

1 **FOR PUBLICATION**

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

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JUAN C. CABRERA, ) **CIVIL ACTION NO. 01-0578**

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) )  
Plaintiff, ) )

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) )  
v. ) )

10

MEI-YING YEN, ) **ORDER**

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) )  
Defendant. ) )

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**I. INTRODUCTION**

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THIS MATTER came on for hearing on May 6, 2002, and continued to May 13, 2002, in courtroom 205A on Plaintiff's Motion for Default Judgment. Juan C. Cabrera ("Plaintiff") appeared with counsel, Perry P. Inos, Esq. Mei-Ying Yen ("Defendant") appeared *pro se*. The Court, having considered the pleadings, the testimony of the witnesses and exhibits introduced into evidence, and being fully advised, now renders its ruling.

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**II. BACKGROUND**

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Plaintiff and Joon Chul Ahn ("Mr. Joon") entered into a Lease Agreement ("Lease") dated April 15, 1985, for a term of twenty years for property described as Lot No.008 H 20 (formerly Block 53 Lot 4), containing an area of 871 square meters, located in Chalan Kanoa, Saipan. *See* Pl.'s Ex. A. Pursuant to Article 3 of the Lease, Mr. Joon agreed to pay \$500.00 per month in rent with an increase of \$50.00 every five years, payable in advance quarterly installments.<sup>1</sup> On July 30, 1991, Mr. Yu, an assignee of the Lease,<sup>2</sup> assigned his interest in the Lease to Defendant. According to the Complaint, Defendant's last

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<sup>1</sup> Thus, the rent for the period between April 15, 2000 to April 14, 2005 was \$650.00 per month.

<sup>2</sup> Mr. Joon had assigned his interest in the Lease to Ahn (In) Jung Hee. On June 13, 1995, Mr. Hee assigned his interest in the Lease to Youngsik Robert Yu. *See* Pl.'s Ex. B.

1 rental payment, as assignee of the Lease, was on March 16, 2001.

2 On August 28, 2001, Plaintiff notified Defendant that she was in default on the Lease for  
3 nonpayment of rent. *See* Pl.'s Ex. D. According to Plaintiff, Defendant thereafter surrendered the premises  
4 when Defendant's brothers gave the keys to the premises to Plaintiff on August 28, 2001. Plaintiff claimed  
5 that Defendant's brother informed him that Defendant could no longer afford to pay rent on the Lease.<sup>3</sup>

6 On November 1, 2002, Plaintiff filed a complaint against Defendant seeking termination of the  
7 Lease pursuant to the Holdover Tenancy Act, 2 CMC §§§ 40201, *et seq.* Plaintiff also sought back rent  
8 from March 16, 2001, to August 2001, in the amount of \$3,900.00 plus interest, attorney fees, and costs.  
9 Defendant was served with the Summons and Complaint at the Division of Corrections on February 20,  
10 2002. On March 14, 2002, the Deputy Clerk entered the entry of default, as Defendant failed to answer  
11 the complaint.

### 12 III. ISSUE

13 Whether to grant Plaintiff's request to terminate the Lease and for damages in the amount of  
14 \$3,900.00 in unpaid rent pursuant to the Lease.

### 15 IV. ANALYSIS

16 Obtaining a default judgment is a three-step procedure involving the default, the entry of default,  
17 and the entry of default judgment. *See N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1986).  
18 In the case at issue, Defendant was properly served with the Summons and Complaint on February 20,  
19 2002. On March 14, 2002, the Deputy Clerk entered an entry of default because Defendant defaulted  
20 when she failed to answer the Complaint. As such, Plaintiff's factual allegations are deemed admitted. The  
21 entry of default, by the clerk's office, against Defendant cuts off Defendant's right to appear in the case  
22 with respect to liability issues. *See Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d  
23 155, 160 (2nd Cir. 1992). The entry of default is, however, merely the interim order that officially  
24 recognizes that: (1) the defendant is in default; and (2) the plaintiff's well-pleaded factual allegations  
25 (except damages) are deemed admitted and may not be contested. *See Black v. Lane*, 22 F.3d 1395,  
26 1399 (7th Cir. 1994).

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28 <sup>3</sup> At the time the keys were turned over to Plaintiff, Defendant was incarcerated.

1 After a default has been entered, the plaintiff may apply for a judgment based on such default. *See*  
2 *N.Y. Life Ins. Co.*, 84 F.3d at 141. Commonwealth Rules of Civil Procedure 55(b)(2) permits the court  
3 to conduct a hearing to take an account, to determine the amount of damages, to establish the truth of any  
4 averment by evidence, or to make an investigation of any matter. *See* Com. R. Civ. P. 55(b)(2); *see also*  
5 *Greyhound Exhibitgroup, Inc.*, 973 F.2d at 158. On April 9, 2002, Plaintiff moved the Court to enter  
6 default judgment, in favor of the Plaintiff and against Defendant, for the relief prayed for in the Complaint.  
7 *See* Pl.'s Notice of Mot. and Mot. for Default J. In his Complaint, Plaintiff prayed for termination of the  
8 Lease, for judgment for unpaid rent, for pre- and post-judgment interest, for reasonable attorney fees and  
9 costs, and for other such relief as the Court deems just and proper. On May 13, 2002, the Court held an  
10 inquest on Plaintiff's motion for default judgment, where the Court heard testimony from Plaintiff, Plaintiff's  
11 wife, Defendant, and Defendant's two brothers, Tony Yen and Chien Lon Yen.

12 Plaintiff contends that he is entitled to \$3,900.00 for unpaid rent for the second and third quarters  
13 of 2001 (April through September). At the default judgment hearing, however, Defendant presented  
14 evidence demonstrating that, although she made several attempts to tender the rental payments, Plaintiff  
15 refused to accept these payments. Defendant stated that because she was incarcerated at the time the rent  
16 payments were due, she instructed her brothers to pay the rent to Plaintiff. Defendant's brothers testified  
17 that they attempted to pay the total amount due to Plaintiff, but Plaintiff's wife refused to receive the money.  
18 Moreover, Defendant offered receipts of five money orders, in the total sum of \$3,250.00 to corroborate  
19 her testimony. *See* Def.'s Ex. 1. "A party who prevents performance on his own part or on the part of  
20 the adverse party cannot take advantage of such noncompliance or non-performance by the party obligated  
21 to perform under the contract." *See Ambrosia Coal and Constr. Co. v. C.B.G., Inc.*, No. 94 C.A. 199,  
22 1996 Ohio App.LEXIS 1888, at \*6-7 (Ohio Ct. App. May 9, 1996) (*citing Suter v. Farmers Fertilizer*  
23 *Co.*, 126 N.E. 304, 411 (Ohio 1919)). Thus, Plaintiff cannot now claim that he suffered financial hardship  
24 when he refused on several occasions to accept the tender of rental payments.

#### 25 **V. ORDER**

26 Pursuant to Commonwealth Rules of Civil Procedure 55(b)(2), the Court hereby GRANTS  
27 Plaintiff's request for an entry of default judgment against Defendant, specifically as to the termination of  
28 the Lease. In assessing damages, the Court finds that because Plaintiff failed to accept Defendant's good

1 faith efforts to pay the rent due on the Lease, Defendant is not liable for the unpaid rent from April to  
2 September 2001.

3 **SO ORDERED** this 19th day of March 2003.

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5 /s/  
6 VIRGINIA S. SABLAN ONERHEIM, Judge *Pro Tempore*

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