

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

SALVADOR ALVAREZ,

PLAINTIFF,

v.

**ESTATE OF EVERLENA KEEL; ANTON KEEL;
AND ALL PERSONS CLAIMING ANY LEGAL
OR EQUITABLE RIGHT, TITLE, ESTATE,
LIEN, OR INTEREST IN PLOT NO, 9A QUEEN
STREET CHRISTIANSTED, ST. CROIX
ADVERSE TO PLAINTIFF'S TITLE, OR ANY
CLOUD ON PLAINTIFF'S TITLE THERETO
AND DOES 1 THROUGH 5, INCLUSIVE,**

DEFENDANTS.

SX-14-CV-436

COMPLAINT TO QUIET TITLE

(ADVERSE POSSESSION)

MEMORANDUM OPINION

THIS MATTER came before the Court on Plaintiff Salvador Alvarez's (hereinafter "Plaintiff") motion for entry of default judgment, filed on June 20, 2017. No opposition has been filed in response.

BACKGROUND

On November 14, 2014, Plaintiff filed a complaint against the Estate of Everlena Keel; Anton Keel; and All Persons Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in Plot No, 9A Queen Street Christiansted, St. Croix Adverse to Plaintiff's Title, or Any Cloud on Plaintiff's Title Thereto and Does 1 through 5, Inclusive, to quiet title by adverse possession in connection with the real property described as Plot No. 9A Queen Street, Christiansted, St. Croix, U.S. Virgin Islands (hereinafter "Subject Property"). Plaintiff alleged the following in his complaint:

"Plaintiff has standing to pursue this action because he claims title by adverse possession." (Compl. ¶ 4) "Plaintiff's possession of the [Subject] Property has been uninterrupted, actual, open, hostile, continuous, exclusive, and notorious under claim or color of title since 1996." (Id., at ¶ 8) "Plaintiff's possession and acts of ownership of the [Subject] Property include, without limitation, (a) posting a sign bearing "Salvador's Barber Shop" on the [Subject] Property, (b) payment of property taxes, (c) maintaining the entire property, including but not limited to installing impact resistant glass windows and painting the building." (Id., at ¶ 9)

“Plaintiff has occupied the [Subject Property] to the exclusion of all others, without permission, since at least 1996.” (Id., ¶ 10)

Subsequently, the Court granted Plaintiff’s motion to serve Defendants by publication. When Defendants failed to file a response to Plaintiff’s complaint, Plaintiff filed a motion for entry of default. The Court granted Plaintiff’s request and defaults were entered against Defendants.¹ On June 20, 2017, Plaintiff filed this instant 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

¹ Given that all the Defendants defaulted in this matter, the Court will *sua sponte* dispense mediation as required under Title 28 V.I.C. § 531(b).

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 plaintiff’s 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 (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”) (internal quotations and citation omitted).

DISCUSSION

The issue before the Court is whether Plaintiff has established ownership of the Subject Property by adverse possession pursuant to Title 28, section 11 of the Virgin Islands Code. Title 28, section 11 of the Virgin Islands Code defines adverse possession as “[t]he uninterrupted, exclusive, actual, physical adverse, continuous, notorious possession of real property under claim or color of title for 15 years or more shall be conclusively presumed to give title thereto, except as against the Government.” “An adverse claimant is required to prove all the elements of adverse possession by clear and convincing evidence.” *Simpson v. Golden Resorts, LLLP*, 56 V.I. 597, 606 (V.I. 2012).

A. Whether Plaintiff is Entitled to Default Judgment Against Defendants

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, his “possession of the [Subject] Property has been uninterrupted, actual, open, hostile, continuous, exclusive, and notorious under claim or color of title since 1996.” (Compl. ¶ 8) Plaintiff alleged that his acts of ownership of the

Subject Property includes (a) posting a sign bearing "Salvador's Barber Shop" on the [Subject] Property, (b) payment of property taxes, (c) maintaining the entire property, including but not limited to installing impact resistant glass windows and painting the building." (Id., at ¶ 9) Plaintiff further alleged that, since 1996, he had occupied the Subject Property to the exclusion of all others. (Id., ¶ 10) Based on the foregoing, the Court finds that these unchallenged facts constitute a legitimate cause of action for adverse possession.

However, the Court must note that Plaintiff did not attach any exhibits in support of this instant motion for default judgment. Here, Plaintiff's claim against Defendants is to quiet title and not for a sum certain. Yet, there is no record before the Court evidencing that, for the past fifteen years, Plaintiff had: (1) actual and physical possession; (2) hostile possession; (3) open and notorious possession; and (4) continuous and exclusive possession of the Subject Property. Thus, while the Court finds the facts, as alleged in Plaintiff's complaint, constituted a valid cause of action under the Virgin Islands law, the Court must schedule an evidentiary hearing in this matter.

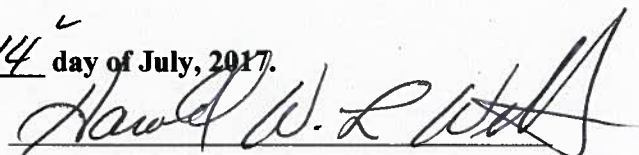
CONCLUSION

Based on the foregoing, the Court will schedule an evidentiary hearing in this matter and reserve ruling on Plaintiff's motion for default judgment. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 14 day of July, 2017.

ATTEST:

Estrella H. George
Clerk of the Court


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

By: 
Court Clerk Supervisor

Dated: 7/18/17