Wally v. ROP, 16 ROP 19 (2008)
SYLVIA M. WALLY and WILLY WALLY,
Appellants,

v.

REPUBLIC OF PALAU,
Appellee.

CIVIL APPEAL NO. 07-033
Civil Action No. 05-245

Supreme Court, Appellate Division
Republic of Palau

Decided: November 10, 2008[1]
p.20
Counsel for Appellants: Yukiwo P. Dengokl

Counsel for Appellee: David W. Shipper
p.21
BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice, presiding.

PER CURIAM:

On October 18, 2005, Appellee filed a condemnation case to obtain title to Cadastral Lot No. 064 B 02. After a trial, the trial court awarded the property to Appellee and ordered it to pay Appellants just compensation in the amount of $258,345.69. To reach this amount, the trial court found that the property was worth $28.60 per square meter and that interest should run at a rate of three percent per annum under 35 PNC § 318(b). Appellants challenge the interest rate applied by the trial court. Because the trial court erred in concluding that 35 PNC § 318(b) applied, we reverse the judgment of the trial court with regard to interest and remand this case for further proceedings.

BACKGROUND

During the period of Japanese rule in Palau, the property now known as Cadastral Lot No. 064 B 02 was taken from its owners. After Japanese rule ended, the property passed to the Trust Territory of the Pacific Islands ("Trust Territory"). In the 1960s, the Trust Territory built an elementary school on the property. This school, known as George B. Harris Elementary School,

[1] Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

still stands on the property today.

Over thirty years after the school was built, the Land Court determined that the property had been wrongfully taken from its rightful owners during the Japanese period and that it now belonged to Appellants. On February 17, 2003, this Court affirmed the Land Court's determination. As a consequence, title to the property vested in Appellants on that date.

On October 18, 2005, Appellee filed a condemnation case to obtain title to the property. Because Appellee already had possession of the property, the only issue in the case was what constituted "just compensation" for the property. After a one-day trial, the trial court accepted the view of Appellee's appraiser that the fair market value of the property was $28.60 per square meter. As for interest, the trial court applied the three percent interest rate provided for by 35 PNC § 318(b)(2). The trial court stated:

> Defendants argue that this statute does not apply because the defendants never had possession of the land as stated in paragraph (a). The Court disagrees. Paragraph (a) simply states the normal procedures in condemnation cases where the government is taking lands from privately owned lands in possession of the owners. This by no means is a condition precedent to paying the three percent interest rate in this case. The issue is not on procedures, but on what is the proper interest rate. The statute on condemnation provides the only p.22 interest rate and it is three percent. If a different interest rate was contemplated at some point in the condemnation proceeding, the National Congress would have said so in the statute. It did not. The statute also does not require that interest rate be determined by cross reference to other statute. Hence, the Court concludes that the condemnation statute provides interest rate for condemnation cases at three percent per annum for all stages of the proceedings.

Trial Court Findings of Fact and Conclusion of Law, May 7, 2007.

On March 17, 2007, the trial court entered judgment in favor of Appellants in the amount of $285,345.69. This figure was calculated by multiplying the area of the property obtained by Appellee by $28.60 per square meter, plus 3 percent annual interest on this "principal" from February 17, 2003 to March 17, 2007, minus stipulated deductions. On July 16, 2007, the Trial Division entered an amended judgment, but the amount of just compensation remained the same.

Appellants appeal the trial court's Findings of Fact and Conclusions of Law, May 17, 2007, Judgment, and July 16, 2007, Judgment. The appeal is "limited to the legal question of whether the Trial Division correctly ruled that 3% and not 9%, or some other rate was the appropriate interest rate to apply and add to the just compensation award."Appellants' Notice of Appeal.

STANDARD OF REVIEW

We review trial court findings of fact for clear error. *Roman Tmetuchl Family Trust v.*

Whipps, 8 ROP Intrm. 317, 318 (2001). "When reviewing for clear error, if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the Appellate Division is left with a definite and firm conviction that a mistake has been committed." *Id.* We review trial court legal conclusions *de novo*. *Id.*

DISCUSSION

Article XIII, section 7 of the Constitution provides that "the national government shall have the power to take property for the public use upon payment of just compensation." Where there is a delay between the time of the taking and the time the owner of land receives compensation, "an award of interest to compensate the owner for that delay is itself part of the 'just compensation' to which the owner is entitled." *Liberty Square Dev. Trust v. City of Worcester*, 808 N.E.2d 245, 251 (Mass. 2004); *see also Miller v. United States*, 620 F.2d 812, 837 (Ct. Cl. 1980) (citing *Albrecht v. United States*, 329 U.S. 599, 602 (1947)). Because interest is part of the constitutionally required just compensation, determining a reasonable rate of interest in an eminent domain proceeding is a judicial function. *See*, *e.g.*, *Miller*, 602 F.2d at 837; *Liberty Square,* 808 N.E.2d at 251; 26 Am. Jur.2d *Eminent Domain* § 320 (2004). As p.23 a consequence, a legislative body cannot set a "reasonable" interest rate by statute. *See Miller*, 602 F.2d at 837 ("It does not rest with Congress to say what compensation shall be paid, or even what shall be the rule of compensation.").

This does not mean, however, that a legislature cannot weigh in on what constitutes a reasonable interest rate. *Liberty Square*, 808 N.E.2d at 251. A court can apply a statutory interest rate as part of just compensation if that rate is "reasonable and judicially acceptable." *Miller*, 620 F.2d at 837. In some United States courts, an interest rate set by an applicable statute "enjoys a rebuttable presumption that it is a reasonable rate that would satisfy constitutional requirements." *Liberty Square*, 808 N.E.2d at 251-52; 26 Am. Jur.2d *Eminent Domain* § 320 (2004). A person seeking a rate higher than the statutory interest rate "may overcome that presumption by showing that the statutory rate is so low that it fails to meet the constitutional standard of reasonableness." *Liberty Square*, 808 N.E.2d at 252.

In the instant case, the trial court found that (a) 35 PNC § 318 provided an applicable interest rate, and (b) that this rate was binding. As the above discussion indicates, the latter finding might not survive constitutional scrutiny. We need not decide, however, whether the three percent interest rate provided in 35 PNC § 318(b)(2) is binding, or instead, subject to a rebuttable presumption of reasonableness. This is because 35 PNC § 318(b)(2) is not applicable to the facts of this case. If we were faced with a situation where 35 PNC § 318(b) did apply, we would then address constitutional question of what effect the statutory interest rate has. It is a "fundamental rule of judicial restraint," however, that "we avoid constitutional questions when it is possible to decide the case on other grounds." *The Senate v. Nakamura, et al.*, 7 ROP Intrm. 212, 218 (1999).

Because this case is one of statutory interpretation, we first turn to the Palau National Code. The Olbiil Era Kelulau ("OEK") has created two methods by which the government can

exercise its eminent domain power. *See* 35 PNC §§ 301-20. First, there is a "straight" or "traditional" condemnation proceeding. 35 PNC §§ 311-17. In a traditional condemnation proceeding, the government files a complaint before taking the property at issue. *See KLK, Inc. v. U.S. Dep't of Interior*, 35 F.3d 454, 455 n.1 (9th Cir. 1994); *see also* 26 Am. Jur.2d *Eminent Domain* §§ 18, 268 (2004).

Title 35 also contains a "quick-take" procedure. 35 PNC §§ 318-19. Under this procedure, "[i]n the event the national government desires to enter into immediate possession of the property, it shall file a declaration of taking and pay a sum of money which is considered to be the fair value of the property to the Clerk of Courts." 35 PNC § 318(a). In addition to filing a declaration and making a deposit, the government must send the owners of the property a summons that states, among other things, that "a sum of money which is considered to be the fair value of the property has been paid to the Clerk of Courts, which sum shall draw interest at the rate of three percent per annum from the date of the summons until claimed by the defendant or ordered paid to the defendant by the court." 35 PNC § 318(b)(2). Once the government complies with these steps, p.24 the government may immediately take possession of the property. 35 PNC § 318(c). The quick-take procedure in Palau is similar to that authorized by the United States Code and the Model Eminent Domain Code. 26 Am. Jur.2d *Eminent Domain* §§ 18, 268 (2004).

Section 318(b)'s the three percent interest provision appears in the context of a quick-take condemnation and that interest rate, by its own terms, applies only to a deposit made by the government to the Clerk of Courts. It is undisputed in this case that Appellee did not comply with 35 PNC § 318(a) and did not deposit any money with the Clerk of Courts. The "first step in statutory interpretation is to look at the plain language of a statute," *Lin v. ROP*, 13 ROP 55, 58 (2006). Here, the plain language of the statute demonstrates that deposits made under § 318(a) will bear interest at a rate of three percent. The trial court erred when it found that the statute also applied to non-deposits not made in compliance with § 318(a).

The case *In re Ngiralois*, 3 TTR 303 (T.T. H. Ct. Tr. Div. 1967), is instructive. In *Ngiralois*, the Trust Territory entered the defendant's land and started clearing it before initiating condemnation proceedings. *Id.* at 306. Two years later, the government filed a complaint and a declaration of taking and deposited the fair market value of the land with the Clerk of Courts pursuant to § 1309(b) of the Trust Territory Code. *Id.* at 306, 315, 316. Section 1309 of the Trust Territory Code is almost identical to 35 PNC § 318. *Compare* TTC § 1309 *with* 35 PNC § 318. The court allowed interest at a rate of six percent from the time the government entered the land, "except upon the amount deposited in accordance with Section 1309 of the Code for the period during which that was on deposit, the interest on that amount being expressly limited to three percent (3%) per annum by subparagraph (b) of Section 1309." *Ngiralois*, 3 TTR at 315. Implicit in this finding is that the statutory interest rate in § 1309 (b) applied only to the amount the Trust Territory placed on deposit in accordance with the quick-take provision; the statutory rate did not apply for the time period before the government made a deposit.

Appellee argues that the Trial Division's decision was based on sound legal and public policy grounds. As for the former, Appellee contends that the Trial Division applied the well-settled rule that "the legislature is presumed to intend a pass a valid act, and that a law should be

construed to sustain its constitutionality whenever possible." This argument is without merit. It is the applicability of 35 PNC § 318(b) that is at issue here, not its constitutionality. As for public policy, Appellee maintains that "[t]his case represents the first – but not likely the last – of cases in which the Republic of Palau continues to use 'returned' property for the benefit of the people. . . . [i]f we adhere to the Appellant's position, the Republic will be forced to pay a high interest rate to the landowner, beginning on the day a Certificate of Title is issued." Even assuming this is true, public policy cannot prevail over the plain language of a statute. *Lin*, 13 ROP at 60.

Appellee also argues that it was within the discretion of the trial court to look to the statutory rate of three percent and find that it was reasonable under the circumstances of this case. It is true that *had* the trial court independently p.25 considered the facts of this case and found that three percent was a reasonable interest rate, its factual finding would be subject to a clearly erroneous standard of review. It is also true that nothing precludes a trial court from considering statutory interest rates in reaching a reasonable interest rate. The problem, however, is that this is not what the trial court did. In its Findings of Fact and Conclusions of Law, the trial court stated that "[t]he statute on condemnation provides the only interest rate and it is three percent. If a different interest rate was contemplated at some point in the condemnation proceeding, the National Congress would have said so in the statute." These statements indicate that the trial court was not using its discretion when it chose three percent as the applicable interest rate; rather, the trial court applied the three percent interest rate because it erroneously believed it was required to do so.

Finally, we decline Appellant's invitation to impose the nine percent interest rate found in 14 PNC § 2001. First, the "determination of just compensation, including the proper rate of interest, is basically a question of fact." *Miller*, 620 F.2d at 837. Consequently, the proper way to proceed is to have the trial court reconsider the interest issue on remand. Second, it is difficult to understand how Appellants can argue on one hand that "just compensation" is an exclusively judicial determination, and on the other hand, argue that 14 PNC § 2001 provides the correct interest rate.

CONCLUSION

For the foregoing reasons, we hold that 35 PNC § 318(b)(2) does not apply to the facts of this case. We **REVERSE** the judgment of the trial court with regard to interest and **REMAND** this case for further proceedings to determine a reasonable rate of interest. By so holding, however, we take no position regarding what constitutes a reasonable rate of interest.