



By Order of the Court, Judge Joseph N. Camacho

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**FOR PUBLICATION**



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**CNMI SUPERIOR COURT**  
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**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**SECUNDINA UNTALAN PANGELINAN ) CIVIL ACTION NO. 17-0067**  
**AND SELINA MARIE PANGELINAN, )**  
**Plaintiffs, ) ORDER DENYING DEFENDANT’S**  
**v. ) DEMAND FOR DEFAULT JUDGMENT**  
**JOHN SABLAN PANGELINAN, ) AS THE CLERK OF COURT DID NOT**  
**Defendant. ) MAKE AN ENTRY OF DEFAULT**  
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This matter came before the Court on October 27, 2017 on Defendant John Sablan Pangelinan’s Demand for Default Judgment and Plaintiffs’ Motion to Dismiss Defendant’s Counterclaim. Attorney Janet King appeared for the Plaintiffs, Secundina Untalan Pangelinan (“Secundina”) and Selina Marie Pangelinan (“Selina”). Defendant John Sablan Pangelinan (“Defendant Pangelinan”) appeared *pro se*. This order will address Defendant Pangelinan’s Demand for Default Judgment. Plaintiffs’ Motion to Dismiss Defendant’s Counterclaim will be addressed in a separate order.

Based on a review of the filings, oral arguments, and applicable law, the Court makes the following order.

**II. BACKGROUND**

Plaintiffs Secundina Untalan Pangelinan and Selena Marie Pangelinan filed their complaint and demand for a jury trial on March 8, 2017, alleging two causes of action: abuse of process and interference with contract. Defendant Pangelinan moved to dismiss both causes of action, and the Court denied Defendant Pangelinan’s motion on July 19, 2017. *Pangelinan v. Pangelinan*, Civ. No.

1 17-0067 (NMI Super. Ct. Jul. 19, 2017) (Order Denying Defendant’s Motion to Dismiss as  
2 Plaintiffs Have Alleged Sufficient Facts to Establish all the Elements of the Caused of Action of  
3 Abuse of Process and Interference With Contract at 17).

4 Defendant Pangelinan filed his Answer and Counterclaim on July 24, 2017. Defendant  
5 Pangelinan’s Answer and Counterclaim brought a quiet title action as to the ancestor’s lands<sup>1</sup> in  
6 Norberto E. Pangelinan’s estate,<sup>2</sup> abuse of process, and libel. On July 31, 2017, Defendant  
7 Pangelinan filed his Answer and Amended Counterclaim, alleging the same three causes of action  
8 as his initial Answer and Counterclaim.

9 On August 15, 2017, Defendant Pangelinan filed his Demand for Default Judgment,  
10 claiming “the Clerk [of Court] entered on the docket plaintiffs’ ‘default’ on August 15, 2017.”  
11 Demand for Default at 1. There is no record of an entry of default in this case. Further, there is no  
12 record of Defendant Pangelinan filing a motion for entry of default. On September 15, 2017, the  
13 Plaintiffs filed their Opposition to Defendant’s Demand for Default Judgment.

14 On August 18, 2017, the Plaintiffs filed their Motion to Dismiss Defendant’s Counterclaim,  
15 moving that the Court dismiss Defendant Pangelinan’s counterclaims for quiet title, abuse of  
16 process, and libel. Defendant Pangelinan did not file an opposition.

17 Prior to the October 27, 2017 hearing date, Defendant Pangelinan filed a number of motions  
18 to shorten time,<sup>3</sup> which were denied at the October 27, 2017 hearing. At the October 27, 2017  
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20 <sup>1</sup> In his Amended Answer and Counterclaim, Defendant Pangelinan listed Lot No. 018 B 101, Lot No. 018 B 102, Lot  
21 No. 018 B 67, Lot No. 018 B 68, Lot 018 B 69, Lot No. 018 B 58, Lot No. 018 B 29, Lot No. 018 B 27, Lot No. 018 B  
22 05, Lot No. 018 B 06, Lot No. 006 D 14, Lot No. 004 H 18, Lot No. 006 H 42, Prewar Lot No. 446, Prewar Lot No.  
23 447, and Prewar Lot No. 448.

24 <sup>2</sup> Norberto E. Pangelinan’s estate is filed with the court under Civ. No. 15-0169, and is currently on appeal to the  
Commonwealth Supreme Court under case number 017-SCC-0010/0011-CIV.

<sup>3</sup> On August 28, 2017, Defendant Pangelinan filed his Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for Hearing on  
Defendant Pangelinan’s “Demand for Default Judgment” to a Date Much Sooner than the Date Set by the Court for  
October 3, 2017 as Ordered on August 21, 2017. On September 24, 2017, Defendant Pangelinan filed his First  
Amended Declaration of John S. Pangelinan in Support of Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for  
Hearing on Defendant Pangelinan’s “Demand for Default Judgment” to a Date Much Sooner than the Date Set by the

1 hearing, the Court took under advisement Defendant Pangelinan’s Motion for Default Judgment  
2 and the Plaintiff’s Motion to Dismiss Defendant’s Counterclaim.

3 **III. DISCUSSION**

4 Defendant Pangelinan argues that the Court should enter a default judgment in his favor. In  
5 his Demand for Default Judgment, Defendant Pangelinan states that a default judgment should be  
6 entered against the Plaintiffs pursuant to NMI R. Civ. P. 55(b)(2), since “the Clerk entered on the  
7 docket plaintiffs’ ‘default’ on August 15, 2017.” Demand for Default Judgment. Defendant  
8 Pangelinan represented to the Court that, since he filed and served his counterclaim on July 24,  
9 2017, and filed and served his amended counterclaim on July 31, 2017, that the last day for the  
10 Plaintiffs to file a responsive pleading would be August 14, 2017, and that as of August 15, 2017,  
11 he had not been served with a responsive pleading. Amended Decl. of John Sablan Pangelinan in  
12 Supp. of Ent. of Default. Although Defendant Pangelinan filed a declaration in support of entry of  
13 default, there is no motion or request for entry of default on the record. Instead, all that is on the  
14 record is the Defendant’s declaration (and his amended declaration) and his demand for default  
15 judgment.

16 Pursuant to NMI R. Civ. P. 12(a)(1)(A), a party must serve their answer “within 20 days  
17 after being served with the summons and complaint.” Defendant Pangelinan’s Counterclaim was  
18 served on the Plaintiffs on July 24, 2017, thus the twenty-day deadline for filing a responsive  
19 pleading fell on August 14, 2017. The Plaintiffs ultimately filed their Motion to Dismiss  
20 Defendant’s Counterclaim on August 18, 2017, four days later. In their Opposition to Defendant’s

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22 Court for October 3, 2017. On October 12, 2017, Defendant Pangelinan filed his Second Amended Declaration of John  
23 S. Pangelinan in Support of Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for Hearing on Defendant Pangelinan’s  
24 “Demand for Default Judgment” to a Date Much Sooner than the Date Set by the Court on October 3, 2017 as Ordered  
on August 21, 2017. On October 24, 2017, Defendant Pangelinan filed his Third Amended Declaration of John S.  
Pangelinan in Support of Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for Hearing on Defendant Pangelinan’s  
“Demand for Default Judgment” to a date much sooner than the Date set by the Court for October 3, 2017 as Ordered  
on August 21, 2017. These motions were all denied as moot at the October 27, 2017 hearing.

1 Demand for Default Judgment, the Plaintiffs represented to the Court that their attorney had  
2 erroneously calculated the filing deadline based upon the July 31, 2017 Amended Answer and  
3 Counterclaim, rather than the July 24, 2017 Answer and Counterclaim. At the October 27, 2017  
4 hearing, counsel for the Plaintiffs represented to the Court that she had been inundated with  
5 hundreds of pages of filings from the Defendant.

6 The key issue, then, is whether the Plaintiffs' four-day delay in filing a responsive pleading  
7 entitles Defendant Pangelinan to a default judgment in his favor. Defaults and motions to set aside  
8 defaults are governed by Commonwealth Rules of Civil Procedure Rules 55 and 60(b).  
9 Procedurally, an entry of default is made before a default judgment is entered. *See* NMI R. Civ. P.  
10 55. An entry of default and a default judgment are two different and distinct steps in the default  
11 process:

12 A *default* is when a defendant has failed to plead or otherwise respond to the  
13 complaint within the time required by the [Rules of Civil Procedure]. An *entry of*  
14 *default* is what the clerk enters when the default is established by affidavit or  
otherwise. After defendant's default has been entered, plaintiff may apply for a  
judgment based on such default. This is *default judgment*.

15 *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996) (emphasis in original) (internal  
16 citations omitted). Thus, before the Court can address whether a default judgment may be entered,  
17 the Court must look to whether the Clerk of Court has made an entry of default.

18 Pursuant to NMI R. Civ. P. 55(a), "[w]hen a party . . . has failed to plead or otherwise  
19 defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk  
20 shall enter the party's default." Based on the record before the Court, Defendant Pangelinan has not  
21 requested an entry of default, and the Clerk of Court has not made an entry of default in this case.  
22 Defendant Pangelinan filed a declaration "in Support of Entry of Default," and an amended  
23 declaration "in Support of Entry of Default," but no request for entry of default was made. More  
24 importantly, no entry of default has been made in this case. Instead, Defendant Pangelinan filed his

1 Demand for Default Judgment together with the first of the two declarations, but did not make a  
2 formal request for entry of default to the Clerk of Court. *See* Declaration of John Sablan Pangelinan  
3 in Support of Entry of Default of Plaintiff Secundina Untalan Pangelinan and Plaintiff Selina Marie  
4 Pangelinan; Amended Declaration of John Sablan Pangelinan in Support of Entry of Default of  
5 Plaintiff Secundina Untalan Pangelinan and Plaintiff Selina Marie Pangelinan.

6 The Demand for Default Judgment, filed August 15, 2017, claims that the Clerk of Court  
7 entered default on the same day. However, there is no entry of default reflected on the record.  
8 Where no entry of default has been made, a default judgment is not justified. *Dr. Ing H.C.F.*  
9 *Porsche AG v. Zim*, 481 F.Supp. 1247, 1248 n.1 (N.D. Tex. 1979) (“Defendants’ answer having  
10 been filed four days after plaintiff’s request, and no default having been entered by the clerk, the  
11 request is [denied].”).<sup>4</sup>

12 The Court notes that the Plaintiffs made a number of arguments pursuant to *In re Woodruff*,  
13 2015 MP 11, regarding whether default judgment should be entered, or whether a potential entry of  
14 default should be set aside. Although *Woodruff* outlines the grounds for both setting aside an entry  
15 of default and an entry of default judgment,<sup>5</sup> the Court need not reach the *Woodruff* factors,<sup>6</sup> as  
16 there has been no entry of default in this case, and thus there is no entry of default for the Court to  
17 set aside.

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20 <sup>4</sup> The Court notes that this case is distinguishable from *Tenorio v. Camacho*, where an entry of default had been made.  
21 Civ. No. 15-0101-CV (NMI Super. Ct. Mar. 22, 2018) (“Order Denying Defendants’ Motion to Set Aside Entry of  
22 Default as Defendants Were Properly Served Pursuant to 7 CMC § 1104, Therefore Plaintiff’s Motion for Default  
23 Judgment is Granted, Which Quiets Title in Favor of Plaintiff”).

22 <sup>5</sup> “Grounds for setting aside an entry of default often parallels the grounds for setting aside a default judgment under  
23 Rule 60(b).” *Woodruff*, 2015 MP 11 ¶ 20 (citing *Roberto v. De Leon Guerrero*, 4 NMI 295, 297 (1995)).

23 <sup>6</sup> The three factors outlined in *Woodruff* for determining whether an entry of default or default judgment must be set  
24 aside are: “(1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to the default;  
25 (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default would prejudice the other party.”  
26 2015 MP 11 ¶ 21 (quoting *United States v. Signed Personal Check No. 730*, 615 F.3d 1085, 1091 (9th Cir. 2010))  
(brackets in original).

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**V. CONCLUSION**

There has been no entry of default in this case, and an entry of default is a prerequisite for a default judgment. Accordingly, the Defendant Pangelinan’s motion for default judgment is **DENIED.**

**IT IS SO ORDERED** this 5<sup>th</sup> day of April, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
JOSEPH N. CAMACHO  
Associate Judge