

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED

JAN X 3 2003

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMIL ALPERIN, et al.,

Plaintiffs,

v.

VATICAN BANK, et al.,

Defendants.

No. C99-4941 MMC

**ORDER RE: PLAINTIFFS' MOTION FOR
JUDGMENT BY DEFAULT**

(Docket No. 176)

Before the Court is plaintiffs' motion, filed April 10, 2001, for judgment by default against defendant Croatian Liberation Movement (Hrvatski Oslobodilacki Pokret) ("HOP") pursuant to Federal Rule of Civil Procedure 55(b)(2).

"The district court's decision whether to enter a default judgment is a discretionary one." Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.1980). Factors that courts may consider in exercising discretion as to the entry of a default judgment include the sufficiency of the complaint, the substantive merits of the plaintiff's claims, the possibility of prejudice to the plaintiff if such relief is denied, the possibility of a dispute concerning material facts, and the strong policy of the Federal Rules of Civil Procedure favoring decisions on the merits. See Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986); see also Aldabe, 616 F.2d at 1093 (affirming district court's refusal to grant default judgment "[g]iven the lack of merit in appellant's substantive claims"). Additionally, a default judgment against one of several defendants while the action continues is ordinarily improper where their liability is joint and several. See Hunt v. Inter-Globe Energy, Inc., 770 F.2d 145, 148 (10th Cir.

JAN 9 2003

1 1985).¹


2 Here, significant questions have been raised as to the merits of plaintiffs' claims.
3 Defendant Istituto per le Opere di Religione ("IOR") and defendant Order of Friars Minor
4 ("OFM") have filed motions to dismiss on numerous grounds, including (1) nonjusticiability
5 based on the political question doctrine, (2) lack of subject matter jurisdiction, (3) lack of
6 personal jurisdiction, (4) lack of standing, and (5) the statute of limitations.² By agreement
7 of the parties, the Court was asked to address at the outset only the first of these defenses,
8 the political question doctrine. By separate order filed concurrently herewith, the Court has
9 dismissed the complaint as against both the IOR and OFM on that ground. From the
10 pleadings, it would appear that the political question defense is equally applicable to
11 defendant HOP.

12 Accordingly, the Court will afford plaintiffs the opportunity to demonstrate how their
13 claims against HOP differ significantly in that respect from their claims against the IOR and
14 OFM. Plaintiffs' memorandum, if any, shall be filed no later than 30 days from the date of
15 this order. Should plaintiffs elect to file such memorandum, plaintiffs shall also address the
16 issue of personal jurisdiction as well as how, at this date, any judgment against HOP can
17 be enforced.

18 This order closes Docket No. 176.

19 **IT IS SO ORDERED.**

20 Dated: JAN X 3 2003

21 
22 MAXIME M. CHESNEY
23 United States District Judge

24 ¹ The instant complaint names four defendants, alleging causes of action for an
25 accounting, conversion, unjust enrichment, retitution, human rights violations and violations
26 of international law against all such defendants. Plaintiffs seek equitable relief as well as
27 compensation and damages. The Court is unable to determine from either the pleadings or
28 the instant motion whether the claims give rise to several or only joint and several liability.
For the reasons expressed *infra*, however, this issue now appears to be moot.

²On June 25, 2002, plaintiffs voluntarily dismissed the complaint as against
defendant Swiss National Bank.

United States District Court
for the
Northern District of California
January 3, 2003

* * CERTIFICATE OF SERVICE * *

Case Number:3:99-cv-04941

Alperin

vs

Vatican Bank

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 3, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Thomas Dewey Easton, Esq.
Law Office of Thomas Dewey Easton
2782 NE Baroness Place
Bend, OR 97701

Jeffrey S. Lena, Esq.
1152 Keith Avenue
Berkeley, CA 94708-1607

Ronald E. Mallen, Esq.
Hinshaw & Culbertson
244 Jackson Street
Suite 300
San Francisco, CA 94111

Jonathan H. Levy, Esq.
Post Office Box 6080
Cincinnati, OH 45206

K. Lee Boyd, Esq.
Pepperdine University Law School
24255 Pacific Coast Highway
Malibu, CA 90263

Milosh Milenkovich, Esq.

5851 Pearl Road
Suite 302
Parma Heights, OH 44130

Richard W. Wieking, Clerk

BY: Tracy W. Eero
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

JAN X 3 2003

RELATED CASE ORDER

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

A Notice of Related Cases has been filed that the following cases are related within the meaning of Civil L.R. 3-12(b):

C 99-4941 MMC Emil Alperin, v. Vatican Bank, et al.
C 00-4319 MJJ George Zivkovich v. Vatican Bank, et al.

ORDER

The time for filing a statement to support or oppose the Notice has passed. On the basis of the material submitted to the Court, as the Judge assigned to the earliest filed case, I find that the cases:

ARE NOT RELATED as defined by Civil L.R. 3-12(b).

ARE RELATED as defined by Civil L.R. 3-12(b). Pursuant to Civil L.R. 3-12(e), the Clerk of Court is ordered to reassign the later-filed action to the undersigned. Counsel are instructed that all future filings are to bear the initials MMC immediately after the case number. All matters presently scheduled for hearing in the reassigned case(s) are vacated and must be renoticed for hearing before the undersigned.

DATED: JAN X 3 2003


UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on the date stated below, I lodged a copy of this order with each judicial officer and I mailed a copy to each counsel of record in the cases listed above.

Richard W. Wieking, Clerk

DATED: JAN X 3 2003

By: 
Deputy Clerk

Copies to: Courtroom Deputies ✓
Case Systems Administrators ✓
Counsel of Record ✓
Entered into Assignment Program: _____
(date)

JAN 9 2003

United States District Court
for the
Northern District of California
January 3, 2003

tl

* * CERTIFICATE OF SERVICE * *

Case Number:3:99-cv-04941

Alperin

vs

Vatican Bank

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 3, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Thomas Dewey Easton, Esq.
Law Office of Thomas Dewey Easton
2782 NE Baroness Place
Bend, OR 97701

Jeffrey S. Lena, Esq.
1152 Keith Avenue
Berkeley, CA 94708-1607

Ronald E. Mallen, Esq.
Hinshaw & Culbertson
244 Jackson Street
Suite 300
San Francisco, CA 94111

Jonathan H. Levy, Esq.
Post Office Box 6080
Cincinnati, OH 45206

K. Lee Boyd, Esq.
Pepperdine University Law School
24255 Pacific Coast Highway
Malibu, CA 90263

Milosh Milenkovich, Esq.

5851 Pearl Road
Suite 302
Parma Heights, OH 44130

Richard W. Wieking, Clerk

BY:

Tracy Lucero
Deputy Clerk

United States District Court
for the
Northern District of California
January 3, 2003

tl

* * CERTIFICATE OF SERVICE * *

Case Number:3:00-cv-04319

Zivkovich

vs

Vatican Bank

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 3, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Peggy J. Reali, Esq.
Dougherty & Hildre
2550 Fifth Avenue
Suite 600
San Diego, CA 92103-6624

Barry G. Reed, Esq.
Zimmerman Reed, P.L.L.P.
651 Nichollet Mall
Suite 501
Minneapolis, MN 55402

Jeffrey S. Lena, Esq.
1152 Keith Avenue
Berkeley, CA 94708-1607

Joanna D. Opperman, Esq.
Hinshaw & Culbertson
244 Jackson Street
Suite 300
San Francisco, CA 94111

Richard W. Wieking, Clerk

BY: Amy Marco
Deputy Clerk