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FOR PUBLICATION

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

NORTHERN MARIANAS HOUSING CORPORATION,)	CIVIL ACTION NO. 17-0126
)	
Plaintiff,)	ORDER SETTING ASIDE COURT COST
)	AND PREJUDGMENT DAMAGES
v.)	AWARDED IN DEFAULT
)	
SHEILA P. KAPILEO,)	
)	
Defendant.)	

I. INTRODUCTION

This case involves a rental agreement between Plaintiff and Defendant and was last before the Court on February 6, 2018, at 9:00 am in Courtroom 223A on Plaintiff’s Motion for an Order in Aid of Judgment. Attorney Michael A. White represented Plaintiff Northern Marianas Housing Corporation (“Plaintiff”). Defendant Shelia P. Kapileo (“Defendant”) appeared *pro se*.

II. PROCEDURAL BACKGROUND AND FACTS

1. Plaintiff filed its complaint and the underlying agreement for unpaid rent on May 31, 2017.
2. Defendant failed to file an answer to the complaint.
3. On September 14, 2017, Plaintiff filed a one page Motion for Entry of Default pursuant to “Rule 55 of the Commonwealth Rules of Civil Procedure” which was granted by the Clerk of Court pursuant to Commonwealth Rule of Civil Procedure 55(a).

By order of the Court, Associate Judge Wesley M. Bogdan

- 1 4. A Declaration for Entry of Default was attached, in which Plaintiff's counsel declared
2 service had been made, but Defendant failed to timely answer.
- 3 5. On September 14, 2017, Plaintiff also filed a one-page Motion for Default Judgment
4 containing the following language in full: "Plaintiff here respectfully moves that judgment
5 by default be entered against the Defendant, as prayed for in the Complaint herein, the
6 default of the Defendant having previously been entered in this matter."
- 7 6. On November 29, 2017 at 9:00 a.m., Plaintiff's motion was heard before the undersigned
8 judge.
- 9 7. During the initial discussion of the status of the case, Plaintiff moved to withdraw the
10 motion, stating its intention to re-file the motion through the Clerk of Court under NMI R.
11 Civ. P. 51(b)(1).
- 12 8. Specifically, this Court questioned Plaintiff's reasoning for the motion for withdrawal and
13 asked Plaintiff's counsel if the amount of the default which he intended to ask for under
14 NMI R. Civ. P. 51(b)(1) would be for the specific "sum certain" listed in the complaint
15 under discussion.
- 16 9. Plaintiff's counsel indicated that responding to the Court's questioning was unnecessary, but
17 answered affirmatively that the amount of the default judgment he would seek from the
18 Clerk of Court would be for the sum certain of \$11,700.00.
- 19 10. Based upon this attestation, this Court orally granted the motion to withdraw the original
20 motion without prejudice.
- 21 11. On December 22, 2017, Plaintiff filed a proposed order granting the withdrawal of the
22 original motion for default judgment and a renewed Request for Default Judgment pursuant
23 to Commonwealth Rule of Civil Procedure 55(b)(1).
- 24 12. The Clerk of Court granted the Request for Default Judgment on the same day.

- 1 13. A Declaration for Default Judgment accompanied Plaintiff's renewed Request for Default
2 Judgment.
- 3 14. In his declaration, Plaintiff's counsel declared under penalty of perjury that Plaintiff was
4 entitled to \$11,700.00 in principal, \$1,402.08 in prejudgment interest from August 1, 2016
5 to the date of requested judgment at the rate of 9.0% per annum, and \$266.50 in court costs.
- 6 15. The exact legal basis and calculations for these figures were not submitted.
- 7 16. In the complaint, Plaintiff simply alleged the terms of the underlying contract entitled it to
8 the award of prejudgment interest from August 1, 2016 to the date of judgment and the
9 award of costs (Compl. 2).
- 10 17. A signed copy of the underlying contract was attached to the complaint as Exhibit A.
- 11 18. The contract provides that Defendant pay Plaintiff \$450.00 in rent per month, however, no
12 terms provide that Defendant would pay litigation expenses or interest to Plaintiff.
- 13 19. On January 10, 2018, Plaintiff filed a Motion for Order in Aid of Judgment.
- 14 20. Plaintiff's Motion for Order in Aid of Judgment was heard on February 6, 2018.
- 15 21. At the hearing, the Court expressed its concern over the requested amounts in the default
16 judgment and, specifically, questioned why prejudgment interest and court costs were
17 included with the sum certain principal amount noted in the complaint.
- 18 22. Plaintiff's counsel responded that it was his belief that the Court does not have authority to
19 review default judgments entered by the Clerk of Court and must therefore enforce a
20 judgment even if the judgment contained a mistake or was contrary to law.
- 21 23. Plaintiff's counsel stated further that the reason he withdrew the previous motion for default
22 judgment and filed for a default judgment through the Clerk of Court was because he knew
23 the undersigned judge did not "feel" that Plaintiff was automatically entitled to prejudgment
24 interest and costs.

1 **III. ISSUES**

2 This case presents two separate but connected issues. The first concerns this Court’s ability
3 to review a default judgment granted by the Clerk of Court. The second issue relates to counsel’s
4 misrepresentations to the Court in his effort to obtain a default judgment which included
5 prejudgment interest and costs (without review or approval of those requested damages by the court
6 having jurisdiction over the matter).

7 **IV. STATEMENT OF LAW**

8 As to the first matter, under the controlling Rules of Civil Procedure, the Clerk of Court has
9 limited ministerial authority to grant default judgments and may do so only when a defendant has
10 failed to answer a complaint within the proscribed time and “[w]hen the plaintiff’s claim against a
11 defendant is for a sum certain or for a sum which can by computation be made certain.” NMI R.
12 Civ. P. 55(b)(1). Under provisions of the CNMI Constitution, CNMI Statutes and controlling
13 Supreme Court rules (and as confirmed by persuasive precedent), the Superior Court is fully
14 empowered to review default judgments granted by the Clerk of Court.

15 As to the second matter, the Model Rules of Professional Conduct provide that a lawyer
16 shall not knowingly make a false statement of fact or law to a tribunal and shall zealously represent
17 a client only within the bounds of law. Counsel is hereby cautioned in the strongest terms to
18 exercise greater care with his legal arguments and choice of words made before this Court. Future
19 efforts to circumvent judicial procedures because counsel does not “feel” that he will obtain the
20 result desired will result in the initiation of formal disciplinary action.

21 **V. DISCUSSION**

22 On February 6, 2018—when the Court heard Plaintiff’s Motion for Order in Aid of
23 Judgment—the Court *sua sponte* inquired into the legal basis for the inclusion of prejudgment
24 interest and the amount of costs requested in the default judgment entered by the Clerk of Court. In

1 response, Plaintiff argued that the Court had no authority to *sua sponte* inquire into whether the
2 Clerk of Court’s judgment was lawfully entered because to do so is to act as a representative for
3 Defendant. Plaintiff further insisted that the Court must instead simply uphold and enforce the
4 default judgment without further inquiry unless a defendant moves for court review. As explained
5 below, such arguments and interpretation of the law are erroneous.

6
7 **A. The Court’s Inherent, Equitable and Statutory Powers to Review a
8 Default Judgment Entered by the Clerk of Court**

9 As an initial matter, this Court notes that Article IV Section 2 of the CNMI Constitution
10 provides that the CNMI Superior Court shall have “all inherent powers” to complete the exercise
11 of its duties and jurisdiction under the Constitution and the laws of the Commonwealth (emphasis
12 added). In addition, 1 CMC Section 3202 provides that the Superior Court has original jurisdiction
13 over all civil actions, in law and “in equity” and the power to issue all other orders necessary and
14 appropriate to the full exercise of its jurisdiction (emphasis added.) Moreover, 7 CMC Section 4207
15 unambiguously provides that any order in aid of judgment may be modified by the court as justice
16 may require, at any time, upon application of either party and notice to the other, “or on the court’s
own motion.”

17 To be direct, this Court finds in no uncertain terms that—when Plaintiff’s Motion for an
18 Order in Aid of Judgment was called on February 6, 2018—counsel’s response and
19 misrepresentation of the amount of damages he would request from the Clerk of Court is good
20 cause under its inherent powers contained in Article IV, Section 2 of the CNMI Constitution; under
21 equitable principles of law as provided for in 1 CMC Section 3202; and under the specific statutory
22 provision contained in 7 CMC Section 4207, to review, modify and/or vacate the default judgment
23 at issue. Counsel’s explanation at Plaintiff’s Motion for an Order in Aid of Judgment hearing that
24 the reason he withdrew the motion for default judgment—which was to be heard in the Superior

1 Court and instead filed for a default judgment through the Clerk of Court—was because he knew
2 the undersigned judge would not automatically grant Plaintiff’s request for prejudgment interest is
3 not well taken. Counsel’s attempted manipulation of the judicial process to get prejudgment interest
4 is borderline sanctionable and extremely troubling.¹ Accordingly, the exceptional circumstances
5 presented by counsel’s actions and subsequent rationalization support in and of itself the exercise of
6 this Court’s extraordinary Constitutional power as supported by directly applicable CNMI Statutory
7 authority to readdress the instant default judgment entered by the Clerk of Court. Given the CNMI’s
8 lack of written guidance on the issue of when a Court is empowered to review default judgments
9 entered by the Clerk of Court, additional grounds for the Court to take such action are discussed
10 briefly below.

11
12 **B. The Court’s Authority to Review and Correct Default Judgments
Under NMI Civ. R. P. 60(a)**

13 First, NMI R. Civ. P. 60(a) explicitly provides that clerical mistakes in judgments, orders or
14 other parts of the record and errors therein arising from oversight or omission may be corrected by
15 the court at any time of its own initiative (or on the motion of any party and after such notice, if
16 any, as the court orders) (emphasis added.). Under this authority, and because the prejudgment
17 interest sought by the Plaintiff is not provided for in the underlying rental agreement signed by the
18 Defendant (and because no underlying basis, accounting, or computation of any kind was provided
19 to the Clerk of Court as how the requested “court costs” in the amount of \$266.50 were calculated),
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22
23 ¹ As an officer of the Court and a long time member and past president of the CNMI Bar Association, counsel’s actions
24 in this case are simply unacceptable. Nonetheless, this Court notes that shortly following this incident—counsel re-
scheduled many Court dates for medical reasons and was off-island for a considerable period of time for what was also
reported to the Court as health reasons. Although no excuse, this may have effected counsel’s judgment and contributed
to his conduct.

1 the amount of the default judgment entered by the Clerk of Court was erroneous and mistaken.
2 Therefore, this Court is empowered to correct the error on its own initiative, at any time.²

3 To be clear, the Clerk of Court did not have the judicial authority to enter a default judgment
4 against Defendant in this case in the amount of \$13,368.58 because Plaintiff had only asked for
5 \$11,700.00 in the underlying Complaint. Plaintiff's bare assertion of the additional amount owed by
6 Defendant is insufficient to make the amount a "sum certain." Under a plain reading of Rule
7 55(b)(1), the clerk's inclusion of prejudgment interest and costs in the default judgment resulted in a
8 clerical mistake as well as a "voidable" judgment. *See J.C. Tenorio Enterprises, Inc. v. Uddin, 2006*
9 *MP 11*, ¶ 11 (a party may always seek relief from a default judgment if there has been a mistake or
10 procedural irregularity under Rule 60(a)).³

11 It is also helpful to note on this issue that as explained in other jurisdictions with nearly
12 identical controlling rules of civil procedure, a claim for damages is not considered a "sum certain"
13 unless there "is no doubt as to the exact amount of damages to which a plaintiff is entitled as a
14 result of the defendant's default. *See, e.g., KPS & Assocs. v. Designs by FMC, Inc.*, 318 F.3d 1, 20
15 (1st Cir. 2003) (citing *Reynolds Sec., Inc. v. Underwriters Bank & Trust, Co.*, 44 N.Y.2d 568, 378
16 N.E.2d 106, 109, 406 N.Y.S.2d 743 (N.Y. 1978) ("The term 'sum certain' in this context

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18 ² As noted above, the underlying rental agreement at issue is completely void of any language concerning interest of any kind, let alone prejudgment interest.

19 ³ In the *J.C. Tenorio* case, the Supreme Court was asked to determine whether the Clerk of Court had authority to enter default judgment for an award of treble damages under the CNMI's Bad Checks Act. Ultimately, the Supreme Court explained—in dicta—that the plaintiff's failure to cite to the legal authority for an award and failure to provide the calculation did not make the award a sum uncertain or take it out of the Clerk's Rule 55(b)(1) jurisdiction. *Id.* ¶ 15. However, the Court did specifically explain that "in the future, to prevent questions of jurisdiction, counsel should be sure to present the simple mathematical calculation along with the relevant statutory authority when presenting a default judgment to the Clerk." *Id.* Counsel's failure to provide this basic information in the instant matter is even more troubling as he was also Plaintiff's legal counsel in the *J.C. Tenorio* case. Unfortunately, the Supreme Court did not provide any additional details on what constituted sums certain or exactly what type of computations the Clerk of Court was empowered to make (or, did not have to make) when issuing default judgments because appellant's motion to vacate the judgment in that case was untimely under N. M. I. Civ. R. P. 60(b)(4). Moreover, when a party is entitled to seek relief or set aside default judgments entered by a Clerk of Court does not control when the Superior Court is authorized to do so.

1 contemplates a situation in which, once liability has been established, there can be no dispute as to
2 the amount due, as in actions on money judgments and negotiable instruments." *See also*
3 *Interstate Food Processing Corp. v. Pellerito Foods, Inc.*, 622 A.2d 1189, 1193 (Me. 1993) ("Such
4 situations include actions on money judgments, negotiable instruments, or similar actions where the
5 damages sought can be determined without resort to extrinsic proof."). Consequently, a sum certain
6 is often equated with "liquidated damages" which are those damages known and calculable from the
7 relevant documents or statutes at issue. *Id.* (citing 46 AM. JUR. 2D Judgments § 318). Thus, where
8 an award, such as prejudgment interest, is mandated by statute or by mutual agreement of the
9 parties as evidenced in the contract, the award is a sum certain. *Id.* (citing *Farm Family Mut. Ins.*
10 *Co. v. Thorn Lumber Co.*, 501 S.E.2d 786, 791 (W. Va. 1998)).

11 However, the term "sum certain" is not met where the claim is for unliquidated damages, or
12 where the amount of the sum sought is largely a matter of opinion on which qualified persons might
13 fairly and honestly differ. 46 AM. JUR. 2D Judgments § 260. As explained by an Appellate Court in
14 Hawaii, if the award is qualified and based on equitable principles to be awarded at the court's
15 discretion, the award is not a sum certain, cannot be entered by the clerk, and must be awarded by a
16 judge. *Ledcor - U.S. Pac. Constr., LLC v. Joslin*, No. CAAP-12-0000041, 2014 Haw. App. LEXIS
17 522 at 19 (2014) ("[Rule 55] carefully limits the clerk's authority to those cases where entry of
18 judgment is purely a ministerial act, since 'sound policy dictates that the clerk should not be
19 invested with discretionary power.'") (quoting 10A CHARLES ALAN WRIGHT, ARTHUR J.
20 MILLER & MARY K. KANE, FEDERAL PRACTICE AND PROCEDURE § 2683 at 416 (2nd
21 ed. 1983)).

22 In the present case, the inclusion of costs and prejudgment interest in the default judgment
23 entered by the Clerk of Court was in error and the only way in which it could have been properly
24 awarded would have been through the exercise judicial discretion in equity (something which the

1 Clerk of Court is not empowered to exercise). *See Isla Dev. Prop., Inc. v. Jang*, 2017 MP 13 (in
2 absence of controlling statutory or contract language, *an award for prejudgment interest requires*
3 *argument on equity and presentation of facts and evidence concerning damages and the parties'*
4 *actual losses*). *Id.* ¶¶ 16-17 (emphasis added).

5 In sum, the Court finds that the amount of costs and prejudgment interest are unliquidated
6 damages, not sums certain and Plaintiff's assertion that this Court is without authority to review the
7 Clerk of Court's award of the default judgment granted in this case is misguided for all the reasons
8 noted above and under additional controlling rules of civil procedure and persuasive precedent as
9 well.

10 **C. The Court's Authority to Take Account or to Determine the**
11 **Amount of Damages or to Establish the Truth of**
12 **Any Averment Under NMI R. Civ. P. 55(b)(2)**

13 The specific rule of civil procedure controlling the issuance of default judgments makes
14 absolutely certain that when it is necessary to take an account, to determine the amount of damages,
15 to establish the truth of any averment by evidence, or to make an investigation of any other matter,
16 the court may conduct such hearings or order such references as it deems necessary. NMI R. Civ.
17 P. 55(b)(2) (emphasis added). Under the plain language of NMI R. Civ. P. 55(b)(2), this Court has
18 the authority to determine the amount of damages or to establish the truth of any averment by
19 evidence as it deems necessary before carrying a default judgment into effect. *See D'Onofrio v.*
20 *Mattino*, 430 F. Supp.2d 431, 437-438 (E.D.Pa. 2006) (finding *sua sponte* inquiry under Fed. R.
21 Civ. P. 55(b) into personal jurisdiction over the defendant is not the assertion of defenses on behalf
22 of the defendant, but is part of the court's responsibility to determine that it has the power to enter
23 or enforce a default judgment) (citing *Williams v. Life Sav. and Loan*, 802 F.2d 1200, 1203 (10th
24 Cir. 1986)).

1 The First Circuit Court of Appeals likewise found under the analogous federal rule that it
2 was an abuse of the trial court’s discretion when the trial court granted default judgment but failed
3 to hold a hearing to inquire into the amount awards requested when it was apparent from the face of
4 the complaint that the calculations provided were unclear and that claims for sums uncertain were
5 included. *KPS Assoc.*, 318 F.3d at 18 (remanding the case for a hearing to inquire into the issue of
6 the amount of damages due to the trial court’s failure to properly exercise its duty of inquiry under
7 Federal Rule of Civil Procedure 55(b)(2)).

8 The Supreme Court in Guam has held under similar court rules that Rule 55(b) “expressly
9 authorizes a court to conduct a hearing on the issue of damages before entering a judgment by
10 default when the plaintiff seeks unliquidated damages.” *Mariano v. Surla*, 2010 Guam 2 ¶ 41.
11 “Therefore, even upon default, a court may not rubber-stamp the non-defaulting party’s damages
12 calculation, but rather must ensure that there is a basis for the damages that are sought.” *Id.* (quoting
13 *Overcash v. United Abstract Group, Inc.*, 549 F. Supp. 2d 193, 196 (N.D.N.Y. 2008)).

14
15 **D. The Court’s Authority to Review Default Judgments
Under NMI Civ. R. P. 55(c) and 60(b)**

16 Finally, the Court notes that under a plain reading of NMI Civ. R. P. 55(c), for “good cause”
17 shown, the Court may “set aside” an entry of default and, if a judgment by default has been entered,
18 may likewise “set aside” the default judgment in accordance with Rule 60(b).⁴ As uniformly
19 recognized in various jurisdictions, this provision means that the determination of whether good

20
21 ⁴ While relief from a default judgment is usually granted on a motion filed by the defaulting party, under similar federal
22 rules, a majority of circuits who have considered the power of a district court to vacate a judgment under Rule 60(b)
23 have concluded that district courts have the discretion to grant such relief *sua sponte*. See *Pierson v. Dormire*, 484 F.3d
24 486, 491-92 (8th Cir. 2007), vacated in part on rehearing on other grounds by 276 Fed. Appx. 541 (8th Cir. 2008);
Golden Blount, Inc. v. Robert H. Peterson Co., 438 F.3d 1354, 1359 n.1 (Fed. Cir. 2006); *Fort Knox Music Inc. v.*
Baptiste, 257 F.3d 108, 111 (2d Cir. 2001) (noting that while relief from judgment is usually sought by motion of a
party, “nothing forbids the court to grant such relief *sua sponte*”); *Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168
F.3d 347, 351-52 (9th Cir. 1999); *McDowell v. Celebrezze*, 310 F.2d 43, 44 (5th Cir. 1962); *United States v. Jacobs*,
298 F.2d 469, 472 (4th Cir. 1961).

1 cause exists under Rule 55(c) is a matter resting largely “within the sound discretion of the trial
2 court.” *Madsen v. Bumb*, 419 F.2d 4, 5 (9th Cir. 1969).

3 Therefore, as noted above, when Plaintiff’s Motion for an Order in Aid of Judgment was
4 heard on February 6, 2018, this Court was empowered to set aside the default judgment entered by
5 the Clerk of Court for good cause shown. This is because the Court immediately noticed in the
6 moving legal papers filed that the representations counsel had made in open Court (that only the
7 principal amount due in the default judgment would be sought from the Clerk of Court) had
8 changed and that Plaintiff asked for prejudgment interest and costs to be added to the principal sum
9 certain listed in the complaint by the Clerk of Court. This Court finds in no uncertain terms that
10 counsel’s effort to obtain prejudgment interest contrary to his representations to the Court amounts
11 to “good cause” to set aside the default judgment at issue under NMI R. P. 55(c) in accordance with
12 NMI R. P. Rule 60(b)(3) and (b)(4).⁵

13 **E. The Court Reminds Counsel of his Duty of Candor to the Tribunal**

14 The Court takes this opportunity to remind Plaintiff’s counsel of his duty of candor to the
15 tribunal. As noted above in the underlying facts related to this case, Plaintiff’s counsel represented
16 to the Court that he would only be seeking from the Clerk of Court default judgment for
17 \$11,700.00, the principal amount due under the rental agreement in question. Despite his
18 representation, however, Plaintiff’s counsel instead filed a request for Default Judgment that
19

20 ⁵ This Court further notes a final “catch-all” provision in CNMI Civil Rule of Procedure 60(b)(6) which explicitly
21 provides that a Court may relieve a party or a party’s legal representative from a final judgment for any other reasons
22 justifying relief from the operation of the judgment. This exceptionally broad authority is recognized to mean that the
23 authority in Rule 60 is remedial in nature and is to be “liberally construed.” See *Brown v. Eastman Kodak Co.*, 2000
24 Guam 30 ¶ 18 (citing *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984) (citation omitted); *Midsea Industrial, Inc. v. HK
Engineering, Ltd.*, 1998 Guam 12, P 6 (citation omitted). See also *In re Cremidas*, 14 F.R.D. 15 at 17 (D. Alaska 1953).
Further, the power vested in the courts under Rule 60(b)(6) is sufficient to enable them to vacate judgments “whenever
such action is appropriate” to accomplish justice. *Brown*, 2000 Guam at 12 (citing *Klapprott v. United States*, 335 U.S.
601, 614-15 (1948). Ultimately, judgment by default is a drastic step, appropriate only in extreme circumstances, and a
case should, whenever possible, be decided on the merits. *Brown*, 2000 Guam at 12 (citing *Falk*, 739 F.2d at 463;
Midsea, 1998 Guam 14, P 6).

1 included \$11,700.00 in principal, \$1,402.08 in prejudgment interest from August 1, 2016 to the date
2 of requested judgment at the rate of 9.0% per annum, and \$266.50 in court costs. When questioned
3 about the reasoning behind his actions, counsel explained that he anticipated that this Court would
4 not automatically grant pre-judgment interest in this case. The Court admonishes counsel for such
5 behavior and reminds him to be more cognizant of his duty of candor toward the tribunal pursuant
6 to ABA Model Rules of Professional Conduct Rule 3.3.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the awards of prejudgment interest and court costs are hereby
9 **VACATED AND SET ASIDE**. Plaintiff takes only in the amount of \$11,700.00 and may file a
10 motion for an evidentiary hearing regarding damages for prejudgment interest (if any) and court
11 costs.

12
13 **IT IS SO ORDERED** this 29th day of August, 2018.

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16 Wesley M. Bogdan, Associate Judge