UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 19-1110 PA (KSx)	Date	April 30, 2019
Title	Danu Vina Co., Ltd. v. Cloud B, Inc.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Kamilla Sali-Suleyman	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: IN CHAMBERS – COURT ORDER

Before the Court is an Application for Default Judgment ("Motion for Default Judgment") filed by petitioner Danu Vina Co., Ltd. ("Petitioner") (Docket No. 18). Petitioner seeks confirmation of a foreign arbitration award it obtained against respondent Cloud B, Inc. ("Respondent") and the issuance of a Judgment consistent with that arbitration award. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for May 6, 2019, is vacated, and the matter taken off calendar.

Petitioner, which is a Vietnamese company, seeks to confirm an arbitration award (the "Award") rendered by the Hong Kong International Arbitration Center pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") and federal law implementing the New York Convention. See 9 U.S.C. §§ 201-208. According to the Petition, in 2013, the parties entered into a master purchasing contract requiring all disputes to be resolved by binding arbitration in Hong Kong. By 2015, Respondent, which is incorporated and has a principal place of business in California, fell substantially behind on payments it owed to Petitioner. By 2017, Respondent owed $793,356.20 for "Delivered Products" and $120,587.54 for "Finished Products" that Petitioner had manufactured at Petitioner's request.

Petitioner instituted an arbitration proceeding in Hong Kong in 2018. Respondent appeared in the arbitration proceeding. The arbitrator issued a "Final Award" on December 10, 2018, requiring Respondent to pay to Petitioner $793,356.20 for the Delivered Products, $120,936.20 for the Finished Products, prejudgment interests, arbitration costs, and attorneys' fees and costs of $82,722.55. Petitioner then instituted this action under the New York Convention on February 13, 2019, seeking confirmation of the Final Award. Respondent has not appeared in the action despite having been served with the Summons and Petition on February 15, 2019. After Respondent's time to appear expired, Petitioner sought and obtained a Default by Clerk on March 18, 2019. Petitioner then filed the pending Motion for Default

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Judgment. Respondent has filed no Opposition to the Motion for Default Judgment. See Local Rule 7-12 ("The failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion . . . .").

The statute implementing the New York Convention provides:

> Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

9 U.S.C. § 207. "The seven grounds for refusing to confirm an award are set out in Article V of the Convention." Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Defense Systems, Inc. ("Cubic"), 665 F.3d 1091, 1096 (9th Cir. 2011). Under the New York Convention, a court can refuse recognition or enforcement of an arbitration award in limited circumstances:

> 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
>
> (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
>
> (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
>
> (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it

contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Id. at 1096 n.2.

Federal Rule of Civil Procedure 55(b)(2) grants the Court the power to enter a default judgment. The Court need not make detailed findings of fact in the event of a default judgment. Adriana Int'l Corp. v. Thoeren, 913 F.2d 1406, 1414 (9th Cir. 1990). The general rule is that upon entry of a default, well-pleaded allegations in the complaint regarding liability are deemed true. Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977). Factors the Court should consider in evaluating a motion for entry of default judgment include: "(1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at 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 decisions on the merits." Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

Here, the Court finds that these factors weigh in favor of granting Petitioner's Motion for Default Judgment. In light of the well-pleaded allegations in the Petition, the limited circumstances through which the Court could refuse to recognize the Final Award—none of which appear to apply here—and Respondent's failure to appear in this action or oppose the Motion for Default Judgment, Petitioner's interest in an efficient resolution of the case outweighs Respondent's interest in adjudication on the merits. See PepsiCo v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) ("Defendant's failure to answer Plaintiffs' Complaint makes a decision on the merits impractical, if not impossible. Under Fed. R. Civ. P 55(a), termination of a case before hearing the merits is allowed whenever a defendant fails to defend an action.").

The Court finds that Petitioner has validly served Respondent with the Summons and Petition and that there is no basis under the New York Convention for refusing to recognize and enforce the Final Award issued by the arbitrator. The Court therefore grants the Motion for Default Judgment. The Court concludes that Petitioner is entitled to a Judgment against respondent in the total amount of $1,356,565.95 (consisting of damages for the Delivered Products of $793,356.20, damages for the Finished Products of $120,936.20, prejudgment interest in the total amount of $352,198.20, arbitration costs of $7,352.80, and attorneys' fees and costs awarded by the arbitrator of $82,722,55). The Court will therefore sign a Judgment consistent with this Order.

IT IS SO ORDERED.