

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

AXIS SURPLUS INSURANCE COMPANY

PLAINTIFF

VS.

Case No.: 11-cv-01034

ALL-STAR RECYCLING, LLC

DEFENDANT

ORDER

Before the Court is a Motion for Entry of Final Judgment filed by Plaintiff Axis Surplus Insurance Company (“Axis”). (ECF No. 22). Defendant All-Star Recycling, LLC (“ASR”) has not responded, and the time for doing so has passed. The Court finds the matter ripe for consideration.

Axis filed the instant lawsuit on May 12, 2011, to recover salvage proceeds due to Axis for salvage recovery done by ASR following a fire loss sustained by Axis’s insured, Oasis Trading, LLC, in Warren, Arkansas. By order dated January 6, 2012, the Court stayed this lawsuit at the parties’ request through February 29, 2012 in order to allow the settlement conditions to be fulfilled. (ECF No. 18). On January 26, 2012, the parties executed a Settlement Agreement and Mutual Release. Pursuant to the terms of the Settlement Agreement, ASR agreed to pay Axis \$55,000.00 by certified check in two equal installments due to be received by Axis on January 31, 2012, and February 24, 2012. Axis agreed to dismiss the pending case against ASR with prejudice after all settlement funds cleared at the bank. The Settlement Agreement was signed by representatives of both Axis and ASR.

On February 28, 2013, Axis filed a Motion to Enforce Settlement Agreement. (ECF No. 19). At the time the motion was filed, ASR had failed to make any payments to Axis in compliance with the terms and conditions of the Settlement Agreement. Axis moved this Court to enter an order requiring ASR to comply with the terms of the Settlement Agreement. ASR did not file a response

to the motion. The Court held that the Settlement Agreement was an enforceable contract under Arkansas law and that ASR was in breach of the Settlement Agreement. Accordingly, Axis's motion to enforce was granted (ECF No. 21), and ASR was ordered to immediately follow through with its obligations under the Settlement Agreement.

The present motion was filed by Axis on May 9, 2013. The motion states that, in the year since the Court's enforcement order was entered, ASR has only paid \$13,500 towards the settlement. This leaves an unpaid balance of \$41,500. Axis requests that the Court enter a final judgment against ASR in the amount of \$41,500.

Upon consideration, the Court finds that the motion should be and hereby is **GRANTED**. Axis is entitled to an entry of final judgment against ASR in the amount of \$41,500. A judgment of even date consistent with this opinion shall issue.

Pursuant to Federal Rule of Civil Procedure 41(a)(2) and the terms of the parties' settlement agreement, Axis's claims against ASR are hereby **DISMISSED WITH PREJUDICE**. The Court shall retain jurisdiction over the terms of the settlement agreement.

IT IS SO ORDERED, this 15th day of August, 2013.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge