

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

VITEK RECOVERY ENTERPRISES, LLC,

Plaintiff,

vs.

Case No. 2014-652-CB

UUSI, LLC, d/b/a NARTRON and/or NARTRON
CORPORATION,

Defendant,

and

UUSI, LLC, d/b/a NARTON,

Counter-Plaintiff,

vs.

VITEK RECOVERY ENTERPRISES, LLC,

Counter-Defendant,

and

VITEK TECHNOLOGY CO, LTD,

Third-Party Defendant.

OPINION AND ORDER

Defendant/Counter-Plaintiff/Third-Party Plaintiff UUSI, LLC d/b/a Nartron ("Nartron") has filed a motion for entry of default judgment against Vitek Recovery Enterprises, LLC ("Vitek Recovery").

I. Factual and Procedural History

In this case, Nartron and Vitek Recovery filed competing breach of contract claims against each other in connection with a series of purchase orders between Nartron and Vitek Technology Co. Ltd. ("Vitek Tech"). Vitek Tech, a foreign corporation with its primary offices in China, allegedly provided certain components to Nartron through July 2013. In its pleadings, Nartron seeks to recover for parts that were provided by Vitek Tech that were allegedly non-conforming, and that Vitek Tech refused to replace or have returned. Specifically, Nartron seeks to recover \$274,671.14 in damages in asserted were incurred due to its overpayment for some parts and the costs it incurred in salvaging the non-conforming parts.

On or about June 17, 2015, Vitek Recovery filed its answer to Nartron's second amended counter and third-party complaint ("Counter/Third-Party Complaint"). On August 17, 2015, Vitek Recovery's counsel withdrew. Per the Order of Withdraw ("Withdraw Order"), a status conference was set for September 3, 2015. (See Nartron's Exhibit CC.) The Withdraw Order also provided that failure to appear may result in a default being entered. (Id.) A representative of Vitek Recovery did not appear at the status conference. As a result, the Court entered an Order of Dismissal, which dismissed Vitek Recovery's case against Nartron without prejudice ("Dismissal Order"). (See Nartron's Exhibit DD.) In addition, the Dismissal Order set a status conference for October 8, 2015 "to advise the Court of the status of the [Counter/Third-Party Complaint]." (Id.)

On October 8, 2015, Nartron filed its instant verified motion for default judgment against Vitek Recovery based on its failure to appear for status conferences and

depositions, and failure to answer discovery requests. The motion was set for a hearing on October 19, 2015. Vitek Recovery did not appear at the hearing, and the Court set the matter for an evidentiary hearing on November 25, 2015. On November 24, 2015, the Court entered an Order cancelling the evidentiary hearing and permitting Nartron to file a brief and affidavits in support of its motion within 21 days. On December 15, 2015, Nartron filed its brief and affidavits in support of its motion.

II. Arguments and Analysis

Pursuant to MCR 2.401(G)(1):

Failure of a party of the party's attorney or other representative to attend a scheduled conference or to have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement, as directed by the court, may constitute a default to which MCR 2.603 is applicable.....

MCR 2.603(A) provides that a default shall be entered if a party against whom a judgment is sought has failed to plead or otherwise defend as provided in the court rules. Further, MCR 2.603(B)(1) provides that 7 days' notice of a default must be provide prior to the entry of a default judgment. In this case, the Court is satisfied that entry of a default against Vitek Recovery is appropriate given its repeated failure to appear for status conferences and hearings, and its failure to respond to discovery requests. However, the Court is convinced that it may not enter a default judgment against Vitek Recovery at this time based on the fact that a default had not been entered prior to Nartron filing its instant motion. While Nartron's instant motion could potentially form the basis for a default judgment once the procedural requirements of MCR 2.603 are satisfied, the motion must be denied without prejudice at this time.

III. Conclusion

For the reasons set forth above, Nartron's motion for a default judgment against Vitek Recovery with respect to Nartron's counter-claim is GRANTED, IN PART, and DENIED WITHOUT PREJUDICE, IN PART. Specifically, a default is hereby entered against Vitek Recovery with respect to Nartron's counter-claim. Nartron's request for a default judgment against Vitek Recovery is DENIED, WITHOUT PREJUDICE. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

Date: MAR 24 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge