IN THE SUPREME COURT OF GUAM

GOVERNMENT OF GUAM,
Plaintiff-Appellee,

v.

162.40 SQUARE METERS OF LAND, more or less, situated in the municipality of Agana and UNKNOWN OWNERS,
Defendants-Appellees,

ARTEMIO B. ILAGAN,
Defendant-Appellant,

ENGRACIA UNGACTA and FELIX F. UNGACTA,
Defendants-Appellees.

OPINION

Cite as: 2016 Guam 10

Supreme Court Case No.: CVA14-011
Superior Court Case No.: CV0863-81

Appeal from the Superior Court of Guam
Argued and submitted on July 2, 2015
Dededo, Guam

Appearing for Defendant-Appellant:
Seth Forman, *Esq.*
Dooley Roberts & Fowler LLP
Orlean Pacific Plaza
865 S. Marine Corps Dr., Ste. 201
Tamuning, GU 96913

Appearing for Plaintiff-Appellee:
David J. Highsmith, *Esq.*
Assistant Attorney General
Office of the Attorney General
590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

BEFORE: ALEXANDRO C. CASTRO, Presiding Justice *Pro Tempore*; JOHN A. MANGLONA, Justice *Pro Tempore*; ALBERTO E. TOLENTINO, Justice *Pro Tempore*.[1]

PER CURIAM:

[1] This case is on its second appeal after remand to the trial court in accordance with this court's opinion in *Government of Guam v. 162.40 Square Meters of Land More or Less, Situated in the Municipality of Agana* ("*162.40 Square Meters of Land I*"), 2011 Guam 17. On remand, the trial court determined that just compensation at the time of Plaintiff-Appellee Government of Guam's ("the Government") taking of Defendant-Appellant Artemio M. Ilagan's[2] property was $45,000.00, which amount was less than what had been deposited by the Government at the time of the taking. Ilagan appeals the trial court's determination concerning the rate of interest on the deficiency and its decision to award Ilagan simple, rather than compound, interest.

[2] For the reasons set forth below, we reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The facts underlying the original trial court proceedings can be found in *162.40 Square Meters of Land I*, 2011 Guam 17; thus, only those facts which are relevant to the current appeal will be recited.

[4] On November 27, 1981, the Government issued a Declaration of Taking, condemning 162.40 square meters of land owned by Ilagan for the purpose of transferring said property to

[1] All three full-time justices recused themselves from this matter. On July 9, 2014, pursuant to 7 GCA § 6108(a) and the Rule of Necessity, *United States v. Will*, 449 U.S. 200, 213-17 (1980), Chief Justice Robert J. Torres appointed the Honorable Alexandro C. Castro to serve as Presiding Justice *Pro Tempore* in this matter. Presiding Justice Castro then appointed the Honorable John A. Manglona and the Honorable Alberto E. Tolentino to serve as Justices *Pro Tempore*.

[2] On June 17, 2015, counsel for Defendant-Appellant Artemio M. Ilagan filed a Motion for Substitution of Party, informing the court that Mr. Ilagan passed away on February 9, 2015, and moving that Artemio B. Ilagan, in his capacity as Special Administrator for the Estate of Artemio M. Ilagan, be substituted as Defendant-Appellant in this action. This court granted the motion for substitution on June 30, 2015. For purposes of clarity, the references in this opinion to "Ilagan" are to the decedent, Artemio M. Ilagan.

Ilagan's neighbors, Defendants-Appellees Felix F. Ungacta and Engracia Ungacta ("the Ungactas"), pursuant to the Government's post-World War II "Agana Plan," a plan for condemnation and redistribution of land in the village of Agana. Record on Appeal ("RA"), tab 2 at 1-2 (Decl. of Taking, Dec. 1, 1981). The Government deposited in the Court Registry the amount of $9,744.00 as just compensation to Ilagan for the taking.

[5] The Government filed a Complaint in Condemnation on December 1, 1981. Ilagan contested the condemnation on grounds that the taking was not for a public purpose.

[6] The matter went to trial in 2009. In 2010, the trial court entered judgment in favor of Ilagan, holding that the taking was not part of the Agana Plan and, therefore, was not condemned pursuant to a valid public purpose. The Ungactas appealed.

[7] This court reversed the judgment, holding that there was sufficient evidence that Ilagan's property was taken pursuant to the Agana Plan and for a valid public purpose. The matter was remanded to the trial court to determine the issue of whether just compensation was paid to Ilagan.

[8] On remand, the trial court ruled that just compensation at the time of the taking was $45,000.00, *i.e.*, $35,256.00 more than the $9,744.00 that was deposited in the Court Registry at the time of the taking. As to the interest owed to Ilagan on this difference, the court awarded him simple interest at the rate of 6% per year from the date of the Declaration of Taking. Ilagan timely appealed.

II. JURISDICTION

[9] This court has jurisdiction over an appeal from a final judgment of the Superior Court of Guam. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-114 (2015)); 7 GCA §§ 3107, 3108(a) (2005).

III. STANDARD OF REVIEW

[10] Although a trial court's award of interest, including its decision to award simple, rather than compound interest, is generally reviewed for an abuse of discretion, *Guam United Warehouse Corp. v. DeWitt Transp. Servs. of Guam, Inc.*, 2003 Guam 20 ¶ 36 (citing *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 7), any statutory interpretation or legal analysis is reviewed *de novo*, *see Guam Top Builders, Inc. v. Tanota Partners*, 2012 Guam 12 ¶ 63 (citations omitted). Thus, the issue of whether interest on a condemnation award can be subject to a statutory cap, being a question of law, warrants *de novo* review.

IV. ANALYSIS

[11] The final clause of the Fifth Amendment of the United States Constitution—the "Takings Clause"—provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. This right has been extended to Guam by way of the Organic Act of Guam. 48 U.S.C.A. § 1421b(f) (Westlaw current through Pub. L. 114-114 (2015)) ("Private property shall not be taken for public use without just compensation."); *id.* § 1421b(u) (extending certain amendments to the United States Constitution to Guam, including the Fifth Amendment). "'The Takings Clause is a limitation on governmental power, and is intended to prevent 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.'" *Gutierrez v. Guam Power Auth.*, 2013 Guam 1 ¶ 32 (quoting *Cepeda v. Gov't of Guam*, 2005 Guam 11 ¶ 20). Thus, while the government is not prohibited from the taking of private property for a public purpose, the Fifth Amendment guarantees just compensation to the property owner for such a taking. *Id.* ¶¶ 32, 47 (citations omitted).

[12] Ilagan argues that the trial court's determination concerning the rate of interest on his just compensation award and its decision to award him simple, rather than compound, interest deprive him of his Fifth Amendment right to just compensation. *See* Appellant's Br. at 17-18 (May 15, 2014). We address each argument in turn.

A. Whether the Rate of Interest on a Just Compensation Award Can be Limited by Statute

[13] "The U.S. Supreme Court has defined 'just compensation' as 'the full and perfect equivalent in money of the property taken. The owner is to be put in as good [a] position pecuniarily as he would have occupied if his property had not been taken.'" *Gutierrez*, 2013 Guam 1 ¶ 47 (alteration in original) (quoting *United States v. Miller*, 317 U.S. 369, 373 (1943) (citing *Comm'r of Transp. v. Rocky Mountain, LLC*, 894 A.2d 259, 281 (Conn. 2006)). "[I]f disbursement of the award is delayed, the owner is entitled to interest thereon 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) (citing *Phelps v. United States*, 274 U.S. 341, 344 (1927); *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 306 (1923)); *see also United States v. Blankinship*, 543 F.2d 1272, 1275 (9th Cir. 1976) ("[I]n order 'that the owner shall not suffer loss and shall have the "just compensation" to which he is entitled[,]' . . . an 'extra amount' must be paid when the taking precedes the payment of compensation; '[i]nterest at a proper rate is a good measure.'" (third alteration in original) (quoting *Seaboard*, 261 U.S. at 306)).

[14] To that end, 21 GCA § 15107 provides, in pertinent part:

> Upon the filing of [a] declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such estate or interest therein as is specified in said declaration, shall vest in the government of Guam, and said lands shall be deemed to be condemned and taken for the use of the government of Guam, and the right to just

> compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the *said judgment shall include, as part of the just compensation awarded, interest at the rate of six percent (6%) per annum* on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

21 GCA § 15107 (2005) (emphasis added). At trial, Ilagan's appraiser, W. Nicholas Captain, provided the court with a report on what he deemed the rate of interest required to justly compensate Ilagan for the delay in payment. Using long-term U.S. Treasury rates—specifically, the 20- and 30-Year Treasury Constant Maturity Rate—on an annual basis, as well as compound interest, Captain determined that from the time of taking through January 1, 2008, the $45,000.00 just compensation award would have grown to $302,827.00.[2] *See* Def.'s Ex. I-N (Consulting Report, Dec. 29, 2008). The trial court, however, relying on 21 GCA § 15107, awarded Ilagan simple interest at the rate of 6% per annum on the deficiency. RA, tab 254 at 4 (Dec. & Order, Mar. 4, 2014).

[15] Ilagan argues that "[t]he Government cannot arbitrarily limit the rate of interest for just compensation purposes by statute." Appellant's Br. at 15. Citing to Ninth Circuit precedent, Ilagan contends that "any statutory rate of interest in a condemnation statute sets only a floor on interest and not a ceiling." *Id.* at 20 (citing *Schneider v. County of San Diego*, 285 F.3d 784, 793 (9th Cir. 2002); *United States v. 50.50 Acres of Land*, 931 F.2d 1349, 1355 (9th Cir. 1991); *Blankinship*, 543 F.2d at 1276. He further argues that "[t]he proper rate of interest in a condemnation action is a rate at which a reasonably prudent person would receive if investing so as to produce a reasonable return while maintaining safety of principal." *Id.* (citing *Schneider*,

[2] Using the same methodology, Captain also determined that the original deposit of $9,744.00 would have grown to $65,575.00 by January 1, 2008. *See* Def.'s Ex. I-N (Consulting Report, Dec. 29, 2008).

285 F.3d at 792; *50.50 Acres*, 931 F.2d at 1355; *Redevelopment Agency of the City of Burbank v. Gilmore*, 700 P.2d 794, 805-06 (Cal. 1985)).

[16] In response, the Government argues that because a Guam statute, 21 GCA § 15107, governs this issue:

> Mr. Ilagan must establish that there is a constitutional infirmity of some kind with either the statute itself or with the trial court's application of it in order to prevail. This is a burden he cannot meet. The Organic Act and the Constitution do not require an upward departure from the statutory interest rate of six percent.

Appellee's Br. at 4 (June 5, 2014) (citing 48 U.S.C.A. § 1421b(u); U.S. Const. amend. V). According to the Government, unless the owner can demonstrate that a higher rate is constitutionally required, the statutory interest rate "should generally be used." *Id.* at 8 (citing *Textainer Mgmt. Ltd. v. United States*, 99 Fed. Cl. 211 (Fed. Cl. 2011); *Vaizburd v. United States*, 67 Fed. Cl. 499 (Fed. Cl. 2005)). Quoting an unpublished Ninth Circuit case, the Government maintains that "[a] court must consider an alternative interest rate only if 'competent evidence is presented supporting another rate of interest as being more appropriate.'" *Id.* (quoting *Vacation Vill., Inc. v. Clark Cnty., Nev.*, 244 Fed. Appx. 785, 789 (9th Cir. 2007)).

[17] In setting interest at the rate of 6% per annum, the trial court took note of federal precedent holding that under the Federal Declaration of Taking Act, the 6% interest rate on a just compensation award "is a floor rather than a ceiling." RA, tab 254 at 4 (Dec. & Order) (citing *Blankinship*, 543 F.2d at 1276). However, the trial court then cited two U.S. Supreme Court cases for the proposition that "the local interest rate is a fair and reasonable method of ascertaining interest in condemnation proceedings." *Id.* (citing *Seaboard*, 261 U.S. at 305; *United States v. Rogers*, 255 U.S. 163, 169 (1921)). The court concluded, "Considering that the language of 21 G.C.A. § 15107 . . . prescribes a rate of six percent, the Court discerns no

statutory authority for imposing . . . a higher rate of interest on the just compensation due in this case." *Id.*

[18] The trial court's reasoning is flawed in two respects. First, the court failed to note the significant factual distinctions among *Seaboard*, *Rogers*, and the instant case. While in *Seaboard* and *Rogers* the Court found the application of a statutory interest rate to be proper, neither of those cases involved a question regarding the sufficiency of the statutory rate of interest. Instead, both appeals, from the early 1920s, were brought by the United States on the issue of whether interest should have been awarded against the government in the first place. *See Seaboard*, 261 U.S. at 303; *Rogers*, 255 U.S. at 168. The Court determined in both cases that interest was necessary in order to provide just compensation to the owners of the condemned properties; accordingly, the Court affirmed the lower courts' application of the local statutory interest rate in each case. *See Seaboard*, 261 U.S. at 305-06; *Rogers*, 255 U.S. at 169-70. Neither case involved the specific question of whether the applicable statutory rate of interest satisfied the requirement of "just compensation."

[19] Second, the trial court, in denying Ilagan a greater rate of interest, improperly relied on the fact that no statutory authority exists allowing interest at a rate higher than 6% as provided by 21 GCA § 15107. "Just compensation is provided for by the Constitution and the right to it cannot be taken away by statute." *Seaboard*, 261 U.S. at 304 (citing *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 327 (1893)). By setting the interest rate for just compensation awards at 6% per annum, the Guam Legislature seems to have assumed the right to determine what shall be the measure of compensation in eminent domain cases. "But this is a judicial, and not a legislative, question." *Monongahela*, 148 U.S. at 327. As put by the Supreme Court in *Monongahela*,

> The legislature may determine what private property is needed for public purposes; that is a question of a political and legislative character. But when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public, taking the property, through congress or the legislature, its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry.

Id. "Courts therefore are not bound by statutory interest rates in the condemnation context. Although the legislature can suggest possible rates, the ultimate determination of the rate of interest to be applied in a condemnation proceeding rests with the trial court." *State by Humphrey v. Baillon Co.*, 480 N.W.2d 673, 676 (Minn. Ct. App. 1992); *see also Lea Co. v. N.C. Bd. of Transp.*, 345 S.E.2d 355, 358-59 (N.C. 1986) ("Since the ascertainment of just compensation is a judicial function and compensation for delay in payment is a part of just compensation, determining the amount of additional compensation for delay in payment is also a judicial function." (citations omitted)).

[20] While courts are in general agreement that they are not bound by statutory interest rates in condemnation proceedings, "[s]everal jurisdictions have applied an interest rate set by statute *if that interest rate satisfies the requirement that just compensation be paid for a taking*." *Lea Co.*, 345 S.E.2d at 359 (emphasis added) (citing *Miller v. United States*, 620 F.2d 812, 837 (Ct. Cl. 1980); *In re City of New York*, 449 N.E.2d 399, 401 (N.Y. 1983)). Some jurisdictions have held that the statutory rate is presumptively reasonable, allowing the landowner to rebut the rate's reasonableness. *E.g.*, *Liberty Square Dev. Trust v. City of Worcester*, 808 N.E.2d 245, 251-52 (Mass. 2004) ("[A]ny interest rate set by statute enjoys a rebuttable presumption that it is a reasonable rate that would satisfy constitutional requirements. A claimant seeking compensation above the statutory rate may overcome that presumption by showing that the statutory rate is so low that it fails to meet the constitutional standard of reasonableness."

(citations omitted)); *State by Humphrey v. Jim Lupient Oldsmobile Co.*, 509 N.W.2d 361, 364 (Minn. 1993) ("[T]he trial court should presume that the statutory rate is reasonable and, therefore, meets the requirements of just compensation and should order judgment at that rate unless the condemnee rebuts this presumption and affirmatively shows that another rate is reasonable and affords just compensation."); *In re City of New York*, 449 N.E.2d at 401 ("The Legislature may fix a fair or prima facie measure of the proper interest rate in the first instance, . . . but while that legislatively fixed rate is presumptively reasonable, it is not determinative of the issue. The claimant may introduce relevant evidence of prevailing market rates to rebut the statutory presumption of reasonableness and demonstrate that some higher rate must be paid to afford him just compensation."). *Contra Leverty & Hurley Co. v. Comm'r of Transp.*, 471 A.2d 958, 960 n.4 (Conn. 1984) (declining to accord presumption status to statutory interest rate).

[21] Other jurisdictions have held that a trial court must make an independent assessment of the rate of interest necessary to provide the landowner with just compensation, rather than simply rely upon statutory rates. In *Blankinship*,[3] the Ninth Circuit "directed district courts to use a fact-specific approach to determine if the statutory rate was 'proper and reasonable,' or if the Fifth Amendment required a higher rate of interest." *50.50 Acres of Land*, 931 F.2d at 1355 (quoting *Blankinship*, 543 F.2d at 1274). Under the Ninth Circuit approach:

> the court must determine if the statutory formula is constitutionally inadequate given the factual circumstances of the case. The court should receive evidence from each side and consider a variety of investment measures. If the court finds the statutory formula to be inadequate, it must then determine the appropriate rate to be used.

[3] In *Blankinship*, the court held that "the 6 percent figure employed by Congress in the Declaration of Taking Act cannot be viewed as a ceiling on the rate of interest allowable . . . . It will, of course, operate as a floor. No lesser rate than 6 percent is consistent with the intent of Congress; a rate no greater than 6 percent in some instances will contravene the Fifth Amendment." 543 F.2d at 1276.

Id. (citing *Blankinship*, 543 F.2d at 1274). The standard to be used in determining the appropriate rate of interest is "to fix interest . . . at the rate 'a reasonably prudent person investing funds so as to produce a reasonable return while maintaining safety of principal' would receive." *Id.* (quoting *United States v. 429.59 Acres of Land*, 612 F.2d 459, 465 (9th Cir. 1980)); *see also Jim Lupient Oldsmobile Co.*, 509 N.W.2d at 363 ("We believe that a reasonable rate is what a reasonable and prudent investor would earn while investing so as to maximize the rate of return over the relevant period of time, yet guarantee safety of principal."); *State by Spannaus v. Carney*, 309 N.W.2d 775, 776 (Minn. 1981) ("The landowner is entitled to that return which would have been available if the landowner has been timely paid and had made reasonable and prudent investments.").

[22] We are persuaded by the "rebuttable presumption" approach and hold that the statutory rate set by 21 GCA § 15107 is entitled to a presumption of reasonableness. A landowner seeking compensation above the statutory rate may rebut the presumption by showing that the rate fails to meet the constitutional standard of "just compensation." Thus, the court is not bound by the statutory rate and must consider evidence offered to rebut the presumption of reasonableness. Furthermore, we hold that the statutory rate operates as a floor; while the court is not bound by the rate, it may only deviate upward, not downward. *See Blankinship*, 543 F.3d at 1276.

[23] Here, the trial court's Decision and Order made no mention of the evidence presented by Ilagan in support of his request for a rate above the statutory rate of 6%. Instead, it appears the court believed it was bound by 21 GCA § 15107, noting that "the Court discerns no statutory authority for imposing . . . a higher rate of interest . . . ." RA, tab 254 at 4 (Dec. & Order). This strict application of the statutory interest rate without a determination of whether the rate actually provides just compensation to Ilagan is inconsistent with the overwhelming precedent that the

proper rate of interest is a judicial determination. Under either the "presumption of reasonableness" approach or the "independent assessment" approach, Ilagan was entitled to not only put forth evidence in support of his argument that an interest rate beyond that provided by statute is required in order to provide him just compensation, but to have that evidence assessed by the trial court in determining the proper rate. The trial court's failure to consider whether the 6% interest rate actually provided Ilagan just compensation constituted an abuse of discretion.

[24] Because the trial court did not analyze the evidence presented by Ilagan and determine whether he successfully rebutted the presumption of reasonableness attached to the statutory rate, we must remand the matter to the Superior Court for determination of this issue in the first instance. Because of the decades-long duration of this case – over 34 years – as well as the fact that Mr. Ilagan passed away during the pendency of this appeal, we strongly urge the trial court and the parties to reach finality of this case. In order to prevent unnecessary delay of the proceedings below and to avoid giving the litigants a second bite at the apple, we instruct the trial court to render its interest award on the basis of the evidence already in the record, allowing new evidence of the applicable interest rates only for those dates for which evidence was not already presented. Captain's report provided the annual Treasury rates from January 1982 to January 2008. Thus, the trial court should consider new evidence of the applicable interest rates since January 2008 and through payment of the just compensation award. Moreover, as we hold that the statutory rate operates as a floor, in rendering its interest award, the trial court may deviate above, but not below, 6%.

[25] We now turn to the issue of whether the interest rate should be simple or compounded.

B. Whether "Just Compensation" Requires the Award of Compound, Rather than Simple, Interest

[26] At trial, Ilagan argued that he was entitled to compound interest on the deficiency award (*i.e.*, the difference between the value of the property at the time of the taking, $45,000.00, and the Government's original deposit for the taking, $9,744.00), as calculated by Captain in his consulting report. *See* Def.'s Ex. I-N (Consulting Report). The trial court denied Ilagan's request for compound interest, and instead awarded him simple interest at the rate of 6% as provided under 21 GCA § 15107. On appeal, Ilagan argues that "[c]ompounding of interest is necessary to satisfy the constitutional mandate of just compensation." Appellant's Br. at 22. He reasons that "if the full value of just compensation had been deposited with the Court contemporaneously with the filing of the declaration of taking, [he] would have been able to earn compound interest." *Id.* (quoting *United States v. 319.46 Acres of Land*, 508 F. Supp. 288, 291 (W.D. Okla. 1981)).

[27] The Government admits that in some instances, compound interest may be required to meet the "just compensation" requirement of the Fifth Amendment, Appellee's Br. at 10 (citing *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 10 (1984); *Innovair Aviation, Ltd. v. United States*, 83 Fed. Cl. 498, 507 (2008)), but retorts that simple interest should be awarded "unless special circumstances dictate otherwise," *id.* at 9. The Government contends that in this case, "there are no special circumstances that would justify an award of compound interest and the Superior Court did not abuse its discretion when it refused to make such an award." *Id.* at 10

[28] The trial court, in denying Ilagan compound interest, relied upon this court's holding in *Guam United Warehouse Corp. v. DeWitt Transportation Services of Guam, Inc.*, 2003 Guam 20, wherein this court held that "[t]he silence of a statute to specifically allow for compound interest 'means that the interest shall be calculated on the basis of simple interest rather than

compound interest in the absence of some special circumstance dictating otherwise.'" *DeWitt*, 2003 Guam 20 ¶ 38 (quoting *Norman v. Norman*, 506 N.W.2d 254, 256 (Mich. Ct. App. 1993)). The trial court stated that "[c]onsidering that the language of 21 G.C.A. § 15107 is silent regarding compound interest . . . , the Court discerns no statutory authority for imposing compound interest . . . ." RA, tab 254 at 4 (Dec. & Order).

[29] Just as the trial court erred in simply relying on the prescription of a 6% statutory rate of interest as determinative of the issue of the proper rate to be applied to the deficiency in this case, the court likewise erred in relying on the silence in 21 GCA § 15107 as being dispositive of the issue of whether compound, rather than simple, interest should be awarded. In *DeWitt*, this court considered whether compound interest was required by 18 GCA § 47106, which concerns the legal rate of interest on loans.[4] Clearly, the proper rate of interest in such a situation can be set by the legislature. As discussed above, however, the determination of the rate of interest required to provide just compensation in a condemnation proceeding is a judicial, rather than a legislative, function. Therefore, unlike an award of interest on a loan, the trial court is not bound by the silence in 21 GCA § 15107 when determining whether or not compound interest is required to provide a condemnee interest sufficient to satisfy the "just compensation" requirement of the Fifth Amendment. *See, e.g.*, *Otay Mesa Prop., L.P. v. United States*, 779 F.3d 1315, 1327 (Fed. Cir. 2015) ("The Supreme Court has long held that 'just compensation' includes interest compounded from the date of a taking when payment for the taking does not

[4] Title 18 GCA § 47106 provides:

> **§ 47106. Legal Rate of Interest.**
>
> The rate of interest upon the loan or forbearance of any money, goods or things in action, or on accounts after demand or judgment rendered in any court of the territory, shall be six percent (6%) per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest not exceeding the rates of interest specified in Title 14 of this Code.

18 GCA § 47106 (2005).

coincide with the taking itself." (citing *Phelps*, 274 U.S. at 344; *Seaboard*, 261 U.S at 306)); *429.59 Acres of Land*, 612 F.2d at 465 ("Nor did the Commission err by compounding the 6.635 average rate of interest to arrive at a figure of 7.4 percent simple interest per annum. Compounding of interest is appropriate to compensate the landowners for the loss of use of the interest that the deficiency award would have been producing for them during the interim."); *Nat'l Food & Beverage Co. v. United States*, 105 Fed. Cl. 679, 704 (2012) ("The Federal Circuit has mandated compound interest where it is necessary 'to accomplish complete justice' under the Takings Clause." (quoting *Dynamics Corp. of Am. v. United States*, 766 F.2d 518, 520 (Fed. Cir. 1985))). Thus, the trial court erred in simply relying upon the silence in the statute as being dispositive of the issue; where, as here, the condemnee argues that simple interest would be inadequate and presents evidence in support of an award of compound interest, the court should assess whether such compounding of interest is necessary to satisfy the requirement of just compensation.

[30] We find that compounding of interest is necessary to provide just compensation in this case. Again, 34 years have passed since the time of the taking. If the Government had deposited the full value of the property in 1981 ($45,000.00), Ilagan would have been able to earn compound interest on that amount. Compound interest is necessary to compensate Ilagan for the loss of use of the interest that the deficiency award would have been producing for him during the interim. *See 429.59 Acres of Land*, 612 F.2d at 465.

V. CONCLUSION

[31] The determination of the proper rate of interest to satisfy the requirement of just compensation in a takings case is a judicial, rather than a legislative, function. Therefore, courts are not bound by the statutory interest rate. The statutory rate, however, is entitled to a

presumption of reasonableness, which may be rebutted by a landowner seeking compensation above the statutory rate. The trial court erred in failing to consider Ilagan's evidence regarding his entitlement to a rate above the 6% provided in 21 GCA § 15107. The matter is remanded to the trial court to determine in the first instance whether under the circumstances of this case, Ilagan is entitled to an interest rate above the statutory rate. In reaching such decision, the trial court is to rely on the evidence already in the record regarding the applicable interest rates through January 2008, and open the record to new evidence only on the applicable interest rates since that date.

[32] Additionally, we determine that compounding of interest is necessary to provide Ilagan the just compensation to which he is entitled.

[33] Accordingly, we **REVERSE** and **REMAND** for further proceedings not inconsistent with this opinion.

/s/
JOHN A. MANGLONA
Justice *Pro Tempore*

/s/
ALBERTO E. TOLENTINO
Justice *Pro Tempore*

/s/
ALEXANDRO C. CASTRO
Presiding Justice *Pro Tempore*