

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-21348-CIV-ZLOCH

H & R PRODUCE DISTRIBUTORS, INC.,

Plaintiff,

and

DEFAULT FINAL JUDGMENT

C.H. ROBINSON COMPANY,

Intervenor Plaintiff,

vs.

V & L CUSTOM CUT PRODUCE, INC.,
et al.Defendants.

THIS MATTER is before the Court upon Intervenor Plaintiff C.H. Robinson Company's Motion For Default Judgment (DE 20) and Plaintiff H & R Produce Distributors Inc.'s Motion For Default Judgment (DE 25). The Court has carefully reviewed said Motions and the entire Court file and is otherwise fully advised in the premises.

The Court notes that on or about May 7, 2008, Plaintiff H & R Produce Distributors, Inc. served Defendant V & L Custom Cut Produce, Inc. with a copy of the Summons, the Complaint, and the Motion For Preliminary Injunction filed herein and that said Defendant has failed to file the appropriate Motion or responsive pleading within the time prescribed by law. The Court further notes that on or about August 12, 2008, Intervenor Plaintiff C.H. Robinson Company served Defendants V & L Custom Cut Produce, Inc. and Guillermo Villasin with a copy of the Summons and the

Intervenor Complaint filed herein and that said Defendants have failed to file the appropriate Motion or responsive pleading within the time prescribed by law.

By prior Order (DE 19), the Court entered a default against Defendants V & L Custom Cut Produce, Inc. and Guillermo Villasin. Pursuant to the contract between C.H. Robinson Company and Defendants V & L Custom Cut Produce, Inc. and Guillermo Villasin, C.H. Robinson Company is entitled to pre-judgment interest of 1.5% per month and attorney's fees necessary for the collection of payment on this judgment. See DE 20, Ex. 1, p. 4.

Furthermore, H & R Produce Distributors, Inc. is entitled to pre-judgment interest at the federal statutory rate. Pre-judgment interest on this amount is left to the sound discretion of the Court. Florence Nightingale Nursing Serv., Inc. v. Blue Cross/Blue Shield of Ala., 41 F.3d 1476, 1484 (11th Cir. 1995) (citation omitted). The Court finds that an award of pre-judgment interest is appropriate for claims under the Perishable Agricultural Commodities Act. In re Fleming Companies, Inc., 316 B.R. 809, 816 (D.Del. 2004). Therefore, pre-judgment interest will be assessed to the principal sum of \$21,911.50 from January 10, 2008, until the date of this Order, at a rate of 3.11%, compounded annually.¹ Therefore, Defendant shall recover \$22,411.85.

¹ This was the United States Treasury securities, constant maturities, nominal 1-year rate in effect for the week ending January 14, 2008. See <http://www.federalreserve.gov/releases/H15/20080114/>.

In addition, Intervenor Plaintiff has failed to effect service of process upon Defendants Alan Tuquero and Brenda Tuquero. See DE Nos. 21 & 22. Therefore, the Court will dismiss this case without prejudice as to those Defendants.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. The Court has personal jurisdiction over the Parties hereto and the subject matter herein;

2. Intervenor Plaintiff C.H. Robinson Company's Motion For Default Judgment (DE 20) and Plaintiff H & R Produce Distributors, Inc.'s Motion For Default Judgment (DE 25) be and the same are hereby **GRANTED**;

3. Pursuant to Federal Rules of Civil Procedure 55 and 58, Default Final Judgment be and the same is hereby **ENTERED** in favor of Plaintiff H & R Produce Distributors, Inc. and against Defendant V & L Custom Cut Produce, Inc.;

4. Plaintiff H & R Produce Distributors, Inc. does have and recover from Defendant V & L Custom Cut Produce, Inc. the sum of \$22,411.85., together with post-judgment interest thereon at the rate of 2.05% per annum, for all of which let execution issue;

5. Pursuant to Federal Rules of Civil Procedure 55 and 58, Default Final Judgment be and the same is hereby **ENTERED** in favor of Intervenor Plaintiff C.H. Robinson Company and against Defendants V & L Custom Cut Produce, Inc. and Guillermo Villasin;

6. Intervenor Plaintiff C.H. Robinson Company does have and recover from Defendants V & L Custom Cut Produce, Inc. and

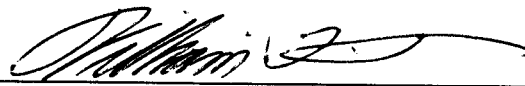
Guillermo Villasin, jointly and severally, the sum of \$18,574.12, together with interest thereon from the date of this Default Final Judgment at the rate of 2.05% per annum, for all of which let execution issue; and

7. The Court shall entertain a separate Motion For Costs from Plaintiff H & R Produce Distributors, Inc. by noon on Tuesday, September 30, 2008, together with all necessary Affidavits and Exhibits, and said Motion shall fully conform to the dictates of Local Rule 7.3.A of the Southern District of Florida;

8. The Court shall entertain a separate Motion For Attorney's Fees And Costs from Intervenor Plaintiff C.H. Robinson Company by noon on Tuesday, September 30, 2008, together with all necessary Affidavits and Exhibits, and said Motion shall fully conform to the dictates of Local Rule 7.3.A of the Southern District of Florida; and

9. The above-styled cause be and the same is hereby DISMISSED without prejudice against Defendants Alan Tuquero and Brenda Tuquero.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 25th day of September, 2008.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel of Record