

IN THE SUPREME COURT OF GUAM

SUMITOMO CONSTRUCTION, CO., LTD.

Plaintiff-Appellee

vs.

GOVERNMENT OF GUAM

Defendant-Appellant

OPINION

Filed: November 7, 2001

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Supreme Court Case Nos.: CVA00-019; CVA00-006

Superior Court Case Nos.: CV1589-99; CV1436-00

Consolidated Appeals from the Superior Court of Guam

Argued and submitted on September 6, 2001

Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, JR., Chief Justice, F. PHILIP CARBULLIDO, Associate Justice, and BENJAMIN J.F. CRUZ, Justice *Pro Tempore*.

CARBULLIDO, J.:

[1] The Defendant-Appellant, the Government of Guam (hereinafter “Government”) appeals two separate judgments entered in the lower court awarding the Plaintiff-Appellee, Sumitomo Construction Co., Ltd. (hereinafter “Sumitomo”) interest on the respective judgments in actions for breach of contract. The Government argues that the trial court erred in awarding both prejudgment and post-judgment interest on the ground that the Legislature has not waived sovereign immunity against such interest. We find that Title 5 GCA § 5475 is a waiver of immunity against prejudgment interest for damages awarded as a result of the government’s breach of a procurement contract. Accordingly, we affirm the trial court’s award of prejudgment interest. However, we find that the Legislature has not waived immunity against post-judgment interest and therefore reverse that portion of the trial court’s judgments.

I.

[2] This is a consolidated appeal of two judgments entered by the Superior Court, which arise out of two separate contracts entered into by Sumitomo and the Government. On or about October 20, 1994, the Department of Public Works (hereinafter “DPW”) of the Government awarded a road construction project to Sumitomo. The original contract price was \$1,469,000.00, which increased over the course of construction to \$3,106,133.19. The Government paid all but \$196,428.91 of the contract amount. On March 5, 1997, Sumitomo made a request for final payment. On July 27, 1998, Sumitomo filed a government claim pursuant to the Government Claims Act, 5 GCA §§ 6101,

et seq. with the Attorney General's Office. The Attorney General's Office informed Sumitomo that DPW did not dispute the outstanding principal. Sumitomo thereafter filed a Complaint in the Superior Court seeking payment of the remaining balance of \$196,428.91 plus interest from March 6, 1997 until the time of payment. Sumitomo filed motions for Judgment on the Pleadings and for Summary Judgment. The Government admitted, in its Answer as well as its Opposition to Summary Judgment, that it owed the principal amount, however, the Government argued against the award of prejudgment interest.

[3] Similarly, on June 3, 1998, Sumitomo entered into a road construction contract with the Government. The original contract amount was \$4,281,834.00, which was subsequently increased by \$411,311.11. The Government accepted the project as complete on March 1, 2000. The government paid all but \$412,331.11 of the contract amount. As a result, Sumitomo filed a complaint in the Superior Court on August 23, 2000, requesting the outstanding principal and prejudgment interest. In its Answer, the Government admitted that it owed the principal amount but disputed liability for prejudgment interest.

[4] The lower court entered a judgment awarding Sumitomo the requested principal amount and prejudgment interest, as well as post-judgment interest at a rate of 6% *per annum*, in each action, respectively. The Government appealed both judgments to this court. Because both appeals turn on the same issue, this court granted the Government's request to consolidate the appeals.¹

¹ The court is disturbed by the quality of the parties' briefing in this appeal. The Government did not cite to a single case issued by this court, one of which, *Pacific Rock v. Department of Education*, 2000 Guam 19, was adverse authority that was directly relevant to the main issue in this case and controlling authority at the time the briefs were filed. Sumitomo's actions are no more availing, as it only cited one case issued by this court. In our view, the complete lack of citation to precedent established by this court tends to indicate that the parties either were extremely careless in preparing for this appeal or simply refuse to recognize this court's case law as controlling legal authority in this

II.

[5] This court has jurisdiction over the appeal of a final judgment of the Superior Court of Guam pursuant to Title 7 GCA § 3107 (1994).

III.

[6] The issue on appeal is whether the trial court erred in its grant of summary judgment awarding prejudgment and post-judgment interest to Sumitomo in a breach of contract action against the Government. We review a grant of summary judgment *de novo*. See *Ceasar v. QBE Ins. (Int'l), Ltd.*, 2001 Guam 6, ¶ 6 (citations omitted). Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Guam R. Civ. P. 56(c).

[7] Courts generally review a lower court’s award of interest for an abuse of discretion. See *US ex rel. Bartec Indus., Inc. v. United Pac. Co.*, 976 F.2d 1274, 1279 (9th Cir. 1992); *Domestic Linen Supply & Laundry Co. v. Kenwood Dealer Group, Inc.*, 672 N.E.2d 184, 191 (Ohio App. 1996). However, if a challenge to interest on a judgment rests on sovereign immunity grounds, a lower court’s award of interest is reviewed *de novo*. See *Hall v. Bolger*, 768 F.2d 1148, 1150 (9th Cir. 1985). The existence of a waiver of sovereign immunity involves statutory interpretation, which we review *de novo*. See *Ceasar*, 2001 Guam 6 at ¶ 7 (citations omitted).

jurisdiction. Either implication is disconcerting.

A. Sovereign Immunity

[8] The government of Guam enjoys broad sovereign immunity. *See Marx v. Gov't of Guam*, 866 F.2d 294, 298 (9th Cir. 1989); *see also Wood v. Guam Power Auth.*, 2000 Guam 18, ¶ 10. While sovereign immunity is inherent, Congress has provided a specific mechanism by which sovereign immunity may be waived. 48 U.S.C. § 1421a (1987); *see Marx*, 866 F.2d at 298. Section 1421a of the Organic Act provides in pertinent part:

The government of Guam shall have the powers set forth in this Act, shall have power to sue by such name, *and, with the consent of the legislature evidenced by enacted law, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the government of Guam of any of its lawful powers.*

48 U.S.C. § 1421a (emphasis added).

[9] Under the Organic Act, sovereign immunity can only be waived by duly enacted legislation. *See id.*; *see also Wood*, 2000 Guam 18 at ¶ 10. Unless such legislation exists, the government cannot be sued. *See Wood*, 2000 Guam 18 at ¶ 10.

[10] Sovereign immunity extends to the interest on a judgment against the government. *See Library of Congress v. Shaw*, 478 U.S. 310, 314, 106 S.Ct. 2957, 2961 (1986), *overruled by statute on other grounds as stated in Estate of Reynolds v. Martin*, 985 F.2d 470 (9th Cir. 1993); *see also Far West Fed. Bank v. Office of Thrift Supervision*, 119 F.3d 1358, 1366 (9th Cir. 1997). “In the absence of express . . . [legislative] consent to the award of interest *separate from a general waiver of immunity to suit*, the United States is immune from an interest award.” *Shaw*, 478 U.S. at 314, 106 S. Ct. 2957 at 2961 (emphasis added). Sovereign immunity in this regard applies to both prejudgment and post-judgment interest. *See, e.g., Far West Fed. Bank*, 119 F.3d at 1366-67

(holding that the FDIC was immune from an award of pre-judgment interest); *Hall*, 768 F.2d at 1151 (holding that the government waived the Postal Services' sovereign immunity against post-judgment interest).² Therefore, pursuant to the Organic Act, unless the Guam Legislature waives sovereign immunity against interest, a party may not recover interest on a judgment against the government. See 48 U.S.C. § 1421a.

1. Prejudgment Interest.

[11] To affirm the lower court's award of prejudgment interest, this court must find both a waiver of immunity against suit as well as against prejudgment interest. The waiver of immunity against suit for breach of contract is contained in the Government Claims Act, 5 GCA § 6105(a), which provides:

Pursuant to Section 3 of the Organic Act of Guam, the Government of Guam hereby waives immunity from suit, but only as hereinafter provided:

(a) for all expenses incurred in reliance upon a contract to which the Government of Guam is a party, but if the contract has been substantially completed, expectation damages may be awarded;

....

Title 5 GCA § 6105(a) (1998); see also *Pacific Rock Corp. v. Dep't of Educ.*, 2001 Guam 21, ¶ 35.

[12] There is no similar waiver of immunity against prejudgment interest in the Claims Act. However, such waiver is found in the Procurement Law, 5 GCA § 5475. That section provides:

² Two recognized exceptions to the no-interest rule are: (1) a condemnation action, in which "the right to 'just compensation' under the Takings Clause has been interpreted as including prejudgment interest;" and (2) when the government entity at issue has a sued-and-be-sued clause and has "cast off the cloak of sovereign and assumed the status of a commercial enterprise." *Coast Fed. Bank v. United States*, 48 Fed. Cl. 402, 442 (Ct. Fed. Cl. 2000) (citations omitted); *Shaw*, 478 U.S. at 317 n.5, 106 S.Ct. at 2963 n.5.

Interest. Interest on amounts ultimately determined to be due to a contractor or the Territory shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

Title 5 GCA § 5475 (1998).

[13] The Government argues that the prejudgment interest provision in the Procurement Law, 5 GCA § 5475, refers only to interest on judgments that are allowed under the Procurement Law, which does not include money damages for a breach of contract claim; and, therefore, 5 GCA § 5475 does not waive immunity against interest on such claims. The Government further asserts that even if 5 GCA § 5475 is interpreted to be a waiver of sovereign immunity against interest on a judgment awarding breach of contract damages, it was impliedly repealed by 5 GCA § 6301(a).

[14] With regard to the Government's first contention, the seminal question is whether the breach of contract claim in the instant action is cognizable under the Procurement Law. We find that it is. The Procurement Law contemplates resolution of contract disputes, that is, disputes arising between the contractor and the government *after* the contract is formed. *See* Title 5 GCA § 5427 (1998).

Title 5 GCA § 5427 provides in relevant part:

Authority to Resolve Contract and Breach of Contract Controversies.

(a) Applicability. This Section applies to controversies between the Territory and a contractor and which arise under, or by virtue of, a contract between them. *This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.*

(b) Authority. The Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of one of these officers is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection (a) of this Section. This authority shall be exercised in accordance with regulations promulgated by the Policy Office.

5 GCA § 5427(a), (b) (emphasis added).

[15] The Government argues in favor of a strict construction of 5 GCA § 5427(a), that is, that the “or other cause” language in that subsection reveals that the Procurement Law’s provisions apply only to equitable relief in a breach of contract action, such as modification and rescission, and not for money damages. This interpretation is not sound as it contravenes the Legislature’s intent, as evidenced by the extensively detailed remedial provisions of the Procurement Law, to provide a comprehensive mechanism of relief for procurement contract disputes. As clearly provided in 5 GCA § 5427(a), such disputes include, “*without limitation,*” claims for breach of contract. The requested relief in the vast majority of such breach of contract claims is damages, and not equitable relief. In light of the Legislature’s intent to provide a comprehensive procedure of relief for procurement contract disputes, it would be illogical for this court to read the inclusive language of 5 GCA § 5427(a) as excluding the most common claim for relief for a breach of a procurement contract, specifically, claims for money damages. *See Pacific Rock*, 2001 Guam 21 at ¶ 33 (holding that a contractor seeking breach of contract damages is *required* to exhaust administrative remedies by first seeking resolution of the claim with the chief procurement officer in the manner prescribed in 5 GCA § 5427). Thus, we reject the Government’s narrow interpretation of 5 GCA § 5427(a), and hold that controversies based upon a claim for breach of contract damages are cognizable under the Procurement Law. *See id.* Accordingly, the Procurement Law’s prejudgment interest provision, 5 GCA § 5475, which allows for “interest on amounts ultimately determined to be due a contractor or the Territory,” applies to judgments awarding damages for breach of a procurement contract. The Government further argues that 5 GCA § 5427 was impliedly repealed by 5 GCA § 6301(a). Section 6301(a) provides:

Maximum Limits of Government Liability. (a) In all cases, neither line agencies nor autonomous agencies nor the government of Guam shall be liable for interest prior to the date of judgment, nor for any punitive damages, nor for attorney's fees of the claimant; provided, that attorney's fees may be awarded a successful claimant as part of a final court judgment if the court finds that suit was filed only because the government of Guam failed to act upon the claim before the expiration of the time specified in § 6208(b) of this Chapter and such failure resulted from failure to investigate the claim.

Title 5 GCA § 6301(a) (1998). The Government contends that the language in section 5 GCA § 6301(a), preserving immunity against prejudgment interest “in all cases,” irreconcilably conflicts with the language of 5 GCA § 5475, thereby repealing 5 GCA § 5475 by implication. We do not agree.

[16] Repeals by implication are disfavored. *See Lujan v. Lujan*, 2000 Guam 21, ¶ 11 (citation omitted); *see also People v. Quinata*, Crim. No. 81-0004A, 1982 WL 30546, at * 2 (D. Guam App. Div. Jun. 29, 1982) (citation omitted). Implied repeals can be found in two instances: “(1) where provisions in the two acts are in irreconcilable conflict”, or “(2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute.” *Quinata*, 1982 WL 30546, at * 2 (citation omitted). Courts can avoid a finding of implied repeal if the two statutes can be reconciled. *See id.*; *Lujan*, 2000 Guam 21 at ¶ 11. The Procurement Law itself contains an implied repealer provision. *See* Title 5 GCA § 5006 (1998). That section provides:

Construction Against Implied Repealer. Since this Chapter is a general law, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.

Id. Therefore, the Procurement Law requires a court to attempt to reconcile a contradictory statute before determining that the later statute repeals a provision of the Procurement Law by implication.

[17] We must first attempt to reconcile the two statutes. In determining whether there is an implied repeal, courts resort to rules of statutory construction. *See California v. United States*, 47 Fed. Cl. 688, 694 (Ct. Fed. Cl. 2000). It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself. *See Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 23. Absent clear legislative intent to the contrary, the plain meaning prevails. *See Aaron v. SEC*, 446 U.S. 680, 697, 100 S. Ct. 1945, 1956 (1980). Neither party has pointed out clear legislative intent that 5 GCA § 6301(a) applies only to tort actions, thus, looking to the plain language of the statute, section 6301(a) can be interpreted as governing “all cases,” tort as well as contract. However, “[n]otwithstanding the deference due the plain-meaning of statutory language, . . . such language need not be followed where the result would lead to absurd or impractical consequences, untenable distinctions, or unreasonable results.” *See Bowlby v. Nelson*, Civ. No. 83-0096A, 1985 WL 56583, at *2 (D. Guam App. Div. Sept. 5, 1985). Absurdity may result when the legislature drafts a statute using language that is broader and more sweeping than that which the legislature intended. *See id.* In such cases, the court can interpret the broad language in a limited fashion in an effort to effectuate legislative intent. *See id.* Moreover, in determining legislative intent, a statute should be read as a whole, and therefore, courts should construe each section in conjunction with other sections. *See Kelly v. Robinson*, 479 U.S. 36, 43, 107 S. Ct. 353, 357-58 (1986), *overruled by statute on other grounds in* 217 B.R. 1008 (N.D. Ill. 1998). As stated by the Supreme Court of the United States, “words and people are known by their companions.” *Gutierrez v. Ada*, 528 U.S. 250, 255, 120 S. Ct. 740, 744 (2000). Accordingly, “[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and

policy.” *Kelly*, 479 U.S. at 43, 107 S.Ct. at 357-58 (citation omitted).

[18] The trial court reconciled 5 GCA §§ 5475 and 6301(a) by determining that the Claims Act provision, 5 GCA § 6301(a), does not govern contract cases, but rather, it governs tort cases only. We agree. While the plain language of the statute supports a finding that it applies to all cases, contract and tort, a reading of 5 GCA § 6301(a) in conjunction with the other subsections of section 6301 as well as other sections of the Claims Act impels a finding that the Legislature intended that section 6301(a)’s bar on prejudgment interest applies to tort claims only.

[19] The Claims Act clearly waives sovereign immunity against contract and tort liability. *See* 5 GCA § 6105. Article 3 of the Claims Act provides the law governing liability and insurance. Section 6301 is entitled “Maximum Limits of Government Liability.” Subsection (a) sweepingly provides that the government shall not be liable for prejudgment interest. *See* 5 GCA § 6301(a). However, the subsequent subsections of section 6301 address tort actions, and make absolutely no reference to contract actions.³ Moreover, section 6302, which immediately follows section 6301,

³ 5 GCA § 6301 provides, in its entirety:

Maximum Limits of Government Liability. (a) In all cases, neither line agencies nor autonomous agencies nor the government of Guam shall be liable for interest prior to the date of judgment, nor for any punitive damages, nor for attorney’s fees of the claimant; provided, that attorney’s fees may be awarded a successful claimant as part of a final court judgment if the court finds that suit was filed only because the government of Guam failed to act upon the claim before the expiration of the time specified in § 6208(b) of this Chapter and such failure resulted from failure to investigate the claim.

(b) The government of Guam, in the case of line agencies, shall be liable in tort for not more than \$100,000 in an action for wrongful death, nor for more than \$300,000 in any other tort action.

(c) Each autonomous agency shall be liable for torts committed by it for not more than the amounts stated in subsection (b), above.

(d)(1) In the case of the Guam Memorial Hospital Authority, it shall also be liable in tort, not to exceed the limits stated in subsection (b), above, for damages arising from negligent acts of Government Health Professionals performed within facilities operated by said Authority as agents of the government of Guam at

addresses the limitations in contract actions. That section provides:

Limitations on Contract Obligations. Each autonomous agency shall be liable for its own contract obligations. The government of Guam shall be liable only for those contract obligations undertaken by the line agencies, or for those contract obligations undertaken by autonomous agencies in which the government is a named party specifically made jointly liable with the autonomous agency by the contract.

Title 5 GCA § 6302 (1998). Thus, the government’s contractual liability is covered in a completely separate section of the Act, further indicating that section 6301(a) governs tort liability and not contract liability. *See Kelly*, 479 U.S. at 43, 107 S. Ct. at 357-58.

[20] Accordingly, we choose to interpret the language in section 6301(a) which bars the recovery of prejudgment interest “in all cases” narrowly in an effort to effectuate legislative intent. *See Bowlby*, 1985 WL 56583, at *2. Specifically, we interpret language “in all cases” to mean in all

the request of the Government. Government Health Professionals shall be considered agents of the government of Guam within the meaning of § 6212 of this Chapter.

(2) Government Health Professionals performing services in government facilities other than those operated by the Guam Memorial Hospital Authority shall be considered agents of the line department or autonomous agency they serve.

(3) A Government Health Professional is any person who is licensed or certified to practice a healing art in Guam and is practicing that art within a government of Guam facility as an agent of the government of Guam.

(4) Health Professionals, including independent contractors serving as agents of the government and government employees covered under the provisions of the Government Claims Act, shall not be liable for more than the amount stated in Subsection (b). Any award against the government employer as herein provided bars further award from the Health Professional or the government employee in the same cause of action for injuries arising out of the same acts or omissions unless:

(i) to the extent that any liability of the government of Guam or all other government agencies, (including, but not limited to, all instrumentalities, autonomous agencies, semi-autonomous agencies, public corporations), is covered by a policy or policies of insurance, the government waives the limitation of liability found in Title 5 of the Guam Code Annotated § 6301; provided, that the government shall not be liable in damages for tort in any amount which exceeds the coverage of insurance and the limitation of liability contained in 5 GCA § 6213; or

(ii) the Court finds that the agent or the government employee was acting outside the scope of her/his employment.

tort cases.

[21] Under the foregoing interpretation, the section 6301(a) bar on the recovery of prejudgment interest does not conflict with the statutory waiver of immunity against prejudgment interest found in the Procurement Law. Therefore, 5 GCA § 6301(a) does not impliedly repeal 5 GCA § 5475. *See Quinata*, 1982 WL 30546, at * 2. Consequently, we find no error in the lower court's award of prejudgment interest.

2. Post-Judgment Interest.

[22] The Government challenges the lower court's award of post-judgment interest. Initially, we address Sumitomo's argument that issue of post-judgment interest is improperly before this court because the Government raised the issue for the first time on appeal. We find that this issue is properly before the court notwithstanding the Government's failure to raise it previously. Sovereign immunity implicates a court's subject matter jurisdiction. *See Wood v. Guam Power Auth.*, 2000 Guam 18, ¶ 10. Therefore, the defense of sovereign immunity can be raised at any time, either by a party or by the court. *See Pacific Drilling Inc., v. Marianas Drilling, Inc.*, Civ. No. 85-0016A, 1985 WL 56585, *3 (D. Guam App. Div. Sept. 27, 1985) (citation omitted); *see also Pacific Rock*, 2001 Guam 21 at ¶ 18. The failure of the government to raise the issue does not constitute a waiver. *See Pacific Drilling Inc.*, 1985 WL 56585, at *3 (citations omitted); *see also Samuels v. Tschechtelin*, 763 A.2d 209, 240 (Md. App. 2000) (“[T]he law is well established that counsel for the State or one of its agencies may not ... by failure to plead the defense, waive the defense of governmental immunity in the absence of express statutory authorization.”) (citation omitted).

Turning to the merits of the issue, the Government argues that because there is no statutory waiver

of immunity against post-judgment interest, the lower court erred in awarding post-judgment interest to Sumitomo. We agree.

[23] While there exists a statutory waiver of immunity against prejudgment interest for judgments entered for the breach of a procurement contract, there is no similar express statutory waiver of immunity against post-judgment interest in either the Claims Act or the Procurement Law. Notwithstanding, Sumitomo argues that we should find an implied waiver of immunity against post-judgment interest. We decline to do so.

[24] As stated earlier, the Organic Act provides a very specific mechanism by which the government of Guam's inherent sovereign immunity may be waived. Under the Organic Act, a waiver of immunity must be in the form of duly enacted legislation. 48 U.S.C. § 1421a. The Guam Legislature is the sole body tasked with defining the scope of the government's immunity, and can broaden or restrict the government's amenability to suit and ultimate liability. *Cf. United States v. N.Y. Rayon Importing Co.*, 329 U.S. 654, 658-59, 67 S. Ct. 601, 603-04 (1947). Courts have no authority to supply a consent to the imposition of post-judgment interest which only the Legislature can give. *Cf. id.* at 660, 67 S. Ct. at 604.

[25] The Legislature has not hesitated to limit the general waiver of immunity against suit, for example, by crafting shortened statute of limitations periods for claims against the Government. *See, e.g.*, Title 5 GCA § 5481 (1998). The Legislature has likewise *broadened* a private party's recourse against the government, for example, by enacting legislation specifically and clearly allowing for prejudgment interest for procurement contract claims. *See, e.g.*, 5 GCA § 5475. Unlike the waiver of immunity against prejudgment interest, the Legislature has not similarly consented to

liability for post-judgment interest. The Legislature's silence on this issue is determinative in light of the rule of statutory construction that waivers of immunity are to be strictly construed in favor of the sovereign. *Shaw*, 478 U.S. at 318, 319, 106 S. Ct. at 2963, 2964. Accordingly, we will not imply a waiver of immunity against post-judgment interest in the Claims Act's general waiver of immunity against suit for breach of contract. *Onofrio v. Dept. of Mental Health*, 584 N.E.2d 619, 620 (Mass. 1992) (holding that because "the rules of construction governing statutory waivers are stringent," the statute waiving immunity for damages could not be interpreted as including an implied waiver of immunity against post-judgment interest) (citation omitted).

[26] Moreover, while we may agree that the availability of post-judgment interest is the better or more equitable rule, our decision today is constrained by the strictures of the Organic Act and strict rules of construction applicable in cases involving issues of sovereign immunity. Because the Organic Act gives the ability to waive immunity solely to the Legislature, courts lack the authority to find an implied waiver of immunity even in the face of strong public policy favoring such a finding. See *Erickson Oil Prod., Inc. v. State*, 516 N.W.2d 755, 759-60 (Wis. Ct. App. 1994); see *N.Y. Rayon Importing Co.*, 329 U.S. at 660, 663, 67 S. Ct. at 604, 606. To do so would be a usurpation of the role that Congress reserved for the Legislature. See *Erickson Oil Prod.*, 516 N.W.2d at 760; cf. *Bank of Guam v. Reidy*, 2001 Guam 14, at ¶ 22 (emphasizing that courts are not in the business of judicial legislation).⁴

⁴ This court is fully cognizant of the possible abuse that may result from our holding on the issue of post-judgment interest. However, we are loath to hastily suppose bad faith on the part of the government and instead presume that the government will undertake to satisfy its legal obligations in a timely and principled manner. Our holding today is shaped by adherence to the doctrine of separation of powers. While we are constrained from encroaching upon the prerogatives of the Legislature, we have no doubt that the Legislature will, in the event that our present confidence in the government is compromised, exercise its power to waive governmental immunity in a manner consistent with the

[27] We hold that in the absence of an express statutory waiver of immunity against post-judgment interest, the government is not liable for such interest. Accordingly, the trial court erred as a matter of law in awarding post-judgment interest in the instant actions.

IV.

[28] We hold that 5 GCA § 5475’s express waiver of governmental immunity against prejudgment interest applies to judgments awarding breach of contract damages. Accordingly, we **AFFIRM** the trial court’s award of prejudgment interest. However, we find that the Legislature has not waived immunity against post-judgment interest and therefore **REVERSE** that portion of the judgments and **REMAND** for entry of judgments not inconsistent with this opinion.

BENJAMIN J.F. CRUZ
Justice *Pro Tempore*

F. PHILIP CARBULLIDO
Associate Justice

PETER C. SIGUENZA, JR.
Chief Justice

public’s interest. *See Marx*, 866 F.2d at 298 (“[48 USC § 1421a] . . . , in effect, enables the Legislature of Guam to waive sovereign immunity . . . when, in the legislature’s opinion, the best interests of both the people and the government of Guam would be served . . .”) (quoting Letter of Roger Ernst, Assistant Secretary of the Interior, to Rep. Wayne N. Aspinall, Chairman, Committee on Interior and Insular Affairs (Mar. 9, 1959), *reprinted in* 1959 U.S. Cong. & Admin. News 2660).