

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 12-cv-1145-WJM-BNB

FEDERAL FRUIT & PRODUCE COMPANY, a Colorado corporation

Plaintiff,

v.

LIBORIO MARKETS #9, INC., a California corporation, in its corporate capacity d/b/a RANCHO LIBORIO,
LIBORIO MARKETS #11, INC., a California corporation d/b/a RANCHO LIBORIO,
LIBORIO COLORADO HOLDING COMPANY, a California corporation in its corporate capacity d/b/a RANCHO LIBORIO,
LIBORIO HOLDING COMPANY, a California corporation in its corporate capacity d/b/a RANCHO LIBORIO,
TRIPLE A. GROCERS, INC., a California corporation in its corporate capacity d/b/a LIBORIO MARKETS,
JOHN ALEJO, in his corporate and individual capacity,
RANDY ALEJO, in his corporate and individual capacity,
ENRIQUE M. ALEJO, in his corporate and individual capacity,
ENRIQUE J. ALEJO, in his corporate and individual capacity, and
BANCO POPULAR NORTH AMERICA, a New York corporation,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE
PLAINTIFFS' MOTIONS FOR DEFAULT JUDGMENT**

On May 2, 2012, Plaintiff Federal Fruit & Produce Company ("Plaintiff") filed this action alleging violations of various provisions of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §§ 499 *et seq.* (ECF No. 1.) Plaintiffs filed an Amended Complaint realleging the same offenses and also naming Banco Popular North America as a Defendant on November 7, 2012. (ECF No. 57.)

On Plaintiff's Motion, on July 3, 2012, the Clerk entered default against Liborio

Colorado Holding Company, Liborio Holding Company, Liborio Markets #11, Inc., Liborio Markets #9, Inc., and Triple A Grocers, Inc. (collectively “Liborio Defendants”). (ECF No. 34.) On July 12, 2012, Plaintiff filed a Motion for Default Judgment against the Liborio Defendants seeking entry of judgment for \$266,646.95 in unpaid principal and \$45,956.41 in unpaid interest for a total amount of \$312,603.36. (ECF No. 38.)

On Plaintiff’s Motion, on January 4, 2013, the Clerk entered default against Banco Popular North America (“Banco”). (ECF No. 64.) On January 18, 2013, Plaintiff filed a Motion for Default Judgment seeking disgorgement of \$266,646.95 in PACA trust assets plus interest of \$72,179.51 for a total amount of \$338,826.46. (ECF No. 65.)

Although default has been entered against the Liborio Defendants and Banco, this case is ongoing against Defendants John Alejo, Randy Alejo¹, Enrique M. Alejo, and Enrique J. Alejo (collectively “Individual Defendants”). Plaintiffs have recently filed a Motion for Summary Judgment against the Individual Defendants in which it alleges that they are liable for violating PACA and seek payment of \$266,646.95 in unpaid principal, plus \$76,003.67 for unpaid interest. (ECF No. 66 at 16.)

Plaintiff’s Amended Complaint plainly alleges that the Liborio Defendants and Banco are jointly liable with the Individual Defendants. (ECF No. 57 p. 13.) The alleged joint liability of the parties is also evident from the fact that Plaintiff has sought judgment in the same amount against the Liborio Defendants and Banco through its Motions for Default Judgment and from the Individual Defendants in its Motion for Summary Judgment. (ECF Nos. 38, 65 & 66.)

¹ It appears that the case against Randy Alejo may be stayed due to his personal bankruptcy filing. (See ECF No. 32.)

In a similar case, where some but not all parties were in default, the Tenth Circuit held: “when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against him until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted.” *Hunt v. Inter-Globe Energy, Inc.*, 770 F.2d 145, 147 (10th Cir. 1985) (citing *Frow v. DeLaVega*, 82 U.S. 552 (1872)).

Because of the joint liability of all Defendants in this case, the fact that the case is ongoing against the Individual Defendants precludes entry of judgment against either the Liborio Defendants or Banco at this time. *Id.*

Accordingly, the Court hereby ORDERS as follows:

1. Plaintiff’s Motion for Default Judgment against the Liborio Defendants (ECF No. 38) is DENIED WITHOUT PREJUDICE;
2. Plaintiff’s Motion for Default Judgment against Banco (ECF No. 65) is DENIED WITHOUT PREJUDICE; and
3. Plaintiff may re-file these motions, if appropriate, after its claims against the Individual Defendants have been resolved.

Dated this 22nd day of February, 2013.

BY THE COURT:



William J. Martinez
United States District Judge