

A.J.J. Enterprises v. Renguul, 3 ROP Intrm. 29 (1991)
A.J.J. ENTERPRISES,
Appellant,

v.

LEVAL RENGUUL, et al.,
Appellees.

CIVIL APPEAL NO. 7-90
Consolidated Civil Action Nos. 540-89, 531-89, and 533-89

Supreme Court, Appellate Division
Republic of Palau

Order

Decided: August 6, 1991

Counsel for Appellant: David F. Shadel

Counsel for Appellees: Pro Se

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;
and FREDERICK J. O'BRIEN, Associate Justice

PER CURIAM:

On January 5, 1990, the Trial Court denied pre-judgment interest in four breach of contract cases which were consolidated on January 12, 1990. (*A.J.J. Enterprises v. Leval Renguul*, Civil Action No. 540-89; *A.J.J. Enterprises v. Krispin Termeteet*, Civil Action No. 531-89; *A.J.J. Enterprises v. Paula Holms*, Civil Action No. 533-89; and *A.J.J. Enterprises vs. Hutchins Markub*, Civil Action No. 530-89).

The Trial Court ruled that Section 354 of the Restatement of the Law, *Contracts* 2d, and U.S. case law permitting pre-judgment interest were not applicable because 14 PNC § 2001, which limits post-judgment interest to 9% per annum, governs the issue. The Trial Court interpreted the statute's silence regarding pre-judgment interest as a prohibition against the award of pre-**L30**-judgment interest.

Appellant filed a notice of appeal on January 29, 1990, limiting its appeal to the question of pre-judgment interest. The appeal involving Appellee Markub (Civil Action No. 530-89) was dismissed on July 18, 1990 for Appellant's failure to timely file its brief. The three remaining Appellees, who are representing themselves pro se, did not move for dismissal. They were given 30 days to file their response briefs. No response briefs have been filed.

As the Trial Court noted, the only statute in Palau which addresses the award of interest

A.J.J. Enterprises v. Renguul, 3 ROP Intrm. 29 (1991)

as damages is 14 PNC § 2001 which states in part, “Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered.” We do not agree with the Trial Court that the language of 14 PNC § 2001 can be read as a legislative decision to exclude pre-judgment interest. To date, there has been no legislative pronouncement regarding pre-judgment interest.

According to 1 PNC § 303, “The rules of the common law, as expressed in the restatement of the law approved by the American Legal Institute...shall be the rules of decision in the courts of the Republic in applicable cases, in the absence of written law...to the contrary.”

Section 354 of the Restatement of the Law, Contracts 2d, quite clearly permits pre-judgment interest as damages in a contract case where the amount owed is fixed by the contract or can be determined with reasonable certainty. Comment c. to Section 354 states, **L31** “Unless otherwise agreed, interest is always recoverable for the non-payment of money once payment has become due and there has been a breach.”

The Trial Court established that each of the Appellees owes a designated amount to Appellant. Applying the common law as reflected in Section 354 of the Restatement of the Law, *Contracts 2d*, Appellant is entitled to interest on the amounts owed dating from the time payment became due. This conclusion is supported not only by Section 354 of the Restatement, but also by relevant case law. *See, NECO v. Rdialul*, Civ. App. No. 9-90 (App. Div. 1991); *Techong v. Peleliu Club*, 6 T.T.R. 275, 282 (Tr. Div. 1973), *aff’d.* at 7 T.T.R. 364 (App. Div. 1976); *Crescent Min. Co. v. Wasatch Min. Co.*, 151 U.S. 317, 14 S.Ct. 348 (1894).

In the absence of a statute, the Court is as competent to determine the amount of interest awarded as compensation for the lost use of money as it is any other item of damages. *Royal Indemnity Co. v. U.S.*, 313 U.S. 289, 61 S.Ct. 995 (1941), *reh. den.* 314 U.S. 708, 62 S.Ct. 52 (1941). The legislature has established 9% per year as the ceiling for post-judgment interest. It is appropriate to apply that limit to pre-judgment interest awards as well, except where the parties have entered into a valid contract providing for a pre-judgment interest rate higher than 9%.

The decision of the Trial Court to deny Appellant pre-judgment interest is hereby REVERSED. These consolidated cases are remanded to the Trial Court for determination of the amount of interest due.