

Plaintiff commenced this action on February 17, 2015, seeking to foreclose on a Charging Order lien on the Defendants' distributional interest in Pinnacle Development and to wind up the business of the company. By Order dated April 8, 2015, the Court granted Plaintiff leave to serve Norris by publication. Publication was completed on May 6, 2015, and proof of publication was filed with the Court. To date, Defendant Norris has yet to file an answer or otherwise respond to the complaint.

Similarly, by Order dated August 6, 2015, the Court granted Plaintiff leave to serve Geiger by publication. Plaintiff filed a Proof of Publication as to Geiger on September 10, 2015. Geiger did not file a response or an answer within 20 days of service by publication. Plaintiff subsequently filed the instant motion for entry of default on January 28, 2016. However, in a letter dated February 4, 2016, Defendant Geiger stated:

I just found out today that the [B]ank of St. Croix has filed suit against me and my company Pinnacle Development & Investments LLC. I have never received a default notice, or [sic] I was never served.

I spoke to the [sic] Christina Williams the bank president a month ago and she told me she was working with the board on reorganizing my loan. There is something going on here that is illegal. I am asking for [a] 45 day extension to find an attorney to represent me.

See Letter from Geiger filed on February 17, 2016. Although Geiger's letter states that he discovered that the Bank of St. Croix filed a lawsuit against him and the Plaintiff in this case is Enterprise Assets, LLC (and not the Bank of St. Croix), the case number referenced in the letter refers to case number "SX6015CV60".

II. DISCUSSION

A request for an entry of default is governed by Superior Court Rule 47, which states:

When a party against whom affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by law or these rules, or has failed to appear at the time fixed for trial, the clerk shall enter his default.

Super. Ct. R. 47. Superior Court Rule 32 provides that a "defendant may appear by entering his appearance before the clerk or by filing an answer with the clerk within 20 days after service of the summons and complaint." Super. Ct. R. 32. A defendant "appears" in an action by making a written submission in which he submits himself to the jurisdiction of

the court or expresses an intent to defend against the civil action. *See Lettsome v. VI Sea Trans*, 52 V.I. 109, 115 (V.I. Super. Ct. 2009); *see also James v. Williams*, 26 V.I. 20, 22 (V.I. Terr. Ct. 1990) (“An appearance is a formal proceeding by which the defendant submits himself to the jurisdiction of the court.”).

In this matter, Plaintiff served Norris by publication pursuant to 5 V.I.C. § 112. Service by publication was completed on May 6, 2015. As of the date of issuance of this Memorandum Opinion, Norris has yet to appear or otherwise express an intent to defend in this action. Thus, the Court will direct that the Court of Clerk enter default against Defendant Norris.

With regards to Geiger, Plaintiff served him by publication effective September 10, 2015. While Geiger—who does not appear to be an attorney authorized to practice law in the Virgin Islands—did not file an answer or otherwise appear within 20 days of service by publication, he did submit a letter dated February 4, 2016 (filed with the Court on or about February 17, 2016) indicating that he became aware that a lawsuit was filed against him and his company, Pinnacle Development and Investments, LLC, but that he was never served. This letter, dated approximately seven days after Plaintiff filed the motion for entry of default, refers to the plaintiff as the Bank of St. Croix and further states that Geiger found out about the lawsuit on the same day (February 4, 2016) he wrote the letter. The letter also states that Geiger was never served or received a default notice. The letter also references case number “SX6015CV60”, which is almost identical to the case number assigned to this civil action, to wit: Case No. SX-15-CV-060. It is unclear whether Geiger is under the mistaken belief that the plaintiff in this case is the Bank of St. Croix or that the

February 4, 2016 letter refers to this case. Nonetheless, despite the lack of clarity and the ambiguous nature of Geiger's letter, the Court will construe Geiger's February 4, 2016 letter, apparently written by a *pro se* litigant, as an appearance made by both Defendant Geiger and Pinnacle Development and Investments, LLC pursuant to Rule 32. *See Dennie v. Swantson*, 51 V.I. 163, 169 (V.I. 2009) (opining that courts are to give greater leeway to *pro se* litigants in dealing with matters of procedure and pleading). Because these defendants voluntarily appeared in this case, the Court finds that it has personal jurisdiction over Geiger and Pinnacle Development and Investments, LLC. *See* 5 V.I.C. § 115 ("A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.").

Moreover, despite the fact that Defendants Geiger and Pinnacle Development and Investments, LLC filed an appearance in this case more than 20 days after being placed on constructive notice of this lawsuit, the Court will deny the motion for entry of default because it does not appear that Plaintiff will be substantially prejudiced by such a denial and this Court has a policy of favoring resolving disputes on the merits. *See Adams v. The North West Co., Inc.*, 2015 V.I. LEXIS 123, *18-19 (V.I. Super. Ct. 2015) ("[I]t is the preference of this Court, in accordance with precedent from the Supreme Court of the Virgin Islands, that cases be resolved on their merits"); *see also Joseph v. Bureau of Corrections*, 54 V.I. 644, 650 (V.I. 2011) ("Both [the Virgin Islands Supreme Court] and the United States Supreme Court have recognized that there is a strong preference for trial courts to decide doubtful cases on their merits rather than dismiss them for failure to

strictly follow purely procedural rules.”); *Marshall v. Sielaff*, 492 F.2d 917, 918 (3d Cir. 1974) (“[T]he policy of the law is to favor the hearing of a litigant’s claims on the merits.”).

Geiger’s February 4, 2016 letter also requests a “45 day extension to find an attorney to represent me.” Since Pinnacle is a corporation, and, with few exceptions not applicable here,¹ “corporations who are parties in civil litigation must be represented by attorneys,” *Lettsome v. VI Sea Trans*, 52 V.I. 109, 112 (V.I. Super. Ct. 2009), the Court will grant Defendant Geiger’s request to stay this case in order for him to find an attorney to represent both himself and the company. The Court strongly cautions Defendant Pinnacle that if it fails to obtain counsel, the Court may exercise its authority to strike all filings made by a non-attorney on Pinnacle’s behalf. *See, e.g. Donovan v. Road Rangers Country Junction, Inc.* 736 F.2d 1004, 1005 (5th Cir. 1984) (“The defendant declined to hire counsel to represent the corporations so the district court properly struck the defenses of the corporation”); *Laborers’ Dist. Council Const. Industry Pension Fund v. Compliance Mgmt. Group, Inc.*, 2005 WL 1331059, at *1 (E.D. Pa. 2005) (ordering that any filing made by an individual on behalf of the defendant corporation be stricken); *Liberty Mut. Ins. Co. v. Hurricane Logistics Co.*, 216 F.R.D. 14, 16 (D.D.C. 2003) (ruling that a corporation may not appear in court pro se, and if a corporation does not retain counsel, the district court may strike the corporation’s answers and responses).

III. CONCLUSION

For the reasons stated above, the Court will grant Plaintiff’s motion seeking an entry of default against Norris, but will deny the motion for an entry of default as to Geiger.

¹ Pursuant to 4 V.I.C. § 112(d), a personal representative who is not an attorney may represent a corporation in an action in the small claims division of the Superior Court.

Furthermore, the Court will grant Geiger's request for an extension in order to allow Geiger and Pinnacle Development and Investments, LLC time to obtain an attorney to represent them in this matter. An appropriate order follows.

Date: March 29, 2016



ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

By: 
 Court Clerk Supervisor

Dated: 3/29/16