

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Michael's Gourmet Pantry, Inc. v. Back of the House, LLC

Case No. 2:22-cv-01953-ART-BNW · No. 2:22-cv-01953-ART-BNW · Decided December 4, 2025

OPINION

Martin

PER CURIAM.

1

UNITED STATES DISTRICT COURT

2

DISTRICT OF NEVADA

3 4 MICHAEL'S GOURMET PANTRY, INC. Case No. 2:22-cv-01953-ART-BNW 5 Plaintiff,
ORDER GRANTING IN PART MOTION

v. FOR DEFAULT JUDGMENT

6 (ECF No. 39)

7 BACK OF THE HOUSE, LLC,

8 Defendant. 9

10 Plaintiff Michael's Gourmet Pantry brought this action against Defendant 11 Back of the
House, alleging breach of contract, breach of covenant of good faith 12 and fair dealing, and
implied indemnity regarding a walk-in cooler that Plaintiff 13 purchased from Defendant. (ECF
No. 1.) Before the Court is Plaintiff's Motion for 14 Default Judgment. (ECF No. 39.) The Court
now grants Plaintiff's Motion. 15 I. Background 16 On September 25, 2024, Magistrate Judge
Brenda N. Weksler granted 17 Counsel for Defendant's motion to withdraw and ordered
Defendant to obtain 18 new counsel by October 25, 2024. (ECF No. 26.) On November 12, 2024,
Judge 19 Weksler entered an Order to Show Cause as to why default should not be entered 20
against Defendants for failure to retain new counsel. (ECF No. 30.) Defendants 21 failed to
appear, and Judge Weksler issued a Report and Recommendation 22 recommending that
Defendant's answer be stricken and default be entered. (ECF

23 No. 31.) The Court then directed the Clerk to enter default against Defendant and

24 granted Plaintiff leave to seek default judgment against Defendant on January 25 14, 2025.
(ECF No. 32.) On that same date, the Clerk entered Default against 26 Defendant. (ECF No. 35.)
Plaintiff subsequently filed its first Motion for Default 27 Judgment. (ECF No. 33.) This Court
denied that motion without prejudice for 28 failure to present relevant facts and law for default.
(ECF No. 38.) Plaintiff then 1 filed the instant motion. (ECF No. 39.) Defendant did not file a
response. 2 II. Legal Standard for Default Judgment 3 Pursuant to Fed. R. Civ. P. 55(a), "[w]hen a
party against whom a judgment 4 for affirmative relief is sought has failed to plead or otherwise

defend . . the clerk 5 must enter the party's default." In deciding whether to grant default judgment, 6 the Court considers factors including "(1) the possibility of prejudice to the 7 plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the 8 complaint, (4) the sum of money at stake in the action, (5) the possibility of a 9 dispute concerning material facts, (6) whether the default was due to excusable 10 neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure 11 favoring decisions on the merits." See *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 12 606, 613–14 (9th Cir. 2016) (citing *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th 13 Cir. 1986)).

14 I. Analysis 15 A. Prejudice To Plaintiff 16 The possibility of prejudice to the plaintiff may be satisfied by showing 17 harm and that the plaintiff lacks other recourse without default judgment. *Nolan 18 v. Calello*, No. 2:21-CV-00981-AB-RAO, 2021 WL 4621945, at *3 (C.D. Cal. July 19 8, 2021); *BBK Tobacco & Foods, LLP v. Aims Grp. USA Corp.*, No. 2:22-CV-01648- 20 GMN-BNW, 2024 WL 1160715, at *3 (D. Nev. Mar. 15, 2024). In this case, Plaintiff 21 made payments totaling \$26,224.75 of the \$91,847.40 owed under the contract 22 to a third-party lender, and never received a product that conformed to the 23 contract's specifications. (ECF No. 39 at 13.) Plaintiff has incurred attorney's fees 24 defending an action from its lender and incurred fees to remove the non- 25 conforming product. (*Id.* at 13-14.) This is enough to show prejudice. 26 B. Merits of Plaintiff's Claims and Sufficiency of Complaint 27 Plaintiff's complaint must allege facts that support plausible, legally 28 cognizable claims. *NewGen*, 840 F.3d at 613-14. Plaintiff's complaint seeks relief 1 under breach of contract, breach of the covenant of good faith and fair dealing, 2 implied indemnity, and declaratory relief. (ECF No. 1.) Because the Clerk entered 3 default against Defendant, these allegations are accepted as true. 4 To plead breach of contract, Plaintiff must allege "(1) the existence of a valid 5 contract, (2) that the plaintiff performed, (3) that the defendant breached, and (4) 6 that the breach caused the plaintiff damages." See *Iliescu v. Reg'l Transp. Comm'n 7 of Washoe Cty.*, 522 P.3d 453, 458 (Nev. App. 2022). The complaint alleged that 8 a contract existed, that Defendant failed to provide a conforming cooler, and that 9 breach harmed Plaintiff. (ECF No. 1 at 10.) 10 In Nevada, every contract implies the covenant of good faith and fair 11 dealing. *Virgin Valley Water District v. Paradise Canyon, LLC*, 567 P.3d 962, 972 12 (Nev. 2025). A plaintiff must allege that a party to a contract "deliberately 13 countervene[d] the intention and the spirit of the contract." *Morris v. Bank of 14 America Nevada*, 110 Nev. 1274, 1278 (1994). "It is well established that a claim 15 alleging breach of the implied covenants of good faith and fair dealing cannot be 16 based on the same conduct establishing a separately pled breach of contract 17 claim." *Jimenez v. GEICO Gen. Ins. Co.*, 448 F. Supp. 3d 1108, 1113 (D. Nev 2020) 18 (internal citation omitted). In its motion for default, Plaintiff fails to complete its 19 sentence alleging how the Defendant breached its duty under the covenants of 20 good faith and fair dealing. (ECF No. 39 at 10.) Both claims are based on failing 21 to provide the usable walk-in cooler. (ECF No. 1 at 10-11.) Therefore, the Court 22 finds that the Plaintiff has

failed to state a claim for breach of the implied 23 covenant of good faith and fair dealing, because it is based on the same facts as 24 its breach of contract claim. 25 To plead implied indemnity, Plaintiff must allege that “(1) it has discharged 26 a legal obligation owed to a third party; (2) the party from whom it seeks liability 27 was also liable to the third party; (3) as between the claimant and the party from 28 whom it seeks indemnity, the obligation ought to be discharged by the latter.” 1 *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 590 (2009) (internal citation 2 omitted). “In evaluating a claim for implied indemnity, courts must carefully 3 examine both parties’ conduct on a case-by-case basis, with the ultimate goal of 4 doing what is fair or just.” *Bank of New York for Certificateholders of CWALT, Inc.*, 5 *Alternative Loan Tr. 2006-OA16, Mortgage Pass-Through Certificates, Series 2006- 6 OA16 v. Foothills at MacDonald Ranch Master Ass’n*, 329 F. Supp. 3d 1221, 1232 7 (D. Nev. 2018) (citing *Hydro-Air Equip., Inc. v. Hyatt Corp.*, 852 F.2d 403, 406 (9th

8 Cir. 1988)). “While it is true that the obligation to indemnify clearly arises in 9 certain situations, for example, when a master-servant relationship exists, 10 implied equitable indemnity may be entirely proper if it is simply fairer to shift 11 the burden of loss.” *Id.* Thus, it is for the finder of fact to “examine the relationship 12 or nexus between the parties when evaluating whether it is fair to require the 13 indemnitor to pay the losses incurred.” *Id.* 14 The complaint alleges that in order to fulfill the financing agreement 15 between Plaintiff and Defendant, Plaintiff was required to pay Alliance Funding 16 Group the amount of \$1,530.79 per month for sixty months. (ECF No. 1 at 11- 17 12.) Defendant had a contractual relationship with Alliance Funding Group to 18 provide the cooler that Alliance Funding Group would then lease to Plaintiff. (ECF

19 No. 12-1, Ex. A.) In the invoice between Defendant and Alliance Funding Group, 20 Defendant warrants refrigeration for one year. (*Id.*) This is sufficient to show a 21 legal obligation to the third party. As a result of Defendant’s breach by providing 22 a non-conforming cooler, Plaintiff stopped paying on its third-party guaranty 23 agreement with Alliance Funding Group. (ECF No. 1 at 12.) This caused Alliance 24 Funding Group to sue Plaintiff over the remaining funds. (ECF No. 29 at 10-11.) 25 Plaintiff filed a third-party suit against Defendant in that action, and Defendant 26 filed a motion to dismiss based on forum selection that was denied. (ECF No. 12- 27 1 at 70-76.) Alliance Funding Group and Plaintiff later settled their claims for 28 \$5,000. (*Id.*) Therefore, Plaintiff has stated sufficient facts for a claim for implied 1 indemnity. 2 To plead a claim for declaratory relief, Plaintiff must allege “(1) a justiciable 3 controversy exists between persons with adverse interests, (2) the party seeking 4 declaratory relief has a legally protectable interest in the controversy, and (3) the 5 issue is ripe for judicial determination.” *Cnty. of Clark, ex rel. Univ. Med. Ctr. V. 6 Upchurch*, 961 P.2d 754, 757 (Nev. 1998). The complaint alleged that a 7 controversy existed between it and Defendant, that Plaintiff has a legally 8 protectable interest in its rights under the contract, and that Plaintiff’s right to 9 recover its losses under the purchase of the cooler is ripe for judicial 10 determination. (ECF No. 1 at 12.) 11

Accordingly, the Eitel factors favor granting default judgment on breach of 12 contract, implied indemnity, and declaratory relief, but not on breach of the 13 implied covenant of good faith and fair dealing. 14 C. Damages at Stake in Relation to Seriousness 15 The damages at stake in the case are proportional to the seriousness of the 16 Defendant's conduct. Compensatory damages are proportional to harm caused 17 by "persistent disregard for [] contractual obligations." Sit Means Sit Franchise, 18 Inc. v. SMSHTX, LLC, No. 2:23-cv-01464-CDS-DJA, 2024 WL 3202561, at *3 (D. 19 Nev. Jun. 26, 2024). Plaintiff seeks damages in the amount that it paid to Alliance 20 Funding Group under its payment plan for the non-conforming cooler, 21 \$26,224.75, as well as \$5,612 for the cost of hauling off the damaged cooler 22 panels, coils, and compressor parts. (ECF No. 39 at 13.) 23 Under its claim for implied indemnity, Plaintiff is also suing for legal fees 24 and costs in a lawsuit filed against it by Alliance Funding Group in the amount 25 of \$67,223.29, \$5,000 of which is towards the settlement of the case. (Id.) The 26 Court finds that the sum of money is not completely disproportionate or 27 inappropriate given the Defendant's conduct. 28

1 D. Disputes of Material Fact 2 There is no dispute concerning material facts at this stage in proceedings. 3 NewGen, 840 F.3d at 616. After the Clerk entered default, "the well-pleaded 4 allegations of the complaint relating to the defendant's liability are taken as true, 5 with the exception of the allegations as to the amount of damages." PepsiCo, Inc. 6 v. Cal. Sec. Cans, 238 F.Supp.2d 1172, 1175 (C.D. Cal. 2002) (citing Televideo 7 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917-918 (9th Cir. 1987)). Therefore, 8 this fact also weighs in favor of default judgment. 9

E. Excusable Neglect 10 Defendant's neglect of this lawsuit does not appear to be excusable. When 11 a defendant fails to make an appearance after being properly served, this factor 12 favors default judgment. See Bd. of Trustees of Constr. & Laborers Health & 13 Welfare Tr. v. Bottom Line Constr., No. 2:23-cv-00830-JCM-DJA, 2024 WL 14 3104519, at *3 (D. Nev. Jun. 24, 2024). After defense counsel moved to withdraw, 15 Defendant failed to replace counsel within thirty days (ECF No. 27), failed to 16 appear at a status conference (ECF No. 30), Defendant was served with the 17 summons and complaint, failed to appear at a status conference, and failed to 18 respond to an Order to Show Cause (ECF No. 32). Accordingly, this factor weighs 19 in favor of default judgment. 20

F. Policy Favoring Decision on the Merits 21 Here a decision on the merits is unlikely despite the federal rules' strong 22 policy preference for deciding cases "upon their merits whenever possible." 23 NewGen, 840 F.3d at 616 (citing Eitel, 782 F.2d at 1471-72). Defendant has not 24 participated in this case for over a year, and the Court finds that deciding the 25 case on the merits is exceedingly unlikely. See PepsiCo, 238 F.Supp.2d at 1175. 26 This factor does not preclude the Court from granting default judgment. 27 Accordingly, the Court finds that the factors weigh in favor of granting 28 default judgment. 1

2 G. Damages 3 a. Breach of Contract 4 The scope of relief a Court may award in granting default judgment is 5 limited by the kind and amount of damages which are sought in the complaint. 6 Fed. R. Civ. P. 54(c). Where a plaintiff's complaint seeks damages "in an amount 7 to be proven at trial," a district court is not barred from awarding damages in a 8 default judgment, so long as the damages awarded do not

differ “in kind” from 9 those prayed for in the complaint. *Scott v. Olives, Inc.*, No. 2:24-cv-01555-RB- 10 DJA, 2025 WL 1577908 at *8 (D. Nev. Jun. 3, 2025) (citing *AirDoctor, LLC v. 11 Xiamen Qichuang Trade Co.*, 134 F.4th 552, 554-55 (9th Cir. 2025)). 12 Plaintiff has provided sufficient evidence of its damages under its claims 13 for breach of contract and breach of the covenant of good faith and fair dealing. 14 See *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (allegations of 15 damages are not taken as true when considering default). Here, Plaintiff bases its 16 damages on invoices to Alliance Funding Group under the contract (\$26,224.75) 17 (ECF No. 39, Ex. 3 and Ex. 5) and its invoice from Bryco for removing the 18 nonconforming cooler (\$5,612). (Id. at Ex. 6.) The Court therefore grants Plaintiff 19 damages in the amount of \$31,836.75. 20 b. Implied Indemnity 21 For Plaintiff’s claim for implied indemnity, it cites the settlement of its state 22 court lawsuit (\$5,000). (ECF No. 39, Ex. 3.) The Court grants these damages. 23 Plaintiff’s list of legal fees in Exhibit D, however, lacks clear methodology; 24 merely listing invoice numbers, dates, and costs not tethered to definable 25 expenses incurred during its lawsuit with Alliance Funding Group. (Id.) A motion 26 for attorney’s fees must include a reasonable itemization and description of the 27 work performed, and an itemization of all costs sought to be charged as part of 28 the fee award. LR 54-14. The motion should also include a brief summary of the 1 || results obtained; the time and labor required; the novelty and difficulty of 2 || questions; skill required to perform the services properly; the preclusion of other 3 || employment by the attorneys due to acceptance of the case; the customary fee; 4 || whether the fee is fixed or contingent; the time limitations imposed by the client 5 || or circumstances; the experience, reputation, and ability of the attorneys; the 6 || undesirability of the case, the nature and length of the professional relationship 7 || with the client; awards in similar cases; and any other information the court may 8 || request. Id. Plaintiff has not provided briefing or evidence to justify an award of 9 || attorney’s fees, and the Court accordingly does not grant his request. 10 Il. Conclusion 11 It is therefore ordered that Plaintiffs Motion for Default Judgment against 12 || Defendant is GRANTED IN PART in the amount of \$36,836.75. (ECF No. 39.) 13 It is further ordered that the Court defers a ruling on Plaintiff’s request for 14 || attorney’s fees under its claim for implied indemnity. 15 It is further ordered that Plaintiff has until December 18, 2025, to file 16 || supplemental briefing regarding its claim for attorney’s fees under implied 17 || indemnity. 18 Dated this 4 day of December, 2025. 19 20 4 j),

21 ANNE R. TRAUM

22 UNITED STATES DISTRICT JUDGE

23 24 25 26 27 28