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

BANCO POPULAR DE PUERTO RICO, PLAINTIFF, v. JEAN CHARLES A/K/A JEAN PATRICIA GEORGE A/K/A JEAN GEORGE AND WINSBERT CHARLES, DEFENDANTS.	SX-16-CV-014 ACTION FOR DEBT AND FORECLOSURE OF REAL PROPERTY MORTGAGE

MEMORANDUM OPINION

THIS MATTER came before the Court on Plaintiff Banco Popular de Puerto Rico's (hereinafter "Plaintiff") motion for default judgment against Defendant Jean Charles a/k/a Jean Patricia George a/k/a Jean George (hereinafter "George") and Defendant Winsbert Charles (hereinafter "Charles"), filed on July 1, 2016.

BACKGROUND

On January 15, 2016, Plaintiff commenced an action for debt and foreclosure against Defendants in connection with the real property described as Plot 357 of Estate William's Delight, Prince Quarter, St. Croix, U.S. Virgin Islands (hereinafter "Subject Property"). In its complaint, Plaintiff alleged the following:

> Defendants are titleholders of record of the Subject Property. (Compl. ¶ 4) On August 21, 2009, Defendants executed and delivered to Plaintiff a promissory note obligating them to pay the principal amount of $112,000.00, together with interest at the rate of 5.25% per annum. (Id., at ¶ 5) To secure payment of the promissory note, Defendants executed and delivered to Plaintiff a first priority mortgage dated August 21, 2009. (Id., at ¶ 7) On or about September 1, 2015, Defendants defaulted under the promissory note and the mortgage—namely, monthly installments of principal and interests became due pursuant to the promissory and were unpaid. (Id., at ¶¶ 9-10) Despite Plaintiff's notice of default to Defendants, to date, the default has not been cured and Defendants remain in default under the promissory note and the mortgage. (Id., at ¶¶ 11-14) Pursuant to the promissory note and the mortgage, Plaintiff elected that the whole principal sum with all unpaid accrued interest to be immediately due and payable. As of December 23, 2015, Defendants owes Plaintiff a total amount of $100,892.52 under the promissory note—to wit: $98,728.66 (principal), plus $2,040.18 (accrued interest), plus $123.68 (late charges)—with interest accruing after December 23, 2015 at the rate of $14..29 per diem. (Id., at ¶ 19)

As such, Plaintiff sought to collect its debt from Defendants and foreclose its lien on the Subject Property. When Defendants 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 each Defendant on March 22, 2016. On July 1, 2017, Plaintiff filed this instant motion for default judgment against Defendants. To date, Defendants have 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 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. 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, Defendants executed and delivered to Plaintiff a promissory note in the amount of $112,000.00 on August 21, 2009 (hereinafter, "Promissory Note"). (Compl. ¶ 5) To secure their obligations under the Promissory Note, Defendants executed and recorded a first priority mortgage on the Subject Property in favor of Plaintiff on August 21, 2009 (hereinafter "Mortgage). (Id., at ¶ 7) Plaintiff alleged that, despite Plaintiff's notice of default to Defendants, to date, the default has not been cured and Defendants remain in default under the Promissory Note and the Mortgage. (Id., at ¶¶ 11-14) In support of its allegations, Plaintiff submitted, *inter alia*, a copy of the deed evidencing that Defendants are titleholders of the Subject Property, a copy of the executed Promissory 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.

The Court must now determine whether a hearing is necessary to establish the amount of damages. Here, Plaintiff submitted the affidavit of Josephine Williams, Assistant VP and

Collection Department Manager of Plaintiff, in support of its motion for default judgment. Josephine Williams stated in her affidavit that Defendants defaulted in the payment of the principal and interests pursuant to the Promissory Note, in the total amount of $103,693.88 as of June 24, 2016—to wit: $98,728.66 (principal), plus $4,646.02 (accrued interest), plus $309.20 (accrued late charges), and plus $10.00 (statement fee)—with interest accruing at the rate of $14.12 per diem thereon. Additionally, Plaintiff also submitted a one-page computer printout, which appear to reflect the payoff calculation in connection with Defendants' account with Plaintiff.[1] The computer printout indicated that the total amount past due is $104,862.38—to wit: $98,728.66 (principal), plus $4,646.02 (accrued interest), plus $309.20 (accrued late charges), plus $10.00 (statement fee), plus $1,168.50 (attorney's fees and costs). Josephine Williams noted in her affidavit, "[t]he sum of $1,168.50 was subtracted from the total pay-off of $104,862.38... [because] [t]his sum represents attorney's fees and costs incurred as of June 9, 2016, which will be awarded at the Court's discretion." (Josephine Aff.) After deducting $1,168.50 from $104,862.38, the total amount past due as of June 24, 2016 is $103,693.88. Based on the foregoing, the Court finds Plaintiff's claim for the total amount owed under the Promissory Note qualifies as a sum certain because "there is no doubt as to the amount to which [Plaintiff] is entitled as a result of [Defendants'] default." *Harrigan,* 61 V.I. at 270. In other words, the Court finds that there can be no dispute as to the amount due under the Promissory Note. Thus, a hearing is not necessary to establish the amount of damages in this matter.

In addition to Plaintiff's request for a judgment in the amount of $103,693.88, with interest accruing at the rate of $14.12, 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. As such, the Court

[1] The computer printout referred to the account of "Jean/Winsbert Charles."

will order Plaintiff to supplement its motion for default judgment with a certified copy of the title search of the Subject Property.

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

Plaintiff also filed an affidavit of its counsel, Attorney Samuel T. Grey of Nichols Newman Logan Grey & Lockwood, PC, for attorney's fees and costs, 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."

CONCLUSION

Based on the foregoing reasons, the Court will order Plaintiff to supplement its motion for default judgment with a certified copy of the title search of the Subject Property. The Court will reserve entering a judgment in this matter until after receipt of the title search. 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 14 **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: 7/18/17