



By Order of the Court, Judge Joseph N. Camacho

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FOR PUBLICATION

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

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| SECUNDINA UNTALAN PANGELINAN |) | CIVIL ACTION NO. 17-0067 |
| AND SELINA MARIE PANGELINAN, |) | |
| |) | ORDER GRANTING MOTION TO SET |
| Plaintiffs, |) | ASIDE ENTRY OF DEFAULT AS |
| |) | PLAINTIFFS DID NOT ENGAGE IN |
| v. |) | CULPABLE CONDUCT THAT LED |
| |) | TO THE DEFAULT ON THE |
| JOHN SABLAN PANGELINAN, |) | COUNTERCLAIM, AND PLAINTIFFS |
| |) | HAVE A MERITORIOUS DEFENSE, |
| Defendant. |) | AND THE OPPOSING PARTY WILL |
| |) | NOT BE PREJUDICED |
| |) | |

This matter came before the Court on July 17, 2018 on Plaintiffs’ Motion to Set Aside Entry of Default with Exhibit 1 Incorporated.¹ Plaintiffs contend that their four-day delay in responding to Defendant’s original Answer and Counterclaim is not sufficient for this Court to maintain a default in favor of Defendant Pangelinan. The Court, in its discretion to dispose “motions for entries of defaults”² with an awareness “of the strong policy favoring resolution of cases on their merits,”³ grants the Plaintiffs’ Motion to Set Aside Entry of Default.

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: 1) abuse of process and

¹ 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*.
² *Feeley v. Whitman Corp.*, 65 F. Supp. 2d 164, 171 (S.D.N.Y. 1999) (denying plaintiff’s request for default judgment where defendant did not file an answer to plaintiff’s amended complaint where defendant was clearly defending against the claims by filing a motion for summary judgment); *see also Woodruff*, 2015 MP 11 ¶ 21 (finding that the question of “[w]hether good cause exists is a matter of discretion left to the trial court”).
³ *Id.* (citing *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 95-6 (2d Cir. 1993)).

1 2) interference with contract. Defendant Pangelinan moved to dismiss both causes of action and the
2 Court denied Defendant Pangelinan’s motion on July 19, 2017. *Pangelinan v. Pangelinan*, Civ. No.
3 17-0067 (NMI Super. Ct. Jul. 19, 2017) (Order Denying Defendant’s Motion to Dismiss as
4 Plaintiffs Have Alleged Sufficient Facts to Establish all the Elements of the Causes of Action of
5 Abuse of Process and Interference With Contract at 17).

6 Defendant Pangelinan filed his Answer and Counterclaim on July 24, 2017. Defendant
7 Pangelinan’s Answer and Counterclaim brought a quiet title action as to the ancestor’s lands⁴ in
8 Norberto E. Pangelinan’s estate,⁵ abuse of process, and libel. Seven days later, on July 31, 2017,
9 Defendant Pangelinan filed his Answer and Amended Counterclaim, alleging the same three causes
10 of action as his initial Answer and Counterclaim.

11 Plaintiffs’ informed the Court that there was “a mistake when calendaring the day to
12 respond to Defendant’s counterclaims, erroneously calendaring the due date for the response as
13 August 21, 2017 (20 days after service of the Defendant’s July 31, 2017 Answer and Amended
14 Counterclaim under NMI R. Civ. P. 12(a)(2)), instead of August 14, 2017 (20 days after service of
15 Defendant’s July 24, 2017 original Answer and Counterclaim under NMI R. Civ. P. 15(a)).”
16 Because of the two filing dates of Defendant Pangelinan’s (Answer and) Counterclaims, the
17 Plaintiffs miscalculated the filing deadline and missed the filing date by four (4) days.

18 On August 15, 2017, Defendant Pangelinan filed his Demand for Default Judgment,
19 claiming “the Clerk [of Court] entered on the docket plaintiffs’ ‘default’ on August 15, 2017.”
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22 ⁴ In his Amended Answer and Counterclaim, Defendant Pangelinan listed Lot No. 018 B 101, Lot No. 018 B 102, Lot
23 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
24 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.
447, and Prewar Lot No. 448.

⁵ 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.

1 Demand for Default at 1. On September 15, 2017, Plaintiffs filed their Opposition to Defendant’s
2 Demand for Default Judgment.

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

6 On October 27, 2017, the Court took under advisement Defendant Pangelinan’s Motion for
7 Default Judgment and the Plaintiff’s Motion to Dismiss Defendant’s Counterclaim, and it denied
8 Defendant Pangelinan’s numerous motions to shorten time.⁶

9 On April 5, 2018, the Court issued its Order Denying Defendant’s Demand for Default
10 Judgment, as the Clerk of Court Did Not Make an Entry of Default,⁷ and the Court also dismissed
11 Defendant Pangelinan’s counterclaims.⁸ Although the Court’s record did not show an entry of
12 default, the parties later stipulated that the clerk made an Entry of Default, which was not recorded
13 in the Court’s record.

14 On May 18, 2018, Plaintiffs filed their Motion to Set Aside Entry of Default With Exhibit 1
15 Incorporated. The May 18, 2018 motion incorporated Plaintiff’s Opposition to Defendant’s
16 Demand for Default Judgment, which was filed on September 15, 2017. Defendant Pangelinan filed

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18 ⁶ On August 28, 2017, Defendant Pangelinan filed his Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for Hearing on
19 Defendant Pangelinan’s “Demand for Default Judgment” to a Date Much Sooner than the Date Set by the Court for
20 October 3, 2017 as Ordered on August 21, 2017. On September 24, 2017, Defendant Pangelinan filed his First
21 Amended Declaration of John S. Pangelinan in Support of Rule 6(c), Com.R.Civ.P., Motion to Shorten Time for
22 Hearing on Defendant Pangelinan’s “Demand for Default Judgment” to a Date Much Sooner than the Date Set by the
23 Court for October 3, 2017. On October 12, 2017, Defendant Pangelinan filed his Second Amended Declaration of John
24 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 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.

⁷ *Pangelinan v. Pangelinan*, Civ. No. 17-0067 (NMI. Super. Ct. Apr. 5, 2018) (Order Denying Defendant’s Demand for
Default As the Clerk of Court Did Not Make an Entry of Default) (“Order Denying Demand for Default”).

⁸ *Pangelinan v. Pangelinan*, Civ. No. 17-0067 (NMI. Super. Ct. Apr. 5, 2018) (Order Dismissing Defendant’s
Counterclaims of Quiet Title as Barred by Res Judicata; Abuse of Process since the Underlying Litigation is Still
Pending; and Libel as Libel Cannot Arise Out of Court Filings).

1 his Opposition to “Plaintiffs’ Motion to Set Aside Entry of Default with Exhibit 1 Incorporated” on
2 May 30, 2018. Plaintiffs filed their reply on June 1, 2018.

3 III. DISCUSSION

4 *In re Woodruff*, 2015 MP 11, governs whether a potential entry of default should be set
5 aside. *Woodruff*, 2015 MP 11 ¶ 20 (citing *Roberto v. De Leon Guerrero*, 4 NMI 295, 297 (1995)).
6 The three factors outlined in *Woodruff* for determining whether an entry of default must be set aside
7 are: “(1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to
8 the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default
9 would prejudice the other party.”⁹ 2015 MP 11 ¶ 21 (quoting *United States v. Signed Personal*
10 *Check No. 730*, 615 F.3d 1085, 1091 (9th Cir. 2010)) (brackets in original). The Court addresses
11 each of these factors in turn.

12 A. The Plaintiffs Did Not Engaged in Culpable Conduct that Led to the Default

13 First, the Court will look to “whether [the party seeking to set aside the default] engaged in
14 culpable conduct that led to the default.” *Woodruff*, 2015 MP 11 ¶ 21.

15 A party engages in culpable conduct when the party “has received actual or constructive
16 notice of the filing of the action and intentionally failed to answer.”¹⁰ A party ‘intentionally fails’ to
17 answer when the party’s failure to answer is willful, purposeful, or an act of bad faith.¹¹ A party’s
18 neglectful failure to answer may not rise of the level of ‘intentional failure’ if the party “offers a
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21 ⁹ In the CNMI, “it is unclear” whether the party seeking to set aside entry of default must establish all three factors. *In*
22 *re Woodruff*, 2015 MP 11 ¶ 21. *But see United States v. Signed Personal Check No. 730*, 615 F.3d 1085, 1091 (9th Cir.
23 2010) (finding that “a finding that any one of these factors is true is sufficient reason for the district court to refuse to
set aside the default”). Here, because Plaintiffs satisfied all three factors of the test, it is unnecessary to determine
whether the moving party must satisfy all of the factors for the Court to set aside an entry of default.

24 ¹⁰ *In re Woodruff*, 2015 MP 11 ¶ 22 (quoting *Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1392
(9th Cir. 1988)).

¹¹ *Id.* (quoting *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697–98 (9th Cir. 2001)).

1 credible, good faith explanation negating any intention to take advantage of the opposing party,
2 interfere with judicial decision making, or otherwise manipulate the legal process....”¹²

3 Here, Plaintiffs represented to the Court that “a mistake [was made] when calendaring the
4 day to respond to Defendant’s counterclaims, erroneously calendaring the due date for the response
5 as August 21, 2017 (20 days after service of the Defendant’s July 31, 2017 Answer and Amended
6 Counterclaim under NMI R. Civ. P. 12(a)(2)), instead of August 14, 2017 (20 days after service of
7 Defendant’s July 24, 2017 original Answer and Counterclaim under NMI R. Civ. P. 15(a)).” Opp.
8 to Demand for Default Judgment at 3 n. 2. The Court finds that because Defendant Pangelinan filed
9 two similar counterclaims close in time with one another, the Plaintiffs’ mistaken late filing was
10 not willful, deliberate, or an act of bad faith. As a result, Plaintiffs’ conduct is not “culpable
11 conduct” that warrants a default.

12 **B. The Plaintiffs Have A Meritorious Defense**

13 Second, the Court will look to “whether [the party in default has no] meritorious defense.”
14 *Woodruff*, 2015 MP 11 ¶ 21. In its order published on April 5, 2018, the Court dismissed
15 Defendant’s counterclaims of quiet title, abuse of process, and libel. *Pangelinan v. Pangelinan*, Civ.
16 No. 17-0067 (NMI Super. Ct. Apr. 6, 2018) (Order Dismissing Defendant’s Counterclaims of Quiet
17 Title As Barred by Res Judicata; Abuse of Process Since the Underlying Litigation is Still Pending;
18 and Libel as Libel Cannot Arise Out of Court Filings at 4-12). For the purposes of the present
19 motion, the Court’s finds the April 5, 2018 published order and its analysis sufficient to show that
20 the Plaintiffs possess meritorious defenses.¹³ *Pangelinan v. Pangelinan*, Civ. No. 17-0067 (NMI
21 Super. Ct. Apr. 6, 2018) (Order Dismissing Defendant’s Counterclaims of Quiet Title As Barred by
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23 _____
24 ¹² *Id.*

¹³ The Court’s analysis of meritorious defense is for the purpose of addressing this particular motion.

1 Res Judicata; Abuse of Process Since the Underlying Litigation is Still Pending; and Libel as Libel
2 Cannot Arise Out of Court Filings at 4-12).

3 **C. Re-Opening the Default Would Not Prejudice Defendant Pangelinan**

4 Third, the Court will look to “whether reopening the default would prejudice the other
5 party.” *Woodruff*, 2015 MP 11 ¶ 21. For the non-defaulting party to be prejudiced, the harm must
6 be greater “than simply delaying resolution of the case.”¹⁴ Instead, there must be a “showing that
7 setting aside default will hinder the [non-defaulting party’s] ability to pursue the claim.”¹⁵ Merely
8 increasing the litigation costs and number of proceedings does not create prejudice.¹⁶

9 Here, there is no evidence that setting aside the entry of default will hinder Defendant
10 Pangelinan beyond having his counterclaims decided on the merits. Further, the Court notes that the
11 case is at the very early stages with no substantial showing of detriment to Defendant Pangelinan
12 that would amount to prejudice. The four-day delay in the filing of any answer is de minimus taken
13 in context of the two filing dates of Defendant Pangelinan’s counterclaim and amended
14 counterclaim. Therefore, Defendant Pangelinan is not prejudiced by setting aside the entry of
15 default.

16 **V. CONCLUSION**

17 Plaintiffs’ Motion to Set Aside Entry of Default with Exhibit 1 Incorporated is **GRANTED**.

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19 **IT IS SO ORDERED** this 1st day of February, 2019.

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21 _____
22 /s/
JOSEPH N. CAMACHO
Associate Judge

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24 ¹⁴ *In re Woodruff*, 2015 MP 11 ¶ 28 (quoting *TCI Group*, 244 F.3d at 701).

¹⁵ *In re Woodruff*, 2015 MP 11 ¶ 28.

¹⁶ *Id.* ¶ 29.