

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RESOURCE POINT, LLC,

Plaintiff,

v

Case No. 13-136819-CK

Hon. Wendy Potts

WEST COAST CONSULTING, LLC,

Defendant.

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OPINION AND ORDER RE: DEFENDANT'S MOTION FOR  
RECONSIDERATION OF THIS COURT'S DENIAL OF DEFENDANT'S  
MOTION TO SET ASIDE THE DEFAULT AND GRANTING OF PLAINTIFF'S  
MOTION FOR ENTRY OF DEFAULT JUDGMENT  
AND  
DEFENDANT'S OBJECTIONS TO PLAINTIFF'S DAMAGES AND REQUEST  
FOR A HEARING BY JURY PURSUANT TO MCR 2.603(B)(3)(b)

At a session of Court  
Held in Pontiac, Michigan  
On

~~DEC 12 2014~~

The matter is before the Court on Defendant West Coast Consulting, LLC's (WCC) motion for reconsideration of the Court's May 28, 2014 order denying WCC's motion to set aside entry of default and order granting Plaintiff's motion for default judgment. As part of the Court's May 28, 2014 rulings, the Court permitted WCC to file objections to Plaintiff's alleged damages. Both parties submitted briefing regarding their respective positions on damages. WCC also requested a jury hearing relating to damages.

The decision whether to grant reconsideration is discretionary. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733 (1987). Reconsideration is warranted if a movant identifies a palpable error by which the Court and the parties have been misled and shows that a different disposition must result from correction of that error. MCR 2.119(F)(3). A movant cannot demonstrate palpable error by arguing legal and factual theories that were, or could have been, presented in the underlying motion. *Churchman v Rickerson*, 240 Mich App 223, 233 (2000); *Charbeneau, supra* at 733.

The gravamen of WCC's reconsideration motion seems to merely express disagreement with the Court's conclusion that Plaintiff is entitled to a default judgment. WCC alleges palpable error in the instant motion by reasserting WCC's position that it satisfied both prongs of MCR 2.603(D) (setting aside default or default judgment) in the underlying motion. However, all of WCC's instant arguments were raised, litigated, and dismissed by the Court at the May 28, 2014 hearing. To the extent WCC characterizes the instant arguments as "new," the Court opines WCC merely reiterates its prior assertions from the underlying hearing. Further, WCC has failed to explain why these "new" arguments were not raised in the underlying briefing or at the May 28, 2014 hearing. Thus, WCC is not entitled to reconsideration of the orders denying WCC's request to set aside the default and granting Plaintiff's default judgment request. *Charbeneau, supra*; *Churchman, supra*.

As an initial matter relating to WCC's jury request, MCR 2.603(B)(3)(b) reads in pertinent part, "[i]f, in order for the court to enter a default judgment...it is necessary to...determine the amount of damages...the court may conduct hearings...it deems

necessary and proper, and shall accord a right of trial by jury to the parties to the extent required by the constitution.” MCR 2.603(B)(3)(b). Further, when a party has been defaulted, that party may not proceed in the action until the default has been set aside. MCR 2.603(A)(3). The Court file reveals WCC filed a jury demand on June 4, 2014 following the Court’s order granting Plaintiff a default judgment on May 28, 2014 and nearly seven months after the initial default was filed on November 22, 2013. Thus, to the extent WCC asserts entitlement to a jury to determine damages, the request is denied. Further, even if a jury demand had been timely filed, the Court determines it would be unnecessary to empanel a jury to determine damages. MCR 2.603(B)(3)(b).

Regarding WCC’s objections to Plaintiff’s damages, WCC challenges whether the parties had a valid agreement and, if they did, whether the provisions contained in the agreement that Plaintiff bases its damages are enforceable. WCC also challenges whether Plaintiff has proven damages, including attorney’s fees, with sufficient specificity.

Where a defendant is in default, that defendant can no longer contest liability. *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 79 (2000). “Entry of a default is equivalent to an admission by the defaulting party as to all well-pleaded allegations.” *American Central Corp v Stevens Van Lines, Inc*, 103 Mich App 507, 512 (1981). To the extent WCC argues the liquidated damage provision is unenforceable or that the parties had no valid agreement, those arguments are easily dismissed as the Court has already found, by virtue of the default judgment, a valid contract exists and found WCC liable based on the parties’ contract. *Kalamazoo Oil, supra; American Central, supra*. WCC further argues Plaintiff has already been compensated for its damages, pointing the Court

agreement between Plaintiff and non-party Clarity. However, WCC fails to explain how the agreement between Plaintiff and Clarity absolves WCC of obligations incurred by way of WCC's breach of Plaintiff's and WCC's agreement. Therefore, the Court awards Plaintiff damages based on the parties agreement as requested at the May 28, 2014 hearing. Plaintiff requested judgment of \$55,382.75 comprised of \$35,100.00 using the 50% gross receipts calculation formula regarding Mr. Nagarajan's 2014 work and \$20,282.75 using the 50% gross receipts calculation formula regarding Mr. Nagarajan's 2013 work.

To determine the reasonableness of attorney's fees, the Court considers the following nonexclusive factors: (1) the professional standing and experience of the attorney, (2) the skill, time and labor involved, (3) the amount in question and the results achieved, (4) the difficulty of the case, (5) the expenses incurred, and (6) the nature and length of the professional relationship with the client. *Campbell v Sullins*, 257 Mich App 179, 199 (2003). In rendering its decision, a trial court need not make detailed findings of fact as to the factors considered. *Michigan National Bank v Metro Institutional Food Service Inc*, 198 Mich App 236, 241 (1993).

WCC argues Plaintiff's counsel's invoice of \$10,809.36 is unreasonable as this matter required only two Court appearances. Plaintiff's counsel of record, Mr. Mark McGowan and Mr. Frank Paolini of Plunkett Cooney, submitted extensive documentation justifying fees incurred. Specifically, Mr. Paolini argues he bills at a rate of \$210/hour as an associate in Plunkett Cooney's Commercial and Banking litigation group. Mr. Paolini argues his hourly rate is reasonable based on hourly rates of attorneys with his skill in the same field and in the relevant geographical area. Further, prior to joining Plunkett

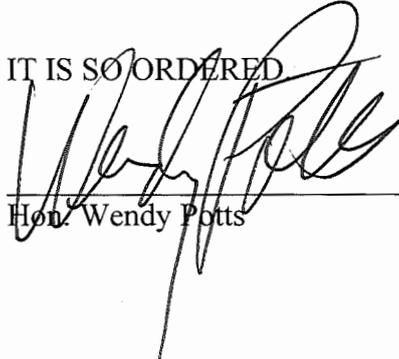
Cooney, Mr. Paolini graduated *magna cum laude* from the University of Detroit Mercy School of Law. Mr. Paolini asserts he spent approximately 53 hours on this matter over the course of seven months comprised of drafting motions, performing legal research, and Court appearances. Mr. Paolini also engaged in settlement negotiations on behalf his client with counsel in Michigan and California. The Court concludes that Mr. Paolini's attorney's fees are not unreasonable and award \$10,000 in attorney's fees. *Campbell, supra; Michigan National Bank, supra.*

In sum, WCC fails to demonstrate palpable error and WCC's motion for reconsideration is denied. For the reasons stated, the Court awards Plaintiff \$55,382.75 in damages, plus \$10,000 in attorney's fees for a total judgment of \$65,382.75. Plaintiff shall file a judgment consistent with the Court's opinion and order within 21 days.

Dated:

DEC 12 2014

IT IS SO ORDERED

  
Hon. Wendy Potts