

FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & JOHN**

FLAGSTAR BANK, FSB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 2007-26
	)	
CHERYL A. DEDUCCA, a/k/a CHERYL	)	
DEDUCCA, PHILLIP DEDUCCA, and	)	
SHERRY A. RATH,	)	
	)	
Defendants.	)	
_____	)	

ATTORNEYS:

A. Jennings Stone, Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

Norman P. Jones, Esq.
St. Thomas, U.S.V.I.
For defendant Sherry A. Rath,

Cheryl A. Deducca a/k/a Cheryl Deducca
50 Cherry Lane, Tiverton, RI 02878
Pro se defendant,

Phillip DeDucca
50 Cherry Lane, Tiverton, RI 02878
Pro se defendant.

ORDER

GÓMEZ, C.J.

The plaintiff in this matter, Flagstar Bank, FSB ("Flagstar"), commenced this debt and foreclosure action on February 1, 2007, against defendants Cheryl A. Deducca a/k/a

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Cheryl Deducca, Phillip DeDucca (together, the "Deduccas"), and Sherry A. Rath ("Rath").¹ On March 30, 2007, Rath filed an answer and cross-claim against the Deduccas.

The record reflects proof of service of Flagstar's complaint and summons on each of the Deduccas. The record also reflects proof of service of Rath's cross-claim and summons on each of the Deduccas. Neither of the Deduccas filed an answer to Flagstar's complaint or Rath's cross-claim or otherwise made an appearance in this matter.

Flagstar moved for entry of default on its complaint against the Deduccas pursuant to Federal Rule of Civil Procedure 55(a) ("Rule 55(a)").² The Clerk of Court entered defaults against each of the Deduccas.

Rath moved for entry of default on her cross-claim against the Deduccas pursuant to Rule 55(a). The Clerk of Court entered defaults against each of the Deduccas on Rath's cross-claim.

¹ Flagstar also moves for summary judgment against defendant Sherry A. Rath. The Court will address that motion in a separate Order.

² That rule provides:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

Fed. R. Civ. P. 55(a).

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Flagstar and Rath now move for default judgment against the Deduccas pursuant to Federal Rule of Civil Procedure 55(b)(2) ("Rule 55(b)(2)").

Rule 55(b)(2) allows courts to enter a default judgment against a properly served defendant who fails to file a timely responsive pleading. *Anchorage Assoc. v. Virgin Is. Bd. of Tax Rev.*, 922 F.2d 168, 177 n.9 (3d Cir. 1990). The rule further provides that "no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein." Fed. R. Civ. P. 55(b)(2); *Murphy v. C.W.*, 158 Fed. Appx. 393, 396 (3d Cir. 2006) (unpublished). Additionally, the plaintiff must file an affidavit "stating whether or not the defendant is in military service and showing necessary facts to support the affidavit" 50 U.S.C. app. § 521(b)(1) (the "Servicemembers Civil Relief Act").

While Rath has submitted what purports to be a "Notice of Compliance with the Servicemembers Civil Relief Act," neither Flagstar nor Rath has submitted, nor does the record contain, any affidavits or other competent evidence of any kind to show that the Deduccas are not infants or incompetent. That failure is fatal to their motion.

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Accordingly, it is hereby

ORDERED that Flagstar's motion for default judgment against the Deduccas is **DENIED** without prejudice; it is further

ORDERED that Rath's motion for default judgment on her cross-claim against the Deduccas is **DENIED** without prejudice; it is further

ORDERED that Flagstar's motion to amend its motion for default judgment is **DENIED** as moot.

S_____
CURTIS V. GÓMEZ
Chief Judge