

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 2017-CA-771
DIVISION: CV-H

The CITY OF JACKSONVILLE, a
municipal corporation,

Plaintiff,

vs.

COWEALTH LLC, a Florida limited
liability company, and BASIC PRODUCTS
LLC, a Florida limited liability company,

Defendants.

MOTION FOR DEFAULT AND FINAL JUDGMENT AFTER DEFAULT

Plaintiff, the CITY OF JACKSONVILLE (the “City”), through its undersigned counsel and pursuant to Rule 1.500 of the Florida Rules of Civil Procedure, moves for the entry of default and final judgment after default against Defendants, COWEALTH LLC and BASIC PRODUCTS LLC (collectively, “Defendants”), and in support thereof states as follows:

1. The City filed this action against Defendants on February 7, 2017, and Defendants were served with process on February 15, 2017.
2. On March 9, 2017, a *pro se* answer was filed on behalf of Defendants.
3. On April 21, 2017, following a duly noticed hearing held April 20, 2017 at which no appearance was made on behalf of Defendants, the Court entered an order striking Defendants’ *pro se* answer and providing that Defendants were to retain counsel and file a pleading within 30 days from the date of the order.

4. More than 30 days have passed from the date of the Court's order and no appearance of counsel on behalf of Defendants has been made and no pleading or other paper has been filed on behalf of Defendants. Therefore, pursuant to Rule 1.500(b) of the Florida Rules of Civil Procedure,¹ default should be entered against Defendants.

5. Further, because the City's damages are liquidated in the Complaint and also established by the affidavit of Kirk R. Wendland, Executive Director of the City's Office of Economic Development ("OED") (filed contemporaneously herewith), the City requests the entry of final judgment after default in the amount of \$210,549.99 against Defendants pursuant to Rule 1.500(e) of the Florida Rules of Civil Procedure.²

6. The entry of default operates as an admission of the well pleaded allegations of the complaint, which may include a plaintiff's entitlement to liquidated damages. Asian Imports, Inc. v. Pepe, 633 So. 2d 551, 552–53 (Fla. 1st DCA 1994) (affirming judgment after default awarding unpaid principal and interest on promissory note as liquidated damages); Mahmoud v. Int'l Islamic Trading (IIT), LTD., 572 So. 2d 979, 981–82 (Fla. 1st DCA 1990) (affirming judgment after default awarding unpaid principal due on letters of credit as liquidated damages).

As the First District Court of Appeal has stated:

Damages are liquidated when the proper amount to be awarded can be determined with exactness from the cause of action as pleaded, i.e., from a

¹ Rule 1.500(b) of the Florida Rules of Civil Procedure provides:

When a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or any applicable statute or any order of court, the court may enter a default against such party; provided that if such party has filed or served any paper in the action, that party shall be served with notice of the application for default.

² Rule 1.500(e) of the Florida Rules of Civil Procedure provides, in pertinent part:

Final judgments after default may be entered by the court at any time If it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter to enable the court to enter judgment or to effectuate it, the court may receive affidavits, make references, or conduct hearings as it deems necessary and shall accord a right of trial by jury to the parties when required by the Constitution or any statute.

pleaded agreement between the parties, by an arithmetical calculation or by application of definite rules of law.

Asian Imports, Inc., 633 So. 2d at 552–53 (quoting Bowman v. Kingsland Dev., Inc., 432 So. 2d 660, 662–63 (Fla. 5th DCA 1983). See also, Mahmoud, 472 So. 2d at 981–92 (same).

7. The City’s damages are liquidated. The Complaint alleges the City paid to Defendants the sum of \$210,549.99 on December 17, 2014 pursuant to the Grant under the Redevelopment Agreement (as those capitalized terms are defined in the Complaint). (Compl. at ¶ 16). As further alleged in the Complaint, the Grant was conditioned on Defendants creating 56 new jobs on or before April 30, 2016 and maintaining those new jobs for two years. (Id. at ¶¶ 10, 11, 19 & 20). Defendants failed to create any new jobs, as alleged in the Complaint and evidenced by reports submitted to the City by Defendants attached to the Complaint as Composite Exhibit C. (Id. at ¶¶ 18, 25a. & b. & Comp. Exh. C). The Complaint further alleges that Section 9.2(b) of the Redevelopment Agreement (entitled “Specific Default Remedy”), as amended, provides:

Job Retention: In the event the [Defendants] fail[] to create 56 New Jobs on or before April 30, 2016, and to maintain the New Jobs for two years, the [Defendants] shall repay to the City a portion of the NWJEDF Grant in the amount of \$4,443.00 per job below the targeted 56 jobs.

8. Pursuant to the Redevelopment Agreement, the City’s damages are capable of exact calculation by application of the mathematical formula in Section 9.2(b), all as set forth in the Complaint. Therefore, the City’s damages are $\$4,443.00 \times 56 = \$248,808.00$, which must be capped at the \$210,549.99 amount of the Grant money actually paid to Defendants. Moreover, the affidavit of Mr. Kirk R. Wendland, Executive Director of the OED (filed contemporaneously herewith), also conclusively establishes the amount of the City’s damages to be \$210,549.99. (Affidavit of K. Wendland at ¶ 9). Therefore, a final judgment after default should be entered against Defendants, jointly and severally, in the amount of \$210,549.99.

WHEREFORE, the City requests that the Court enter default and final judgment after default in favor of the City and against Defendants, jointly and severally, in the amount of \$210,549.99, or granting such other relief as the Court finds appropriate.

DATED this 7th day of June, 2017.

OFFICE OF GENERAL COUNSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of June, 2017, a true and correct copy of the foregoing was filed with the Clerk of Court via the Florida Courts e-Filing Portal and to the following by U.S. Mail:

CoWealth LLC
c/o Joann Brown
5638 Commonwealth Avenue
Jacksonville, FL 32254

Basic Products, LLC
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5638 Commonwealth Avenue
Jacksonville, FL 32254

/s/ Jacob J. Payne
Jacob J. Payne
Assistant General Counsel