

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

*

LAKESIDE NATIONAL, LLC., *

Plaintiff *

v. * **CIVIL NO. JKB-11-1306**

CHICAGO TITLE INSURANCE CO., et al., *

Defendants *

*

* * * * *

MEMORANDUM and ORDER

Lakeside National, LLC (“Plaintiff”) brought this suit against Alltech Title, Inc. (“Alltech”) and Chicago Title Insurance Co. (“Chicago Title”) alleging breach of contract and negligence. Plaintiff now moves for judgment by default against Defendant Alltech. The issues have been briefed and no oral argument is required. Local Rule 105.6. For the reasons set forth below, Plaintiff’s Motion for Default Judgment (ECF No. 23) is GRANTED IN PART and HELD IN ABEYANCE IN PART.

I. BACKGROUND

The facts of this case, as alleged in the Complaint (ECF No. 2) are as follows. On or about September 10, 2007, Plaintiff financed the purchase of a home (“The Property”) by Mr. Lenworth McKenzie (“McKenzie”). The Property was located at 1021 West Lombard Street, Baltimore, Maryland 21223, and was improved by a single family dwelling. The financing consisted of a loan and purchase money mortgage in the amount of \$96,000 and an assignment of rents and leases in favor of Plaintiff. Defendant Alltech was responsible for closing the

transaction. Plaintiff's closing instructions required Alltech to execute a "closing instruction cover" and a "first lien letter" to secure Plaintiff's title to The Property. The instructions provided that Alltech would record the mortgage and deed of assignment immediately upon disbursing the loan proceeds, and would deliver the recorded mortgage to Plaintiff within 45 days of closing.

Additionally, Plaintiff purchased a title insurance policy ("The Policy") from Defendant Chicago Title in the amount of \$96,000 to cover any losses caused by a deficiency in Plaintiff's title or lien on The Property. Chicago Title also issued a closing protection letter ("The Letter") indemnifying Plaintiff against any loss resulting from Alltech's failure to comply with Plaintiff's closing instructions in the event that such failure affected Plaintiff's title or lien.

Alltech closed the sale and disbursed the loan proceeds on September 10, 2007. But, contrary to Plaintiff's instructions, it did not record the deed or mortgage until March 18, 2008. After Alltech closed the sale, but before it recorded the deed and mortgage, the City of Baltimore issued a demolition permit indicating that the improvements on The Property would be razed by January 12, 2008. By the time Alltech recorded the deed and mortgage, the improvements had been razed. McKenzie stopped paying the mortgage on March 10, 2008, and is now in default, with a balance of \$112,636.77 owing. The Property is vacant and unimproved, and its value is not sufficient to satisfy the balance due on the mortgage.

Plaintiff made claims against its title insurance policy and closing protection letter, which Chicago Title denied. On March 29, 2011, Plaintiff filed this suit against Defendants in the Circuit Court for Baltimore City, alleging breach of contract and negligence. On May 12, 2011, Defendant Chicago Title removed the case to this Court on the basis of diversity jurisdiction.

Plaintiff has submitted an affidavit affirming that Defendant Alltech was served with a summons and complaint on June 14, 2011, and that, as of the date of the affidavit, more than 56 days had passed without appearance or pleading from Defendant. On August 8, 2011, the Clerk of the Court entered default as to Defendant Alltech. Plaintiff now moves for entry of judgment by default.

II. STANDARD OF REVIEW

In reviewing a motion for default judgment, the court accepts as true the well-pled factual allegations in the complaint with regard to liability. *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780-81 (4th Cir. 2001). Default alone, however, does not establish liability; rather, the court must determine as a matter of law whether the plaintiff's well-pled factual allegations entitle him to the relief he seeks. 10A WRIGHT, ET AL., FED. PRAC. & PROC. CIV. § 2688 (3d ed. Supp.2010); *Ryan*, 253 F.3d at 780 (quoting *Nishimatsu Constr. Co., v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). If the court determines that liability exists, then it must determine the proper amount of damages. In this regard, the court does not accept the plaintiff's allegations as true, but instead must make an independent determination. *See Credit Lyonnais Secs. (USA), Inc. v. Alcantara*, 183 F.3d 151, 154 (2d Cir. 1999). If the record does not contain sufficient evidence to determine damages, the court may conduct a hearing to determine a proper award. FED. R. CIV. P. 55(b)(2)(B) (West 2011).

III. ANALYSIS

The well-pled facts of the complaint state the following. Defendant Alltech was responsible for conducting the closing of a sale of property and execution of a mortgage on that property in favor of Plaintiff. Plaintiff instructed Defendant to record the mortgage immediately after disbursing the loan proceeds to the buyer. Defendant did not follow these instructions, and

instead waited six months after disbursing the loan proceeds to record the mortgage. In the interim, the City of Baltimore issued a permit to raze the improvements on the property, and the improvements were in fact razed. Before razing the improvements, however, the City sent notice to all parties with a recorded interest in the property. Because Defendant had not yet recorded the mortgage, Plaintiff did not receive notice. As a result, Plaintiff was unable to take steps to prevent the improvements from being razed and has now lost its security interest in the improvements. The Court finds that these allegations are sufficient to state claims for breach of contract and negligence against Defendant Alltech.

Plaintiff further claims that the mortgage is in default with an outstanding balance of \$112,636.77. Plaintiff demands this amount in damages, plus \$155.00 in court costs. The Court, however, does not find that this is the correct measure of damages. Mr. McKenzie's alleged failure to pay his mortgage is in no way connected to the acts or omissions of Defendant. Rather, the only damage that was proximately caused by Defendant's failure to timely record the mortgage was the loss of Plaintiff's security interest in the improvements.

The record does not contain sufficient information to establish the value of the improvements, and the Court must therefore hold a hearing to determine a proper award of damages in this case.

ORDER

Accordingly, it is ORDERED that:

(1) Plaintiff's Motion for Default Judgment (ECF No. 23) is GRANTED IN PART and HELD IN ABEYANCE IN PART as follows:

(A) Judgment is ENTERED against Defendant Alltech Title, Inc. with respect to liability; and

