

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**MARINE REVITALIZATION CORPORATION AND ANTHONY PELLEGRINO, IN
HIS PERSONAL CAPACITY AND AS AN OFFICER OF MARINE REVITALIZATION
CORPORATION,**

Plaintiffs-Appellees,

v.

DEPARTMENT OF LAND AND NATURAL RESOURCES,

Defendant-Appellant.

**SUPREME COURT NO. 2009-SCC-0016-CIV
SUPERIOR COURT NO. 04-0589**

Cite as: 2010 MP 18

Decided December 14, 2010

Edward Buckingham and David Lochabay, Saipan, Northern Mariana Islands for Defendant-Appellant

Michael Dotts, Saipan, Northern Mariana Islands for Plaintiffs-Appellees

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; HERBERT D. SOLL, Justice Pro Tem

DEMAPAN, C.J.:

¶ 1 Appellant Department of Land and Natural Resources (“DLNR”), appeals the third order in aid of judgment in which the trial court set forth several methods of satisfying a stipulated judgment entered in favor of Appellee Marine Revitalization Corporation (“MRC”). The order awarded MRC tax credits worth over five million dollars, ordered that funds and income held by DLNR be spent to satisfy the judgment, and ordered that money already appropriated for the payment of judgments be transferred to MRC. DLNR contends that any action by a Commonwealth court to directly or indirectly satisfy the judgment in the absence of a specific appropriation for that purpose by the Commonwealth Legislature violates both the Commonwealth’s Constitution and statutes. MRC counters that the government’s refusal to satisfy the judgment constitutes a violation of our Constitution, and that this Court has the authority to ensure that the government complies with the judiciary’s judgments and orders. For the reasons set forth herein we hold: (1) the award of assignable tax credits to MRC to satisfy the judgment was in error; (2) no part of DLNR’s budget or the income it derives from its operation of the Outer Cove Marina can be used to satisfy the judgment; (3) federal funds cannot be garnished to satisfy the judgment; (4) post-judgment interest does not accumulate against the government on either the judgment or on any money already appropriated for the payment of judgments; (5) money already appropriated by the Legislature for the payment of judgments must be paid to MRC; (6) DLNR can be ordered to report to the trial court on a regular basis concerning its efforts to satisfy the judgment; and (7) the trial court can only issue an order of contempt for the government’s failure to comply with the portions of the third order in aid of judgment that are upheld by this Court. Accordingly, we AFFIRM in part, REVERSE in part, and REMAND this matter to the trial court.¹

I

¶ 2 The facts of this case are relatively straightforward and undisputed. In 1995, the Commonwealth Legislature enacted the Marine Revitalization Corporation Submerged Lands Lease Act (“Public Law 9-46”). Public Law 9-46 authorized a contract between DLNR and MRC for the construction of Outer Cove Marina. The contract provided that MRC would construct the marina for the government, and the government would then lease the marina to MRC for a period

¹ DLNR petitioned this Court for a stay of the Third Order in Aid of Judgment, which we granted. MRC subsequently filed a Motion for Reconsideration. As the full Panel has considered all of the papers filed in this matter, and issued its opinion, we choose to not write separately and address the Motion for Reconsideration.

of fifteen years, during which time MRC would receive fees and profits from its operation. Public Law 9-46 required that all commercial boats utilize the new marina and that the usage fees collected would belong to MRC. Relying on the above contract, MRC executed a promissory note for \$700,000 in favor of Mobil Oil Marianas Incorporated to fund a boat fueling station and mini-mart at the Outer Cove Marina. Public Law 9-46 provided for binding arbitration in the event of a dispute, and that the decision of the arbitrators “shall be enforceable in the Commonwealth Courts.” Appellant’s Excerpts of Record (“ER”) at 36.

¶ 3 After the construction of the marina, MRC claimed that DLNR breached the contract by failing to require commercial boats to use the Outer Cove. The parties submitted the dispute to arbitration. In December 2004, the arbitrators unanimously ruled in favor of MRC, finding not only that DLNR failed to require commercial boats to use Outer Cove Marina, but that DLNR also engaged in active competition against MRC by soliciting commercial boaters for its marina at Smiling Cove in direct contravention of Public Law 9-46. The arbitration panel ultimately awarded MRC more than five million dollars. Following the issuance of the arbitration award, the parties stipulated to the entry of a judgment in the trial court. On January 27, 2005, the trial court entered judgment in the amount of \$5,919,849.99. Since the issuance of the arbitration award and the entry of judgment, the Legislature has not made an appropriation to satisfy the judgment, and the executive has not submitted proposed legislation to have any money appropriated to satisfy the judgment.

¶ 4 Following the government’s failure to satisfy the judgment, MRC sought an order in aid of judgment. *Marine Revitalization Corp., v. CNMI Dept. of Lands and Natural Resources*, Civ. No. 04-0589D (NMI Super. Ct. May 10, 2005) ([Unpublished] Order in Aid of Judgment). The trial court found that DLNR had not made any written request to the Legislature for an appropriation of funds to satisfy the judgment. The court further found evidence indicating that \$20,000 was available in an account at the Department of Finance for the payment of judgments. The motion for an order in aid of judgment was granted, and the trial court ordered DLNR to pay the \$20,000 “remaining of the amount originally appropriated by the Commonwealth Legislature for the payment of Judgments” to MRC. Appellee’s Excerpts of Record (“ER”) at 7. The trial court also ordered DLNR to pay all income from its operations into the court’s coffers bi-weekly. The government ignored the order and did not challenge it on appeal.

¶ 5 From May 2005, when the first order issued, until February 2008, extensive settlement talks ensued between the parties. During this period, however, the government did not make any payments in accordance with the first order. In February 2008, the parties held their final

settlement conference. At that time, MRC presented seven detailed proposals for ways that the government could begin to satisfy the judgment. The government rejected all seven proposals.

¶ 6 The government's refusal to meet its contractual obligations resulted in MRC's inability to pay its creditors, including Mobil Oil, which filed separate suits against both the Commonwealth and MRC. *See Marine Revitalization Corp. and Anthony Pellegrino v. CNMI Department of Lands and Natural Resources*, Civ. No. 04-0589; *Mobil Oil Mariana Islands, Inc. v. Marine Revitalization Corp. and Anthony Pellegrino*, Civ. No. 02-0566. Recognizing the relationship between Mobil's suits and the present action, as well as the practical reality that Mobil would not be able to recover from MRC until the Commonwealth paid MRC, the trial court consolidated the litigation for the purpose of facilitating a global resolution. *See Mobil Oil Mariana Islands, Inc. v. Marine Revitalization Corp. and Anthony Pellegrino*, Civ. No. 02-0566 (Super. Ct. March 15, 2006) (Order on Defendant's Motion to Consolidate). This consolidation gives rise to Mobil's status as an interested party in the instant appeal.²

¶ 7 After three years of government inaction, in 2008 MRC sought a second order in aid of judgment. The trial court issued the second order in aid of judgment that again mandated the prompt payment of the \$20,000 from the original order, plus nine percent interest from May 2005, which was when the first order was issued. *See Marine Revitalization Corp. v. CNMI Dept. of Lands and Natural Resources*, Civ. No. 04-0589D (NMI Super. Ct. May 21, 2008) ([Unpublished] Order in Aid of Judgment). The second order also allowed MRC to recoup the balance of the judgment through tax credits. The government did not object or appeal the second order in aid of judgment, but instead ignored the court's directive. Four months later, DLNR acknowledged the second order by filing a motion to quash and/or modify it. MRC opposed the motion and filed a motion for the third order in aid of judgment that is now before the Court. Mobil Oil joined in MRC's motion for another order in aid of judgment.

¶ 8 In its third request for an order in aid of judgment, MRC asked the trial court to make the tax credits granted in the second order assignable to third parties. At the hearing on DLNR's motion to quash the second order and MRC's motion for a third order in aid of judgment, the government did not dispute the validity of the initial stipulated judgment confirming the arbitration award of approximately six million dollars, or that the entire amount of the judgment, including accrued interest, remained outstanding. Instead, DLNR argued that under the Commonwealth Code, judgments against the government can only be paid by specific

² In its brief, Mobil states that "Mobil and MRC have entered into a conditional settlement in which MRC has agreed to assign \$1.5 million of its judgment against the CNMI to Mobil. Mobil has been discussing with the CNMI how that amount could be paid over time in the form of tax offsets, but no final agreement has been reached." Response Brief of Plaintiff-Appellee Mobil Oil Mariana Islands, Inc. at 2.

appropriations by the Legislature and that no such appropriation had been made. The government first pointed to 7 CMC § 2251(b), which waives sovereign immunity for any suit “founded upon any law of this jurisdiction . . . or upon any express or implied contract with the Commonwealth government.” The government then relied on 7 CMC § 2254, which provides “[j]udgments rendered pursuant to this article shall be paid from such funds as may be appropriated by the Commonwealth Legislature for that purpose.” In essence, the government argued that it could not satisfy the arbitration award and the stipulated judgment because the Legislature failed to make the necessary appropriation. For reasons discussed more fully below, the trial court disagreed, finding 7 CMC § 2254 inapplicable because the original stipulated judgment was “rendered pursuant to” Public Law 9-46 rather than the waiver of sovereign immunity contained in 7 CMC § 2251(b).

¶ 9

In February 2009, the trial court granted MRC’s motion for a third order in aid of judgment, and it affirmed and incorporated the earlier orders as well as MRC’s request to make the tax credits assignable. The order provides in pertinent part:

1. The \$20,000 ordered paid to Plaintiff’s [sic] on May 10, 2005, shall be paid to Plaintiff’s counsel on or before April 1, 2009, with an accumulated interest at the rate of 9% from May 10, 2005 to the date of payment;
2. DLNR shall pay all income biweekly of DLNR received from its operations at the marina at Outer Cover [sic] in Saipan including, but not limited to the boat slip rental fees, to cover Plaintiff’s costs on executing this judgment into the court;
3. DLNR shall report to the Court by April 30, 2009, on what efforts have been made to obtain an appropriation of funds by the legislature to pay the judgment and to report to the Court on what has been collected out of the operation of the DLNR;
4. Plaintiffs, as well as all CNMI corporations in which Plaintiff’s [sic] Marine Revitalization Corporation or Anthony Pellegrino is the sole shareholder, are hereby authorized to use Plaintiffs’ portion of the judgment (\$5,646,679.00 plus 9% interest from January 27, 2005) as a dollar-for-dollar offset (the “Tax Offset”) against the CNMI Gross Revenue Tax
5. Plaintiffs may assign for consideration all or a portion of its Stipulated Judgment, entered on January 23, 2005, to any third persons or entities. The amount assigned shall be taken by the assignee(s) as a dollar-for-dollar offset against CNMI Gross Revenue Tax
6. [discussing the procedure for using the assignable tax credits].

7. In the event the Order is not complied with, Plaintiffs are authorized to seek further relief, including but not limited to an order garnishing federal funds, appropriating portions of DLNR's budget, and obtaining a finding of contempt from the Court.

Appellant's ER at 5-7. DLNR appeals the third order in aid of judgment, which we have jurisdiction over pursuant to 1 CMC § 3102.

II

¶ 10 The facts in this appeal present a very troubling scenario. The Commonwealth government entered into a contract, which by its own terms was enforceable in the Commonwealth Courts, then breached that agreement and has now failed to fulfill its contractual obligations by repeatedly ignoring a multi-million dollar judgment. Perhaps most troubling is the fact that the government does not dispute the validity of the judgment or of the debt; rather, the Attorney General is put in the unenviable position of arguing that the separation of powers doctrine allows the government to simply ignore a valid judgment to which it stipulated because the Legislature failed to appropriate money for that judgment.

¶ 11 DLNR argues that the trial court's order violated the Commonwealth Constitution and the separation of powers doctrine by indirectly appropriating public funds without the approval of the Legislature. The government also argues that pursuant to Commonwealth statutory law, judgments against the government cannot be paid unless the Legislature makes an appropriation for the payment of the specific judgment in question. MRC responds that the government's repeated refusals to act on the trial court's orders itself violates the separation of powers doctrine; that is, the executive and legislative branches cannot completely ignore a directive of the judiciary—a co-equal branch of government. We review *de novo* constitutional and statutory questions. *N. Marianas College v. Civil Service Comm. II*, 2007 MP 8 ¶ 2.

A. Constitutional Issues

¶ 12 The Commonwealth Constitution provides for a tripartite system of government. Article II sets forth the powers of the Legislature, Article III sets forth the powers of the Executive, and Article IV sets forth the powers of the Judiciary. This organization, distributing the powers among the coordinate branches of government, gives rise to the separation of powers doctrine. *Norwood v. Horney*, 853 N.E.2d 1115, 1148 (Ohio 2006) (holding that the separation of powers doctrine is implicitly embedded in the entire framework of those sections of the state constitution that define the substance and scope of powers granted to the three branches of state government). The separation of powers principle operates in a broad manner to confine legislative powers to the legislature, executive powers to the executive, and those powers which are judicial in character to the judiciary. *VanSickle v. Shanahan*, 511 P.2d 223, 235 (Kan. 1973). Simply stated,

the doctrine forbids one branch of government from exercising the powers properly belonging to another branch. *Admin. Office of Ill. Cts. v. State and Mun. Teamsters, Chauffeurs and Helpers Union, Local 726*, 657 N.E.2d 972, 981 (Ill. 1995).

¶ 13 Both parties argue that the trial court’s third order in aid of judgment should either be upheld or invalidated on separation of powers grounds. The government relies on Articles II and X of the Commonwealth Constitution, which collectively bestow upon the Legislature control over the power to expend public funds. Article II, section 5 of the Commonwealth Constitution grants the Legislature the power of the purse, providing that “[a]ppropriation and revenue bills may be introduced only in the house of representatives.” NMI Const. art. II, § 5(a). Likewise, Article X, which governs taxation and public finance, provides that “[a] tax may not be levied and an appropriation of public money may not be made, directly or indirectly, except for a public purpose. The legislature shall provide the definition of public purpose.” NMI Const. art. X. Together, these provisions imbue the Commonwealth Legislature with exclusive control over the direct or indirect expenditure of public funds. The government also relies on the separation of powers principle that:

[A] judgment against the state . . . merely liquidates and establishes the claim against the state, and that, in the absence of an express statute so providing, such judgment cannot be collected by execution against the state or its property, or by any of the ordinary processes of law provided for the enforcement of judgments; it remains for the state, after such judgment, to provide for the payment thereof in such manner as it sees fit . . . , and the judgment creditor can obtain payment in no other way than that provided.

Westinghouse Electric Co. v. Chambers, 145 P. 1025, 1026 (Cal. 1915).

¶ 14 For its part, MRC argues that the government’s failure to comply with the trial court’s order encroaches upon the province of the judiciary, which generally includes the authority to hear and determine justiciable controversies. This includes the authority to enforce valid judgments, *Del Papa v. Steffen*, 915 P.2d 245, 250-51 (Nev. 1996), and that the trial court in this case had the inherent power to enforce a valid judgment. Specifically, MRC directs this Court to Article IV, section 2 of the Commonwealth Constitution, which provides that “[t]he Superior Court shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under the constitution and laws of the Commonwealth.” We must determine how these constitutional provisions interact with each other, and how that interaction affects the third order in aid of judgment.

¶ 15 The United States Supreme Court recognizes that if a state consents to be sued that its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy a judgment in the absence of such consent; such a scheme does not run afoul of any

section of the U.S. Constitution. *Baltzer v. North Carolina*, 161 U.S. 240, 245-46 (1896). In *Baltzer*, the Court recognized the principle that:

When a judgment has been rendered, the liability of the State has been judicially ascertained, but there the power of the court ends. The State is at liberty to determine for itself whether to pay the judgment or not. The obligations of the contract have been finally determined, but the claimant has still only the faith and credit of the State to rely on its fulfillment.

Id. at 243 (citing *R.R. Co. v. Tenn.*, 101 U.S. 337, 340 (1880)). The Court further stated that a state “may refuse to pay, that is, may refuse to make the necessary appropriation, and the courts are powerless to compel them to do so.” *Id.* In *Baltzer*, the plaintiff sued the state of North Carolina after it amended its constitution to forbid the payment of any debt or bond incurred during 1868, which was the year when the state ratified its new constitution and regained admission to the Union. After the amendment’s ratification, the plaintiff sued for interest the states owed him on his bonds. Finding that North Carolina consented to the suit, the Court nevertheless recognized that this consent did not extend to the enforcement of a judgment against the state, and that this did not run afoul of the Contracts Clause or any other section of the U.S. Constitution. *Id.* at 245-46. Thus, there is not a U.S. Constitutional rule requiring a state to honor judgments against it, and this includes situations where the state has breached one of its contracts.

¶ 16

MRC, however, cites federal case law for the proposition that the Commonwealth Courts can enforce judgments against the Commonwealth government. Both the trial court and MRC in this appeal rely on *Camacho v. Commonwealth of the Northern Mariana Islands*, Civ No. 05-0043 (D.N.M.I. 2008). In *Camacho*, the Commonwealth government took the plaintiff’s real property for the purposes of paving and widening a road. The plaintiff filed suit seeking just compensation under the Takings Clause of the U.S. Constitution, and subsequently obtained a judgment in his favor. The government, however, failed to satisfy the award. The plaintiff then sought a writ of execution or an order in aid of judgment to force the government to satisfy the judgment. The government argued that under Commonwealth law the plaintiff had no way of enforcing the judgment absent an appropriation by the Commonwealth Legislature. The District Court disagreed and granted the order. Without any supporting authority, the District Court reasoned that the Legislature’s failure “to fulfill its constitutional mandate does not, cannot, and will not prevent the court from taking all necessary steps to ensure that its judgments are enforceable. A court that cannot enforce its judgments must forever close its doors, as it will have become nothing more than an historical curiosity.” Appellee’s ER 6 at 44.

¶ 17

The District Court in *Camacho* does not cite any supporting authority for its order. As MRC points out in its brief, however, federal courts often order state governments to satisfy

federal judgments even in the face of state statutes requiring legislative appropriation. For example, federal courts routinely force states to pay costs in federal civil rights actions, *Gates v. Collier*, 616 F.2d 1268 (5th Cir. 1980), and order municipalities to levy taxes to remedy racial discrimination in public schools. *Jenkins v. Missouri*, 855 F.2d 1295 (8th Cir. 1988).

¶ 18 These federal cases, however, are inapplicable for two very significant reasons. First, they all arise in federal court, which is not a co-equal branch of state government subject to the same separations of powers issues that bind this Court. Second, and perhaps more importantly, they all involve federal constitutional issues—namely, the Takings Clause, the Equal Protection Clause, or the Due Process Clause—or are brought pursuant to the Civil Rights Act. Since federal law supersedes conflicting state law under the Supremacy Clause, federal courts hold that where a state violation of federal law results in a judgment against the state, the federal courts possess the authority to enforce those judgments. The facts of this case, however, do not implicate any federal constitutional issues. As the Ninth Circuit stated in *Spain v. Mountanos*, 690 F.2d 742, 746 (9th Cir. 1982), “[u]nder the Supremacy Clause of the United States Constitution, a court, in enforcing federal law, may order state officials to take actions despite contravening state laws.” In this case MRC is in a Commonwealth Court and fails to raise any federal Constitutional issues. Thus, the Supremacy Clause is not applicable and the federal cases cited by the trial court and by MRC do not provide a valid basis upon which this Court can permissibly uphold the lower court’s order.

¶ 19 Turning to the state courts that have addressed this issue, those courts are in almost unanimous agreement that they cannot compel the legislature to appropriate funds either directly or indirectly to satisfy a judgment. *Smith v. State of North Carolina*, 222 S.E.2d 412 (N.C. 1976), stands for the proposition that while the court is empowered to declare the rights as between a judgment creditor and the government, it cannot enforce the judgment absent legislative appropriation. In that case, a doctor received an appointment as superintendent of a state hospital for a term of six years pursuant to statute, but his state employer discharged him without cause and without a hearing. Following his termination, the doctor sought severance pay from the governor and the budget commission—pay that the doctor was statutorily entitled to receive. After the governor and budget commission failed to take action, the doctor filed suit to compel the government to pay him \$250,000 in severance.

¶ 20 In *Smith*, the court first determined that a valid contract existed between the doctor and the government. 222 S.E.2d at 417. The court then framed the issue as follows: “[h]aving determined that a contract existed between plaintiff and the State, the question is whether the state is immune from an action for damages for the alleged breach of that contract.” *Id.* The court began with the rule that

[t]he rights and responsibilities of a state under an ordinary business contract are, with few exceptions, the same as those of individuals. Although it cannot be sued without its consent, the state, when making a contract with an individual, is liable for a breach of its agreement in like manner as an individual contractor.

Id. Notwithstanding the above proposition, the court then went on to say that “there is an[] . . . essential and far-reaching difference between the contracts of citizens and those of sovereigns, not, indeed, as to the meaning and effect of the contract itself, but as to the capacity of the sovereign to defeat the enforcement of its contract.” *Id.* at 418. The court stated that the difference exists in the fact that “[t]he legislature has the ability to avoid payment of the obligations of the state by a failure or refusal to make the necessary appropriation Unless there is an appropriation, courts have no power to enforce a contract of a state, even though they do not doubt its validity.” *Id.*

¶ 21 The court then quotes a number of cases all making similar proclamations: that although the courts cannot force the legislature to fulfill its contractual obligations, the government nonetheless has a duty to its citizenry of faithful performance. *Id.* at 419-22. Quoting *Ace Flying Service, Inc. v. Colorado Department of Agriculture*, 314 P.2d 278, 280 (Colo. 1957), the court states:

To hold that the state may enter into a contract by which the other party is compelled to expend large sums in acquiring material, machinery and personnel to enable it to perform its obligation, and then arbitrarily repudiate the contract relegating the injured party to the doubtful remedy of appealing to the legislature for justice in the form of a bill for relief, would be to sanction the highest type of governmental tyranny.

Id. at 421

¶ 22 After wading through a litany of cases admonishing the government to fulfill its contractual obligations, the court then states:

[i]n the event plaintiff is successful in establishing his claim against the State, he cannot, of course, obtain execution to enforce the judgment The judiciary will have performed its function to the limit of its constitutional powers. Satisfaction will depend upon the manner in which the General Assembly discharges its constitutional duties.

Id. at 424. Finally, the court states that “[w]e do not apprehend that this decision will result in any unseemly conflict between the legislative and judicial branches of the government Past performance convinces us that when the State has entered into a contract, the officials who made it intended that the State would keep its part of the bargain.” *Id.*

¶ 23 As the above discussion indicates, *Smith* is not directly on point. Unlike the present case, in *Smith* no valid judgment existed. The question in that case was whether the employee could sue the government. It did not involve a request for the court to enforce an already existing

uncontested judgment. *Id.* at 424 (“Today we decide only that plaintiff is not to be denied his day in court because his contract was with the State.”). Furthermore, the case was premised on the assumption that the government would comply with its contractual obligations—an assumption already proven untrue in this case.

¶ 24 In *Newman Marchive Partnership, Inc., v. City of Shreveport*, 979 So.2d 1262, 1265 (La. 2008), which is closer factually to the case now before us, and does not premise its holding on hopeful notions that the government will do what it says it will do, the Louisiana Supreme Court held, without apology, that it is constitutionally prohibited from invading the province of the legislature and forcing the state to pay its debts when it refuses. In that case, a construction company contracted with the City of Shreveport to renovate a stadium. The company brought suit for breach of contract and received a sizable judgment in the trial court. After the City failed to pay the judgment, the company brought an action to compel payment. The trial court issued a writ of mandamus, compelling the City to satisfy the judgment, and the City appealed. The issue on appeal was “whether the judicial branch may . . . compel a political subdivision of the state to pay a judgment rendered against it” when no appropriation has been made to satisfy the judgment. *Id.* at 1264. The Louisiana Supreme Court held that it could not.

¶ 25 In *Newman*, the court began with the state constitutional and statutory provisions concerning suits against the government and the payment of judgments. *Id.* at 1265. The court first pointed out that the constitution waives sovereign immunity for certain claims sounding in contract and tort. *Id.* The court then cited a statutory provision, which provides that “[a]ny judgment rendered in any suit filed against the state, a state agency, or a political subdivision . . . shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature” *Id.* at 1266 (citation omitted). Given the applicable constitutional and statutory provisions, the court held that while “the judicial branch is empowered to render judgments against the state . . . the constitution does not provide the judiciary with the ability to execute those judgments.” *Id.* at 1265. The court further recognized that:

Admittedly, [the constitutional and statutory provisions] create[] a frustrating dichotomy for the state’s judgment creditors Still, the combined effect of [these provisions] is clear. Judgments against a political subdivision of the State may only be paid out of funds appropriated for that purpose . . . and under no circumstance shall public property or public funds . . . be subject to seizure.

Id. at 1266 (quotations and citations omitted).

¶ 26 In *Amantia v. Cantwell*, 213 A.2d 251 (N.J. 1965), government employees sought a declaratory judgment that they were entitled to differential pay pursuant to statute, and also sought a writ of mandamus to compel the state treasurer to make provision for the payment. The

court granted declaratory relief, stating that “it is clear to us that petitioners are entitled to the pay they seek, and we so hold.” *Id.* at 254. The court denied, however, the employees’ request to compel payment, stating:

What this court cannot do, however, is direct that the money be paid to the petitioners or compel respondents to request an appropriation. The power to appropriate money rests with the Legislature. While we recognize petitioners’ moral and legal right to the differential pay they seek, this court cannot secure it for them by way of a directive. We can and do declare that the money is due them. Whether or not petitioners receive the money to which they are clearly entitled rests exclusively with the Legislature.

Id.

¶ 27 Similarly, in *Magnetti v. University of Maryland*, 909 A.2d 1101, 1106 (Md. Ct. Spec. App. 2006), the appellate court held that even where a statute exists providing that a governmental entity may sue or be sued, “obtaining a money judgment requires a two-part showing: first, that specific legislative authority for suits has been given, and second, that funds have been appropriated for the purpose of satisfying a money judgment.” In *Fitzgerald v. Palmer*, 219 A.2d 512, 513 (N.J. 1966), the court held that it “could not enforce a judgment if it gave one. No money may be drawn from the State treasury but for appropriations made by law. . . . The judiciary could not order the Legislature to appropriate money, or the Governor to approve an appropriation if one were made.” See *N.J. Div. of Youth and Family Serv. v. D.C. and M.C.*, 571 A.2d 1295, 1301 (N.J. 1990) (stating that “[n]o money may be drawn from the State treasury but for appropriations made by law” unless the constitution mandates the disbursement); see also *Soto v. Nebraska*, 693 N.W.2d 491, 498 (Neb. 2005) (holding that a statute that requires legislative review and appropriation of workers’ compensation claims in excess of \$50,000 does not violate the separation of powers doctrine).

¶ 28 Turning our gaze further into the past, we find that the rule that courts may not enforce judgments against the state, because such an action would amount to an appropriation of funds in violation of the separation of power doctrine, has long existed. In *Campbell Building Co. v. State Road Commission*, 70 P.2d 857, 862 (Utah 1937), the court recognized that while its judgment was valid, the state “may refuse to respond in damages and leave a claimant without any remedy, as it may refuse to pay its bonds.” Nevertheless, “the obligation remains. No legislative fiat can destroy or impair that.” *Id.* In *State v. Woodruff*, 150 So. 760, 766 (Miss. 1933), the court explained that:

A judgment or decree against the state for the payment of money, although entered by its highest court, is not enforceable except by a legislative appropriation. If the case is clear, and there is no available defense to the liability, the court should enter the judgment, although it may be that at the time

being it will meet with legislative disobedience. But in order to render such disobedience inexcusable, and therefore improbable, any such judgment should go to the legislature as an unreserved and solemn recommendation by the court that the liability is fair and free from serious doubt, and that there are no valid defenses known to the law or recognized in equity which the court has failed to discern and to apply.

In *Carr v. State*, 26 N.E. 778, 779 (Ind. 1891), the court explained that “[c]reditors who accept the obligations of a State are bound to know that they cannot enforce their claims by an action against the State directly Whether an appropriation shall or shall not be made is purely a legislative question.” See *Herrick v. E.G. Gallet*, 204 P. 477, 478 (Idaho 1922) (“The mere declaration that certain charges against the state must be paid out of the state treasury does not necessarily make an appropriation [N]o money may lawfully be paid from the treasury except pursuant to and in accordance with an act of the legislature expressly appropriating it to the specific purpose for which it is paid.”); *Myers v. English*, 9 Cal. 341, 349 (1858) (“[T]he Courts have no means, and no power to avoid the effect of *non-action*. . . . Therefore, when the Legislature fails to make an appropriation, we cannot remedy that evil.”) (emphasis added).³

¶ 29 Despite all of the above authority, MRC contends that at least one court holds that it can enforce a judgment against the state, and therefore, we should follow that court’s decision in order to vindicate our constitutionally bestowed right to enforce our judgments. In *AFSCME/Iowa Council v. State*, 484 N.W.2d 390 (Iowa 1992), unions representing public employees brought an action to enforce an arbitration award granting wage increases to government employees. The question, as framed by the court, was “[c]an the government be made to perform in accordance with its contracts, or is the other party, by reason of constitutional and statutory rules intended to protect the public treasury, left to the vagaries of the political process?” *Id.* at 391. The court stated that “[w]e think the State can indeed be required to comply.” *Id.*

¶ 30 The Iowa Supreme Court in *AFSCME/Iowa Council* based its holding on the theory that when a government enters into a contract with an individual, it implicitly appropriates the money to satisfy a debt as a result of the contract. *Id.* at 394. The court did not discuss how, as a practical matter, it would enforce an order directing the legislature to make an appropriation. It merely stated that “[t]he considerations, including political considerations that go into the appropriation process, are left to the legislative branch The judicial branch will intercede . . . in that process only when a failure to act, or a deadlock, has left an adjudicated state obligation

³ See also *County of San Diego v. State*, 164 Cal. App. 4th 580, 612-13 (Cal. Ct. App. 2008) (reaffirming *Myers*, 9 Cal. 341, and holding that where the legislature fails to make an appropriation to satisfy a judgment the courts have no ability to remedy the legislature’s inaction); *Baudoin v. Acadia Parish Police Jury*, 702 So. 2d 715 (1997); *Ill. Educ. Ass’n, et al. v. State of Ill.*, 28 Ill. Ct. Cl. 379, 386 (Ill. Ct. Cl. 1973); *Commonwealth of Kentucky v. Circuit Court*, 365 S.W.2d 106 (Ken. Ct. App. 1963).

uncollectible.” *Id.* at 396. Like the North Carolina Supreme Court in the *Smith* case, the Iowa Supreme Court in *AFSCME/Iowa Council* did not believe that such intercession would come to fruition, stating: “[w]e trust, owing to the goodwill and respect for the rule of law on the part of the governor and the legislators, such a point will not be reached in this dispute.” *Id.*

¶ 31 Not only does the *AFSCME/Iowa Council* case fail to articulate the method of judicial enforcement, it also runs counter to the nearly unanimous majority view. *See* 7 CMC § 3401 (“In all proceedings, the rules of the common law . . . as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary.”). The majority view holds that a person who contracts with the state is chargeable with knowledge of the constitutional provisions and statutes that regulate its contracting powers, which include the inability to enforce a judgment absent a legislative appropriation. *See Parsa v. State*, 474 N.E.2d 235, 237 (N.Y. 1984); *see also Ehco Ranch, Inc. v. State*, 693 P.2d 454, 457 (Idaho 1984) (holding that the existing law of the state is a part of every contract made with the state).

¶ 32 The trial court and MRC also rely heavily on the California Supreme Court’s decision in *Mandel v. Myers*, 629 P.2d 935 (Cal. 1981). In that case, a government employee sued the government on establishment of religion grounds to enjoin the Department of Health Services from giving state employees three hours paid time off on a religious holiday. The employee won and was awarded attorneys fees pursuant to statute. The legislature, however, refused to make an appropriation, and the plaintiff was unable to enforce the award. The employee then sought relief from the trial court seeking an order forcing the State Controller to pay the amount due. The trial court granted the order, directing payment from funds appropriated for “operating expenses and equipment” of the Department of Health Services. The state appealed, the appellate court reversed, but the California Supreme Court reinstated the trial court’s decision.

¶ 33 In *Mandel*, the court first reiterated the “well established” principle that it could not force the legislature to make an appropriation. *Id.* at 940. The court nonetheless found a way to uphold the order, stating that “it is equally well established that once funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures from such funds.” *Id.* The court articulated the test that if “appropriated funds are reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds.” *Id.* at 941. Ultimately, the court found that the state agency’s operating budget was “related” to and available to satisfy the judgment in question.

¶ 34 As the two dissents in *Mandel* point out, the majority’s reasoning is intellectually dishonest. *Id.* at 948-960 (Richardson, J. and Bird, C.J. dissenting). The majority held that the language of the state agency’s operation budget demonstrated legislative intent that funds within that budget could satisfy judgments against the agency. Both dissenting justices make clear that the majority’s liberal treatment of the language of the agency’s operation budget constituted nothing more than a way to force the legislature to do what it refused to do—appropriate funds to pay the judgment.

¶ 35 The majority’s opinion is intellectually dishonest for another reason. All of the cases that the majority relies on involve courts invalidating laws passed by the legislature that effectively overruled a judicial decision by declaring that the particular judgment in question could not be enforced. *See U.S. v. Lovett*, 328 U.S. 303 (1946) (striking down an appropriation bill that prohibited the payment of particular federal employees’ salaries); *Chadha v. Immigration and Naturalization Serv.*, 634 F.2d 408 (9th Cir. 1980) (striking down a federal law that authorized Congress to nullify judicial decisions in certain immigration cases); *Denny v. Mattoon*, 84 Mass. (2 Allen) 361 (1861) (invalidating a law passed by the legislature purporting to annul the effect of a particular judgment). In other words, all the cited cases deal with legislative action. *Mandel*, like this case, however, involves legislative inaction. The distinction is significant. While courts have the power to invalidate illegal or unconstitutional laws, they cannot remedy the evil of inaction by forcing the legislature to act. *County of San Diego*, 164 Cal. App. 4th at 613 (“It is within the legitimate power of the judiciary, to declare the action of the Legislature unconstitutional, where that action exceeds the limits of the supreme law; but the Courts have no means, and no power, to avoid the effects of non-action.”) (quoting *Myers*, 9 Cal. at 349 (1858)). If the Legislature in this case passed a law expressly prohibiting the payment of money to satisfy MRC’s judgment, then this Court could strike down that law. The Legislature, however, has not passed such a law, but instead chooses to not act at all, and this Court lacks the constitutional authority to remedy such a situation.

¶ 36 We find the majority approach, *supra* ¶¶ 19-28, highly persuasive as it recognizes that this Court would overstep its constitutional authority if we ordered the Legislature to appropriate funds for a certain purpose, or if we redirected funds already appropriated for a specific purpose towards the payment of a judgment. *Newman Marchive Partnership, Inc.*, 979 So.2d at 1265; *Smith*, 222 S.E.2d at 424; *N.J. Div. of Youth and Family Serv.*, 571 A.2d at 1301. We would similarly overstep our authority if we ordered an executive official, through a writ of mandamus or similar procedural mechanism, to transfer funds to pay a judgment in the absence of legislative approval. *Amantia*, 213 A.2d at 254. While we do not follow the majority approach blindly,

absent sufficient reasons, this Court adopts the majority’s interpretation of the common law when our law is silent. *See* 7 CMC § 3401. We are not persuaded by *AFSCME/Iowa Council*, as it is the only case we found to directly contradict the majority approach, and also because it is a hollow rule that does not explain how a court would force a legislature to make an appropriation. Instead, the court states that it is sure the legislature will honor the state’s debts; our government’s inaction already indicates that it is not willing to honor this debt, and this further undercuts *AFSCME/Iowa Council*’s persuasiveness. We also find *Mandel* worrisome as it ordered the redirection of public funds for a purpose that the legislature did not authorize. While *Mandel* recognized that it could not order the legislature to make an appropriation, it ignored the California legislature’s intent and ordered that funds be spent for a non-appropriated purpose. While this may or may not be permissible in California, it certainly violates our Constitution. Thus, we hold that we cannot order a direct or indirect appropriation of public funds to satisfy a judgment.

¶ 37 Articles II and X of the Commonwealth Constitution place the power to appropriate public funds, directly or indirectly, and the power to collect taxes, solely in the hands of the Legislature. Article II, section 5 states: “[a]ppropriation and revenue bills may be introduced only in the house of representatives.” NMI Const. art. II, § 5(a). Similarly, Article X provides that “[a] tax may not be levied and an appropriation of public money may not be made, directly or indirectly, except for a public purpose. The legislature shall provide the definition of public purpose.” NMI Const. art. X. Together, these provisions give the Commonwealth Legislature exclusive control over the direct or indirect expenditure of public funds and the power to lay, collect, and credit taxes. While Article IV gives this Court the authority to hear and decide justiciable controversies, this Court’s constitutional authority stops there. Adopting the majority approach and the above constitutional language, we cannot remedy legislative inaction by ordering an appropriation or interfering with lawful revenue collection.

¶ 38 Applying these principles to the third order in aid of judgment, the fourth, fifth, and sixth paragraphs of the trial court’s order, which concern the grant of assignable tax credits to MRC, clearly violates our Constitution. The use of assignable tax credits seizes public funds without Legislative approval in violation of Articles II and X, and is in direct contravention of the majority approach. The authority to lay and collect taxes, or conversely to deem that MRC does not owe taxes because it possesses tax credits, lies firmly with the Legislature. We cannot interpret our Constitution in a manner that would allow the courts to decide who to tax and who to exempt in an effort to satisfy one of our judgments. While the cases above do not discuss a court awarding tax offsets to satisfy a judgment, we find that the effect of this scheme constitutes

an indirect appropriation of public monies effectuated through exempting MRC from its taxes. In other words, the trial court attempts to do indirectly what it cannot do directly. If we cannot order the Legislature to spend the public money in a certain manner, then we certainly cannot divert that money away from the Legislature before it makes an appropriation.

¶ 39 The seventh paragraph of the order leaves open the possibility that MRC may return to court and garnish portions of DLNR’s budget if the order is not complied with. This is constitutionally impermissible as an indirect appropriation in violation of Article II. The Legislature gave DLNR public funds to use for certain purposes, and we cannot upset that Legislative decision by ordering that those funds shall be used for a non-specified purpose—e.g., to satisfy MRC’s judgment. Thus, a Commonwealth court cannot order funds appropriated to a department or agency of the government be used to satisfy a judgment unless the Legislature indicates its intent that those funds can be used for that purpose. We can only order the government to honor the judgment against it in as much as our laws permit.

B. Statutory Law

¶ 40 Several Commonwealth statutes govern the payment of judgments by the government, and we will examine these statutes in determining to what extent we can apply the third order in aid of judgment to the government in order to satisfy MRC’s claim. Both the parties and the trial court focus their analysis on 7 CMC § 2254. For the reasons discussed below, this focus is misplaced. Title 7 CMC § 2254 is part of the Government Liability Act of 1983, which waives governmental immunity for certain claims and provides the exclusive remedy for money judgments against the Commonwealth brought pursuant to the Act. The waiver of governmental immunity is contained in § 2251, which provides:

§ 2251. Other Actions Against the Commonwealth Government.

Except as otherwise provided in article 1 of this chapter (commencing with 7 CMC § 2201), actions upon the following claims may be brought against the Commonwealth government in the Commonwealth Trial Court which shall have exclusive original jurisdiction thereof:

...

(b) Any other civil action or claim against the Commonwealth government founded upon any law of this jurisdiction or any regulation issued under such law, *or upon any express or implied contract with the Commonwealth government*

(emphasis added). Section 2254 then provides for the method of payment of judgments entered against the government for claims brought pursuant to the Government Liability Act:

§ 2254. Payment of Judgments.

Judgments *rendered pursuant to* this article shall be paid from such funds as may be appropriated by the Commonwealth Legislature for that purpose.

(emphasis added).

¶ 41 At the hearing to quash the second order in aid of judgment and in opposition to MRC’s request for a third order in aid of judgment, DLNR argued that MRC’s claim fell within § 2251(b) of the Government Liability Act because its claim was founded upon a contract with the Commonwealth government. It further argued that since the claim fell within the Government Liability Act, 7 CMC § 2254 was applicable and any judgment rendered could only be paid from funds “appropriated by the Commonwealth Legislature for that purpose.”

¶ 42 The trial court disagreed, holding that 7 CMC § 2254 only applied to “Judgments rendered pursuant to” the Government Liability Act and that the stipulated judgment in this case was “rendered pursuant to” Public Law 9-46. Although the trial court does not specifically say so, like the Government Liability Act, Public Law 9-46 waives governmental immunity by providing for the referral of any dispute to an arbitration panel, and if the panel makes an award that award “shall be enforceable in the Commonwealth courts.” Since Public Law 9-46 waives governmental immunity, the entry of the stipulated judgment was not brought pursuant to the Government Liability Act—the Public Law itself allowed MRC to seek relief from the trial court. Finding 7 CMC § 2254 inapplicable, the trial court held that it could permissibly fashion a remedy outside of the appropriation process.

¶ 43 The trial court’s analysis, however, is incomplete. It failed to take into consideration 1 CMC § 7207, which is part of the Budgeting and Planning Act, and provides:

§ 7207. Court Orders.

Except for funds appropriated for settlements and awards, no court may require the disbursement of funds from the Commonwealth Treasury or order the reprogramming of funds in order to provide for such disbursement. *Any final judgment of a court shall be paid only pursuant to an item of appropriations for settlements and awards.*

(emphasis added). The language of 1 CMC § 7207, as well as its location within the Commonwealth Code, makes clear that it was intended to apply to all money judgments against the government, satisfiable from the Commonwealth Treasury, regardless of whether the claim was brought pursuant to 7 CMC § 2251(b). In other words, 1 CMC § 7207 applies independently of whether a claim is brought under the Government Liability Act. Thus, even assuming that the trial court was correct in finding 7 CMC § 2254 inapplicable in this case, the court was still bound by the appropriations provision contained in 1 CMC § 7207. To the extent that the trial court found that it could order money not already appropriated for the payment of judgments to MRC in satisfaction of its judgment, the court erred.

The applicability of 1 CMC § 7207 in this case directly impacts paragraph one of the trial court's third order in aid of judgment. Paragraph one affirmed the first order in aid of judgment by stating that the \$20,000 previously appropriated by the Legislature for the payment of judgments be made available to MRC in partial satisfaction of its judgment. Under 1 CMC § 7207, the court *does* have the power to order money previously appropriated for settlements and judgments paid to MRC. However, it is unclear from the record what amount of money, if any, currently exists for such payments. The trial court ordered the \$20,000 that was available in 2005 to be paid. Now, MRC represents that the Legislature has appropriated \$453,330 since 2007 for the payment of judgments, and that this sum is still in existence. Any amount of money generically appropriated by the Legislature to satisfy judgments against the Commonwealth is subject to the trial court's orders; nothing in the language of 1 CMC § 7207 indicates that judgment appropriations must specifically reference a particular judgment. The trial court cannot, however, order that money already appropriated to pay a different judgment be used to satisfy the debt DLNR owes MRC. Thus, the trial court must determine how much money is currently appropriated to pay judgments, and it can then order the executive to use those funds to satisfy MRC's judgment.⁴

⁴ The government's argument that the trial court's order to satisfy a judgment out of funds already appropriated will violate 1 CMC § 7701, and then subject the official who transferred the money to criminal liability under 1 CMC § 7702 is without merit. 1 CMC § 7701 reads:

(a) No officer or employee of the Commonwealth shall willfully and knowingly make or authorize any expenditure from or create or authorize any obligation or allotment under any appropriation or fund in excess of the amount available therein.

(b) No officer or employee of the Commonwealth shall willfully and knowingly involve the Commonwealth or any agency in any contract or other obligation for the payment of money for any purpose, or make or authorize any payment out of the Commonwealth Treasury, in advance of, or in the absence of, appropriations made for such purposes, unless such contract or obligation is authorized by law or joint resolution.

(c) No officer or employee of the Commonwealth shall willfully and knowingly authorize or create any obligation or make any expenditure in excess of an apportionment, reapportionment, or administrative division made pursuant to the provisions of this part; provided, that continuing appropriation levels pursuant to 1 CMC § 7204(d) shall be treated as an appropriation for the purposes of this section.

(d) No officer or employee of the Commonwealth shall willfully and knowingly obligate any resources in advance of appropriations made for such purposes except in accordance with the provisions of this part.

If the government appropriated money into a fund for the purpose of satisfying judgments, then subsection (a) is not violated because this Court is only requiring that the amount authorized or expended is transferred, and not an amount in excess of what is available. Our opinion orders the trial court to determine how much money is in the judgment fund. Subsection (b) is not violated because we are not ordering an executive official to make or authorize a payment in absence of an appropriation. The fund was created to pay judgments, and therefore, an order from this Court or the trial court does not require an authorization or payment of funds for money not appropriated to satisfy judgments. Subsection (c) is not violated because we are only ordering that the amount available in the judgment fund be used to satisfy the government's debt to MRC; under no circumstances are we ordering an executive branch official to

¶ 45 The applicability of 1 CMC § 7207 also directly effects the second and seventh parts of the trial court’s order, which require DLNR to pay the income it derives from its operation of the Outer Cove Marina into a court account bi-weekly, and subject DLNR’s budget to the possibility of future judicial appropriation if it fails to comply with the third order. These aspects of the trial court’s order are in direct contravention of 1 CMC § 7207, which provides that “[a]ny final judgment of a court shall be paid only pursuant to an item of appropriations for settlements and awards.” By ordering the income stream DLNR receives from its operation of the Outer Cove Marina paid to MRC, the trial court is satisfying its judgment in the absence of a legislative appropriation; this violates 1 CMC § 7207. Likewise, the possibility that DLNR’s budget may satisfy the judgment also violates the statute because the court discharges DLNR’s debt without an appropriation by the Legislature. Thus, these aspects of the trial court’s order violate 1 CMC § 7207.

¶ 46 Although neither party addresses the issue, a subsidiary question exists concerning the nine percent interest assessed on both the \$20,000 and MRC’s original judgment award. The trial court presumably based the nine percent interest on 7 CMC § 4101, which provides “[e]very judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered.” However, the majority view among U.S. jurisdictions holds that a state does not accrue interest on its debts absent its consent. *See e.g., Bott v. Idaho State Bldg. Auth.*, 917 P.2d 737 (Idaho 1996); *Our Lady of Lourdes Hosp. v. Franklin County*, 842 P.2d 956 (Wash. 1993). Furthermore, courts hold that a state does not become liable for payment of interest by reason of a general statute imposing liability for interest (such as 7 CMC § 4101), *Brown v. State Highway Commission*, 476 P.2d 233 (Kan. 1970), and the general rule is that governmental entities are not liable for interest on their debts unless the state constitution, a statute, or a contract calls for it. *Boulis v. Florida Dept. of Transp.*, 733 So. 2d 959 (Fla. 1999). Neither Public Law 9-46, nor the Submerged Lands Lease Agreement, nor any other provisions of the Commonwealth Code make the government liable for post-judgment interest on this judgment. Therefore, the Commonwealth owes no interest on the judgment or on the amount located in the judgment fund.

authorize, obligate, or make an expenditure of money in excess of what has been already appropriated to satisfy judgments. Subsection (d) is not violated because we are not requiring an executive branch official to obligate resources in advance of an appropriation. Whatever is currently available in the fund shall be used to satisfy MRC’s judgment, and we are not ordering any executive branch employee to obligate money from the fund that is not currently located in the account. Therefore, the government’s argument that the third order in aid of judgment potentially exposes a government employee to criminal liability is incorrect because this Court is not ordering any employee to engage in any action that is in violation of the statute. We are merely ordering that funds already appropriated by the Legislature for the payment of judgments be transferred to MRC in partial satisfaction of their unpaid and valid judgment against DLNR.

C. Garnishment of Federal Funds

¶ 47 The seventh paragraph of the order also raises the possibility that MRC can return to the trial court and seek an order garnishing federal funds already appropriated by the U.S. Congress to the Commonwealth. This is an unequivocal violation of federal law, and we rule strongly against this provision. Federal law is very clear that state and territorial courts cannot issue orders garnishing federal funds and property absent Congressional consent. In *Federal Housing Administration v. Burr*, 309 U.S. 242 (1940), the plaintiff, an employee of the Federal Housing Administration (“FHA”), obtained a judgment from the Michigan Supreme Court that ordered the garnishment of federal funds in order to satisfy his claim. The Supreme Court found that Congress waived sovereign immunity for the FHA, and thus, it could sue and be sued; this extended to writs of execution against its property. *Id.* at 245-46. However, the only funds subject to garnishment were those already disbursed to the FHA. *Id.* at 250. The Court found that Congress’s waiver of sovereign immunity for the FHA only extended to funds made available to it, and that funds not available to the FHA under the relevant statutes could not be garnished to pay the employee judgment creditor. *Id.* While *Burr* is not directly on point because in that case the judgment creditor sued the federal government, whereas here the judgment creditor is attempting to obtain satisfaction of its judgment against the Commonwealth government, the case clearly stands for the proposition that the seizure of federal funds can only occur if Congress makes them available to satisfy a judgment.

¶ 48 *Neukirchen v. Wood County Head Start*, 53 F.3d 809 (8th Cir. 1995), presents a factual scenario closer to the one presently before us. In *Neukirchen*, an employee obtained a judgment against a county agency for age discrimination, and moved for a writ of execution against the county’s property, including property purchased with federal funds. The court held that any property purchased with federal funds was federal property, and that the state could not attach it absent consent from the federal government. *Id.* at 811-12. The court cited several cases for the proposition that federal money, and property purchased with federal money, is not available to satisfy a judgment absent federal consent.⁵ *Id.* Therefore, in as much as the third order in aid of judgment allowed MRC to seek the garnishment of federal money allocated to the Commonwealth, the order exceeds the trial court’s authority because neither this Court nor the

⁵ See *Buchanan v. Alexander*, 45 U.S. (4 How.) 20, 20-21 (1846) (holding that creditors of crew members of the frigate Constitution could not garnish their debtors’ wages because “so long as the money remained in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the treasury”); *In re Joliet-Will County Cmty. Action Agency*, 847 F.2d 430, 432-33 (7th Cir. 1988) (holding that property purchased with federal grant funds did not belong to Joliet-Will but rather belonged to the federal government); *Palmiter v. Action, Inc.*, 733 F.2d 1244, 1248 (7th Cir. 1984) (holding that a judgment creditor could not garnish federal funds granted to an Indiana Head Start program).

trial court possess any power to seize federal funds or property absent a clear indication of Congressional intent that such federal funds and property can be used to satisfy judgments against the Commonwealth.

D. The Effect of Constitutional and Statutory Law on the Third Order

¶ 49 The first part of the third order in aid of judgment orders that the \$20,000 already appropriated by the Legislature for the payment of judgments be paid to MRC. Under 1 CMC § 7207, the trial court did have the power to order the government to pay these funds to MRC because the Legislature already appropriated the money for settlements and judgments—assuming that any funds still remain. Therefore, we REMAND this portion of the order to the trial court to determine how much money has been appropriated for the payment of judgments, and for the trial court to enter an order directing the payment of those funds to MRC in partial satisfaction of its judgment. We do not uphold, however, the assessment of the nine percent post-judgment interest rate for this sum and for the judgment amount. Interest does not accrue against a state’s debts absent the state’s consent. The general rule is that governmental entities are not liable for interest on their debts unless the state constitution, a statute, or a contract allows for it. Public Law 9-46 did not provide for the assessment of interest and no other law specifically provides for the assessment of interest on judgments against the government. Therefore, we REVERSE the award of post-judgment interest in its entirety.

¶ 50 The second part of the order requires DLNR to pay all of the income it derives from its operation of the marina into an account at the court. This violates 1 CMC § 7207, which provides that “[a]ny final judgment of a court shall be paid only pursuant to an item of appropriations for settlements and awards.” The trial court cannot satisfy its judgments through any means other than a legislative appropriation. Therefore, we REVERSE the second part of the third order in aid of judgment that requires DLNR to deposit with the court all the income it receives from its operations at Outer Cove Mariana.

¶ 51 The third part of the order requires DLNR to report to the trial court on its efforts to obtain an appropriation by the Legislature to pay the judgment. Neither party cites any case law as to whether this portion of the order was permissible. It does not, however, directly conflict with any Commonwealth constitutional or statutory provision. Since a valid judgment exists, the trial court can require DLNR to report on its efforts to satisfy the judgment pursuant to Article IV section two of the Commonwealth Constitution and 1 CMC § 3202.⁶ Therefore, we AFFIRM the third part of the third order in aid of judgment.

⁶ 1 CMC § 3202: The Superior Court has original jurisdiction over all civil actions, in law and in equity, and over all criminal actions, and has the power to issue writs of mandamus, certiorari, prohibition,

¶ 52 The fourth, fifth, and sixth parts of the trial court’s order concern the grant of assignable tax credits to MRC. This constitutes a violation of Article II section five and Article X of the Commonwealth Constitution by indirectly appropriating public funds by interfering with the collection of taxes for the purpose of satisfying a judgment. The tax credits also attempt to satisfy the judgment outside of the appropriations process in violation of 1 CMC § 7207. Thus, the tax credits not only violate the Commonwealth Constitution, but also the Commonwealth Code, and therefore, we REVERSE these aspects of the third order in aid of judgment.

¶ 53 The seventh part of the order specifies that if DLNR fails to comply with the above requirements, MRC can return to court for the purpose of garnishing federal funds, appropriating portions of DLNR’s budget, and obtaining a finding of contempt. We cannot order the garnishment of federal funds or property for the purpose of paying a judgment creditor absent federal consent. *See Federal Housing Administration*, 309 U.S. 242; *see also Buchanan*, 45 U.S. (4 How.) 20. Likewise, the appropriation of DLNR’s budget violates Articles II and X of the Commonwealth Constitution and 1 CMC § 7207. Finally, the possibility of a future order of contempt is only permissible in as much as our opinion today upholds the third order; no finding of contempt can issue for the government’s failure to follow any portion of the order that we reverse. Therefore, we AFFIRM in part and REVERSE in part the seventh paragraph of the third order in aid of judgment.

III

¶ 54 For the foregoing reasons we hold that a Commonwealth Court possesses the constitutional authority to adjudicate MRC’s rights against the Commonwealth government, find the government liable to MRC, and enter a binding judgment against the government that will only expire when MRC receives full payment. We cannot, however, direct the appropriation of funds or interfere with the collection of taxes to satisfy that judgment because of the separation of powers doctrine. The doctrine is enshrined in the Covenant and the Commonwealth Constitution, forms the cornerstone of our government, and guards against governmental tyranny. In this case, however, the doctrine prevents us from taking any further action to satisfy the judgment. We are tempted to vindicate our judicial authority by holding otherwise, but we refrain from doing so out of respect for the rule of law. The government’s inaction in satisfying the judgment is a grave injustice that unfortunately only the political process can remedy. That being said, we trust that the Legislature will fulfill its Constitutional duties, and appropriate the funds necessary to satisfy

habeas corpus, and all other writs and orders necessary and appropriate to the full exercise of its jurisdiction.

MRC's judgment. We therefore AFFIRM in part, REVERSE in part, and REMAND this matter to the trial court to enter judgment consistent with this opinion.

SO ORDERED this 14th day of December, 2010.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
HERBERT D. SOLL
Justice Pro Tem