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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellant,

v.

LOT NO. 218-5 R/W, LOT NO. 218-6R/W, AND LUISA B. QUITUGUA,
Defendants-Appellees.

Supreme Court Nos. 2013-SCC-0006-CIV & 2013-SCC-0025-CIV
(Consolidated)

Superior Court No. 96-1158

SLIP OPINION

Cite as: 2016 MP 17

Decided December 28, 2016

Edward E. Manibusan and Charles E. Brasington, Saipan, MP, for Plaintiff-Appellant.

No appearance for Defendants-Appellees.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; STEVEN L. HANSEN, Justice Pro Tem.

PER CURIAM:

¶ 1 The Commonwealth of the Northern Mariana Islands ("Commonwealth") appeals the trial court's writ of execution ordering the Commonwealth to pay a land compensation judgment owed to Luisa B. Quitugua ("Quitugua"). The Commonwealth argues the court violated the separation of powers doctrine by ordering the Commonwealth to pay the judgment from funds not appropriated for land compensation. Additionally, the Commonwealth argues the court erred in applying a statutory nine percent post-judgment interest rate. For the following reasons, we find the trial court did not violate the separation of powers doctrine in ordering the Commonwealth to pay the land compensation judgment out of funds not appropriated for that purpose. Nonetheless, we VACATE the writ of execution and REMAND instructing the court to use a proper method to enforce the judgment. Further, we VACATE the trial court's order applying the statutory nine-percent post-judgment interest rate, and REMAND for a new hearing to determine the proper post-judgment interest rate.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 In October 1996, the Commonwealth initiated a complaint and declaration of taking to acquire by eminent domain Quitugua's properties in As Teo, Saipan, described as Lot No. 218-5R/W and Lot No. 218-6R/W (collectively "Lots"), for public road and utility purposes. On August 1, 2005, pursuant to the parties' stipulation, the trial court issued a final judgment ("2005 Judgment") granting the Commonwealth fee simple title to the Lots and ordering the Commonwealth to pay Quitugua $77,137[1] plus three percent pre-judgment interest[2] as compensation for the taking.

¶ 3 The Commonwealth failed to satisfy the 2005 Judgment, and Quitugua repeatedly moved for an order in aid of judgment. On February 13, 2013, the court issued an order in aid of judgment ("Order"), restoring fee simple title in the Lots to Quitugua and awarding Quitugua the initial three percent pre-judgment interest and the statutory nine percent post-judgment interest.[3]

¶ 4 On March 1, 2013, on Quitugua's motion, the court issued a writ of execution ("Writ of Execution"), ordering:

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[1] Under the 2005 Judgment, the total compensation for the Lots was $89,838, but because the Commonwealth had previously paid Quitugua $12,701 plus interest, the balance was $77,137 plus interest.

[2] Pre-judgment interest accrued from October 11, 1996, the date of the filing of the complaint and declaration of taking, to August 1, 2005, the date of the judgment.

[3] Post-judgment interest accrues from August 1, 2005 until the judgment is satisfied.

> [A]ll monies and proceeds located in the checking, savings, money markets, deposit, or certificate accounts of Petitioner, Commonwealth of the Northern Mariana Islands, in or at the BANK OF GUAM, BANK OF HAWAII, or FIRST HAWAIIAN BANK amounts and securities contained therein, are to be delivered to the Law Office of F. Matthew Smith, LLC, for distribution to Respondent Luisa B. Quitugua up to the amount necessary to satisfy the judgment in this matter.

Commonwealth v. Lot No. 215-5/W, Civ. No. 96-1158 (NMI Super. Ct. Mar. 1, 2013) (Writ of Execution Against Monies & Accounts of the Commonwealth of the Northern Mariana Islands at 3). The court found it could "compel government payments" because the Land Compensation Act "appropriated funds for the purpose of discharging outstanding land compensation claims against the Commonwealth." *Id.*[4]

¶ 5 The Commonwealth appeals the court's Writ of Execution and the Order.[5]

II. JURISDICTION

¶ 6 We have jurisdiction over Superior Court final judgments and orders. NMI CONST. art. IV, § 3.

III. STANDARD OF REVIEW

¶ 7 The Commonwealth argues the trial court violated the separation of powers doctrine when it ordered the government to pay land a compensation judgment out of funds not appropriated for that purpose. We review constitutional questions de novo. *N. Marianas Coll. v. Civil Serv. Comm'n II*, 2007 MP 8 ¶ 2. In addition, the Commonwealth argues the trial court erred by applying the statutory post-judgment interest rate as set forth in 7 CMC § 4101. "Whether the trial court applied the correct legal standard is a question of law reviewed de novo. *Commonwealth v. Lot 353 New G*, 2015 MP 6 ¶ 14 (Slip Op., Oct. 13, 2015).

IV. DISCUSSION

A. Separation of Powers

¶ 8 "The Commonwealth Constitution provides for a tripartite system of government," which "gives rise to the separation of powers doctrine." *Marine Revitalization Corp. v. Dep't of Land & Natural Res.*, 2010 MP 18 ¶ 12 ("*MRC*"). "The separation of powers operates in a broad manner to confine legislative powers to the legislature, executive powers to the executive, and those powers that are judicial in character to the judiciary." *Id.* (citing

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[4] The Land Compensation Act was enacted by Public Law 13-17 and, as amended, is codified at 2 CMC §§ 4741–4751. Under the Act, the Legislature appropriated $40 million "to settle and to discharge outstanding land compensation claims against the Commonwealth." PL 13-17, § 2.

[5] Quitugua did not file a brief or argue before the Court.

VanSickle v. Shanahan, 511 P.2d 223, 235 (Kan. 1973)). Article II, Section 5 ("NMI Appropriations Clause")[6] and Article X, Section 1[7] of the NMI Constitution together "imbue the Commonwealth Legislature with exclusive control over the direct or indirect expenditure of public funds." *MRC*, 2010 MP 18 ¶ 13.

¶ 9 In *MRC*, Marine Revitalization Corporation obtained a judgment against the Department of Land and Natural Resources ("DLNR") in a breach of contract lawsuit. *MRC*, 2010 MP 18 ¶ 3. DNLR did not pay the judgment from existing funds, nor did it seek an appropriation from the Legislature to satisfy the judgment. *Id.* ¶ 4. After prolonged efforts by Marine Revitalization Corporation to obtain payment and multiple court orders in aid of judgment, the trial court issued a third order in aid of judgment, which, among other instructions, directed DNLR to pay the outstanding judgment from its income and authorized plaintiffs to request judicial appropriation of DLNR's budget if DLNR did not comply with the order. *Id.* ¶ 9 We found that we would "overstep [our] constitutional authority if we ordered the Legislature to appropriate funds for a certain purpose, or if we redirected funds already appropriated for a specific purpose towards the payment of a judgment." *Id.* ¶ 36. We further noted "[w]e would similarly overstep our authority if we ordered an executive official, through a writ of mandamus or similar procedural mechanism, to transfer funds to pay a judgment in the absence of legislative approval." *Id.* (citing *Amantia v. Cantwell*, 213 A.2d 251, 254 (N.J. Super. 1965)).

¶ 10 Concluding that the Legislature had the exclusive appropriations power, we found 1 CMC § 7207, a Commonwealth statute governing the payment of judgments by the government, applicable. *MRC*, 2010 MP 18 ¶ 43. 1 CMC § 7207 provides:

> 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 (emphasis added). We found "the trial court was . . . bound by the appropriations provision contained in 1 CMC § 7207" and that "[t]o the extent that the trial court found that it could order money not already

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[6] Article II, Section 5 of the NMI Constitution, in relevant part, provides: "Appropriation and revenue bills may be introduced only in the house of representatives."

[7] Article X, Section 1 of the NMI Constitution provides: "A tax may not be levied and an appropriation of public money may not be made, directly or indirectly, except for a public purpose. The legislature shall provide the definition of public purpose."

appropriated for the payment of judgments to MRC in satisfaction of its judgment, the court erred." *MRC*, 2010 MP 18 ¶ 43.

¶ 11 In *Commonwealth v. Lot No. 353 New G*, ("*Lot 353*"), we addressed the narrower question of whether Section 7207 violates the Takings Clause of the Commonwealth Constitution ("NMI Takings Clause") and the Takings Clause of the Federal Constitution ("Federal Takings Clause") in the context of eminent domain.[8] 2012 MP 6 ¶ 12. The NMI Takings Clause provides: "Private property may not be taken without just compensation." NMI CONST. art. XIII, § 2. The Federal Takings Clause similarly provides: "[N]or shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.[9] We found that *MRC* was not dispositive because it did not address the question of eminent domain, and after seeking guidance from other jurisdictions, we held that that Section 7207 did not violate the Takings Clauses because to hold otherwise would "violate the separation of powers and would eviscerate the independence and integrity of the legislative branch." *Lot 353*, 2012 MP 6 ¶ 23. We further concluded that "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." *Id.* ¶ 27. However, in light of the government's ongoing failure to fulfill a constitutional mandate, we see the need to revisit our decision in *Lot 353* on both public policy and legal grounds.

1. Commonwealth's Repeated Failure to Pay

¶ 12 The Court faces a growing need to enforce landowners' constitutional right to just compensation in light of the government's repeated failure to honor that right. In a recent House Bill, the Legislature acknowledged that the CNMI government has "millions of dollars' worth of outstanding land obligations to private land owners whose lands were taken for various public purposes, and various land compensation judgments from the Commonwealth courts in favor of the land claimant." H.B. 19-158, 19th Leg. (N. Mar. I. 2016). The Legislature further acknowledged that "several years have passed and many of these claimants, many of whom have already passed away, have not been properly compensated." *Id.*

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[8] The Commonwealth "may exercise the power of eminent domain as provided by law to acquire private property necessary for the accomplishment of a public purpose." NMI CONST., art. XIII, § 1.

[9] The Federal Takings Clause, contained in the Fifth Amendment to the United States Constitution, is applicable to the Commonwealth. 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) ("[T]he 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 . . . .").

¶ 13 Despite these acknowledgments, the Legislature has continually failed to appropriate sufficient funds for the outstanding land compensation claims and judgments. During oral argument in November 2015, the Commonwealth represented to the Court that the amount remaining in the funds appropriated under the Land Compensation Act was $100,[10] even though the Office of the Attorney General had repeatedly informed the Legislature of all outstanding land compensation judgments against the government. Nor has the Legislature appropriated sufficient funds for all general judgments against the government. *See* PL 18-18 (fiscal year ("FY") 2014 budget); PL 18-66 (FY 2015 budget); PL 19-08 (FY 2016 budget); PL 19-68 (FY 2017 budget).

¶ 14 "'[T]he right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and unalienable rights of man.'" *Lot 353*, 2012 MP 6 ¶ 30 (quoting *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 310 (Cir. Ct. Pa. 1795)). It is well settled law that when private property is taken by eminent domain, owners are entitled to just compensation. *See Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 13 ("The Fifth Amendment of the Constitution of the Commonwealth of the Northern Mariana Islands and the United States Constitution require that when private property is taken for public use by eminent domain, just compensation must be provided to the owner." (internal quotation marks and citation omitted)).

¶ 15 Further, courts have found that when private property is taken for public use without compensation, the just compensation guarantee is self-executing: land owners are entitled to just compensation even when the legislature has not established a specific procedure to enforce it. *See, e.g.*, *State v. Leeson*, 323 P.2d 692, 695 (Ariz. 1958) ("We have also held that since Art. 2, Section 17 of the Constitution of the State of Arizona prohibiting the taking or damaging of private property without just compensation is self-executing, an injured party must be compensated even though the Legislature has not established a specific procedure therefor."); *People ex rel. Alexander v. Mt. Vernon*, 88 N.E. 2d 45,

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[10] The Commonwealth asserted that significant portions of the funds appropriated under the Land Compensation Act were depleted because the funds were used on prison projects and dialysis centers. Indeed, in July 2003, the Legislature permitted portions of the funds appropriated under the Land Compensation Act to fund the Commonwealth Prison Project and the dialysis centers in Tinian and Rota. *See* PL 13-56, §§ 1, 3, 4; 2 CMC § 4743(d). In addition, while the original version of the Land Compensation Act prioritized payment of claims relating to private lands acquired for right of way and road constructions, *see* PL 13-17, § 4(d), in 2004, the Legislature passed Public Law 14-29 to remove the prioritization to treat all claims equally, *see* PL 14-29, § 1(a); PL 15-92 ("The Legislature further finds that Public Law No. 14-29 removed this prioritization with the intent to treat all claims equally."). In 2007, the Legislature passed Public Law 15-92 to restore the original prioritization under PL 13-17. PL 15-92, § 1. Due to the changes in the prioritization, however, millions of dollars were used to compensate wetland and ponding basin claims first, PL 15-92, § 1, which, the Commonwealth asserted, resulted in a significant portion of the funds being depleted in the interim.

49 (Ill. 1949) ("The provision of the constitution guaranteeing compensation if property is taken or damaged for public use is self-executing, requires no legislation for its enforcement, and cannot be impaired by legislation or ordinance."). By parity of reasoning, absence of legislative appropriation cannot bar recovery.

¶ 16 Here, there is a clear gap between the law and reality. Many landowners, like Quitugua, have been seeking, or been awarded and are awaiting, compensation to no avail. It is unfair and unjust that the landowners' private land is taken by the government for public use without just compensation. *See First English Evangelical Lutheran Church v. Cty. of L.A.*, 482 U.S. 304, 318–19 (1987) ("It is axiomatic that the Fifth Amendment's just compensation provision is 'designed to bar 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))); *Baltimore & Ohio R.R. Co. v. United States*, 298 U.S. 349, 368 (1936) ("The just compensation clause may not be evaded or impaired by any form of legislation."). Over twenty years have passed since the taking of Quitugua's Lots, and the government has still failed to satisfy its obligation. For reasons of equity, we are compelled that our prevailing holding regarding land compensation, *Lot 353*, bears reconsideration.

2. Reconsidering Lot 353

¶ 17 We further find that *Lot 353* requires reconsideration because the cases relied on were not relevant to land compensation. In holding that the court may order the government to pay land compensation judgments only out of funds appropriated for settlements and awards, we sought guidance from three cases. *Lot 353*, 2012 MP 6 ¶¶ 18–23. However, the cases we cited did not involve land compensation but statutory employee retirement benefits, *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414 (1990); recovery of taxes paid under protest, *Panhandle E. Pipe Line Co. v. Fadely*, 369 P.2d 356 (Kan. 1962); or reimbursement funds to counties, *Cty. of San Diego v. California*, 79 Cal. Rptr. 3d 489 (Cal. Ct. App. 2008).

¶ 18 In fact, a concurrence and the dissent in *Office of Pers. Mgmt.* suggest that the legislature's appropriations power is not absolute when just compensation is at issue: "[T]he Court does not state that statutory restrictions on appropriations may never fall even if they violate a command of the Constitution such as the . . . Just Compensation Clause . . . ." 496 U.S. at 435 (White, J., concurring); *accord id.* at 437 (Marshall, J., dissenting) ("The Court does not decide whether the Appropriations Clause would bar the judiciary from ordering payments from the Treasury contrary to a statutory appropriation . . . where such payment would be required to remedy a violation of another constitutional provision, such as the . . . Just Compensation Clauses . . . ."). The concurring and dissenting justices suggest that special consideration should be given to the interpretation of the Appropriations Clause when the Takings Clause applies.

¶ 19 Indeed, at least two states have rejected the argument that a lack of appropriated funds justifies nonpayment of land compensation judgments. In *State ex rel. Decker v. Yelle*, the State of Washington took a right of way over Decker's land without compensation. 71 P.2d 379, 380 (Wash. 1937). After the court issued a judgment awarding compensation, the state auditor refused to pay, asserting that the state legislature had not appropriated sufficient funds to pay land compensation awards, because the special fund provided for the project had been exhausted. *Id.* at 381. The Washington Supreme Court found that the State's Bill of Rights including the Takings Clause was "more than mere abstract declarations of general principles" and "'cannot be ignored in any valid enactment.'" *Id.* at 381 (quoting *Atchison St. Ry. Co. v. Missouri Pac. Ry. Co.*, 3 P. 284, 286 (Kan. 1884)). To deny the owner full compensation would allow the State to "'appropriate private property at will, and leave the shorn citizen to the chilling comfort of legislative indifference.'" *Id.* at 381 (quoting *State ex. rel. Peel v. Clausen*, 162 P. 1, 5 (Wash. 1917)). The court also noted "if there be no appropriation to satisfy the state's invasion of [an owner's property], no power on earth could compel the Legislature to pass upon or allow a claim, however just it might be," and that legislature would be able to "'by nonaction . . . annul the Constitution.'" *Id.* (quoting *State ex. rel. Peel*, 162 P. 1 at 5). Accordingly, the court affirmed the writ directing payment out of "any funds in the state treasury not otherwise appropriated." *Id.* at 382.

¶ 20 In *State ex rel. Peterson v. Bentley*, the Minnesota Supreme Court held that a lack of appropriated funds was not a defense for the nonpayment of land compensations. 12 N.W.2d 347, 353 (Minn. 1943), *overruled on other grounds by Peterson v. Anderson*, 19 N.W.2d 70, 74 (Minn. 1943). There, landowners sought condemnation proceedings because the construction of the state project impaired the usage of their land. *Id.* at 350. The state opposed the condemnation, arguing that the funds appropriated for the project were no longer available. *Id.* at 353. The court rejected this argument, reasoning that if the state could use lack of appropriated funds as a defense, it would be able to "avoid entirely the constitutional limitation set upon its power of eminent domain." *Id.*

¶ 21 Here, the Commonwealth has refused to pay Quitugua, asserting the land compensation funds are exhausted and that no other appropriated funds are available to satisfy the judgment. However, like *Decker and Peterson*, we find that the government may not simply neglect its outstanding land compensation judgments for lack of appropriation. If the court cannot order the government to pay the judgment, the Legislature would be able to effectively annul Quitugua's constitutional right to just compensation via non-action. This would be an unreasonable, unjust, and unconstitutional result.

¶ 22 Similar to *Decker* and *Peterson*, other state courts have echoed the need to protect constitutionally mandated rights over the legislature's appropriations power. *See, e.g.*, *Robinson v. Cahill*, 339 A.2d 193, 204 (N.J. 1975) (rejecting the argument that the separation of powers doctrine prohibits the judiciary from

directing the expenditure of state funds because the interest at stake is that of "all the school children of the State, guaranteed by the constitutional voice of the sovereign people equality of educational opportunity"); *McCleary v. State*, 269 P.3d 227, 261 (Wash. 2012) (holding that the state failed to meet its duty under Article IX, Section 1 of the Washington Constitution when it failed to provide adequate funding for the development of a basic education program).

¶ 23 These cases demonstrate that courts do have the power to direct expenditure of funds to enforce constitutional rights. The New Jersey Supreme Court in *Robinson*, in particular, reasoned that as guarantor of the state constitution's command, the court "possesses and must use power equal to its responsibility." 339 A.2d at 204. The court must act in response to a constitutional mandate, and may "even in a sense seem to encroach, in areas otherwise reserved to other Branches of government." *Id.* (citing *Powell v. McCormack*, 395 U.S. 486 (1969)). Like *Robinson*, the Commonwealth courts must act and be allowed to enforce the constitutional mandate of just compensation contained in the Takings Clause.

3. Harmonizing Provisions in a Constitution

¶ 24 Allowing the courts to compel payment gives rise to a potential conflict between the NMI Appropriations Clause and the NMI Takings Clause. Principles resolving constitutional conflict instruct against interpreting the NMI Appropriations Clause as inhibiting the NMI Takings Clause. A constitution should be considered and read as a whole. *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 15 (reading the NMI Constitution as a whole to determine whether it is a chartering document for Tinian and Aguiguan); *accord Gatzke v. Weiss*, 289 S.W.3d 455, 458 (Ark. 2008) (stating that the state constitution "must be considered as whole" and "every provision must be read in light of other provisions relating to the same subject matter."). "[W]hen possible . . . the interpretation of a . . . constitutional provision will be harmonized with other . . . provisions to avoid unreasonable or absurd results." *We People Nevada ex rel. Angle v. Miller*, 192 P.3d 1166, 1171 (Nev. 2008). "[N]o provision should be construed to nullify or impair another." *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 740 N.W.2d 444, 463 (Mich. 2007) (internal quotation marks and citation omitted). If we were to interpret the NMI Appropriations Clause as prohibiting the Commonwealth courts from compelling payment of land compensation judgments in the absence of legislative appropriations, landowner's compensation would be left to the sole discretion of the Legislature. This could significantly inhibit the NMI Takings Clause's guarantee of just compensation, as the courts would have no power to protect the constitutional rights of landowners. Such interpretation would lead to an unreasonable result, nullifying or impairing the NMI Takings Clause.

¶ 25 Further, allowing the court to order payment of land compensation judgments in the absence of legislative appropriation does not nullify or impair the NMI Appropriations Clause. "Appropriations clauses are . . . intended to

prevent fraud and corruption by vesting control over public funds in the legislative branch." *Lot 353*, 2012 MP 6 ¶ 17 (citing *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 428 (1990)). In an eminent domain proceeding, the risk of fraud and corruption in public spending is limited because the amount of land compensation is determined through a set process: the court must determine the fair value of the land after hearing from the parties. 1 CMC § 9224; *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 13 ("Just compensation has been defined as the fair market value of the property on the date it is appropriated.") (internal quotation marks and citation omitted)). Moreover, the Legislature has the power to appropriate money for land compensation claims and judgments and to order the treasurer to make payments only from those appropriations. Our decision is narrowly tailored to outstanding land compensation judgments only, and limits the amount that can be ordered paid to just that necessary to make good on the Commonwealth's obligation.

¶ 26 In summary, because the government repeatedly failed to pay land compensation judgments, because the right to just compensation is a well-settled, natural right, because persuasive case law supports the courts' authority to compel payment, and because principles harmonizing constitutional provisions instruct against interpreting the NMI Appropriations Clause as inhibiting the NMI Takings Clause, we overrule *Lot 353* to the extent it holds that the Commonwealth courts may not order the government to pay land compensation judgments in the absence of legislatively appropriated funds. We now hold that in the context of eminent domain, the Commonwealth courts have the authority to compel the government to pay outstanding land compensation judgments even in the absence of legislatively appropriated funds.

4. Writ of Execution

¶ 27 The Commonwealth argues a writ of execution should not be allowed against the Commonwealth as a matter of policy because it has the effect of freezing the Commonwealth's bank accounts, preventing the government from performing its basic functions. A writ of execution is a court order directing an authorized person, such as a police officer, to demand payment of a judgment or seize the judgment debtor's property to satisfy the judgment. 7 CMC § 4204(a).[11] Some jurisdictions have found that a writ of execution is not

[11] 7 CMC § 4204 (a) provides, in relevant part:

> [The person making the levy] shall demand of the person against whom the execution is issued . . . that the person pay the execution or exhibit sufficient property subject to execution. . . . If the person against whom the execution is issued does not pay the execution in full, including interest and costs and expenses thereof, the person making the levy shall take into his or her possession property of the person against whom the execution is issued, not exempt from execution, sufficient in his or her opinion to cover the amount of the execution.

allowed against the government, unless a statute permits otherwise. *E.g.*, *State ex rel. Dep't. of Highways v. Olsen*, 334 P.2d 847, 848 (Nev. 1959) ("The writ of execution must be quashed for the reason that execution cannot properly be levied against the State in the absence of statute granting such right."); *Sherard v. State*, 509 N.W.2d 194, 198 (Neb. 1993) ("We agree that, absent a statute to the contrary, State property is not subject to execution."); *Delta Cty. Levee Improvement Dist. No. 2 v. Leonard*, 516 S.W.2d 911, 912 (Tex. 1974) ("Public policy exempts political subdivisions of the state performing governmental functions from execution or garnishment proceedings."). In light of the risk of interference with basic government functions, we agree a writ of execution is not allowed against the Commonwealth unless a statute permits otherwise. Accordingly, we vacate the Writ of Execution and remand instructing the court to use a proper method to enforce the judgment owed to Quitugua.[12] Further, any method of enforcing judgment must be carefully tailored to avoid overly restricting the Legislature's appropriations powers, and must order payment of no more than what is owed under the judgment.

5. Retroactive Application

¶ 28 This decision raises a question of retroactivity. Retroactive application of a decision refers to "whether the decision applies to conduct or events that occurred before the date of the decision." *Am. Trucking Ass'ns v. Smith*, 496 U.S. 167, 177 (1990). Judicial decisions are generally given retroactive effect. *United States v. Sec. Indus. Bank*, 459 U.S. 70, 79 (1982). "In civil cases, however, the court may, in its equitable discretion, prohibit or limit retroactive operation of its ruling where the overruled law has been justifiably relied upon or where retroactive operation creates a burden." *Merrill v. Utah Labor Comm'n*, 223 P.3d 1099, 1101 (Utah 2009) (internal quotation marks and citation omitted); *see also Henderson v. Camden Cty. Mun. Util. Auth.*, 826 A.2d 615, 620 (N.J. 2003) ("In deciding whether to apply a decision prospectively, we also consider whether retroactive application could produce substantial inequitable results." (internal quotation marks and citation omitted)). Here, retroactive application creates no new burden; it simply designates a new pathway to compel the government to meet its existing obligation. Further, the purpose of our holding is to enforce landowners' right to just compensation, and it would be unfair for landowners in pending cases to not receive the benefit of today's decision. *See Claxton v. Waters*, 96 P.3d 496, 503 (Cal. 2004) (considering the purposes to be served by the new rule as a factor of the retroactivity determination). We conclude that our holding applies to all civil matters that have not reached final judgment, including those pending on remand to the trial court.

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[12] 7 CMC § 4104 provides: "Enforcement of a judgment may also be affected, if the court deems justice requires and so orders . . . in any other manner known to American common law or common in courts in the United States."

B. Post-Judgment Interest Rate

¶ 29 The Commonwealth argues the trial court erred in applying the statutory nine-percent post-judgment interest rate to the Commonwealth, as set forth in 7 CMC § 4101, because sovereign immunity precludes the application of statutory interest rates. Whether the trial court applied the correct legal standard is a question of law reviewed de novo. *Commonwealth v. Lot 353 New G*, 2015 MP 6 ¶ 14 (Slip Op., Oct. 13, 2015).

¶ 30 7 CMC § 4101 provides: "Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered." However, "'7 CMC § 4101 does not make the government liable for post-judgment interest,' because 'there must be explicit statutory or contractual consent for the government to owe post-judgment interest.'" *Lot 353 New G*, 2015 MP 6 ¶ 19 (quoting *Marine Revitalization Corp. v. Dep't of Land & Natural Res.*, 2011 MP 2 ¶ 9).

¶ 31 Here, the Commonwealth did not give explicit statutory or contractual consent to the nine percent interest rate, retaining the protections of sovereign immunity. Thus, the court erred in applying a statutory nine percent interest rate to the Commonwealth.

V. CONCLUSION

¶ 32 For the reasons stated above, we conclude the trial court did not violate the separation of powers doctrine in ordering the government to pay a land compensation judgment out of funds not appropriated for that purpose. Nonetheless, we VACATE the Writ of Execution and REMAND instructing the court to use a proper method to enforce the judgment owed to Quitugua. Further, the trial court erred in applying a nine percent post-judgment interest rate in the Order. Accordingly, we VACATE the Order applying a statutory nine-percent post-judgment interest rate, and REMAND for a new hearing to determine the proper post-judgment interest rate.

SO ORDERED this 28th day of December, 2016.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
STEVEN L. HANSEN
Justice Pro Tem