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Case No.: 2011-SCC-0005-CIV
Martha Mendiola

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. 2011-SCC-0005-CIV
SUPERIOR COURT NO. 97-0266**

SLIP OPINION

Cite as: 2012 MP 6

Decided June 28, 2012

Edward C. Arriola, Saipan, MP, for Intervenors-Appellants.

Edward A. Buckingham, Attorney General and Michael A. Stanker, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee.

BEFORE: JOHN A. MANGLONA, Associate Justice; DAVID A. WISEMAN, Justice Pro Tem; EDWARD MANIBUSAN, Justice Pro Tem.

MANGLONA, J.:

¶ 1 The issues in this case arise from the Commonwealth's failure to pay an eminent domain judgment entered in favor of the heirs of Maria Mangabao (collectively, "the heirs").¹ The Commonwealth took property owned by the heirs without payment of just compensation, and Defendants and Intervenors successfully obtained a judgment against the Commonwealth for the value of the property taken. When the Commonwealth failed to pay the judgment, Intervenors moved for a writ of execution. The trial court denied the motion, relying upon language in 1 CMC § 7207 ("section 7207") which states that "[a]ny final judgment of a court shall be paid only pursuant to an item of appropriations for settlements and awards." Intervenors now argue that section 7207 violates their constitutional right to just compensation by preventing them from enforcing their eminent domain judgment against the Commonwealth.

¶ 2 We hold that section 7207 does not violate Intervenors' constitutional right to just compensation. We further hold that the trial court erred by awarding the Commonwealth title to the property before it had either paid just compensation or provided for future certain and adequate compensation. We also hold that the trial court erred by failing to award post-judgment interest. We accordingly vacate the portion of the trial court's amended final judgment granting the Commonwealth title to the property, and we remand this case with instructions to: (1) allow title to remain with the heirs² until the Commonwealth either pays just compensation or provides for future certain and adequate compensation; and (2) enter an award of post-judgment interest.

I

¶ 3 In 1993, the Commonwealth took certain parcels of land ("the property") owned by Maria Mangabao for the purpose of improving a public road.³ The Commonwealth did not provide any compensation for the property. In 1996, the Commonwealth entered into a land

¹ The parties have stipulated to the fact that the Commonwealth took the property by eminent domain.

² The identity of the individual heirs is unclear from the record. The trial court stated that Defendants and Intervenors "have undertaken to agree on, or otherwise determine the identity of all of the heirs, and in particular, the heirs in their groups. The Court will need names, addresses, mailing addresses, and e-mail and telephone contact numbers. The parties shall obtain this information." *Commonwealth v. Lot New-G*, Civ. No. 97-0266 (NMI Super Ct. Jan 22, 2008) (Partial and Immediate Final Consent Opinion, Order and Judgment for the Principal at 4). The record does not indicate whether the trial court has obtained the requested contact information or whether the parties have reached an agreement as to the identity of the heirs.

³ The road is now known as Chalan Monsignor Guerrero or "Middle Road."

exchange agreement with some of the heirs (“Defendants”) wherein Defendants agreed to convey title to the property to the Commonwealth in exchange for other property and cash of comparable value. One year later, the Commonwealth filed a complaint for eminent domain against Defendants requesting that the trial court grant it possession and clear title to the property pursuant to the land exchange agreement. Defendants and the Commonwealth subsequently engaged in settlement negotiations.

¶ 4 In 2007, another group of heirs (“Intervenors”) who were not named as parties to the original eminent domain action successfully moved to intervene. In 2008, over ten years after the complaint for eminent domain was filed, the Commonwealth, Defendants, and Intervenors reached an agreement as to a number of issues.⁴ The trial court accordingly entered a partial judgment against the Commonwealth (“Partial Judgment”) for \$4,196,524, the agreed value of the property. Following the issuance of the Partial Judgment, the trial court held a trial to determine the appropriate pre-judgment and post-judgment interest. In October 2009, it issued an order granting the heirs a pre-judgment interest rate of 6.991%. The order did not address the issue of post-judgment interest.

¶ 5 In October 2010, Intervenors moved for a writ of execution to enforce the judgment contained in the Partial Judgment. The trial court denied the motion. Applying section 7207, the trial court reasoned that it lacked both constitutional and statutory authority to order the Commonwealth to pay the judgment. After the trial court entered final judgment in March 2011, the Commonwealth moved to amend the judgment, arguing that the trial court had erred by entering judgment against it without also granting it title to the property. The trial court agreed with the Commonwealth and entered an amended final judgment granting the Commonwealth title to the property.

¶ 6 Intervenors argue on appeal that: (1) section 7207 violates the Takings Clauses of the United States (“U.S.”) and NMI Constitutions (“Takings Clauses”) by depriving litigants of just compensation, and the trial court accordingly erred by relying upon section 7207 to deny the motion for a writ of execution; (2) the trial court erred by granting the Commonwealth title to the property when it had not paid just compensation; and (3) the trial court erred by failing to award the heirs post-judgment interest.

II

⁴ The parties agreed upon the fact that the Commonwealth took the property without payment of just compensation. The parties also agreed upon the time of the taking and the value of the property taken.

¶ 7 “The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth.” 1 CMC § 3102(a).

III

A. Threshold Issues

¶ 8 Before reaching the merits of Intervenors’ arguments, we must consider several threshold issues raised by the Commonwealth. The Commonwealth argues that Intervenors’ motion for a writ of execution was procedurally defective because it was filed prior to the entry of final judgment. It asserts that motions for execution of judgments may only be filed after final judgment has issued and that “there was no final order, judgment, decision or sentence” at the time the motion for a writ of execution was filed in this case. Commonwealth’s Br. at 4. The Commonwealth also argues that Intervenors were required to bring their Fifth Amendment claim under 28 U.S.C. § 1983 (“section 1983”). The timeliness of the writ of execution presents an issue of law, and the applicable standard of review is therefore *de novo*. *See Defunturum v. Saipan Mfrs.*, 1997 MP 21 ¶ 7 (reviewing timeliness of notice of appeal *de novo*). We also review *de novo* the Commonwealth’s argument as to section 1983. *See Marianas Coll. v. Civil Serv. Comm’n*, 2007 MP 8 ¶ 2 (issues of constitutional interpretation are reviewed *de novo*) (citations omitted).

1. Timeliness of the Writ of Execution

¶ 9 Execution is only permitted upon judgments which determine with finality the rights and liabilities of the parties. *Nichols v. Michael D. Eicholtz Enters.*, 706 So. 2d 70, 70 (Fla. Ct. App. 1998) (citation omitted). A judgment determines the rights and liabilities of the parties with finality if it ends litigation on the merits and leaves nothing for the court to do except execute the judgment. *Catlin v. United States*, 324 U.S. 229, 233 (1945) (citation omitted), *superseded by statute as stated in United States v. Muniz*, 540 F.3d 310, 313 n.4 (5th Cir. 2008). Here, the trial court determined the amount of the Commonwealth’s liability in its Partial Judgment and in its subsequent October 2009 order granting pre-judgment interest. These two orders concluded litigation on the merits and left nothing to do but execute upon the judgment. Because Intervenors did not file their motion for a writ of execution until October 2010, approximately a year after the order granting pre-judgment interest, the motion for a writ of execution was not premature.⁵

⁵ Even if the motion for a writ of execution were premature, dismissal would not be the appropriate remedy. As we stated in *Commonwealth v. Kumagai*, 2006 MP 20 ¶ 16 n.5:

Generally, we find that ‘practical, not technical considerations are to govern the application of principles of finality.’ *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148, 152, 85 S. Ct. 308, 310, 13 L. Ed. 2d 199 (1964). In *Sandididge v. Salem Offshore Drilling Co.*, 764 F.2d 252 (5th Cir. 1985), it is noted that the majority of Circuit Courts of Appeal would hold that *jurisdiction was perfected if the case was fully adjudicated below*.

2. *Applicability of Section 1983*

¶ 10

Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

42 U.S.C. § 1983. Parties generally do not have a direct cause of action under the U.S. Constitution and are required to bring their constitutional claims as an action under section 1983. *Azul-Pacifico, Inc. v. L.A.*, 973 F.2d 704, 705 (9th Cir. 1992) (“We have previously held that a litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. § 1983.”) (citations omitted). However, there is an exception to this rule for constitutional claims that arise in the course of existing litigation; parties must raise these claims in the context of the existing litigation rather than in a separate section 1983 action. In *Garry v. Geils*, 874 F. Supp. 195, 196-97 (N.D. Ill. 1995), a municipality filed a complaint for condemnation of the plaintiffs’ property as part of a flood control project, and the court subsequently granted the municipality title to the property. The plaintiffs then brought a separate action under section 1983 alleging that the taking of the property was retaliatory and unconstitutional. *Id.* at 197. The district court stated that “[p]roper defenses [to eminent domain actions] include alleged violations of federal constitutional rights.” *Id.* at 199 (citations omitted). It further stated that “[w]here a defendant in a condemnation action neglects to assert a constitutional issue she properly could have raised as a defense in that action, *res judicata* bars her from later basing a claim against the condemnor on that issue.” *Id.* (citation omitted). The district court dismissed the section 1983 claim, reasoning that the plaintiffs should have raised their constitutional argument in the condemnation action. *Id.* at 199-200.

¶ 11

Here, Intervenors allege a violation of their federal constitutional rights in the context of a pre-existing eminent domain action. They specifically claim that section 7207 violates the Takings Clauses by denying them just compensation. Because Intervenors’ constitutional claim arose in the course of existing litigation, Intervenors were not obligated to bring the constitutional claim as a separate section 1983 action. On the contrary, had Intervenors brought such a separate action, it potentially would have been barred by the doctrine of *res judicata*. See *Garry*, 874 F. Supp. at 199 (“In order to prevent both the piecemeal litigation of claims and the piecemeal presentation of defenses, courts extend the bar of *res judicata* not only to questions actually

(emphasis added).

decided, but also to *all grounds of recovery and defenses which might have been presented in the prior litigation between the parties.*” (emphasis added) (citation and internal quotations omitted).

B. Constitutionality of Section 7207

¶ 12 Having dispensed with the threshold issues raised by the Commonwealth, we now consider Intervenors’ principal argument that section 7207⁶ violates the Takings Clauses, both of which forbid the government from taking private property for public use without “just compensation.”⁷ Our standard of review is *de novo*. *N. Marianas Coll.*, 2007 MP 8 ¶ 2 (stating that constitutional provisions are reviewed *de novo*) (citations omitted).

¶ 13 Our starting point is this Court’s decision in *Marine Revitalization Corp. v. Dep’t of Land & Natural Res.*, 2010 MP 18 (“MRC”). *MRC* arose from a contract dispute and a subsequent judgment issued against the Commonwealth. *Id.* ¶ 3. Plaintiff Marine Revitalization Corporation (“Corporation”) claimed that the Department of Land and Natural Resources (“DLNR”) breached a contract for the construction of a marina. *Id.* The parties submitted their dispute to arbitration and stipulated to a judgment in favor of the Corporation for over five million dollars. *Id.* When the Commonwealth Legislature (“Legislature”) failed to make an appropriation to satisfy the judgment, the Corporation sought and was granted an order in aid of judgment from the trial court. *Id.* ¶ 3-4.

¶ 14 On appeal, this Court considered whether the trial court could issue an order in aid of judgment or whether the trial court was prohibited from enforcing its judgment by section 7207. *Id.* ¶ 12. We began by recognizing the doctrine of the separation of powers in the Commonwealth Constitution:

The Commonwealth Constitution provides for a tripartite system of government. Article II sets forth the powers of the Legislature, Article III sets forth the powers

⁶ Section 7207 states in its entirety:

Except for funds appropriated for settlements and awards, no court may require the disbursement of funds from the Commonwealth Treasury or order the reprogramming of funds in order to provide for such disbursement. Any final judgment of a court shall be paid only pursuant to an item of appropriations for settlements and awards.

1 CMC § 7207

⁷ The Takings Clause of the Fifth Amendment to the United States Constitution states that “nor shall private property be taken for public use, without just compensation.” U.S. Const. Amend. V. The Fifth Amendment is applicable to the Commonwealth through the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. 48 U.S.C. § 1801 note, § 501(a) (“the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States . . . Amendments 1 through 9, inclusive . . . ”). The NMI Constitution also contains its own Takings Clause which states that “[p]rivate property may not be taken without just compensation.” NMI Const. art. XIII, § 2.

of the Executive, and Article IV sets forth the powers of the Judiciary. This organization, distributing the powers among the coordinate branches of government, gives rise to the separation of powers doctrine. . . . The separation of powers principle operates in a broad manner to confine legislative powers to the legislature

Id. (citation omitted). Applying this separation of powers principle, we stated:

When a judgment has been rendered, the liability of the State has been judicially ascertained, but there the power of the court ends. The State is at liberty to determine for itself whether to pay the judgment or not.

Id. ¶ 15 (citing *Baltzer v. N. Carolina*, 161 U.S. 240, 245-46 (1896)). We ultimately concluded that enforcement of the judgment against DLNR was outside the scope of judicial power and that the parties must await a legislative appropriation pursuant to section 7207. *Id.* ¶ 54.

¶ 15 While we find the separation of powers analysis in *MRC* instructive, we do not find *MRC* dispositive of the issue here. *MRC* concerned a judgment that arose from a contract dispute. By contrast, this case concerns a judgment arising from an eminent domain proceeding, and its resolution necessitates consideration of federal constitutional issues that *MRC* explicitly declined to address. 2010 MP 18 ¶ 18 (distinguishing federal cases cited by *MRC* because those cases “involve federal constitutional issues—namely, the Takings Clause”; and “[t]he facts of this case . . . do not implicate any federal constitutional issues.”).

¶ 16 When there is no dispositive Commonwealth authority on an issue, we may look to persuasive authority from other jurisdictions. 7 CMC § 3401⁸; *see also, e.g.*, *Hee v. Oh*, 2011 MP 18 ¶ 11 (seeking guidance from other jurisdictions that distribute property under an equitable distribution theory when “no commonwealth case . . . addresses this issue”); *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 42 (looking to other jurisdictions with similar statutes for “guidance,” when existence of private right of action could not be determined from statutory interpretation); *Commonwealth v. Jindawong*, 2008 MP 3 ¶ 8 (relying upon “persuasive authority” from the United States Court of Appeals for the Third Circuit and upon a “survey of United States common law”). Because *MRC* is not dispositive, and because there are no Restatements or other Commonwealth authorities which seek to reconcile the mandate of just

⁸

Section 3401 states:

In all proceedings, the 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 rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary

7 CMC § 3401 (emphasis added).

compensation in the Takings Clauses with the language of section 7207, we now turn to the common law as generally understood and applied by United States jurisdictions.

¶ 17 The Appropriations Clause of the United States Constitution (“Appropriations Clause”) provides that: “No Money shall be drawn from the [United States] Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7. “Nearly every state [constitution] in the Union” now mirrors the United States constitution and includes a provision stating that no public funds shall be spent except by legislative appropriation (“appropriations clause”). *Humbert v. Dunn*, 24 P. 111, 112 (Cal. 1890).⁹ The fundamental purpose of appropriations clauses is “to assure that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good, and not according to the individual favor of Government agents or the individual pleas of litigants.” *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 428 (1990) (discussing purpose of the Appropriations Clause of the United States Constitution). Appropriations clauses are also intended to prevent fraud and corruption by vesting control over public funds in the legislative branch. *Id.* at 427-28.

¶ 18 A survey of United States jurisdictions provides numerous examples of courts enforcing the plain language of appropriations clauses and finding that they cannot enforce judgments against the state in the absence of an appropriation. In *Office of Pers. Mgmt.*, the respondent, a federal employee, left his position after his application for disability retirement was approved. 496 U.S. at 416. After receiving erroneous information from the Office of Personnel Management, the respondent obtained part-time work and earned an annual wage that exceeded the statutory maximum for disability retirement. *Id.* at 417. As a result, the respondent’s disability retirement was discontinued. *Id.* The respondent appealed the decision to discontinue his retirement benefits, arguing that the government’s misinformation was grounds for estoppel. *Id.* at 418-19. The government countered that estoppel could not nullify the statutory maximum prescribed by Congress. *Id.*

⁹ See also, e.g., Cal. Const. art. XVI, § 7 (“Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller’s duly drawn warrant.”); Delaware Const. art. VIII, § 6(a) (“No money shall be drawn from the treasury but pursuant to an appropriation made by Act of the General Assembly;”); Kan. Const. art. II, § 24 (“No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law.”); Minn. Const. art. XI, § 1 (“No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.”); Mont. Const., art. VIII, § 14 (“Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.”); Neb. Const. art. III, § 25 (No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law”); Okla. Const. art. V, § 55 (“No money shall ever be paid out of the treasury of this State, nor any of its funds, nor any of the funds under its management, except in pursuance of an appropriation by law”); Or. Const. art. IX § 4 (“No money shall be drawn from the treasury, but in pursuance of appropriations made by law.”).

¶ 19 On review, the United States Supreme Court (“U.S. Supreme Court”) cited to the Appropriations Clause and its “straightforward and explicit command” that no money can be paid out of the Federal Treasury unless it is appropriated by an act of Congress. *Id.* at 424 (quotations omitted) (citation omitted). Because the award sought by the respondent would be in “direct contravention” of a federal statute, the U.S. Supreme Court reasoned that the award would violate the Appropriations Clause by paying out money not appropriated by Congress. *Id.* at 424-26. It accordingly rejected the respondent’s estoppel argument and concluded that he was not entitled to a re-instatement of his disability benefits, despite the fact that he lost the benefits as a result of the government’s own mistake. *Id.*

¶ 20 Similarly, in *Panhandle E. Pipe Line Co. v. Fadely*, 369 P.2d 356, 357 (Kan. 1962), the plaintiff paid more than thirty thousand dollars in taxes pursuant to an oil and gas tax severance act. When the act was later held unconstitutional the plaintiff brought an action to recover the taxes. *Id.* *Panhandle* held that the taxes were not recoverable. *Id.* at 359. Citing to a state constitutional provision stating that no money shall be drawn from the treasury except by appropriation, the court reasoned that it “cannot now say the state treasurer can reach into any fund and pay back to the plaintiff the sum of the protested taxes” *Id.*

¶ 21 Finally, in *Cnty. of San Diego v. Cal.*, 79 Cal. Rptr. 3d 489, 495 (Cal. Ct. App. 2008), the court considered a provision of the California Constitution which stated that the California legislature “shall provide” funds to reimburse counties for the cost of a state-mandated program or service. When the state refused to reimburse the county of San Diego for certain state-mandated programs and services, the county brought a complaint and the trial court issued a mandate ordering the state to pay. *Id.* The state appealed the mandate citing to Article XVI, Section 7 of the California Constitution, which provides that money may be drawn from the state treasury only by legislative appropriation, and argued that the writ of mandate violated the separation of powers. *Id.*

¶ 22 The appellate court held in favor of the state, despite the constitutional provision obligating the California legislature to provide reimbursement. *See id.* at 500-01. It reasoned that the writ of mandate issued by the trial court “violates the separation of powers doctrine because it effectively orders the Legislature to appropriate funds in future state budget acts.” *Id.* at 501. “Under the separation of powers doctrine, the Legislature cannot be judicially compelled to appropriate sufficient funds to satisfy the State’s subject reimbursement obligations through future legislation and to pay those funds to the Counties.” *Id.*

¶ 23 In light of the authority above, we are convinced that a ruling holding section 7207 to be unconstitutional would violate the separation of powers and would eviscerate the independence

and integrity of the legislative branch. *See, e.g., Office of Pers. Mgmt.*, 496 U.S. at 425 (“any exercise of a power granted by the Constitution to” the judicial branch “is limited by a valid reservation of congressional control over funds in the Treasury.”); *City of Sacramento v. Cal. State Legislature*, 231 Cal. Rptr. 686, 688 (Cal. Ct. App. 1986) (“a ruling that orders the Legislature to enact an appropriation necessarily implicates the independence and integrity of the Legislature and its ability to fulfill its mission in checking its coequal branches.”). We therefore hold that section 7207 does not violate the Takings Clauses. Section 7207 is an enforcement and appropriation provision only, and it does not take property without just compensation.

¶24 In support of their argument that section 7207 is unconstitutional, Intervenors direct this Court to *Decker v. Yelle*, 71 P.2d 379, 382 (Wash. 1937), where the Washington Supreme Court compelled the state to pay a judgment in an eminent domain action. *Yelle* relied wholly upon the Washington Supreme Court’s prior decision in *State ex rel. Peel v. Clausen*, 162 P. 1 (Wash. 1917),. *Id.* at 403-04. *Peel*, in turn, relied upon a state statute stating in relevant part that “[u]pon the entry of judgment upon the verdict of the jury or the decision of the court or judge thereof, awarding damages as hereinbefore prescribed, *the state of Washington may make payment of the damages assessed* to the parties entitled to the same” 162 P. at 4 (quoting Rem. Code § 897 (1915)) (emphasis added). The *Peel* court reasoned that because the statute evinced a clear legislative intent to pay judgments in eminent domain actions, the statute constituted a legislative appropriation under the Washington Constitution, such that the judiciary did not violate the separation of powers by enforcing its judgment against the state.¹⁰ *See id.* at 16-21.

¶25 *Yelle* and *Peel* indicate that a court may enforce its eminent domain judgment with a writ of execution when a statute demonstrates a legislative intent to pay eminent domain judgments. However, *Yelle* and *Peel* do not hold the appropriations clause contained in the Washington Constitution unconstitutional. On the contrary, they recognize the validity of the clause and hold that the court may only enforce its eminent domain judgment if the legislature has demonstrated a

¹⁰ It is well established that a legislative appropriation need not be made in any set form and that a clear indication of legislative intent is sufficient to constitute an appropriation. *See Goodykoontz v. Acker*, 35 P. 911, 913 (Colo. 1894) (“Although no set form of words is necessary to constitute an appropriation, it being sufficient if the legislative intent to appropriate clearly appears, on the other hand the courts invariably refuse to infer an intention to appropriate from doubtful or ambiguous language.”) (citation omitted); *Carr v. State*, 26 N.E. 778, 780 (Ind. 1891) (“It is sufficient if the intention to make the appropriation is clearly evinced by the language employed in the statutes upon the subject, or if it is evident that no effect can possibly be given to a statute unless it be construed as making the necessary appropriation.”); *Campbell v. Comm’rs of State Soldiers’ & Sailors’ Monument*, 18 N. E. 33, 34 (Ind. 1888) (“There may be an appropriation of public moneys to a given purpose without in any manner designating the act as an appropriation.”).

clear intent to appropriate the necessary funds. *Yelle* and *Peel* are thus poor support for Intervenors' argument that section 7207 is unconstitutional.¹¹

¶ 26 Intervenors additionally argue that we should rely upon the decision of the NMI District Court in *Camacho v. Mariana Pub. Lands Auth.*, No. 05-0043 (NMI Dist. Ct. Sept. 30, 2008) (Order Granting Motion for Writ of Execution and, in the Alternative, for an Order in Aid of Judgment) ("Camacho Order"). There, the court permitted the plaintiff to enforce his federal eminent domain judgment against the Commonwealth. Camacho Order at 3. We reject Intervenors' argument because we find *Camacho* to be distinguishable. In *Camacho*, the judgment at issue was a federal court judgment and was thus not "constrained" by the plain language of section 7207. Camacho Order at 3. Here, by contrast, the judgment at issue is a judgment of the Commonwealth Superior Court and is plainly constrained by section 7207. *Camacho* also emphasized the fact that a federal court may take "all necessary steps" to enforce its judgment against a state. Camacho Order at 7. However, this Court is not a federal court and consequently does not have such enforcement power. *See MRC*, 2010 MP 18 ¶ 18 (distinguishing *Camacho* and other federal cases where a federal court enforced its judgment against a state; stating that "the Supremacy Clause is not applicable [here] and the federal cases cited by the trial court and by *MRC* [therefore] do not provide a valid basis upon which this Court can permissibly uphold the lower court's order.").

¹¹ We note that Public Law 13-17 may or may not implicate a duty of the state to pay eminent domain judgments. Public Law 13-17 stated in relevant part that:

The Legislature finds that the Commonwealth currently owes to its citizens approximately Forty Million Dollars (\$40,000,000) for land acquired by eminent domain or other legal process. The Legislature further finds that the current rate of repayment is unacceptable, and the prompt compensation for such land taking serves the Commonwealth's best interest. While in the past land taking claims against the Commonwealth were settled largely through an exchange of public land, the diminishing availability of public land, coupled with other competing public land uses, requires the establishment of a compensation program to pay for the taking of private lands for public uses, such as road and ponding basin construction. The purpose of this Act, therefore, is to *authorize the Marianas Public Lands Authority, in conjunction with the Commonwealth Development Authority, to incur public debt in an amount of up to \$40,000,000, and to use the proceeds to settle and to discharge outstanding land compensation claims against the Commonwealth.*

P.L. 13-17, § 2 (emphasis added). Intervenors did not argue before the trial court that Public Law 13-17 constitutes a legislative appropriation, such that the trial court may issue a writ of execution under the plain language of section 7207. Neither do Intervenors make this argument on appeal. Intervenors only argue that section 7207 is unconstitutional and that they have a constitutional right to compensation. Intervenors' Opening Br. at 5 (asking the Court to "revers[e] the Superior Court and hold[] that the constitutionally mandated right of the Heirs to be compensated by the government abrogates local statute."). *See Commonwealth v. Castro*, 2008 MP 18 ¶ 24 (citing cases stating that issues not raised at trial or in party's brief are waived).

¶27 Finally, Intervenors emphasize the importance of land to the people of the Commonwealth. We are cognizant that “[l]and is the only significant asset that the people of the Commonwealth have.” *Dep’t of Pub. Lands v. Commonwealth*, 2010 MP 14 ¶ 31 (quoting *Analysis of the Commonwealth Constitution* 165 (1987)). We are also aware that the government is obligated to pay just compensation and that the obligation to pay just compensation cannot be evaded or impaired. *Baltimore & Ohio R.R. Co. v. United States*, 298 U.S. 349, 368 (1936) (“The just compensation clause may not be evaded or impaired”). However, as one of three co-equal branches of government, we can exercise no more power than we are given. The Legislature alone is responsible for making necessary appropriations, and although Commonwealth courts may determine the amount owed by the state in just compensation and may enter judgment against the state, there the judicial power must end. The integrity of the very foundation of the doctrine of the separation of powers requires this result. *MRC*, 2010 MP 18 ¶ 12 (“[The separation of powers] doctrine forbids one branch of government from exercising the powers properly belonging to another branch.”); *Clinton v. City of New York*, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring) (“Liberty is always at stake when one or more of the branches seek to transgress the separation of powers.”).

¶28 Before concluding, we must briefly discuss the authority on writs of execution cited by the Commonwealth. The Commonwealth cites to multiple cases which state that a writ of execution may not issue against public property in the absence of a statute granting the right. Commonwealth’s Br. at 10 (citing *Commonwealth Dep’t of Highways v. Circuit Court*, 365 S.W.2d 106, 107-08 (Ky. Ct. App. 1963); *State ex rel. Dep’t of Highways v. Olsen*, 334 P.2d 847, 848 (Nev. 1959)). The narrow question presented by this appeal is whether section 7207, and its plain statement that any final judgment shall be paid only pursuant to an item of appropriations except by appropriation, violates the Takings Clauses. This appeal does not present the issue of whether public property may be executed upon as a general matter, in the absence of section 7207 or a similar provision. The cases cited by the Commonwealth are therefore distinguishable.

C. Title

¶29 Having determined that the trial court did not err when it denied Intervenors’ motion for a writ of execution, we now consider Intervenors’ argument that the trial court erred when it granted the Commonwealth title to the property. We review de novo the legal issue of whether a trial court may grant title to property taken by eminent domain before the government has paid just compensation. *See J.G. Sablan Rock Quarry, Inc. v. Dep’t of Pub. Lands*, 2012 MP 2 ¶ 40 (Slip Opinion March 30, 2012) (stating that issues of law are reviewed de novo).

¶ 30 “[T]he right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and unalienable rights of man.” *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 310 (Cir. Ct. Pa. 1795); *see also Wilkinson v. Leland*, 27 U.S. 627, 657 (1829) (“The fundamental maxims of a free government seem to require, that the rights of personal liberty and private property, should be held sacred.”). Moreover, the preservation of property is “a primary object of the social compact” that underlies our government, such that “[n]o man would become a member of a community, in which he could not enjoy the fruits of his honest labour and industry.” *Vanhorne's Lessee*, 2 U.S. at 310. Thus, though it is accepted that every person ought to contribute to the public purpose and to public exigencies, “*no one can be called upon to surrender or sacrifice his whole property*, real and personal, for the good of the community, *without receiving a recompence in value.*” *Id.* (emphasis added). Such a sacrifice would be:

[I]nconsistent with the principles of reason, justice, and moral rectitude; [] incompatible with the comfort, peace, and happiness of manakind; [] contrary to the principles of social alliance in every free government; and [] contrary both to the letter and spirit of the Constitution. In short, it is what every one would think unreasonable and unjust

Id.

¶ 31 The just compensation requirement contained in the Takings Clause is the mechanism by which the U.S. Constitution protects persons from being called upon to unjustly sacrifice their private property for the good of the community. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001) (just compensation prevents the government “from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960))). Just compensation generally gives persons whose land is taken by eminent domain the right to demand the full and perfect equivalent of the property taken, in combination with compensation for any damage inflicted by the taking. *See Wheeler v. City of Pleasant Grove*, 833 F.2d 267, 270 (11th Cir. 1987).

¶ 32 The government is generally not required to pay just compensation prior to taking title to property obtained in an eminent domain action. *Cherokee Nation v. S. Kansas Ry. Co.*, 135 U.S. 641, 659 (1890) (“[The Constitution] does not provide or require that compensation shall be actually paid in advance of the occupancy of the land to be taken.”). However, if the government does take title prior to the payment of just compensation, the United States Supreme Court has stated that the government must provide a future “certain and adequate” method of obtaining compensation. *Id.* (“But the owner is entitled to reasonable, certain and adequate provision for obtaining compensation before his occupancy is disturbed.”).

¶33 When the government takes property without either paying just compensation or providing for future certain and adequate compensation, title must remain with the property owner until the government appropriates or otherwise guarantees the necessary funds. *See, e.g., Gatefield Corp. v. Gwinnett Cnty.*, 507 S.E.2d 164, 165 (Ga. Ct. App. 1998) (stating that title to property taken by eminent domain vested in the county upon entry of judgment and payment of the just compensation award to the court); *Chicago Park Dist. v. Downey Coal Co.*, 115 N.E.2d 223, 224 (Ill. 1953) (“the title to property which is the subject of condemnation proceedings does not vest in the condemner until the judgment fixing just compensation is entered and paid.”); *Heidisch v. Globe & Republic Ins. Co. of America*, 84 A.2d 566, 566 (Pa. 1951) (pursuant to state statute, title to property remained with plaintiffs until county had paid the amount of the consent verdict).

¶34 The case of *Rockway Pacific Corp. v. Stotesbury*, 255 F. 345 (N.D.N.Y. 1917) illustrates the importance of property owners retaining title until the government has paid the judgment. In that case, property owners whose land was taken by eminent domain sought to enforce a judgment against the state of New York. *Id.* at 346. The trial court granted the state title to the condemned property pursuant to a state statute allowing the court to grant title prior to the payment of just compensation. *Id.* at 437. The trial court then refused to enforce its judgment against the state, relying upon a state constitutional provision analogous to section 7207. *Id.* The plaintiffs appealed to enforce the judgment. *Id.* at 436. On appeal, the court stated that “[t]he courts . . . have held that the payment for property taken in *invitum* for public use need not be concurrent with the taking, but that it is sufficient if the law authorizing the taking also provides a sure, sufficient, and convenient remedy by which the owner can subsequently coerce payment by legal proceedings.” *Id.* at 349. It found that the constitutional provision limiting the payment of judgments to appropriations, coupled with the state statute allowing the government to grant title prior to the payment of just compensation, deprived the plaintiff of a sure, sufficient and convenient means to enforce the judgment. *Id.* at 350-51. It accordingly held the state statute allowing the court to grant title prior to the payment of just compensation to be unconstitutional. *Id.* at 350. It also enjoined the trial court from granting the government title to the property and ordered that title should only be granted when the legislature appropriated the funds necessary to pay the judgment. *Id.* at 351.

¶35 Here, the Legislature has passed no act appropriating the funds necessary to pay the judgment against the Commonwealth. Neither does the record show that the Commonwealth has taken any other measures to provide the heirs certain and adequate compensation. At this time, there are no adequate means whereby the heirs may seek compensation for the property that the

government has taken from them. Until such means are provided, we are compelled to protect the heirs' right to private property against the uncompensated taking of their property by their government. There is no lawful justification for taking property without simultaneously providing "such securities for payment as the law entitles the owners to demand . . ." *Rockway*, 255 F. at 354 (Rogers, J., concurring). On the contrary, allowing the government to take the property without just compensation would be unreasonable, unjust, and "contrary both to the letter and spirit of the Constitution." *Vanhorne's Lessee*, 2 U.S. at 310. We accordingly instruct the trial court to allow title to remain with the heirs until the Commonwealth has either paid just compensation or has provided to the trial court's satisfaction for future certain and adequate payment of such compensation.

¶36 The Commonwealth argues that the heirs may obtain certain and adequate compensation through a land exchange. Land exchanges are governed by the Public Purpose Land Exchange Authorization Act of 1987 ("Exchange Act"), 2 CMC §§ 4141-4150 (1987), which "was designed in part to provide compensation for takings and short exchanges in the form of awards of public land in lieu of monetary compensation." *Pua v. Marianas Pub. Land Corp.*, 1998 MP 4 ¶ 4.¹² This Court has previously stated that "The [Exchange Act] only authorizes persons who believe that they are entitled to compensation to *file claims for compensation . . .*" *Id.* ¶ 8 (quoting *Castro v. Div. of Pub. Lands*, 1997 MP 29 ¶ 13) (emphasis added). There is nothing in the Exchange Act which "creat[ed] a cause of action upon which the Court can grant relief [,]" *id.*, or which otherwise provides any certainty that a party desirous of a land exchange will in fact be granted such an exchange. We therefore reject the Commonwealth's argument that a land exchange offers the heirs a certain means of just compensation.¹³

¶37 The Commonwealth also argues that the plain language of 1 CMC § 9226 ("section 9226") requires the trial court to grant it title to property taken by eminent domain immediately

¹² Public Law 13-17 as amended is codified in relevant part at 2 CMC §§ 4741-4745. Intervenors assert that the Exchange Act was "superseded" by Public Law 13-17. Intervenors' Reply Br. at 4. However, nothing in Public Law 13-17 indicates an intent to either amend or supersede any portion of the Exchange Act. Rather, Public Law 13-17 was presumably intended to function in harmony with the Exchange Act, by establishing a "compensation program" to pay takings claims that could not be settled through a land exchange. See P.L. 13-17, § 2 ("While in the past land takings claims against the Commonwealth were settled largely through an exchange of public land, the diminishing availability of public land . . . requires the establishment of a compensation program to pay for the taking of private lands . . ."); 2 CMC § 4145(a) ("nothing in this article shall be construed as precluding or prohibiting monetary compensation, either in lieu of or in addition to a land exchange.").

¹³ This opinion does not preclude the possibility of land exchanges as a form of just compensation. It merely concludes that the future possibility of a land exchange is not certain and adequate compensation for the taking in the instant case.

following the entry of judgment, regardless of whether or not just compensation has been paid. Section 9226 states, in relevant part:

The record of final judgment in the proceedings shall state the particular land or interest in land which the government has acquired and the compensation to be paid to the defendants and the clerk of courts shall issue a certificate of title in accordance with the judgment.

1 CMC § 9226. Section 9226 is silent as to when the clerk of court must issue the certificate of title; it states only that the certificate shall be issued “in accordance with the judgment.” We therefore reject the Commonwealth’s argument that section 9226 requires title to immediately pass to the Commonwealth upon entry of a final judgment.¹⁴

¶ 38 Finally, the Commonwealth argues that certain and adequate compensation is available through a legislative appropriation. In its Partial Judgment, the trial court instructed the Commonwealth to “report[] on the steps taken to notify the Legislature of this Court’s judgment.” Commonwealth’s Excerpts of Record at 11. The record does not indicate whether the Attorney General’s Office ever made such a report or made any effort to include the eminent domain judgment in an appropriations bill. There is certainly no indication that an adequate legislative appropriation will be included in an upcoming appropriations bill. We therefore reject the Commonwealth’s argument that a legislative appropriation is certain and adequate compensation at this time.

D. Post-Judgment Interest

¶ 39 Finally, we address Intervenors’ claim that they are entitled to post-judgment interest on the trial court’s judgment. We review *de novo* the issue of whether prevailing parties in eminent domain actions are entitled to post-judgment interest against the government. *See Pangelinan v. N. Mariana Islands Ret. Fund*, 2009 MP 12 ¶ 25 (“Whether a government entity enjoys sovereign immunity on interest damages is a question of law reviewed *de novo*.); *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 7 (stating that we review *de novo* the rule of law which the trial court applied to determine interest in an inverse condemnation case).

¶ 40 Interest, whether pre- or post-judgment, generally cannot be recovered against the government in the absence of an agreement to pay or a statute providing for payment. *Manglona*, 2005 MP 15 ¶ 43; *see also Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 304 (1923)

¹⁴ Intervenors’ desired interpretation of section 9226, which would allow the Commonwealth to take title prior to paying just compensation, is also disfavored because it raises constitutional concerns. *See Phelps v. United States*, 274 U.S. 341, 344 (1927) (“Acts . . . are to be construed and applied in harmony with and not to thwart the purpose of the Constitution.”); *Rockway*, 255 F. at 350-51 (holding statutory provision allowing government to obtain title prior to payment of just compensation unconstitutional, because provision, when read in conjunction with statute barring the payment of judgments except by legislative appropriation, deprived litigants of sure, sufficient and adequate means of compensation).

(noting general rule that “in the absence of a stipulation to pay interest or a statute allowing it, none can be recovered against the United States upon unpaid accounts or claims.”). However, the United States Supreme Court has created an explicit exception to this rule for eminent domain actions. *Seaboard*, 261 U.S. at 306. In such actions, the property owner is entitled to interest sufficient to ensure that he is placed in “as good a position pecuniarily as he would have occupied if the payment had coincided with the appropriation.” *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 10 (1984). Under this rule, no interest is due if the government pays just compensation on the date of the taking because the property owner remains in as good a position after the taking as before. *Danforth v. United States*, 308 U.S. 271, 284 (1939). However, if the government delays payment of just compensation, then the government is liable for the post-judgment interest sufficient to put the property owner in as good a position as the owner enjoyed before the taking. *Phelps v. United States*, 274 U.S. 341, 344 (1927); *Seaboard*, 261 U.S. at 306.

¶ 41 In *Seaboard*, the United States government acted under the purported authority of a federal statute to appropriate land from a railway company. 261 U.S. at 302. When the lower court allowed the railway company to recover post-judgment interest on its subsequent eminent domain judgment, the government appealed. *Id.* at 303. On review, the Supreme Court stated:

Where the United States condemns and takes possession of land before ascertaining or paying compensation, the owner is not limited to the value of the property at the time of the taking; *he is entitled to such addition as will produce* the full equivalent of that value paid contemporaneously with the taking.

Id. at 306 (emphasis added). The Supreme Court concluded that the award of post-judgment interest against the government should be upheld, because the interest was necessary to ensure that the owner did not suffer loss and that he received the just compensation to which he was entitled. *Id.*

¶ 42 Similarly, in *Phelps*, the United States government requisitioned portions of the plaintiff’s property for use in World War II. 274 U.S. at 342. Although the government eventually paid the plaintiff for the use of the property, the plaintiff alleged that the payment did not constitute just compensation. *Id.* He argued that the government remained liable for “sums as will produce the equivalent of the value of the use of the leased property paid contemporaneously; and that interest at a reasonable rate from the date of the use to the time of payment is a good measure of the amount to be added in order to make just compensation.” *Id.* at 343. On review, the Supreme Court agreed with the plaintiff and held that he should be awarded reasonable post-judgment interest. *Id.* at 344. Citing *Seaboard*, the Court reasoned that the plaintiff was “entitled to have the full equivalent of the value of [the government’s] use at the time of the taking paid contemporaneously with the taking.” *Id.*

¶43 Here, as in *Seaboard* and *Phelps*, the government has taken property without payment of just compensation. Thus, like the plaintiffs in *Seaboard* and *Phelps*, Intervenors are entitled to both pre- and post-judgment interest sufficient to put them in as good a pecuniary position as they would have enjoyed if the payment of just compensation had coincided with the taking. Because the trial court did not award Intervenors any post-judgment interest, this case is remanded to the trial court with instructions to award post-judgment interest to Intervenors in accordance with this opinion.

IV

¶44 In light of the foregoing, we decline to hold 1 CMC § 7207 unconstitutional. However, we hold that the Commonwealth cannot obtain title to the heirs' property when it has neither paid just compensation nor provided for future certain and adequate compensation. We accordingly VACATE the trial court's amended final judgment granting the Commonwealth title to the property and ORDER that title be transferred to the heirs until the Commonwealth pays just compensation or provides for future certain and adequate compensation. Finally, we hold that the heirs are entitled to the post-judgment interest sufficient to put them in as good a position as they enjoyed prior to the taking, and we accordingly REMAND this case for an award of post-judgment interest consistent with this opinion.

SO ORDERED this 28th day of June, 2012.

/s/
JOHN A. MANGLONA
Associate Justice

/s/
DAVID A. WISEMAN
Justice Pro Tem

/s/
EDWARD MANIBUSAN
Justice Pro Tem

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



E-FILED
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Case No.: 2011-SCC-0005-CIV
Martha Mendiola

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. 2011-SCC-0005-CIV
SUPERIOR COURT NO. 97-0266

JUDGMENT

¶ 1 Intervenors-Appellants appealed the Superior Court's denial of their motion for a writ of execution to enforce an eminent domain judgment against the Commonwealth. For the reasons cited in the accompanying opinion, the Court: (1) AFFIRMS the trial court's denial of Intervenors-Appellants' motion for a writ of execution; (2) ORDERS title to the disputed property to be transferred to the heirs of Maria Mangabao (collectively, "the heirs") until the Commonwealth has either paid the heirs just compensation for the property or has provided for future certain and adequate compensation; and (3) REMANDS this case for an award of post-judgment interest on the judgment.

ENTERED this 28th day of June, 2012.

/s/
Jennifer Dockter
Clerk of Court