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Luen Thai Fishing Venture, Ltd. v. Pohnpei
20 FSM R. 306 (Pon. 2016)

FSM SUPREME COURT TRIAL DIVISION

LUEN THAI FISHING VENTURE, LTD. and
LIANCHENG OVERSEAS FISHERY (FSM)
CO., LTD.,

Plaintiffs,

vs.

STATE OF POHNPEI, JOHN EHSA in his
capacity as Governor, OFFICE OF FISHERIES
AND AQUACULTURE, and MIJU MULSAN
COMPANY, LTD.,

Defendants.

CIVIL ACTION NO. 2013-001

ORDER DENYING MOTION TO SET ASIDE ENTRY OF DEFAULT

Arthur R. Barcinas
Temporary Justice*

Decided: February 9, 2016

* Judge, Guam Superior Court, Hagatna Guam

APPEARANCES:

For the Plaintiffs: Stephen V. Finnen, Esq.
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Kolonias, Pohnpei FM 96941

For the Defendant: Joseph S. Phillip, Esq.
(Miju Mulsan Co.) P.O. Box 464
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HEADNOTES

Civil Procedure – Default and Default Judgments – Entry of Default – Setting Aside

An application under Rule 55(c) to set aside a default entry or judgment is addressed to the court's sound discretion, and the judge's determination normally will not be disturbed on appeal unless the appellate court finds an abuse of discretion or concludes that the judge was clearly wrong. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 307-08 (Pon. 2016).

Civil Procedure – Default and Default Judgments – Entry of Default – Setting Aside

Under Civil Procedure Rule 55(c), relief from an entry of default may be granted for good cause shown. A default entry may thus be set aside for reasons that would not be enough to open a default judgment, but, although good cause is a mutable standard, varying from situation to situation, and is

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likewise a liberal one, it is not so elastic as to be devoid of substance. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

Civil Procedure – Default and Default Judgments – Entry of Default – Setting Aside

In determining whether good cause to vacate an entry of default exists, a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. A court may also examine such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the motion's timing. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

Civil Procedure – Default and Default Judgments – Entry of Default – Setting Aside

When the motion to set aside the default was not brought until nearly two and a half years after default was entered, and when the movant's arguments do not address the length of delay in filing the motion to set aside but argue that another defendant failed to protect its interest, the court finds that the default was willful. The court may refuse to set aside a default when the default is due to willfulness or bad faith or where the defendant offers no excuse at all for the default. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

Civil Procedure – Default and Default Judgments – Entry of Default – Setting Aside

A Rule 55 motion to vacate an entry of default will be denied when the defendant does not cite a meritorious defense in its motion and does not even assert that it has one. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016).

Civil Procedure – Default and Default Judgments – Entry of Default – Setting Aside

A motion to set aside an entry of default will be denied when the motion was not brought until nearly two and a half years after the default was entered; when, although if the motion to set aside had filed at an early stage of the lawsuit the prejudice to the plaintiff would have been minimal, granting the motion now would be prejudicial to the plaintiff because the plaintiff has actively litigated the matter for nearly three years; when the defendant does not assert a meritorious defense in its motion; and when, after a prior court order addressed the default, it was seven months before the motion to set aside was filed. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308-09 (Pon. 2016).

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COURT'S OPINION

ARTHUR R. BARCINAS, Temporary Justice:

I. BACKGROUND

Entry of Default was entered against the defendant, Miju Mulsan Company Ltd. (herein "Mulsan") on April 26, 2013 for failure to answer or otherwise respond to the Summons and Complaint filed by the plaintiff, Luen Thai Fishing Venture Ltd. and Liancheng Overseas Fishery (FSM) Co., Ltd. (herein "Luen Thai"). The Summons and Complaint was filed on January 13, 2013. On November 10, 2015, Mulsan filed a Motion to Set Aside Entry of Default. Luen Thai entered an Opposition to Motion to Set Aside Default on November 19, 2015.

II. MOTION TO SET ASIDE ENTRY OF DEFAULT

An application under Rule 55(c) to set aside a default entry or judgment is addressed to the sound discretion of the district court. The judge's determination

normally will not be disturbed on appeal unless the appellate court finds an abuse of discretion or concludes that the judge was "clearly wrong."

10A CHARLES A. WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2693, at 91-93 (1998) (footnote omitted).

Under Civil Procedure Rule 55(c), relief from an entry of default may be granted for good cause shown. A default entry may thus be set aside for reasons that would not be enough to open a default judgment. A Rule 55(c) motion is addressed to the trial court's discretion. Good cause is a mutable standard, varying from situation to situation, and it is likewise a liberal one, but not so elastic as to be devoid of substance. FSM Dev. Bank v. Goulard, 9 FSM Intrm. 375, 377 (Chk. 2000) (citing Coon v. Grenier, 867 F.2d 73, 76 (1st Cir. 1989)).

In determining whether good cause to vacate an entry of default exists a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. A court may also examine into such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the timing of the motion. Goulard, 9 FSM Intrm. at 378; see also United States v. One Parcel of Real Estate, 763 F.2d 181, 183 (5th Cir. 1985); Traguth v. Zuck, 710 F.2d 90, 94 (2d Cir. 1983); Pontarelli v. Stone, 713 F. Supp. 525, 528 (D.R.I. 1989).

Here, instead of filing an Answer, Mulsan entered a Motion to Dismiss on February 1, 2013, which was denied by the court on February 15, 2013. [Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM Intrm. 573 (Pon. 2013).] No Answer or response to the Summons and Complaint was ever filed by Mulsan, resulting in an Entry of Default on April 26, 2013. Because the Motion to Set Aside Default was not brought until November 10, 2015, nearly two and a half years after default was entered, the court finds that the default was willful.

In Mulsan's pending motion to show that its actions were not willful, it argues that Pohnpei State failed to protect the interest of Mulsan under the lease agreement that is the subject of this lawsuit, and that Luen Thai has not alleged or made allegations of wrongdoing by Mulsan. These arguments do not address the length of delay in filing the motion to set aside. The court may refuse to set aside a default when the default is due to willfulness or bad faith or where the defendant offers no excuse at all for the default. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 159, 162 (Pon. 2001).

The granting of Mulsan's motion would be prejudicial to Luen Thai because Luen Thai has litigated this matter for nearly three years, participated in numerous hearings and made abundant filings, and is currently engaged in arbitration proceedings. Had Mulsan filed its motion to set aside at an early stage in this lawsuit, the prejudice to Luen Thai would be minimal.

Further, Mulsan does not assert a meritorious defense in its current motion. A Rule 55 motion to vacate an entry of default will be denied when the defendant does not cite a meritorious defense in its motion and does not even assert that it has one. FSM Social Sec. Admin. v. Chuuk Public Utility Corp., 16 FSM Intrm. 333, 334 (Chk. 2009).

Finally, in an Order entered on April 29, 2015 memorializing a hearing held on April 17, 2015, the court held

On April 10, 2015 Pohnpei moved to quash Miju Mulsan Co.'s subpoena. Pohnpei first contended that Miju Mulsan's Co. had no standing to seek discovery from it because, on April 26, 2013 an entry of default was made against Miju Mulsan Co. in

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this case and that default has not been set aside. Although Miju Mulsan Co. had appeared at the preliminary injunction hearing, it has not answered the plaintiffs' complaint or sought to have its default set aside. Since an entry of default is similar to a finding of liability but it is not a final judgment, the entry of default does not relieve plaintiffs of their burden of proving the damages that flowed from any liability thus established. Lee v. FSM, 18 FSM Intrm. 558, 560 (Pon. 2013). Since a defendant who is in default may participate in a damages hearing if necessary and proper to determine the amount of damages, it would seem that a defaulting defendant might be able to conduct some discovery in that regard.

[Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).]

Although the Order addressed Mulsan's default and the fact that no action has been taken to set aside the default, it took Mulsan nearly seven (7) months after the issuance of this Order before the motion to set aside was filed, further supporting the unreasonableness of the delay in filing the motion to set aside by Mulsan.

III. CONCLUSION

THEREFORE, the defendant Miju Mulsan's Motion to Set Aside Entry of Default is HEREBY DENIED.

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FSM SUPREME COURT APPELLATE DIVISION

BENJAMIN M. ABRAMS,

Appellant,

vs.

FSM DEVELOPMENT BANK,

Appellee.

APPEAL CASE NO. P10-2014

ORDER CORRECTING CAPTION

Dennis K. Yamase
Chief Justice

Decided: February 12, 2016

APPEARANCE:

For the Appellant:

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