

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

MARY A. WEEKES A/K/A MARY A. WEEKS,

PLAINTIFF,

v.

KALANI K. JOHN A/K/A KALANI K. THOMAS,

DEFENDANT.

SX-16-CV-348

**ACTION FOR DEBT AND
FORECLOSURE OF MORTGAGE**

MEMORANDUM OPINION

THIS MATTER came before the Court on Plaintiff Mary A. Weekes a/k/a Mary A. Weeks' (hereinafter "Plaintiff") motion for default judgment, filed on January 24, 2017.

BACKGROUND

Plaintiff commenced a lawsuit against Defendant Kalani K. John a/k/a Kalani K. Thomas (hereinafter "Defendant") and alleged the following in her complaint, filed on June 2, 2016:

On June 13, 2008, Defendant executed a mortgage note in the amount of \$27,000.00 in favor of Plaintiff and Thomas Pamphile a/k/a Thomas Pamphille.¹ (Compl. ¶ 4) On the same date, Defendant also simultaneously executed a purchase money mortgage to secure the payment of the indebtedness with the following property: Plot 499 Estate Work & Rest, Queen Quarter, St. Croix U.S. Virgin Islands, consisting of 0.2332 U.S. acre, more or less, as more fully shown on Drawing No. 4624, dated July 20, 1990.² (Id.) Thomas Pamphile a/k/a Thomas Pamphille died on January 5, 2011.³ (Id. at ¶ 6) Despite numerous reminders by Plaintiff, Defendant remains in default of the obligations under the mortgage note and the purchase money mortgage. (Id. at ¶¶ 7-10) As of the date of filing of the complaint, the outstanding balance under the mortgage note is \$17,477.20. (Id. at ¶ 12)

Plaintiff sought to recover unpaid principal, accrued interest, costs, reasonable attorneys' fees, judgment of foreclosure, and any other relief the Court may deem equitable and just. 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

¹ A copy of the mortgage note was attached to the complaint as Exhibit 2.

² A copy of the purchase money mortgage was attached to the complaint as Exhibit 2.

³ A copy of Thomas Pamphile a/k/a Thomas Pamphille's death certificate was attached as Exhibit 3.

in this matter on January 12 2017. On January 24, 2017, Plaintiff filed this instant motion. To date, Defendant has not appeared in this matter.

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

In her motion, Plaintiff alleged that as of November 1, 2016, Defendant owes Plaintiff \$17,477.20 under the mortgage note and \$2,730.00 for attorney’s fees and costs for bringing this action. (Motion, p. 6) Accordingly, Plaintiff requested the Court to enter a default judgment in favor of Plaintiff for: (1) \$17,477.20; plus (2) \$2,730.00; plus (3) any other relief the Court may deem just and proper.

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, on June 13, 2008, Defendant executed and delivered a mortgage note (hereinafter “Note”) and a purchase money mortgage (hereinafter “Mortgage”) in the amount of \$27,000.00 in favor of Plaintiff and Thomas Pamphile a/k/a Thomas Pamphille. (Compl. ¶ 4) A copy of the Note and the Mortgage were attached to the complaint as exhibits, both dated June 13, 2008 and signed by Defendant. (Compl. Ex. 2) Plaintiff alleged that, notwithstanding her demands, Defendant remained in default of the obligations under the Note and the Mortgage. More specifically, Plaintiff alleged that Defendant owed Plaintiff in the total amount of \$17,477.20 under the Note. (Compl. ¶ 12) 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 failed to submit any proof to support its assertion that \$17,477.20 remains outstanding under the Note. Thus, Plaintiff’s claim for the total amount owed under the Note does not qualify as a sum certain because a sum certain requires that “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, this is not a situation in which there can be no dispute as to the amount due under the Note. Thus, an evidentiary hearing is necessary to establish the amount of damages in this matter. *See King*, 61 V.I. at 346; *Harrigan*, 61 V.I. at 269.

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 cannot enter a judgment until after the evidentiary hearing has been held.

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

Plaintiff also filed a statement of costs and expenses for attorney's fees and costs incurred in this matter, although no motion for the same appears in the record. In light of the fact that an evidentiary hearing is necessary in this matter, the Court will reserve ruling on Plaintiff's request for attorney's fees and costs until after the evidentiary hearing has been held.

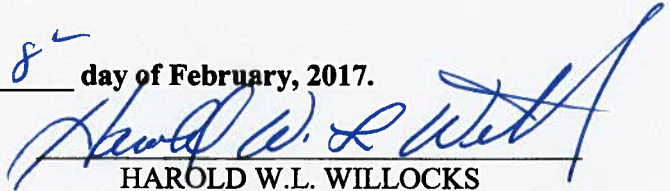
CONCLUSION

Based on the foregoing reasons, the Court will schedule an evidentiary hearing to establish the amount of damages in this matter. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 8th **day of February, 2017.**

ATTEST:

Estrella H. George
Acting Clerk of the Court


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

By: 

Court Clerk Supervisor

Dated: 2/8/17