

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

FLAGSTAR BANK, FSB,

Plaintiff,

v.

GREGORY W. DEGELE, a/k/a Gregory Degele, LAURA DEGELE, husband and wife, and ENFIELD GREEN HOMEOWNERS ASSOCIATION, a/k/a Estate Enfield Green Owner's Association, Inc.,

Defendants.

1:23-cv-00056-WAL-EAH

TO: A.J. Stone, III, Esq.

ORDER

THIS MATTER comes before the Court on the "Motion for Entry of Default Against Gregory W. Degele, Laura Degele, and Enfield Green Homeowners Association," Dkt. No. 20, filed by Plaintiff Flagstar Bank, NA (f/k/a Flagstar Bank, FSB) on October 21, 2024. Dkt. No. 20. Plaintiff seeks entry of default against these three Defendants based on their failure to appear or respond to the complaint in this matter. *Id.* Flagstar's attorney, A.J. Stone, III, Esq., also filed a Declaration in Support of the Motion for Entry of Default. Dkt. No. 21.

In the Declaration, Attorney Stone describes how Defendant Gregory Degele was served by substitute service in Louisville, Kentucky on December 22, 2023, by leaving a copy of the summons and complaint with his wife and co-mortgagor, Laura Degele. The 21-day period for Gregory Degele to respond to the complaint expired on January 21, 2024. Dkt. No. 21, ¶¶ 4. Similarly, Laura Degele was served personally on December 22, 2023, and the 21-day period for her to respond also expired on January 21, 2024. *Id.* ¶ 5. Attorney Stone

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further declares that, on March 19, 2024, Defendant Enfield Green Homeowners Association (“EGHA”) was served personally in the Territory, and the 21-day period to respond expired on April 9, 2024. *Id.* ¶ 6.

The motion is separated by headings (Facts, Legal Standard, and Argument), similar to what would be found in a memorandum of law. In the Legal Standard section, Flagstar points to 5 V.I.C. § 112 as providing for service of process outside the Territory in a foreclosure action, where a defendant has property within the Territory. Dkt. No. 20 at 3. Flagstar also cites Fed. R. Civ. P. 4(e) that provides that a corporation may be served “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent of the Corporation,” and V.I. R. Civ. P. 4(h)(1)(B), that provides that a corporation may be served “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent” of the corporation. *Id.* If personally served or served by substitute service, a defendant must answer a complaint within 21 days after being served, pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i). *Id.*

Flagstar then argues that Laura Degele was served personally in Louisville, Kentucky on December 22, 2023 and Gregory Degele was served at his home in Louisville on that same day by substitute service on Laura Degele. *Id.* at 3-4. EGHA was served through its Treasurer, Ryan Allene, on March 19, 2024. *Id.* at 4. None of the Defendants have filed a notice of appearance, answer, or motion to dismiss, and the time to do so has expired. *Id.* Flagstar adds that there was no evidence showing that Gregory or Laura Degele were minors,

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incompetents, or members of the United States military. *Id.* It therefore requests that default be entered against the three Defendants. *Id.*

DISCUSSION

Federal Rule of Civil Procedure 55(a), governing entry of default by the Clerk of Court, provides:

Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

Fed. R. Civ. P. 55(a).

The Court may enter default only against a party who has been properly served. *See United States v. One Toshiba Color Television*, 213 F.3d 147, 156 (3d Cir. 2000); *see also* 10A Charles Alan Wright, *et al.*, *Fed. Practice & Procedure* § 2682 (3d ed. 2008); *Anderson v. Mercer Cnty. Sheriff's Dept.*, 2013 WL 5703615 at *3 (D.N.J. Oct. 17, 2013) ("The entry of default 'when there has been no proper service of the complaint is *a fortiori* void, and should be set aside.'" (quoting *Gold Kist, Inc. v. Laurinburg Oil Co.*, 756 F. 2d 14, 19 (3d Cir. 1985))).

This Court has required parties seeking an entry of default to provide either an affidavit or declaration of the facts in support of the application and a memorandum of law, along with proof of service that the non-appearing party/parties have been served. Flagstar provided a Declaration by its counsel in support of the application, Dkt. No. 21, as well as proof of service and affidavits of service by the process server attesting to service on Gregory and Laura Degele, Dkt. Nos. 6, 7, and EGHA, Dkt. No. 13. While it did not provide a separate memorandum of law, the motion was set out in the form of a memorandum and was less

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than five pages in length. According to LRCi 7.1(c)(1), a separate memorandum of law need not be submitted if the combined document (motion and memo) does not exceed five pages in length. Thus, Flagstar complied with the filing requirements for seeking entry of default.

However, the legal and factual underpinnings of the applications for entry of default were not sufficient to support the relief requested.

Service of a summons and complaint on an “individual within a Judicial District of the United States” is governed by Fed. R. Civ. P. 4(e). In a similar vein, “Serving an Individual Located Outside the Virgin Islands” is governed by V.I. R. Civ. P. 4(f). Serving a Corporation, Partnership, or Association is governed by Fed. R. Civ. P. 4 (h); the Virgin Islands Rule for “Serving a Corporation, Partnership, or Association” located in the Virgin Islands is governed by V.I. R. Civ. P. 4(h)(1)(A).

Flagstar cites 5 V.I.C. § 112(a) as providing for service of a summons and complaint outside of the Territory, and Federal Rule 4(e)(2). Dkt. No. 20 at 3. However, 5 V.I.C. § 112(a) pertains to “Substituted Service by Publication,” which is not at issue here. Flagstar also does not specify which provision(s) of Fed. R. Civ. P. 4(e)(2) applied to the service upon Gregory and Laura Degele. Since proper service is the key element in an application of entry of default, a party must do more than cite a Rule: it must specifically detail how the service comported with that rule, and Flagstar did not do so here.

As to the service on EGHA, the Memorandum cites V.I. R. Civ. P. 4(h)(1)(B), but nowhere has Flagstar explained how it learned that Ryan Alleyne was the Treasurer of EGHA and therefore service upon him was proper in order to serve EGHA. In its Motion for

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Enlargement of Service Period for Process Served Out of Time, Dkt. No. 15, Flagstar explained how it came to serve Mr. Alleyne on behalf of EGHA. However, the Motion for Entry of Default did not contain any of that information, either in Attorney Stone's Declaration or in the Memorandum. Thus, there was no explanation why, for example, Flagstar did not provide any information from the V.I. Division of Corporations and Trademarks that the Court would normally look to as containing the name of the proper person to serve EGHA showing that he was authorized to accept service. As a result, Flagstar did not support its conclusion that service on Mr. Alleyne sufficed to serve EGHA.

Given these deficits, entry of default is improper at this time.

Accordingly, it is hereby **ORDERED** that the "Motion for Entry of Default Against Gregory W. Degele, Laura Degele, and Enfield Green Homeowners Association," Dkt. No. 20, filed by Plaintiff Flagstar Bank, NA, Dkt. No. 20, is **DENIED WITHOUT PREJUDICE**.

ENTER:

Dated: November 4, 2024

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE