

INTEREST AND USURY

Although FSM Public Law No. 2-33, regarding usury, did not appear in the 1982 codification of FSM statutes, it remained effective as did every other law which took effect after October 1, 1981 and it is currently in effect as codified in the 1987 supplement to the FSM Code at 34 F.S.M.C. 201-207. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 36 (App. 1989).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Interest on unpaid social security taxes is assessed at 12% from date due until paid even if part of a court judgment and even though court judgments normally bear a 9% interest rate. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

Plaintiff's waiver of a portion of its monetary claim cannot summarily disprove an affirmative defense of usury. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

In commercial credit transactions, no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of twenty-four percent. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

When an agreement provides for 18% interest per annum on the principal remaining after the debtor's last payment, no usury issue arises, and when the interest charged cannot be said to be arbitrary and capricious on any other basis, the interest portion of the agreement is binding. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

No person in a commercial credit transaction may directly or indirectly receive or charge interest which exceeds an annual percentage rate of twenty-four percent. Bank of the FSM v. Mori, 11 FSM R. 13, 14 (Chk. 2002).

Because the repeal of a statutory prohibition against usury releases any penalties imposed and permits enforcement of the debtor's obligation in accordance with the parties' agreement, it follows that as to a usury defense, the parties' agreement is governed by the law existing when

the agreement is enforced. Bank of the FSM v. Mori, 11 FSM R. 13, 15 (Chk. 2002).

A plaintiff is only entitled to a judgment which represents the amount of money he lent to the defendants and the \$100,000 in interest he seeks cannot be awarded when it is the product of an unlawful and usurious interest rate. Walter v. Damai, 12 FSM R. 648, 649 (Pon. 2004).

A creditor who engages in a usurious credit transaction has no right to collect or receive any interest and this prohibition extends to prejudgment interest. Walter v. Damai, 12 FSM R. 648, 650 (Pon. 2004).

Interest on unpaid social security taxes continues to accrue at 12% until paid, even though a judgment normally bears interest at 9%. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

The general rule is that, in the absence of express authorization, interest is to be computed on a simple basis rather than compounded. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

When there is no authorization for compound interest in the settlement agreement and when it is apparent that the parties, in settling their prior lawsuit, intended to apply the legal or judgment rate of interest to any unpaid settlement balances, the plaintiff's damages must therefore be calculated on a simple interest basis. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

A lease agreement's penalty provision, which charged either one or two per cent per day (365% or 730% per annum respectively), is void since either interest rate is usurious. The penalty for charging a usurious interest rate is that the person charging such a rate has no right to receive or collect any interest. Uehara v. Chuuk, 14 FSM R. 221, 225-26 (Chk. 2006).

The legal interest rate is nine per cent per annum simple interest – not compounded. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 n.2 (Yap 2006).

If appellants post a supersedeas bond, they are automatically entitled to stay once the court has approved the bond. Statutory post-judgment interest, however, will continue to accrue until the judgment is paid. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 505 (Yap 2006).

The court has the discretion to award pre-judgment interest, but it is not a matter of right unless the debtor knows precisely what he is to pay and when payment is due. The purpose of awarding interest is to compensate the complaining party for losing use of the funds. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the unpaid balance, an award of pre-judgment interest has been upheld. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

A court has the discretion to award pre-judgment interest, but it is not a matter of right unless the debtor knows precisely what he is to pay and when payment is due. The purpose of awarding interest is to compensate the complaining party for losing use of the funds. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

When the parties have a written agreement stating that interest would be added to the

unpaid balance, an award of pre-judgment interest will be upheld. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

When the defendant agreed to make regular payments but there was no written agreement to pay interest on the defendant's open account; when the ledger page showing payments contains a 25-cent charge at the time of each payment but this does not correspond to an interest calculation; and when there is no evidence to show interest was discussed or agreed to by the defendant, the plaintiff is not entitled to pre-judgment interest. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Pre-judgment interest cannot be awarded until the court has determined when payment would reasonably have been due. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

Since 18% per annum is not a usurious rate of interest under FSM law, the defaulting defendants will be liable for this item of damages when the defaulting defendants agreed, by their agent's signature on the invoices, to pay this rate on overdue accounts. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

If the additional 33% charge for collection were considered a penalty instead of attorney's fees, it would then have to be added to the any other penalties and interest to determine the true interest rate, and adding 33% to the 18% contract rate would yield an interest rate over 50%, which is usurious interest. When a creditor seeks a usurious interest rate, the penalty is that the creditor will not be permitted to recover any interest whatsoever. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

The legal rate of interest is 9%, and is simple interest, not compounded. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

When there is no evidence in the record that the defendant knew of, or had agreed to, a contractual requirement that he pay interest and the ledger sheets admitted into evidence do not show any interest charges and when none of the situations where the courts have previously allowed prejudgment interest is present, prejudgment interest will be denied. George v. Albert, 17 FSM R. 25, 33 (App. 2010).

When the parties have had an agreement stating that interest would be added to an unpaid balance, the FSM court has awarded prejudgment interest, and, prejudgment interest at the 9% statutory judgment rate has also been awarded when the defendant knew precisely the amount to which he was obligating himself and the effective date of that commitment to pay, and when the defendant was liable for conversion. George v. Albert, 17 FSM R. 25, 33 (App. 2010).

The statutory interest rate is 9% per year, which the court may impose prejudgment when the defendant knew precisely the amount to which he was potentially obligating himself, and the effect date of that commitment. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 n.6 (Pon. 2011).

The general rule is that in applying partial payments to an interest-bearing debt which is due, in the absence of an agreement or statute to the contrary, the payment will be first applied to the interest due. Salomon v. Mendiola, 20 FSM R. 138, 140 (Pon. 2015).

At the start of a typical loan repayment, the installment payments are usually not much

larger than the amount of interest accrued and due. The bulk of the installment payment is then applied to interest and the remaining amount goes to reducing the principal so that at the next installment payment, if made on time, a little less is needed to pay the accrued interest and a little more can go to the reduction of principal. This does not constitute usury unless the interest rate itself is higher than permitted by statute. Salomon v. Mendiola, 20 FSM R. 138, 140-41 (Pon. 2015).

If the loan payments are late, more interest will accumulate and more of the payment will go to cover the interest and less will go to reducing the principal. Enough late payments or a missed payment and the next payment may end being applied all to accrued interest with nothing left over to apply to the principal. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

When a court finds a lack of an enforceable contract, and no evidence was submitted to support the plaintiff's request for interest, the plaintiff may not recover on a claim for 1.5% interest per month based on the parties' unenforceable agreement. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 19 (Pon. 2016).

Usury is the exacting, taking, or receiving of an interest charge in an amount or at a rate in excess of that allowed by law for the use of money or extension of credit. Setik v. Mendiola, 21 FSM R. 537, 556-57 (App. 2018).

In a commercial credit transaction, no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of 24 percent. Setik v. Mendiola, 21 FSM R. 537, 557 (App. 2018).

In applying partial payments to an interest-bearing debt which is due, in the absence of an agreement or statute to the contrary, the payment will be first applied to the interest due. Thus, at the start of a loan repayment, the bulk of a monthly payment is applied to the accrued interest and the remaining amount goes to reducing the principal so that at the next monthly payment, if made on time, a little less is needed to pay the accrued interest and a little more will go to reducing the principal. This is not usury unless the interest rate (including fees) is itself higher than the statutory cap. Setik v. Mendiola, 21 FSM R. 537, 557 (App. 2018).

A 9% interest rate is not usurious. The court thus has no power to disregard it, or to otherwise vary it, lower it, or raise it because the parties agreed to the 9% rate – the bank offered to lend the loan applicants money at 9%, and those applicants, who borrowed money, agreed to borrow it at 9%. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 474 n.1 (Pon. 2020).

Congress created the FSM Development Bank, and gave it the power to lend money either with or without security, and if with security upon such terms as may from time to time seem expedient. The bank's ability to set terms is, of course, limited by the usury statutes. Those statutes prohibit (make usurious) credit transactions that directly or indirectly exceed an annual interest rate of 24%. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

FSM law prohibits (make usurious) commercial credit transactions that directly or indirectly exceed an annual interest rate of 24%, and consumer credit transactions made after October 31, 1998, that directly or indirectly exceed 24% annual interest. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

A "late fee" of 15% per month on unpaid invoices is an annual interest rate of 180%, and these "late fees" charge interest, either directly or indirectly, at a rate that is usury and that is thus prohibited. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

The penalty for charging, or trying to charge, a usurious rate, is that the person or entity charging, or trying to charge, such a rate, has no right to collect or receive any interest. It does not matter whether the other party agreed to pay the usurious rate or not or whether the interest sought is prejudgment or post-judgment. This penalty cannot be avoided by reducing the interest to a legal rate or by calling it a fee because that would defeat the statute's purpose. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

The statutory penalty is that the creditor, who charges or tries to charge a usurious interest rate, has no right to any interest whatsoever. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

When a debtor has paid a creditor's invoice that included usurious interest, the debtor is entitled to restitution of all the usurious interest "late fees" paid. Yoruw v. FSM Dep't of Educ., 22 FSM R. 596, 599 (Yap 2020).

The FSM usury statutes prohibit (make usurious) commercial credit transactions that directly or indirectly exceed an annual interest rate of 24%, and consumer credit transactions made after October 31, 1998, that exceed an annual interest rate of 24%. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 606-07 (Pon. 2020).