

DEC 23 2014



ASST. CLERK OF COURTS  
REPUBLIC OF MARSHALL ISLANDS

IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

<p>BANK OF MARSHALL ISLANDS, Plaintiff</p> <p>-v-</p> <p>CALHOUN SHAMORY, EVELYN MOHANG, MAKEIAN MOHANG, Defendants</p>	<p>Civil Action No. 2014-228</p> <p><b>ORDER OF DEFAULT JUDGMENT</b></p>
---	--

To: Alanso W. Elbon, counsel for plaintiff

The court has entered the defendants' default. BOMI then filed a motion for default judgment. The court entered a deficiency order concerning the motion, and BOMI filed a response to deficiency order. Upon review of the entire file, the court makes the following findings and enters judgment as provided by MIRC 55(b)(2).

The original loan amount was \$7500, with the first of biweekly payments of \$200 due in May 2014. At the time the complaint was filed, defendants had made only three payments, and had incurred an additional \$333.09 due in interest. BOMI requested judgment in the amount of \$7658.60 (reflecting \$6992.42 in unpaid balance, plus \$333.09 interest, and an identical amount for "unpaid insurance pr."); interest at \$3.15/day; court costs of \$50; and 30% of that total amount as reasonable attorney's fees.

After defendants were served with the complaint, Calhoun Shamory "then reinstated the agreed his bi-weekly allotment payment of \$200.00," and has been current in his payments since reinstatement. Nonetheless, BOMI now requests not only judgment for the unpaid balance, and daily interest based on that amount, but an additional "auxiliary balance," as loan has now been classified as "substandard," additional court costs, and attorney's fees in the amount of \$2016.60.

As defendants are in default, the court is unsure if they were lead to believe that by reinstating payments BOMI might defer seeking judgment for the full amount due.

However, the court cannot, and will not, speculate on this. They are in default and BOMI is entitled to default judgment, in an amount shown to the court's satisfaction.

High Court General Order 2005-001 provides that attorney's fees are generally not taxable as costs against the losing party and not directly recoverable as an element of damages, subject to three exceptions. *See, Anitok v. Binejal*, 2 MILR 114, 117 (1998). The court may award attorney's fees if there is a valid contractual provision for the allowance of reasonable attorney's fees. The contract in this case provides, at § 9:

**Payment of Costs by Borrower.** In the event any suit is commenced to enforce payment of this note, Borrower agrees to pay costs incurred by the Bank in such suit, including reasonable attorney's fees of 30% of the amount of the principal, interest, and late charges due at the time of judgment.

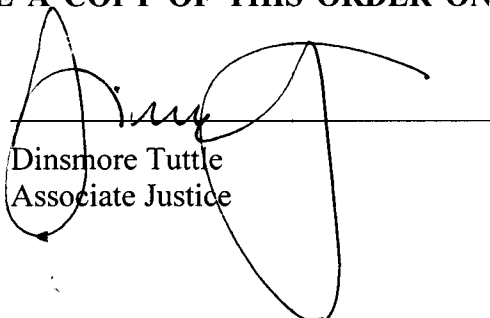
BOMI has presented no evidence from which this court might conclude that its request for attorney's fees in the amount of \$2016.60, for a \$7500 loan that was in arrears in the amount of \$1400 when the case was filed, is reasonable, notwithstanding the language in the contract. BOMI merely demands this amount, without showing any basis for the request beyond reference to § 9, which itself requires finding that the fees are reasonable. The language in General Order 2005-001, allows for an exception to the general rule against awarding attorney's fees if they are "reasonable." If this court were to find that the contract alone can dictate what is reasonable, it would be abdicating its role to make factual findings and conclusions of law.

Based on the record, the court concludes that the attorney's fee requested is not reasonable, and that request is denied. Otherwise, default judgment shall enter in the amount requested by BOMI.

Judgment enters against Calhoun Shamory, Evelyn Mohang and Makeian Mohang, in favor of Bank of the Marshall Islands, in the amount of \$6722.00, plus costs of \$65.00 and interest at 9% *per annum*.

**COUNSEL FOR BOMI SHALL SERVE A COPY OF THIS ORDER ON THE DEFENDANTS.**

Dated: 23 December 2014



Dinsmore Tuttle  
Associate Justice