

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.

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OPINION AND ORDER

Defendant/Counter-Plaintiff/Third-Party Plaintiff UUSI, LLC d/b/a Nartron ("Nartron") has filed a renewed motion for entry of a 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 it 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 Withdrawal ("Withdrawal 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 first 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. On March 24, 2016, the Court issued an Opinion and Order in which it entered a default against Vitek Recovery with respect to the Counter-Third Party Complaint, and denied Nartron's request for a default judgment without prejudice. On April 6, 2016, a proof of service was filed documenting that Vitek Recovery was served with a copy of the default.

On April 20, 2016, Nartron filed its instant renewed motion for a default judgment as to the Counter-Third Party Complaint against Vitek Recovery. On May 9, 2016, the Court held a hearing in connection with the motion. Once again, Vitek Recovery failed to appear. At the conclusion of the hearing, the Court took the motion under advisement.

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.....

As discussed in the March 24, 2016 Opinion and Order, the Court is satisfied that a default was appropriate in this case given Vitek Recovery's repeated failure to appear for status conferences and hearings, and its failure to respond to discovery

requests. Further, Nartron has now served Vitek Recovery with a copy of the default previously entered in this case pursuant to MCR 2.603(A)(2), and has filed proof of service with the Court in accordance with MCR 2.603(A)(2)(b).

Once a default is entered and a party seeks the entry of a default judgment, the moving party must give the non-moving party notice of the request at least 7 days before a default judgment is entered under MCR 2.603(B)(1)(a) and (b). In this case, Nartron's instant request for a default judgment was served on Vitek Recovery on April 21, 2016, well more than 7 days prior to the date this motion was heard on May 9, 2016. Accordingly, Nartron has complied with the notice requirement set forth in MCR 2.603. Consequently, the only remain issue is whether Nartron has set forth sufficient authority and proof to warrant a default judgment.

A motion for default judgment does not reach of merits of a claim. *Rogers v J.B. Hunt Transp*, 466 Mich 645, 654; 649 NW2d 23 (2002). Rather, "[e]ntry of a default is equivalent to an admission by the defaulting party as to all well-plead allegations." *American Central Corp v Stevens Van Lines, Inc.*, 103 Mich App 507, 512; 303 NW2d 234 (1981). In this case, Nartron has pled that it entered into a contract with Vitek Tech, that Vitek Tech breached the terms of the contract, and that it has been damaged as a result of Vitek Tech's breach. Moreover, Nartron has alleged that Vitek Recovery is liable for its damages as an alter ego of Vitek Tech. Accordingly, the Court is satisfied that Nartron has properly plead a claim for breach of contract, which if admitted, establishes a basis for recovery against Vitek Recovery. Given that an entry of a default operates as an admission of all well-plead allegations, the default in this matter operates as an admission of liability. However, a default does not establish the amount

of damages the defaulted party is liable for. Consequently, Nartron has the burden of establishing its damages.

In its motion, Nartron contends that it has incurred damages as a result of Vitek Tech's delivery of non-conforming parts and refusal to accept the return of those parts. In support of its position, Nartron relies on the affidavit of John Washeleski, its Executive Vice-President. (See Nartron's Exhibit A.) In his affidavit, Mr. Washeleski testified that as a result of Vitek Tech's breaches Nartron has incurred damages of \$274,671.14 exclusive of interest, costs and attorney fees. *Id.* In addition, Nartron has provide documentary evidence to establish its claim for damages. (See Nartron's Exhibits D, F, and G.) Accordingly, the Court is satisfied that Nartron has sufficiently established the amount of damages that it is entitled to recover.

Finally, Nartron requests to recover attorney fees and costs in the amount of \$160,122.02. However, Nartron has failed to present any evidence establishing that they are entitled to recover such fees and costs. "Awards of costs and attorney fees are recoverable only where specifically authorized by a statute, a court rule, or a recognized exception." *Phinney v. Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997). In this case, Nartron has failed to set forth any authority under which it is entitled to recover the attorney fees and/or costs that it seeks to recover. Consequently, the Court is convinced that Nartron has failed to sufficiently establish that it is entitled to any attorney fees and/or costs. As a result, Nartron's request for attorney fees and/or costs must be denied.

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, IN PART. Specifically, Nartron's request for a default judgment in the amount of \$274,671.14 is GRANTED. Nartron's request for attorney fees and costs is DENIED. Nartron shall submit a judgment consistent with this Opinion and Order within 14 days of the date of this Opinion and Order. Pursuant to MCR 2.602(A)(3), this matter remains OPEN pending entry of a final judgment consistent with this Opinion and Order.

IT IS SO ORDERED.

Date: MAY 11 2016

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