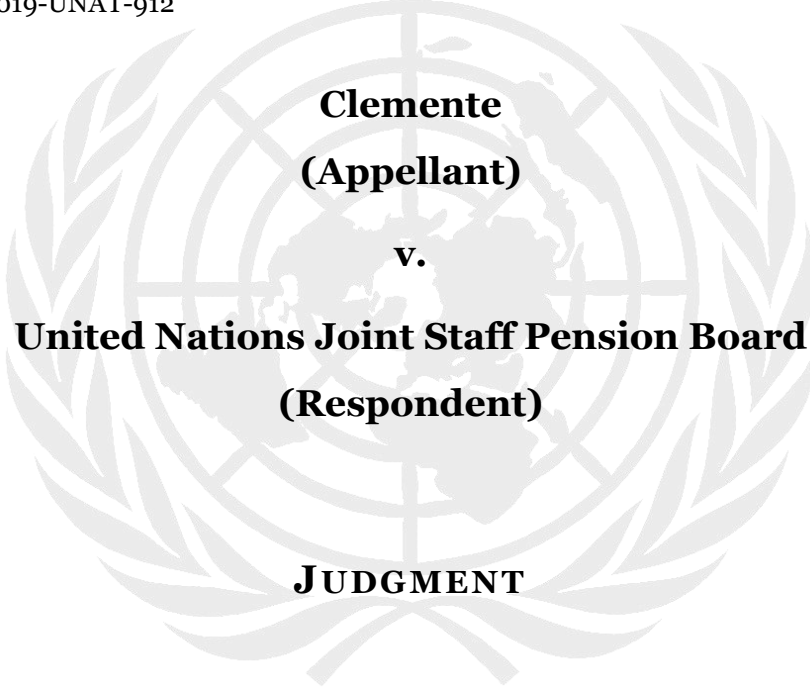




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2019-UNAT-912



**Clemente
(Appellant)**
v.
**United Nations Joint Staff Pension Board
(Respondent)**

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Richard Lussick
Case No.:	2018-1206
Date:	29 March 2019
Registrar:	Weicheng Lin

Counsel for Appellant:	George G. Irving
Counsel for Respondent:	Paul Dooley

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Vivian Clemente against a decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively) refusing to pay her a widow's benefit in terms of Article 34 of the Regulations of the United Nations Joint Staff Pension Fund (Regulations and UNJSPF or the Fund, respectively). The Fund's decision was communicated to Ms. Clemente on 6 August 2018. Ms. Clemente filed the appeal on 2 November 2018, and the Fund filed its answer on 19 December 2018.

Facts and Procedure

2. Mr. Rodolfo Clemente, a national of the Philippines, participated in the Fund from 1 October 1999 to 30 November 2015 as a staff member of the World Intellectual Property Organization (WIPO). Upon separation from service, Mr. Clemente opted for a reduced retirement benefit with one-third lump sum under Article 28 of the Regulations. Mr. Clemente died on 29 June 2016, a mere seven months after retiring from service.

3. Ms. Clemente, the Appellant, claims to be the spouse of Mr. Clemente and that she is, therefore, entitled to a widow's benefit under Article 34 of the Regulations. Article 34 provides *inter alia* that a widow's benefit will be payable to the surviving spouse of a participant who was entitled to a retirement benefit at the date of the participant's death if she was married to the deceased at the date of his separation from service and remained married to him until his death.

4. Ms. Clemente is also a national of the Philippines, currently employed with the United Nations Office at Geneva (UNOG). She has participated in the Fund since 5 December 2001.

5. On 6 May 1978, Mr. Clemente married Ms. Madelyn Agbayani in Santa Maria, Bulacan in the Philippines. On 24 March 1995, Mr. Clemente married Ms. Clemente in Quezon City in the Philippines. Mr. and Ms. Clemente were issued a marriage certificate which refers to each of their status as single and makes no mention of Mr. Clemente's marriage to Ms. Agbayani. At the time of their marriage, Mr. Clemente's marriage to Ms. Agbayani was still in existence pending annulment proceedings. On 21 August 1996, about a year after their marriage, the Regional Trial Court of the Philippines issued an Order

that Mr. Clemente's first marriage to Ms. Agbayani was "null and void". Although the Order is dated in 1996, it reflects that the petition for annulment had been served on Ms. Agbayani on 17 February 1995, approximately one month before Mr. and Ms. Clemente's marriage. On 24 April 2014, approximately eight years after the Order was issued, the Regional Trial Court issued a "certificate of finality" rendering the annulment "final and executory".

6. Mr. and Ms. Clemente had one minor daughter. On 26 October 2016, Ms. Clemente applied for the widow's benefit under Article 34 of the Regulations and her minor daughter applied for a surviving dependent benefit, which was granted.

7. Throughout Mr. Clemente's participation in the Fund, he listed Ms. Clemente as his spouse. Both WIPO and UNOG reported their marital status to the Fund. Switzerland recognized Ms. Clemente and Mr. Clemente's marital status and granted them residential status as spouses. Switzerland continues to recognize Ms. Clemente's status as a widow. The first time the Fund was made aware of Mr. Clemente's first marriage was when Ms. Clemente brought it to the attention of the Fund when seeking survivor benefit payments.

8. By letter dated 30 April 2017, the Fund informed Ms. Clemente that per its review of the Philippine law her marriage to Mr. Clemente was bigamous, and thus null and void, because it pre-dated the annulment of Mr. Clemente's first marriage. Accordingly, the Fund rejected her request for widow benefits under Article 34 on the grounds that she did not meet the requirements.

9. On 26 July 2017, Ms. Clemente requested a review of the Fund's decision to the Standing Committee. Ms. Clemente provided a legal opinion of a legal practitioner in the Philippines. The legal opinion indicated that a void marriage in the Philippines is deemed to be valid until declared otherwise in judicial proceedings; and as her marriage had not been declared invalid by any court in the Philippines, it must be presumed to be valid.

10. On 24 August 2017 and 26 December 2017, the Fund wrote to the Permanent Mission of the Philippines in New York and Geneva, respectively explaining the situation and asking for advice on the legal position. The key part of the letter reads:

We understand that Article 83 of the Civil Code of the Philippines provides that if a person was previously married, then any marriage subsequently contracted by that person while his or her first spouse is alive "shall be illegal and void from its performance, unless [...]"

the first marriage was annulled or dissolved”[.]? The Fund has interpreted this provision as requiring the previous marriage to be annulled before the subsequent marriage is celebrated. On this basis, the Fund has taken the position that Mr. Clemente’s marriage to Ms. [Clemente] was illegal and void, given that Mr. Clemente’s marriage to Ms. Agbayani was not annulled until after Mr. Clemente’s purported marriage to Ms. [Clemente].

Having regard to the foregoing background, we would be grateful for your guidance on the following two questions as they pertain to Philippine law:

- (a) Is the Fund’s interpretation of Article 83 of the Civil Code correct (*i.e.*, is it correct that Mr. Clemente’s marriage to Ms. [Clemente] was illegal under Philippine law), or did the subsequent annulment of Mr. Clemente’s first marriage retroactively validate Mr. Clemente’s second marriage;
- (b) Does cohabitation in the Philippines confer similar rights as marriage, specifically including pension rights? [...] If so, [...] Are there any differences between marriage and cohabitating couples *vis-a-vis* pension rights?

11. The Fund to date has not received a reply.

12. The Philippine Statistical Authority continues to maintain the Certificate of Marriage issued to Ms. Clemente as a valid document, which it provided to Ms. Clemente as recently as 29 October 2018.

13. On 6 August 2018, the Standing Committee communicated its decision to Ms. Clemente, which upheld the decision of the Fund to reject her request for widow benefits. The letter stated in pertinent part:

[...] the Committee concluded that your marriage to Mr. Clemente was not legally valid and could not, therefore, be recognized for the purpose of paying you a widow’s benefit under Article 34 of the Fund’s Regulations. In particular, the Committee noted that, when you and Mr. Clemente sought to marry, in the Philippines, on 24 March 1995, Mr. Clemente was already married to another individual. Mr. Clemente’s previous marriage was annulled on 21 August 1996, *after* your marriage to Mr. Clemente, with the annulment order being rendered final and executory on 24 April 2014. Therefore, having regard to Philippine law, which applies in this case, the Committee concluded that your marriage to Mr. Clemente was not valid.

The Committee also considered whether it could award you a widow’s benefit on the basis that you had cohabited with Mr. Clemente in a marriage-like relationship for approximately 20 years. In accordance with previous decisions of the Pension Board, the Fund is able to recognize non-traditional unions as being equivalent to marriage if, under national law, they cover similar legal affects as marriage, specifically including pension

rights.¹ In the Philippines, however, cohabitation is not equivalent to marriage. Among other things, the Committee noted that under the Social Security System of the Philippines, cohabitation does not automatically establish an entitlement to a survivor's benefit. Therefore, the Committee concluded that you could not be paid a widow's benefit on that basis.

14. In response, Ms. Clemente filed an appeal with the Appeals Tribunal.

Submissions

Ms. Clemente's Appeal

15. Ms. Clemente requests the Appeals Tribunal to rescind the decision and hold that she is owed widow's benefits under Article 34 of the Fund's Regulations. She also requests costs to reimburse her legal fees in the amount of USD 5,000.

16. Ms. Clemente argues that Section B of the UNJSPF Administrative Rules directs member organizations to provide marital status to the Fund and verify the accuracy thereof. Section B.3 states "no change shall be accepted after the date of the participant's separation in respect of records pertaining to [...] the report of his other prospective beneficiaries". It also holds the Organization responsible for any actuarial costs related to the provision of incorrect information. WIPO and UNOG duly reported Ms. Clemente as Mr. Clemente's spouse. The Fund previously advised Mr. Clemente of his entitlements upon his separation including his prospective survivor benefits. The Fund is bound to accept and abide by the information furnished by the employing Organizations. Especially since there is no competing claim being made for survivor benefits. At the time of Mr. Clemente's separation from service on 30 November 2015, his first marriage had been annulled and Ms. Clemente was his only legal wife as maintained and reported by WIPO.

¹ Between 2006 and 2016, the UNJSPB reviewed the scope of Article 34 of the Regulations in relation to non-traditional unions. This resulted in the Secretary-General issuing ST/SGB/2004/13/Rev. 1 (Personal status for purposes of United Nations entitlements), which expanded the recognition of marriage to include unions and registered partnerships legally recognized by the competent authority of the location where the status was established as long as the union confers similar legal effects as marriage, specifically including pension rights. Subsequently, with effect from 1 September 2016, the Chief Executive Officer of the Fund issued guidelines allowing prospectively for spousal benefits under Articles 34 of the Regulations in unions/registered partnerships recognized by the competent authority of the relevant location.

17. Ms. Clemente further argues that the Fund erred in law. The Fund's unsupported reasoning upheld by the Standing Committee was based on their interpretation of the law of the Philippines as requiring the previous marriage to be annulled prior to the subsequent marriage. The legal effects of annulment are not the same as divorce. While Mr. Clemente's first marriage was not technically annulled until 21 August 1996 by trial court order, an annulment has retroactive effect since it declares the marriage null and void *ab initio*, as if a valid marriage had never taken place. Furthermore, as there has been no judicial determination by a Philippine legal authority that renders Mr. and Ms. Clemente's marriage invalid, without a judicial decree from the Philippines declaring their marriage as having no legal effect, it was an improper abuse of authority by the Fund to assume that no second marriage existed. The Fund's analysis of the Philippine's law in the absence of a judicial decree is outside of the purview of the Fund's role, which is bound to apply the provisions of the UNJSPF Regulations on their face.

18. Ms. Clemente also argues that the Fund is bound to accept and abide by the information it is furnished from its Member Organizations as well as by the Swiss authorities, which recognize the parties as being married. Switzerland, where Mr. and Ms. Clemente have resided for 20 years, recognizes the legal validity of domestic partnerships.

The Fund's Answer

19. The Fund requests the Appeals Tribunal to uphold the Standing Committee's decision and dismiss the appeal in its entirety. It argues that Ms. Clemente was not married to Mr. Clemente at the time of his separation from service and thus fails to meet a critical requirement to receiving widow's benefits under Article 34.

20. The Fund asserts that the validity of the marriage must be determined under the Philippine law, the locality of the marriage and nationality and the jurisdiction ordering the annulment. Pursuant to Article 40 of the Philippine Family Code Executive Order No. 209 (Family Code), the "absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void". Article 41 provides "a marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless there is reason to presume that the former spouse is deceased". Article 83 of the Philippine Civil Code (Civil Code) provides that "any marriage subsequently contracted by any person during the life time of the first spouse of such person

with any person other than such first spouse shall be illegal and void from its performance, unless: [...] the previous marriage was annulled or dissolved” or the first spouse is presumed dead. Based on these provisions and in the absence of confirmation to the contrary from the Philippines, the only reasonable conclusion is that Mr. and Ms. Clemente were not legally married under the Philippine law because he was already married to Ms. Agbayani, and as such Ms. Clemente does not meet the requirements of Article 34.

21. Moreover, Ms. Clemente was not cohabitating in a union or partnership conferring similar legal effects as marriage, including pension rights, which would bring her within the scope of the expanded interpretation of marriage decided by the UNJSPB in 2016. The Fund based its conclusion on the provisions of the Philippine’s Social Security System, which provides that death benefits are payable only to the legal spouse and children of the participant. Further the Appeals Tribunal’s jurisprudence in *El-Zaim*² and *Tebeyene*,³ supports the principle that in order for a participant’s second marriage to be valid his or her previous existing marriage must be legally dissolved in accordance with the laws of the jurisdiction where it was celebrated. In line with this principle, the fact that Mr. Clemente’s second marriage is recognized by the Swiss government for purposes of residential status is not relevant as the applicable law is the Philippine law.

22. With regard to the marriage certificate, the Fund points out that there is no evidence that the Philippine issuing authority has been made aware of Mr. Clemente’s prior marriage. The marriage certificate lists Mr. Clemente’s civil status at the time of the second marriage as “single” despite his being married at the time.

23. The Fund has an independent obligation to ensure that its Regulations are complied with and a duty to verify the legality of marital status. It has no discretion to authorize payment if the conditions are not satisfied and doing so without satisfactory proof of marital status would be prejudicial to the other participants.

24. Lastly, the Fund argues that there is no basis to support Ms. Clemente’s request for costs and it should be dismissed. The Fund acted in accordance with its duty of care.

² *El-Zaim v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-007.

³ *Tebeyene v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-016.

Considerations

25. The primary question for determination is whether Ms. Clemente's marriage to Mr. Clemente was valid. In accordance with general principles of private international law, the validity of a marriage must be assessed and determined in accordance with the *lex loci celebrationis*, which, in the instant matter, is the law of the Philippines.

26. The Fund posed a more specific question to the Permanent Mission of the Philippines in its letter of 24 August 2017. It asked whether the subsequent annulment of Mr. Clemente's first marriage retroactively validated the second marriage.

27. Divorce is not legal in the Philippines. The only manner in which a marriage can end, other than through death of a spouse, is by annulment. Articles 85 to 91 of the Civil Code govern the grounds, process, and consequences of annulment. The causes for annulment are of a restricted nature, for example, fraud or one of the parties being of unsound mind. The grounds for annulment appear to have been interpreted liberally to permit for easier dissolution in deserving cases.

28. Article 80 of the Civil Code provides that certain marriages are void *ab initio*. They include marriages with under-age minors, bigamous, polygamous and incestuous marriages, and those not celebrated in accordance with the appropriate formalities.

29. The relevant part of Article 83 of the Civil Code, upon which the Fund relies, reads:

Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) The first marriage was annulled or dissolved; or [...]

30. This provision stipulates that a marriage subsequently contracted during the lifetime of the first spouse will be illegal "unless the first marriage was annulled or dissolved". This can be construed extensively, as Ms. Clemente submits, to mean that the annulment or dissolution of the first marriage retroactively cures the illegality of the subsequent marriage. But the use of the passive tense "was" arguably indicates otherwise.

31. The provisions of the Civil Code must be read together with the Family Code. The Family Code at Article 40 provides that annulled marriages in general are regarded as void *ab initio*. However, given the practical difficulties of such a proposition, the Family Code provides that the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void; and at the same time allows for exceptions in which the normal consequences of marriage are applied to annulled marriages. Thus, the property regime of the annulled marriage is treated as if the marriage was valid; inter-spousal donations remain valid; and the children of the annulled marriage are regarded as legitimate.⁴

32. The Family Code does not deal fully with all the consequences of an annulment of a prior marriage for a subsequent marriage concluded before the void first marriage was annulled. Article 41 of the Family Code, in keeping with Article 83 of the Civil Code, provides that a marriage contracted by any person during the subsistence of a previous marriage shall be null and void. But, by way of narrow exception, the subsequent marriage will be valid if before the celebration of the subsequent marriage the prior spouse was absent for four consecutive years, and the spouse present had a well-founded belief that the absent spouse was already dead. Article 42 provides that such subsequent marriage shall be automatically terminated on the reappearance of the absent spouse, unless there is a judgment annulling the previous marriage. Where the subsequent marriage is automatically terminated on the reappearance of the absent spouse, the ordinary consequences of marriage in respect of property and children apply to the subsequent marriage. These provisions indicate, therefore, that although a subsequent “bigamous” marriage is void *ab initio*, it too (like the prior annulled marriage) may still enjoy the effects of a valid marriage. The exception though is of a narrow scope, thus, implying that other second marriages celebrated before the annulment of an existing first marriage do not enjoy the effects of a valid marriage.

33. Various judicial pronouncements of the Supreme Court of the Philippines, however, obviate the need to resolve the question posed by the Fund to the Permanent Mission of the Philippines. The validity of Ms. Clemente’s marriage can be resolved on a different and narrower basis and thus, it is unnecessary for this Tribunal to reach a definitive conclusion

⁴ See Articles 50 and 54 of the Family Code read with Articles 43 and 44 of the Family Code. Article 89 of the Civil Code stipulates that the children born of an annulled marriage “shall have the same status, rights and obligations as acknowledged natural children, and are also called natural children by legal fiction”.

on whether in terms of the law of the Philippines the annulment of a first marriage retroactively validates a subsequent marriage celebrated prior to the annulment of the first.

34. In *Vda. De Consuegra v. GSIS*,⁵ the Supreme Court of the Philippines ruled with regard to the rights of a wife in a subsequent marriage, that although the second marriage might be presumed to be void *ab initio* if it was celebrated while the first marriage was still subsisting, there is still a need for judicial declaration of its nullity.

35. A similar ruling was made in *Roberto Domingo v. Court of Appeals et al.*⁶ In that matter, a petition for protection of rights to marital property, the wife in a second marriage celebrated before the annulment of the first marriage, prayed for her marriage to be declared null and void and of no force and effect. The husband filed a motion to dismiss claiming that the petition disclosed no cause of action. He submitted that the second marriage was void *ab initio* and thus that the petition for the declaration of its nullity was superfluous and unnecessary. The wife maintained that a judicial determination of the nullity of the subsequent marriage was necessary to provide a basis for the separation and distribution of the properties acquired during coverture. The Supreme Court held that, although the second marriage might be presumed bigamous and void *ab initio*, there was still a need in law for judicial declaration of such nullity. An annulable marriage is presumed valid in the law of the Philippines until a direct action to annul it is granted.

36. The Supreme Court in *Roberto Domingo* thus affirmed that as a matter of policy the nullification of a marriage cannot be accomplished merely on the basis of the perception of the parties that their union is so defective with respect to the essentials of a contract of marriage as to render it void *ipso iure* and with no legal effect. The parties to a formally celebrated marriage should not be allowed to simply assume that their marriage is void. More is required. The Supreme Court rationalized the need for a court order as follows:

Were this so, this inviolable social institution would be reduced to a mockery and would rest on very shaky foundations indeed. And the grounds for nullifying marriage would be as diverse and far-ranging as human ingenuity and fancy could conceive. For such a social significant institution, an official state pronouncement through the courts, and nothing less, will satisfy the exacting norms of society. Not only would such an open and public declaration by the courts definitively confirm the nullity of

⁵ *Vda. De Consuegra v. GSIS*, 37 SCRA 316, 326.

⁶ *Roberto Domingo v. Court of Appeals et al*, G.R. No. 104818, September 17, 1993.

the contract of marriage, but the same would be easily verifiable through the records accessible to everyone.

37. Hence, under the law of the Philippines, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding.⁷

38. The line of reasoning of the Supreme Court reflects pragmatism in assessing the consequences of illegality. Illegal juridical acts are often deemed to exist until they are set aside by a court in appropriate proceedings because they have legal consequences that cannot simply be overlooked. The proper functioning of modern society would be considerably compromised if all juridical acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. It is for this reason that the law recognizes that even an unlawful act is capable of producing legally valid consequences for so long as the unlawful act is not set aside. The apparent anomaly is attributable to the evidential presumption of validity expressed by the maxim *omnia praesumuntur rite esse acta*; and until the act in question is found to be unlawful by a court, there is no certainty that it is. Thus, legal validity is never absolute but can only be described in relative terms. A marriage may be hypothetically a nullity, but the court may refuse to quash it, for instance, because the plaintiff lacks standing, does not deserve a discretionary remedy, or has waived his rights. In any such case the “void” juridical act remains effective and is, in reality, valid.⁸ It follows that a juridical act may be void for one purpose and valid for another; and that it may be void against one person but valid against another.⁹

39. The evidence does not disclose that the presumptively valid marriage of Ms. Clemente has been the subject of any legal proceedings for a declaration of nullity in the Philippines. Her presumptively valid marriage was extant at the date Mr. Clemente separated from service and she remained so married to him until his death. The marriage was and is legally recognized by the competent authorities of the Philippines. In the premises, Ms. Clemente is entitled to payment of a widow’s benefit in terms of Article 34 of the Regulations.

⁷ See also *Salvador S. Abunado et al v. People of the Philippines*, G.R. No. 159218, March 30, 2004.

⁸ Wade: *Administrative Law* 7 Ed. at page 342-4; C Forsyth: “The Metaphysics of Nullity: Invalidity, Conceptual Reasoning and the Rule of Law” in *Essays on Public Law in Honour of Sir William Wade QC* (Clarendon) Press 141.

⁹ In the present context, the celebration of a second marriage while a first still subsists will sustain a criminal charge of bigamy in the law of the Philippines - *Salvador S. Abunado et al v. People of the Philippines*; but at the same time might have different civil consequences such as those in *Roberto Domingo v. Court of Appeals et al.*

40. Ms. Clemente's request for costs of the appeal cannot be sustained. Article 9(2) of the Appeals Tribunal's Statute permits the Appeals Tribunal to award costs only if a party has manifestly abused the appeals process. The decision of the Standing Committee was reached in good faith and in the interests of the other participants in the Fund. Its stance is by no means an abuse of process.

Judgment

41. The appeal is granted, and the decision of the Standing Committee is hereby vacated.

42. The following orders are issued:

- (a) The decision of the Standing Committee communicated on 6 August 2018 denying Ms. Clemente a widow's benefit in terms of Article 34 of the Regulations is rescinded;
- (b) The Fund is ordered to pay Ms. Clemente a widow's benefit in accordance with Article 34 of the Regulations;
- (c) The payment of the benefit in paragraph (b) of this order shall be made in future on the day of the month upon which the Fund ordinarily makes such payments to similarly entitled beneficiaries in accordance with Article 34 of the Regulations and Section I.1 of the UNJSPF Administrative Rules; and
- (d) The Fund is ordered to pay Ms. Clemente within 14 days of the issuance of this Judgment the amount of the widow's benefit payable in terms of Article 34 of the Regulations for the period 29 June 2016 until the date of this Judgment, together with interest on each monthly amount owing at the U.S. Prime Rate from the date the benefit was due until the date of payment and an extra five per cent shall be added to the U.S. Prime rate if this Judgment is not executed within the stipulated deadline.

Original and Authoritative Version: English

Dated this 26th day of March 2019 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Halfeld

(Signed)

Judge Lussick

Entered in the Register on this 29th day of May 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar