

NOT FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

CARATWO LAND, LLC,

Plaintiff,

SX-15-CV-53

v.

ACTION FOR DEBT

REFILL PLUS, LLC and CRISTINE HILTY,

Defendants.

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff Caratwo Land LLC's (hereinafter "Plaintiff") Motion for Entry of Default against Cristine Hilty (hereinafter "Hilty") and Refill Plus, LLC filed March 19, 2015. Plaintiff filed a Renewed Request to Enter Default against Hilty on July 5, 2016. On December 9, 2015, Plaintiff filed a Motion for Reconsideration of the Order entered November 24, 2015. For the following reasons, the Motion for Entry of Default against Hilty will be granted. The Motion for Reconsideration of the Order entered November 24, 2015 shall be denied.

BACKGROUND

On February 10, 2015, Plaintiff filed an action for debt against Defendants Cristine Hilty and Refill Plus, LLC (collectively "Defendants"). After the Defendants failed to answer, appear or otherwise defend, Plaintiff filed a Motion for Entry of Default against Hilty and Refill Plus, LLC on March 19, 2015. In response to Plaintiff's request for entry of default, the court Ordered Plaintiff to provide proof of service. *See* Order entered November 24, 2015. The Affidavit of Default states that service was attempted on Caribbean Trust Services, Corp. at 5050 Anchor Way, the resident agent for Refill Plus, LLC on February 24, 2015, but the resident agent could not be located. Thereafter, the a copy of the Complaint and Summons for Refill Plus, LLC was served personally on Hilty. The record reflects that Hilty is the sole member of Refill Plus, LLC. However, nothing in the record indicates

that Hilty is also resident agent appointed by Refill Plus, LLC for service of process. Subsequently, Plaintiff filed a Motion for Reconsideration of the Order entered November 24, 2015 and moved for entry of default against Hilty only. On July 5, 2016, Plaintiff filed a Renewed Request to Enter Default against Hilty. The issue before the Court is whether to grant Plaintiff's request for default judgment against Hilty.

STANDARDS OF REVIEW

I. Motion for Reconsideration

The Supreme Court explained that "a trial judge has the discretion to reconsider an issue and should exercise that discretion whenever it appears that a previous ruling, even if unambiguous, might lead to an unjust result."¹ Local Rule of Civil Procedure 7.3 prescribes that a motion for reconsideration may be filed based on: "1. intervening change in controlling law; 2. availability of new evidence; or 3. the need to correct clear error or prevent manifest injustice."²

II. Entry of Default

Entry of default is governed by Superior Court Rule 47, which states that "when a party against whom affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by law or these rules, or has failed to appear at the time fixed for trial, the clerk shall enter his default."³ A "defendant may appear by entering his appearance before the clerk or by filing an answer with the clerk within 20 days after service of the summons and complaint."⁴ Plaintiff must properly serve the

¹ See *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 621-22 (2012) (citation omitted).

² A thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from the Supreme Court of the Virgin Islands reveals that no other procedure governs motions for reconsideration besides the Local Rule of Civil Procedure 7.3 which is applicable to the Superior Court through Superior Court Rule 7. See *Vanterpool v. Gov't of the V.I.*, 2015 V.I. Supreme LEXIS 23, *30 (VI. 2015) (citing *Sweeney v. Ombres*, 60 V.I. 438, 442 (VI. 2014)). LRCi 7.3.

³ SUP. CT. R. 47.

⁴ SUP. CT. R. 32. See *Enterprise Assets, LLC v. Pinnacle Development & Investments, LLC*, 2016 V.I. LEXIS 29, *2-3 (V.I. Super. Ct. Mar. 29, 2016).

Defendant before the Clerk can enter default.⁵

DISCUSSION

Pursuant to Superior Court Rule 27, Federal Rules of Civil Procedure 4 governs the manner of service of process.⁶ Once a challenge to service of process is properly made, the plaintiff bears the burden of establishing a *prima facie* showing that service was perfected.⁷ A plaintiff must follow the law of service in the state where the service is made.⁸

With respect to proper service on a limited liability company, Title 13, Section 1109 of the Virgin Islands Code prescribes that “a limited liability company ... authorized to do business in the Virgin Islands shall designate and continuously maintain an agent and physical address of the agent for service of process on the company in the Virgin Islands.”⁹ “An agent must be an individual resident of the Virgin Islands, a domestic corporation, another limited liability company, or a foreign corporation or foreign company authorized to do business in the Virgin Islands.”¹⁰ Furthermore, Title 13, Section 1112 prescribes that “[a]n agent for service of process appointed by a limited liability company ... is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.”¹¹

Here, Plaintiff submitted proof that Hilty was personally served for Refill Plus, LLC with a copy of the Complaint and Summons on February 24, 2015. As mentioned above, Hilty is the sole member of Refill Plus, LLC. However, nothing in the record indicates that Hilty was appointed by Refill Plus, LLC as the resident agent for service of process. Hilty’s status as the sole member of

⁵ See *Dutch W. Indian Trading Co. v. Gov’t of the V.I.*, 2014 V.I. LEXIS 66, *5 (V.I. Super. Ct. Aug. 26, 2014).

⁶ See *In re Catalyst Third-Party Litig.*, 2015 V.I. LEXIS 144, *5-6 (V.I. Super. Ct. Dec. 16, 2015); SUP. CT. R. 27.

⁷ FED. R. CIV. P. 4(c)(1). *Faulknor v. Gov’t of the Virgin Islands*, 2014 V.I. LEXIS 6, *1 (V.I. Super. Ct. 2014).

⁸ FED. R. CIV. P. 4(e).

⁹ See 13 V.I.C. § 1109(a).

¹⁰ See 13 V.I.C. § 1109(b).

¹¹ See 13 V.I.C. § 1112(a).

Refill Plus, LLC does not automatically mean that she is the resident agent. There are no documents from the Office of the Lieutenant Governor showing the resident agent for Refill Plus, LLC. The process server unsuccessfully tried to serve Caribbean Trust Services Corp at 5050 Anchor Way, Christiansted, Virgin Islands as resident agent for Refill Plus, LLC.

Section 1112(b) states that “[i]f a limited liability company ... fails to appoint or maintain an agent for service of process within the Virgin Islands or the agent for service of process cannot with reasonable diligence be found at the agent's address, the Lieutenant Governor shall be deemed an agent of the company upon whom process, notice, or demand may be served.”¹² Furthermore, pursuant to Section 1112(c), where the resident agent cannot be found with reasonable diligence,

Service of any process, notice, or demand on the Lieutenant Governor may be made by delivering to and leaving with the Lieutenant Governor, the Director of the Corporate and Tradename Division within the office of the Lieutenant Governor, or any clerk having charge of the limited liability companies within the office of the Lieutenant Governor, duplicate copies of the process, notice, or demand. If the process, notice, or demand is served within the office of the Lieutenant Governor, the Lieutenant Governor shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office. Service is effected under this subsection at the earliest of:

- (1) the date the company receives the process, notice, or demand;
- (2) the date shown on the return receipt, if signed on behalf of the company; or
- (3) five days after its deposit in the mail, if mailed postpaid and correctly addressed.

Failure to comply with the provisions of the rules requiring the serving of notice on parties to bring them within the jurisdiction of the Court and to bind them by the Court's Judgments is fatal to the validity of the judgments, decrees or orders of the Court.¹³ Due process requires that the defendant be given adequate notice of the suit, and be subjected to the personal jurisdiction of the court.¹⁴

“Service of process — unless waived by a general appearance — is a prerequisite to the Superior

¹² See 13 V.I.C. § 1112(b).

¹³ See *Rubin v. Johns*, 21 V.I. 525, 531 (V.I. Terr. Ct. 1985).

¹⁴ See *Ernest v. Morris*, 64 V.I. 627, 640 (2016).

Court obtaining personal jurisdiction over a defendant.”¹⁵ “Unless service is waived, proof of service must be made to the court.”¹⁶

A plaintiff has 120 days from commencing an action to serve the defendant, absent an extension of time by the Court for good cause.¹⁷ If, after 120 days, service remains unaffected, and the plaintiff did not move for an extension before the 120 days elapsed, the court must either “dismiss the action without prejudice against that defendant or order that service be made within a specified time.”¹⁸ Notice to Plaintiff that dismissal is imminent must first be given before the Court may dismiss the case.¹⁹

In its Motion for Reconsideration, Plaintiff states that “it does not intend to attempt any further service on Refill Plus, LLC.” Motion for Reconsideration at 1. Without submitting any supporting documentation from the Office of the Lieutenant Governor, Plaintiff insists that Hilty is the resident agent of Refill Plus, LLC. Refill Plus, LLC is a named defendant in this case, and must be properly served with a copy of the Complaint and Summons in order for the court to have personal jurisdiction or dismissed from the case. According to the procedures outlined in Section 1112(c), if the resident agent cannot be found with reasonable diligence, Plaintiff should effectuate service of process on the Lieutenant Governor “by delivering to and leaving with the Lieutenant Governor, the Director of the

¹⁵ See *Ross v. Hodge*, 58 V.I. 292, 311 n.22 (2013); see also *Joseph v. Daily News Pub. Co., Inc.*, S. Ct. Civ. No. 2009-0015, 57 V.I. 566, 2012 V.I. Supreme LEXIS 80, *15 n.4 (V.I. Oct. 31, 2012) (citations omitted) (emphasis added).

¹⁶ A thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedent from the Supreme Court of the Virgin Islands reveals that no other procedure governs service besides Superior Court Rule 27 (b) and Federal Rule of Civil Procedure 4 which are applicable to the Superior Court through Superior Court Rule 7. See *Vanterpool v. Gov't of the V.I.*, 2015 V.I. Supreme LEXIS 23, *30 (VI. 2015) (citing *Sweeney v. Ombres*, 60 V.I. 438, 442 (VI. 2014)). See also *Beachside Assocs., LLC v. Fishman*, 53 V.I. 700, 716 (VI. 2010). FED. R. CIV. P. 4(l)(1).

¹⁷ See FED. R. CIV. P. 4(m).

¹⁸ FED. R. CIV. P. 4(m). See also *Petrucelli v. Bohringer and Ratzinger, GMBH*, 46 F.3d 1298, 1305 (3d Cir. 1995).

¹⁹ *Id.*

Corporate and Tradename Division within the office of the Lieutenant Governor, or any clerk having charge of the limited liability companies within the office of the Lieutenant Governor, duplicate copies of the process.”²⁰ The Court finds that there is good cause to grant Plaintiff an extension of time to properly serve Refill Plus, LLC. The Order entered November 24, 2015 required Plaintiff to submit proof that Hilty and Refill Plus, LLC were properly served. Hilty was served personally. However, there is no evidence that Refill Plus, LLC was properly served. Refill Plus, LLC must be served in order for the Court to retain personal jurisdiction.

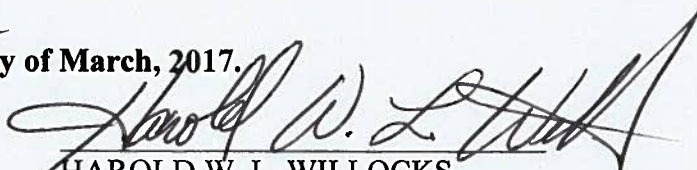
CONCLUSION

Based on the foregoing analysis, Renewed Request to Enter Default against Hilty will be granted. The Acting Clerk of the Court shall be instructed to enter default against Hilty. Plaintiff’s Motion for Reconsideration of the Order entered November 24, 2015 will be denied. Plaintiff will be granted an extension of time to serve Refill Plus, LLC. The Court will enter an Order consistent with this Memorandum Opinion.

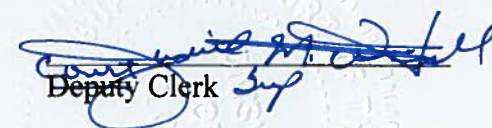
DATED this 2nd day of March, 2017.

ATTEST:

Estrella George
Acting Clerk of the Court


HAROLD W. L. WILLOCKS
Administrative Judge of the Superior Court

By:


Deputy Clerk

Dated:

3/2/17

²⁰ 13 V.I.C §1112(c).

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DIVISION OF ST. CROIX

CARATWO LAND, LLC,

Plaintiff,

SX-15-CV-53

v.

ACTION FOR DEBT

REFILL PLUS, LLC and CRISTINE HILTY,

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiff Caratwo Land LLC's (hereinafter "Plaintiff") Motion to Correct Misstatement by the Court in its Memorandum Opinion (hereinafter "Motion") filed March 20, 2017.

Upon careful review of the record, the Court finds it necessary to clarify the record and correct the following scrivener's error in the Memorandum Opinion dated and entered March 2, 2017:¹

On page 5, second paragraph, starting 7 lines from the bottom of the page, delete the sentence "Without submitting any supporting documentation from the Office of the Lieutenant Governor, Plaintiff insists that Hilty is the resident agent of Refill Plus, LLC." In footnote 17, insert "the December 2015 amendment to the Federal Rules of Civil Procedure 4(m) gives plaintiff 90 days—instead of the previous 120 days—to serve the complaint and summons. However, because Plaintiff filed the complaint on February 10, 2015, well before the amendments took effect on December 1, 2015, the Court has applied the previous rule which, as mentioned above, gives Plaintiff 120 days to serve the defendant."

The premises having been considered therein, it is hereby:

ORDERED that Plaintiff's Motion is **GRANTED**; and it is further

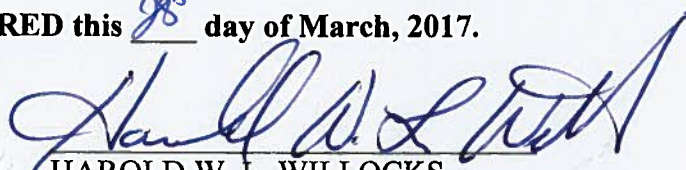
ORDERED that a copy of this Order shall be served on counsel of record and forwarded to the IT Division to accompany the Memorandum Opinion on the Superior Court's website.

DONE and so ORDERED this 28th day of March, 2017.

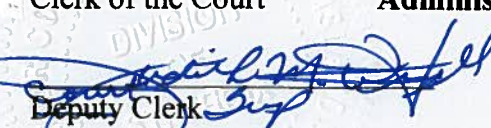
ATTEST:

Estrella George

Clerk of the Court


HAROLD W. L. WILLOCKS

Administrative Judge of the Superior Court

By: 

Deputy Clerk

Dated: 3/29/17

¹ Clerical mistakes in judgments, orders or other parts of the record, and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders. SUP. CT. R. 137.