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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

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-Appellants.

Supreme Court No. 2014-SCC-0007-CIV

Superior Court No. 97-0266

OPINION

Cite as: 2015 MP 6

Decided October 13, 2015

Edward C. Arriola and Michael W. Dotts, Saipan, MP, for Intervenors-Appellants.

Gilbert J. Birnbirch and Charles E. Brasington, Saipan, MP, for Petitioner-Appellee.

BEFORE: JOHN A. MANGLONA, Associate Justice; DAVID WISEMAN, Justice Pro Tem; HERBERT SOLL, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Intervenors-Appellants[1] ("Appellants") argue that the trial court erred by establishing the post-judgment interest rate at 4.136% simple interest. They assert that an incorrect legal standard was applied and the record is devoid of information supporting the award. For the following reasons, we VACATE the 4.136% post-judgment interest rate and REMAND with instructions to determine a rate that neither takes into consideration the current value of the property nor awards simple interest without adequate justification.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 In March 1993, the Commonwealth took a number of lots owned by Maria Mangabao. Three years later, the Commonwealth entered into a land exchange agreement with Mangabao's heirs, "wherein [the heirs] agreed to convey title to the property to the Commonwealth in exchange for other property and cash of comparable value." *Commonwealth v. Lot No. 353 New G*, 2012 MP 6 ¶ 3. In 1997, the Commonwealth filed its Complaint for Eminent Domain, seeking clear title by deed of all three lots. Subsequently, the heirs and the Commonwealth entered into settlement negotiations.

¶ 3 In 2007, Appellants intervened. After the parties reached an agreement as to several issues, the Superior Court entered a final judgment of $4,196,524, which represented the value of the land taken in March 1993. Later, the court issued an order establishing a 6.991% pre-judgment interest rate compounded annually. Using that interest rate, the court calculated the "final award" amount to be $11,431,662.10. This figure represents the sum of the pre-judgment interest ($7,235,138.10) and the value of the land at the time of the taking ($4,196,524).

¶ 4 When the Commonwealth failed to pay the final award amount, Appellants filed a motion for a writ of execution. The trial court denied this motion, and in June 2012, this Court affirmed that decision on appeal. *Lot No. 353 New G*, 2012 MP 6. Further, we held that the trial court erred by failing to award post-judgment interest, stating that "the heirs are entitled to post-judgment interest sufficient to put them in as good a position as they enjoyed prior to the taking." *Id.* ¶ 44.

¶ 5 In July 2013, the trial court held a bench trial to establish the post-judgment interest rate. At that hearing, Appellants argued that the rate is established by statute, and alternatively, if the court should find that statute inapplicable, the rate should be 7.74% compounded, as testified to by their

[1] There are twelve intervenor-appellants: 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.

expert witness. In contrast, the Commonwealth and their expert witness advocated for a 4.136% compound interest rate. After considering the arguments, the court ordered the post-judgment interest rate be set at 4.136% simple interest.

¶ 6 Appellants appeal that order, seeking an alternative post-judgment interest rate.

II. JURISDICTION

¶ 7 We have appellate jurisdiction over Superior Court final judgments and orders. NMI CONST. art. IV, § 3. The Commonwealth challenges this Court's jurisdiction on two bases: (1) the order establishing post-judgment interest rate is not a final order, and (2) the appeal violates the separate document rule.

A. Finality of the Order

¶ 8 The Commonwealth contends that the order is not final because the post-judgment interest rate will continue to fluctuate until the final award amount is paid.

¶ 9 An order is final if "it ends litigation on its merits and leaves nothing for the Court to do except execute the judgment." *Lot No. 353 New G*, 2012 MP 6 ¶ 9. In our previous opinion regarding this property, we addressed a similar argument—we examined whether "[a party's] motion for a writ of execution was procedurally defective because it was filed prior to the entry of final judgment." *Id.* ¶ 8. In our analysis, we found that the judgment was final because the trial court issued orders that granted pre-judgment interest and established the amount of the Commonwealth's liability. *Id.* ¶ 9.

¶ 10 Here, litigation has concluded on the merits because post-judgment interest has been granted and the rate has been determined. The post-judgment interest rate cannot fluctuate because the order itself sets the rate to 4.136% simple interest. Because the order definitively established the interest rate, it resolved the issue on its merits and left nothing for the court to do except execute the judgment. *See id*. Therefore, the order is a final order.

B. Separate Document Rule

¶ 11 The Commonwealth argues that the separate document rule was violated because an entry of judgment or order had not been filed with the clerk of the Superior Court before the appellants filed their notice of appeal. Furthermore, they assert that because the rule requires strict compliance and no authority permits the Clerk of Court to waive this requirement, the appeal must be dismissed.

¶ 12 Under the separate document rule, an "entry of judgment or order" must be in a different form than "announced orders, decisions and sentences," and must be filed with the clerk of the Superior Court before an appeal is permitted. *Commonwealth v. Kumagai*, 2006 MP 20 ¶¶ 18–23. Strict compliance with the separate document rule is required unless an exception applies. *Id*. ¶ 22 ("[W]ithout such an entry of judgment or order, this Court has no jurisdiction to

hear most cases, as our jurisdiction, with certain exceptions, is limited to judgments [that] are final.").

¶ 13 Since *Kumagai*, amendments to NMI Supreme Court Rule 4 have expanded the definition of entry of judgment. Previously, Rule 4(a)(1) articulated that "[t]he filing of the judgment with the clerk of the Superior Court" constituted an entry of judgment. NMI SUP. CT. R. 4(a) (1997). Now, an order or judgment is entered, for purposes of civil appeals, when either the separate document rule is satisfied or "150 days have run from entry of the judgment or order in the civil docket under Commonwealth Rule of Civil Procedure 79(a)." NMI SUP. CT. R. 4(a)(7)(A)(ii). Here, the order establishing post-judgment interest rate was recorded on the docket on March 10, 2014, and judgment was considered entered 150 days after that date, on August 8, 2014. Furthermore, it is inconsequential that Appellants filed their notice of appeal prior to August 8, 2014, because a premature notice of appeal is treated as filed on the date of entry of judgment. NMI SUP. CT. R. 4(a)(2); *see Outlaw v. Airtech*, 412 F.3d 156, 163 (D.C. Cir. 2005). Accordingly, we now address the merits of the appeal.

III. STANDARDS OF REVIEW

¶ 14 Whether the trial court applied the correct legal standard is a question of law reviewed de novo. *In re Estate of Malite*, 2011 MP 4 ¶ 9. The court's selection of the rate of interest is a factual issue that is reviewed for clear error. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 7.

IV. DISCUSSION

¶ 15 The Fifth Amendment of the United States Constitution and Article XIII, Section 2, of the NMI Constitution state that private property may not be taken without just compensation. Just compensation is defined as "the fair market value of the property on the date it is appropriated." *Estate of Muna*, 2007 MP 16 ¶ 13 (quoting *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 10 (1984)). In the Commonwealth, the legal standard for establishing pre-judgment and post-judgment interest is that the interest rate must be set to an amount that places the owner "in as good a pecuniary position as they would have enjoyed if the payment of just compensation had coincided with the taking." *Lot No. 353 New G*, 2012 MP 6 ¶ 43.

¶ 16 In setting pre-judgment interest rates, courts consider "the current value of the property as well as the amount of money [one] could have obtained by prudently investing the proceeds of [the value of the land at the time of the taking]," *Estate of Muna*, 2007 MP 16 ¶ 20, because "[i]t is assumed that a person who received the pecuniary value of his property as of the date of taking would [have] invest[ed] these funds in a reasonably prudent manner." *United States v. 429.59 Acres of Land*, 612 F.2d 459, 464–65 (9th Cir. 1980). In other words, just compensation includes not only the value of the land at the time of the taking but also an amount that places the individual in a position equivalent to "a reasonably prudent person investing funds so as to produce a reasonable

return while maintaining a safety of principal . . . ." *Estate of Muna*, 2007 MP 16 ¶ 19.

¶ 17 The purpose of awarding pre-judgment and post-judgment interest rates is identical—to provide just compensation. Like pre-judgment interest, if one were entitled to post-judgment interest, they would invest the "final award"[2] in a reasonably prudent manner. Thus, logically, the reasonably prudent person standard is applicable to both pre-judgment and post-judgment interest rate determinations.

A. Applicability of 7 CMC § 4101

¶ 18 Appellants argue that they are entitled to at least a 9% post-judgment interest rate because 7 CMC § 4101 does not explicitly exempt the Commonwealth.[3]

¶ 19 In *Marine Revitalization Corp. v. Dep't of Land & Natural Res.*, we stated that "7 CMC § 4101 does not make the government liable for post-judgment interest," because "there must be explicit statutory or contractual consent for the government to owe post-judgment interest." 2011 MP 2 ¶ 9, 15. Subsequent case law has not modified our interpretation of § 4101 nor has the statute been amended; thus, Appellants' contention that the statute applies is unavailing.

¶ 20 Although 7 CMC § 4101 is inapplicable, Appellants remain entitled to "just compensation under the federal Fifth Amendment takings clause." *Pangelinan v. N. Mariana Islands Ret. Fund*, 2009 MP 12 ¶ 34. Appellants are due post-judgment interest that places them in a position equivalent to that of "a reasonably prudent person investing funds so as to produce a reasonable return while maintaining a safety of principal." *Estate of Muna*, 2007 MP 16 ¶ 19. Thus, we reaffirm our position that just compensation is achieved not by applying statutorily prescribed interest rates but by ensuring claimants receive constitutionally adequate compensation. *Id*. ¶ 14.

B. Applicability of the Restatement's "Prudent Investor Rule"

¶ 21 Appellants argue the trial court erred by failing to apply the "Prudent Investor Rule" from the Restatement of the Law Third, Trusts.

¶ 22 "Restatement provisions [are] applicable only when, and to the extent, 'written law' or 'local customary law' is silent." *Tan v. Younis Art Studio, Inc.*, 2007 MP 11 ¶ 14 (citing 7 CMC § 3401). Here, our case law articulates the standard for establishing pre-judgment and post-judgment interest rates—the interest rate must be set to an amount that places the individual "in as good a pecuniary position as they would have enjoyed if the payment of just

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[2] The "final award" is the sum of the fair market value of the land at the time of taking and the interest that amount would have generated from the time of the taking to the date of judgment.

[3] Under 7 CMC § 4101, "[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."

compensation had coincided with the taking." *Lot No. 353 New G*, 2012 MP 6 ¶ 43. Furthermore, this Court has defined "just compensation" as "the fair market value of the property on the date it is appropriated." *Estate of Muna*, 2007 MP 16 ¶ 13 (quoting *Kirby*, 467 U.S. at 10). Because Restatement provisions may apply only when "written law" is silent, the Restatement's "Prudent Investor Rule" is inapplicable because case law indicates the standard for determining post-judgment interest rates.

C. Particular Circumstances of the Appellants

¶ 23 Appellants argue that the trial court erred because it did not consider their particular circumstances when it established the interest rate. They posit that had the "final award" been disbursed, they would have hired the "best of the best" money managers and fund consultants, and they would have achieved a higher rate of return on the hypothetical portfolio. Opening Br. 19. Thus, they assert they are entitled to an interest rate greater than 4.136%.

¶ 24 Appellants' argument that an interest rate determination should consider the particular circumstances of an individual has been rejected by the United States Court of Federal Claims:

> In determining whether a particular rate of interest is sufficient under the Fifth Amendment to provide the "full and perfect equivalent of the property taken," *Seaboard*, 261 U.S. at 304, courts have often relied on a standard referred to as the "prudent investor rule." Pursuant to this rule, the appropriate interest rate is calculated based not on an assessment of how a particular plaintiff would have invested any recovery, but rather on how "a reasonably prudent person" would have invested the funds to "produce a reasonable return while maintaining safety of principal." *United States v. 429.59 Acres of Land*, 612 F.2d 459, 464-65 (9th Cir. 1980).

Tulare Lake Basin Water Storage District v. United States, 61 Fed. Cl. 624, 627 (Fed. Cl. 2004).[4] Here, not only has the Appellants' argument proven unsuccessful in federal court, but Appellants have also failed to support their argument with legal authority; consequently, we conclude the trial court did not

[4] The "prudent investor rule" in the Restatement of the Law Third, Trusts, differs from the prudent investor rule in *Tulare*. In the Restatement, the rule applies specifically to trusts—it states that trustees are under a number of duties "to invest and manage the funds of the trust as a prudent investor would, in light of the purpose, terms, distribution requirements, and other circumstances of the trust." Restatement (Third) of Trusts § 227 (1992). Here, the prudent investor rule provides a standard to assess whether the method used to calculate interest rates sufficiently provides just compensation. Although the rules may share similar language, without more, we decline to read in provisions from an unrelated Restatement when case law already articulates the appropriate standard.

err when it established its interest rate without consideration of Appellants' ability to hire financial consultants.

D. Current Value of the Property in Inverse Condemnation Cases

¶ 25 Last, there is an undeveloped argument that this Court now addresses in its de novo review.[5] The issue is whether the trial court erred when it considered the current value of the property in its post-judgment interest rate determination. The trial court's order states that we have indicated that the current value of the property should be considered in awarding post-judgment interest:

> Finally, the Supreme Court has stated that the trial courts should consider the current value of the property. *Estate of Muna*, 2007 MP 16 ¶ 19. While neither party presented this information, the Court notes that property in the Commonwealth has declined in value from the original date of taking of March 31, 1993. It does not believe that the property in question would yield a value of $4,196,524 had it been sold in today's market. The Court, therefore, finds that the most equitable rate of post-judgment interest presented in this case is the one set for by the Government.

Commonwealth v. Lot 353 New G, Civ. No. 97-0266 (NMI Super. Ct. Mar. 11, 2013) (Order Establishing Post-Judgment Interest Rate at 7–8) [hereinafter Order]. In *Estate of Muna*, we cited to *Kirby*, 467 U.S. 1, for the proposition that "a final award should bear some relation to the current value of the property." *Estate of Muna*, 2007 MP 16 ¶ 19. After review of *Kirby*, it is clear that, in this context, *Kirby* does not support that proposition.

¶ 26 In *Kirby*, the United States sought to acquire land owned by the petitioner. Under 40 U.S.C. § 257, a statute governing the procedure for "straight-condemnation" proceedings, an officer of the Government must make an application to the Attorney General who then files a complaint with the federal district court. *Kirby*, 467 U.S. at 3. The district court then issues a final judgment that determines the compensation due to the owner of the land. *Id*. at 4. Afterwards, the Government may exercise its option to tender payment to the land owner and acquire title to the land. *Id*.

¶ 27 In *Kirby*, after the United States filed its complaint in condemnation, the District Court "referred the matter to a special commission to ascertain the compensation due [to the] petitioner." *Id*. at 7. That commission entered a report recommending compensation in the amount of $2,331,202. *Id*. at 7–8. Both parties objected to this amount, and two years later, after holding a hearing on those objections, the District Court entered judgment and awarded the petitioner $2,331,202 plus interest from the date the complaint had been

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[5] Appellants' Opening Brief contains a subheading titled "The Lower Court Erred In Its Understanding That a Fair Award Should Bear Some Relation to the Current Value of the Property," but its accompanying text fails to expound that argument.

filed "to the date the Government deposited the adjudicated value of the land with the court." *Id*. Seven months later, the United States deposited the total amount and acquired title to the land. *Id*.

¶ 28 On appeal, the petitioner contended $2,331,202 plus interest was insufficient compensation under the Fifth Amendment because that award "represents the commission's best estimate of the value of the land on March 6, 1979." *Id*. at 16. Petitioner argued that he was denied just compensation in an amount equivalent to the difference between the value of the land on the date of the taking and $2,331,202. *Id*. The Court agreed, holding that the Petitioner is "entitled to the value of its land on the date of the taking, not on the date of valuation." *Id*. at 19.

¶ 29 The *Estate of Muna* court commented that "a final award should bear some relation to the current value of the property." 2007 MP 16 ¶ 19 (citing *Kirby*, 467 U.S. at 17). In inverse condemnation cases, like *Estate of Muna*, the Government physically enters into possession of the property and ousts the owner. *United States v. Clarke*, 445 U.S. 253, 257 (1980). In such cases, the date of taking is the date the Government physically enters into possession:

> The usual rule is that if the United States has entered into possession of the property prior to the acquisition of title, it is the former event which constitutes the act of taking. It is that event which gives rise to the claim for compensation and fixes the date of which the land is to be valued and the Government's obligation to pay interest accrues.

United States v. Dow, 357 U.S. 17, 22 (1958). In contrast, in straight-condemnation proceedings, like *Kirby*, the taking is not effectuated until payment is tendered. *Kirby*, at 11–12.

¶ 30 *Kirby* does not support the proposition that "a final award should bear some relation to the current value of the property" in the instant case. The current value of the property would be relevant had this been a straight-condemnation proceeding and payments were not tendered, because under that circumstance, the date of payment and the date of taking are identical. However, this case is not a straight-condemnation proceeding—it is an inverse condemnation proceeding because the taking was effectuated by physical means; therefore, the current value of the property bears no relation to the amount of just compensation.

E. Selection of Interest Rate

¶ 31 "The determination of a reasonable rate of interest for just compensation is a finding of fact, which should be disturbed only if clearly erroneous." *Estate of Muna*, 2007 MP 16 ¶ 7. "A finding is clearly erroneous when, even though some evidence supports it, the entire record produce[s] the definite and firm conviction that the court below committed a mistake." *Rebuenog v. Aldan,* 2010 MP 1 ¶ 20 *(*internal quotation marks omitted). "The test is whether the trial court could rationally have found as it did, rather than whether the reviewing

court would have ruled differently." *In re Estate of Yong Kyun Kim*, 2001 MP 22 ¶ 9.

¶ 32 Here, the court considered four different interest rates, three of which were submitted by Appellants. First, the court considered the statutory rate of 9% but dismissed that rate because "applying a blanket statutory rate of interest is inappropriate [in] eminent domain cases." Order at 4 (citing *Estate of Muna*, 2007 MP 16 ¶¶ 14–15).

¶ 33 The court then entertained the rate of 6.991%, an interest rate based off the pre-judgment interest rate in this case. The court refused to apply that rate because awarding the pre-judgment interest rate would not place Appellants in as good a pecuniary position as they would have enjoyed had the payment of just compensation coincided with the taking.

¶ 34 Next, the court considered a 7.74% compound interest rate presented by Appellants' expert witness. The court acknowledged the expert witness' methodology, noting that the 7.74% compound interest rate was based off a hypothetical investment portfolio's rate of return, that the portfolio sought the highest return and analyzed the rates of return for various types of investments over a twenty year period ending in June 2013, and that the portfolio invested 100% of its assets—50% in stocks and 50% in bonds.

¶ 35 Last, the court considered a 4.136% compound interest rate presented by the Commonwealth's expert witness. In its evaluation, the court examined the methodology of the Commonwealth's proposed interest rate, stating that it was also based on an analysis of a hypothetical investment portfolio's market performance, that it analyzed the rate of return for a variety of investments over a time period ranging from January 4, 2008, to March 31, 2013,[6] and that the portfolio invested 90% of its assets—40% in stocks and 50% in bonds. The remaining 10% were held in cash or cash equivalents.

¶ 36 The court then chose between the experts' two possible interest rates. It settled on the Commonwealth's rate because Appellants' rate incorporated an analysis of market returns outside the scope of post-judgment interest determinations:

> This case was remanded from the Supreme Court for a determination of *post*-judgment interest since pre-judgment interest was already awarded. Post-judgment interest is interest that accrues after the entry of a judgment. Therefore, it is inappropriate for this Court to consider market research for a period of time before the Judgment was issued.

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[6] Pre-judgment interest was calculated from March 31, 1993, the date of the taking, to January 4, 2008. Post-judgment interest should be calculated from January 4, 2008, to the date of the final payment.

Order at 7 (internal citation omitted). The court reasoned that it was inappropriate to consider market research for the period of time before the judgment was issued because those years had already been taken into consideration in the court's pre-judgment interest rate calculation.

¶ 37 Here, the trial court erred by establishing a 4.136% simple interest rate because the record is devoid of evidence supporting a simple interest rate determination, the record indicates the interest rates before the court were compounded, and the court provided no justification for its sua sponte simple interest rate determination. Although the interest rates were not explicitly identified as simple or compound, both experts' reports indicate the rate here was to be compounded, as evidenced by their use of the compound interest formula. Because the 4.136% simple interest rate finding is unsupported by the record, we hereby VACATE the court's post-judgment interest rate determination.

V. CONCLUSION

¶ 38 For the reasons stated above, we VACATE the 4.136% post-judgment interest rate and REMAND with instructions to determine a post-judgment interest rate that neither takes into consideration the current value of the property nor awards a simple interest rate without justification.

SO ORDERED this 13th day of October, 2015.

/s/
JOHN A. MANGLONA
Associate Justice

/s/
DAVID WISEMAN
Justice Pro Tem

/s/
HERBERT SOLL
Justice Pro Tem