

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BERKLEY REGIONAL
INSURANCE CO.,

Plaintiff,

v.

JAMES T. REDDING, INC., *et al.*,

Defendants.

Civil Action No. ELH-12-2578

MEMORANDUM OPINION

In this breach of contract case, plaintiff Berkley Regional Insurance Company (“Berkley”) filed suit against defendant James T. Redding, Inc., d/b/a JTR, Inc. (“JTR”); James T. Redding; and Kimberly Redding (collectively, the “Indemnitors”) in connection with several construction projects (“Bonded Projects”). *See* Complaint, ECF 1 ¶¶ 7–14. In partial consideration for Berkley’s issuance of surety bonds, defendants agreed to indemnify Berkley against “all losses, costs and expenses, including, but not limited to, attorneys’ and consultants’ fees, incurred by Berkley in any way related to the Berkley’s issuance of surety bonds on behalf of JTR.” *Id.* ¶ 33. When JTR was unable to meet its payment and performance obligations on the Bonded Projects, JTR requested and received from Berkley loans in the amount of \$851,572, which JTR and the Indemnitors promised to repay by March 30, 2012, but failed to do so. *Id.* ¶ 21–23.

In its suit, plaintiff seeks repayment on the loan and indemnification for payments it has

made to JTR's subcontractors and suppliers in connection with the Bonded Projects.¹ *Id.* ¶ 29–31. In particular, Berkley requested damages totaling \$1,055,390.70. *Id.* ¶ 37. The defendants failed to respond. Thereafter, Berkley moved for an entry of default (ECF 7), which was entered on November 14, 2012 (*see* ECF 8, 9), and also moved for an order of default judgment (“Motion,” ECF 11). In its Motion, Berkley requested damages totaling \$2,825,045.60. ECF 11.

On June 18, 2013, pursuant to 28 U.S.C. § 636 and Local Rule 301, the matter was referred to Magistrate Judge Timothy J. Sullivan for a Report and Recommendation as to the pending Motion. ECF 12. On August 21, 2013, Judge Sullivan directed Berkley to supplement its Motion “to explain why the amount sought in its Motion exceeds the amount set forth in its Complaint” and to explain “why an award of . . . nearly \$1.8 million more than the amount specified in the Complaint . . . would not violate Rule 54(c).” ECF 15; *see* Fed. R. Civ. P. 54(c) (“A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.”). Berkley filed a Supplemental Motion for Default Judgment (“Supplemental Motion,” ECF 16) on August 28, 2013, arguing that because Defendants “were on notice that [Berkley’s] . . . damages were ongoing and continuing in nature,” Berkley may seek damages in excess of those demanded in the Complaint. ECF 16 at 6. In the alternative, Berkley requested that, “if the Court is not inclined to award damages in excess of \$1,055,390.70,” it be permitted to withdraw its Motion and file and serve an amended complaint on the Indemnitors. *Id.*

On October 3, 2013, Judge Sullivan issued a Report And Recommendation (“Report,” ECF 17), in which he recommended that Berkley’s Motion and Supplemental Motion be denied, without prejudice, and that Berkley “be granted leave of Court to file and serve an Amended

¹ This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, as there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.

