

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

For Publication

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

**SOLEDAD T. OGUMORO,**

Plaintiff,

v.

**HAN-YOON KO, et al.,**

Defendant.

**CIVIL ACTION NO. 99-0655**

**ORDER GRANTING DEFENDANT'S  
RULE 60(b) MOTION FOR RELIEF  
FROM JUDGMENT**

THIS MATTER came on for hearing May 20, 2003 on Defendant's Rule 60(b)(4) motion for relief from the judgment. Counsel for both sides were present and were heard. After carefully considering the pleadings and the arguments made at the hearing, the Court concluded that it needed to hear evidence as to the steps taken to effect personal service. After a continuance, this hearing was held on December 10, 2003. Having considered the arguments and evidence presented, the Court is prepared to rule.

**FACTUAL BACKGROUND**

Though there are a number of disputed facts in this case, there are sufficient undisputed facts for the Court to decide the motion in question. The undisputed facts relied upon by this court are as follows:

1. On November 16, 1994, Soledad T. Ogumoru agreed to lease Lot No. 2003-4-R3 ("the Lot") to Jo Suk Kon and Jun Duk Soon Jo (together, "the Jos") for a term of 55 years. The lease required payments totaling \$220,000 within a week of signing and monthly payments of

- 1           \$2,000 from December 1, 1998 until November 30, 2048.
- 2   2.       On August 25, 1995, the Jos mortgaged their leasehold interest in the Lot and a second lot  
3           to Han-Yoon Ko to secure a loan in the amount of \$200,000. The Jos failed to make the  
4           required monthly payments on the loan, so Mr. Ko sued them to recover on the promissory  
5           note and foreclose the mortgages. On March 13, 1997, Mr. Ko obtained a writ of execution  
6           against the Jos for \$296,736.
- 7   3.       On August 19, 1997, following a public sale, an order was issued by the Superior Court  
8           allowing Mr. Ko to purchase the Jos' leasehold interest in the Lot for \$25,000.
- 9   4.       The rent due under the lease had been paid up to November 30, 1998. On January 6, 1999,  
10          Mr. Ko gave a check to Ms. Ogumoru in the amount of \$6,000. This was to cover rent for  
11          December 1998, January 1999, and February 1999. The payor on this check was "Glory  
12          Corporation," a closely held entity owned by Mr. Ko.
- 13   5.       On October 29, 1999, Ms. Ogumoru sued the Jos in Civil Action No. 99-0655 to terminate  
14          the lease based on nonpayment of rent. Ms. Ogumoru gave notice to cure to the Jos, but they  
15          failed to cure within 30 days.
- 16   6.       On August 25, 2000, Ms. Ogumoru filed a motion seeking to add Mr. Ko to the lawsuit. Ms.  
17          Ogumoru said that she had only recently learned of Mr. Ko's interest in the Lot.
- 18   7.       On November 20, 2000, the Court granted Ms. Ogumoru permission to serve Mr. Ko by  
19          publication and posting, as authorized by 7 CMC § 1102(b). The Court relied on Ms.  
20          Ogumoru's representation that she did not know Mr. Ko's residential or mailing address and  
21          could not obtain them by exercise of reasonable diligence.
- 22   8.       The notice was published in the Mariana's Variety on November 23, 2000, November 29,  
23          2000, December 7, 2000, and December 20, 2000. A certified copy of the notice was not left  
24          with the Attorney General.
- 25   9.       Mr. Ko did not file any pleadings in the case and did not enter an appearance, either in  
26  
27  
28

1 person or through counsel until the filing of the instant motion<sup>1</sup>.

2 10. On February 28, 2001, this Court granted Ms. Ogumoru's motion for a default judgment  
3 against Mr. Ko and the Jos. The Court found that Mr. Ko and the Jos were jointly and  
4 severally liable to Ms. Ogumoru for damages totaling \$80,200, plus reasonable attorney fees.  
5 The Court also terminated the Defendants' leasehold interest in the Lot.

6 11. On March 11, 2003, Mr. Ko filed the instant action.

## 7 LEGAL CONSIDERATIONS

### 8 I. Standards for Granting Relief from a Default Judgment

9 In the instant matter Mr. Ko seeks relief from a default judgment. A default judgment is  
10 entered where a party against whom a claim is brought fails to defend against the claim by appearing  
11 in court, filing pleadings, etc. Com. R. Civ. P. 55(a). Such judgments are strongly disfavored -  
12 cases should be decided on their merits whenever possible. *Schwab v. Bullock's Inc.*, 508 F.2d 353,  
13 355 (9th Cir. 1974). Therefore, the Commonwealth Rules of Civil Procedure allow a court to set  
14 aside a default judgment for "good cause shown." Com. R. Civ. P. 55(c). In addition, on motion  
15 from an affected party, a court may grant relief from a default judgment under Rule 60(b).  
16 Commonwealth Rule of Civil Procedure 60 lists a number of grounds upon which relief might be  
17 granted, including excusable neglect (Com. R. Civ. P. 60(b)(1)), misconduct by the party who  
18 sought the default judgment (Com. R. Civ. P. 60(b)(3)), and where "the judgment is void" (Com.  
19 R. Civ. P. 60(b)(4)). In this case, Mr. Ko argues that the default judgment is void for failure to give  
20 proper notice of suit.

21 As a rule, courts of the Commonwealth employ a three part test in evaluating a request for  
22 relief from a judgment. To prevail, "the movant must show: (1) that the plaintiff will not be  
23 prejudiced; (2) the existence of a meritorious defense; and (3) that the default was not the result of  
24 the defendant's culpable conduct." *Roberto v. De Leon Guerrero*, 4 N.M.I. 295, 297 (1995). A  
25 balancing test is sensible, because relief from judgment is usually an equitable remedy and is

26

27

---

28 <sup>1</sup> Mr. Ko's appearance in the instant matter is a special appearance made only for the limited purpose of challenging jurisdiction.

1 discretionary. The party petitioning for relief is not questioning the legality of the earlier judgment,  
2 but rather is suggesting that justice and equity would be served by granting the relief requested.

3         However, where the motion is brought under Rule 60(b)(4), (arguing that the judgment is  
4 void), the party petitioning for relief is alleging that the court never had the authority to enter the  
5 judgment in the first place.

6             There is no question of discretion on the part of the court when a motion is under  
7 Rule 60(b)(4). Nor is there any requirement, as there usually is when default  
8 judgments are attacked under Rule 60(b), that the moving party show that he has a  
9 meritorious defense. Either a judgment is void or it is valid.

10 *Thos. P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, 1256  
11 (9th Cir. 1980) (*citing* WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE: CIVIL § 2862 at 197).

12 In this case, Mr. Ko contends that this Court lacked personal jurisdiction over him when the default  
13 judgment was entered because he was never given proper notice of the suit. If this is proven, the  
14 default judgment is void and must be vacated.

## 15 **II. The Notice Requirement**

16         “The fundamental requisite of due process of law is the opportunity to be heard. And it is to  
17 this end, of course, that summons or equivalent notice is employed.” *Grannis v. Ordean*, 234 U.S.  
18 385, 394, 34 S. Ct. 779, 783, 58 L. Ed. 1363, 1369 (1914) (internal citations omitted). Because of  
19 its great importance, notice must be given in a manner “reasonably calculated, under all the  
20 circumstances, to apprise interested parties of the pendency of the action and afford them an  
21 opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306,  
22 314, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873 (1950). Furthermore, “[t]he means employed must be  
23 such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.”  
24 *Id.* 339 U.S. at 315, 70 S. Ct. at 657, 94 L. Ed. at 874. Under the Commonwealth Rules of Civil  
25 Procedure, a natural person must normally be served either by mail or by hand delivery to the  
26 defendant or to an adult resident of the defendant’s home. Com. R. Civ. P. 4(e). Commonwealth  
27 law allows notice by publication, as was done here, only where personal service is not reasonably  
28 possible. 7 CMC § 1104(b). Therefore, the Court must consider whether Ms. Ogumoru exercised  
reasonably diligence in attempting to personally serve Mr. Ko.

