FILED
DEC 18 2017
ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

MYJAC FOUNDATION, PANAMA, Plaintiff, v. SYLVIA MARIA VEGA ARCE and JUAN BAUTISTA ALFARO ALFARO, Defendants.	CIVIL ACTION 2016-139 **ORDER DENYING MOTION TO SET ASIDE DEFAULT JUDGMENT**

Klaus Dimigen, counsel for plaintiff
Arsima Muller, counsel for plaintiff
David Strauss, counsel for defendants

Defendants were personally served with a copy of the summons and complaint outside the Republic on September 30, 2016. They failed to file a responsive pleading or otherwise defend. Their default was duly entered, and on January 30, 2017, I entered a default judgment in favor of plaintiff.

On September 22, defendants filed a motion to set aside the default judgment. Plaintiff opposed the motion. After having carefully considered the parties' memoranda and accompanying documentation, I deny the motion.

ANALYSIS

Defendants first claim that the default judgment must be set aside because the summons and complaint were in the English language and defendants do not understand the English language. MIRCP 4(o) states:

> In each instance an effort shall be made to see that the copy of the summons and of the complaint delivered, left for, or sent to each defendant, is in a language that the defendant is likely to understand or can easily have explained to the defendant. Unless it is certain that a defendant understands a particular language, the copy or translation delivered, left for or sent to the defendant shall be either in English or in Marshallese. The decision as to what language shall be used shall be made by the clerk or judge signing the summons, subject to any order made by the court on the matter.

I find that the requirements of MIRCP 4(o) were satisfied. First, Rule 4(o) does not require the use of a specific language – it only requires that the summons and complaint be in a language "that the [defendants are] likely to understand or can easily have explained to [them]." Here, there is no credible showing that defendants are not likely to understand the English language.[1] Moreover, the notary public who served the defendants explained the documents to them. He affirms: "During the proceeding the notified [defendants were] duly informed of the content of the documents and details of the notice presented." Second, Rule 4(o) states that "[t]he decision as to what language shall be used shall be made by the clerk or judge signing the summons." Here, the clerk who signed the summons at least impliedly authorized the use of the English language.

---

[1] Although defendants' memorandum states that defendants do not understand the English language, defendant Arce's affidavit states only that she is not fluent in legal English. And because defendant Alfaro did not file an affidavit, it is impossible to determine whether he is or is not likely to understand the English language.

Defendants next claim that this service violated the laws of Costa Rica and the RMI. 27 MIRC §252(1) allows for personal service on a defendant outside the territorial limits of the Republic, and §252(2) discusses the manner of service and identifies those persons who are authorized to serve summonses. Defendants concede that notaries public can serve summonses in Costa Rica, but claim that, in this case, the notary public did not first obtain the proper authorization. Defendants rely on the opinion of Costa Rican attorney Marielos Melendez, who recites the authorization requirements and concludes that this service is "not legally perfected and has no legal standing." While I have no reason to doubt the accuracy of attorney Melendez's recitation of Costa Rican law, his opinion carries no weight because his *application* of that law is based entirely on unreliable hearsay. He states only that he was "informed that none of these processes or procedures were followed." Informed by who? Informed by someone who searched the records and found no authorization? Informed by a party to or other person interested in this litigation who did not search the records? Informed by his mother, or his next-door neighbor, or his local grocery clerk? If attorney Melendez made a search and found no authorization, I would expect to see an affidavit or declaration to that effect. In the absence of such a showing, I give no weight to his conclusion.

Defendants next claim that the default judgment must be set aside because RMI courts lack personal jurisdiction over them. Challenges to personal jurisdiction are waived if they are not raised in a responsive pleading or other timely motion. MIRCP 12(h). These defendants did not claim lack of personal jurisdiction when they should have done so, and their default has been entered. If I were to grant the pending motion, defendants could then raise the defense. But for purposes of the resolving the pending motion, the defense has been waived.

Defendants next claim there are "other reasons justifying relief" from the default judgment. The purpose of the phrase "other reasons justifying relief" is to allow defaulted defendants the opportunity to explain *why* they could not or did not file a timely responsive pleading. Here, these defendants only recite potential defenses to the underlying action. They do not provide a single reason that explains or justifies their failure to timely respond to the summons.

ORDER

Defendants' motion to set aside the default judgment is denied.

DATED this 18th day of December, 2017.

BY THE COURT:

COLIN R. WINCHESTER
Associate Justice