

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CSK PARTNERS, LLC

PLAINTIFF

V.

NO. 09-2106

LG ELECTRONICS U.S.A., INC.,
a foreign corporation,
NI GROUP, LLC, a foreign
corporation, and AMERICAN
EXPRESS BANK, FSB, a foreign
corporation

DEFENDANTS

O R D E R

Now on this 27th day of July 2010, comes on for consideration **Plaintiff's Motion for Default Judgment** (document #23). The Court, being well and sufficiently advised, finds and orders as follows:

1. This case was originally filed in Sebastian County Circuit Court on August 3, 2009. Defendant LG Electronics U.S.A., Inc., removed the action to this Court on September 8, 2009.

A summary of Plaintiff's allegations is set out below:

* Plaintiff is in the business of constructing and operating hotels both within and outside the state of Arkansas.

* On April 3, 2009, Plaintiff ordered 352 televisions from NI Group, LLC, which is a distributor of LG-brand televisions, for a total purchase price of \$223,498.82.

* Plaintiff agreed to pay a 50% deposit by authorizing a charge on its American Express card account in the amount of \$111,749.41 in favor of NI Group, LLC. There was a problem with this charge and Plaintiff subsequently authorized a charge on its

American Express card account in the same amount -- \$111,749.41 -- in favor of LG Electronics. Plaintiff received a credit to its American Express account for the charge that was originally made in favor of NI Group, LLC.

* Plaintiff asserts that two subsequent American Express credit card authorizations for the purchase of these televisions was forged in favor of LG Electronics. Plaintiff further asserts that additional unauthorized charges were made on its American Express card account

* Plaintiff alleges that it did not receive all of the televisions that it ordered.

* Plaintiff asserts that it was damaged in the amount of \$291,731.71, which is the total amount of unauthorized charges on its American Express card.

2. As evidence to support its claim, Plaintiff attaches copies of the purchase orders for the televisions, the credit card authorization forms, and various other documents that appear to have been produced in discovery.

3. Plaintiff asserts causes of actions against the Defendants for breach of contract, deceptive trade practices and conversion. Plaintiff seeks damages in the amount of \$291,731.71 plus costs and attorney's fees, and punitive damages.

4. Plaintiff shows by Affidavit of counsel that Defendant NI Group, LLC, was served by certified mail, return receipt requested. The record contains no responsive pleading by NI Group, LLC.

5. On December 23, 2009, the Clerk of Court entered Default against by NI Group, LLC. On December 22, 2009, Plaintiff filed the present motion for default judgment against NI Group, LLC, and asks this Court to enter judgment against NI Group, LLC, in the amount of \$291,731.71 plus pre-judgment and post judgment interest, attorneys' fees in the amount of \$7,400 and costs in the amount of \$217.25.

6. The Court finds that Defendant NI Group, LLC, is in default for its failure to answer or otherwise defend itself in this case. Once the Court determines that a defendant is in default, the factual allegations of the complaint, "except those relating to the amount of damages, will be taken as true." *Wright, Miller & Kane, Federal Practice & Procedure Civil 3d*, § 2688. Although a default judgment may be warranted based on a party's failure to defend, F.R.C.P. 55(b)(2) allows the court to hold a hearing if the court deems it necessary and proper to enable the court to determine the amount of damages. The Court finds that such a hearing is appropriate in this case.

IT IS THEREFORE ORDERED that Plaintiff's **Motion For Entry of Default Judgment** against NI Group, LLC (document #23) is hereby **GRANTED** and the Clerk of Court is directed to enter judgment by default in favor of Plaintiff against NI Group, LLC., on the issue of liability only.

IT IS FURTHER ORDERED that, pursuant to F.R.C.P. 55(b)(2), the Court will take up the issue of the amount of damages to be

adjudged against NI Group, LLC, at a separate hearing to be held during the week of January 10, 2011, which is the trial date in this case.

IT IS FURTHER ORDERED that the Court will take up the matter of attorneys' fees to be assessed against NI Group, LLC, at the separate hearing to be held during the week of January 10, 2011.

IT IS SO ORDERED.

/s/JIMM LARRY HENDREN
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE