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For Publication

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**THE BOARD OF MARIANAS PUBLIC
LANDS AUTHORITY,**

Plaintiff,

vs.

**THE HEIRS OF RITA ROGOLIFOI,
represented by DOLORES SARALU,
JESUS DELEON GUERRORO TAKAI,
DIRECTOR OF DIVISION OF LAND
REGISTRATION AND SURVEY,
DEPARTMENT OF LANDS AND
RESOURCES, and UNKNOWN DOES,**

Defendants.

**HEIRS OF RITA ROGOLIFOI, Dec., by
and through ENRIQUE K. SEMAN,
Administrator,**

Counter-Claim Plaintiff,

vs.

**THE BOARD OF MARIANAS PUBLIC
LANDS AUTHORITY,**

Counter-Claim Defendant.

CIVIL ACTION NO. 05-0197A

AMENDED

**ORDER GRANTING PREJUDGMENT
INTEREST RATES FOR
GOVERNMENT TAKING OF LOTS
630-1R/W AND 630-2R/W**

1 This Court's "Order Granting Prejudgment Interest Rates for Government Taking of
2 Lots 630-1R/W and 630-2R/W," dated January 8, 2009, is now amended to read:

3
4 **I.**
INTRODUCTION

5 THIS MATTER came before the Court on August 8, 2008 at 9:00 a.m. to hear expert
6 testimony regarding the determination of the appropriate prejudgment interest rates. Assistant
7 Attorney General R. Anthony Welch appeared on behalf of Plaintiff/Counter-Defendant Board
8 of Marianas Public Lands Authority (MPLA).¹ Brien Sers Nicholas appeared on behalf of
9 Defendant/Counter-Claim Plaintiff Heirs of Rita Rogolifoi (Rogolifoi Heirs). Briefs containing
10 closing arguments regarding this matter were submitted on September 22, 2008.

11 This Court having considered all pleadings, arguments, materials on record, and all
12 relevant rules and case law, enters the following order: GRANTING prejudgment interest rate of
13 7.724 percent for the March 24, 1976 land taking and GRANTING prejudgment interest rate of
14 6.991 percent for the January 16, 1992 land taking.

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16 **II.**
STANDARD

17 The remaining issue in this case is the determination of the prejudgment interest rates
18 associated with "just compensation" to be received by the Rogolifois for the taking of Lots 630-
19 1R/W and 630-2R/W. See Order Re: February 12th, 2008 Compensation Hearing, CNMI
20 Superior Court, Civ. Act. No. 05-0197A. *Estate of Muna v. CNMI*, 2007 MP 16 (Slip Opinion)
21 is the authority in the CNMI to determine prejudgment interest in inverse condemnation
22 proceedings.² "'Just compensation' has been defined as 'the fair market value of the property
23

24
25 ¹ Parties stipulated to the substitution of the Department of Public Lands (DPL) for former plaintiff Board of
26 Marianas Public Land Authority. Since the caption has not been changed, MPLA will be referred to throughout this
order; however, this order binds DPL.

27 ² When the government acquires privately owned land "by physically entering into possession and ousting the owner
28 ... the owner has a right to bring an 'inverse condemnation' suit to recover the value of the land." *Kirby Forest
Industries, Inc. v. U.S.*, 467 U.S. 1, 7 (1984) (citing *U.S. v. Dow*, 357 U.S. 17, 21-22 (1958)). "Inverse
condemnation" is defined as a suit "brought by the affected owner, not by the condemnor." *Kirby*, 467 U.S. at 7 n.6
(citing *United States v. Clarke*, 445 U.S. 253, 257 (1980)).

1 on the date it is appropriated.” *Estate of Muna v. CNMI*, 2007 MP 16, ¶ 13 (citing *Kirby*
2 *Forest Indus., Inc. v. U.S.*, 467 U.S. 1, 9 (1984)). However, when “payment of fair market
3 value has been deferred, *an additional element of compensation* in the form of reasonable
4 interest should be awarded.” *Estate of Muna*, 2007 MP 16, ¶ 13 (citing *Schneider v. County of*
5 *San Diego*, 285 F.3d 784, 789 (9th Cir. 2002))(emphasis added). It is a judicial responsibility to
6 determine just compensation; however courts are guided, but not bound, by the legislature
7 through statutes prescribing interest rates. *Id.* at ¶ 14. The Fifth Amendment requires an award
8 equal to the fair market value of the property on the date the payment is made. *Estate of Muna*,
9 2007 MP 16 ¶ 17 (citing *Kirby*, 467 U.S. 1, 17 (1984)). However, the *Kirby* Court also realized
10 the tenuous relationship between the change in market value of property and the market rate of
11 interest, therefore declining to set a standard interest rate for all condemnation actions. *Id.*
12 Instead of setting a standard interest rate, courts must “determine ‘what a reasonably prudent
13 person investing funds so as to produce a reasonable return while maintaining safety of
14 principle’ would have received.” *Estate of Muna*, 2007 MP 16 ¶ 19 (citing *United States v.*
15 *50.50 Acres of Land*, 931 F.2d 1349, 1354 (9th Cir. 1991)). The *Estate of Muna* Court
16 interpreted this to mean that “the trial court shall examine the current value of the property as
17 well as the amount of money [the landowner] could have obtained by prudently investing the
18 proceeds” if the compensation was awarded when the land was taken. *Id.* at ¶ 20. The
19 compensation awarded to the land owner “should bear some relation to the current value of the
20 property.” *Estate of Muna*, 2007 MP 16 ¶ 19 (citing *Kirby*, 467 U.S. 1, 17 (1984)). Finally,
21 *Estate of Muna* requires the court to hold a hearing to take evidence to determine fair
22 compensation. *Id.* at ¶ 19.

23 24 **III.** **DISCUSSION**

25 At the August 8, 2008 hearing, both parties presented expert testimony to show the
26 proper prejudgment interest rate. MPLA presented Mitchell Aaron, a certified real estate
27 appraiser, who also provided MPLA’s land appraisals in this matter. MPLA Closing Brief at 2.
28 Aaron testified that 123 of 129 CNMI citizens who had land taken by the government accepted a

1 settlement with an interest rate of 3.5 percent compounded. *Id.* at 4. MPLA argues that these
2 prior settlements in land taking cases, awarding 3.5 percent prejudgment interest, is the local
3 standard and should apply to the present action. Aaron also testified that property values in the
4 CNMI have declined since 1992 at about eight percent per year, losing almost 89 percent of their
5 1992 value. *Id.* at 6. MPLA contends that awarding a higher interest rate would be a windfall in
6 light of the current value of the property at issue.

7 Daniel Webb, a financial adviser with over thirty years experience, testified on behalf of
8 the Rogolifoi Heirs. Webb calculated the present value of two lump sum payments by applying
9 separate interest rates to each payment amount. *Id.* at 3. Webb concluded that the appropriate
10 interest rate for the March 24, 1976 land taking is 7.724 percent and the appropriate interest rate
11 for the January 16, 1992 land taking is 6.991 percent. Rogolifoi Closing Brief at 3. In
12 determining these interest rates, Webb relied on concepts found in the Uniform Prudent Investor
13 Act (UPIA). Rogolifoi Exhibit KKK at 2. “The UPIA was adopted in 1992 by the American
14 Law Institute’s Third Restatement of the Law of Trusts ... and is the most widely used legal
15 reference in evaluating the reasonableness of investment decisions.” *Id.* To determine the
16 weighted average annualized returns for lump sum payments in 1976 and 1992 to the present
17 date, Webb designed a hypothetical investment portfolio comprised of fifty percent U.S.
18 domestic stocks and fifty percent fixed income securities, including U.S. Treasury obligations,
19 Bank CDs, and AAA rated corporate debt obligations. *Id.* at 2-3. This type of investment
20 portfolio is considered moderately conservative. *Id.* at 2. Relying on data obtained from the
21 Federal Reserve Statistical Release H.15, Standard & Poor's, Inc., and the Wall Street Journal,
22 Webb constructed historical returns for this type of portfolio. Webb used this technique, which
23 he considered a prudent investment strategy, to calculate the 7.724 percent and 6.991 percent
24 prejudgment interest rates. Rogolifoi Closing Brief at 3.

25 Neither the testimony of Aaron nor MPLA’s cross examination of Webb contradicted the
26 calculations or strategy set forth by Webb’s testimony. Furthermore, on cross examination,
27 Webb testified that the 3.5 percent prejudgment interest rate accepted by 123 of 129 CNMI
28 citizens in prior land taking cases was well below the rate of inflation. *Id.* at 4. Following

1 MPLA's arguments, this Court should award 3.5 percent interest simply because 123 of 129
2 claimants settled for that rate. MPLA has failed to consider that receiving an interest rate below
3 the rate of inflation may have been a bad settlement and may not be "just compensation." This
4 Court will not penalize the Rogolifoi Heirs simply because a majority of others took a bad
5 settlement offer. This Court believes that Webb's testimony meets the *Estate of Muna* standard
6 in determining "'what a reasonably prudent person investing funds so as to produce a reasonable
7 return while maintaining safety of principle' would have received." *Estate of Muna*, 2007 MP
8 16 ¶ 19 (citing *United States v. 50.50 Acres of Land*, 931 F.2d 1349, 1354 (9th Cir. 1991)).
9 However, this Court finds difficulty awarding Webb's suggested interest rates in light of the
10 *Estate of Muna* Court's statement that "a final award should bear some relation to the current
11 value of the property." *Id.*

12 MPLA argues that Webb's interest rates would give the Rogolifoi Heirs a windfall, since
13 the property value is lower now than it was when the land was actually taken. MPLA contends
14 that its suggested 3.5 percent interest rate prevents any windfall to the Rogolifoi Heirs and would
15 allow the final award to bear a closer relationship to the current value of the property. The
16 Rogolifoi Heirs argue that the *Estate of Muna* Court made that statement in response to the
17 unique procedural aspects of *Kirby Forest Indus., Inc. v. United States*, 567 U.S. 1 (1984). In
18 *Kirby*, although the parties stipulated to the date of taking, in subsequent proceedings the date of
19 taking was changed. Rogolifoi Closing Brief at 4. The problem in *Kirby* was the substantial
20 delay between the date of valuation and the date the judgment was actually paid, during which
21 the value of land changed. *Id.* In light of the differences between the procedural aspects of
22 *Kirby* and the present action, the Rogolifoi Heirs argue that the *Estate of Muna* Court's comment
23 is not determinative here. *Id.* at 5.

24 While not in total agreement with the Rogolifoi rationale, this Court does agree that the
25 Supreme Court's statement regarding the final award's relationship to the current property value
26 does not apply in this instance. If this Court were to apply the 3.5 percent interest rate suggested
27 by MPLA, while the final award would be closer to the current value of the property, an injustice
28 would occur to the Rogolifoi Heirs. The Rogolifoi Heirs would be punished by receiving less

1 money than they could have potentially generated through investments. Although land values
2 have fallen, prompt payment for the land taking would have allowed the Rogolifoi Heirs to
3 strategically invest the money they were awarded, investments which would not have been
4 affected by the falling land values. Furthermore, it is likely that the Supreme Court did not take
5 into consideration the drastic decreases in land value currently affecting the CNMI when it made
6 that statement.³ This Court, through the expert testimony of Webb, has been shown that a
7 reasonably prudent person could have invested funds received in 1976 and generated a return of
8 7.724 percent per year. Furthermore, a reasonably prudent person could have invested funds
9 received in 1992 and generated a return of 6.991 percent per year. Even in light of the
10 significantly lower land values today, it is not a windfall to receive what a reasonably prudent
11 person could have generated through moderately conservative investments if the Commonwealth
12 would have made prompt payment for the land taking.

13 The parties have previously stipulated to the values of the property taken. *See Stipulation*
14 *and Order Re: Compensation Hearing on February 12, 2008 (E-Filed April 29, 2008)*
15 *(Stipulation)*. In its closing brief, MPLA argues that the parties made a mutual mistake in
16 stipulating to these values. MPLA Closing Brief at 4. At the status conference on February 11,
17 2009, the Rogolifois responded to the issue of mutual mistake. The Rogolifois argued that the
18 stipulated property values were negotiated between their counsel, Brien Sers Nicholas, and
19 Assistant Attorney General Anthony Welch (Welch). Furthermore, the Rogolifois argue that
20 they made no mistake in stipulating to those values, and if there was a mistake, it was only on the
21 part of Welch. In the absence of evidence to the contrary, this Court finds that even if Welch
22 made a unilateral mistake when he stipulated to the property values in this Court's April 29,
23 2008 Order, a unilateral mistake does not force this Court to rescind the stipulations. As
24 stipulated between the parties, the fair market value for the portion of Lot 630-1R/W taken
25 March 24, 1976 is \$10,000. Stipulation 3: 12-14. The fair market value for the remaining
26 portion of Lot 630-1R/W and Lot 630-2R/W taken January 16, 1992 is \$659,200. Stipulation 3:

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28 ³ Property in the CNMI has lost a total of almost 89 percent of their 1992 values. MPLA Closing Brief at 6.

1 15; 4: 1-2. The cumulative total for the two takings is \$669,200. Stipulation 3: 7. Finally, the
2 Court orders MPLA to negotiate with the Rogolifois as to a land exchange to resolve the
3 remaining issue of the encroached area.

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5 **IV.**
6 **CALCULATION OF CURRENT VALUES**

7 The present or current value of a lump sum of money is calculated by using the
8 mathematical formula for present and future value calculations. Rogolifoi Exhibit A (citing
9 Robert M. Crowe, *Time and Money – Using Time-Value Analysis in Financial Planning* (7th ed.,
10 Keir Educational Resources 2002).

11 The basic formula for computing the future value of a single sum of money (and
12 from which all other time value formulas are derived) is the following:

$$13 \text{ FVSS} = \text{PVSS}(1+i)^n$$

14 where

15 FVSS = the future value of a single sum

16 PVSS = the present value of a single sum

17 i = the compound periodic interest rate expressed as a decimal

18 n = the number of periods in which compounding occurs

19 That is, add the interest rate to one and raise this sum to a power equal to the
20 number of periods during which compounding occurs. Then multiply this by the
21 present value of the single sum in question to determine the future value of that
22 single sum.

23 Robert M. Crowe, *Time and Money – Using Time-Value Analysis in Financial Planning* (7th ed.,
24 Keir Educational Resources 2002). In this case, the inputs for the two calculations would be:

25 (1) \$10,000 received on March 24, 1976 – PVSS = \$10,000; i = .07724; n = 32.5

$$26 \text{ FVSS} = \text{PVSS}(1+i)^n$$

$$27 \text{ FVSS} = 10,000 \times (1+.07724) \text{ to the } 32.5 \text{ power}$$

$$28 \text{ FVSS} = 10,000 \times 11.224198$$

$$\text{FVSS} = 112,241.98$$

(2) \$659,200 received on January 16, 1992 – PVSS = \$659,200; i = .06991; n = 16.5

$$\text{FVSS} = \text{PVSS}(1+i)^n$$

$$\text{FVSS} = 659,200 \times (1+.06991) \text{ to the } 16.5 \text{ power}$$

$$\text{FVSS} = 659,200 \times 3.049506551021$$

$$\text{FVSS} = 2,010,234.72$$

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V.
CONCLUSION

For the foregoing reasons, the Rogolifoi Heirs are to be awarded:

1. Just Compensation

1. For the March 24, 1976 taking, the prejudgment interest rate of 7.724 percent, with the final award amount to be \$112,241.98.
2. For the January 16, 1992 taking, the prejudgment interest rate of 6.991 percent, with the final award amount to be \$2,010,234.72.

2. Rent Collected by MPLA

1. The sum of \$220,867.61, representing rent collected under the original lease with the former Micronesian Telecommunication Corporation (now PTI) as of March 31, 2009;
2. The sum of \$216,148.36 representing rent collected under the original lease with Saipan Ice, Inc. as of March 31, 2009; and
3. The sum of \$130,527.50, representing rent collected under the original lease with Commercial Trading of Saipan as of March 31, 2009;
4. MPLA must account for and remit to this Court all rental payments collected from the respective Lessees under the lease agreements in this case, including any amount to date as of the respective dates above-mentioned when the last rental payment was collected and agreed to in this case.

SO ORDERED this 7th day of May, 2009.

/s/
ROBERT C. NARAJA,
Presiding Judge