NOT FOR PUBLICATION

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

FIRST BANK PUERTO RICO, Plaintiff, vs. MICHAEL M. SCHLEA A/K/A MICHAEL SCHLEA, Defendant.	SX-16-CV-439 ACTION FOR DEBT AND FORECLOSURE

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Michael M. Schlea a/k/a Michael Schlea's (hereinafter "Schlea") motion to set aside entry of default filed February 8, 2017 (hereinafter "Motion"). Plaintiff First Bank Puerto Rico (hereinafter "First Bank") did not respond.

BACKGROUND

On or about May 22, 2008, Schlea executed and delivered to First Bank a Promissory Note in the face amount of $100,000 with interest accruing at the rate of 7.875% per annum (hereinafter "Note").[1] As security for the payment of monies due under the Note, Schlea executed and delivered to First Bank a Mortgage in the amount of $100,000 (hereinafter "Mortgage") encumbering the following real property:[2]

> Unit No. J-2 of Coral Princesse Condominium, St. Croix, U.S. Virgin Islands, a Condominim according to a Declaration of Condominium ("Declaration") dated April 3, 1967, filed for record on April 3, 1967, in the Office of the Recorder of Deeds, Christiansted, St. Croix, U.S. Virgin Islands at Vol. P. C. 60M, Page No. 386, together with a 3.833% undivided interest in the common areas and facilities declared in the Declaration to be appurtenant to the above described Condominium Unit; the address of Unit No. J-2 of Coral Princesse Condominium, St. Croix, U.S. Virgin Islands (hereinafter "Property").

[1] Compl. ¶4, Ex. A.
[2] Id. at ¶5, Ex. B.

By letter dated April 14, 2015, First Bank notified Schlea that as of March 1, 2016 he was in default of his obligations under the Note and Mortgage.[3] All sums due under the Note have been duly accelerated; and as of July 12, 2016, Schlea is owing the principal sum of $91,344.63, plus interest in the amount of $3,233.74 and late fees in the amount of $184.93 for a total indebtedness of $94,763.33. Interest continues to accrue on the principal at the rate of $19.71 per diem.[4]

On August 8, 2016, First Bank filed a Complaint against Schlea. Schlea was served by certified mail on August 29, 2016; and he was also served personally with a copy of the Complaint and Summons by a process server in Clyde, Ohio on December 2, 2016. By Order entered December 14, 2016, the parties were ordered to mediate within 90 days.[5] After Schlea failed to answer, appear, or otherwise defend, the Clerk entered default against Schlea on January 11, 2017. Counsel for Schlea entered an appearance on the record on February 3, 2017. Schlea filed an Answer on February 8, 2017. The question presented is whether the entry of default should be vacated.

STANDARD OF REVIEW

"Any party adversely affected by entry of default may move to have the default set aside."[6] Entry of Default is governed by Virgin Islands Rule of Civil Procedure 55.[7] "The court may set aside entry of default for good cause."[8] When default judgment has not yet been entered after an entry of default, the court employs a liberal standard when reviewing a Motion to set

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[3] Compl. ¶6, Ex. C.
[4] Id. at ¶7.
[5] *See* Order entered December 14, 2016.
[6] *See Bazzar v. Salem*, 2015 V.I. LEXIS 125, *4 (V.I. Super. Ct. Oct. 8, 2015).
[7] V.I. R. Civ. P. 55.
[8] Id. at 55(c).

aside default because it is more appropriate to address an action on its merits whenever possible."[9] Courts generally disfavor judgments by default, preferring to decide cases on their merits.[10] Motions to set aside default, should be construed liberally, and any doubts must be resolved in favor of the moving party.[11] "Courts have balanced the excusable neglect factors when deciding a motion to vacate an entry of default."[12] The factors for excusable neglect include: (1) the non-faulting party will not be prejudiced by the reopening, (2) the default was not the result of inexcusable neglect or willful act, and (3) the defaulting party has a meritorious defense.[13] With the foregoing legal principles in mind, the Court will balance each factor.

DISCUSSION

(1) First Bank will not be prejudiced by the reopening.

First Bank will not be prejudiced by the reopening of the case. This matter is in its initial stages and the parties have not yet engaged in discovery. Furthermore, although the court ordered mediation, the parties have not yet made a good faith effort to engage in mediation as required prior to the entry of any judgment of foreclosure.[14] The Court finds that vacating the entry of default and allowing the case to be decided on its merits will not delay the final resolution of the proceedings. Accordingly, this factor weighs heavily in favor of vacating the entry of default.

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[9] *See Bazzar*, 2015 V.I. LEXIS 125 at *3-4.

[10] *Deal Furniture & Appliance Inc. v. Four Winds Plaza P'ship*, 36 V.I. 151, 153 (D.V.I. 1997).

[11] *James v. Williams*, 26 V.I. 20, 22 (V.I. Terr. Ct. 1990) (citations omitted). *See also Farnese v. Bagnasco*, 687 F.2d 761, 764 (3d Cir. 1982) ("In a close case, doubts should be resolved in favor of setting aside the default and obtaining a decision on the merits.")

[12] *Bazzar*, 2015 V.I. LEXIS 125 at *5.

[13] *Lee v. James Smith Caribbean Auto Mart Derrick Fredericks*, 2010 V.I. LEXIS 77, *3 (V.I. Super. Ct. Nov. 8, 2010) (citations and internal quotation marks omitted). *See also Bazaar, supra* (The factors for excusable neglect include: (1) whether the plaintiff will be prejudiced;(2) whether the defendant has a meritorious defense; and (3) whether the default was the result of the defendant's culpable conduct).

[14] *See Webster v. First Bank P.R.*, No. 2016-0039, 2017 V.I. Supreme LEXIS 24, at *7 (V.I. Apr. 24, 2017); 28 V.I.C. §531(b).

(2) The default was not the result of inexcusable neglect or willful act.

Upon review of the record, it does not appear that Schlea's default was the result of a willful act. Although Schlea does not state any reason for the dilatory filing of his Answer, there is no indication that Schlea's conduct was willful. Ergo, this factor weighs in favor of vacating the entry of default.

(3) There is good cause to proceed to a determination on the merits.

Schlea has not asserted any facts to support a finding that there exists a basis for a meritorious defense to First Bank's debt and foreclosure claim. However, Schlea's response and willingness to defend, in and of itself supports a finding of good cause to proceed to a determination on the merits.[15] Therefore, the last factor also weighs in favor of vacating the entry of default.

CONCLUSION

Based on the foregoing analysis, Schlea's motion to set aside entry of default will be granted. On balance, all three factors weigh in favor of vacating the entry of default. Ergo, the default entered by the Clerk on January 11, 2017 shall be vacated. The Court will enter an Order consistent with this Memorandum Opinion.

DATED this 27th day of June, 2017.

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

ATTEST:
Estrella George
Clerk of the Court

By: ________________
~~Deputy~~ Court Clerk Sup

Dated: 6/27/17

CERTIFIED TO BE A TRUE COPY
This 27 day of June 2017
ESTRELLA GEORGE
CLERK OF THE COURT
By ________________ Court Clerk

[15] *Bazzar*, 2015 V.I. LEXIS 125 at *4.