

AICHI NGIRCHOKEBAI, Plaintiff

v.

SANTOS, Defendant

Civil Action No. 369

Trial Division of the High Court

Palau District

November 13, 1967

Hearing on motion for default judgment for failure of defendant to answer or appear, in which defendant's counsel claims he is not prepared to defend against plaintiff's claim having been retained only one week previous to hearing. The Trial Division of the High Court, Associate Justice D. Kelly Turner, held that defendant's failure to answer complaint or retain counsel until after entry of default will not excuse the default, and that defendant may contest only amount of recovery claimed by plaintiff.

1. Judgments-Default

Defendant's failure to answer civil complaint or to retain counsel to represent him until after entry of default does not excuse default.

2. Judgments-Default

Where default judgment is entered against defendant for failure to appear or answer civil complaint, defendant's only interest is then to defend against amount claimed and not against his liability under the claim.

3. Judgments-Default

If defendant answers civil complaint at any time prior to entry of default, he is permitted to contest claim as well as amount.

4. Judgments-Default

Failure of defendant to timely obtain counsel to appear in civil action is not grounds for setting aside default.

5. Judgments-Default

Once default in civil action has been entered in docket, unless good cause is shown for setting it aside, plaintiff may proceed with establishment of amount of his judgment.

6. Judgments-Default

Where default judgment is entered in docket in civil action, plaintiff's only obligation is to prove amount to which he is entitled.

7. Judgments-Default

In interests of fairness and justice, court will permit defendant who is in default to contest amount of recovery claimed by plaintiff although procedure is not strictly in accord with practice followed in United States.

Assessor: JUDGE PABLO RINGANG
Interpr'eter: SINGICHI IKESAKES
Counsel for Plaintiff: WILLIAM O. WALLY
Counsel for Defendant: MOSES MAKOLL

TURNER, *Associate Justice*

OPINION

[1-7] Defendant's counsel informed the court he was not prepared to defend against the plaintiff's claim because he had been retained to represent the defendant one week previously. Defendant's failure to answer the complaint or to retain counsel to represent him until after entry of default does not excuse the default and defendant's only interest now is to defend against the amount claimed and not against his liability under the claim. If defendant had answered the complaint at any time prior to the entry of the default, he would have been permitted to contest the claim as well as the amount. Failure of a defendant to timely obtain counsel to appear in an action is not grounds for setting aside a default. Once default has been entered in the docket, unless good cause is shown for setting it aside, plaintiff may proceed with establishment of the amount of his judgment. That he is entitled to a judgment, without contest by the defendant, arises from the default. Plaintiff's only obligation is to prove the amount to which he is entitled. In the interests of fairness and justice we permit the defendant, even though he is in default, to contest the amount of the recovery claimed by plaintiff. Although the procedure is not strictly in accord with the practice followed in United States courts, it is deemed that this method of arriving at a judgment provides for substantial and expeditious justice.

Plaintiff testified in his own behalf as to his claim and counsel for defendant cross-examined him at length as to the propriety of the amount he claimed. Upon the testimony given, the following judgment order is made.