

STATE OF MICHIGAN  
COURT OF APPEALS

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ALKEN-ZIEGLER, INC.,

Plaintiff-Appellee,

v

BARON DRAWN STEEL CORPORATION, a/k/a  
BARON DRAWN STEEL & WIRE,

Defendant-Appellant.

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UNPUBLISHED

November 13, 2007

No. 271429

Kalkaska Circuit Court

LC No. 06-009060-CK

Before: Murphy, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

In this contract dispute, defendant appeals as of right the trial court's judgment, following the entry of a default, declaring that plaintiff's account with defendant was satisfied in full. We affirm.

We review the trial court's denial of defendant's motion to set aside the default for an abuse of discretion. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Id.* To warrant setting aside the default, defendant was required to show good cause and file an affidavit of facts showing a meritorious defense. MCR 2.603(D)(1). "Good cause" requires that a defendant demonstrate (1) "a substantial irregularity or defect in the proceeding upon which the default is based" or (2) "a reasonable excuse for failure to comply with the requirements that created the default." *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233; 600 NW2d 638 (1999); see also *AMCO Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 95; 666 NW2d 623 (2003).

Here, the default entered by the court clerk was based on defendant's failure to answer the complaint. Having considered defendant's argument on appeal, we are not persuaded that the trial court abused its discretion in finding that defendant failed to establish good cause for not timely filing the answer. Therefore, we affirm the trial court's decision denying defendant's motion.

We now turn to defendant's challenges to the default judgment entered by the trial court. As the Supreme Court observed in *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573, 578; 321 NW2d 653 (1982), "[i]t is an established principle . . . that a default settles the question of liability as to well-pleaded allegations and precludes the defaulting party from relitigating that issue." The entry of a default is the equivalent of an admission by the defaulting party with respect to the well-pleaded allegations. *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 79; 618 NW2d 66 (2000). But a defendant does have the right to participate where further proceedings are necessary to determine the amount of damages. *Id.*

Here, plaintiff specifically abandoned its claims for damages in Counts II and III of its complaint, along with any claim for attorney fees sought in Count I. Count I alleged that there existed a bona fide dispute arising out of the delivery of defective steel, that an agreement was reached between the parties to settle the dispute, that the agreement allowed plaintiff to deduct \$65,292 from the amount owing for future purchases of steel from defendant, that plaintiff proceeded to deduct or withhold \$65,292 relative to its final payment to defendant on the last steel transaction between the parties, and that defendant persistently ignored the agreement by making demands for full payment on the final steel shipments. These were well-pleaded allegations and are deemed admitted in light of the default. Plaintiff requested that the trial court enter a declaratory judgment that recognized the agreement and declared that plaintiff's account with defendant was fully satisfied. The prayer for declaratory relief was made in an attempt to preclude further legal action by defendant against plaintiff for recovery of the alleged balance on the final steel purchase.

We conclude that defendant has not established that the trial court erred in granting the declaratory relief and, specifically, by ordering and adjudicating that plaintiff's account was fully satisfied as a consequence of the deduction of \$65,292. Although we are not bound by a party's choice of labels for an action, *Johnston v City of Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989), plaintiff neither sought nor was awarded damages with respect to the particular claim contained in Count 1 of the complaint. Therefore, defendant's various arguments on appeal concerning damages are without merit.<sup>1</sup>

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<sup>1</sup> Although many of the arguments made by defendant at the hearing to settle the judgment under MCR 2.602 and the seven-day rule were not procedurally proper in that they went beyond any claim that the judgment did not conform to the trial court's previous ruling from the bench, the trial court listened to the arguments and rejected them on the simple basis that an evidentiary hearing or trial, jury or otherwise, was unnecessary because of the nature of Count I. With regard to defendant's assertions concerning the missed hearing on May 8, 2006, and conversations with a court clerk on adjournment, there is no need to address whether it was proper to conduct the hearing without defendant because the trial court essentially made the same observations and ruling at the subsequent hearing attended by defendant, i.e., no evidentiary hearing or trial was necessary in light of the nature of Count I.

We also conclude that defendant has not established that it was entitled to an evidentiary hearing with respect to the declaratory relief ordered by the trial court. The decision to hold post-default proceedings under MCR 2.603(B)(3)(b) is within the trial court's discretion. *Wood, supra* at 585; *Michigan Bank-Midwest v D J Reynaert, Inc*, 165 Mich App 630, 649; 419 NW2d 439 (1988). The trial court's decision that it could grant the declaratory relief based on the allegations in plaintiff's complaint, and default thereon, without an evidentiary hearing or trial, did not constitute an abuse of discretion, where it was not necessary to take an account, determine an amount of damages, establish the truth of an allegation, or to investigate any other matter. MCR 2.603(B)(3)(b). The right to a jury trial was not triggered because the trial court decided that an evidentiary hearing or trial was unnecessary, *id.*, and we find no abuse of discretion with regard to that decision. Further, considering the equitable remedy or relief involved here and the admission to the allegations by way of the default, a trial *by jury* was not required and would not have been proper. *Gelman Sciences, Inc v Fireman's Fund Ins Co*, 183 Mich App 445, 449-450; 455 NW2d 328 (1990) ("Normally, an action for declaratory relief is equitable in nature. There is no right to a jury trial where the relief sought is equitable in nature."); see also *Anzaldúa v Band*, 457 Mich 530, 538; 578 NW2d 306 (1998) (a judge has authority to determine facts involving equitable remedies); *Rowry v Univ of Michigan*, 441 Mich 1, 9; 490 NW2d 305 (1992) (an action predicated on the enforcement of an agreement is equitable in nature).

Finally, defendant has not established that this case was inappropriate for declaratory relief. Under MCR 2.605(A), "[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." In general, a declaratory judgment is appropriate if it is necessary to guide a plaintiff's future conduct in order to preserve its legal rights. *Associated Builders & Contractors v Dep't of Consumer & Industry Services Director*, 472 Mich 117, 126; 693 NW2d 374 (2005); *Shavers v Attorney Gen*, 402 Mich 554, 588-589; 267 NW2d 72 (1978). The plaintiff must "plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised." *Id.* at 589.

Here, in light of the prior entry of the default, the trial court appropriately looked to plaintiff's complaint, without conducting an investigation pursuant to MCR 2.603(B)(3)(b), to determine if declaratory relief was appropriate. Plaintiff's allegations regarding the prior dismissed lawsuit and its expectation that defendant would file another a lawsuit were sufficient to establish an actual controversy. It was not necessary that plaintiff wait until defendant file another lawsuit to determine if its account was fully satisfied by performance of the agreement pleaded in Count I of the complaint. Moreover, under the circumstances, it was not an abuse of discretion to grant declaratory relief. *Gauthier v Alpena Co Prosecutor*, 267 Mich App 167, 170; 703 NW2d 818 (2005).<sup>2</sup> Unlike *Dobson v Maki*, 184 Mich App 244, 251; 457 NW2d 132

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<sup>2</sup> Defendant claims that declaratory relief is improper because there exists complex factual issues necessitating investigation and trial, such as the issue of causation. This argument, however, fails  
(continued...)

(1990), the instant case does not involve other named defendants whose rights might be affected by the judgment. Reversal or vacation of the default judgment is unwarranted.

Affirmed.

/s/ William B. Murphy  
/s/ Michael R. Smolenski  
/s/ Patrick M. Meter

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(...continued)

to appreciate that a default was entered, thereby resolving in plaintiff's favor any potential factual issues arising out of the allegations.