WILLY WALLY and SYLVIA WALLY,
Appellants,

v.

REPUBLIC OF PALAU,
Appellee.

CIVIL APPEAL NO. 09-014
Civil Action No. 05-245

Supreme Court, Appellate Division
Republic of Palau

Decided: February 18, 2010

[1] **Evidence:** Judicial Notice

A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Counsel for Appellants: Yukiwo P. Dengokl

Counsel for Appellee: Ronald K. Ledgerwood

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

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

FOSTER, Justice:

Appellants, Willy and Sylvia Wally ("Wally"), appeal an Order, which was issued by the Trial Division on March 11, 2009, determining the proper rate of interest to be applied to the value of land taken via inverse condemnation. Specifically, Wally contends that the Trial Division erred in finding that a three percent interest rate was both secure and reasonable enough to constitute just compensation under Article IV, Section 6 of the Palau Constitution, for the Republic's taking of Wally's land. For the reasons that follow, we AFFIRM the Trial Division's Order.

BACKGROUND

This is the second time this case has come before the Appellate Division. Because this most recent appeal concerns the Trial Division's determination, on remand, of the proper rate of interest to be applied to the value of Wally's land, this Court will not recount the extensive factual and procedural history of the underlying dispute here.[1] With respect to the issue on appeal now, the pertinent facts are outlined below.

On May 7, 2007, the Trial Division ordered an award of three percent interest on the fair market value of Wally's land. It based that interest rate upon 35 PNC § 318(b)(2). On appeal, the Appellate Division reversed the Trial Division's award of three percent interest because 35 PNC § 318(b)(2) was inapplicable to the type of condemnation that occurred in the underlying case. Explaining

[1] The underlying facts of this case are set forth in the Court's Opinion in *Wally v. Republic of Palau*, 16 ROP 19 (2008).

the reversal, the Appellate Division noted that two methods exist by which the government can exercise its eminent domain power. First, in a traditional condemnation proceeding, governed by 35 PNC §§ 311-317, the government files a complaint before taking the property. Second, in a "quick take" procedure, governed by 35 PNC §§ 318-319 and applicable only "[i]n the event the national government desires to enter into immediate possession of the property, [the government files] a declaration of taking and pay[s] a sum of money which is considered to be the fair value of the property to the Clerk of Courts." 35 PNC § 318(a). The sum of money deposited with the clerk draws interest at the rate of three percent per year. 35 PNC § 318(b)(2).

In describing the Trial Division's misapplication of the law, the Appellate Division stated that "Section 318(b)'s three percent interest provision is clearly 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." *Wally v. Republic of Palau*, 16 ROP 19 (2008). The Appellate Division further noted, "[i]t 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." *Id.* Therefore, the Appellate Division held that the Trial Division misapplied the law when it stated that 35 PNC § 318(b)(2)'s interest rate was binding in this case. It elaborated on the Trial Division's misapplication of the law in the passage below:

> It is true that *had* the trial court independently 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.

Id. at 7. Therefore, the Appellate Division remanded the case to the Trial Division to independently consider the facts of the case and to determine the proper rate of interest to be applied to the just compensation award.

On remand, the Trial Division ordered the parties to submit a preliminary set of briefs on November 24, 2008, which addressed the issue of the proper rate of interest. On

December 29, 2008, the Trial Division rejected the theories propounded in the preliminary briefs and ordered the parties to submit supplemental briefs on the issue. After supplemental briefing, the Court held a hearing on February 26, 2009, in which the parties presented additional evidence, in the form of oral testimony, to inform the Court's determination.

At the hearing, Wally called expert witness Mr. Kenneth Uyehara ("Uyehara"), who works as a real estate appraiser, performing evaluations and consultations since 1992. Uyehara testified that, based upon his methods and reasoning, an interest rate of ten percent per year was the proper rate of interest to be added to the just compensation award,[2] After cross-examining Uyehara, Appellee called Richard Ziegler ("Ziegler"), who works as a sales manager for the Bank of Hawaii. Ziegler testified that the average rate of return or yield on a certificate of deposit over $100,000.00 for the time period in question was 1.56%. Accordingly, he recommended an identical interest rate be applied here.

Following the hearing, the Trial Division entered its Order on March 11, 2009. It began by acknowledging its error in applying 35 PNC § 318(b)(2) in the previous award, and by accepting the instruction to "independently consider the facts of the case and determine a reasonable interest rate." *Wally v. Republic of Palau,* Civil Act. No. 05-245, Order at 1 (Tr. Div. Mar. 11, 2009). The Trial Division proceeded to outline the prudent investor standard, which courts routinely use to determine whether an interest rate provides just compensation and which is defined as"what a reasonably prudent person investing funds so as to produce a reasonable rate of return while maintaining safety of principal would receive." *Id.* at 2 (citing *Schneider v. County of San Diego*, 285 F.3d 784, 793 (9th Cir. 2002)).

The Trial Division then proceeded to its analysis of the interest rates suggested by the parties. It began by noting that the rate suggested by the government was too low to constitute a reasonable rate of return, remarking that "a reasonably prudent person need not be limited to those investment vehicles obtained at a bank on island, when a variety of safe investments are accessible to Palauans via the internet or a broker." *Id.* at 2. On the other hand, it noted that Wally's suggested rate of ten percent was too high, stating, "[t]hat rate is based in part on the United States mortgage market, which is inapplicable to the value of land in Palau, and in part on investment vehicles which are

[2] This valuation was calculated as follows. First, Mr. Uyehara calculated something called the "safe interest rate," which was based upon the annual yield for U.S. Treasury bills. Treasury bills are deemed safe because the U.S. has never defaulted on such obligations. Mr Uyehara concluded that the safe interest rate was four percent. Uyehara then set the ceiling rate, which was fourteen percent and which was based upon equity yield rates in higher risk items like the U.S. stock market. Having established these parameters, Uyehara then looked at the prevailing interest rate of mortgages from the Palau National Development Bank, which is between eight percent and ten percent, and blended it with equity, which resulted in a yield of ten percent for the period in question, 2003-2007. (Appellant's Br. at 5-6 (citing Testimony of Kenneth Uyehara at 2:27:19-21; 2:27:22-00; 2:28:01-34)).

unavailable to those without a United States Social Security number. Additionally, as recent events have shown, mortgage-based investments are risky: they could provide high interest rates or fail to safely maintain the principal." *Id.*

In the three sentence paragraph that followed, the Trial Division settled instead on a rate of three percent. It concluded: "In this case, three percent is an interest rate which is both secure and reasonable. This conclusion, reached after much consideration, is not based on 35 PNC § 318(b), or any other statute, but on the particular circumstances of this case. As Defendants have already been paid the principal and three percent interest thereupon, pursuant to an earlier order, no further payment is required." *Id*. at 2-3. This appeal followed.

STANDARD OF REVIEW

The trial court's findings of fact are reviewed for clear error. *Ongidobel v. Republic of Palau*, 9 ROP 63, 65 (2002). Under this standard, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Dilubech Clan v. Ngaremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). "When reviewing for clear error, if the Trial Division'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." *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Conclusions of law are reviewed *de novo*. *Id.*; *Esebei v. Sadang*, 13 ROP 79, 81 (2006).

DISCUSSION

The gist of Wally's argument on appeal is two-fold: first, the Trial Division erred when it rejected the ten percent rate offered by Wally's expert; and second, it erred when it concluded that three percent was a reasonable rate instead. We will address these two arguments separately and in turn.

[1] As to Wally's first argument, we vigorously disagree. The Trial Division heard ample testimony at the February 26, 2009 hearing, considered two rounds of briefs (primary and supplemental), and sufficiently outlined its reasoning in its March 11, 2009, Order such that this Court is not left with a firm conviction that a mistake has been made. Wally claims, for example, that the Trial Division's consideration of the recent volatility of the U.S. mortgage market was improper speculation, stating, "such finding is pure speculation which the Trial Court may not engage in." (Appellant's Reply Br. at 2 (quoting *The Children of Ngeskesuk v. Esbei Espangel*, 1 ROP Intrm. 682, 690 (1989) ("In the absence of testimony and since the issue was not properly before the Trial Court, we hold that the Trial Court is not free to engage in speculations, especially where speculations have substantial impact on the interest of litigants."))). Wally argued that the Trial Division was not entitled to consider the recent downturn because there was no evidence on the record about such events and because they were irrelevant to determining the proper rate of interest. We find this argument wholly unconvincing. Far from speculation, the recent downturn in the

mortgage market is a fact that is not subject to reasonable dispute and can be easily verified by resort to sources whose accuracy cannot be reasonably be questioned. *See* ROP R. Evid. 201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."). Moreover, the recent downturn is probative of the volatility of mortgage markets generally, which bears directly on an investor's reasonable expectations of return, especially one concerned with maintaining safety of principal. Accordingly, we hold that Trial Division did not err in its rejection of the ten percent interest rate.

As to Wally's second argument contesting the Trial Division's finding that a three percent rate was both secure and reasonable, we disagree as well. Here again, the Trial Division clearly heard ample testimony at the February 26, 2009 hearing, and clearly considered two rounds of briefs (primary and supplemental). Although it did not exhaustively outline its reasoning in its March 11, 2009 Order, this Court is sensitive to the fact that interest rate determinations like this one can be exceedingly difficult to make, and oftentimes are the result of a complex combination of factors, including statutorily-set interest rates for similar just compensation awards, such as the one outlined in 35 PNC § 318(b)(2), oral testimony, and documentary evidence. Here, the Trial Division clearly considered the arguments propounded by both parties, even to the extent of ordering supplemental briefing and holding a hearing to take oral testimony.

Wally claims that the Trial Division failed to explain how it arrived at the three percent interest rate; thus, this Court should remand the case for a fuller explanation, stating "[a]lthough a trial court need not discuss all the evidence it relied on to support its conclusion, the court's decision must 'reveal an understanding analysis of the evidence, a resolution of the material issues of 'fact' that penetrate beneath the generality of ultimate conclusions, and an application of the law to those facts.'" *Eklbai Clan v. Imeong,* 13 ROP 102, 107 (2006) (citing *Fritz v. Blailes*, 6 ROP Intrm. 152, 153 (1997)). However, this Court is satisfied with the way the Trial Division explained why it rejected the interest rates suggested by the opposing sides in this case. It called 10% too high and 1.56% too low—and most importantly, explained why. Having carefully considered both parties' suggested rates, the Trial Division was entitled to conclude as a matter of law that a number between those interest rates best represented a secure and reasonable rate given the facts and circumstances of the case. Indeed, after hearing the testimony and reading the primary and supplemental briefs, the Trial Division stated that, "[t]his conclusion, reached after much consideration, is not based on 35 PNC § 318(b), or any other statute, but on the particular circumstances of this case." *Wally*, Civil Act. No. 05-245, Order at 2 (Tr. Div. March 11, 2009). Accordingly, we hold that there is enough evidence for the Trial Division—and for this Court—to reach the three percent conclusion. Therefore, this determination, however approximate, was not reversible error and we AFFIRM the Trial Division's Order.

CONCLUSION

For the reasons set forth above, we AFFIRM the Trial Division's Order.

MATERNE, Justice, dissenting:

Because I believe the Trial Division did not elaborate on its reasoning in proclaiming three percent as the "proper" interest rate in this case, I would remand this case back to the Trial Division for further elaboration. The Trial Division applied the prudent investor standard and rightfully rejected the interest rates suggested by the parties. It called 10% too high and 1.56% too low. However, the Trial Division failed to explain how it arrived at three percent as the secure and reasonable rate. In only stated, "[i]n this case, three percent is an interest rate which is both secure and reasonable. This conclusion, reached after much consideration, is not based on 35 PNC § 318(b), or any other statute, but on the particular circumstances of this case. As Defendants have already paid the principal and three percent interest thereupon, pursuant to an earlier order, no further payment is required." *Wally*, Civ. Act. No. 05-245, at 2.

Although the Trial Division heard ample testimony at the February 26, 2009 hearing, and clearly considered two rounds of briefs, it failed to explain how it arrived at the three percent interest rate. The Trial Division did not cite to any evidence proffered at the February 26, 2009 hearing, nor did it indicate that it was using the statutorily set interest rate of 35 PNC § 318(b)(2) as a guide post. In light of Wally's argument contesting the Trial Division's finding that a three percent rate was both secure and reasonable, I would remand this matter for a fuller explanation of its reasoning.