

1
2
3 **FOR PUBLICATION**
4

5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 Estate of Vincente S. Muna,
9 Deceased, by and through Larry T. Lacy,
10 Administrator,

11 Plaintiff,

12 v.

13 Commonwealth of the Northern Mariana
14 Islands,

15 Defendant.

Civil Action No. 96-0769

**ORDER GRANTING SUMMARY
JUDGMENT IN PART AND DENYING
SUMMARY JUDGMENT IN PART**

16 **I.**

17 **INTRODUCTION**

18 **THIS MATTER** came before this Court for a hearing of Defendant's Motion for Summary
19 Judgment on June 19, 2003. The Plaintiff, Larry T. Lacy as Administrator for the Estate of Vincente
20 S. Muna, was represented by Brien Sers Nicholas. The Defendant, the Commonwealth of the
21 Northern Mariana Islands, was represented by Assistant Attorney General, James D. Livingstone.

22 **II.**

23 **FACTS**

24 Vicente S. Muna owned a parcel of land on Saipan prior to World War II. *See Memorandum*
25 *in Support of Motion for Summary Judgment* at 2. Tobias C. Muna, an heir to Vincente Muna, filed
26 an application for registration of Japanese Lots 448 and 448-1. *Id.* Approximately 20 years later,
27 a Commonwealth land registration team determined that Vincente Muna was the pre-war owner of
28 the registered lots, amounting to 6,277.6 square meters of land. *Id.* The Commonwealth, prior to
that determination, had transferred some of plaintiff's land and used other portions of his lots for
public uses, i.e. roads. *Id.*

1 Plaintiff filed a quiet title action in 1996, later amended to include the underlying takings
2 claim. *Id.*

3 The Estate of Vicente S. Muna, by Larry T. Lacy, Administrator (“Muna”),
4 subsequently brought an action to quiet title. Muna moved for summary judgment
5 and the Government opposed and cross-moved for summary judgment. Noting that
6 the Government failed to appeal the Land Commission's decision, the trial court
7 found that it was bound by the 1991 determination. The court acknowledged that an
8 administrative decision may be disregarded if a party can demonstrate that
9 procedural irregularities occurred. However, the court found the Government's
10 argument that it did not receive notice of the administrative proceedings
11 disingenuous. Finding that the Government was constructively notified of what its
12 own agency was doing, the trial court concluded that “Muna is entitled to quiet title
13 for the 6,277.6 square meters of land comprising old Japanese lots 448 and 448-1.”
14 (Internal citations omitted).

15 *Estate of Muna v. Commonwealth*, Appeal Nos. 98-031 and 98-035, at 6 (N.M.I. February 14, 2000).

16 The Commonwealth Supreme Court affirmed the holding of the trial court that the Commonwealth
17 had waived its right to appeal the land registration team’s decision, and was therefore bound by that
18 decision. *Id.* Resulting from that decision, the Commonwealth, then became liable for either the
19 return of Plaintiff’s land or compensation of its fair market value. After the Supreme Court’s
20 affirming of the trial court ruling, the case then proceeded in the Superior Court for determination
21 of the remaining issues.

22 On December 16, 2002 the Commonwealth served its First Set of Requests for Admissions
23 on the Plaintiff pursuant to Com.R.Civ.P. 36(a). *Id.* at 2. The Plaintiff failed to respond to the
24 request for admissions made by the Commonwealth. *Id.* The Defendant then, on April 1, 2003, filed
25 its Motion for Summary Judgment. The Plaintiff submitted a tardy reply and Cross-Motion for
26 Summary Judgment on April 11, 2003.¹

27 Because the main issue surrounding the claim is the actual date of the taking, the following
28 factual statement is relevant. On March 24, 1976, the United States and the Northern Mariana
Islands Representatives signed the Covenant to Establish a Commonwealth of the Northern Mariana
Islands in Political Union with the United States of America, 48 U.S.C. § 1801 (the “Covenant”).

¹Plaintiff’s reply was due April 10, 2003, and not served on the Defendant until April 14, 2003. This Court wishes to assert the importance of adhering to the rules of procedure, specifically those regarding filing deadlines. Future tardy pleadings will be stricken and the opposing party’s motion will be considered unopposed.

1 COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL
2 UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1801 note, *reprinted in CMC* at B-101
3 et seq. Under the Covenant, the United States agreed to transfer the real property it held in the
4 Northern Mariana Islands back to the people of the islands.² On April 1, 1976, the Department of
5 the Interior issued an order separating the Northern Mariana Islands from the rest of the Trust
6 Territory and transferring the public lands to the Resident Commissioner of the newly formed
7 Northern Marianas Government. *See* Secretarial Order No. 2989 (March 24, 1976; effective April
8 1, 1976). The transfer of property to the Commonwealth of the Northern Marianas occurred April
9 1, 1976, memorialized in the Confirmation Deed issued August 9, 1978 by the High Commissioner
10 of the Trust Territory of the Pacific Islands.

11
12 **III.**
13 **DISCUSSION**

14 Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories,
15 admissions on file, and affidavits, if any, show that there are no genuine issues of material fact and
16 that the moving party is entitled to judgment as a matter of law. *See* Com. R. Civ. P. 56(b); *see also*
17 *Celotex v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, L.Ed.2d 265 (1986). When the moving party
18 has shown an absence of evidence to support the non-moving party's case, the non-moving party
19 must present specific facts showing there is a genuine issue for trial. *See Matsushita Elec. Indus.*
20 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *see also*
21 *Castro v. Hotel Nikko, Saipan, Inc.*, 4 N.M.I. 268, 4 N.M.I. 272 (1995).

22
23
24 ² Covenant § 801. All right, title and interest of the Government of the Trust Territory of the Pacific Islands
25 in and to real property in the Northern Mariana Islands on the date of the signing of this Covenant or thereafter
26 acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be
27 transferred to the Government of the Northern Mariana Islands. All right, title and interest of the Government of the
28 Trust Territory of the Pacific Islands in and to all personal property on the date of the signing of this Covenant or
thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement,
be distributed equitably in a manner to be determined by the Government of the Trust Territory of the Pacific Islands
in consultation with those concerned, including the Government of the Northern Mariana Islands. COVENANT TO
ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED
STATES OF AMERICA, 48 U.S.C. § 1801 note, *reprinted in CMC* at B-101 et seq.

1 The court must view the evidence and all inferences to be drawn from the underlying facts
2 in the light most favorable to the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S.
3 242, 247-48, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). After reviewing the facts in a light most
4 favorable to the non-moving party, the court may only grant summary judgement when it appears
5 as a matter of law that the moving party is entitled to judgment. *See Cabrera v. heirs of DeCastro*, 1
6 N.M.I. 172, 1 N.M.I. 176 (1990). There are only two issues to resolve in this matter: the date the
7 Commonwealth deprived the Plaintiff of his property and the interest rate to be applied since the
8 deprivation.

9 The Commonwealth may take possession of land by undertaking eminent domain
10 proceedings or by physically taking possession of the land and ousting the owner. *See Kirby Forest*
11 *Industries v. United States*, 467 U.S. 1, 6 (1984). Where a taking is at issue a plaintiff is entitled to
12 bring an inverse condemnation action to recover the value of the land from the date of the taking.
13 *Id.* (citing *United States v. Dow*, 357 U.S. 17, 21-22 (1958)). Once the property rights taken by the
14 government have been established there must be a calculation of just compensation. Just
15 compensation equates to fair market value at the time of the taking. *See Kirby Forest Industries*,
16 467 U.S. at 10. Individuals deprived of their property before compensation is awarded are also
17 entitled to prejudgment interest. *See Kirby Forest Industries*, 467 U.S. at 10-11; *Seaboard Air Line*
18 *Ry. Co. v. United States*, 261 U.S. 299, 306 (1923).

19 The Plaintiff objects to the Commonwealth's position that the property in question was taken
20 on April 1, 1976. Alternatively, the Plaintiff believes the date of the taking to have occurred on
21 March 15, 1991; the date the Land Commission determined the Plaintiff to be the owner of Lot Nos.
22 448 and 448-1. Determination of this question, is a matter of law and not a factual matter.
23 Moreover, the Plaintiff is deemed to have admitted through the Defendant's requests for admissions
24 the time of the taking.

25 Com.R.Civ.P. 36(a) governs requests for admissions. Unanswered requests for admissions
26 render the matter requested conclusively established for the purpose of that suit. *Federal Trade*
27 *Commission v. Medicor, LLC*, 217 F. Supp. 2d 1048, 1053 (C.D. Cal. 2002) (failure to respond
28 results in automatic admission, with no motion necessary, because Rule 36(a) is self-executing).

1 Matters admitted in accordance with Rule 36, whether explicitly admitted or admitted by default,
2 are conclusively established, for purposes of the pending action. Unanswered admissions are proper
3 in considering a motion for summary judgment. *Id.* (in ruling on summary judgment motion, district
4 court deemed admitted requests for admissions to which defendants failed to respond, noting that
5 failure to respond results in automatic admission, with no motion necessary); *See also United States*
6 *v. Kasuboski*, 834 F.2d 1345., 1350 (7th Cir. 1987); *O'Campo v. Hardisty*, 262 F.2d 621, 624 (9th
7 Cir. 1958); *Batson v. Porter*, 154 F.2d 566, 568 (4th Cir. 1946).

8 The Plaintiff at the time of this hearing had neither responded to Defendant's First set of
9 Requests for Admission, which were served on December 16, 2002, nor attempted to amend or
10 withdraw the admissions. As such, the following facts were conclusively established for the purpose
11 of this case:

- 12 1. That lots 448 and 448-1 containing an area of 6,277.6 sq.m. should be deemed to
13 have been taken in 1976.
- 14 4. That the Commonwealth is responsible for compensating the Plaintiff for the fair
15 market value of the land in 1976.
- 16 5. That the market value for lots 448 and 448-1 containing an area of 6,277.6 sq.m. in
17 1976 is less than \$7.00/sq.m.

18 Under Com.R.Civ.P 36(a) the above admissions are deemed conclusive, based on the failure to
19 respond. The Plaintiff, has therefore, in essence stipulated to the above stated requests for
20 admissions.

21 Summary judgment is a severe measure, and one that must be treated with the utmost
22 scrutiny given the nature of the basis for the Defendant's request. "When considering a motion for
23 summary judgment based on an admission, the court may consider such factors as whether the
24 admissions are certain or uncertain, whether they are vague, ambiguous, or clear, and whether the
25 request was properly served." MOORE'S FEDERAL PRACTICE, Civil § 36.03 (2003). The requests
26 for admissions submitted by the Defendant precisely represent their point and the focus of their case.
27 No evidence was presented, nor has anything been established regarding improper service by the
28 Defendant. Where the admissions are precise and properly served the Court must follow the guide

1 of the Com.R.Civ.P. 36(a) and deem them admitted. Resulting from that determination, the
2 admissions can be used as a basis for summary judgment.

3 Despite the admissions deemed as conclusive to this proceeding, the Court finds that the date
4 of the taking is the point at which the Commonwealth assumed possession of the land. The actions
5 of the Land Commission that certified the Plaintiff's interest in the land are not relevant to the date
6 of the taking. The Commonwealth obviously held the land prior to that certification. The
7 determination issued in 1991 stated that the late Vincente Muna was the "pre-war owner of lots 448
8 and 448-1." *Estate of Muna v. Commonwealth*, Appeal Nos. 98-031 and 98-035 (N.M.I. 1999).

9 The Plaintiff contends that "to date, there has been no conveyance of any sort vesting titles
10 to any public lands in the Commonwealth of the Northern Mariana Islands, successor to the
11 Government of the NMI." *See Plaintiff's Opposition to Defendant's Motion for Summary Judgment*
12 at 4. Primarily, the Plaintiff suggests that lands of the Trust Territory of the Pacific Islands were
13 transferred to the Resident Commissioner pursuant to Secretarial Order 2989. *See Defendant's*
14 *Exhibit B*. Yet, under the Plaintiff's view the transfer of land to the Resident Commissioner never
15 culminated in a subsequent transfer to the Commonwealth. Therefore, the first time at which the
16 Plaintiff could have asserted rights to the land was March 15, 1991 when the Land Commission
17 issued its determination. A plaintiff is not entitled to choose the date their land was taken.

18 The Commonwealth succeeded the Resident Commissioner as the governing institution of
19 the Northern Mariana Islands January 9, 1978. *See Confirmation Deed* at 2-3, attached as Exhibit
20 C to Mem. of Law in Support of Defendant's Motion for Summary Judgment. The Confirmation
21 Deed unambiguously transferred all public and alien lands to the Resident Commissioner. *Id.* at
22 3. The lands of the Northern Mariana Islands then became the lands of the Commonwealth per the
23 section of the Confirmation Deed representing a transfer of power away from the temporary power
24 of the Resident Commissioner. The Commonwealth replaced the Resident Commissioner in that
25 office's lawful governmental exercise over the power of land in the Northern Mariana Islands.

26 This Court makes its findings based on the above two conclusions. First, the failure to
27 answer the Defendant's requests for admissions is deemed as a conclusive answer to those
28 admissions. Second, land in the Northern Mariana Islands came under governmental control

1 beginning with the interim involvement of the Resident Commissioner and culminating in a transfer
2 of power to the Commonwealth.

3 The Plaintiff raises one final objection to the Defendant's summary judgment position. The
4 Defendant suggests that the statutory interest of three percent (3%) that applies statutorily to eminent
5 domain actions should be applied here. 1 CMC § 9227(b). Eminent domain actions are analogous
6 to inverse condemnation actions, as they both concern the taking of property. However, an inverse
7 condemnation action is not a eminent domain action, and the plain language of the statute cannot
8 be applied here. Statutes are to be given their plain meaning. *Estate of Faisao v. Tenorio*, 4 N.M.I.
9 260, 265 (1995); *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12, 18 (1992). There is no existing
10 statutory provision specifically governing interest in inverse condemnation actions. 7 CMC § 4101
11 provides for a nine percent (9%) interest rate to be applied to judgments for the payment of money.
12 7 CMC § 4102 governs judgments affecting interest in land, but provides no rate of interest to guide
13 the Court. The judgment incurred here is a payment of money, yet the underlying interest is an
14 interest in land, and will be governed according to the Court's discretion guided by fairness
15 considerations.

16 In one breath, the Plaintiff states that this Court retains discretion in determining appropriate
17 rates of interest. In another, the Plaintiff states that this is a matter left for the jury. Determination
18 of interest to be applied to judgments is a legal question, not one left to a jury. This Court is with
19 discretion to determine the rate. Without a specific statute to the guide the Court, we are left with
20 ascertaining a rate that exemplifies fairness. To be sure, the rate should fall somewhere within the
21 realm of the statutory guidelines provided for actions other than the underlying one, namely three
22 to nine percent (3-9%). The Court sets the interest rate at six percent (6%), which for years was the
23 rate of statutory interest on court judgments. That rate will be applied to the damages Plaintiff
24 receives as the result of its inverse condemnation action.

25 IV.

26 ORDER

27 The Defendant's Motion for Summary Judgment is hereby **GRANTED**. The Plaintiff's
28 Cross-Motion for Summary Judgment is **DENIED**. The rate of interest to be applied to the

1 Plaintiff's inverse condemnation action is six percent (6%).

2

3

4 **SO ORDERED** this 4th day of December 2003.

5

6

/s/ _____
David A. Wiseman
Associate Judge

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28