

G.R. No. 224324 – *National Power Corporation, petitioner, versus Heirs of Salvador Serra Serra et al., respondent.*

Promulgated:
JAN 22 2020



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SEPARATE OPINION

CAGUIOA, J.:

I concur, except as to the imposition of interest.

I reiterate my position in my *Concurring & Dissenting Opinion* in *Lara's Gifts & Decors, Inc., v. Midtown Industrial Sales, Inc.*,¹ that not all obligations consisting in the payment of a sum of money should be considered forbearance within the authority of the Bangko Sentral ng Pilipinas (BSP). The term “forbearance” **must be construed in the narrow context of the Usury Law** and in relation to the other provisions found therein. Hence, I subscribe to the definition provided in *Eastern Shipping Lines, Inc. v. Court of Appeals*,² which adopted the definition that a forbearance, within the context of the usury law, is a “contractual obligation of [a] lender or creditor to refrain, during [a] given period of time, from requiring [the] borrower or debtor to repay [a] loan or debt then due and payable.”³ **In other words, a forbearance should be understood as akin to a loan and must involve 1) an agreement or contractual obligation; 2) to refrain from enforcing payment or to extend the period for the payment of; 3) an obligation that has become due and demandable; and 4) in return for some compensation, i.e., interest.**⁴

The foregoing requisites are not present in the instant case. Notably, there is no contractual obligation on the part of the property owner to refrain from enforcing payment of just compensation in exchange for the payment of interest. Rather, the property owner merely fails to exact payment as the amount of just compensation must still be determined. **As the proceedings for the determination of just compensation has absolutely nothing to do with usury, the BSP-prescribed rate of 12% per annum until June 30, 2013 and 6% per annum thereafter⁵ should not apply.**

At the same time, however, I recognize that a significant period often runs between the time the State takes the property and the time the courts finally adjudge the amount of just compensation due. **Strictly speaking, there is no “in delay” or “in default” or “mora” pursuant to Article**

¹ G.R. No. 225433, August 28, 2019.

² 304 Phil. 236 (1994).

³ Id. at 251, citing Black's Law Dictionary (1990 ed., 644), which in turn cited the case of *Hafer v. Spaeth*, 22 Wash. 2d 378, 156 P. 2d 408, 411.

⁴ *Supra* note 1.

⁵ *Ponencia*, p. 8.



2209 of the Civil Code because the amount of just compensation due at the time of taking is, at said time, undetermined. Hence, the State should not be held liable for compensatory interest for the delay in the payment of just compensation as the amount owed to the property owner has yet to be determined with finality.⁶ Nevertheless, the opportunity cost of the money that the property owner failed to receive in full at the time of the taking of the property cannot be ignored. In true sales, the property owner and the prospective buyer are free to negotiate on a higher selling price should payment be at a later date or on installment.⁷ In *Republic of the Philippines v. Spouses Bunsay*,⁸ the Court explained however:

x x x **[T]he transfer of real property by way of expropriation is not an ordinary sale contemplated under Article 1458 of the Civil Code. Rather, it is akin to a “forced sale” or one which arises not from the consensual agreement of the vendor and vendee, but by compulsion of law. Unlike in an ordinary sale wherein the vendor sets the selling price, the compensation paid to the affected owner in an expropriation proceeding comes in the form of just compensation determined by the court.**

In turn, just compensation is defined as the **fair and full equivalent of the loss incurred by the affected owner.** More specifically:

x x x [J]ust compensation in expropriation cases is defined “as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker’s gain but the owner’s loss. **The word ‘just’ is used to modify the meaning of the word ‘compensation’ to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample.**” x x x⁹

Hence, it is reasonable to require the State to pay interest to compensate the property owner for the opportunity cost of immediately losing his or her property without receiving immediate full payment therefor. I thus wholly agree that **“[i]nterest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.”**¹⁰

In other words, since full payment of just compensation cannot, in reality, be made at the time of the taking of the property, the State must compensate the property owner for the loss he or she incurs from the actual delay (not legal “in delay” or “*mora*” under Article 2209) in the payment of

⁶ See CIVIL CODE, Article 2213 which states that:

Article 2213. Interest cannot be recovered upon **unliquidated claims** or damages, except when the demand can be established with reasonable certainty.

⁷ See discussion on time-price doctrine in my Concurring and Dissenting of Opinion in *Lara’s Gifts & Decors, Inc., v. Midtown Industrial Sales, Inc.*, supra note 1.

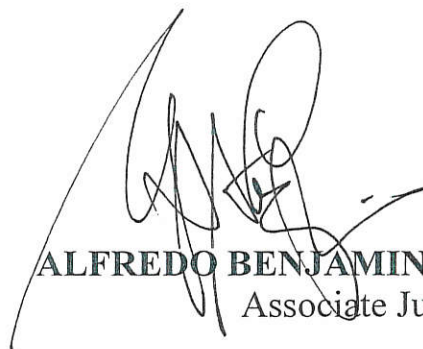
⁸ G.R. No. 205473, December 11, 2019.

⁹ Id. at 8. Citations omitted, additional emphasis and underscoring supplied.

¹⁰ *Evergreen Manufacturing Corp. v. Republic*, 817 Phil. 1048, 1065 (2017).

the compensation due. Therefore, the State is liable for interest on the payment of just compensation, not because the amount due constitutes a forbearance of money under the Usury Law nor because the State is “in default” under Article 2209 of the Civil Code and thus liable for compensatory interest. **Interest is awarded as an indispensable part of just compensation, in order “to ensure that the owner is fully placed in a position as whole as he was before the taking occurred.”**¹¹ Under these premises and for lack of any other convenient metric, I find it reasonable to impose **by analogy** the legal interest rate of 6% *per annum* under Article 2209 of the Civil Code.

Once the decision awarding just compensation becomes final and executory however, the obligation of the State to immediately pay the total amount awarded becomes **liquidated and immediately demandable**.¹² Hence, compensatory interest under Article 2209 of the Civil Code begins to run on the total just compensation value at the 6% legal rate from the time the decision becomes final and executory until full payment.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

¹¹ *Republic v. Decena*, G.R. No. 212786, July 30, 2018.

¹² CIVIL CODE, Art. 2213; see also my Concurring and Dissenting Opinion in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, supra note 1.