LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

Tribal Court

Court Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740 Phone: 231-242-1462

TRIBAL COURT

Case No: C-126-0711

Ct. App. No. A-021-0312

Northern Shores Loan Fund, Inc.

Petitioner,

vs.

Harbor Wear of Boyne, Inc.

Respondent.

OPINION ON REMAND FROM THE LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS APPELLATE COURT

This case is before the Court for a second time, after an order from the Little Traverse Bay Bands of Odawa Indians (LTBB) Appellate Court directing that this Court make factual findings for all of the relevant facts and issues necessary for disposition of the Loan Fund's claim. Additionally, the LTBB Appellate Court directed this Court to apply the relevant law and procedural rules to its factual findings and to dispose of the case in a manner consistent with the law. In accordance with instructions from the LTBB Appellate Court, this Court notes that a new trial is not warranted to comply with the remand order; a review of the record will suffice.

The Court grants Northern Shores Loan Fund's Motion for an Entry of Default Judgment against Harbor Wear of Boyne.

FACTUAL SUMMARY

On January 20, 2011, Northern Shores Loan Fund, Inc. (Petitioner), a nonprofit corporation organized under the laws of the LTBB, filed a complaint against Harbor Wear of Boyne City, Inc. (Respondent), a Michigan Corporation. The Petitioner and the Respondent had previously, on January 25, 2010, entered into a loan agreement in which the Petitioner agreed to loan the Respondent $15,165. *See* Exhibit B. In addition to the loan agreement, the Respondent executed a promissory note in favor of the Petitioner for the amount of $15,165, with interest to accrue at a rate of 10% per annual, on January 25, 2010. *See* Exhibit C. Pursuant to the loan agreement and promissory note, the Respondent agreed to make 48 monthly payments of $392.95, commencing on March 1, 2010. *Id.* In the event that the Respondent was in "default on any required payments" or "sells substantially all the assets of the business," the Respondent agreed that the entire principal balance and any "accrued or unpaid interest" of the loan would become "immediately due." *See* Exhibit B. The Respondent also agreed to pay costs and reasonable attorney fees in the event of default. *Id.*

In addition to the loan agreement and promissory note between the parties, the Petitioner and the Respondent entered into a security agreement by which the Respondent granted the Petitioner a security interest in the Respondent's business assets, including, but not limited to, "all chattel paper, inventory, fixtures and equipment, cash receivables" and "notes receivables." *See* Exhibit D. The Petitioner perfected its security interest in the Respondent's business assets by filing a UCC Financing Statement with the Michigan Department of State on February 4, 2010. *See* Exhibit E.

The Petitioner has not received payments from the Respondent since December 17, 2010. Beginning in January 2011, the Petitioner has contacted the Respondent on multiple occasions, requesting that the account be brought current, to which the Petitioner has received unsatisfactory response and no payment. *See* Exhibit F.

After attempting in vain to reach an agreement to bring the Respondent's account current, the Petitioner, on April 21, 2011, sent the Respondent a letter, notifying the Respondent of its default in accordance with the terms of the agreement. *See* Exhibit I. Subsequently, on April 27, 2011, the Respondent agreed to surrender all of its business assets to the Petitioner. *See* Exhibit J. On May 26, 2011, the Petitioner received the remaining *de minimus* business assets of the Respondent. *See* Exhibit K. Following its receipt of the Respondent's business assets as required by the loan agreement, the Petitioner sold the Respondent's assets for a collective $290, applying this amount to the loan balance owed by the Respondent. *See* Exhibit L. As of June 30, 2011, the Respondent owed the Petitioner $15,872.

A pre-trial hearing was held on November 1, 2011 before the Honorable Jenny Lee Kronk, former LTBB Associate Judge. Following the pre-trial hearing, the Court ordered the parties to file and serve on one another a list of exhibits and witnesses to be presented at trial. The Respondent failed to appear at the pre-trial hearing, despite receiving ample

notice as required by the LTBBRCP. The pre-trial conference was originally scheduled for September 6, 2011, but was then rescheduled for September 29, 2011. Upon receiving a request to adjourn the hearing from the Respondent on September 27, 2011 so it could attempt to hire counsel, the Court rescheduled the pre-trial hearing for November 1, 2011.

During a January 30, 2012 trial on the matter before Judge Jenny Lee Kronk, former LTBB Associate Judge, the Court denied the Petitioner's request for an entry of default judgment and dismissed the case. *Northern Shores Loan Fund, Inc. v. Harbor Wear of Boyne City, Inc.*, No. C-126-0711W (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Feb. 7, 2012). On appeal, the LTBB Appellate Court directed that this Court make factual findings for all of the relevant facts and issues necessary for disposition of the Loan Fund's claim. *Northern Shores Loan Fund, Inc. v. Harbor Wear of Boyne, Inc.*, No. A-021-0312 (Little Traverse Bay Bands of Odawa Indians Ct. App. Nov. 6, 2012). Additionally, the LTBB Appellate Court directed this Court to apply the relevant law and procedural rules to its factual findings and to dispose of the case in a manner consistent with the law. *Id.*

On January 24, 2013, following the LTBB Appellate Court's decision, the Petitioner filed a Motion for Reconsideration of the Factual Findings Made and Entry of Judgment in Petitioner's Favor with the Court. *See* Petitioner's Motion, Exhibit A. The Petitioner requested a total of $21,738.62, which included $12,202.46 in principal, $6,817.66 for late fees and collection costs, and $1,718.50 in accrued interest. Additionally, the Petitioner requested an additional sum for attorney fees in pursuing the matter to judgment after the appeal of $750. See Petitioner's Motion, Exhibits B and C.

JURISDICTION

The Court has jurisdiction to hear this case under Waganakising Odawak Statute 2003-07, Aug. 3, 2003, "Preamble and General Definitions" section of Title XII. Corporations, Businesses and Commercial Transaction. Additionally, both the Petitioner and the Respondent explicitly submitted to the Court's jurisdiction in the terms of the contract.

DISCUSSION

A.

Under the LTBB Rules of Civil Procedure (LTBBRCP) Rule XXIV, a default judgment may be entered "by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim." Additionally, default judgments are only appropriate against parties that fail to plead or otherwise defend claims against them. *Id.* at Section 1. Judgment by default shall "not be different in kind from, or exceed in amount, that specifically prayed for in the complaint or petition." LTBBRCP XXIII, Section 2(b). The language found in the rule grants the Court much leeway when deciding whether the evidence before it is necessary to establish a claim. In deciding to grant a request for default judgment, however, the petitioner is still held to the preponderance of the

evidence standard. That is to say the Petitioner must prove that it is more likely than not that the Respondent is liable under the law for breach of contract. *Swiss v. Emery*, No. PPO-019-0612 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 20, 2012).

Here, the record reflects more than sufficient evidence needed for the Court to grant the Petitioner's request for a default judgment. In addition to the loan agreement, promissory note and commitment letter signed by both the Petitioner and the Respondent establishing the Respondent's obligation to make minimum monthly payments on the loan, the record reflects that the Petitioner informed the Respondent multiple times that the Respondent was late on payments and would be in default if it did not pay. The Respondent also did not dispute that it was in default, and, realizing such, even agreed to turn over its assets to the Petitioner. The fact that the Respondent disregarded an order of the Court to appear at a pre-trial hearing and at the initial trial itself—in addition to the fact that the Court rescheduled the pre-trial hearing at least once based on the Respondent's request—further supports a finding for the Petitioner of an entry of default judgment against the Respondent.

B.

In addition to seeking the balance of the loan and interest at a rate of 10% per annum, the Petitioner seeks an order requiring the Respondent to pay its court costs and reasonable attorney fees as part of a default judgment against the Respondent. Under the LTBB Rules of Civil Procedure, Rule XXIII, Section 2(b), a judgment by default shall "not be different in kind from, or exceed in amount, that specifically prayed for in the complaint or petition." Under a plain reading of the rule, the Court may not enter a judgment by default that exceeds the amount specifically requested by the Petitioner in its complaint. While interest fees accrued between January 18, 2013 and the Court's ruling today may have increased the judgment award, the Court is not permitted to enter a default judgment in excess of $21,738.62.

CONCLUSION

In light of the Court's findings above, the following is ORDERED:

1) The Petitioner Northern Shores Loan Fund's Motion for an Entry of Default Judgment against the Respondent for $21,738.62 is granted;
2) The Respondent Harbor Wear of Boyne is ORDERED to pay default judgment of $21,738.62; and
3) The Respondent Harbor Wear of Boyne is ORDERED to pay attorney fees of $750.

IT IS SO ORDERED

7/17/13
Date

Allie Greenleaf Maldonado, LTBB Chief Judge

CERTIFICATE OF MAILING

I certify that on this date copies of this *Order* were served to the parties by First-Class Mail.

7-17-13
Date

Tribal Court Officer