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FOR PUBLICATION

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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

vs.

**Lot No. 353 NEW-G,
Lot No. 2016-1R/W,
Lot No. 335 N-G,
RAMON A. TEBUTEB and all heirs of
MARIA MANGABAO, claiming by and
through RAMON A. TEBUTEB,**

Defendants,

**NICANOR F. NORITA, JOAQUIN P.
ALDAN, JOSE P. ALDAN, JUAN F.
FITIAL, FELICITA R. LIMES, JUAN Ra
LIMES, JUAN Ro LIMES, LILLIAN R.
LIMES, MARIA A. MENDIOLA,
CONNIE A. ALDAN, ISAAC F. KAIPAT,
and GREGORIO A. DELEON
GUERRERO,**

Intervenors.

CIVIL ACTION NO. 97-0266

**ORDER GRANTING PREJUDGMENT
INTEREST RATE**

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I. INTRODUCTION

THIS MATTER came before the Court on July 28, 2008 at 9:30 a.m. to hear arguments regarding the determination of the appropriate prejudgment interest rates for the government takings of Lot No. 353 NEW-G, Lot No. 2016-1R/W, and Lot No. 335 N-G. Assistant Attorney General Alan J. Barak appeared on behalf of the Commonwealth of the Northern Mariana Islands. Eric Smith appeared on behalf of Defendants Ramon A. Tebuteb and all heirs of Maria Mangabao, claiming by and through Ramon A. Tebuteb (collectively, the “Mangabao Heirs”). Michael Dotts appeared on behalf of the Intervenors, Nicanor F. Norita, Joaquin P. Aldan, Jose P. Aldan, Juan F. Fitial, Felicita R. Limes, Juan Ra Limes, Juan Ro Limes, Lillian R. Limes, Maria A. Mendiola, Connie A. Aldan, Isaac F. Kaipat, and Gregorio A. Deleon Guerrero.

This Court having considered all pleadings, arguments, materials on record, and all relevant rules and case law, enters the following order: GRANTING a prejudgment interest rate of 6.991 percent.

II. STANDARD

The parties have stipulated to a land taking date of March 31, 1993 and a Judgment of \$4,196,524. The remaining issue in this case is the determination of the appropriate prejudgment interest rate to compensate the Mangabao Heirs for the March 31, 1993 government taking of Lot No. 353 NEW-G, Lot No. 2016-1R/W, and Lot No. 335 N-G. *Estate of Muna v. CNMI*, 2007 MP 16 (Slip Opinion) is the authority in the CNMI to determine prejudgment interest in inverse condemnation proceedings. In *Estate of Muna*, our Supreme Court adopted the Ninth Circuit's method to determine prejudgment interest rates, stating that courts must “determine ‘what a reasonably prudent person investing funds so as to produce a reasonable return while maintaining safety of principle’ would have received.” *Estate of Muna*, 2007 MP 16 ¶ 19 (citing *United States v. 50.50 Acres of Land*, 931 F.2d 1349, 1354 (9th Cir. 1991)). The Supreme Court interpreted this to mean that “the trial court shall examine the current value of the property as well as the amount of money [the landowner] could have

1 obtained by prudently investing the proceeds” if the compensation was awarded when the land
2 was taken. 2007 MP 16 ¶ 20. Furthermore, the Supreme Court stated that “it believed” the
3 compensation awarded to the land owner “should bear some relation to the current value of the
4 property.” *Estate of Muna*, 2007 MP 16 ¶ 19 (citing *Kirby*, 467 U.S. 1, 17 (1984)). *Estate of*
5 *Muna* also requires the court to hold a hearing to take evidence to determine fair compensation.
6 *Id.* At ¶ 19.

7 Finally, in *Board of Marianas Public Lands Authority (MPLA) v. Heirs of Rita*
8 *Rogolifoi*, the Commonwealth Superior Court, after hearing expert testimony on the issue of
9 prejudgment interest rates, adopted a prejudgment interest rate of 7.724 percent for lands taken
10 in 1976 and a prejudgment interest rate of 6.991 percent for lands taken in 1992. *See MPLA v.*
11 *Heirs of Rogolifoi*, Civ. No. 05-0197 (N.M.I. Super. Ct. May 7, 2009) (Amended Order
12 Granting Prejudgment Interest Rates for Government Taking of Lots 630-1R/W and 630-
13 2R/W).¹ *Heirs of Rogolifoi* also provided the Court with the basic mathematical formula for
14 computing the future value of a single sum of money of $FVSS = PVSS(1+i)^n$.²

15 16 III. DISCUSSION

17 As required by *Estate of Muna*, this Court held an evidentiary hearing on the subject of
18 prejudgment interest on April 3 and April 4, 2008. As an expert witness on prejudgment
19 interest, the Government presented Mitchell K. Aaron, a certified real estate appraiser.
20 Intervenors, who the Mangabao Heirs joined, presented Rufo T. Mafnas, CPA, an accountant,
21 as an expert witness on this issue.

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25 ¹ Due to the length of this citation, the Order will be cited as *Heirs of Rogolifoi*, Civ. No. 05-0197 (Amended Order)
throughout the entirety of this Order.

26 ² Where: $FVSS$ = the future value of a single sum; $PVSS$ = the present value of single sum; i = the compound
27 periodic interest rate expressed as a decimal; n = the number of periods in which compounding occurs. That is, add
28 the interest rate to one and raise this sum to a power equal to the number of periods during which compounding
occurs. Then multiply this by the present value of the single sum in question to determine the future value of that
single sum.

1 Aaron testified that 126 land claimants settled for 3.0 percent compound interest
2 payments in the Commonwealth over the last 20 years.³ Pl.'s Post-Trial Mem. 4-5. Aaron also
3 testified that the Chalan Kiya properties in question have dropped in value by between 8.2
4 percent to 14.6 percent from 1993-2008. *Id.* at 6. As a result of the 126 prior land cases and
5 the falling value of land value in the Commonwealth, Aaron determined that the proper
6 prejudgment interest rate should remain at 3 percent compounded interest. Aaron's
7 qualifications as an expert witness to determine prejudgment interest rates include his
8 experience in appraising, over 15 years attending seminars, conferences, and meetings on real
9 estate values in Saipan, and his knowledge of bank and other lender interest rates. *Id.*

10 Mafnas testified that he spent about 34 hours researching interest rates which
11 culminated into his expert report that this Court took into evidence. *See* Intervenors [Proposed]
12 Findings 3-4. By considering a number of different interest rates and different investing
13 scenarios, including stocks, mutual funds, prime interest rates, treasury bills, CDA loans,
14 corporate bonds, and municipal bonds, Mafnas determined that the proper prejudgment interest
15 rate that should be awarded is 9 percent compound interest. *Id.* at 4-9. Mafnas concluded that
16 based on his research and data, a prudent person investing to preserve principal but also
17 investing to produce a return on investment, could have achieved a 9 percent return on an
18 investment made between March 31, 1993 and April 3, 2008. *Id.* at 9. Mafnas qualifications as
19 an expert witness include his experience working for the Department of Revenue and Taxation,
20 as Controller of the Commonwealth Utilities Corporation, as Analyst Manager for the
21 Department of the Public Auditor, and maintaining his own private practice consulting to
22 businesses for the last three years. *Id.* at 2-3.

23 As supported by Aaron's testimony, the Government argues for a community standard
24 when determining how a reasonably prudent person would invest funds. Instead of the test
25 adopted in *Estate of Muna*, the Government asks that this Court “focus on what an investor in
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27 ³ Interestingly, Aaron testified in *Heirs of Rogolifoi* “that **123 of 129 CNMI citizens** who had land taken by the
28 government accepted a settlement with an interest rate of **3.5 percent compounded.**” *Heirs of Rogolifoi*, Civ. No.
05-0197 (Amended Order) at 3-4 (Emphasis added to show the discrepancy between Aaron's testimony regarding
the number of land claimants that settled and the interest rate agreed to).

1 the [Commonwealth] community would do to obtain a reasonable return while conserving the
2 principal.” Pl.’s Post-Trial Mem. at 10. To support this argument, the Government claims that
3 this community standard is best exemplified by the 126 landowners who voluntarily chose a 3
4 percent compounded interest rate to settle their inverse condemnation claims. *Id.* Finally, the
5 Government argues that awarding the Mangabao Heirs a higher interest rate would result in a
6 “tremendous, unfair windfall,” due to the falling value of land in the Commonwealth since
7 1993. Pl.’s Post-Trial Reply Mem. at 19.

8 This Court rejects the Government’s proposal to enforce a community standard. The
9 Commonwealth Supreme Court, in adopting the reasonable prudent person standard, accepted
10 the standard being utilized by the Ninth Circuit.

11 It is assumed that a person who received the pecuniary value of his property as of
12 the date of taking would invest these funds in a reasonable prudent manner. Thus,
13 it is proper, when a payment of just compensation is delayed, to fix interest on
14 any deficiency award at the rate “a reasonable prudent person investing funds so
as to produce a reasonable return while maintaining safety of principal” would
receive.

15 *United States v. 429.59 Acres of Land*, 61 F. 2d 459, 464-65 (9th Cir. 1980). This Court
16 chooses to follow our Supreme Court’s decision to adopt the reasonable prudent person standard
17 instead of developing a “reasonable prudent local” standard as requested here by the
18 Government. This Court agrees with the Intervenor’s that “[t]he fictional “reasonable prudent
19 person” is not subject to a “dumbing down” because of where the claimant comes from.”
20 Intervenor’s Resp. at 3. Furthermore, the prior settlements the Government uses as “best
21 evidence” to support its argument have not been admitted into evidence here, and the complete
22 details regarding those transactions are unknown. However, there is proof that at least one
23 Commonwealth resident whose land was taken rejected the Government’s 3 percent interest
24 settlement offer and was awarded 6 percent interest by a jury. *See Camacho v. CNMI*, Civ. No.
25 05-0043 (D. NMI).

26 Additionally, Intervenor’s point out that Aaron testified that the 3 percent prejudgment
27 interest rate accepted in the 126 settlements was chosen based on 1 CMC 9227(b), which
28 prescribes 3 percent as the interest rate for eminent domain actions. Intervenor’s Resp. at 10.

1 However, the Supreme Court in *Estate of Muna* explicitly stated that that statute is inapplicable
2 to inverse condemnation actions. *Estate of Muna*, 2007 MP 16 ¶ 15. The Court agrees with
3 Intervenor that the 126 settlements relied on by the Government as support for adopting a
4 community standard is based on a premise that the Commonwealth Supreme Court explicitly
5 rejected. *See* Intervenor's Resp. at 10. Furthermore, in *Heirs of Rogolifoi*, it was determined that
6 3.5 percent was below the rate of inflation. *See Heirs of Rogolifoi*, Civ. No. 05-0197 (Amended
7 Order) at 4. Since the Government is proposing a 3 percent prejudgment interest rate here, the
8 rate of inflation argument in *Heirs of Rogolifoi* is persuasive here as well. As stated in *Heirs of*
9 *Rogolifoi*, this Court will not penalize the Mangabao Heirs simply because 126 landowners took
10 a bad settlement offer. *Id.* at 5

11 The Government's proposal that awarding more than 3 percent prejudgment interest
12 results in a windfall for the Mangabao Heirs is also rejected. The Government's argument is
13 based on the fact that land values have fallen drastically from their values in 1993. The *Heirs*
14 *of Rogolifoi* Court determined that the Supreme Court's statement that the final award should
15 bear some relationship to the current property value did not apply. *Id.* The Supreme Court's
16 statement was based on an analysis of *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1,
17 104 S. Ct. 2187, 81 L. Ed. 2d 1 (1984), where there was a “substantial delay between the date
18 of valuation and the date the judgment was actually paid, during which [time] the value of the
19 land changed. *Id.* The Court concluded that due to the different procedural aspects between
20 *Kirby* and *Heirs of Rogolifoi*, the Supreme Court's comment was not determinative. *Id.* While
21 this Court agrees with the analysis in *Heirs of Rogolifoi*, it should also be pointed out that the
22 Supreme Court did not state that the final award *must* bear a relationship to the current property
23 value, rather, the Supreme Court stated that it “*believe[d]* that a final award should bear some
24 relation to the current property value.” *Estate of Muna*, 2007 MP 16 ¶ 19 (Emphasis added).
25 The fact that the Supreme Court stated it “believed” a relationship between the final award and
26 current property value shows that the Supreme Court anticipated, with the drastic reduction of
27 property values in the Commonwealth, that it would be difficult to rationalize why inverse
28 condemnation awards would be substantially greater than the current value of the property.

1 However, as stated in *Heirs of Rogolifoi*, [a]lthough land values have fallen, prompt payment
2 for the land taking would have allowed the [Mangabao Heirs] to strategically invest the money
3 they were awarded, investments which would have not been affected by the falling land values.
4 *Heirs of Rogolifoi*, Civ. No. 05-0197 (Amended Order) at 6. Finally, “[e]ven in light of the
5 significantly lower land values today, it is not a windfall to receive what a reasonably prudent
6 person could have generated through moderately conservative investments if the
7 Commonwealth would have made prompt payment for the land taking.” *Id.*

8 This Court finds neither Aaron's nor Mafnas' testimony completely convincing on the
9 issue of prejudgment interest rate. Aaron's testimony is almost identical to his testimony on the
10 same issue in *Heirs of Rogolifoi*. His testimony was unconvincing in that case and this Court
11 finds no additional merit to his testimony in the present case.⁴ Mafnas' testimony, while
12 methodical and reasonable, appears inflated. The expert witness in *Heirs of Rogolifoi*, whose
13 qualifications as to financial investing greatly outweigh those of Mafnas, determined that
14 appropriate interest rate for a government land taking in 1992 should be 6.991 percent. *See*
15 *Heirs of Rogolifoi*, Civ. No. 05-0197 (Amended Order) at 4 (Discussion on how expert witness
16 calculated 6.991 percent as the appropriate prejudgment interest rate for a 1992 land taking).
17 This Court does not believe that a 2.009 percent increase in the prejudgment interest rate for
18 land taken in 1993, compared to land taken in 1992, has been explained by Mafnas' testimony.
19 Since *Heirs of Rogolifoi* presents a prejudgment interest rate that was calculated methodically
20 by a superiorly qualified expert witness for a land taking only one year from the land taking in
21 this case, this Court will adopt the 6.991 prejudgment interest rate here. Additionally, *Heirs of*
22 *Rogolifoi* provides this Court with how that prejudgment interest rate was calculated and a
23 mathematical formula to calculate the future value of a lump sum of money, which is
24 applicable in all land taking cases. *See Heirs of Rogolifoi*, Civ. No. 05-0197 (Amended Order)
25 at 4-5, 7.

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28 ⁴ The Government has twice presented the same expert witness to argue for a 3 percent compound interest rate. In future inverse condemnation cases, the Court suggests that the Government present a more credible expert, in hopes that the Government's argument is more persuasive.

1 On January 4, 2008, this Court entered a Judgment determining that the date of the
2 taking of the property was March 31, 1993. The Court also determined that the value of the
3 property taken from the Mangabao Heirs on the date of the taking was \$4,196,524. Using the
4 formula provided in *Heirs of Rogolifoi*, and a prejudgment interest rate of 6.991 percent, this
5 Court will calculate the total amount to be awarded to the Mangabao Heirs.
6

7 IV. CALCULATION OF CURRENT VALUE

8 \$4,196,524 received on March 31, 1992: PVSS = \$4,196,524; $i = .06991$; $n = 14.83^5$

9 $FVSS = PVSS(1+i)^n$

10 $FVSS = 4,196,524 \times (1+.06991)$ to the 14.83 power

11 $FVSS = 4,196,524 \times 2.72407881$

12 $FVSS = 11,431,662.10$
13

14 V. CONCLUSION

15 For the foregoing reasons, the Mangabao Heirs are to be awarded 6.991 percent
16 prejudgment interest for the March 31, 1993 land taking, with the final award amount to be
17 \$11,431,662.10.
18

19 **SO ORDERED** this 1st day of October, 2009.
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22 _____
23 /s/
24 ROBERT C. NARAJA,
25 Presiding Judge
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28 ⁵ 14.83 is representative of 14 years and 10 months, representing the time between the date of taking, March 31, 1993 and the date of Judgment, January 4, 2008. 14 years 10 months = 178 months, divided by 12 = 14.83.