

FILED
SUPERIOR COURT
OF GUAM

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CLERK OF COURT

By: JS

IN THE SUPERIOR COURT OF GUAM

DNA, INC.,

Plaintiff,

vs.

ESTATE OF DONNIE LUCIUS
ATOIGUE LIZAMA, ESTATE OF
RONNIE VINCENT ATOIGUE
LIZAMA, and JOHN DOES 1-10,

Defendants.

CIVIL CASE NO. CV0143-25

**DECISION AND ORDER DENYING
MOTION FOR ENTRY OF DEFAULT
JUDGMENT AND MOTION TO STRIKE**

This matter came before the Honorable Dana A. Gutierrez on October 23, 2025 upon Plaintiff DNA, Inc.'s ("Plaintiff") Motion for Entry of Default Judgment against Defendant Estate of Donnie Lucius Atoigue Lizama ("Estate of Donnie"), and Plaintiff's Motion to Strike the Estate of Donnie's Answer to the Amended Complaint. At the hearing, Attorney Delia Wolff appeared on behalf of Plaintiff, and Attorney Jacqueline Terlaje appeared on behalf of the Estate of Donnie. Upon review of the arguments, pleadings, and applicable Guam law, the Court hereby **DENIES** Plaintiff's Motion for Entry of Default Judgment and Plaintiff's Motion to Strike.

BACKGROUND

Plaintiff filed its Complaint for Partition on February 27, 2025. Plaintiff requested the Clerk of Court enter default on the original Complaint for Partition on March 21, 2025. *See* Req. for

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Entry of Default by Clerk of Ct. (Mar. 21, 2025). The Clerk of Court refused entry of default due to “missing information regarding [Guam Rules of Civil Procedure] Rule 55(b)(1)[–](2) and the defendant’s military status.” Speed Memo (Mar. 24, 2025).

Plaintiff then filed an Amended Complaint for Partition of Real Property on March 31, 2025. The Amended Complaint was served upon the Estate of Donnie’s Administratrix, Cynthia Limtiaco-Lizama, on April 2, 2025. Mot. to Strike at 1 (June 11, 2025); Est. of Donnie’s Opp’n to Mot. to Strike (“Opp’n to Mot. to Strike”) at 2–3 (Jul. 9, 2025). Plaintiff has not requested an entry of default from the Clerk of Court on this amended pleading.

Under Guam Rules of Civil Procedure (“GRCP”) Rule 12(a), an answer was due from the Estate of Donnie on April 22, 2025. No answer was filed by that date. *See* Mot. to Strike at 1. On May 5, 2025, Plaintiff filed a Motion for Entry of Default Judgment against the Estate of Donnie. Mot. for Entry of Default Judgment against Def. Est. of Donnie (“Mot. for Entry of Default J.”).

On May 12, 2025, the Estate of Donnie filed an Objection and Opposition to Application for Default Judgment and Request for Leave of Court, asserting “excusable neglect” based on a breakdown in communications with prior counsel and a substitution of counsel occurring in the probate proceedings. Obj. and Opp’n to Appl. for Default J. (“Obj. and Opp’n”) at 1–2.

On June 11, 2025, Plaintiff filed a Motion to Strike the Answer as untimely and filed without leave of court. Mot. to Strike at 1. On July 9, 2025, the Estate of Donnie opposed the Motion to Strike, again asserting excusable neglect and additionally arguing that Plaintiff’s Motion to Strike was itself untimely under the Rules. Opp’n to Mot. to Strike at 1, 5–6.

At the October 23, 2025 hearing, counsel addressed both motions. In particular, Plaintiff acknowledged that the Clerk of Court has not entered default. Min. Entry at 10:16:08 A.M. (“[N]o

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entry has been made yet.”). The Court heard arguments from both parties and took the matter under advisement.

DISCUSSION

I. Plaintiff’s Motion for Entry of Default Judgment

A. Plaintiff Does Not Meet the Procedural Requirements under Rule 55 for Entry of Default Judgment

GRCP Rule 55 establishes a two-step process: (1) entry of default by the clerk when a party has failed to plead or otherwise defend; and (2) entry of default judgment by the court.¹ *See, e.g., Valenzuela v. Torres*, 2020 WL 6083438, at *1 (C.D. Cal. July 21, 2020) (“Federal Rule of Civil Procedure 55 provides a two-step process for entering judgment against a party who fails to defend: first, the entry of default, and second, the entry of default judgment.”); *Citizens Bank v. Decena*, 562 B.R. 202, 206 (E.D.N.Y. 2016) (“Rule 55 provides a ‘two-step process’ for the entry of judgment against a party who fails to defend: first, the entry of a default, and second, the entry of a default judgment.”). A motion for default judgment is premature unless a clerk’s default has first been entered. *See, e.g., Scheibel v. Grillakis*, 2025 WL 756604, at *2 (M.D. Fla. Feb. 26, 2025) (“As an initial matter, the motion for default judgment is due to be denied as premature because a clerk’s entry of default must be entered before default judgment.”); *Malone v. TDMW Mgmt. Inc.*, 2021 WL 12319524, at *2 (N.D. Ala. Oct. 27, 2021) (“The general rule is that a motion for default judgment is premature if it precedes an application for a Clerk’s entry of default.”); *United States v. \$4,620 in U.S. Currency*, 779 F. Supp. 2d 65, 67 (D.D.C. 2011) (“Because Rule 55 requires

¹ The Court notes that Attorney Terlaje also raised this argument during the hearing. Min. Entry at 10:37:35 A.M. (“That two-step process requires entry of default before an application for default judgment may be made.”).

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entry of a default by the Clerk before a default judgment may be entered, the government's motion for default judgment is premature.”).

Here, the record reflects that Plaintiff filed a Motion for Entry of Default Judgment on May 5, 2025, but no Clerk’s entry of default was entered prior to or after the filing of that motion. Plaintiff’s counsel acknowledged at hearing that the clerk had not entered default. Without a Clerk’s entry of default, the Court lacks a procedural basis to entertain default judgment.² *See, e.g., Horton v. 360 Digital Media, LLC*, 2023 WL 6050591, at *2 (N.D. Tex. Aug. 30, 2023) (“Without entry of default, there is no basis for entry of a default judgment.”); *Fields v. Ohio Dep’t of Rehab. & Correction*, 2015 WL 6755310, at *2 (S.D. Ohio Nov. 4, 2015) (“[W]ithout an entry of default by the clerk, this Court cannot award default judgment.”).

B. Excusable Neglect and Policy Favoring Decisions on the Merits

Even if the motion were procedurally ripe, default judgments are disfavored because cases should be resolved on their merits whenever reasonably possible. *See, e.g., Adams v. Duenas*, 1998 Guam 15 ¶ 5 (“It must also be kept in mind that default judgments are generally disfavored and deciding a case on its merits is encouraged whenever possible.”); *Pineda v. Pineda*, 2005 Guam 10 ¶ 11 (“The law prefers that cases be decided on their merits, hence, default judgments are generally disfavored.”) (citation omitted); *Kim v. Min Sun Cha*, 2020 Guam 22 ¶ 12 (“[A] default

² Plaintiff argues that it is concurrently moving the Court to order the Clerk of Court to enter default under GRCP Rule 55(a). Min. Entry at 10:15:17 A.M.–10:17:21 A.M. (Oct. 23, 2025). This request is improper. First, in seeking default, a plaintiff “must ask the court clerk to enter the default under [Rule 55(a)].” *Lal v. Felker*, 2012 WL 3704917, at *1 (E.D. Cal. Aug. 24, 2012) (emphasis added); *see also Purvis-Chapman v. Silverstein*, 2014 WL 3954991, at *1 (D.N.J. Aug. 13, 2014) (“First, under Fed. R. Civ. P. 55, the party seeking default must request that the clerk of court enter default.”); *Prudential Ins. Co. of Am. v. Tubbs*, 2021 WL 3733126, at *2 (E.D. Okla. Aug. 23, 2021) (“Initially, a party must ask the Clerk of the Court to enter default.”). Rule 55 does not permit a party to bypass the Clerk of Court by requesting that the Court order the Clerk to act in the first instance. Second, the Amended Complaint was filed on March 31, 2025. Plaintiff had nearly seven months before the October 23, 2025 hearing to request that the Clerk enter default on the Amended Complaint, yet failed to do so.

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judgment is ‘a drastic measure, only appropriate in extreme circumstances because, whenever possible, cases should be decided on their merits.’”) (citation omitted).

The Estate of Donnie argues that its delay in filing an answer was attributable to “excusable neglect.” Obj. and Opp’n at 3. Specifically, the Estate of Donnie presented evidence that the Administratrix experienced a breakdown in communications with prior counsel, sought substitution of counsel in early May 2025, requested an extension from Plaintiff’s counsel, and promptly filed an opposition and Answer on May 12, 2025 upon substitution of counsel. Obj. and Opp’n at 1–2.

“[T]he concept of ‘excusable neglect’ ‘may encompass delays caused by inadvertence, mistake, or carelessness, at least when the delay was not long, there is no bad faith, there is no prejudice to the opposing party, and movant’s excuse has some merit.’” *Cedar Petrochemicals, Inc. v. Dongbu Hannong Chem. Co.*, 769 F. Supp. 2d 269, 281 (S.D.N.Y. 2011) (citing *LoSacco v. City of Middletown*, 71 F.3d 88, 92–93 (2d Cir. 1995)).

Here, the delay is attributable to a loss of legal representation by the Estate of Donnie, which is a reasonable explanation for the failure to timely respond, and the delay in filing the Answer was only approximately twenty days beyond the deadline. The Court further notes that this length of delay need not negate a finding of “excusable neglect.” *See Miller v. Power*, 2023 WL 6976602, at *2 (D. Utah Oct. 23, 2023) (“The [U.S.] Supreme Court has affirmed a finding of excusable neglect despite a twenty-day delay.”) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 385–86 (1993)); *Johnson Bros. Corp. v. WSP USA, Inc.*, 2023 WL 7277179, at *5 (M.D. Fla. Sept. 20, 2023) (“A five-week delay is excusable given the reason for the delay.”). Furthermore, the case is in its early stages and Plaintiff has not demonstrated

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concrete prejudice arising from this short delay. This all weighs in favor of finding excusable neglect. *See Ewing v. Toby*, 2023 WL 350532, at *2 (E.D.N.C. Jan. 20, 2023) (found “[the] defendants’ failure to timely answer the complaint was the product of excusable neglect” where “the action is still in its early stages, [the] defendants’ delay in answering was brief, and plaintiff has not demonstrated he was prejudiced by this delay.”); *Zipline, LLC v. Sols. Grp., Inc.*, 2012 WL 3150584, at *2 (E.D. Mo. Aug. 2, 2012) (The court “allow[ed] Plaintiff to file its reply to Defendants’ counterclaims out of time” because “[a]t this early stage of the litigation, there is no apparent ‘impact on judicial proceedings’ or prejudice to Defendants caused by Plaintiff’s delay of 23 days.”).

The Court finds the delay attributable to excusable neglect and that justice favors resolving the dispute on its merits rather than by default. Accordingly, the Motion for Entry of Default Judgment is denied.

II. Plaintiff’s Motion to Strike

Plaintiff seeks to strike the Estate of Donnie’s Answer on the grounds that it was filed after the Rule 12(a) deadline and without leave of court. Mot. to Strike ¶¶ 7–8. The Estate of Donnie responds that excusable neglect exists and that Plaintiff’s Motion to Strike was itself untimely. Opp’n to Mot. to Strike at 1, 5–6.

A. Leave to File Late Pleading

Under GRCP Rule 6(b), when an act is required to be done within a specified time, the Court may, upon motion made after expiration of the period, permit the act to be done where the failure to act was the result of excusable neglect. *See Perez v. TLC Residential, Inc.*, 2016 WL 1569988, at *1 (N.D. Cal. Apr. 19, 2016) (“Under Rule 6(b), when a party moves for a pleading

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to be accepted despite missing the relevant deadline, the pleading may be accepted ‘where the failure to [file before the deadline] was the result of excusable neglect.’”); *Brown v. Fisher*, 251 F. App’x 527, 533 (10th Cir. 2007) (same). The Estate filed a written request for leave in its Objection and Opposition on May 12, 2025 and explained the basis for excusable neglect. Obj. and Opp’n at 1–2. Although the Answer was filed after the deadline has passed, the Court has discretion to deem the filing timely when excusable neglect is established and no prejudice results. *Richard v. New York City Dep’t of Educ.*, 2017 WL 11726144, at *2 (E.D.N.Y. Dec. 15, 2017) (“The Court therefore concludes that the defendant has demonstrated that its delay in filing its Answer was the result of excusable neglect, and that there is good cause to extend the deadline retroactively to deem the Answer timely filed.”); *Cornwell v. Warden, San Quentin State Prison*, 2025 WL 2765782, at *4 (E.D. Cal. Sep. 29, 2025) (“[T]he Court finds excusable neglect, exercises its discretion, and grants petitioner an extension of time, *nunc pro tunc*, to file the motion for evidentiary hearing.”). For the same reasons discussed above, the Court finds excusable neglect to allow the late filing of the Answer.

B. Timeliness of the Motion to Strike

Additionally, GRCP Rule 12(f) requires motions to strike to be made within 21 days after service of the pleading. The Answer was served on May 12, 2025. Plaintiff filed its Motion to Strike on June 11, 2025, more than 21 days after service. Mot. to Strike at 1; Opp’n to Mot. to Strike at 5–6. Plaintiff has not demonstrated excusable neglect for its own late filing. This provides an independent basis to deny the Motion to Strike.

For the reasons stated above, Plaintiff’s Motion to Strike is denied, and the Estate of Donnie’s request for leave is granted.

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CONCLUSION

Accordingly, **IT IS SO ORDERED:**

1. Plaintiff's Motion for Entry of Default Judgment is **DENIED**.
2. Plaintiff's Motion to Strike the Estate of Donnie's Answer is **DENIED**.
3. The Estate of Donnie is **GRANTED** leave under GRCP Rule 6(b), and its May 12, 2025 Answer is deemed timely filed.

SO ORDERED this 21st day of January, 2026.



HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam