

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

**CARIBBEAN COOLING COMPANY,
INC.,**

Plaintiff,

v.

**DIONISIO LORENZO and DION
CONSTRUCTION,**

Defendants.

**DION CONSTRUCTION,
Counter Plaintiff,**

v.

**CARIBBEAN COOLING COMPANY,
INC.,**

Counter Defendant.

SX-12-CV-135

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants Dionisio Lorenzo and Dion Construction's (hereinafter, "Defendants" or "Lorenzo") Motion to Set Aside Entry Default. The Motion was filed on June 25, 2015 and is unopposed. For the following reasons, the Court will deny the Defendant's motion and strike the Defendant's Answer and Counterclaim.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff, Caribbean Cooling Company, Inc. (hereinafter, "Plaintiff") filed a Complaint on April 10, 2012. On April 20, 2012, Dionisio Lorenzo was personally served with a Summons and the Complaint in front of Good Year Tires in Estate Castle Coakley, St. Croix. Defendant failed

to answer, appear, or otherwise defend. Default was entered against the Defendants on October 15, 2012.

On March 11, 2015, the Court reserved its ruling on the Plaintiff's Motion for Judgment by Default in order to hold a damages hearing to properly consider the award of damages against the Defendants. Thereafter, the Defendants filed the instant Motion to Set Aside Entry of Default on June 25, 2015. On September 17, 2015, Defendants filed their Answer and Counterclaim. Plaintiff filed a Motion to Strike the Answer and Counterclaim on September 24, 2015.

STANDARD

For good cause shown, the court, upon application and notice to the adverse party, may set aside an entry of default. SUPER. CT. R. 50.¹ Although Superior Court Rule 50 does not expressly incorporate Federal Rule of Civil Procedure 55(c), which governs applications for relief from entries of default, the standard in the Virgin Islands' jurisprudence remains the same.² Because the inquiry should consider all the relevant circumstances, in certain instances, courts have also considered other equitable factors.³ Courts generally disfavor judgments by default, preferring to decide cases on their merits.⁴ Motions to set aside default, however, should be construed liberally, and any doubts must be resolved in favor of the moving party.⁵

¹ "For good cause shown, the court, upon application and notice to the adverse party, may set aside an entry of default, judgment by default or judgment after trial or hearing. Rules 59 to 61, inclusive, of the Federal Rules of Civil Procedure shall govern such applications." SUPER. CT. R. 50.

² *Lee v. James Smith Caribbean Auto Mart Derrick Fredericks*, 2010 V.I. LEXIS 77, *3 (V.I. Super. Ct. Nov. 8, 2010).

³ *Bazzar v. Salem*, 2015 V.I. LEXIS 125, *2 (V.I. Super. Ct. Oct. 8, 2015).

⁴ *Deal Furniture & Appliance Inc. v. Four Winds Plaza P'ship*, 36 V.I. 151, 153 (D.V.I. 1997).

⁵ *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.")

DISCUSSION

Defendant prays for relief from the Clerk's October 15, 2012 entry of default on the following grounds: (1) that the Defendants are ignorant of the legal system; (2) that Defendants failure to respond in a timely manner was unintentional because they were attempting to negotiate a settlement directly with the Plaintiff; and (3) that because judgment by default has not yet been entered, the case should proceed on the merits.

Entry of default in the Superior Court of the Virgin Islands is governed exclusively by the superior court rules and not the Federal Rules of Civil Procedure; but because these rules are nearly identical, a court may look to federal decisions interpreting the federal rule for persuasive authority. Fed. R. Civ. P. 55(a); Super. Ct. R. 47. *See Appleton v. Harrigan*, 61 V.I. 262, 263 (VI. 2014) (internal quotation marks omitted). As mentioned *supra*, the "court has the discretion to set aside an entry of default for 'good cause' shown" under Superior Court Rule 50. The Court will grant a motion to set aside an entry of default if: (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.⁶ With the foregoing legal principles in mind, the Court will balance each factor.

First, the Court finds that the Plaintiff will be prejudiced by the reopening of the case. Plaintiff has expended resources filing its motion for entry of default, motion for default judgment, amended motion for default judgment along with supporting documents before the Defendant filed his answer. The Court cancelled the hearing because the Plaintiff submitted the

⁶ *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).

pertinent documents showing that there is a sum certain for judgment. Although judgment by default has not yet been entered, at this juncture, Plaintiff has worked diligently to provide all of the necessary information and supporting documents for the court to enter a judgment. Ergo, the first factor weighs heavily against the Defendant.

Second, the Defendant's default is not excusable. The Defendant waited three years to appear and filed an answer along with a counterclaim on the eve of the court granting judgment by default. Since Lorenzo was properly served, he was obligated to respond to the Complaint. The Defendant's reasons for not filing an answer, a notice and not appearing is inexcusable. Therefore, all three factors weigh against the Defendant.

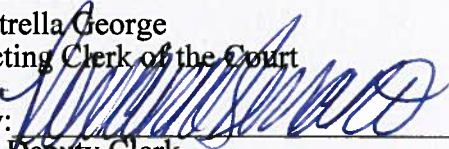
CONCLUSION

For the foregoing reasons, the Court will deny the Defendant's Motion. On balance, all of the factors weigh against vacatur. Ergo, the Court will deny the Defendant's Motion to Vacate the Entry of Default and grant the Plaintiff's Motion to Strike Answer and Counterclaim. An Order consistent with this Opinion will be entered by the Court.

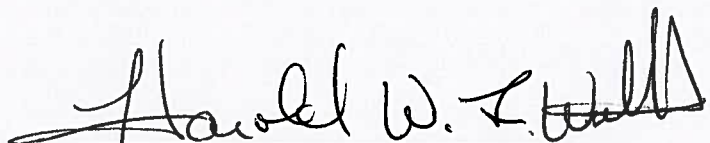
Dated: 2-4-16

ATTEST:

Estrella George
Acting Clerk of the Court

By: 
Deputy Clerk

Dated: 2/4/16


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