

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

**BANCO POPULAR DE PUERTO RICO,**

**PLAINTIFF,**

**v.**

**JEWEL A. DAVID,**

**DEFENDANT.**

**SX-16-CV-562**

**ACTION FOR DEBT**

**MEMORANDUM OPINION**

**THIS MATTER** came before the Court on Plaintiff Banco Popular de Puerto Rico's (hereinafter "Plaintiff") motion for default judgment against Defendant Jewel A. David (hereinafter "Defendant"), filed on March 14, 2017 (hereinafter, "Motion").

**BACKGROUND**

On September 7, 2016, Plaintiff filed a lawsuit against Defendant, alleging that Defendant owed Plaintiff money pursuant to an installment loan note. (Compl. ¶¶ 4-5) A copy of the installment loan note was attached to the complaint as Exhibit 1. (Compl., Ex. 1) Plaintiff sought to recover unpaid principal, accrued interest, late charges, costs, attorneys' fees and any other relief the Court may deem equitable and just. (Compl.) 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 request and an entry of default was entered against Defendant in this matter on November 4, 2016. On March 14, 2017, Plaintiff filed this instant Motion. 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 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, Defendant executed and delivered to Plaintiff an installment loan note in the amount of \$20,000.00 on July 10, 2009 (hereinafter, "Note"). (Compl. ¶ 4) Plaintiff alleged that Defendant has defaulted in the payment of the Note. (Compl. ¶ 5) Plaintiff further alleged that, as of August 31, 2016, Defendant owed Plaintiff in the total amount of \$15,725.01 under the Note. (Id.) The copy of the Note attached to the complaint was dated July 10, 2009 and signed by debtor "Jewel A. David." 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, manager of Plaintiff, in support of its default judgment. Josephine Williams reiterated in her affidavit that Defendant defaulted in the payment of the principal and interests pursuant to the Note, in the total amount of \$15,725.01. Additionally, Plaintiff also submitted a one-page computer printout, which appear to reflect Defendant's installment loan account with Plaintiff.<sup>1</sup> The computer printout indicated that the total amount past due is \$15,725.01 (total loan balance = \$14,040.44; interest balance = \$1,651.23; late charge = \$33.34). Based on the foregoing, the Court finds Plaintiff's claim for the total amount owed under the Note qualifies as a sum certain because "there is no doubt as to the amount to which [Plaintiff] is entitled as a result of [Defendant's] 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 Note. Thus, a hearing is not necessary to establish the amount of damages in this matter.

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<sup>1</sup> The loan number on the computer printout matches the loan number on the Note.

## **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. In the affidavit of Attorney Samuel T. Grey, he asserted that the subject matter of this suit is neither novel nor complex, and that Plaintiff incurred \$895.00 in attorney's fees and \$156.74 in costs in this matter. A copy of the slip listing including the itemization of the attorney's fees and a copy of the slip listing including the itemization of the costs were attached as Exhibit 1 and Exhibit 2 to Attorney Samuel T. Grey's affidavit.

Title 5, Section 541 of the Virgin Islands Code<sup>2</sup> (hereinafter, "Section 541") governs the award of attorney's fees and costs in civil matters. The prevailing party routinely requests, and the Court often grants, an award for attorney's fees and costs, so long as they are provided for within the confines of the Section 541.<sup>3</sup> The language of Section 541 and case law are clear that the decision to award attorney's fees and costs, and the amount to be awarded, is within the Court's discretion. Title 5 V.I.C. § 541; *Kaloo v. Estate of Small*, 62 V.I. 571, 584 n. 11 (V.I. 2015) (noting that a trial judge has discretion in determining reasonable attorney's fees and costs); *see also, Pedro v. Huggins*, SX-

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<sup>2</sup> Title 5, Section 541 of the Virgin Islands Code provides:

(a) Costs which may be allowed in a civil action include:

- (1) Fees of officers, witnesses, and jurors;
- (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
- (3) Expenses of publication of the summons or notices, and the postage when they are served by mail;
- (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
- (5) Necessary expense of copying any public record, book, or document used as evidence on the trial; and
- (6) Attorney's fees as provided in subsection (b) of this section.

(b) The measure and mode of compensation of attorneys shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto; provided, however, the award of attorney's fees in personal injury cases is prohibited unless the court finds that the complaint filed or the defense is frivolous.

(c) For the purposes of this section, "frivolous" means:

- (i) without legal or factual merit; or
- (ii) for the purpose of causing unnecessary delay; or
- (iii) for the purpose of harassing an opposing party.

<sup>3</sup> *Supra*, fn. 1.

98-CV-792, 53 V.I. 98, 105-06 (Super. Ct. Mar. 5, 2010) (unpublished). In *Kaloo*, the Supreme Court pointed out that the “attorney’s fees awards should represent a ‘fair and *reasonable* portion of... [the] attorney’s fees incurred in the prosecution or defense of the action, and not [necessarily] the whole amount charged by the attorney.’” 62 V.I. at 584 fn. 11 (quoting *Estien v. Christian*, 11 V.I. 464 (3d Cir. 1975) (applying the “lodestar” test in determining the reasonableness of attorney’s fees under Section 541)) (emphasis in original). In considering the reasonableness of the attorney’s fees, the Supreme Court found guidance in the factors discussed by the Appellate Division of the District Court of the Virgin Islands in *Andrew Evans v. R&G Mortgage Corp.*, D.C. Civ. App. No. 2003/126 (D.V.I. App. Jan. 10, 2007)—namely:

the time and labor required, the novelty and difficulty of the issues involved, the level of skill needed to properly conduct the case, the customary charges of the bar for similar services, the amount involved in the controversy, the benefits resulting to the client from the services, and the contingency or certainty of compensation. *Judi’s of St. Croix Car Rental v. Weston*, 2008 V.I. Supreme LEXIS 21,\*3 (V.I. 2008).<sup>4</sup>

Here, Plaintiff sought recovery of \$895.00 in attorney’s fees, accounting for 3.10 hours spent by various attorneys—with the initials “LAK”, “CGS” and “STG”—in prosecuting this matter. Plaintiff also sought recovery of \$156.74 in costs.

The Court notes at the outset that Plaintiff is the prevailing party in this matter based on the Court’s finding above that Plaintiff is entitled to a judgment by default. The Court further notes that this is not a frivolous personal injury action. Thus, Section 541 is applicable. The Court will now determine whether the attorney’s fees and costs requested falls within the confines of Section 541.

**a. Attorney’s Fees**

First, the Court reviews the time and labor expended in this matter. According to the slip listing including the itemization of the attorney’s fees: Attorney “LAK” spent a total of 0.90 hour

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<sup>4</sup> While the Supreme Court in *Judi’s* addressed the reasonableness of the attorney’s fees requested under Supreme Court Rule 30, the Court nevertheless finds the factors considered therein to be helpful in this instance. Thus, the Court is guided by the same factors the Supreme Court considered in *Judi’s*.

reviewing the file, drafting the demand letter, and noting that the demand letter was unclaimed/undeliverable; Attorney “CGS” spent a total of 0.20 hour reviewing documents; and Attorney “STG” spent a total of 2.00 hours preparing the complaint and preparing the entry of default documents. (Grey Aff., Ex. 1) The Court finds that Attorney “LAK”’s entry on January 4, 2016 and January 12, 2016 to be duplicative—namely, both entries billed for 0.20 hour for noting that the demand letter was unclaimed/undeliverable. Thus, the Court will strike the January 12, 2016 entry. Other than that, the Court finds the services rendered and the time spent by Attorney “LAK”, Attorney “CGS” and Attorney “STG” to be reasonable. Second, the Court evaluates the novelty and difficulty of the issues involved. The Court finds that the issues involved herein is neither novel nor complex, given that it is a straightforward collection’s case and that the record in this case is minimal. Third, the Court evaluates the level of skill required of counsel to properly conduct the case. As the Court just noted, this matter is a straightforward collection’s case. This means that the counsel was only required to have a basic understanding of the Superior Court Rules and some basic drafting skills to properly conduct this case. Here, all the documents prepared and filed are short and straightforward, without the need for any legal research—namely, a little over one-page complaint, a less than half-page motion for entry of default, and a less than half-page motion for default judgment. The Court finds that this matter did not require a high degree of skill by counsel. Fourth, the Court compares the hourly rate charged in this matter with the customary charges of Virgin Islands attorneys. The Court finds the \$300.00 hourly rate charged by Attorney “LAK” and Attorney “STG” and the \$125.00 hourly rate charged by Attorney “CGS” to be consistent, or lower in the case of Attorney “CGS”, with the customary and prevailing market rates attorneys charge in the U.S. Virgin Islands. *See, e.g., Garvey v. Estate of Moorhead*, SX-13-CV-210, 2016 V.I. LEXIS 107, \*11 (Super. Ct. Aug. 1, 2016) (unpublished) (“Here, without any proffer of its reasonableness from Petitioner, the Court finds the claimed hourly rate of \$400 to be excessive, and will assign as reasonable an

hourly rate of \$300.”); *Chapa v. Sepe*, ST-12-CV-504, 2013 V.I. LEXIS 72, \*2 (Super. Ct. June 3, 2013) (unpublished) (“While Three hundred and ninety-five dollars (\$395.00) is at the high end of the customary and prevailing market rates attorneys charge in the Virgin Islands, a majority of the hours billed were at a rate of Two hundred ninety-five dollars (\$295.00), which is a moderate hourly rate as compared to what other attorneys charge in the Virgin Islands.”); *Interocean Ins. Agency v. Joseph*, SX-06-CV-177, 2014 V.I. LEXIS 73, \*10 (V.I. Super. Ct. Sep. 12, 2014) (unpublished) (the court accepted the attorney’s hourly rates of \$350.00 for in-court services and \$300.00 for other services as “fair and reasonable for an attorney with his experience and record”). Fifth, the Court considers the amount in controversy and the attorney’s fees requested. In *Judi*’s, the Supreme Court found that the attorney’s fees is unlikely to be reasonable when the attorney’s fees requested was almost four times the amount in controversy. 2008 V.I. Supreme LEXIS 21 at \*3. Here, the amount in controversy was \$15,725.01 and the attorney’s fees requested was \$895.00. The Court finds that the relationship between the amount in controversy and the attorney’s fees requested to be within reason. Sixth, the Court considers the benefits resulting to Plaintiff from the services. Here, as the result of the services rendered by Attorney “LAK”, Attorney “CGS” and Attorney “STG”, Plaintiff obtained a favorable outcome—namely, a default judgment against Defendant for the amount he owes Plaintiff pursuant to the Note. The Court finds that Plaintiff benefited from the service of its counsels. Lastly, the Court considers the contingency or certainty of compensation. According to Attorney Samuel T. Grey’s affidavit, Plaintiff retained Nichols Newman Logan Grey & Lockwood, PC—at the hourly rate of \$300.00. (Grey Aff., Ex.1) Thus, it appears that Plaintiff and Nichols Newman Logan Grey & Lockwood, PC did not have a contingency fee agreement. Based on the foregoing, once the Court deduct the \$60.00 billed for the duplicative entry mentioned above, the Court finds the attorney’s fees sought by Plaintiff to be reasonable.

**b. Costs**

According to the slip listing including the itemization of the costs, Plaintiff was billed for certified mail return receipt request fee (\$6.74), filing fee (\$75.00) and process service fee (\$75.00). (Grey Aff., Ex. 2) Section 541 only permits the recovery of certain costs.<sup>5</sup> Certified mail return receipt request fee,<sup>6</sup> filing fee and process service fee do not fall under the allowable costs of Section 541. Thus, the Court will not grant any costs here.

**CONCLUSION**

Based on the foregoing reasons, the Court will grant Plaintiff's Motion and enter a default judgment against Defendant. Given that the Court finds that there can be no dispute as to the amount of damages due in this matter, it is not necessary to hold a hearing to establish the amount of damages. Furthermore, the Court will grant Plaintiff's request for attorney's fees in the amount of \$835.00 but deny Plaintiff's request for costs. An Order consistent with this Memorandum Opinion will follow.

**DONE and so ORDERED** this 3<sup>rd</sup> day of April, 2017.

**ATTEST:**

Estrella H. George  
Clerk of the Court

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

By: 

Court Clerk Supervisor

Dated: 4/4/17

<sup>5</sup> *Supra*, fn. 1.

<sup>6</sup> The certified mail return receipt request fee, billed on November 23, 2015, was not for the service of the summons in this matter. The complaint in this matter was not filed until September 7, 2016. Thus, Title 5 V.I.C. § 541(a)(3) is not applicable here. *See supra*, fn. 1.