CIRCUIT COURT BRANCH V

DLERK OF COURTS BROWN COUNTY WI

BROWN COUNTY

Case No. 13 CV 1838

Oneida Small Business, Inc.

Plaintiff,

White Feels Courts Dec 9, C 11, 11, C

White Eagle Sports Bar & Grill, LLC

Paul F. Danforth

v.

Christina S. Danforth

Defendants,

PLAINTIFF'S RESPONSE TO DEFENDANTS' CHRISTINA DANFORTH AND PAUL DANFORTH'S BRIEFS IN OPPOSITION TO SUMMARY JUDGMENT AND MOTION TO STRIKE AFFIDAVIT.

The Plaintiff, Oneida Small Business, Inc.'s Motion for Summary Judgment should be granted. The Defendant, Christina S. Danforth has filed an answer contesting the amount the Plaintiff asserts is owed. The Court should dismiss the Defendant's frivolous motion.

As Defendant, Christina Danforth, cited in her Motion, the purpose of summary judgment procedure is to determine whether there are no genuine factual disputes in order to "avoid trials where there is nothing to try." *Rollins Burdick Hunter of Wis., Inc. v. Hamilton,* 101 Wis. 2d 460, 470, 304 N.W.2d 752 (1981).

In this case, there is nothing to try, and a trial should be avoided, the Defendants obtained a loan from the Plaintiff in the amount of Fifty Thousand Dollars (\$50,000) as evidenced in Exhibit A attached to this motion. The Defendants have failed to make timely payments on this Loan as

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evidenced by the Affidavit of Gary Jordan attached hereto and incorporated herein by referenced as Exhibit B.

The Defendant, Christina Danforth, asserts that Attorney Andrew A. Van Sickle is somehow serving as a witness in this case and that the affidavit in support of this Motion would qualify as hearsay, and therefore should not be considered by this court. Notwithstanding several arguments contrary to the Defendant's assertions, this issue is easily remedied by the Plaintiff providing an affidavit from a representative of the Plaintiff. An affidavit from Mr. Gary Jordan is attached hereto as Exhibit B. The attached affidavit makes the Defendant's Motion to Strike Affidavit a non-issue.

Defendant, Paul F. Danforth, asserts the Answer filed on January 31, 2014, is inclusive of all parties, however the same was exclusively signed by Defendant, Christina Danforth and does not represent the same is on behalf of Defendant Paul F. Danforth or Defendant, White Eagle Sports Bar & Grill, LLC.

Because there are no genuine factual disputes in this case, the Plaintiff demands judgment and requests the following relief without need of a heating and additional proceedings.

- For a money judgment against Defendants, White Eagle Sports Bar and Grill, LLC, Paul
 F. Danforth and Christina S. Danforth, jointly and severally in the sum of \$55,587.43 plus
 pre and post judgment interest owing thereon.
- 2. A Writ of Replevin for all the property secured by the General Business Security Agreement and Note and;

3. For costs and disbursements of this action, including reasonable attorney's fees.

Dated this 21 day of March, 2014.

LEWIS & VAN SICKLE, LEC

By:

Andrew A. Van Sickle 1022263 Attorney for the Plaintiff, Oneida

Small Business, Inc.

LEWIS & VAN SICKLE, LLC P.O Box 107 Pulaski, WI 54162 920-822-2777 W. B. A. GP 451 (5/05) 11221
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BUSINESS NOTE

Exhibit A

(Use only for business purpose loans)

Boxes not checked are inapplicable.

White Eagle Sports Bar & Grill, LLC	August 18, 2006	\$_50,000.00
(MAKER) 1. Promise to Pay and Payment Schedule. The undersigned ("Maker," wheth		
Bay Bank As Servicer For Oneida Small Business Incorporated Green Bay		at 2555 Packerland Drive.
Green Bay , Wisconsin, the subalance, according to the following schedule:	um of \$ 50,000,00	, plus interest on the unpaid principa
A single payment of the unpaid principal and accrued interests	est is due and payable c	n February 18, 2007.
 2. Interest Calculation. This Note bears interest on the unpaid principal balan [Check (a) or (b); only one shall apply.] (a) \(\infty \) Fixed Rate. At the annual rate of5.000 %. 	ce before maturity:	
(b) Variable Rate. At the annual rate ("Note Rate") which shall equal the In-	dex Rate (as defined below),	plus minusn/a
percentage points. However, the Note Rate shall not exceedn/a% change date described below the Note Rate shall ben/a% per yean/a	per year and shall not be less	than In/a % per year and until the first
The Index Rate may or may not be the lowest rate charged by Lender. Ti	ne Note Rate shall be adjusted o	only on the following change dates:
An adjustment in the Note Rate will result in an increase or decrease in payment, (3) the number of scheduled periodic payments sufficient to remaining payment of principal and interest so that those remaining payment of scheduled maturity date, (5) the amount of each remaining payment of payments will be substantially equal and sufficient to repay this Note by by Lender, plus the final payment of principal and interest, or (6) n/a	o repay this Note in substantiall ayments will be substantially e of principal and interest (other th its scheduled maturity date has	y equal payments, (4) the amount of each qual and sufficient to repay this Note by its an the final payment) so that those remaining
In addition, Lender is authorized to change the amount of periodic paymer this Note. The Maker agrees to pay any resulting payments or amounts. this Note, Lender may substitute a comparable index. Interest is computed: (c) For the actual number of days principal is unpaid on the basis of a 3 days to arrive at a daily interest rate, and the daily interest rate will be applied to 365 days in a calendar year and 366 days in a leap year) a 365 day year and 366 days in a leap year) a 365 day year and 366 days in a leap year) a 365 day year and 366 days in a leap year) a 365 day year and 366 days in a leap year) a 365 day year and 366 days in a leap year) a 365 day year and 366 days in a leap year) a 365 day year and 366 days in a leap year) a 365 day year and 366 days in a leap year and 366 day year and 366 days in a leap year and 366 day year and 367 days in a leap year and 367 days in a spillad interest shall bear interest from its due date until paid at the Junpaid principal and interest bear interest after maturity until paid (whether lappicated principal and interest bear interest after maturity until paid (whether lappicated principal and interest bear interest after maturity until paid (whether lappicated principal and interest bear interest after maturity until paid (whether lappicated principal and interest bear interest after maturity until paid (whether lappicated principal and interest bear interest after maturity until paid (whether lappicated principal and interest bear interest after maturity until paid (whether lappicated principal and interest bear interest after maturity until paid (whether lappicated principal and interest bear interest from its due date until paid at the days of the until paid (whether lappicated principal and interest after maturity until paid (whether lappicated principal and interest after maturity until paid (whether lappicated principal and interest after maturity until paid (whether lappicated principal and interest after maturity until paid (whether lappicated	If the Index Rate ceases to be 60 day year (which means that id to the unpaid principal for the ear. Par, counting each day as 1/30t e interest rate then in effect for by acceleration or lapse of time for per year, computed on the sate charges payable by Maker to be on or before the 10th days of the 3 days affect.	the stated interest rate will be divided by 360 actual number of days principal is unpaid up h of a month and disregarding differences in this Note. This Note. The pair is as the interest rate before maturity. Lender and third to unpaid principal.
All prepayments shall be applied first to accrued and unpaid interest, second to THIS NOTE INCLUDES ADDITION	other charges payable by Make	r to Lender and third to unpaid principal.
OTHER PROVISIONS:	White Eagle Sports Bar & Gr	ill, LLC (SEAL)
_	A Wisconsin Limited Liability	
Corone of	By: Latin Cristina S. Danforth, Member	01.+1
Conta	By:	MANUEL (SEAL)
0		(SEAL)
	By: P. O. Box 131	(SEAL)
	Oneida, WI 54155 (ADDRESS)	/DUALET
FOR LENDER CLER		(PHONE)
Collateral: Unsecured Purpose: Business Expense	w	'illiam G. Menacher

- 5. Default and Enforcement. Upon the occurrence of any one or more of the following events of default: (a) Maker fails to pay any amount when due under this Note or under any other instrument evidencing any indebtedness of Maker to Lender, (b) any representation or warranty made under this Note or information provided by Maker to Lender in connection with this Note is or was false or fraudulent in any material respect, (c) a material adverse change occurs in Maker's financial condition, (d) Maker fails to timely observe or perform any of the covenants or duties contained in this Note, (e) any guarantee of Maker's obligations under this Note is revoked or becomes unenforceable for any reason, (f) Maker, Maker's spouse or a surety or guarantor of this Note dies or ceases to exist, (g) an event of default occurs under any agreement securing this Note, or (h) Lender at any time believes in good faith that the prospect of payment or performance under this Note, under any agreement securing this Note is impaired, then the unpaid balance shall, at the option of Lender, without notice, mature and become immediately payable. The unpaid balance shall automatically mature and become immediately payable in the event any Maker or any surety, indorser or guarantor for any of Maker's obligations under this Note becomes the subject of bankruptey or other insolvency proceedings. Lender's receipt of any payment on this Note after the occurrence of an event of default shall not constitute a waiver of the default or the Lender's rights and remedies upon such default. To the extent not prohibited by law, Maker consents that venue for any legal proceeding relating to collection of this Note was executed and Maker submits to the jurisdiction of any such court.
- 6. Security. This Note is secured by all existing and future security agreements and mortgages between Lender and Maker, between Lender and any inderser or guarantor of this Note, and between Lender and any other person providing collateral security for Maker's obligations, and payment may be accelerated according to any of them. Unless a lien would be prohibited by law or would render a nontaxable account taxable, Maker grants to Lender a security interest and lien in any deposit account Maker may at any time have with Lender. Lender may, at any time after an occurrence of an event of default, without notice or demand, set-off against any deposit balance or other money now or hereafter owed any Maker by Lender any amount unpaid under this Note.
- 7. Rights of Lender. Without affecting the liability of any Maker, indorser, surety, or guarantor, Lender may, without notice, accept partial payments, release or impair any collateral security for the payment of this Note or agree not to sue any party liable on it. Lender may apply prepayments, if permitted, to such future installments as it elects. Lender may without notice to Maker apply payments made by or for Maker to any obligations of Maker to Lender. Without affecting the liability of any indorser, surety or guarantor, Lender may from time to time, without notice, renew or extend the time for payment.
- 8. Obligations and Agreements of Maker. The obligations under this Note of all Makers are joint and several. All Makers, indorsers, sureties, and guarantors agree to pay all costs of collection before and after judgment, including reasonable attorneys' fees (including those incurred in successful defense or settlement of any counterclaim brought by Maker or incident to any action or proceeding involving Maker brought pursuant to the United States Bankruptcy Code) and waive presentment, protest, demand and notice of dishonor Maker agrees to indemnify and hold harmless Lender, its directors, officers, employees and agents, for, from and against any and all claims, damages, judgments, penalties, and expenses, including reasonable attorneys' fees, arising directly or indirectly from credit extended under this Note or the activities of Maker. This indemnity shall survive payment of this Note. Each Maker acknowledges that Lender has not made any representations or warranties with respect to, and that Lender does not assume any responsibility to Maker for, the collectability or enforceability of this Note or the financial condition of any Maker. Each Maker has independently determined the collectability and enforceability of this Note. Maker represents that the legal name of Maker and the address of Maker's principal residence are as set forth on page 1. Maker shall not change its legal name or address without providing at least 30 days prior written notice of the change to Lender.
- 9. Interpretation. This Note is intended by Maker and Lender as a final expression of this Note and as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing. This Note benefits Lender, its successors and assigns, and binds Maker and Maker's heirs, personal representatives, successors and assigns. The validity, construction and enforcement of this Note are governed by the internal laws of Wisconsin except to the extent such laws are preeempted by federal law. Invalidity or unenforceability of any provision of this Note shall not affect the validity or enforceability of any other provisions of this Note.

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STATE OF WISCONSIN

CIRCUIT COURT BRANCH V

BROWN COUNTY

ONEIDA SMALL BUISNESS, INC. 3812 N. County Line Road Oneida, WI 54155

CASE NO.: 13 CV 1838

Plaintiff,

VS.

WHITE EAGLE SPORTS BAR & GRILL, LLC P.O. Box 131 Oneida, WI 54155

And

Case Code: 30304

PAUL F. DANFORTH 4774 N. County Line Road Oneida, WI 54155

And

CHRISTINA S. DANFORTH 4774 N. County Line Road Oneida, WI 54155

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF WISCONSIN)
)ss
COUNTY OF BROWN)

Gary Jordan, being first duly sworn on oath, deposes and states as follows:

1. That I am a representative of the Plaintiff, Oneida Small Business, Inc., in the above captioned matter.

- 2. That I make this Affidavit upon my personal knowledge and belief.
- 3. This Affidavit is made in support of the Plaintiff's Notice of Motion and Motion For Summary Judgment previously filed with the Court.
- 4. As outlined in Plaintiff's Summons and Complaint, Defendants, borrowed money from Oneida Small Business, Inc., in the sum of Fifty Thousand Dollars (\$50,000) on or about August 18, 2006 in the form of a Business Note.
- 5. The Defendants have renewed this note on several occasions with the most recent renewal dated November 18, 2009.
- 6. As outlined in the Plaintiff's Summons and Complaint, The Defendants failed to make payments on the Note when due despite Plaintiff's demand for payment.
- 7. As to Plaintiff's Cause of Action as pled in Plaintiff's Summons and Complaint, there is currently due and owing to the Plaintiff from the Defendants the sum of \$55,587.43 consisting of \$48,147.78 principal and \$7,346.65 interest.
- 8. Defendants have failed to redeem or surrender the collateral pledged to Plaintiff come current on the loan payments or pay off the same.

WHEREFORE, the Plaintiff requests the following:

- A. Money Judgment in the amount of \$55,587.43 against defendants, jointly and severally, plus interest thereon;
- B. Writ of Replevin for all property secured by the General Business Security Agreement.
- C. All additional relief the Court deems just and equitable.

Dated this the $\frac{\cancel{Y}}{\cancel{Y}}$ day of March, 2014

ONEIDA SMALL BUSINESS, INC.

By:

Gary Jordan

Subscribed and sworn before me this the day of March, 2014.

Andrew A. Van Sickle

Notary Public, State of Wisconsin

My commission is permanent.