

providing compensation. On November 19, 2003, Terekieu Clan, as represented by Wilhelm Rengiil and others (“the Rengiil Group”), filed suit against the ROP. On June 7, 2006, a second group of individuals led by Gloria Salii (“the Salii Group”) intervened as third-party plaintiffs. The Salii Group claimed to be the true representatives of Terekieu Clan.

Despite the internal clan dispute, on May 29, 2009, the ROP, the Rengiil Group, and the Salii Group filed a joint stipulation agreeing that the ROP would pay the Clan \$158,444 as just compensation for the land, plus three percent interest from February 17, 2003, “until the date of the judgment herein.” The Stipulation further directed:

The ROP shall pay the judgment as soon as funds have been certified as appropriated by the Olbiil Era Kelulau (“OEK”) and available. The ROP shall deposit the sum of \$158,444.00, plus interest thereon, and upon receipt the Certificate of Title showing the [Palau] Public Land Authority as owner thereof, the judgment amount shall be delivered to the Terekieu Clan by the Clerk of Courts.

Despite the trial court not being a party to the Stipulation, the Stipulation was drafted in such a way as to order the court to take action:

The Court shall issue an order of Inverse Condemnation pursuant to which the ROP shall pay just compensation to the Terekieu Clan in the amount set forth herein and granting the ROP/Palau Public Lands Authority a fee simple interest in the Property, and an order that a Certificate of Title to the Property be issued showing the Palau Public Lands Authority as the owner of the Property.

On June 15, 2009, then-presiding Justice Foster issued an order specifically declining to enter judgment pursuant to the Stipulation due to the unresolved dispute

between the representatives of Terekieu Clan. Instead, Justice Foster granted a motion to continue the trial after no party objected. The case proceeded to trial and on January 21, 2011, the trial court entered a judgment and order finding that Wilhelm Rengiil was the proper representative of Terekieu Clan to receive the just compensation. The Salii group appealed. The ROP received title to the property after the execution of the Stipulation, but before the appellate decision in this matter. The trial court's decision was affirmed on July 5, 2012.

Approximately two and a half months later, on September 24, 2012, the National Treasury of Palau issued a check in the amount of \$158,444 and presented it to the Terekieu Clan. That sum matched the agreed upon fair market value, but included none of the interest promised in the Stipulation.

On March 20, 2013, Terekieu Clan filed a motion with the trial court in which it sought payment for the interest pursuant to the signed stipulation. In its response, the ROP conceded that interest was due from February 17, 2003 (the date of the taking of the land), to May 29, 2009 (the date the Stipulation was signed). The ROP argued that the latter date marked the day that it effectively removed itself from the litigation. Under the ROP's theory, any additional interest beyond May 29, 2009, was foreclosed based on sovereign immunity. Despite the trial court's offer allowing the ROP to file additional briefing, it failed to avail itself of the opportunity. Accordingly, the trial court, finding no judgment was ever issued pursuant to the Stipulation, disposed of the ROP's sovereign

immunity argument and entered a final judgment of inverse condemnation against the ROP in accordance with the terms of the parties' Stipulation. The ROP was directed to pay three percent interest on the amount of \$158,444, as calculated from February 17, 2003, until the date of the judgment, June 17, 2013. This appeal followed.

STANDARD OF REVIEW

A lower court's conclusions of law are reviewed de novo. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Factual findings of the lower court are reviewed using the clearly erroneous standard. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002).

ANALYSIS

The ROP presents two arguments on appeal: First, that no interest accrued beyond the signing of the stipulation on May 29, 2009. Second, that the ROP is not responsible for any interest after September 24, 2012, the date the ROP tendered the Clan a check for \$158,444.

I. Accrual of interest from the signing of the Stipulation on May 29, 2009, to the issuance of the check on September 24, 2012.

In its brief, the ROP begins by conceding that an award of interest is part of just compensation. *Wally v. ROP*, 16 ROP 19, 22 (2008) (finding an award of interest to compensate the owner for that delay is itself part of the just compensation to which the owner is entitled). However, it is the ROP's position that by signing the Stipulation it effectively removed itself from the case. Under this theory, interest stopped accruing

when the Stipulation was signed. The ROP enumerates three reasons for its position: (1) pursuant to the terms of the Stipulation, accrual of interest was to stop with the signing of the Stipulation; (2) that the intentions of the parties and general fairness should prevent the accrual of interest while the Rengiil group and Salii group fought over clan leadership; and (3) that the OEK was unable to appropriate funds to pay the Clan until the Court issued a Judgment. Terekieu Clan responds that interest is constitutionally required as part of just compensation and contractually required per the terms of the Stipulation.

We agree with the Clan. As succinctly put by the trial court, when the ROP takes property for public use, it is required to provide just compensation. Palau Const. art. XIII, § 7. The default rule of just compensation requires the government to pay interest for the entire time period between the time of the taking and the time of payment. *See Wally*, 16 ROP at 22 (“[A]n award of interest to compensate the owner for that delay is itself part of the just compensation to which the owner is entitled”). Accordingly, under a just compensation analysis, interest continued to accrue after the signing of the Stipulation until the time of payment. The question then is, does the Stipulation modify the default rule in such a way as to terminate the accrual of interest before the time of payment? We answer the question in the negative.

a. The Stipulation

The Stipulation requires the payment of interest between the time of the taking and the entry of judgment, which indisputably occurred after the ROP paid \$158,444 on September 24, 2012. Per the Stipulation, the parties agreed that “[t]he sum of \$158,444.00 will be paid in accordance with the stipulation plus interest at the rate of three (3%) per annum from February 17, 2003, until the date of the judgment herein.”

When asked to interpret a contract, the Court’s goal is to ascertain the parties’ mutual intent at the time of contracting. Under Palauan law, courts look first to the actual language used in a contract to discern the parties’ intent. The words used in the contract are assigned their ordinary and plain meaning unless all parties have clearly intended otherwise.

Estate of Rechucher v. Seid, 14 ROP 85 (2007) (internal quotations and citations omitted). A plain reading of the Stipulation requires the accrual of interest until the entry of judgment.

b. Intention of the Parties/Fairness

At times, the ROP argues that the terms of the Stipulation toll the accrual of interest with the signing of the Stipulation (“the intent of the parties *per the Stipulation/Agreement* was not for the ROP to pay interest during the time the parties were contesting rightful ownership of the clan”) (emphasis added). However, at other times, the ROP argues that interest should have stopped “*shortly after* the Stipulation/Agreement was signed” (emphasis added). To the extent that the ROP is now asking the Court to look beyond the plain words of the Stipulation, the Court declines to do so. The ROP, in its opening brief, admitted to drafting the Stipulation. The terms of a

contract are generally strictly construed against the party drafting the agreement. *Trust Territory v. Edwin*, 8 TTR 23, 34 (1979). Further, the Stipulation also contains an integration clause, which states in part, “[t]his Stipulation supersedes any and all agreements, either oral or written, between the Parties hereto and contains all of the covenants and agreements between the Parties.”

The trial court relied on *Mesubed v. Urebau Clan*, Civ. App. No. 12-045, slip op. at 4 (May 21, 2013), for the position that a stipulated judgment is a contract; and *Omega Engineering, Inc. v. Omega, S.A.*, 432 F.3d 437, 443 (2d Cir. 2005), for the position that “a settlement agreement is a contract that is interpreted according to general principals of contract law.” Additionally, the trial court concluded that when just compensation is determined by a contractual agreement, the terms of the agreement control. The trial court quoted *American Jurisprudence* for the general rule which states, “where the owner of the condemned property parts therewith under an agreement as to the price, the condemnor’s obligation to pay is controlled by the terms of the contract, precluding an allowance of interest *unless* the contract so provides.” 26 Am. Jur. 2d *Eminent Domain* § 323 (emphasis added).

We consider the trial court’s reasoning to be sound. As stated in *United States v. Thayer-West Point Hotel Co.* 329 U.S. 585 (1947), “‘just compensation’ entitles the property owner to receive interest from the date of the taking to the date of payment as a part of his just compensation.” *Id.* at 588. However, in “an ordinary contractual

relationship between the [government and a party] . . . the inclusion or exclusion of interest depends upon other contractual provisions, the intention of the parties and the circumstances surrounding the use of the term.” *Id.* at 589-590; *see Leichter v. Lebanon Bd. of Educ.*, 917 F.Supp.2d 177, 186 (D. Conn. 2013) (“it is axiomatic that parties can contract out of the default rule”).

The ROP and Terekieu Clan entered into a contract. That contract modified the default interest rule of just compensation. The terms of the modification are clear. Under contract law, holding the parties to the terms of the Stipulation is appropriate.¹

c. The OEK’s appropriation of funds

The ROP also contends that the trial court’s refusal to enter judgment prevented the OEK from appropriating the Stipulation funds. This is plainly incorrect. First, the Court notes that the OEK eventually appropriated \$158,444 in funds and the Clan was paid this sum more than eight months before the entry of judgment. Second, as discussed in *Wally*, Title 35’s “quick take” procedure allows for appropriation of funds and payment without court action. *Wally v. ROP*, 16 ROP at 19.²

¹ See 44B Am. Jur. 2d *Interest and Usury* § 75 (“The pendency of legal proceedings between a debtor and his or her creditor will not stop the running of the interest on the debt if the money is not paid into court, or if it is evident from the contract that the parties did not intend to postpone payment in the event of legal proceedings.”); *See also* 44B Am. Jur. 2d *Interest and Usury* § 21 (Stating in part, “[u]ndoubtedly, persons who occupy or intend to assume the relation of debtor and creditor may contract for the payment of interest within the limits allowed by statute, and such a contract is controlling because interest expressly reserved in a contract is recoverable as a right.”).

² Under this takings procedure, the ROP must pay the Clerk of Courts fair market value for the land, “which sums shall draw interest at the rate of three percent per annum *from the date of the*

While the trial court's refusal to enter judgment may have been unforeseen by the ROP drafter, the ROP could have attempted to mitigate the accrual of interest. Yet, as pointed out by the trial court, the ROP did nothing for over three years ("The ROP never offered to pay the amount of the stipulated judgment into the Court pending resolution of the Clan issue; it never sought to withdraw the Stipulation; and it still has not paid the interest that it concedes it owes").

In sum, the ROP's argument that the accrual of interest stopped after the signing of the Stipulation is without merit. Under a constitutional just compensation theory, or under the terms of the Stipulation, accrual of interest continued from the signing of the Stipulation at least to the issuance of the payment of \$158,444 on September 24, 2012.

II. Accrual of interest from September 24, 2012, the date the check was tendered to June 17, 2013, the date of judgment

In its second argument, the ROP contends that just compensation only entitles the property owner to interest from the date of the taking to the date of payment of the principal. In other words, the ROP argues that no interest is owed after the ROP paid \$158,444 on September 24, 2012.³ However, the ROP points to no case holding that, where there is a contractual agreement between the parties as to the accrual of interest,

summons until claimed by the defendant or ordered paid to the defendant by the court." 35 PNC § 318(b)(2) (emphasis added).

³ We note that the ROP's argument is flawed. Under general accounting practices, initial payments of a debt are, at a minimum, partially attributed to interest before principal. See 44B Am. Jur. 2d *Interest and Usury* § 72. Accordingly, even absent the Stipulation, the principal was not fully paid on September 24, 2012, and interest on the remaining principal would continue to accrue beyond that date.

the contract is invalid if it requires the accrual of interest beyond the date of payment of the principal.

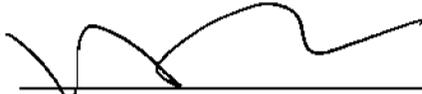
As discussed above, it is clear that the parties were free to contract out of the default rule terminating the accrual of interest at the time of payment. They have done so here. Under the plain language of the Stipulation, interest accrued from the time of the taking until the date of the judgment.

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is **AFFIRMED**.

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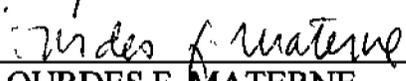
SO ORDERED, this 13 day of January, 2014.



ARTHUR NGIRAKLSONG
Chief Justice



KATHLEEN M. SALII
Associate Justice



LOURDES F. MATERNE
Associate Justice