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IN THE
Supreme Court
OF THE
Commonwealth of the Northern Mariana Islands

TRIPLE J SAIPAN, INC. DBA TRIPLE J MOTORS,
Plaintiff-Appellant,

v.

DION JOSEPH S. OGO,
Defendant-Appellee.

Supreme Court No. 2019-SCC-0010-CIV

OPINION

Cite as: 2020 MP 15

Decided June 29, 2020

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLONA
ASSOCIATE JUSTICE PERRY B. INOS

Superior Court Civil Case No. 18-0400
Associate Judge Wesley M. Bogdan, Presiding

INOS, J.:

¶ 1 Plaintiff-Appellant Triple J Saipan, Inc., doing business as Triple J Motors (“Triple J”), appeals the Superior Court’s Final Judgment in a debt collection case. It argues the court: (1) erred in vacating the Superior Court Clerk of Court’s (“Clerk”) entry of default judgment; (2) erred in declining to award pre-judgment interest; (3) abused its discretion in failing to award the full requested attorney’s fees; and (4) abused its discretion in failing to award the full requested costs. For the following reasons, we REVERSE the Final Judgment and REMAND for reentry of the Clerk’s default judgment as to prejudgment interest, attorney’s fees, and costs, as well as post-judgment interest.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Defendant-Appellee Dion Joseph S. Ogo (“Ogo”) defaulted on a vehicle purchase contract and Triple J sued to collect on the balance. Under the contract, Ogo agreed to pay the total principal at 12% interest per annum. He failed to answer the complaint and the Clerk entered his default. Upon request from Triple J, the Clerk entered default judgment of \$3,166.62 in principal, \$268.60 in prejudgment interest starting from April 10, 2018, \$600.00 in attorney’s fees based on the default fee schedule, and \$261.50 in costs as supported by counsel’s declaration, pursuant to then-Commonwealth Rule of Civil Procedure 55(b)(1) (“Rule 55(b)(1)”)¹. The Clerk included post-judgment interest at a rate of 9% per annum.

¶ 3 After a series of hearings, motions, and orders, and while allowing Triple J to substantiate its requests, the court vacated the default judgment on the basis that the Clerk may not administratively enter the award of prejudgment interest, attorney’s fees, and costs. The court relied on Commonwealth Rule of Civil Procedure 60(a) (“Rule 60(a)”)², which allows correction of a clerical mistake, or one of oversight or omission.² The court instead entered partial judgment of \$3,166.62 in principal and later issued a final judgment reducing the attorney’s fees and costs to \$120.00 and \$111.50, respectively, and denying prejudgment interest. *Triple J Saipan, Inc. v. Ogo*, Civil Action No. 18-0400 (NMI Super. Ct.

¹ Commonwealth Rule of Civil Procedure 55(b)(1) has since been replaced by the NMI Rule of Civil Procedure 55(b)(1), which contains stylistic changes not affecting the substance of the rule.

² Rule 60(a) states:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

COM. R. CIV. P. 60(a) (repealed January 9, 2019).

May 3, 2019) (Partial Default Judgment at 1); *Triple J Saipan, Inc. v. Ogo*, Civil Action No. 18-0400 (NMI Super. Ct. July 8, 2019) (Final Judgment at 5).

¶ 4 The award of attorney’s fees was based on the two-step reasonableness test in *In re Estate of Malite*, 2016 MP 20, and NMI Rule of Indigent Representation 80. The court found the small claims filing fee of \$75.00 to be a reasonable basis for costs awarded because this was a “straight-forward pro se collection case.” *Id.* at 3 n.1.

¶ 5 The court declined to award prejudgment interest because Triple J failed to identify any statute or specific contract provision that allows for the 12% prejudgment interest after the borrower defaults and fails to make the necessary payments (including payment of the agreed upon finance charges). Final Judgment at 2.

¶ 6 Triple J appeals.

II. JURISDICTION

¶ 7 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 8 We review de novo the court’s decision vacating the default judgment under Rule 60(a). *Torres v. Fitial*, 2008 MP 15 ¶ 8. We also review de novo whether the Clerk had authority to enter the default judgment. *J.C. Tenorio Enterprises, Inc. v. Uddin*, 2006 MP 22 ¶ 9. We review the denial of prejudgment interest, award of attorney’s fees, and failure to award the full costs each for an abuse of discretion. *Manglona v. Commonwealth*, 2005 MP 15 ¶ 41; *In re Estate of Malite*, 2010 MP 20 ¶ 38; *Ishimatsu v. Royal Crown Ins., Corp.*, 2010 MP 8 ¶ 64; *In re Estate of Aldan*, 1997 MP 3 ¶ 17.

IV. DISCUSSION

A. Default Judgment

¶ 9 Triple J raises the same issues and makes the same arguments regarding the partial vacatur of default judgment, the award of attorney’s fees, and the award of costs as those made in *Joeten Motor Co. v. Leon Guerrero*, 2020 MP 14. Triple J now brings the additional issue of prejudgment interest to our attention. We reiterate our holdings in *Joeten* and then consider whether prejudgment interest was a sum certain under Rule 55(b)(1).

¶ 10 In *Joeten*, we held that the court improperly relied on Rule 60(a) to vacate the awards of attorney’s fees and costs in the default judgment because the Clerk’s purported error was legal rather than clerical. *Id.* ¶¶ 9–11. Rule 60(a) allows the court to correct only clerical errors, or errors in math, typography, or transcription, or oversight, omission, or failure to reflect what the court intended on the record. There, the order stating the “default judgment contained awards of damages the Clerk of Court may not administratively enter” implied that the Clerk did not have the authority to enter the default judgment under Rule

55(b)(1).³ *Joeten Motor Company, Inc. v. Leon Guerrero*, Civil Action No. 18-0395 (NMI Super. Ct. May 3, 2019) (Partial Default Judgment at 1). Here, this language is identical to that in Triple J’s Partial Default Judgment. Partial Default Judgment at 1. The court misapplied Rule 60(a) because there was neither a clerical error to fix nor was it an appropriate rule for vacating a default judgment. Thus, we reach the same conclusion here—invoking Rule 60(a) was an abuse of discretion.

¶ 11 We also found the attorney’s fees and costs were sums certain under Rule 55(b)(1). In doing so, we held the court lacked authority to issue *In Re: The 1992 Attorney’s Fee Schedule in Civil Default Cases* (“2018 Action”), which rescinded an earlier fee schedule for reasonable attorney’s fees in default civil cases (“1992 Fee Schedule”) and required reasonableness determinations for attorney’s fees awards. *Joeten*, 2020 MP 14 ¶ 15. The 2018 Action was therefore not enforceable. The 1992 Fee Schedule, however, contains similar fee awards as that in other jurisdictions’ default judgment fee schedules and promotes judicial economy and efficiency. *Id.* ¶¶ 17–19.

¶ 12 In *Joeten*, the 1992 Fee Schedule and attorney’s fees requested were presumptively reasonable. *Id.* ¶ 19. Because the Clerk could apply the 1992 Fee Schedule and the court filing fee schedule to calculate the attorney’s fees and costs, *Uddin*, 2006 MP 22 ¶ 14, we held both were sums certain for which the Clerk could enter default judgment. *Joeten*, 2020 MP 14 ¶¶ 20–21. Here, the requested fees correspond to those in the 1992 Fee Schedule. Again, at this time and until the 1992 Fee Schedule is revised or rebutted, we find the attorney’s fees reasonable and calculable. The costs, as in *Joeten*, are based on the court filing fee schedule and thus calculable as well. The attorney’s fees and costs are sums certain for which the Clerk may enter default judgment under Rule 55(b)(1).

¶ 13 We next address whether prejudgment interest is a sum certain. Triple J argues the contract expressly provides for prejudgment interest on the unpaid principal balance at 12% per annum.

¶ 14 No statutory authority exists in the Commonwealth for prejudgment interest rates, *Manglona v. Commonwealth*, 2010 MP 10 ¶ 20, but prejudgment interest may be provided for by contract. *Isla Dev. Prop., Inc. v. Jang*, 2017 MP 13 ¶ 14 (citing *Manglona v. Baza*, 2012 MP 4 ¶ 23). When interpreting a contract, we aim to “give effect to the intentions of the parties as expressed in the instrument.” *Commonwealth Ports Auth. v. Tinian Shipping Co., Inc.*, 2007 MP 22 ¶ 16. The parties’ intentions are “generally presumed to be encompassed by

³ Rule 55(b)(1) states:

If the plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff’s request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

COM. R. CIV. P. 55(b)(1) (repealed January 9, 2019).

the plain language of contract terms.” *Riley v. Public School Sys.*, 4 NMI 85, 88 (1994). In *Isla Development Property*, we held the phrase “unpaid principal balance and accrued interest” in a promissory note provided for pre-default interest. 2017 MP 13 ¶ 9. There, the note contained a remedies clause, which stated that the holder could demand interest if the payee failed to pay all of the principal by the default date. *Id.* ¶ 11. We found the note’s plain language provided for accrual of interest—specifically pre-default interest. *Id.* In *Manglona v. Commonwealth*, we held prejudgment interest was stipulated in a lease agreement with the language “[a]ny sum accruing to Landlord under the provisions of the Lease which shall not be paid when due shall bear interest at the rate provided by law from the date notice specifying such nonpayment is given until paid.” 2005 MP 15 ¶ 44.

¶ 15 The vehicle purchase contract in this case provides for prejudgment interest. It reads: “You agree to pay the Creditor – Seller and the holder of this Contract . . . the Amount Financed and Finance Charge according to Your Payment Schedule below. We will figure the Finance Charge on a daily basis.” App. 7. It further states: “You promise to pay us . . . the Amount Financed stated on the front of this Contract (the amount is called “principal”), plus interest on the decreasing unpaid principal balance at the Annual Percentage Rate stated on the front of this Contract.” App. 9. The contract set the percentage rate at 12% per annum. App. 7. The language “interest on the decreasing unpaid principal balance at the Annual Percentage Rate” provides for payment of interest so long as the principal balance remains unpaid. This is similar to language which we found provided for prejudgment interest in *Isla* and *Manglona*. We find the plain language requiring Ogo to pay interest on the unpaid balance provides for prejudgment interest.

¶ 16 “Prejudgment interest serves to compensate for the deprivation of the money due from the time the claim accrues until judgment is entered, ‘thereby achieving full compensation for the injury that damages are intended to redress.’” *Manglona*, 2005 MP 15 ¶ 43 (quoting *West Virginia v. United States*, 479 U.S. 305, 310 n.2 (1987)). We calculate prejudgment interest from the date of the loss or the date the complaint was filed to the date final judgment is entered. *See Isla Dev. Prop.*, 2017 MP 13 ¶ 10; *see also Commonwealth v. Lot No. 218-5 R/W*, 2016 MP 17 ¶ 2 n.2.

¶ 17 Here, the Clerk could calculate prejudgment interest as a sum certain by multiplying the decreasing unpaid principal balance by the 12% per annum interest rate and the period of time that has passed. In the default judgment, the Clerk granted prejudgment interest at the 12% per annum rate from April 10, 2018, to the date of the default judgment. The contract, complaint, and the filings below fail to provide an explanation for Triple J’s use of April 10, 2018, as the start date for accrual of prejudgment interest. In any event, the 12% per annum interest rate would apply to any remaining unpaid balance up until the date of default judgment, regardless of the prejudgment interest accrual date. The interest due on the unpaid balance was prejudgment interest and a sum certain

for which the Clerk may enter default judgment under Rule 55(b)(1).⁴ The court's subsequent denial of prejudgment interest was an abuse of discretion.

¶ 18 As in *Joeten*, Triple J's request for attorney's fees and costs was a sum certain for which the Clerk properly entered default judgment. The award of prejudgment interest is also a sum certain. The Final Judgment is reversed and we remand this case for reentry of the Clerk's default judgment.

B. Costs

¶ 19 Triple J argues the court abused its discretion in failing to award the full requested costs because it believed this case should have been filed as a small claims action. The costs here are the filing fees in a civil suit. We review for an abuse of discretion the court's failure to award the full requested costs. *Ishimatsu*, 2010 MP 8 ¶ 64; *In re Estate of Aldan*, 1997 MP 3 ¶ 17.

¶ 20 While Commonwealth Rule of Civil Procedure 54(d)(1)⁵ allows costs to be awarded to the prevailing party unless the court directs otherwise, Rule 83 controls the award of costs on this issue: a "plaintiff *may* file a case under this small claims procedure for any civil action within the jurisdiction of the court, involving a claim the value of which is five thousand (\$5,000.00) dollars or less . . ." COM. R. CIV. P. 83(a) ("Rule 83(a)") (emphasis added). Rule 83 leaves the choice of how to file its case with Triple J, not the court. As we held in *Joeten*, Rule 83 allowed Triple J to file the action as a civil action and the court should have awarded costs accordingly. 2020 MP 14 ¶ 25. The court abused its discretion in awarding costs as if the case had been filed as a small claims action.

V. CONCLUSION

¶ 21 For the foregoing reasons, we REVERSE the Final Judgment and REMAND the case for reentry of the Clerk's default judgment as to prejudgment interest, attorney's fees, and costs, as well as post-judgment interest.

⁴ Prejudgment interest in this case should be calculated up to the date of the default judgment.

⁵ Rule 54(d)(1) states "costs other than attorney's fees shall be allowed as of course to the prevailing party unless the court otherwise directs." COM. R. CIV. PRO. 54(d)(1) (repealed January 9, 2019).

SO ORDERED this 29th day of June, 2020.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice

COUNSEL

Michael A. White, Saipan, MP, for Plaintiff-Appellant.

Dion Joseph S. Ogo, Pro Se, Saipan, MP, Defendant-Appellee.

NOTICE

This slip opinion has not been certified by the Clerk of the Supreme Court for publication in the permanent law reports. Until certified, it is subject to revision or withdrawal. In the event of discrepancies between this slip opinion and the opinion certified for publication, the certified opinion controls. Readers are requested to bring errors to the attention of the Clerk of the Supreme Court, P.O. Box 502165 Saipan, MP 96950, phone (670) 236-9715, fax (670) 236-9702, email Supreme.Court@NMIJudiciary.com.



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JUDGMENT

Plaintiff-Appellant Triple J Saipan, Inc., doing business as Triple J Motors, appeals the Superior Court's Final Judgment in a debt collection case. It argues the court: (1) erred in vacating the Superior Court Clerk of Court's ("Clerk") entry of default judgment; (2) erred in declining to award pre-judgment interest; (3) abused its discretion in failing to award the full requested attorney's fees; and (4) abused its discretion in failing to award the full requested costs. For the following reasons, we REVERSE the Final Judgment and REMAND for reentry of the Clerk's default judgment as to prejudgment interest, attorney's fees, and costs.

ENTERED this 29th day of June, 2020.

/s/

GRETCHEN A. SMITH
Clerk of the Supreme Court