

ROP v. Akiwo, 6 ROP Intrm. 297 (1996)
REPUBLIC OF PALAU and ELBUHEL SADANG,
in his capacity as the Director of the Bureau of
National Treasury under the Ministry of Administration,
Plaintiffs,

v.

RAYMOND AKIWO, SYLVESTER ALONZ, IGNACIO ANASTACIO,
SABINO ANASTACIO, SEIT ANDRES, EVENCE BECHES, FLAVIAN CARLOS,
1298 HARUO ESANG, HARRY FRITZ, MARIO GULIBERT, JOSHUA KOSHIBA,
HERSEY KYOTA, KERAI MARIUR, SAM MASANG, AUGUSTINE MESEBELUU,
DAIZIRO NAKAMURA, WILLIAM NGIRAIKELAU, SANTOS OLIKONG,
THOMAS PATRIS, JOHNNY REKLAI, ISIDORO RUDIMCH, ALAN SEID,
ALBERT SHIRO, PETER SUGIYAMA, HIDEO TELL, SCHWARTZ TUDONG,
ELIA TULOP, MINAMI UEKI, and SURANGEL WHIPPS,
Defendants.

CIVIL ACTION NO. 350-95

Supreme Court, Trial Division
Republic of Palau

Decision and order granting prejudgment interest
Decided: January 22, 1996

Counsel for Plaintiffs: Office of the Attorney General

Counsel for Defendants: Office of Senate Legal Counsel; Office of House Legal Counsel

ARTHUR NGIRAKLSONG, Chief Justice:

Before the Court is plaintiff Republic of Palau's ("government") Motion to Clarify the Court's January 3, 1996, Decision and Order. In the Decision and Order, this Court granted summary judgment in favor of the government and against defendants, who are legislators with the Olbiil Era Kelulau (collectively "defendants"). Each defendant was ordered to reimburse the government for compensation paid to the defendant by the government in violation of the Constitution. Before judgment under Rule of Civil Procedure 58 issued from that decision, the government asked the Court to grant prejudgment interest as well. The motion has been fully briefed, and hearing was held on January 22, 1996. The Court grants the request for prejudgment interest, calculated and described more particularly below.

I. FACTS

The facts of this dispute are fully described in the Court's January 3, 1996, Decision and Order. They are summarized here. In April of 1995, this Court struck down as unconstitutional a statute that purported to increase monthly payments for "official expenses" from \$1,000 per month to \$2,000 per month. Decision and Order, *Palau Chamber of Commerce v. Ucherbelau*, Civil Action No. 42-94 (April 3, 1995). The increase in compensation took effect during the OEK term in which the bill passed and was thus in violation of **L299** Article IX, Section 8 of the Constitution. *See* Palau Const. art. IX, § 8 ("[t]he compensation of the members of the Olbiil Era Kelulau shall be determined by law. No increase in compensation shall apply to members of the Olbiil Era Kelulau during the term of enactment . . .").

The government then initiated this action to recover from the individual defendants the amount of the unconstitutionally paid compensation. In paragraph one of its prayer for relief, the government also requested prejudgment interest as part of the restitution. *See* Complaint for Action to Recover Expense Money Unlawfully Had and Received at 5. Subsequently, all parties filed motions for summary judgment. After briefing was completed and oral argument was presented, this Court entered summary judgment in favor of the government and against the defendants. The Court did not enter judgment under Rule of Civil Procedure 58.

Because the request for prejudgment interest was not made in the government's summary judgment motion nor discussed by the government in its opposition to the defendants' summary judgment motion, and because the issue was not addressed by defendants nor was it addressed by the parties at oral argument, the Court did not *sua sponte* grant or deny prejudgment interest in its Decision and Order. The government now requests that the Court grant an award of prejudgment interest.¹

II. DISCUSSION

As discussed in the Decision and Order, in the absence of a constitutional or statutory provision or custom, the rule of decision is provided by the Restatement of the Law approved by the American Law Institute. If no such rule is found there, then the rule of decision is provided by the law generally understood and applied in the United States. 1 PNC § 303 ("[t]he rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the **L300** rules of decision in the Courts of the Republic of Palau . . .").

The Restatement of Restitution addresses the availability of prejudgment interest for successful claimants suing for restitution. Section 156 of the Restatement of Restitution provides that:

¹ Because judgment has not yet issued, the motion is not one to amend judgment. Rather, because of the procedural posture of the case, the motion is properly treated as one for summary judgment on the request for prejudgment interest. Accordingly, the Court does not have the opportunity to address defendants' contentions that a motion for prejudgment interest cannot be made in the first instance as part of a motion to amend judgment.

a person who has a duty to pay the value of a benefit which he has received, is also under a duty to pay interest upon such value from the time he committed a breach of duty in failing to make restitution if, and only if: (a) the benefit consisted of a definite sum of money, or (b) the value of the benefit can be ascertained by mathematical calculation from the terms of an agreement between the parties or by established market prices, or (c) payment of interest is required to avoid injustice.

Here, subpart (a) clearly imposes a duty on defendants to pay interest to the government. Comment B to section 156 provides that “[o]rdinarily only simple interest is allowed.” The Court finds no reason to deviate from the general rule. There remain, however, the issues of determining when the recoverable interest began to accrue and at what rate. 2

Under Restatement section 156, interest is calculated “from the time [defendants] committed a breach of duty in failing to make restitution” of the public funds. Comment (a) is enlightening on this issue. “[W]here [restitution is due] for mistake, there is a breach of duty upon notice of the facts” that form the basis for the duty to make restitution.

It is undisputed that the notice of the mistake of law was provided when the decision in *Palau Chamber of Commerce v. Ucherbelau* was issued. See RESTATEMENT OF RESTITUTION § 63 (1937) (“[t]here is no breach of duty to make restitution because of a transfer made by mistake until the transferee or beneficiary has notice of the facts upon which the transferor’s right depends and **1301** has had a reasonable opportunity for making restitution.”).³ Accordingly, recoverable interest began to accrue on April 3, 1995.

The Court is competent to determine the interest rate to be used in calculating the prejudgment interest awardable. *A.J.J. Enter. v. Renguul*, 3 ROP Intrm. 29, 31 (1991). “The legislature has established 9% per year as the ceiling for post-judgment interest. It is appropriate to apply that limit to pre-judgment interest awards as well, except where the parties have entered into a valid contract providing for a pre-judgment interest rate higher than 9%.” *A.J.J. Enter.*, 3 ROP Intrm. at 31; see also 14 PNC § 2001.

² The parties do not cite to this Restatement provision. Instead, they ask the Court to exercise its discretion in determining whether prejudgment interest should be awarded. Given the plain and unambiguous language of Section 156, as affirmatively adopted by the legislature through 1 PNC § 303, the Court has no such discretion. See *A.J.J. Enter. v. Renguul*, 3 ROP Intrm. 29, 31 (1991).

³ The government proposes two alternative dates. First, the government suggests that interest may start to accrue on the date the first unconstitutional payment was made. The Court rejects this suggestion because it has no relationship to the date defendants had knowledge of the facts that gave rise to the duty to return the money. Second, the government suggests that interest may start to accrue on April 17, 1996, the date the Attorney General sent, and defendants received, a letter demanding the return of the improper compensation. Because the evidence is undisputed that defendants had knowledge of the facts giving rise to the duty to return the compensation on the earlier, April 3, 1996, date, the Court rejects this option as well.

ROP v. Akiwo, 6 ROP Intrm. 297 (1996)

Based on the arguments presented at the hearing, the Court sees no reason to deviate from the statutory percentage rate provided for post-judgment interest. The Court adopts the same reasoning used in *A.J.J. Enterprises*, and applies a 9% per annum interest rate. The simple interest owed by each defendant thus will be calculated by multiplying the amount of compensation to be reimbursed (\$16,000) by the annual interest rate (9%), and multiplying the result by the number of days between when the Court notified defendants that the compensation was paid in violation of the Constitution (April 3, 1995) and the date judgment entered (January 22, 1996, which is the date of this order as well), divided by the number of days in a year.

Based on this formula, the total amount of interest due is calculated as follows: $(\$16,000 * .09) * (294/365)$. The total amount of prejudgment interest owed is thus \$1,159.89 per defendant. When added to the unconstitutionally paid compensation to be reimbursed, the government is entitled to recover from each defendant \$16,000 plus \$1,159.89, which totals \$17,159.89 per defendant.