

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE V. LONGHI,
Plaintiff,
v.
KHALED MONAWAR,
Defendant.

Case No. 14-cv-04554-KAW

**ORDER DENYING MOTION FOR
DEFAULT JUDGMENT WITHOUT
PREJUDICE; GRANTING LEAVE TO
AMEND COMPLAINT**

Re: Dkt. No. 12

Lawrence V. Longhi ("Plaintiff") moves for default judgment against Khaled Monawar ("Defendant"). Pursuant to Civil Local Rule 7-1(b), the Court deems this matter suitable for disposition without oral argument and VACATES the hearing currently set for November 19, 2015. As discussed below, the allegations in the complaint are insufficient to establish this Court's jurisdiction over the case or its jurisdiction over Defendant. Accordingly, the Court DENIES the motion WITHOUT PREJUDICE and GRANTS Plaintiff LEAVE TO AMEND the complaint to cure these pleading deficiencies.¹

I. BACKGROUND

A. Factual background

This action stems from a failed joint venture between the parties. Plaintiff alleges that in October 2001, after the destruction of the World Trade Center on September 11, 2001, Defendant, his father, and his uncle approached Plaintiff about "reconstructing Afghanistan[,] which was expected to boom as a result of the fall of the Taliban." (Compl. ¶¶ 6, 7, Dkt. No. 1.) Defendant apparently had family ties there, "which could be exploited to obtain business." (Id. ¶ 6.)

¹ On January 20, 2015, Plaintiff consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).

1 Defendant's uncle specifically represented that at the time, he had a connection with the Director
2 of the World Bank, and Ashrah Ghani, "who [had been] recently elected President of Afghanistan
3 [sic]" and "who would finance much of the rebuilding work to be done. . . ." (Id.)

4 Defendant and his family members asked for Plaintiff's help with serving as a project
5 facilitator and finding suitable contractors to perform the work. (Id. ¶ 8.) As compensation,
6 Plaintiff was to receive one-third of any proceeds generated from any resulting reconstruction
7 projects. (Id.) Plaintiff, Defendant, and Defendant's family formalized their dealings through a
8 series of memorandums of understanding ("MOUs"), the last of which was dated June 2, 2003.
9 (Id. ¶ 9.) They also incorporated in January 2003, as Afgamco, Inc. According to Plaintiff, he is
10 Chairman, CEO, and a shareholder of the company. (Id. ¶ 10.) Defendant was also a shareholder
11 and President, and his uncle served as a silent shareholder. (Id.)

12 Plaintiff fulfilled his obligations under the joint venture agreement. (Id. ¶¶ 11-19.) He
13 identified a number of contractors, including LoBuono Engineering Inc. and the Michael Baker
14 Corporation. (Id. ¶¶ 11.) After negotiations, Afgamco, the Baker Corporation, and
15 LoBouno/Weidlinger signed a Memorandum of Understanding dated March 17, 2003 ("March
16 MOU"). (Id. ¶ 19.) Pursuant to the March MOU, the three entities would share equally in any
17 profits generated by the joint venture, a 10% management fee would apply to any project, and
18 Afgamco would be paid a commission based on project revenues. (Id. ¶ 19; Longhi Decl., Ex. B,
19 Dkt. No. 13.)

20 Plaintiff asserts that in October 2004, he learned that the Michael Baker Corporation had
21 been awarded its first contract, worth \$1.2 billion, for work in Afghanistan on May 9, 2003. (Id. ¶
22 26.) In October 2008, Monawar admitted that he had received payment on behalf of the joint
23 venture, but he still did not pay Longhi. (Id. ¶¶ 26-27.) Monawar also failed to pay Plaintiff his
24 share of other contracts, which were worth more than \$8 billion. (Id. ¶ 28.) In addition,
25 Defendant "stole joint venture's business quarry project which the joint venture proposed to
26 Afghan government for development by diverting ownership of the quarry in his name." (Id. ¶
27 29.)

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1 these elements satisfied, it turns to seven factors ("the Eitel factors") to determine whether it
2 should enter a default judgment:

3 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
4 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
5 stake in the action[,] (5) the possibility of a dispute concerning material facts[,] (6)
whether the default was due to excusable neglect, and (7) the strong policy
underlying the Federal Rules of Civil Procedure favoring decision on the merits.

6 Eitel, 782 F.2d at 1471-72 (citation omitted). In this analysis, "the well-pleaded allegations of
7 the complaint relating to the defendant's liability are taken as true." *PepsiCo, Inc. v. Cal. Sec.*
8 *Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (citing *Televideo Sys., Inc. Heidenthal*, 826
9 F.2d 915, 917-18 (9th Cir. 1987)). Nevertheless, default does not compensate for essential
10 facts not within the pleadings or those legally insufficient to prove a claim. *Cripps v. Life Ins.*
11 *Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992) superseded by statute on other grounds,
12 Pub. L. No. 100-702, 102 Stat. 4669.

13 III. DISCUSSION

14 A. Subject matter jurisdiction

15 Plaintiff alleges that the Court has diversity jurisdiction over this action pursuant to 28
16 U.S.C. § 1332. (Compl. ¶ 4.) He asserts that he is a citizen of New Jersey, and he identifies
17 Defendant as a citizen of California who resides in the City of Concord (Id.) "The natural
18 person's state citizenship is . . . determined by h[is] state of domicile, not h[is] state of residence."
19 See *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). In the declaration included
20 with his supplemental brief, Plaintiff states that he is a U.S. citizen and that his permanent home is
21 in New Jersey. (Longhi Decl. ¶ 3.) He also states that Defendant is a U.S. citizen, that Defendant
22 was living in California in 2006, that he has been a member of a Walnut Creek tennis club from
23 2009 to the present, and that Defendant's permanent home is still in Concord, California. (Id. ¶¶
24 5-8.) The complaint, however, contains no such allegations. As necessary facts not contained in
25 the pleadings are not established by default, the Court denies Plaintiff's motion without prejudice
26 and grants Plaintiff leave to amend the complaint to cure this pleading deficiency.

27 B. Personal jurisdiction

28 Plaintiff also alleges that Defendant is a citizen of California, who has been residing in

1 Concord, California, at all relevant times. (Compl. ¶ 2.) In his motion, Plaintiff asserts that "this
2 Court has general personal jurisdiction over Defendant Monawar[,] who resides in Contra Costa
3 County, State of California." (Pls.' Mot. at 4 (citation omitted).) As discussed above, Plaintiff
4 makes no allegations with respect to Defendant's domicile, and to the extent that Plaintiff wishes
5 to rely on that basis to establish personal jurisdiction, such allegations are necessary. See
6 Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2853-54 (2011) ("For an
7 individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile .
8 . . ."); see also Cal. Practice Guide: Federal Civil Procedure Before Trial, Ch. 3-D § 3:60 (2015)
9 ("Residence' is simply the place where one lives, even temporarily, and regardless of intent to
10 remain. 'Domicile,' on the other hand, is the place where one resides with the intent to remain
11 indefinitely."). Plaintiff shall remedy this pleading deficiency in his first amended complaint.

12 **IV. CONCLUSION**

13 For the reasons set forth above, Plaintiff's motion for default judgment is DENIED
14 WITHOUT PREJUDICE. The Court GRANTS Plaintiff LEAVE TO AMEND the complaint to
15 cure the pleading deficiencies discussed above.

16 **IT IS SO ORDERED.**

17 Dated: 11/17/15

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KANDIS A. WESTMORE
20 United States Magistrate Judge
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