

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

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**JESUS I. TAISAGUE,**  
Plaintiff,

v.

**ELOY S. INOS, in his official and personal capacities, et al.,**  
Defendants.

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**SUPREME COURT NO. 2014-SCC-0004-CQU**

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**OPINION**

**Cite as: 2014 MP 13**

Decided November 13, 2014

Ramon K. Quichocho and Samuel I. Mok, Saipan, MP, for Plaintiff Jesus I. Taisague  
Reena Patel, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Defendant  
Commonwealth of the Northern Mariana Islands

BEFORE: ROBERT J. TORRES, Justice Pro Tem; F. PHILIP CARBULLIDO, Justice Pro Tem; MICHAEL J. BORDALLO, Justice Pro Tem.

TORRES, J.P.T.:

¶ 1 The United States District Court for the Northern Mariana Islands (“U.S. District Court”) certified four questions to this Court seeking guidance on how we interpret article I, section 1 and article III, section 20(a) of the NMI Constitution.<sup>1</sup> These questions were triggered by litigation in the U.S. District Court where plaintiff Jesus I. Taisague (“Taisague”) sued defendants Eloy S. Inos, the Commonwealth, and the Commonwealth Retirement Fund (collectively, “the Government”) for their actions regarding the Commonwealth pension system.

¶ 2 After modifying the questions to reframe the issues, we accepted all four certified questions. We are now asked to decide:

- (1) Are contract rights impaired or diminished under article I, section 1 or article III, section 20 when the Commonwealth does not pass any law creating a defense to the breach of the pension contract?
- (2) Are contract rights impaired or diminished under article I, section 1 or article III, section 20 when the Commonwealth does not pass any law depriving a retiree of the ability to sue for breach of the pension contract?
- (3) Are contract rights impaired or diminished under article I, section 1 or article III, section 20 when the Commonwealth passes a law requiring the legislature appropriate funds before court judgments can be enforced?
- (4) If the answer to any of the above questions is yes, what is the Commonwealth’s test for impairment or diminishment under article I, section 1 or article III, section 20?

¶ 3 For the reasons discussed below, we do not address the first two questions and we answer the third question in the negative because it does not pose a scenario that violates article I, section 1 or article III, section 20(a). Because we do not answer “yes” to any of the first three questions, we are not asked to set forth the Commonwealth’s standard for impairment or diminishment.

### **I. Facts and Procedural Background**

¶ 4 The Commonwealth Retirement Fund (“the Fund”) has faced significant financial difficulties. In 2012, retirees filed a class-action lawsuit regarding the Fund and the benefits to be paid out. The Commonwealth entered into a settlement agreement with the settlement class that both reduced potential retiree payments and bound all retirees unless they specifically opted-out. Taisague, a Commonwealth employee entitled to retirement benefits, opted out of the settlement. He then sued the Government in the U.S. District Court alleging the settlement violated the United States Constitution’s Contract Clause and the NMI Constitution’s contract clause. After granting in part the Government’s motion to dismiss, the U.S. District Court certified four questions to this Court. We accepted the certified questions.

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<sup>1</sup> Unless otherwise noted, any references to article I, section 1 or article III, section 20 refer to the NMI Constitution.

¶ 5 The certified questions focus in part on the Legislature’s ability to restrict the payment of judgments against the Commonwealth. The statutory basis for this power originated in PL 3-68 and was codified at 1 CMC § 7207. Section 7207: (1) prevents a court from requiring “the disbursement of funds from the Commonwealth Treasury or order[ing] the reprogramming of funds in order to provide for such disbursement” and (2) establishes that “[a]ny final judgment of a court shall be paid only pursuant to an item of appropriations . . . .” 1 CMC § 7207(a). The certified questions also ask about the failure to either create a defense to breach of contract or deprive a person of the ability to sue. Currently, the Legislature has done neither.

¶ 6 The certified questions turn on two clauses of the NMI Constitution: article I, section 1 and article III, section 20(a). Article I, section 1—the Commonwealth’s contract clause—states: “No law shall be made that is a bill of attainder, an ex post facto law, a law impairing the obligation of contracts, or a law prohibiting the traditional art of healing.” Article III, section 20(a) states: “Membership in an employee retirement system of the Commonwealth shall constitute a contractual relationship. Accrued benefits of this system shall be neither diminished nor impaired.”

## II. Jurisdiction

¶ 7 We have jurisdiction over certified questions from a federal court. NMI SUP. CT. R. 13; *see Kabir v. CNMI Pub. Sch. Sys.*, 2009 MP 19 ¶¶ 6-24 (explaining the basis for the Court’s jurisdiction over certified questions).

## III. Discussion

¶ 8 We answer the questions in the order they were presented. We begin by addressing the first two certified questions—regarding legislative inaction—together because the questions can be resolved on common ground. Next, we turn to the third question: whether the Legislature can pass a law requiring appropriations before a judgment against the Commonwealth can be enforced. We conclude by stating our reasons for not answering the fourth question’s invitation to set forth a standard for impairment or diminishment.

### A. No Law Creating a Defense to Breach of Contract or Depriving a Person of the Right to Sue

¶ 9 The first two certified questions ask whether a contract is unconstitutionally impaired or diminished when the Legislature does not pass a law: (1) creating a defense to breach of contract or (2) depriving a contracting party of the ability to sue. The parties agreed at oral argument that neither question posed a scenario violating article I, section 1 or article III, section 20(a). Oral Argument at 9:54:51-59 (Taisague); *id.* at 10:28:22-29:38 (Commonwealth). Because the issues in question one and two were conceded, our answer to these questions would be an advisory opinion. *See L.A. Alliance for Survival v. City of Los Angeles*, 993 P.2d 334, 339 (Cal. 2000) (“The weight of authority holds that a high court’s answer to a certified question is *not* an improper advisory opinion so long as [] a court addresses

only issues that are truly contested by the parties and are presented on a factual record . . .”). This we cannot do. *See Bank of Saipan, Inc. v. Superior Court*, 2004 MP 15 ¶ 6 (explaining the Court does not “declare principles or rules of law that do not presently affect this case”). Accordingly, we will not answer question one or two.

*B. Law Requiring Legislature Appropriate Funds Before Enforcement of Judgments*

¶ 10 The third certified question asks whether a contract is impaired or diminished by a law preventing a judgment from being enforced until the Legislature appropriates funds. We focus our inquiry on 1 CMC § 7207 because this law embodies the restriction at the heart of the certified question: the prevention of a judgment from being enforced until the Legislature appropriates funds. *See* 1 CMC § 7207(a) (stating “no court may require the disbursement of funds from the Commonwealth Treasury” and “[a]ny final judgment of a court shall be paid only pursuant to an item of appropriations”). With this in mind, we must determine whether § 7207 causes: (1) impairment under article I, section 1; or (2) impairment or diminishment under article III, section 20(a).

¶ 11 We have no case law interpreting article I, section 1 or article III, section 20(a) so our analysis begins at the most basic level: what type of legislative action is restrained. At the very least, the prohibition on impairing or diminishing a contract reflects the idea that the Legislature is limited in how it can *detrimentally* affect rights under existing contracts. *See Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 503 n.30 (1987) (“[The Contract Clause] was made part of the Constitution to remedy a particular social evil -- the state legislative practice of enacting laws to relieve individuals of their obligations under certain contracts -- and thus was intended to prohibit States from adopting as [their] policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them.”) (internal quotation marks omitted)); BLACK’S LAW DICTIONARY 644 (abridged 9th ed. 2010) (explaining that “impair” is “commonly used in reference to diminishing the value of a contractual obligation to the point that the contract becomes invalid or a party loses the benefit of the contract”); *id.* at 408 (defining “diminution”—the verb form of which is “diminish”—as “[t]he act or process of decreasing, lessening, or taking away”).

¶ 12 Having established a foundation for an impairment or diminishment analysis, our focus returns to § 7207. In the Commonwealth, only the Legislature can determine whether to appropriate funds to pay a judgment; a Commonwealth court cannot order an appropriation. *Marine Revitalization Corp. v. Dep’t of Land & Natural Res.*, 2010 MP 18 ¶¶ 13, 19. This restriction, expressed in § 7207, codifies existing constitutional allocations of power. *Id.* at ¶¶ 12-13 (explaining that article II, section 5 of the NMI Constitution grants the Legislature the power of the purse and that the separation of powers doctrine precludes one branch of government from exercising powers properly belonging to another branch). As a result, even in the absence of § 7207, a Commonwealth court could not force the Legislature to pay

judgments because that would exceed a court’s constitutional authority. *Marine Revitalization Corp.*, 2010 MP 18 ¶ 36. This principle is based on the separation of powers doctrine, *id.* at ¶ 28 (“[C]ourts may not enforce judgments against the state, because such an action would amount to an appropriation of funds in violation of the separation of powers doctrine . . . .”), and is reflected in court decisions by nearly every state addressing the issue, *id.* at ¶ 19 (“[State] courts are in almost unanimous agreement that they cannot compel the legislature to appropriate funds either directly or indirectly to satisfy a judgment.”). In short, under the NMI Constitution’s allocation of power, the Legislature is always free to choose when (or if) to pay judgments levied against the Commonwealth by local courts. *Id.* at ¶¶ 12-13, 36.

¶ 13           Having established § 7207’s function, our analysis of question three is straightforward. As we explained above, impairment or diminishment at the very least requires legislative action detrimentally affecting a contracting party’s rights. However, § 7207 does not change or alter the rights of the parties because the law does not prevent Taisague from enforcing his contractual rights or obtaining a judgment for the full amount of his accrued benefits; rather, the law merely codifies existing allocations of power. *See id.* at ¶ 36 (explaining the NMI Constitution prohibits a Commonwealth court from forcing the Commonwealth to pay a judgment); 1 CMC § 7207(a) (explaining a judgment against the Commonwealth can be enforced only if the Legislature allocates funds). Accordingly, § 7207 does not impair or diminish a contract—which means the third certified question does not pose a scenario violating article I, section 1 or article III, section 20(a).

¶ 14           Our conclusion is buttressed by the United States Supreme Court’s interpretation of the United States Constitution’s Contract Clause. Precedent analyzing this clause is helpful for two reasons. First, the Court’s analysis of the NMI Constitution is informed by the interpretation of analogous United States Constitution provisions, *Commonwealth v. Minto*, 2011 MP 14 ¶ 22, which in this case is the federal Contract Clause, *compare* U.S. CONST. art. 1, § 10, cl. 1 (“No state shall . . . pass any . . . law impairing the Obligation of Contracts . . . .”), *with* NMI CONST. art. 1, § 1 (“No law shall be made that is . . . a law impairing the obligation of contracts . . . .”). Second, the drafters indicated that federal Contract Clause case law is informative. ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS 2 (1976) (“[Article I, section 1] is drawn largely from [A]rticle I, [S]ection 10, of the United States Constitution . . . . No substantive change from the relevant provisions of [A]rticle I, [S]ection 10 or the interpretations of those provisions by the United States Supreme Court is intended.”).

¶ 15           Applying the federal Contract Clause, the United States Supreme Court has concluded a state’s refusal to pay judgments does not unconstitutionally impair a contract. *R.R. Co. v. Tennessee*, 101 U.S. 337, 340 (1880) (“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.”); *R.R. Co. v. Alabama*, 101 U.S. 832, 835 (1880) (“States may refuse to pay,

that is, may refuse to make the necessary appropriation, and the courts are powerless to compel them to do so.”). Therefore, federal precedent reinforces our conclusion that a law requiring the Legislature to appropriate funds before a judgment can be enforced does not unconstitutionally affect a contract.

*C. Standard for Impairment and Diminishment*

¶ 16 Moving to the final question, we are asked to set forth a standard for impairment and diminishment *only if* we answer “yes” to any of the first three certified questions. Because we do not answer “yes” to any of the first three questions, we are not asked to set forth a test for article I, section 1 or article III, section 20(a).

**V. Conclusion**

¶ 17 For the reasons discussed above, we will not answer the first two certified questions and we answer the third certified question in the negative because there is no article I, section 1 or article III, section 20(a) violation when the Legislature passes a law requiring the appropriation of funds before a judgment against the Commonwealth can be enforced. Because we do not answer “yes” to any of the first three questions, we do not address the fourth question asking the Court to set forth a standard for impairment or diminishment.

SO ORDERED this 13th day of November, 2014.

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/s/  
ROBERT J. TORRES  
Justice Pro Tem

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/s/  
F. PHILIP CARBULLIDO  
Justice Pro Tem

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/s/  
MICHAEL J. BORDALLO  
Justice Pro Tem