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

SIWELL INC. D/B/A CAPITAL MORTGAGE SERVICES OF TEXAS, **PLAINTIFF,** **V.** **CUREENE SMITH,** **DEFENDANT.**	**SX-16-CV-066** **ACTION FOR DEBT AND FORECLOSURE OF MORTGAGE**

MEMORANDUM OPINION

THIS MATTER came before the Court on Plaintiff Siwell Inc. d/b/a Capital Mortgage Services of Texas's (hereinafter "Plaintiff") motion for default judgment, filed on February 8, 2017.

BACKGROUND

On January 15, 2016, Plaintiff commenced an action for debt and foreclosure against Defendant Cureen Smith (hereinafter "Defendant") in connection with the real property described as Plot 119 of Estate Glynn, King Quarter, St. Croix, U.S. Virgin Islands (hereinafter "Subject Property"). In its complaint, Plaintiff alleged the following:

> Defendant is the titleholder of record of the Subject Property. (Compl. ¶ 4) On or about April 3, 2012, Defendant executed and delivered to Plaintiff a note obligating them to pay the principal amount of $155,168.00, with interest at the rate of 3.875% per annum. (Id., at ¶ 5) To secure payment of the note, Defendant executed and delivered to Plaintiff a first priority mortgage covering the Subject Property, dated April 3, 2012. (Id., at ¶¶ 6, 8) The mortgage was recorded with the Record of Deeds for the District of St. Croix on April 3, 2012. (Id., at ¶ 8) On or about April 1, 2015, Defendant defaulted under the note and the mortgage—namely, principal, interest, and late charges. (Id., at ¶ 11) Despite Plaintiff's demands upon Defendant, to date, the default has not been cured and Defendant remains in default under the note and the mortgage. (Id., at ¶ 12) Pursuant to the note and the mortgage, Plaintiff elected that the whole principal sum with all unpaid accrued interest to be immediately due and payable. As of November 12, 2015, Defendant owes Plaintiff a total amount of $153,831.37 under the note—to wit: $145,178.98 (principal), plus $4,219.29 (accrued interest), plus $932.57 (late fees), plus $3,014.41 (escrow overdraft), plus $275.22 (prorated earned mortgage insurance, plus $143.90 (overdrawn unapplied funds), and plus $67.00 (assessed fees)—with interest accruing at the rate of 3.875% per diem. (Id., at ¶ 13)

As such, Plaintiff sought to collect its debt from Defendant and foreclose its lien on the Subject Property. When Defendant failed to file a response to Plaintiff's complaint, Plaintiff filed a motion for an entry of default. The Court granted Plaintiff's motion and an entry of default was entered against Defendant on June 7, 2016. On February 8, 2017, Plaintiff filed this instant motion for default judgment against Defendant. To date, Defendant has not filed a response to Plaintiff's motion.

STANDARD OF REVIEW

Entry of default and default judgment are separate matters under Superior Court Rules 47 and 48. In *King v. Appleton*, 61 V.I. 339, 346 (V.I. 2014), the Supreme Court of the Virgin Islands (hereinafter, "Supreme Court") instructed that "after entering the default, the Superior Court must consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law." (internal quotations omitted). The Supreme Court explained that a defendant, "by his default, admitted the plaintiff's well-pleaded allegations of fact, [he] is concluded on those facts by the judgment, and is barred from contesting the facts thus established." *Id.* In other words, a defendant's default does not in itself warrant the court to enter a default judgment. *Id.* ("the mere fact of [the defendant's] default did not entitle [the plaintiff] to the entry of a default judgment against [the defendant]; instead, [the defendant's] default only conceded the facts as alleged in [the plaintiff's] complaint"). Rather, "[t]here must be a sufficient basis in the pleadings for the judgment entered." *Id.* Thus, if the court finds the facts, as alleged in the plaintiff's complaint, constituted a valid cause of action under the Virgin Islands law, the court is to hold a hearing to establish the amount of damages. *Id.; see also, Appleton v. Harrigan*, 61 V.I. 262, 269 (V.I. 2014) (after entry of default, damages generally must be established in an evidentiary proceeding [where] the defendant is afforded the opportunity to contest the amount claimed) (internal quotations and citations omitted).

However, such a hearing is not required "[w]hen the plaintiffs claim against a defendant is for a sum certain or for a sum which can by computation be made certain." *Harrigan*, 61 V.I. at 270 (citing Super. Ct. R. 48(a)(1)). The Supreme Court explained that, "[a] claim is not a sum certain unless there is no doubt as to the amount to which a plaintiff is entitled as a result of the defendant's default." (citation omitted). *Harrigan,* 61 V.I. at 270. In *Harrigan*, the Supreme Court found the damage claimed therein—namely, unpaid rent—did not qualify as a sum certain because sum certain for the purposes of Superior Court Rule 48 "contemplates a situation in which, once liability has been established, there can be no dispute as to the amount due, as in actions on money judgments and negotiable instruments." *Id.* (internal quotations and citation omitted).

DISCUSSION

I. Whether Plaintiff is Entitled to a Judgment by Default

The Court will first determine whether the facts, as alleged in Plaintiff's complaint, constitute a legitimate cause of action. According to Plaintiff's complaint, on or about April 3, 2012, Defendant executed and delivered to Plaintiff a note obligating them to pay the principal amount of $155,168.00, with interest at the rate of 3.875% per annum (hereinafter "Note"). (Compl. ¶ 5) To secure the obligations under the Note, Defendant executed and recorded a first priority mortgage on the Subject Property in favor of Plaintiff on April 3, 2009 (hereinafter "Mortgage). (Id., at ¶¶ 6, 8) Plaintiff alleged that, despite Plaintiff's demands upon Defendant, to date, the default has not been cured and Defendant remains in default under the Note and the Mortgage. (Id., at ¶¶ 12) In support of its allegations, Plaintiff submitted, *inter alia*, a copy of the executed Note and a copy of the executed Mortgage. Based on the foregoing, the Court finds that these unchallenged facts constitute a legitimate cause of action for debt.

However, the Court must note that Plaintiff did not include an affidavit or attach any exhibits in support of this instant motion for default judgment. Thus, it is unclear what documents Plaintiff relied upon in deriving the total amount of $153,831.37 that is owed by Defendant under the Note as of November 12, 2015. As such, the Court needs more information from Plaintiff.

Furthermore, in addition to Plaintiff's request for a judgment in the amount of $153,831.37, with interest accruing at the rate of 3.875% per annum, Plaintiff also requested for a judgment of foreclosure upon the Subject Property. However, Plaintiff failed to submit a copy of the title search of the Subject Property. Thus, the Court cannot discern whether Plaintiff's interest in the Subject Property is in fact senior and superior to all others who have interests in the Subject Property.

Accordingly, the Court will grant Plaintiff leave to file supplemental supporting documents.

II. Whether Plaintiff is Entitled to Attorney's Fees and Costs

Plaintiff also filed a memorandum of costs and affidavit of its counsel, Attorney Robert P. Wood of Rogers Townsend & Thomas, PC, although no motion for the same appears in the record. Pursuant to Virgin Islands Rule of Civil Procedure 54(d), the Court will order Plaintiff to file a separate motion for attorney's fees and costs "[w]ithin 30 days after the entry of a final judgment or a judgment allowing costs [including attorney's fees]."

CONCLUSION

Based on the foregoing reasons, the Court will order Plaintiff to supplement its motion for default judgment and reserve entering a judgment in this matter at this time. Furthermore, the Court will also order Plaintiff to file its request for attorney's fees and costs in a separate motion in compliance with the Virgin Islands Rule of Civil Procedure 54. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 24th **day of July, 2017.**

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

ATTEST:
Estrella H. George
Clerk of the Court

By: ____________
Court Clerk Supervisor

Dated: 8/1/17