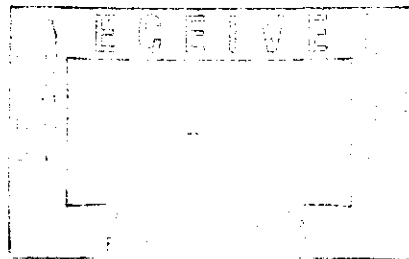


May 4, 2009

Lisa Wilson
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600



RE: Hilliard Limited Partnership v. Evergreen Development, LLC, et al
Brown County Case No.: 08-CV-2265
Our File No.: 070998-0001

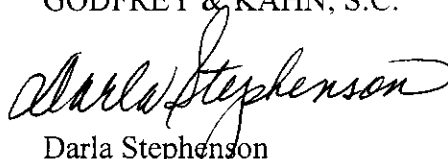
Dear Ms. Wilson:

On behalf of Plaintiff, Hilliard Limited Partnership, enclosed is an original and one copy of a proposed Bill of Costs and Disbursements in the above-referenced matter. If you do not receive any objections to same, please tax the costs, docket the Bill of Costs, and return a conformed copy to me in the self-addressed stamped envelope provided. Our check in the amount of \$5.00 as and for the docketing fee is also enclosed.

By copy of this letter, the same is being served on Defendant, Ronald Van Den Heuvel.

Very truly yours,

GODFREY & KAHN, S.C.


Darla Stephenson
Paralegal

Enclosures

c: Ronald Van Den Heuvel (w/ encl)

3791631_1

(13)

May 11, 2009

VIA HAND DELIVERY

Lisa M. Wilson
Clerk of Courts
Brown County Courthouse
100 South Jefferson Street
Green Bay, WI 54305-3600

Re: Hilliard Limited Partnership v. Evergreen Development, LLC, et al
Case No. 08-CV-2265
Our File No.: 070998-0002

Dear Ms. Wilson:

Enclosed please find twenty-five (25) original Garnishment Summons and Complaints for Non-Earnings against Ronald Van Den Heuvel, along with four copies of each Garnishment, in the above referenced matter. Please file the originals and return the authenticated copies to our waiting messenger. I enclose a check in the amount of \$201.00 for your filing fee.

Thank you for your attention to this matter. If you should have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

GODFREY & KAHN, S.C.

Darla Stephenson
Darla Stephenson
Paralegal

DKS:s
Enclosures
3794317_1

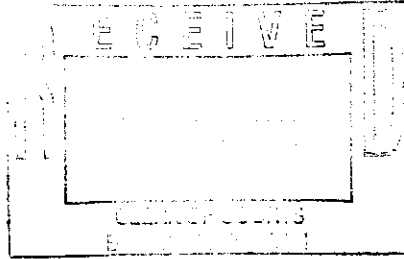


333 MAIN STREET, SUITE 600
POST OFFICE BOX 13067
GREEN BAY, WI 54307-3067
TEL 920-432-9300
FAX 920-436-7988
www.gklaw.com

rnova@gklaw.com

April 8, 2009

3
Clerk of Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600



RE: Hilliard Limited Partnership v. Evergreen Development, LLC, et al.
Brown County Case No. 08-CV-2265
File No.: 070998-0002

Dear Clerk:

This is in response to your letter dated March 31, 2009.

Enclosed please find our check in the amount of \$5.00 to cover the fee for docketing the judgment in the above-referenced matter.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

GODFREY & KAHN, S.C.

Ross J. Nova

Ross J. Nova / gn

RJN:gn
Enclosure

3708255_1

SUE E. BISCHEL
Circuit Judge



JESSIE PEDRETTI
Court Reporter
920/448-4126

DONNA MASON
Deputy Clerk
920/448-4166

CIRCUIT COURT BRANCH III

BROWN COUNTY COURTHOUSE
100 S. JEFFERSON STREET
P.O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600

MICHELLE WALLERIUS
Judicial Assistant
920/448-4115

April 16, 2009

Mr. Ross Nova
Attorney at Law
PO Box 13067
Green Bay, WI 54307-3067

FILE COPY

Mr. Ronald Van Den Huevel
2303 Lost Dauphin Road
De Pere, WI 54115

Re: *Hilliard Limited Partnership vs. Evergreen Development, LLC*
Case No. 08-CV-2265

Dear Mr. Nova and Mr. Van Den Huevel:

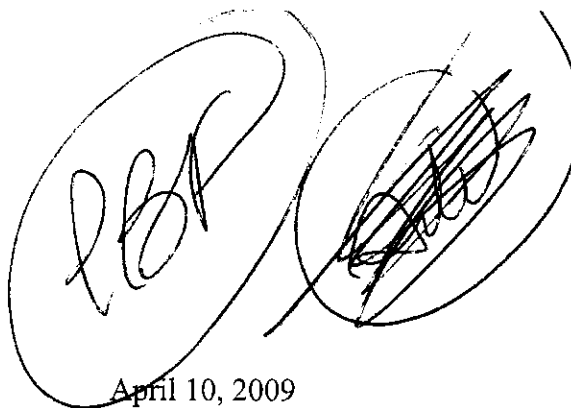
Enclosed for each of you please find a copy of my Decision regarding Plaintiffs' Motion for Summary Judgment. I would respectfully request Attorney Nova draft an Order in conformity with this Decision and include the language regarding finality as required by *Wamboldt v. West Bend*, 2005 AP 1874.

Thank you for your anticipated cooperation.

Sincerely,

Sue E. Bischel
Circuit Court Judge

SEB:mkw
Enclosure



April 10, 2009

Honorable Sue E. Bischel
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

RE: Hilliard Limited Partnership v. Evergreen Development, LLC, et al.
Brown County Case No. 08-CV-2265
File No.: 070998-0002

Dear Judge Bischel:

On Wednesday, April 8, 2009, I received a file-stamped copy of Defendant, Ronald Van Den Heuvel's, Response to the Plaintiff's Motion for Summary Judgment. For a number of reasons, that filing is defective, should be stricken, and per our prior request, judgment entered against Defendant Van Den Heuvel.

There are numerous reasons why this filing is defective. First, it was filed after the April 3 deadline set forth in your briefing schedule. Second, the filing does not comport with your summary judgment briefing requirements. Third, the filing does not comport with Local Rules in terms of meeting proper structure and form. Fourth, it provides no affidavit or other admissible evidence in support of it. Fifth, it cites to no case law, statute or fact to support any of the allegations contained in it.

Judge Bischel, we believe any one of the foregoing deficiencies should result in the entry of summary judgment in favor of the Plaintiff and against Defendant Van Dan Heuvel. Should you wish further information or input, please do not hesitate to contact me.

On an unrelated note, please be advised that as of April 17, 2009, I will no longer be working with Godfrey & Kahn, S.C. Sherry Coley, a colleague of mine in the Green Bay office, will be handling this matter going forward. Her contact information is identical to mine.

Honorable Sue E. Bischel
April 10, 2009
Page 2

Judge Bischel, thank you in advance for your anticipated cooperation. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

GODFREY & KAHN, S.C.

A handwritten signature in black ink, appearing to read "Ross J. Nova", written over a horizontal line.

Ross J. Nova

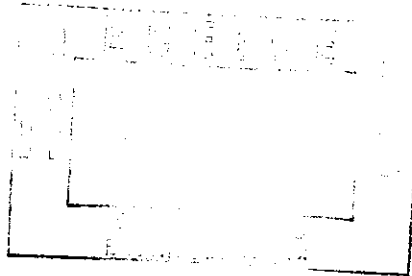
RJN:kjo

cc: Ronald H. Van Den Huevel
Evergreen Development, LLC
Hilliard Limited Partnership

3718816_1

April 6, 2009

Lisa Wilson
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600



RE: Hilliard Limited Partnership v. Evergreen Development, LLC, et al
Brown County Case No.: 08-CV-2265
Our File No.: 070998-0001

Dear Ms. Wilson:

On behalf of Plaintiff, Hilliard Limited Partnership, enclosed is an original and one copy of a proposed Bill of Costs and Disbursements in the above-referenced matter. If you do not receive any objections to same, please tax the costs, docket the Bill of Costs, and return a conformed copy to me in the self-addressed stamped envelope provided. Our check in the amount of \$5.00 as and for the docketing fee is also enclosed.

By copy of this letter, the same is being served on Defendants, Evergreen Development, LLC and Ronald Van Den Heuvel.

Very truly yours,

GODFREY & KAHN, S.C.


Darla Stephenson
Paralegal

Enclosures

c: Ronald Van Den Heuvel (w/ encl)
Evergreen Development, LLC (w/ encl)
3671705_1

rnova@gklaw.com

April 6, 2009

Honorable Sue E. Bischel
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

RE: Hilliard Limited Partnership v. Evergreen Development, LLC, et al.
Brown County Case No. 08-CV-2265
File No.: 070998-0002


Dear Judge Bischel:

Defendant, Ronald H. Van Den Heuvel, had until Friday, April 3, 2009 to respond to the Plaintiff's Motion for Summary Judgment. Having not received any information in my office and having seen that nothing was filed according to the Circuit Court Access Program, we respectfully request that you enter Judgment against Mr. Van Den Heuvel pursuant to the proposed Default Judgment sent to you previously.

Thank you in advance for your anticipated cooperation. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

GODFREY & KAHN, S.C.


Ross J. Nova

RJN:kjo

cc: Ronald H. Van Den Huevel
Evergreen Development, LLC
Hilliard Limited Partnership

3701431_1

*Donna - I signed
a few things yesterday
that I had been holding
Is this one of them? If not,
please check file to see
if its in the file -
those*

CLERK OF CIRCUIT COURT

Brown County



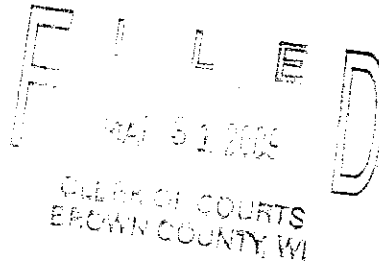
100 SOUTH JEFFERSON STREET
P.O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600
TELEPHONE (920) 448-4155
FAX (920) 448-4156
WWW.CO.BROWN.WI.US/CLERK_OF_COURTS

LISA WILSON
CLERK OF CIRCUIT COURT
(920) 448-4179

LAURI MARENGER
CHIEF DEPUTY
(920) 448-4154

NEIL BASTEN
FINANCIAL OPERATIONS MANAGER
(920) 448-4501

March 31, 2009



Atty Ross Nova
PO Box 13067
Green Bay, WI 54307

Re: Hilliard Limited Partnership
08CV2265

Dear Atty Nova:

A judgment has been filed in the above-entitled case. Pursuant to WI § 814.61(5)(b), this judgment will not be docketed until the \$5.00 fee is paid.

Sincerely,

Donna Mason
Deputy Clerk/Court Coordinator

copy to file

RONALD H. VAN DEN HEUVEL

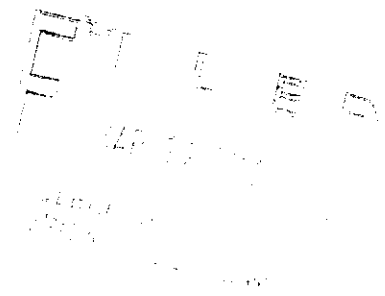
2303 Lost Dauphin Road

De Pere, WI 54115

Daytime Phone: (920) 964-0006

March 19, 2009

The Honorable Sue E. Bischel
Circuit Court Branch III
Brown County Courthouse
100 S. Jefferson Street
Green Bay, WI 54305



Re: *Hilliard Limited Partnership vs. Evergreen Development, LLC*
Case No. 08-CV-2265
Lawyer/Client – Privileged Information, confidentiality and conflict of interest

Dear Judge Bischel:

The following statements are true and complete and should warrant immediate attention.

1. Godfrey and Kahn has a clearly understanding that Tak Investments, ST Paper, LLC and ST Holdings, LLC are technology and business partners with Tissue Technology, LLC and that Ron Van Den Heuvel is an 83% owner of TTL.
2. Without Mr. Van Den Heuvel or Tissue Technology, LLC having legal counsel present Godfrey and Kahn's attorneys have met with Mr. Van Den Heuvel, Mr. Sharad Tak, owner of Tak Investments and ST companies, and the various companies on many occasions. Mr. Van Den Heuvel and Mr. Sharad Tak have understood any items stated or discussed in these meetings were covered as privileged information and under the client/lawyer confidentiality.
3. Godfrey and Kahn clearly understands that ST Paper and Tak investments shared the same office at 1555 Glory Road, Green Bay, WI 54304 with Tissue Technology. Godfrey knows this as they sent TTL notices and Tak/ST Paper invoices to that location.
4. Godfrey and Kahn clearly understand that they have drafted joint agreements for both ST Paper group and Ron Van Den Heuvel and Tissue Technology, LLC group.
5. Funds of Tissue Technology group and of Ron Van Den Heuvel have been used to pay fees of Tak Investment or ST Group due and owed to Godfrey and Kahn.
6. Godfrey and Kahn has directly requested and received numerous documents, letters and emails as well as other confidential information from Ron Van Den Heuvel (personally), Partners Concepts Development, Inc., Ecofibre, Inc., Tissue Products Technology Corp., Tissue Technology, LLC and Oconto Falls Tissue, Inc. Since such information was requested directly by Godfrey & Kahn to entities owned and/or controlled by Mr. Van Den Heuvel, such information was expected to be covered under attorney client privilege.

Sincerely,

Ronald H. Van Den Heuvel

Cc: Ross Nova, esq.

HILLIARD LIMITED PARTNERSHIP,
Plaintiff,

**BRIEFING FORMAT &
SCHEDULING ORDER**

v.

FILE COPY

Case No: 08-CV-2265

EVERGREEN DEVELOPMENT, LLC
and RON VAN DEN HEUVEL,
Defendants.

FILED
MAR 19 2009
BROWN COUNTY, WI

The following is the required **BRIEFING FORMAT** for the Brown County Circuit Courts:
BROWN COUNTY, WI

1. Introduction

2. Stipulated Facts/Proposed Undisputed Facts

- a. The parties must provide all facts necessary for granting or denying summary judgment. This Court will not search the record for evidence.
- b. ***Stipulated Facts.*** If facts in this matter have been stipulated to by the parties, this section shall begin with numbered paragraphs containing each stipulated fact.
- c. ***Proposed Undisputed Facts.*** Proposed undisputed facts shall be set forth in numbered paragraphs. Each factual assertion must be supported by reference to admissible evidence that is supported by record cite(s), such as affidavits, depositions, etc. Citations to the record must include specific references to pages, paragraphs, and line numbers.
- d. The responding party shall respond separately to each numbered Stipulated Fact and/or Proposed Undisputed Fact using the same corresponding paragraph numbers. Each response should expressly state whether the fact is "disputed" or "undisputed" and state the reason for such assertion.

3. Disputed Facts

- a. This section need not be in numbered paragraph form, but must contain citations to the record.

4. Standard of Review

5. Argument

- a. This section shall provide a complete argument, including all legal arguments and factual information necessary to grant the motion.
- b. The parties shall make liberal use of headings and sub-headings.

6. Conclusion/Relief Sought

Parties should also note that the Brown County Circuit Court Rules require supporting materials be filed in conjunction with the party's brief. Only the relevant portions of the supporting materials shall be submitted along with the briefs. The specific parts of the supporting materials sought to be utilized shall be highlighted or underlined. Brown County Cir. Ct. R. 404(c).

Nothing in this procedure should be construed as affecting a party's obligation to comply with Wis. Stat. § 802.08, other applicable statutes, case law, and local circuit court rules.

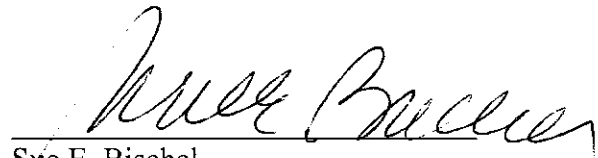
The following is the required **BRIEFING SCHEDULE** for the Brown County Circuit Courts:

1. The moving party's motion and brief shall be filed with the Clerk of Courts and a courtesy copy to the Judge by **MARCH 26, 2009**. This brief shall be limited to 15 double-spaced pages.
2. The responding party's brief shall be filed with the Clerk of Courts and a courtesy copy to the Judge on or before **APRIL 3, 2009**. This brief shall be limited to 15 double-spaced pages.
3. The moving party's reply brief, if any, shall be filed with the Clerk of Courts and a courtesy copy to the Judge on or before **APRIL 13, 2009**. This brief shall be limited to 7 double-spaced pages.
4. This matter will be decided on the briefs.

****Noncompliance with this Briefing Procedure and Schedule may be the basis for the imposition of sanctions including dismissal, striking of papers, imposition of terms, and such other appropriate sanctions.**

Dated this 13 day of March, 2009.

BY THE COURT:


Sue E. Bischel
Circuit Court Judge, Branch III

SUE E. BISCHSEL
Circuit Judge



JESSIE PEDRETTI
Court Reporter
920/448-4126

DONNA MASON
Deputy Clerk
920/448-4166

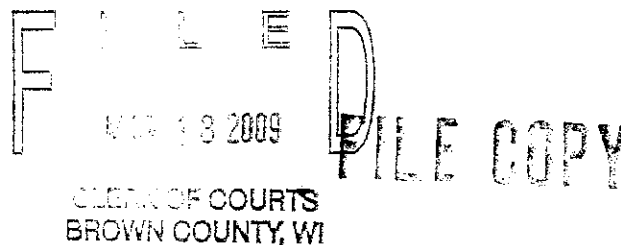
CIRCUIT COURT BRANCH III

BROWN COUNTY COURTHOUSE
100 S. JEFFERSON STREET
P.O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600

MICHELLE WALLERIUS
Judicial Assistant
920/448-4115

March 12, 2009

Mr. Ross Nova
Attorney at Law
PO Box 13067
Green Bay, WI 54307-3067



Mr. Ronald Van Den Huevel
2303 Lost Dauphin Road
De Pere, WI 54115

Re: *Hilliard Limited Partnership vs. Evergreen Development, LLC*
Case No. 08-CV-2265

Dear Mr. Nova and Mr. Van Den Huevel:

I received Mr. Nova's letter of March 9, 2009 and intend to grant his Motion for Summary Judgment as it pertains to defendant Evergreen Development, LLC. The corporation was served on September 18, 2008 and Attorney Stellpflug filed a Notice of Retainer on behalf of the corporation on October 8th. The plaintiff filed its Motion for Summary Judgment on January 2, 2009 and Mr. Van Den Huevel on behalf of the corporation, signed a stipulation permitting Stellpflug Law to withdraw as counsel on January 7, 2009. I had established a scheduling conference to occur on January 22, 2009, but removed it from my calendar to allow corporation and Mr. Van Den Huevel individually to retain a new attorney. I wrote the parties on January 7th advising Mr. Van Den Huevel that he had 30 days to retain an attorney. I indicated that if he did not do so, I would establish a briefing schedule regarding the personal claims against Mr. Van Den Huevel and would likely grant the default judgment as it pertained to the corporation.

I heard nothing from the defendant in the next 30 days, and Mr. Nova again wrote to request action on his Summary Judgment Motion. I again wrote to Mr. Van Den Huevel on February 16, 2009 allowing him another 10 days to advise me how he intended to proceed. Mr. Van Den Huevel wrote me on February 5, 2009 advising me that an attorney would be entering an appearance on behalf of the defendant corporation on March 2, 2009. I have reviewed the file maintained by the Clerk of Court and the computerized CCAP records and no Notice of Appearance or Retainer has been filed.

rnova@gklaw.com

March 9, 2009

Honorable Sue E. Bischel
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

FILED
MAR 13 2009

CLERK OF COURTS
BROWN COUNTY, WI

RE: Hilliard Limited Partnership v. Evergreen Development, LLC, et al.
Brown County Case No. 08-CV-2265
File No.: 070998-0002

Dear Judge Bischel:

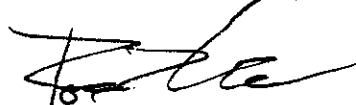
You have very kindly provided the Defendants multiple extensions to retain counsel prior to entering Judgment pursuant to the Plaintiff's Motion for Summary Judgment filed with the Court on January 5, 2009. Despite these extensions, the Defendants have failed to cause any attorney to file the Notice of Appearance as directed in your prior correspondence.

This letter respectfully requests that you enter Judgment in favor of the Plaintiff as set forth in the Summary Judgment papers or, in the alternative, set a short briefing schedule on the pending Summary Judgment Motion.

Judge Bischel, thank you for your cooperation. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

GODFREY & KAHN, S.C.



Ross J. Nova

RJN:kjo

cc: Ronald H. Van Den Huevel
Evergreen Development, LLC
Hilliard Limited Partnership

3615346_1

SUE E. BISCHSEL
Circuit Judge



JESSIE PEDRETTI
Court Reporter
920/448-4126

DONNA MASON
Deputy Clerk
920/448-4166

CIRCUIT COURT BRANCH III

BROWN COUNTY COURTHOUSE
100 S. JEFFERSON STREET
P.O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600

MICHELLE WALLERIUS
Judicial Assistant
920/448-4115

March 2, 2009

Mr. Ronald Van Den Huevel
2303 Lost Dauphin Road
De Pere, WI 54115

FILED
MAR 02 2009
CLERK OF COURTS
BROWN COUNTY, WI
FILE COPY

Re: *Hilliard Limited Partnership vs. Evergreen Development, LLC*
Case No. 08-CV-2265

Dear Mr. Van Den Huevel:

I received your letter of February 25, 2009 in which you indicate that an attorney will be entering an appearance on behalf of the corporation on Monday, March 2nd. Please ask that attorney to provide me with a copy of that Notice of Appearance so that I can establish a briefing schedule which will allow the new attorney time to become familiar with the case and respond to the motion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sue E. Bischel".

Sue E. Bischel
Circuit Court Judge

SEB:mkw

c: Attorney Ross Nova

(b)
RONALD H. VAN DEN HEUVEL

2303 Lost Dauphin Road
De Pere, WI 54115
Daytime Phone: (920) 964-0006

February 25, 2009

The Honorable Sue E. Bischel
Circuit Court Branch III
Brown County Courthouse
100 S. Jefferson Street
Green Bay, WI 54305

Re: *Hilliard Limited Partnership vs. Evergreen Development, LLC*
Case No. 08-CV-2265

Dear Judge Bischel:

In response to your letter to me dated February 16, 2009, an attorney will be entering an appearance on behalf of Evergreen Development, LLC on Monday March 2nd, 2009. It is my belief he will contest the motion for summary judgment. I will be appearing on behalf of myself, *pro se*. I will also contest the motion for summary judgment. Thank you for your correspondence and consideration on this matter and please feel free to contact me if you have any questions.

Sincerely,



Ronald H. Van Den Heuvel

Cc: Ross Nova, esq.

FILED
MAR 03 2009

CLERK OF COURTS
BROWN COUNTY, WI

SUE E. BISCHEL
Circuit Judge



JESSIE PEDRETTI
Court Reporter
920/448-4126

DONNA MASON
Deputy Clerk
920/448-4166

CIRCUIT COURT BRANCH III

BROWN COUNTY COURTHOUSE
100 S. JEFFERSON STREET
P.O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600

MICHELLE WALLERIUS
Judicial Assistant
920/448-4115

February 16, 2009

Mr. Ronald Van Den Huevel
2303 Lost Dauphin Road
De Pere, WI 54115

FILE COPY

Re: *Hilliard Limited Partnership vs. Evergreen Development, LLC*
Case No. 08-CV-2265

Dear Mr. Van Den Huevel:

I believe you received a copy of Attorney Nova's letter to me dated February 12, 2009. I am prepared to establish a briefing schedule regarding the Motion for Summary Judgment but before devoting my time to this motion, would like to inquire whether you are contesting it. I have not heard from you whether you intend to retain an attorney on your behalf or on behalf of the corporation. It is my understanding that you are the managing partner of that corporation. As I indicated in my earlier correspondence, you cannot personally defend the corporation. If you do not intend to retain an attorney for the corporation, nothing will be submitted on behalf of the corporation to defeat Mr. Nova's request and I will be compelled to grant judgment in favor of his client. If you do not intend to personally respond to the Summary Judgment Motion on your behalf, or retain an attorney for yourself, I will similarly be compelled to grant the motion. Therefore, before devoting substantial time to this motion, I would respectfully request that you advise me within 10 days of the date of this letter whether you intend to retain an attorney for yourself or the corporation, and whether you are personally opposing the motion and intend to submit a response brief which would be ordered.

Sincerely,

Exhibit 10 days

Sue E. Bischel
Circuit Court Judge

SEB:mkw

c: Attorney Ross Nova
Evergreen Development, LLC

rnova@gklaw.com

February 12, 2009

Honorable Sue E. Bischel
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

RE: Hilliard Limited Partnership v. Evergreen Development, LLC, et al.
Brown County Case No. 08-CV-2265
File No.: 070998-0002

Dear Judge Bischel:

On January 9, 2009, the parties in the above-referenced matter received a letter from you providing the Defendants thirty days from January 7, 2009 to retain substitute representation. That time has expired and counsel for the Plaintiff has received no information that the Defendants have retained new counsel. Assuming that the Court has likewise received no information regarding new representation for the Defendants, we respectfully request the Court establish a briefing schedule in regard to the Summary Judgment Motion filed by the Plaintiff on January 5, 2009.

Judge Bischel, thank you in advance for your patience and cooperation. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

GODFREY & KAHN, S.C.



Ross J. Nova

RJN:kjo

cc: Ronald H. Van Den Huevel
Evergreen Development, LLC
Hilliard Limited Partnership

3553157_1

SUE E. BISCHSEL
Circuit Judge



JESSIE PEDRETTI
Court Reporter
920/448-4126

DONNA MASON
Deputy Clerk
920/448-4166

CIRCUIT COURT BRANCH III

BROWN COUNTY COURTHOUSE
100 S. JEFFERSON STREET
P.O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600

MICHELLE WALLERIUS
Judicial Assistant
920/448-4115

January 7, 2009

Mr. Michael Kirschling
Attorney at Law
PO Box 5637
De Pere, WI 54115

Mr. Ross Nova
Attorney at Law
PO Box 13067
Green Bay, WI 54307-3067

FILE COPY

Re: *Hilliard Limited Partnership vs. Evergreen Development, LLC*
Case No. 08-CV-2265

Dear Mr. Kirschling and Mr. Nova:

I received Mr. Nova's Notice of Motion and Motion for Summary Judgment on January 5, 2009 and Mr. Kirschling's Motion to Withdraw as Counsel on January 6, 2009. Based upon the fact that we have not yet conducted a scheduling conference, I have signed Mr. Kirschling's proposed Order allowing his firm to withdraw.

In his cover letter attached to his motion, Mr. Nova requests that I establish a briefing schedule and remove this case from the scheduling conference calendar on January 22nd. I have removed it from the scheduling conference calendar, but do not intend to establish a briefing schedule at this time. I would like to afford the defendants an opportunity to retain another attorney before establishing the briefing schedule. The defendants should advise me within 30 days of today's date as to their plans to retain alternative counsel. Mr. Van Den Heuvel could represent himself individually but he is prohibited from representing the defendant corporation, which must retain an attorney.

If I do not receive information from the defendants regarding representation within the next 30 days, I will establish a briefing schedule regarding the claims against Mr. Van Den Heuvel individually. I also anticipate that I would be required to grant the plaintiff's motion as it pertains to the corporate defendant.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sue E. Bischel".

Sue E. Bischel
Circuit Court Judge

SEB:mkw

c: Evergreen Development, LLC
Mr. Ron Van Den Heuvel



Mark A. Bartels
Terence J. Bouressa
John P. D'Angelo
Debra A. DeLeers
Timothy A. Hawley
Steven D. Hitzeman
Sandra L. Hupfer
Robert J. Janssen
Michael J. Kirschling
Evan Y. Lin
Lora A. Matzke
Peggy L. Miller
Christina L. Peterson
Patricia J. Sandoz
C. David Stellpflug
Kathryn M. Van Boort

January 2, 2009

Clerk of Court
Brown County Courthouse
100 S. Jefferson Street
PO Box 23600
Green Bay, WI 54305-3600

Re: Hilliard Limited Partnership v. Evergreen Development, LLC, et al.
Brown County Case No. 08 CV 2265

Dear Clerk:

Enclosed please find our firm's Notice of Motion and Motion to Withdraw as Attorneys for the Defendants in the above-entitled matter along with an Affidavit in support of the same. Kindly receive and file. We are enclosing a duplicate copy of the Notice of Motion and Motion to Withdraw and Affidavit with the request that they be authenticated and returned to me in the enclosed envelope. We are further enclosing a proposed Order for Withdraw in duplicate for Judge Bischel's consideration.

By copy of this letter, the above documents are being served upon attorneys for the plaintiff as well as the individual defendants.

Thank you.

Very truly yours,

STELLPFLUG LAW, S.C.

By:


Michael J. Kirschling

MJK:jca

Enclosure

cc: Ross Nova, Esq.
C. David Stellpflug, Esq.
Ron Van Den Heuvel

rnova@gklaw.com

December 31, 2008

Honorable Sue E. Bischel
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

RE: Hilliard Limited Partnership v. Evergreen Development, LLC, et al.
Brown County Case No. 08-CV-2265
File No.: 070998-0002

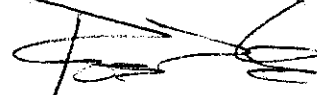
Dear Judge Bischel:

Under separate cover, a courtesy copy of Plaintiff's Notice of Motion and Motion for Summary Judgment, Brief and accompanying documents was delivered to your chambers. I respectfully request that, at your convenience, you set a briefing schedule for the Summary Judgment Motion. Further, I respectfully request that the Scheduling Conference set for January 22, 2009 at 2:00 p.m. be cancelled and rescheduled, if necessary, once a decision on Plaintiff's Motion for Summary Judgment has been rendered.

Judge Bischel, thank you for your time and attention. If you have any questions or comments, or require additional information, please do not hesitate to contact me.

Very truly yours,

GODFREY & KAHN, S.C.



Ross J. Nova

RJN:kjo

cc: David Stellpflug

3436653_1

Hilliard Limited Partnership vs. Evergreen Development
LLC

Notice of Hearing

Case No. 2008CV002265

COURT ORIGINAL

FILE COPY

This case is scheduled for: **Scheduling conference**

Date 01-22-2009	Time 02:00 pm	Location (Include Room Number) Brown County Courthouse - 2nd Floor Room 260 100 South Jefferson St., Rm. 260 PO Box 23600 Green Bay WI 54305-3600
Court Official Sue E. Bischel, Judge		
Re Money Judgment		

This matter will not be adjourned by the court except upon formal motion for good cause or with the specific approval of the court upon stipulation by all parties.

Please complete and furnish to the Court five (5) days before the scheduling conference a Scheduling Conference Statement.

Parties who wish to appear at the scheduling conference by telephone must notify the Judicial Assistant in advance by calling (920) 448-4115 and make arrangements for a telephone conference call. All parties who wish to participate by telephone must be joined in a conference call. At the appointed time, please call (920) 448-4115.

Please note that the jury fee must be paid prior to the scheduling conference.

**If you need help in this matter because of a disability,
please call: 920-448-4155**

Brown County Circuit Court
Date: December 16, 2008

Distribution:

	Address	City	State	Zip	Personal Service	Mail/Phone Notice	Electronic Notice
Court Original							
Ross J Nova	333 Main St Ste 600, PO Box 13067	Green Bay	WI	54307-3067			
C David Stellpflug	444 Reid St Ste 200, P O Box 5637	De Pere	WI	54115			

Handwritten signature and date:
2/16/08

STATE OF WISCONSIN

:

CIRCUIT COURT
BRANCH 3

:

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

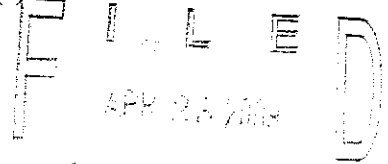
Case No. 08-CV-2265

v.

Code No(s) 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.



CLERK OF COURTS
BROWN COUNTY, WI

ORDER FOR JUDGMENT AND JUDGMENT

Ross J. Nova, appearing on behalf of Plaintiff, Hilliard Limited Partnership("Plaintiff"), Defendant, Ronald H. Van Den Heuvel, appearing personally, and Defendant, Evergreen Development, LLC, having in no manner appeared; and

The Court having read the papers and pleadings on file in this action, having considered the Motion for Summary Judgment filed by the Plaintiff and the evidence submitted therewith, and the arguments of the parties submitted through correspondence, and the Court having prepared and rendered its decision as to said Motion for Summary Judgment as to Defendant, Ronald H. Van Den Heuvel in its Decision dated April 16, 2009.;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

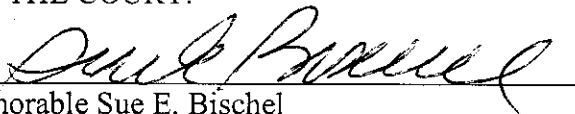
1. Plaintiff, Hilliard Limited Partnership, recover of Defendant, Ronald H. Van Den Heuvel, Judgment in the principal amount of Nine Hundred Ten Thousand Three Hundred Fifty-seven and 90/100 Dollars (\$910,357.90) plus interest at the rate of eighteen percent (18%) from the date of Judgment to the date of payment in full;

2. Plaintiff, Hilliard Limited Partnership, shall have and recover from Defendant, Ronald H. Van Den Heuvel, its statutory costs in this action and actual attorney's fees which may be taxed by the Court as provided by applicable law; and

3. This judgment shall be a final order as to Plaintiff's claims against Defendant, Ronald H. Van Den Heuvel.

Dated this 23 day of April, 2009.

BY THE COURT:



Honorable Sue E. Bischel
Circuit Court Judge

3746667_1

April 21, 2009



Honorable Sue E. Bischel
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

RE: Hilliard Limited Partnership v. Evergreen Development, LLC, et al.
Brown County Case No. 08-CV-2265
File No.: 070998-0002

Dear Judge Bischel:

As you know, we represent Plaintiff, Hilliard Limited Partnership ("Hilliard"), in the above-referenced matter. We are in receipt of your correspondence and Decision dated April 16, 2009, granting Plaintiff's Motion for Summary Judgment against Defendant, Ronald Van Den Heuvel. Pursuant to your Decision, enclosed is an Order for Judgment and Judgment against Mr. Van Den Heuvel. If this Order meets with your approval, I respectfully request that you sign the Order and have your clerk forward it to the Clerk of Courts for filing.

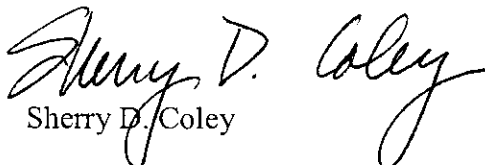
By copy of this correspondence to the Clerk of Courts, please file the original and forward authenticated copies to me in the envelope provided.

Please be advised that Attorney Sherry D. Coley will be handling this matter on behalf of Plaintiff going forward. By copy to the Clerk of Courts, please note that all future notices and communications from the Court should be sent to my attention. All parties of record are copied on this correspondence.

Thank you for your anticipated cooperation. If you have any further questions or concerns, please do not hesitate to contact me.

Very truly yours,

GODFREY & KAHN, S.C.


Sherry D. Coley

SDC:jls

Enclosures

cc: Clerk of Court
Ronald H. Van Den Heuvel, Enclosure
Evergreen Development, LLC, Enclosure
Gary Wickert, Enclosure

HILLIARD LIMITED PARTNERSHIP,
Plaintiff,

DECISION

vs.

EVERGREEN DEVELOPMENT, LLC
and RONALD VAN DEN HEUVEL,
Defendants.

Case No. 08-CV-2265

FILED
APR 17 2009

HOLDING

CLERK OF COURTS
BROWN COUNTY, WI

Summary Judgment is granted in favor of the Plaintiffs and against defendant, Ronald Van Den Heuvel.

BACKGROUND

The Complaint in this action alleges that about April 15, 2007, the plaintiff executed a promissory note with defendant, Evergreen Development, LLC and defendant, Ronald Van Den Heuvel. The note was in the amount of \$759,637.50 and provided for repayment of principle and interest no later than October 15, 2007. The Complaint alleges that both defendants defaulted on the required payment and that the plaintiff is therefore entitled to \$910,357.90, jointly and severally. Both defendants retained a law firm to represent them and counsel filed an Answer on behalf of both defendants on October 8, 2008. The law firm subsequently filed a motion to be allowed to withdraw as counsel on January 2, 2009 asserting that the defendants had failed to fulfill their financial obligations to the law firm and had been given reasonable warning that the firm would move to withdraw if that did not occur. The Plaintiffs filed a Motion for Summary Judgment as to both defendants on the same date.

I then removed this matter from my scheduling conference calendar and granted the Motion to Withdraw as Counsel. I afforded the defendants 30 days in which to retain new



counsel. When I did not receive a response, Plaintiff again asked that I grant summary judgment against both defendants. I wrote to Mr. Van Den Heuvel both individually and as the managing partner of the defendant corporation. I advised him that he could not represent the corporation because he is not licensed to practice law in the State of Wisconsin and granted him additional time to retain an attorney. Mr. Van Den Heuvel advised me that he would be retaining an attorney by March 2, 2009 but did not do so. The Plaintiff again renewed it's request for Summary Judgment and I granted the request as it pertains to the corporation on March 12, 2009. I then established a briefing schedule regarding the claims against Mr. Van Den Heuvel. He advised me that he would be representing himself and contesting the Summary Judgment Motion.

Plaintiffs' brief and supporting documents were submitted in a timely fashion. The Briefing Format and Scheduling Order set forth the required format and also required that Mr. Van Den Heuvel's brief in opposition be filed no later than April 3, 2009.

On April 13, 2009, I received a letter from plaintiff's counsel asking that I also grant the Summary Judgment Motion as it pertains to Mr. Van Den Heuvel. Plaintiff's counsel complains that the brief was not filed in a timely fashion, that it did not follow the required format, that Mr. Van Den Heuvel submitted no affidavits in support of his opposition, and that he also cited no legal authority for his position. I have now reviewed the response brief filed by Mr. Van Den Heuvel on April 6, 2009. For the following reasons, the Plaintiffs' Motion for Summary Judgment as to Ronald Van Den Heuvel is granted.

LEGAL STANDARD

Under Wis. Stat. § 802.08, summary judgment shall be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Swatek v. County of Dane, 192 Wis. 2d 47, 61-62, 531 N.W.2d 45 (1995).

The interpretation of a written contract is a question of law. Tang v. C.A.R.S. Protection Plus, Inc., 2007 WI App 134, ¶ 27, 734 N.W.2d 169, 301 Wis. 2d 752. When the terms of a contract are plain and unambiguous, a court will construe the contract as it stands. Id. ¶ 29. However, if the terms of a contract are ambiguous, a court must consider extrinsic evidence to arrive at the parties' intent. Id.

ANALYSIS

It is difficult to precisely ascertain the nature of Mr. Van Den Heuvel's defense. He appears to assert there is a material question of fact regarding another agreement between the parties. Mr. Van Den Heuvel appears to claim that there was an oral agreement between the parties that the plaintiff would not enforce the note until some type of closing occurred regarding another business (Eco Fiber, Inc.). But this information is contained in Mr. Van Den Heuvel's response brief. He has submitted no Affidavits or supporting documents in that regard.

It is a "well-established principle" that parties against whom a properly supported motion for summary judgment is made may not rest upon mere allegations, but must, by affidavits or other statutory means, set forth specific facts showing that there exists a genuine issue requiring a trial. Dawson v. Goldammer, 2006 WI App 158, ¶ 30, 295 Wis. 2d 728, 722 N.W.2d 106, quoting Board of Regents of Univ. of Wis. Sys. v. Mussallem, 94 Wis. 2d 657, 673-74, 289 N.W.2d 801 (1980). If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against such party. Wis. Stat. § 802.08(3). Thus, as the factual allegations are not properly supported, I must ignore them.

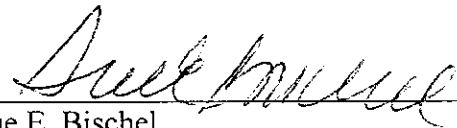
Plaintiffs' counsel is correct that Mr. Van Den Heuvel's brief is defective and in noncompliance with the Briefing Order in several respects. It was filed a few days late and does not comply with the briefing format. Nevertheless, the Briefing Order indicates that noncompliance may be the basis for imposition of a number of sanctions, including dismissal. I do not think the violations of the Briefing Order are necessarily sufficient to strike Mr. Van Den Heuvel's brief and grant the Summary Judgment claim. But I am satisfied that the complete failure to submit Affidavits or other supporting documents requires me to grant the Plaintiff's Summary Judgment Motion.

CONCLUSION

For the foregoing reasons, the Plaintiffs' Motion for Summary Judgment against defendant, Ronald Van Den Heuvel is hereby granted.

Dated at Green Bay, Wisconsin this 16 day of April, 2009.

BY THE COURT:


Sue E. Bischel
Circuit Court Judge

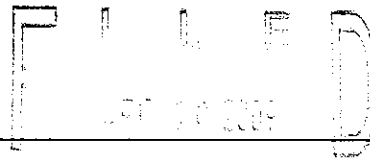
STATE OF WISCONSIN : CIRCUIT COURT : BROWN COUNTY
BRANCH 3

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,
v.

Case No. 08-CV-2265
Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,
Defendants.



BILL OF COSTS

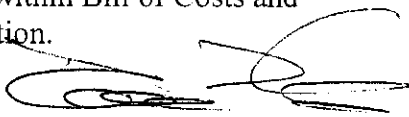
CLERK OF COURTS
BROWN COUNTY, WI

Plaintiff, Hilliard Limited Partnership, by its attorneys, Godfrey & Kahn, S.C., hereby
submits its Bill of Costs pursuant to Wis. Stat. § 814.04.

	<u>PROPOSED</u>	<u>ALLOWED</u>
EXCLUSIVE OF DISBURSEMENTS		
Actual Attorney Fees:		
77.5 Hrs @ \$258.50/Hr (Ross Nova)	\$ 20,034.00	\$
.3 Hrs @ \$190.00/Hr (Sherry Coley)	\$ 57.00	\$
1.7 Hrs @ \$333.53/Hr (Tim McCoy)	\$ 567.00	\$
DISBURSEMENTS		
Express Delivery Charges	\$ 58.64	\$
Photocopies	\$ 174.60	\$
Filing Fees	\$ 256.00	\$
Deposition Transcripts	\$ 858.30	\$
Witness Fees	\$ 20.00	\$
Postage	\$ 9.60	\$
Service of Process	\$ 60.00	\$
Title Insurance Reports	\$ 235.00	\$
TOTAL	\$ 22,330.14	\$


State of Wisconsin)
) ss
Brown County)

Ross J. Nova, being duly sworn on oath, says that he is one of the attorneys for the plaintiff in the within entitled action, and that the disbursements within mentioned have been or will be necessarily made and the copies charged for in the within Bill of Costs and Disbursements were necessarily obtained for use in said action.



Ross J. Nova

Subscribed and sworn to before me, this 6 day of April, 2009.



Notary Public, State of Wisconsin
My commission expires: 7-12-09

The above costs and disbursements are hereby adjusted, taxed and allowed this 16 day of April, 2009, at \$ 22,330.14.

LISA M. WILSON
BROWN COUNTY CLERK OF CIRCUIT COURT

By: 

Deputy Clerk

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL

Defendants:

FILED
JUL 22 2008
BROWN COUNTY, WI


DEFENDANT'S REPLY BRIEF TO PLAINTIFF'S MOTION FOR SUMMARY**JUDGMENT**

INTRODUCTION

The Court should deny Plaintiff's Motion for Summary Judgment. There exists a material question of fact relating to other Defendants' and Plaintiff had an ancillary agreement relating to whether the July 20, 2007 promissory note ("Note") would not be enforced until the Eco Fibre, Inc. asset sale. Because there does exist a material question of fact, Summary Judgment is not warranted.

ANALYSIS

A promissory note is typically only a subset of a larger agreement. For example, in a bank loan, the promissory note typically only memorializes the payment terms but there is a larger loan agreement which controls the totality of the parties' agreement. While Plaintiffs have correctly asserted the applicability of the statute of frauds and the parole evidence rule pertaining to the Note, neither the parole evidence rule nor the statute of frauds are applicable to the ancillary agreement between Defendants' and Plaintiff relative to the non-enforceability of the note prior to the Eco Fibre, Inc. closing.



In addition, the Note still remains between the original Makers and original Payee. The Note has not been transferred to a person without knowledge of the original deal between the Parties. The Note remains between the original parties. Thus, Plaintiff takes the Note with all defenses of the Maker ("Defendants'") intact. Notably, the Defendants' are free to assert as defense in payment of the Note such organic contractual defenses such as benefit of bargain or lack of consideration. Thus, the denial to the Defendants' of the benefit of the bargain they struck with Plaintiff, which was not to enforce the Note, until the Eco Fibre, Inc. closing, would deny the Defendants' the benefit of their bargain. Moreover, it would deny the Defendants' a material portion of their consideration for entering into the Note.

In deposition testimony of the Defendant, Ron Van Den Heuvel, set forth that the Plaintiff in its own brief, Defendant Van Den Heuvel has stated that it was his belief that he and the Plaintiff had struck a bargain that the Note would not be enforced until the Eco Fibre, Inc. closing. Plaintiffs have asserted an affidavit where the principal of the Plaintiff said he struck no such bargain. This "he said, he said" is a prime example of a material issue of fact which makes summary judgment non-warranted. However, there is circumstantial evidence which supports Defendant Van Den Heuvel's claim. Why would Eco Fiber, Inc., for essentially no consideration whatsoever, give the Plaintiffs a mortgage. Eco Fiber, Inc. owed nothing to the Plaintiff. Eco Fiber, Inc. had and still has pending a potential deal to sell its assets. Neither EcoFibre, Inc. nor any other business would give a mortgage for virtually no consideration to a party it had no obligation to if that party could enforce the mortgage prior to closing of such pending deal almost certainly, then, killing such deal.

CONCLUSION

Because there is a material question of fact whether the Plaintiff and Defendants' had an agreement relative to the enforcement of the Note to not occur prior to the EcoFibre closing, there exists a material question of fact and Defendant Ronald Van Den Heuvel, respectfully requests that Judge Bischel denies the Plaintiff's motion for Summary Judgment.

Dated this 3rd day of April, 2009.

RONALD H. VAN DEN HEUVEL

A handwritten signature in cursive script, reading "Ronald H. Van Den Heuvel", written over a horizontal line.

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH III

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

v.

Case No: 08-CV-2265

Case Code: 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

BROWN COUNTY, WI

**STIPULATION PERMITTING STELLPFLUG LAW, S.C.'S,
WITHDRAWAL AS ATTORNEYS**

NOW COME the Defendants, Evergreen Development, LLC, and Ronald H. Van Den Heuvel (hereinafter collectively "Evergreen"), and Stellpflug Law, S.C., (hereinafter "Stellpflug"), who hereby stipulate that Stellpflug may withdraw as counsel for Evergreen in the above-entitled matter due to its failure to timely pay for services rendered by Stellpflug to date in this matter on its behalf.

EVERGREEN DEVELOPMENT, LLC

1-7-2009
Dated

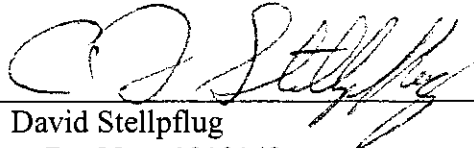

Ronald H. Van Den Heuvel
Managing Member

1-7-2009
Dated


Ronald H. Van Den Heuvel, Individually

1-7-09
Dated

STELLPFLUG LAW, S.C.


C. David Stellpflug
State Bar No.: 1010142
Michael J. Kirschling
State Bar No.: 1004642

POST OFFICE ADDRESS:

444 Reid Street, Suite 200
P.O. Box 5306
De Pere, WI 54115
Telephone: (920) 336-5766
Facsimile: (920) 336-5769

STATE OF WISCONSIN : CIRCUIT COURT : BROWN COUNTY
BRANCH 3

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

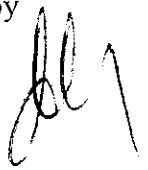
Defendants.

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

This case addresses whether the Defendants breached the terms of a promissory note by failing to repay it when due. Defendants, Ronald Van Den Heuvel and Evergreen Development, LLC, the makers of the promissory note (together, the "Defendants"), admitted they did not repay the promissory note when due and that such a failure to repay breached the terms thereof. The Defendants admitted under oath that failure to repay the promissory note is a default under the terms thereof, thereby allowing the Plaintiff to accelerate repayment of the Note. Because the validity of the promissory note is not in question, it is undisputed that the Defendants breached the promissory note, and summary judgment in favor of the Plaintiff is appropriate.

What the Defendants allege is that at some point prior to or contemporaneously with the execution of the promissory note, the Plaintiff orally agreed to modify the promissory note to provide for repayment upon the sale of a non-party business related to the Defendants, whenever that would occur, if ever. The Plaintiff sharply disputes this implausible allegation, but it is immaterial. For reasons explained in this Brief, the promissory note cannot be modified by



alleged oral agreements made prior to or contemporaneously with the making of the promissory note. Because of the parol evidence rule, a failure of consideration and the Statute of Frauds, any oral modification of the promissory note would be ineffective and any evidence in support thereof is inadmissible. Because the Defendants' oral amendment defense must fail as a matter of law, the Plaintiff is entitled to summary judgment.

STIPULATED FACTS

1. Attached hereto is a true and correct copy of the Note in favor of the Plaintiff executed by the Defendants in the principal amount of \$759,637.50 (the "Note"). (Affidavit of Ross J. Nova ("Nova Aff."), ¶ 5 - Defendants' Responses to Plaintiff's First Set of Requests to Admit ("Admission") No. 1; Answer, ¶ 4).

2. The Note was executed by Defendant, Ronald Van Den Heuvel, on or about July 18-20, 2007. (Nova Aff. ¶3-Continued deposition of Ronald Van Den Heuvel ("RVDH Dep. 2"), 56:4-6; 68: 18-20).

3. The Note states that repayment of principal and interest at the rate of eight percent (8%) per annum must occur by no later than October 15, 2007. (Answer ¶ 5).

4. The Note states that an Event of Default by Defendants can occur due to Defendants' "failure, refusal, inability or other nonpayment or nonperformance for any reason whatsoever: (i) in the payment of any installment of principal and/or interest due hereunder when due" (Admission No. 1 at ¶ 5).

5. The Note states that Defendants' failure to repay any amounts due under the Note constitutes an Event of Default thereunder. (RVDH Dep. 2, 46: 18-20).

6. The Note states that upon the occurrence of an Event of Default, the Plaintiff "may declare the entire unpaid principal balance of the disbursement to maker . . . immediately due and payable . . . without further notice or demand on maker." (*Id.*)

7. The Note states that if any Event of Default under the Note is not cured by the Defendants within five (5) calendar days after the occurrence thereof, any unpaid amounts shall accrue interest at the rate of eighteen percent (18%) per annum. (*Id.*, at ¶ 6).

8. The Note states that an Event of Default under the Note can only be waived if done so by the Plaintiff in writing. (*Id.*).

9. The Defendants failed to repay the Note on or before October 15, 2007. (Answer, ¶ 6).

10. Defendants have made no payments on the Note. (RVDH Dep. 2, 44:20-23).

11. Defendants did not receive a written waiver of an “Event of Default” from Plaintiff. (*Id.*; 47: 21-24).

12. The sale of the assets of Eco Fibre, Inc. or Evergreen Development, LLC may never occur. (Admission No. 12).

13. There is no executed document by which the proceeds of the sale of Eco Fibre, Inc. will be made directly to Plaintiff. (*Id.*, No. 8).

14. There is no date certain by which the contemplated sale of Eco Fibre, Inc. must be completed. (*Id.*, No. 11).

15. The possible sale of Eco Fibre, Inc. may never occur. (*Id.*, No. 12).

PROPOSED UNDISPUTED FACTS

1. Plaintiff, as payee under the Note, has elected to apply the defaulting provisions of the Note. (Affidavit of Neal Maccoux, ¶ 4).

2. As of December 23, 2008, there is due and owing upon the Note the sum of \$949,592.45. (Affidavit of Neal Maccoux, ¶ 5).

3. There is nothing in writing between the parties evidencing any agreement for the Plaintiff to forbear collecting on the Note. (RVDH Dep. 2, 16:5-13; 47: 7-11).

4. Plaintiff never signed anything in writing documenting any alleged “compromise and settlement.” (*Id.*, 77: 25-78: 5).

DISPUTED FACTS

1. At some point prior to or contemporaneously with the execution of the promissory note, the Plaintiff orally agreed to modify the promissory note to provide for repayment upon the sale of a non-party business related to the Defendants, whenever that would occur, if ever. There are four versions of the alleged “compromise and settlement”:

a. Plaintiff agreed not to be paid on the Note until the assets of a company called Eco Fibre, Inc. were sold. (Nova Aff., ¶ 4 - Deposition of Ronald H. Van Den Heuvel (“RVDH Dep.”), 13:25-14: 3).

b. Defendants had an understanding with Plaintiff that the Plaintiff would agree to renew the Promissory Note until such time as the assets of Evergreen Development, LLC were sold. (*Id.*, 15: 20-25).

c. Four documents, a Baylake Bank Mortgage, a Stock Purchase Agreement, the Note, and Mortgage represent an agreement that the Plaintiff would not attempt to collect on the Note until assets of some third party company were sold. (RVDH Dep. 2, 63: 17-64: 15).

d. The parties reached an agreement whereby Plaintiff would not attempt to collect on the Note as evidenced by the Mortgage signed by the Defendants on July 20, 2007. (*Id.*, 62: 21-63: 6).

2. The “compromise and settlement” was entered into on one or more of the following dates:

a. The Plaintiff’s agreement not to pursue collection of any Promissory Note until the assets of Eco Fibre and/or Evergreen Development, LLC were sold was reached

at the time of the issuance of the first Promissory Note, on or about February 14, 2006. (RVDH Dep.,16: 3-6).

b. The alleged “Compromise and Settlement” was entered into the same date as the first promissory note between the parties, February 14, 2006. (*Id.*,15:20-16:13).

c. The “compromise and settlement” was entered into was the date of an Eco Fibre, Inc. shareholder meeting held in 2004. (RVDH Dep. 2, 14:20-25).

d. The “compromise and settlement” was entered into “after July 4, 2007.” (*Id.*; 75: 17-24).

e. The “compromise and settlement” was entered into on July 20, 2007. (*Id.*, 68: 14-20).

f. On July 20, 2007, after executing the Note, as alleged in the Complaint and before the commencement of this action, Plaintiff and Defendants entered into a Compromise and Settlement Agreement whereby Plaintiff agreed “to refrain from any legal action and postpone the due date of the Promissory Note until the sale of Eco Fibre, Inc.” (Answer, ¶ 12).

STANDARD OF REVIEW

A party is entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.” Wis. Stat. § 802.08. Wisconsin courts recognize that “[s]ummary judgment is thus consistent with the underlying purpose of the rules of civil procedure ‘to secure the just, speedy and inexpensive determination of every action and proceeding.’” Transportation Ins. Co. v. Hunzinger Const. Co., 179 Wis.2d 281, 290, 507 N.W.2d 136 (Ct. App. 1993) (quoting Wis. Stat. § 801.01(2)).

A party cannot resist a motion for summary judgment merely by alleging the existence of some disputed fact. The factual dispute must be *material*; that is, it must concern a fact that affects the resolution of the controversy. Clay v. Horton Mfg. Co., 172 Wis.2d 349, 354, 493 N.W.2d 379 (Ct. App. 1992). Here, the factual dispute over the alleged oral “compromise and settlement” of the Note is immaterial, because the oral amendment of the Note alleged by the Defendants is legally ineffective. Because the resolution of the dispute over the alleged oral “compromise and settlement” of the Note would not affect the outcome of the controversy, that factual dispute is not material.

The factual dispute must also be *genuine*, which means that the non-moving party’s assertion must be supported by credible evidence such that a reasonable fact finder could find in the non-moving party’s favor. Baxter v. DNR, 165 Wis.2d 298, 312, 477 N.W.2d 640 (1991). An affidavit that contradicts deposition testimony, or testimony that contradicts physical or documentary evidence, may be insufficient as a matter of law to create a genuine dispute of fact requiring trial. See, e.g., Yahnke v. Carson, 2000 WI 74, ¶ 21, 236 Wis.2d 257, 613 N.W.2d 102; Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co., 2002 WI 80, ¶ 36, 254 Wis.2d 77, 646 N.W.2d 777. In this case, the Defendants cannot create a genuine factual dispute by submitting affidavits that contradict the deposition testimony or documentary evidence in this case.

Ultimately, this case depends on a question of law: Are the terms of the Note as written enforceable? A case that turns on a question of law is appropriately resolved on summary judgment. Jones v. Sears Roebuck & Co., 80 Wis.2d 321, 327, 259 N.W.2d 70 (1987). For the reasons given below, the alleged oral “compromise and settlement” of the Note is legally insufficient and the Plaintiff is entitled to judgment as a matter of law.

ARGUMENT

I. DEFENDANTS BREACHED THE EXPRESS TERMS OF THE NOTE.

The essential terms of the Plaintiff's claim – the existence of the Note and its breach – are admitted by the Defendants. The Note is a valid contract and a negotiable instrument between the parties. The Defendants admit that full repayment of the Note was due on or before October 15, 2007 under the terms thereof. (Stipulated Facts, ¶ 3). Defendants further admit that as of today, no payment has been made on the Note. (*Id.*, ¶¶ 9-10). The Defendants agree that such failure constitutes an Event of Default as defined by the Note. (*Id.*, ¶¶ 3-6). Defendants further agree that “unless such Event of Default is subsequently waived in writing by Hilliard,” the Plaintiff may declare the entire balance of the Note “to be immediately due and payable.” (*Id.*, ¶ 8) The Defendants agree that the Plaintiff has never waived any Event of Default in writing. (*Id.*, ¶ 11). The Note has never been modified or amended in a writing signed by the parties. (Proposed Undisputed Facts, ¶¶ 3-4).

II. THE COURT MUST ENFORCE THE EXPRESS TERMS OF THE NOTE.

As a general rule, Wisconsin courts will hold the parties to a contract to the plain terms of their written agreement. *See, e.g., Teff v. Unity Health Plans Ins. Corp.*, 2003 WI App. 115, ¶ 21, 265 Wis.2d 703, 666 N.W.2d 38. The Note provides that an Event of Default cannot be waived except in a writing signed by the Plaintiff. (Stipulated Facts, ¶ 8). Nevertheless, the Defendants apparently are contending that Wisconsin law would permit the parties to act differently than as stated in the Note based on an alleged oral “compromise and settlement.” But the circumstances under which a written agreement may be orally amended are not met here.

A. The Oral “Compromise And Settlement” Alleged By Defendants Would Have Been Ineffective.

Even though Defendant Van Den Heuvel testified that the alleged “compromise and settlement” happened on many different dates, (2004; February 14, 2006; after July 4, 2007;

July 20, 2007) each date is either prior to or contemporaneous with the execution of the Note. (July 20, 2007). Whichever date the court decides to pick as the date the alleged “compromise and settlement” was entered into is irrelevant. Taking Mr. Van Den Heuvel’s testimony as truth, the alleged “compromise and settlement” is barred by the parol evidence rule and is, therefore, inadmissible to vary the terms of the Note. Alternatively, considering that the alleged sale of Eco Fibre, Inc. and/or Evergreen Development, LLC has not happened in the last five years, and as admitted by the Defendants, may never happen, the alleged “compromise and settlement” fails as a matter of law due to lack of consideration.

1. **The “compromise and settlement” is barred by the parol evidence rule.**

The Defendants’ position, that the alleged “compromise and settlement” entered into prior to or contemporaneously with the Note varies the terms of the Note, is incompatible with the Wisconsin parol evidence rule:

“[E]vidence of an oral agreement prior to, or contemporaneous with, the execution and delivery of a bill or note is not admissible to vary or contradict the written instrument. Thus, as a general rule, a written contract evidenced by a bill or note governs the rights of the parties thereto and testimony of a contemporaneous oral agreement differing therefrom cannot be considered. The maker of a note is estopped from contradicting the plain language of his note.”

E.R. Beyer Lumber Co., Inc. v. Brooks, 45 Wis.2d 262, 268-69, 172 N.W.2d 654 (1969), citing 12 Am.Jur.2d, Bills and Notes, pp. 283, 284, sec. 1252; see also, In re: Spring Valley Meats, Inc., 94 Wis.2d 600, 607 (1980).

In E.R. Beyer, the maker of a note submitted an affidavit opposing a motion for summary judgment stating that at the time the promissory note was made, “it was agreed between affiant and plaintiff’s president that affiant could pay said notes at any time regardless of their maturity.” *Id.* at 269. Eerily, that is exactly what the Defendants are alleging in this case; that

rather than being due on October 15, 2007 as stated in the Note, the Defendants could repay on the Note at some unspecified point in the future contingent on an event which may never occur.

(cite). In responding to such allegation, the Wisconsin Supreme Court concluded:

If we assume such agreement was made, the effect would be to vary the terms of the Notes which are absolute on their face. No evidence of a verbal agreement made at the same time or prior thereto, qualifying the terms of the Notes can be admitted or considered in evidence. *Id.* (citations omitted).

Indeed, the parties to the Note went out of their way to specify a payment date and set forth extensive rights to the Plaintiff in the event that date was not satisfied. (Stipulated Facts, ¶¶ 1-7). The alleged oral “compromise and settlement” touches on that same matter, by amending the payment date of the Note, to some point in the future, or possibly never. If the “particular element of the contract which is claimed to rest in parol is *mentioned* in the writing itself, ‘then presumably the writing was meant to represent all of the transaction on that element . . .’” Touchett v. E.Z. Painter Corp., 268 Wis. 635, 643 (1955) (citations omitted) (emphasis added). Here, the “particular element which claims to rest in parol” – the alleged “compromise and settlement” to pay at some future date – is “mentioned” in the Note, which makes clear that there was no such agreement. Accordingly, the Defendants cannot enforce the Plaintiff’s supposed “compromise and settlement” to postpone payment to some point in the future, or possibly never.

2. The oral “compromise and settlement” lacked consideration.

The alleged “compromise and settlement” is ineffective for a second, equally fundamental reason: it is unsupported by consideration.

Under Wisconsin law, a written agreement may be modified orally, but that oral modification itself must be established like any other contract, with an offer, acceptance and, crucially, consideration. Kohlenberg v. American Plumbing Supply Co., 82 Wis.2d 384, 393

263 N.W.2d 496 (1978) (“[T]he existence of an agreement which is in substitution or modification of a previous contract must be established in the same way as any other contract.”); Home Savings Bank v. Gertenbach, 270 Wis. 386, 394-95, 71 N.W.2d 347 (1955) (“[T]o have a valid oral agreement terminating the guarantee as to [appellant], such new agreement must be supported by consideration.”).

The oral “compromise and settlement” alleged by the Defendants is utterly unsupported by consideration. This alleged oral modification would take the Note, whose principal value is over three quarters of a million dollars with a specific due date, and modify it to a payment date contingent upon the sale of a third party company, *which Defendants agree may never happen!* (cite). As the Defendants have alleged, the Plaintiff received absolutely nothing in consideration for its oral “compromise and settlement” to modify a Note that would have paid Plaintiff an amount now worth \$915,515.12 at a point in time that may never occur. (Stipulated Facts, ¶ 15).

The alleged “compromise and settlement” of the Note lacks consideration and, therefore, is not a valid oral contract or negotiable instrument. Accordingly, assuming that the facts alleged by the Defendants are true, the oral “compromise and settlement” is not legally effective as a modification of the Note. The Court must, therefore, enforce the Note as written. There is no genuine dispute that the Defendants have breached the written terms of the Note. The Plaintiff is entitled to summary judgment on its breach of contract claim.

B. The Alleged “Compromise and Settlement” Is Governed By The Statute Of Frauds.

The maker of the Note testified that the alleged “compromise and settlement” was entered into at various times between 2004 and 2008. (Disputed Facts, ¶¶ 2(a)-2(f)) Assuming, *arguendo*, that the alleged “compromise and settlement” was entered into in 2006, the “compromise and settlement” cannot, by its terms, be completed within one year, thereby

making it subject to Wisconsin general Statute of Frauds, Wis. Stat. § 241.02(1)(a). Thus, under Wisconsin law, the “compromise and settlement” is one that is significant enough that it must be in writing. The Statute of Frauds is, at its heart, an evidentiary requirement designed to prevent disputes and uncertainties about agreements between the parties. Kocinski v. Home Ins. Co., 147 Wis.2d 728, 734-35, 433 N.W.2d 654 (Ct. App. 1998). A Statute of Frauds is, to put it plainly, designed to forestall exactly the kind of dispute that the Defendants attempt to raise in this case.

CONCLUSION

For the foregoing reasons, the Court should grant summary judgment to the Plaintiff on its breach of contract claim and enter judgment against the Defendants in the amount of \$949,592.45, plus the Plaintiff’s actual attorney’s fees and costs as allowed by the Note.

Dated this 31st day of December, 2008.

GODFREY & KAHN, S.C.

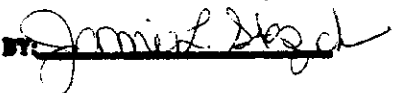
By: 

Ross J. Nova
State Bar No. 1036723
Attorneys for Plaintiff, Hilliard Limited
Partnership

P.O. ADDRESS:

333 Main Street, Suite 600
Post Office Box 13067
Green Bay, WI 54307-3067
Phone: 920-432-9300
Fax: 920-436-7988
rnova@gklaw.com
3420253_1

**The undersigned certifies that
a true copy of the within was
served by mail or by personal
delivery upon all attorneys and
parties of record pursuant to
Wis. Stat. Sec. 801.14 this
31 day of December, 2008.
GODFREY & KAHN, S.C.**

BY: 

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,Defendants.

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

TO: Evergreen Development, LLC and
Ronald H. Van Den Heuvel
c/o C. David Stellpflug and Michael Kirschling
Stellpflug Law Firm
444 Reid Street, #200
De Pere, WI 54115

PLEASE TAKE NOTICE, that at the time and date to be designated by this Court, the undersigned will appear before the Honorable Sue E. Bischel, on behalf of the Plaintiff, Hilliard Limited Partnership, to present a motion pursuant to Wis. Stat. § 802.08 for Summary Judgment. The bases for this motion are that there are no genuine issues of material fact, and that the Plaintiff is entitled to judgment as a matter of law against the Defendants.

The grounds for this Motion are set forth in further detail in the accompanying Brief in Support of Motion for Summary Judgment and the Affidavits of Ross J. Nova and Neal Maccoux filed herewith.

Dated this 31st day of December, 2008.

GODFREY & KAHN, S.C.

P.O. ADDRESS:

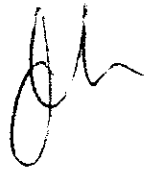
333 Main Street, Suite 600
Post Office Box 13067
Green Bay, WI 54307-3067
Phone: 920-432-9300
Fax: 920-436-7988
rnova@gklaw.com
3420848_1

By: 

Ross J. Nova
State Bar No. 1036723
Attorneys for Plaintiff, Hilliard Limited
Partnership

The undersigned certifies that
a true copy of the within was
served by mail or by personal
delivery upon all attorneys and
parties of record pursuant to
Wis. Stat. Sec. 801.14 this
31 day of December 2008
GODFREY & KAHN, S.C.

By: 



STATE OF WISCONSIN : CIRCUIT COURT : BROWN COUNTY
BRANCH 3

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

**AFFIDAVIT OF ROSS J. NOVA IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

ROSS J. NOVA, being first duly sworn on oath, deposes and says:

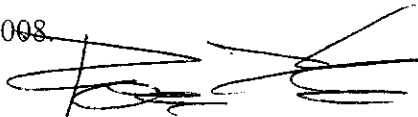
1. I am one of the attorneys for the Plaintiff, Hilliard Limited Partnership, with regard to the above-referenced matter and am authorized to submit this Affidavit.
2. The deposition of Ronald Van Den Heuvel was taken in the presence of a court reporter on November 5, 2008 at the Stellpflug Law Firm at 444 Reid Street, De Pere, Wisconsin. Said court reporter has prepared a transcript of said deposition and Affiant has a copy. Attached hereto as Exhibit A are true and correct copies of Exhibits 1 and 9 of said deposition, along with pages 13-16 of said deposition. Portions of said transcript have been highlighted for the Court.
3. The deposition of Ronald Van Den Heuvel was continued in the presence of a court reporter on December 1, 2008, at the offices of the Stellpflug Law Firm at 444 Reid Street, De Pere, Wisconsin. Said court reporter has prepared a transcript of said deposition and Affiant



has a copy. Attached hereto as Exhibit B are true and correct copies of pages 14, 16, 44, 46-47, 56, 62-64, 75, 77-78. Portions of said transcript have been highlighted for the Court.

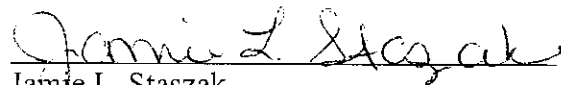
4. Attached hereto as Exhibit C is a true and correct copy of Defendants, Evergreen Development, LLC's and Ronald Van Den Heuvel's Responses to Plaintiff's First Set of Requests to Admit. Please note this document was received approximately one month after said parties originally received said discovery requests and, by rule, have been deemed admitted.

Dated this 31st day of December, 2008.



Ross J. Nova

Subscribed and sworn to me this 31st day of December, 2008.

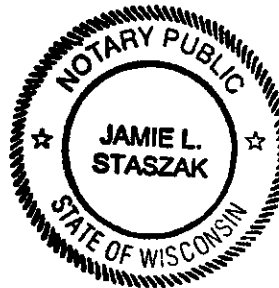


Jamie L. Staszak

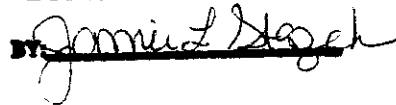
Notary Public, Brown County, WI

My Commission expires: 09/13/2009

3436605_1



The undersigned certifies that
a true copy of the within was
served by mail or by personal
delivery upon all attorneys and
parties of record pursuant to
Wis. Stat. Sec. 801.14 this
31 day of December 2008
GODFREY & KAHN, S.C.

BY: 

1

PROMISSORY NOTE

\$705,000.00

**December 31, 2005
Green Bay, Wisconsin**

FOR VALUE RECEIVED, dated as of the 13th day of February, 2006, effective as of December 31, 2005, and subject to Paragraph 1, below, the undersigned, Evergreen Development, LLC, a Wisconsin limited liability company ("Maker"), hereby promises to pay to the order of Hilliard Limited Partnership, a Wisconsin limited partnership ("Holder"), at Green Bay, Wisconsin, the principal sum of Seven Hundred Five Thousand and 00/100 Dollars (\$705,000.00) plus interest accruing on the outstanding principal amount at the rate of six percent (6.0%) per annum (except in the case of an Event of Default (as defined below)), until all amounts due hereunder are paid in full. The term of this note shall be twelve (12) months, except as set forth in Paragraph 9, below. Notwithstanding the foregoing, all principal and interest due hereunder shall become due and payable on December 31, 2006, except as set forth in Paragraph 9, below. All payments under this Promissory Note shall be applied first to the payment of the then current outstanding principal balance, if any; and then to the interest due thereon, if any, as described below.

1. This Promissory Note shall be secured by the Personal Guaranty of Ronald H. Van Den Heuvel, in the form attached as **Annex 1**.
2. The principal balance of this Promissory Note may be prepaid in full, or in part, at any time without penalty to Maker or Holder.
3. The principal balance of this Promissory Note may be accelerated in full by Holder at any time without advance written consent of Maker in the event of an Event of Default (as defined below) hereunder.
4. As a material inducement to Holder to loan the funds described herein, Maker hereby represents and warrants to Holder that: (i) this Promissory Note has been duly executed and delivered by Maker, so that it constitutes the legally enforceable obligations of Maker in accordance with their respective terms; and (ii) all financial statements, information and other data furnished by Maker to Holder, if any, are true, complete and correct in all material respects to Maker's knowledge.
5. Maker, to its knowledge, is not now in default under any material agreement to which it is a party, the effect of which would adversely affect performance by Maker of its obligations pursuant to, and as contemplated by, the terms and provisions of this Promissory Note. Neither the execution and delivery of this Promissory Note nor any other document executed and delivered by Maker in connection with the loan by Holder hereunder, nor the consummation of the loan, nor compliance with the terms and provisions thereof, violate any presently existing provisions of law or of any presently existing applicable order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality or constitute a default under any indenture, mortgage, agreement or contract of any kind to which Maker may be bound, so as to adversely affect performance by Maker of its obligations pursuant to, and as contemplated by, the terms and provisions of this Promissory Note.

EXHIBIT

tabbies

A

6. There are no actions, suits or proceedings pending or, to the knowledge of Maker, threatened against Maker, before any court or any governmental, administrative, regulatory, adjudicatory or arbitral body or agency of any kind (including bankruptcy, insolvency or similar proceedings) that will adversely affect performance by Maker of its obligations pursuant to, and as contemplated by, this Promissory Note.
7. Maker has not filed any petition, nor has any petition been filed, against any such party in bankruptcy or insolvency or reorganization or for the appointment of a receiver or trustee or for the arrangement of debts. Maker is not insolvent nor will it be rendered insolvent by the consummation of the transactions contemplated by this Promissory Note.
8. Every warranty and representation made herein and all information supplied to Holder in connection with the loan is true and accurate in all material respects on the date hereof and will be true in all material respects on the date of every disbursement under the loan.
9. In the event, prior to the maturity date of this Note, fifty percent (50.0%) or more of all issued and outstanding shares of Eco Fibre, Inc., a Wisconsin corporation ("Eco Fibre"), including fifty percent (50.0%) or more of the Subject Shares (as defined in the Stock Purchase Agreement of even date), are sold or transferred to a non-affiliated third party, in a cash transaction, the remaining principal balance and any accrued interest will be paid within sixty (60) days of such closing.
10. An "Event of Default" by Maker shall mean Maker's failure, refusal, inability or other nonpayment or nonperformance for any reason whatsoever: (i) in the payment of principal and/or interest due hereunder when due; or (ii) in the performance of any of the terms, conditions or provisions contained herein, including without limitation the following: (A) any representation or warranty made by Maker in this Promissory Note, the Personal Guaranty of even date given to Holder by Ronald H. Van Den Heuvel, or in any certificate or document furnished under the terms of this Promissory Note shall prove untrue in any material respect when made, and (B) if Maker shall admit Maker's inability to pay debts, or if Maker shall make an assignment for the benefit of creditors, or shall be adjudicated a bankrupt; or shall file a voluntary petition in bankruptcy or to effect a plan or other arrangement with creditors, or to liquidate assets of Maker under court supervision, or shall have applied for or permitted the appointment of a receiver or trustee or custodian for any of Maker's property or assets, or a trustee, receiver or custodian shall have been appointed for any property or assets of Makers who shall not have been discharged within sixty (60) days after the date of his or her appointment; or (iii) except as set forth in Paragraph 9, above, the sale or transfer of the Subject Shares (as defined in the Stock Purchase Agreement of even date), or any interest in such Subject Shares, including without limitation, the granting of a warrant, option or subordinated collateral pledge, to any third party.
11. If any Event of Default is not cured by Maker within ten (10) calendar days after written notice identifying such Event of Default is sent to Maker; then any such amounts shall bear interest at twelve percent (12.0%), calculated and accruing from the date of the default for so long as, and on such amounts as are identified and remain outstanding. Failure to exercise the terms of this paragraph by Holder following any Event of Default hereunder shall not constitute a waiver of the right to exercise the same at a later time or upon the occurrence of any subsequent Event of Default. Holder shall have all other rights and remedies available to it at law and in equity with regard to any default hereunder. In addition to the foregoing, upon the occurrence of an Event of Default, unless such Event of Default is subsequently

waived in writing by Holder, Holder shall be entitled, at the option of Holder, to exercise any or all of the following rights and remedies: (i) Holder may suspend its obligations under this Promissory Note, without further notice to Maker; and (ii) Holder may terminate its obligation under this Promissory Note and may declare the entire unpaid principal balance of the disbursements to Maker made under this Promissory Note to be immediately due and payable, together with accrued and unpaid interest on such disbursements, without further notice to or demand on Maker.

12. If any suit or action is instituted or if any attorney is employed to recover any sums due under this Promissory Note, or on any part of this Promissory Note, the undersigned Maker promises to pay all costs of collection, including reasonable attorneys' fees, incurred by Holder. The undersigned Maker, for itself and its successors and assigns, hereby expressly waives presentment for payment, notice of nonpayment, protest and notice of protest and diligence in collection, and consents to any and all extensions and renewals of this Promissory Note without notice. In the event any one or more of the provisions contained in this Promissory Note shall for any reason be held to be invalid or illegal in any respect, such invalidity or illegality shall not affect any other provision of this Promissory Note, but this Promissory Note shall be construed as if such invalid or illegal provision had never been contained herein.
13. This Promissory Note shall be interpreted and construed under the internal laws of the State of Wisconsin, without regard to the principles of conflict of laws. Maker hereby consents to personal jurisdiction over Maker by the courts of the State of Wisconsin and/or the federal courts of the United States located in the Eastern District of Wisconsin, and any action to enforce the terms and conditions of this Promissory Note may be brought therein by the Holder, and venue shall be proper therein.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has signed, sealed and delivered this Promissory Note as of the day, month and year first above written.

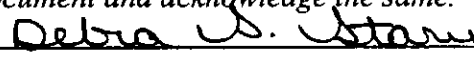
"MAKER":

EVERGREEN DEVELOPMENT, LLC

By: 
Ronald H. Van Den Heuvel, Member

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this 14th day of February, 2006, the above-named Ronald H. Van Den Heuvel, to me known to be the person authorized on behalf of Evergreen Development, LLC to execute the foregoing document and acknowledge the same.



Notary Public, State of Wisconsin

My commission: Expires December 20, 2009

REQUIRED TO BE ATTACHED:

Annex 1: Personal Guaranty

gb131315_4

State Bar of Wisconsin Form 21-2003
MORTGAGE

Document Number

Document Name

Eco Fibre, Inc. f/k/a/ Re-Box Paper, Inc.,*

("Mortgagor," whether one or more) mortgages to Hilliard Limited Partnership

, its successors or assigns ("Mortgagee," whether one or more), to secure payment of \$ 750,000.00 evidenced by a note or notes, or other obligation ("Obligation") dated July 18, 2007 executed by Eco Fibre, Inc., a Wisconsin Corporation

to Mortgagee, and any extensions, renewals and modifications of the Obligation and refinancings of any such indebtedness on any terms whatsoever (including increases in interest) and the payment of all other sums, with interest, advanced to protect the Property and the security of this Mortgage, and all other amounts paid by Mortgagee hereunder, the following property, together with all rights and interests appurtenant thereto in law or equity, all rents, issue and profits arising therefrom, including insurance proceeds and condemnation awards, all structures, improvements and fixtures located thereon, in Brown County, State of Wisconsin ("Property"):

*a Wisconsin Corporation

See Attached Addendum for legal description

2325129 9

CATHY WILLIQUETTE
BROWN COUNTY RECORDER
GREEN BAY, WI

RECORDED ON
07/27/2007 11:53:54AM

REC FEE: 19.00
TRANS FEE:
EXEMPT #
PAGES: 5

Recording Area

Name and Return Address
Hilliard Limited Partnership
333 Main St., Ste. 601
Green Bay, WI 54301

WD-1041

Parcel Identification Number (PIN)

This is not _____ homestead property.
(is) (is not)

This is not _____ a purchase money mortgage.
(is) (is not)

1. **MORTGAGOR'S COVENANTS.**

a. **COVENANT OF TITLE.** Mortgagor warrants title to the Property, except restrictions and easements of record, if any, and further excepting:

Liens in favor of Baylake Bank consisting of the following: Financing Statement filed as Document No. 678388, Financing Statement filed as Document No. 678389, Financing Statement filed as Document No. 678548, Mortgage, Security Agreement and Fixture Filing filed as Document No. 1772321, Real Estate Security Agreement filed as Document No. 1999394, and Mortgage filed as Document No. 2150335.

b. **FIXTURES.** Any property which has been affixed to the Property and is used in connection with it is intended to become a fixture. Mortgagor waives any right to remove such fixture from the Property which is subject to this Mortgage.

c. **TAXES.** Mortgagor promises to pay when due all taxes and assessments levied on the Property or upon Mortgagee's interest in it and to deliver to Mortgagee on demand receipts showing such payment.

d. **INSURANCE.** Mortgagor shall keep the improvements on the Property insured against loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, without co-insurance, through insurers approved by Mortgagee, in the amount of the full replacement value of the improvements on the Property. Mortgagor shall pay the insurance premiums when due. The policies shall contain the standard mortgage clause in favor of Mortgagee, and evidence of all policies covering the Property shall be provided to Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. Unless Mortgagor and Mortgagee

otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided Mortgagee deems the restoration or repair to be economically feasible.

e. **OTHER COVENANTS.** Mortgagor covenants not to commit waste nor suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from future liens superior to the lien of this Mortgage and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or become secured at any time by a mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.

2. **DEFAULT AND REMEDIES.** Mortgagor agrees that time is of the essence with respect to payment of principal and interest when due, and in the performance of the terms, conditions and covenants contained herein or in the Obligation secured hereby. In the event of default, Mortgagee may, at its option, declare the whole amount of the unpaid principal and accrued interest due and payable, and collect it in a suit at law or by foreclosure of this Mortgage or by the exercise of any other remedy available at law or equity. If this Mortgage is subordinate to a superior mortgage lien, a default under the superior mortgage lien constitutes a default under this Mortgage.

3. **NOTICE.** Unless otherwise provided in the Obligation secured by this Mortgage, prior to any acceleration (other than under paragraph 9, below) Mortgagee shall mail notice to Mortgagor specifying: (a) the default; (b) the action required to cure the default; (c) a date, not less than 15 days from the date the notice is mailed to Mortgagor by which date the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration.

4. **EXPENSES AND ATTORNEY FEES.** In case of default, whether abated or not, all costs and expenses, including, but not limited to, reasonable attorney fees, to the extent not prohibited by law shall be added to the principal, become due as incurred, and in the event of foreclosure be included in the judgment.

5. **FORECLOSURE WITHOUT DEFICIENCY.** Mortgagor agrees to the provisions of Sections 846.101 and 846.103, Wis. Stats., as may apply to the Property and as may be amended, permitting Mortgagee in the event of foreclosure to waive the right to judgment for deficiency and hold the foreclosure sale within the time provided in such applicable Section.

6. **RECEIVER.** Upon default or during the pendency of any action to foreclose this Mortgage, Mortgagor consents to the appointment of a receiver of the Property, including homestead interest, to collect the rents, issues and profits of the Property during the pendency of such an action, and such rents, issues and profits when so collected shall be held and applied as the court shall direct.

7. **WAIVER.** Mortgagee may waive any default without waiving any other subsequent or prior default by Mortgagor.

8. **MORTGAGEE MAY CURE DEFAULTS.** In the event of any default by Mortgagor of any kind under this Mortgage or any Obligation secured by this Mortgage, Mortgagee may cure the default and all sums paid by Mortgagee for such purpose shall immediately be repaid by Mortgagor with interest at the rate then in effect under the Obligation secured by this Mortgage and shall constitute a lien upon the Property.

9. **CONSENT REQUIRED FOR TRANSFER.** Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, option, long-term lease or in any other way) without the prior written consent of Mortgagee, unless either the indebtedness secured by this Mortgage is first paid in full or the interest conveyed is a mortgage or other security interest in the Property, subordinate to the lien of this Mortgage. The entire indebtedness under the Obligation secured by this Mortgage shall become due and payable in full at the option of Mortgagee without notice, which notice is hereby waived, upon any transfer, sale or conveyance made in violation of this paragraph. A violation of the provisions of this paragraph will be considered a default under the terms of this Mortgage and the Obligation it secures.

10. **ASSIGNMENT OF RENT.** Mortgagor hereby transfers and assigns : lutely to Mortgagee, as additional security, all rents, issues and profits which become or remain due (under any form or agreement for use or occupancy of the Property or any portion thereof), or which were previously collected and remain subject to Mortgagor's control following any default under this Mortgage or the Obligation secured hereby and delivery of notice of exercise of this assignment by Mortgagee to the tenant or other user(s) of the Property in accordance with the provisions of Section 708.11, Wis. Stats., as may be amended. This assignment shall be enforceable with or without appointment of a receiver and regardless of Mortgagee's lack of possession of the Property.

11. **ENVIRONMENTAL PROVISION.** Mortgagor represents, warrants and covenants to Mortgagee that (a) during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property; (c) without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components ("PCBs") or underground storage tanks; (d) there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) Mortgagor in the past has been, at the present is and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Mortgagee from all loss, cost (including reasonable attorney fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Mortgagee in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

12. **SECURITY INTEREST ON FIXTURES.** To further secure the payment and performance of the Obligation, Mortgagor hereby grants to Mortgagee a security interest in:

CHOOSE ONE OF THE FOLLOWING OPTIONS; IF NEITHER IS CHOSEN, OPTION A SHALL APPLY:

- ☐ A. All fixtures and personal property located on or related to the operations of the Property whether now owned or hereafter acquired.
- ☐ B. All property listed on the attached schedule.

This Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to those parts of the Property indicated above. This Mortgage constitutes a fixture filing and financing statement as those terms are used in the Uniform Commercial Code. This Mortgage is to be filed and recorded in the real estate records of the county in which the Property is located, and the following information is included: (1) Mortgagor shall be deemed the "debtor"; (2) Mortgagee shall be deemed to be the "secured party" and shall have all of the rights of a secured party under the Uniform Commercial Code; (3) this Mortgage covers goods which are or are to become fixtures; (4) the name of the record owner of the land is the debtor; (5) the legal name and address of the debtor are _____

Eco Fibre, Inc., 500 Fortune Ave, De Pere, WI 54115

(6) the state of organization and the organizational identification number of the debtor (if applicable) are Wisconsin ; and Entity ID No. R031170

(7) the address of the secured party is _____

13. **SINGULAR; PLURAL.** As used herein, the singular shall include the plural and any gender shall include all genders.

14. **JOINT AND SEVERAL/LIABILITY** The covenants of this Mortgage set forth herein shall be deemed joint and several among Mortgagors, if more than one. Unless a Mortgagor is obligated on the Obligation secured by this Mortgage, Mortgagor shall not be liable for any breach of covenants contained in this Mortgage.

15. **INVALIDITY.** In the event any provision or portion of this instrument is held to be invalid or unenforceable, this shall not impair or preclude the enforcement of the remainder of the instrument.

Dated July 18, 2007

ECO FIBRE, INC. f/k/a Re-Box Paper, Inc.

(SEAL) *Ronald H. Van Den Heuvel* (SEAL)
* Ronald H. Van Den Heuvel, President

(SEAL) *Steven C. Peters* (SEAL)
* Steven C. Peters, Secretary

AUTHENTICATION

Signature(s) _____
authenticated on _____

*
TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, _____
authorized by Wis. Stat. § 706.06)

THIS INSTRUMENT DRAFTED BY:

John Jez
1555 Glory Rd., Green Bay, WI 54304

ACKNOWLEDGMENT

STATE OF WISCONSIN)
Brown) ss.
COUNTY)

Personally came before me on 7/20/07,
the above-named Ronald H. Van Den Heuvel and Steven C. Peters
to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Debra S. Stary
* Debra S. Stary
Notary Public, State of Wisconsin
My Commission (is permanent) (expires: 12/20/2009)

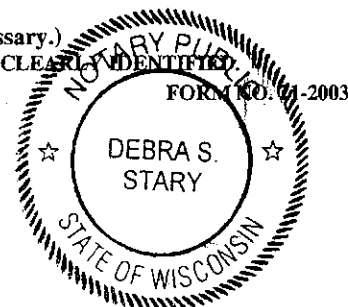
(Signatures may be authenticated or acknowledged. Both are not necessary.)

NOTE: THIS IS A STANDARD FORM. ANY MODIFICATIONS TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.

MORTGAGE

STATE BAR OF WISCONSIN

* Type name below signatures.



ADDENDUM TO MORTGAGE

Mortgagor: Eco Fibre, Inc. f/k/a Re-Box Paper, Inc.

Mortgagee: Hilliard Limited Partnership

Legal Description of Property:

Lot 1 of Volume 41 Certified Survey Maps, Page 100, Map No. 6194, said map being part of Lots 1 and 2, De Pere Business Park South Addition and part of the Southwest $\frac{1}{4}$ of Section 32, Township 23 North, Range 20 East, in the City of De Pere, West side of Fox River, Brown County, Wisconsin.

1 be continued until the assets of Evergreen Development
2 were sold?

3 A I have that agreement with every one of them. I turn
4 these into notes because it's better for them. But all
5 of them approved me entering into the bank debt that
6 said we could not pay shareholders before the bank debt
7 was paid.

8 So I can't just skirt this, turn it into a note,
9 and now pay the note because, I mean, you can't do
10 that. It would be against the covenants with the
11 banks. I mean, I can't pay equity-- I can't pay
12 equity before I pay the bank debt. It's just in the
13 bank note.

14 Q You referred to sort of an understanding among the
15 members of Evergreen to renew these notes until the
16 assets are sold. Is there anything in writing that
17 evidenced this understanding you had with either
18 Hilliard Limited Partnership or any other member of
19 Evergreen Development, LLC, at any time?

20 A The only thing that's in writing is the same thing
21 that's in Tissue Products Technology and in Eco-Fibre,
22 and that is that I had shareholders' approval and board
23 of directors' approval when they were members of
24 Eco-Fibre and when they were members of TPTC to enter
25 into the bank debt that is still in place. And very

1 clearly everyone understands they cannot get any money
2 out of any of the companies directly or indirectly
3 until the assets are sold.

4 Q Okay. That was actually a yes or no question,
5 Mr. Van Den Heuvel, so I'm trying to make this go
6 faster.

7 A Okay.

8 Q So I'll ask the question one more time. You referred
9 to an understanding that you had with the members of
10 Evergreen Development, LLC, to renew various promissory
11 notes until the assets of Evergreen Development were
12 sold. Is that understanding reduced to writing?

13 A I don't believe so, but I'm not sure.

14 Q Okay. What would you need to do to verify your
15 understanding?

16 A I'd have to go through five years of e-mails.

17 Q Okay. I'll just request that you do that to verify
18 your understanding.

19 So we understand, as you sit here today, you don't
20 know of any writing evidencing the understanding we've
21 been referring to, and you're going to let me know if
22 your understanding is incorrect by reviewing e-mails so
23 that the next time we meet, you can deny your
24 understanding if it turns out you're mistaken, correct?

25 A Incorrect. The bank documents and the two resolutions

1 from the shareholders and the board of directors
2 definitely says I cannot buy anybody out without paying
3 them in full.

4 Q The shareholders and board of directors of what entity?

5 A Eco-Fibre and TPTC.

6 Q Okay. I'll request copies of those documents.

7 A Okay.

8 Q Is there anything--any board of directors or members
9 vote or writing evidencing an understanding between you
10 and the members of Evergreen Development, LLC, to renew
11 the promissory notes until the assets of Evergreen are
12 sold?

13 A Other than the fact it just keeps happening. They
14 understand. But no, I don't think anything's in
15 writing.

16 Q Okay. Did you ever have any conversations with any
17 member of Hilliard Limited Partnership regarding this
18 understanding that-- Strike that. Let me lay the
19 foundation.

20 Is it your testimony then that you believe that
21 you had an understanding with the Hilliard Limited
22 Partnership that it would agree to renew the promissory
23 note represented in Exhibit 1 until such time as the
24 assets of Evergreen Development, LLC, were sold?

25 A Yes.

1 Q Okay. Was that ever put in writing?

2 A I'm not sure.

3 Q When was that understanding reached with Hilliard

4 Limited Partnership?

5 A I talked to the guys many a time. And when we turned

6 it from stock to a note, that was the understanding. I

7 mean, they wanted on their balance sheet a note instead

8 of stock so that they could value it, and I agreed to

9 do it through an arm's length transaction with full

10 awareness that there was no way to pay it until the

11 assets were sold and that I would work very diligently

12 to sell the assets and not receive a wage from either

13 one of the companies. I agreed to it.

14 Q With whom on behalf of Hilliard Limited Partnership did

15 you reach this understanding to renew the promissory

16 note represented by Exhibit 1?

17 A Mostly with Dan Hilliard, but I did talk to Neal

18 Maccoux several times on it also.

19 Q And what role does Dan Hilliard play with Hilliard

20 Limited Partnership?

21 A I don't know.

22 Q Okay.

23 A He works for me though.

24 Q Okay. Do you know if Dan Hilliard's a member of

25 Hilliard Limited Partnership?

1 Q Who made the \$10,000 payment?

2 A I don't remember.

3 Q What form did that payment take? Was that cash,

4 cashier's check, wire transfer?

5 A I don't remember.

6 Q What was the \$10,000 for?

7 A I want to say it was maybe some legal costs, maybe

8 some other outside-the-group costs; and we started

9 to talk about a mortgage at that time.

10 Q Why would you cause to be paid \$10,000 for the

11 Hilliard Limited Partnership's legal costs?

12 A Because it's a deal we made going forward and the

13 rest of the shareholders had certain amounts of

14 their legal bills paid also.

15 Q And what did you or the Evergreen Development, LLC,

16 receive in return for making the \$10,000 payment to

17 cover Hilliard Limited Partnership's legal costs?

18 A Well, switching them from a stock to a note had no

19 gain to us. It was -- There's absolutely nothing we

20 received. All we did is helped out our shareholders

21 by allowing the asset purchase agreement that was

22 going forward to give people notes that we could

23 then turn into mortgages and that everybody would

24 ride along together and be paid when these mortgages

25 were satisfied upon the sale of the assets. There



1 Now, there were combined shareholders in
2 this meeting, TPTC and Eco-Fibre; and the TPTC
3 shareholders have received their monies per the
4 agreement. That asset was sold.

5 Q Is there anything in writing that states that the
6 Hilliard Limited Partnership agreed to hold off
7 collecting on its promissory note until such time as
8 a mortgage had been paid off?

9 A Other than the fact that the promissory notes each
10 one received had paragraph 5 in that says they
11 cannot violate any covenants or any mortgages that
12 are on the property, and everyone seen this and
13 understood it.

14 Q Okay. Just so I am clear, other than paragraph 5 of
15 Exhibit No. 1 you know of no document, no letter, no
16 notes, no memo, no e-mail which states that Hilliard
17 Limited Partnership agreed to hold off collecting on
18 its promissory note or receiving payoff under the
19 promissory note until a mortgage had been satisfied?

20 A I have not reviewed the minutes of those meetings.
21 I will review the minutes of those meetings before I
22 could answer that.

23 Q Who took the minutes of these meetings?

24 A It would be Steve Peters or Debra Stary. Possibly
25 it might have been someone else, but I'm not sure.

1 Q Okay. In fact, the promissory note represented by
2 Exhibit No. 8 was not repaid by October 15, 2007; is
3 that correct?

4 A The terms and conditions were not satisfied.

5 Q If we turn to the second page of Exhibit No. 8,
6 paragraph No. 5 defines an event of default. Well,
7 it states an event of default by maker shall mean
8 maker's failure, refusal, inability, or other
9 nonpayment or nonperformance for any reason
10 whatsoever, (1), in the payment of any installment
11 of principal and/or interest due hereunder when due.
12 Did I read that correctly?

13 A Yes.

14 Q And the payment of principal and interest was not
15 made by October 15 of 2007. We already agree on
16 that, correct?

17 A Yes.

18 Q That constitutes an event of default under this
19 promissory note, Exhibit No. 8, correct?

20 A One of them, yes.

21 Q Okay. If we turn to paragraph No. 6 of
22 Exhibit No. 8, it allows for the maker -- in this
23 case you individually -- and Evergreen Development,
24 LLC, to cure the event of default within five
25 calendar days, correct?

1 A It does allow me to pay it within five calendar
2 days.
3 Q Okay. After the event of default, correct?
4 A Correct.
5 Q And that did not occur? The note --
6 A There has been no default.
7 Q Okay. Because of the repayment being conditioned on
8 the satisfaction of the Eco-Fibre mortgage, correct?
9 A Correct.
10 Q Okay. And nothing else, correct?
11 A Correct.
12 Q Approximately halfway down paragraph 6 on the right
13 side a sentence begins, In addition to the
14 foregoing, upon the occurrence of an event of
15 default, unless such default -- event of default is
16 subsequently waived in writing by Hilliard, Hilliard
17 shall be entitled, at its option, to exercise any or
18 all of the following rights and remedies. Do you
19 see where I am reading?
20 A Yes.
21 Q Did you ever receive a writing from Hilliard Limited
22 Partnership waiving an event of default under this
23 promissory note, Exhibit No. 8?
24 A No.
25 Q So other than this alleged condition regarding the

1 THE WITNESS: I really don't know when I
2 received it; and, you know, I've answered that. I'm
3 going to say it was somewhere between the closing of
4 Phase 1 April 15 and when this was signed July 18 or
5 19th or 20th by the parties, somewhere in that time
6 period. I think it came altogether on the same
7 time. It sure looks like it. I was, again, trying
8 to accommodate my shareholders, my original
9 shareholders of Eco-Fibre, in which I have worked
10 very diligently to sell their assets and distribute
11 the money.

12 BY MR. NOVA:

13 Q You had an opportunity to read Exhibit No. 8 before
14 you signed it, correct?

15 A I'm not sure.

16 Q Did you take the draft version of Exhibit No. 8 to
17 your attorneys for them to review?

18 A No.

19 Q Did you understand Exhibit No. 8 at the time you
20 signed it?

21 A It says amended and restated promissory note. I
22 just assumed it was one like the 28 others I have
23 signed.

24 Q Okay. So nothing the Hilliards did prevented you
25 from reading Exhibit No. 8 before you signed it or

1 Hilliards on many occasions and told them the
2 mortgage won't be satisfied until we have an asset
3 purchase agreement, a financial closing; and to
4 satisfy their concern, we gave them the mortgage and
5 we had an agreement where they were going to draft a
6 new amended and restated note.

7 Q The compromise and settlement referred to in
8 paragraph 12 -- Was that ever reduced to writing?

9 A No. You'll see the trend before. The April 15 note
10 was signed in July. The December 31 note was signed
11 at the end of February. This is the way the
12 Hilliard group moves forward each time. The other
13 shareholders when the note is due total up the
14 interest, bring it in. It's resigned. They
15 understand that the mortgage ain't paid, and they
16 understand that their liens or mortgages have not
17 been satisfied. It's a very simple thing. With
18 this it usually takes Neal a few more days or a few
19 more weeks depending on how he wants to go through
20 things.

21 Q Just to make sure that we cover all of the bases,
22 the compromise part, the compromise and settlement
23 referred to in paragraph 12 of your answer, was
24 never reduced to writing in any form? There's no
25 document, no letter, no notes, no e-mail, nothing in

1 writing referring to the allegations contained in
2 paragraph 12 regarding a compromise and settlement;
3 is that correct?

4 A Other than the mortgage.

5 Q The -- Other than the mortgage?

6 A Because the settlement is the mortgage.

7 Q Where in the mortgage does it state that the
8 plaintiff agreed to refrain from legal action and
9 postpone the due date of the promissory note?

10 A Why would I give them the mortgage?

11 Q That's not my question.

12 A My question is -- I'm saying it very clearly. Other
13 than the mortgage, you have nothing in writing.

14 Q Okay.

15 A The mortgage was given to them as settlement.
16 Otherwise I wouldn't give it to them.

17 Q So other than the amended and restated note itself
18 and the mortgage itself, there's no other
19 documentation regarding any understanding between
20 you, Evergreen Development, and Hilliard Limited
21 Partnership; is that correct?

22 A Four documents -- Baylake mortgage, stock purchase
23 agreement, note, and mortgage. Those four documents
24 understand the settlement that we came apart.

25 Q Show me in writing. Show me in writing,

1 Mr. Van Den Heuvel, where Hilliard Limited
2 Partnership agreed to, quote, refrain from any legal
3 action and postpone the due date of the promissory
4 note until Eco-Fibre, Inc., completed the sale and
5 expansion of their facility in De Pere, Wisconsin,
6 closed quote?

7 A In writing they signed a stock purchase agreement.
8 In writing there's an Eco-Fibre mortgage from
9 Baylake Bank, which they understand. In writing
10 Note 1 clearly states that they cannot be repaid
11 until that mortgage is satisfied, and I gave them a
12 mortgage here to make sure that I cannot sell the
13 asset without them being paid. So to me those are
14 the four documents that bring the commencement of
15 settlement to agreement.

16 Q Okay. Your lawyer wrote this document and stated
17 that the compromise and settlement agreement --
18 Strike that. Your lawyer wrote that on July 20,
19 2007, after executing the promissory note as alleged
20 in the complaint and before commencement of this
21 action plaintiffs and defendants entered into a
22 compromise and settlement. So your attorney wrote
23 that this compromise and settlement happened
24 sometime after July 20, 2007, correct?

25 A I -- I don't know how the words are explained. I do

1 weeds and 54 acres. The retaining ponds, permits,
2 storm sewer, improvements are approximately
3 \$17 million. So altogether it's approximately
4 \$39 million.

5 Q And what currently is the debt owed by Eco-Fibre?

6 A I want to say it is somewhere in the low 30s
7 including some of the debt is on improvements, not
8 on Eco-Fibre. I take that back too. The State has
9 about a million and a half of grants that will be
10 paid. So in addition to the asset purchase
11 agreement there's about a million and a half of
12 grants, so it would exceed \$41 million, 41, three
13 approximately.

14 Q When did you reach the compromise and settlement
15 referred to in paragraph 12 of your answer?

16 A Sometime in July is my best guess.

17 Q You can't identify the date?

18 A Not the exact date. I signed the mortgage 18th,
19 19th, or 20th. It's -- It's probably real close to
20 that time period.

21 Q Was the compromise settlement -- Strike that. Was
22 the compromise and settlement agreed to in one
23 meeting or a series?

24 A There were a series of meetings.

25 Q When was the first meeting regarding the compromise

1 A My office.

2 Q Who was present?

3 A I wouldn't know, but at one of these meetings Steve

4 Peters was there. One of them I remember Andy

5 couldn't make it because he was traveling somewhere.

6 I don't remember what meeting that was; but he maybe

7 went to Africa, South Africa maybe. I shouldn't say

8 that, but that's where my memory says he was at.

9 Q It was South Africa.

10 A It was, okay.

11 Q At any of the meetings regarding the alleged

12 compromise and settlement referred to in 12 of your

13 answer was anyone else present other than you, Steve

14 Peters, Dan Hilliard, Andy Hilliard, and Neal

15 Maccoux?

16 A No. It would be a combination of that group.

17 Q What date was this compromise and settlement

18 reached?

19 A Right after the 4th of July, I want to say, sometime

20 in that time period.

21 Q Before or after you signed the amended and restated

22 promissory note?

23 A At or around that time. I can't remember right when

24 it was there. I know they wanted to review the

25 mortgage, and we had given it to him a couple of

1 That's kind of the way it went.

2 Q Did you discuss the compromise and settlement with
3 Andy -- Andy Hilliard's father at all?

4 A Well, I didn't. I said -- I told him we had a tough
5 situation going forward and financing was tough in
6 this market; but I do believe that I used the term
7 your boys are comfortable now that no assets will be
8 sold underneath them without them being paid in full
9 and/or that I'm diligently working hard and it's a
10 real project? And I showed him the off-take
11 agreement signed by the Kraft family and Wausau
12 Paper. They were fairly -- I think everybody is
13 very comfortable that this deal is progressing as
14 fast as possible.

15 Q Did you have a conversation with the senior Hilliard
16 regarding the compromise and settlement referred to
17 in paragraph 12 of your answer?

18 A The only thing I said to them is we came apart with
19 a mortgage that should satisfy any issues that they
20 had. I didn't get into any specifics. Wally and I
21 were friends for a long time. I used to do all of
22 his work, built all of his buildings as an
23 architect, and did electrical work for him for
24 years.

25 Q Did the Hilliard Limited Partnership agreement sign

1 anything in writing documenting the compromise and
2 settlement referred to in paragraph 12 of your
3 answer?

4 A The only evidence I have that they did is they
5 recorded the mortgage. So I don't really have
6 anything signed by them back because they always
7 bring things for me to sign back to them and then
8 they accepted it because they took the mortgage and
9 filed it. So the mortgage went to them a couple
10 times back and forth, and they wanted to talk a
11 little more to see this or that. Finally, they
12 agreed; and then shortly after they agreed they
13 filed the mortgage.

14 Q When you say they agreed, who communicated to you
15 that the Hilliard Limited Partnership agreed to the
16 compromise and settlement contained in paragraph 12
17 of the answer?

18 A Well, Dan negotiated or I shouldn't say negotiated.
19 Dan is the one who told me that they agreed, and
20 basically a couple different times he said the
21 mortgage was a good idea, and I know Dan is inside
22 of our group working as hard as anybody to get this
23 closed.

24 Q Do you know what role Dan Hilliard has within
25 Hilliard Limited Partnership?

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

vs.

Code No.: 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

**DEFENDANTS EVERGREEN DEVELOPMENT, LLC,
AND RONALD VAN DEN HEUVEL'S RESPONSES TO PLAINTIFF'S FIRST SET OF
REQUESTS TO ADMIT**

NOW COME THE DEFENDANTS Evergreen Development, LLC, and Ronald Van Den Heuvel, by their attorneys, Stellpflug Law, S.C., and hereby respond to Plaintiff's First Set of Requests to Admit as follows:

1. Admit that attached hereto as Exhibit A is a true and correct copy of a Promissory Note in favor of the Plaintiff executed by the Defendants in the principal amount of Seven Hundred Fifty-Nine Thousand Six Hundred Thirty-Seven and 50/100 Dollars (\$759,637.50).

RESPONSE: Admit.

2. Admit that no writing exists which relieves the Defendants from the terms of the Promissory Note.

RESPONSE: Deny. Defendants believe that there are e-mails between the parties that indicate an understanding that the Note is not payable until the sale of EcoFibre, Inc., is



complete. Defendants are currently reviewing their files to locate said e-mails. Upon Defendants' review of their files, this admission will be supplemented.

3. Admit that there is no oral agreement relieving the Defendants from their obligations under the Promissory Note.

RESPONSE: Deny. Defendant, Ronald Van Den Heuvel, on behalf of Evergreen Development, LLC, had discussions with the principals of Hilliard Limited Partnership wherein it was agreed that the Note would not be payable until such time as the sale of EcoFibre, Inc., was completed.

4. Admit that EcoFibre, Inc., is not a party to the Promissory Note.

RESPONSE: Admit.

5. Admit that the date of closing of the sale of EcoFibre, Inc., has not been set.

RESPONSE: Admit that a single date has not been set for the closing, but a time period for the closing has been set in that it is scheduled to close within the first quarter of 2009.

6. Admit that EcoFibre, Inc., does not have in place financing sufficient to complete the financing of its facility in DePere, Wisconsin.

RESPONSE: Admit that EcoFibre, Inc., does not have 100 percent financing in place but does have 50 percent in place at this time, with the expectation that the remaining financing will be in place within the first quarter of 2009.

7. Admit that there is no executed document by which proceeds of the sale of EcoFibre, Inc., will be paid directly to either Defendant.

RESPONSE: Admit.

8. Admit that there is no executed document by which proceeds of the sale of EcoFibre, Inc., will be paid directly to the Plaintiff.

RESPONSE: Admit that no executed document is in place by which the proceeds of the sale of EcoFibre, Inc., will be paid directly to the Plaintiff. However, a payout sheet indicating where the proceeds of the sale will go and to whom has been drafted and is attached hereto indicating that the Plaintiffs will be paid out of said proceeds.

9. Admit that the debt of EcoFibre, Inc., exceeds the assets of EcoFibre, Inc.

RESPONSE: Deny that the debt of EcoFibre, Inc., exceeds its assets in that the sale of EcoFibre, Inc., does not only include the real property, but also includes technology and other intangibles such as permits, whose value, combined with the real property of EcoFibre, Inc., and its equipment, will exceed the debt of EcoFibre, Inc.

10. Admit that interests secured by mortgages and/or other recorded documents in EcoFibre, Inc.'s, real property that are senior to the mortgage of the Plaintiff, exceed the value of that real property.

RESPONSE: Admit that the real property value of EcoFibre, Inc., is exceeded by other interests senior to the mortgage of the Plaintiff, but that when the total value of EcoFibre, Inc., which includes technology and intangibles, exceeds the debt of EcoFibre, Inc., including all secured interests including that of the Plaintiff.

11. Admit that there is no date certain by which the contemplated sale of EcoFibre, Inc., must be completed.

RESPONSE: Admit.

12. Admit it is possible that the sale of EcoFibre, Inc., will never occur.

RESPONSE: Admit.

13. Admit that more than one year has passed since the recording date of the mortgage referred to in Paragraph 12 of your Answer.

RESPONSE: Admit.

DATED this 8th day of December, 2008.

STELLPFLUG LAW, S.C.

Attorneys for Defendants

By: 

C. David Stellpflug

State Bar Member No.: 1010142

Michael J. Kirschling

State Bar Member No.: 1004642

444 Reid Street

P.O. Box 5637

De Pere, WI 54115

Phone: (920) 336-5766

Fax: (920) 336-5769

I CERTIFY THAT ON DECEMBER 8, 2008,
I SERVED THE WITHIN DOCUMENT, BY
HAND DELIVERY, PURSUANT
TO RULE 801.14(2) WIS. RULES OF CIVIL
PROCEDURE.

Stellpflug Law, S.C.

BY: 

TO: Attorney Ross J. Nova

PHASE 2 PROJECTED CLOSING STATEMENT
November 21, 2008

Subordinated Debt		\$12,000,000
Stonehill - ECO	\$4,731,763	
Stonehill - PCDI	\$4,733,817	
Stonehill - TPTC/OFTI	\$2,534,421	
Total Stonehill (Int. through 11/30/07)		\$12,000,000

Asset Purchase		\$10,800,000
Total Sources		\$10,800,000

Anchor Bank		\$1,446,431
ITV		\$1,520,597
Cordova		\$1,534,050
Baylake Bank		\$4,311,584
Bay Bank		\$1,250,567
Accounts Payable		\$500,000
Transfer Tax / Closing Costs (TTL)		\$236,771
Total Uses		\$10,800,000

<i>Nicolet (Tak Loan of \$6,200,000 paid at closing)</i>	\$6,200,000
--	--------------------

Phase 1 Notes Paid at Phase 2 Closing	\$10,000,000
Baylake Bank	\$4,000,000
Chris Hartwig	\$2,000,000
Associated Bank	\$1,300,000
Accounts Payable	\$2,700,000
Total Uses	\$10,000,000

After Dryer Payment	\$7,000,000
Hilliard Limited Partnership	\$823,017
PAMV	\$1,380,283
IFC Credit Corp	\$4,300,000
Accounts Payable	\$496,700
Total Spirit Payments	\$7,000,000

Total of All Payments	\$27,800,000
------------------------------	---------------------

Remaining Debt		
Nicolet	TTL Working Capital Loan	\$2,800,000
Nicolet	Converting Equip.	\$2,900,000
Nicolet	Sales & Marketing	\$2,924,687
Nicolet (Swakwaeko)	Purely Cotton Equipment	\$2,880,283
Associated Bank (includes VHC paid)	After Dryer Sales	\$2,613,503
Bay Bank	TTL/NWTC	\$2,065,451
Stonehill	After Dryer and Converting Equipment	\$11,000,000
Stonehill	Purely Cotton	\$3,000,000
Pat & Ann Murphy	Various	\$3,500,000
Pat & Ann Murphy & GEMU		\$739,425
Ray VDH & OTHERS		\$1,600,000
Paul Gehl		\$1,258,274
Bernie Dahlin		\$3,236,932
GPD Leasing, Inc (\$2,186,448 EPC)		
Total Stock Buyout		\$6,834,632
Total Remaining Debt		\$40,518,555

Phase 1 Notes - Seller Financing (Current Value)	\$35,349,413
After Dryer Sets (4 Left)	\$26,000,000
Restricted Cash	\$11,000,000
Converting Equipment	\$6,000,000
Sales and Marketing Agreement 15 Yr	\$36,900,000
Sales and Marketing Agreement 7 yr	\$36,400,000
Cargill - HEMI Force	\$7,400,000
TOTAL	\$159,049,413

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

vs.

Code No.: 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

DEFENDANTS EVERGREEN DEVELOPMENT, LLC
AND RONALD VAN DEN HEUVEL'S AMENDED ANSWER TO COMPLAINT

NOW COME THE DEFENDANTS Evergreen Development, LLC, and Ronald Van Den Heuvel, by Stellpflug Law, S.C., and hereby amend their answer the Complaint of the Plaintiff as follows:

1. Defendants reallege and incorporate herein by reference Paragraphs 1 through 11, inclusive, and Paragraphs 13 and 14, inclusive, with like force and effect as if fully realleged herein.

2. As to Paragraph 12 of its original Answer, Defendants hereby amend that paragraph under Affirmative Defenses in that it is hereby affirmatively alleged that at the time Plaintiff executed the Promissory Note or sometime prior thereto, Plaintiff and Defendants entered into an agreement whereby Defendants caused an affiliate, Eco Fibre, Inc., to execute a mortgage in favor of the Plaintiff to secure payment of the Promissory Note; and, in consideration for the same, Plaintiff agreed to refrain from any legal action and to postpone the due date of the Promissory Note until Eco-Fibre, Inc., completed the sale and expansion of their

A handwritten signature in black ink, appearing to be a stylized 'JL' or similar initials, located at the bottom right of the page.

facility in DePere, Wisconsin, which has not yet occurred. The mortgage was recorded July 27, 2007 as Document No. 2325129, Brown County records.

WHEREFORE, Defendants hereby demand judgment as follows:

- A. For dismissal of the Complaint with prejudice;
- B. For an award of statutory costs, disbursements and attorney fees as permitted by law;
- C. For any other and further relief that the Court may deem just and equitable.

DATED this 31st day of December, 2008.

STELLPFLUG LAW, S.C.

By: 

Michael J. Kirschling
State Bar Member No.: 1004642
C. David Stellpflug
State Bar Member No.: 1010142
Attorney for Defendants

444 Reid Street
P.O. Box 5637
De Pere, WI 54115
Phone: (920) 336-5766
Fax: (920) 336-5769

I CERTIFY THAT ON DECEMBER 31, 2008
I SERVED THE WITHIN DOCUMENT, BY
U.S. MAIL, POSTAGE PREPAID, PURSUANT
TO RULE 801.14(2) WIS. RULES OF CIVIL
PROCEDURE.
Stellpflug Law, S.C.

BY: 

TO: Attorney Ross J. Nova

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

**AFFIDAVIT OF NEAL MACCOUX IN
SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANTS**

STATE OF WISCONSIN)
) SS.
COUNTY OF BROWN)

NEAL MACCOUX, being first duly sworn on oath, deposes and states as follows:

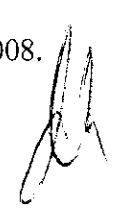
1. I am an adult resident of the State of Wisconsin and am a general member of the Plaintiff in the above-entitled action.

2. Exhibit A hereto is a true and correct copy of the Note delivered to me as signed by the Defendants on or about July 20, 2007.

3. As of today, the Plaintiff has received no money from the Defendants despite the Plaintiff's requests for their adherence to the terms of the Note.


4. On October 20, 2007, as a result of the Defendants' failure to pay the full installment amount due on October 15, 2007, the Plaintiff elected to exercise its option pursuant to the terms of the Note, to require the immediate payment of all outstanding principal and interest due under the Note, with the default interest rate of eighteen percent (18%) per annum.

5. Attached hereto as Exhibit B is a true and correct copy of the calculations setting forth the amount of principal and outstanding interest due and owing as of December 22, 2008.




6. I make this affidavit in support of Plaintiff's Motion for Summary Judgment against the Defendants.

Dated this 22 day of December, 2008.



Neal Maccoux


Signed and sworn to before me this
22nd day of December, 2008.



Notary Public, State of Wisconsin
My Commission: Repetual

3420314_1

The undersigned certifies that
a true copy of the within was
served by mail or by personal
delivery upon all attorneys and
parties of record pursuant to
Wis. Stat. Sec. 801.14 this
31 day of December 2008.
GODFREY & KAHN, S.C.

BY: 

AMENDED AND RESTATED
PROMISSORY NOTE

\$759,637.50

April 15, 2007
Green Bay, Wisconsin

FOR VALUE RECEIVED, the undersigned Evergreen Development, LLC, a Wisconsin limited liability company and Ronald H. Van Den Heuvel, an adult resident of the State of Wisconsin, in his individual capacity and as a principal, manager, member, director, and officer of Evergreen Development, LLC (collectively, "Maker"), hereby promise to pay to the order of Hilliard Limited Partnership, a Wisconsin limited partnership ("Hilliard") at Green Bay, Wisconsin, the principal sum of Seven Hundred Fifty-ninety Thousand Six Hundred Thirty-seven and 50/100 Dollars (\$759,637.50), as and when set forth herein. Notwithstanding anything in this Amended and Restated Promissory Note (or any prior note, instrument or other related document that is amended and restated herein) to the contrary, Maker shall pay Hilliard all amounts due and payable hereunder not later than the fifteenth (15th) day of October, 2007. This Amended and Restated Promissory Note amends and restates the terms and conditions of that certain Note dated December 31, 2005 between Maker and Hilliard.

1. The principal amount of this Amended and Restated Promissory Note may be prepaid in full, or in part, at any time without penalty.
2. The principal balance of, and all interest accrued and other amounts due pursuant to, this Amended and Restated Promissory Note may be declared by Hilliard immediately due and payable in full and accelerated at any time if an "Event of Default" (as defined below) occurs.
3. Repayment of the Note shall occur in one installment of principal and all accrued interest. The principal amounts due and owing under this Amended and Restated Promissory Note will accrue interest from the date hereof at the rate of eight percent (8.00%) per annum until payment in full; provided, however, that interest shall accrue at the Default Rate if an Event of Default occurs. All Principle and Accrued Interest is payable to Hilliard by Maker no later than the fifteenth (15th) day of October, 2007.
4. As a material inducement to Hilliard to loan the funds described herein, Maker hereby represents and warrants to Hilliard that:
 - (a) The execution and delivery of this Amended and Restated Promissory Note and any other document executed and delivered by Maker do not violate any presently existing provisions of law or any presently existing applicable order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality or constitute a default under any indenture, mortgage, agreement or contract of any kind to which Maker may be bound, so as to adversely affect performance by Maker of their obligations pursuant to, and as contemplated by, the terms and provisions of this Amended and Restated Promissory Note.



- (b) There are no actions, suits or proceedings pending or, to the knowledge of Maker, threatened against Maker, before any court or any governmental, administrative, regulatory, adjudicatory or arbitrational body or agency of any kind (including bankruptcy, insolvency or similar proceedings) that will adversely affect performance by Maker of their obligations pursuant to, and as contemplated by, this Amended and Restated Promissory Note.
 - (c) Maker has not filed any petition, nor has any petition been filed against Maker in bankruptcy or insolvency or reorganization or for the appointment of a receiver or trustee or for the arrangement of debts. Maker is not insolvent nor will they be rendered insolvent by the consummation of the transactions contemplated by this Amended and Restated Promissory Note.
5. An "Event of Default" by Maker shall mean Maker's failure, refusal, inability or other nonpayment or nonperformance for any reason whatsoever: (i) in the payment of any installment of principal and/or interest due hereunder when due; or (ii) in the performance of any of the terms, conditions or provisions contained herein, including without limitation the following: (A) if any representation or warranty made by Maker in this Amended and Restated Promissory Note or in any certificate or document furnished under the terms of this Amended and Restated Promissory Note shall prove untrue in any material respect when made; and (B) if Maker shall admit their inability to pay debts; or if Maker shall make an assignment for the benefit of creditors, or shall be adjudicated a bankrupt; or shall file a voluntary petition in bankruptcy or to effect a plan or other arrangement with creditors, or to liquidate assets of Maker under court supervision, or shall have applied for or permitted the appointment of a receiver or trustee or custodian for Maker's property or assets, or a trustee, receiver or custodian shall have been appointed for any property or assets of Maker who shall not have been discharged within sixty (60) days after the date of his or her appointment.
6. If any Event of Default is not cured by Maker within five (5) calendar days after the occurrence thereof, then any such amounts shall bear interest at a rate equal to eighteen percent (18.00%) per annum (the "Default Rate"), calculated and accruing from the date of the default for so long as and on such amounts as are identified and remain outstanding; provided, however, that if applicable law does not permit the foregoing rate, it shall be reduced to the highest rate allowed under such applicable law. Failure by Hilliard to exercise the terms of this paragraph following any Event of Default hereunder shall not constitute a waiver of the right to exercise the same at a later time or upon the occurrence of any subsequent Event of Default. Hilliard shall have all other rights and remedies available to it at law and in equity with regard to any breach and/or default hereunder. In addition to the foregoing, upon the occurrence of an Event of Default, unless such Event of Default is subsequently waived in writing by Hilliard, Hilliard shall be entitled, at its option, to exercise any or all of the following rights and remedies: (i) Hilliard may suspend its obligations under this Amended and Restated Promissory Note, without further notice to Maker; and (ii) Hilliard may terminate its obligation under this Amended and Restated Promissory Note and may declare the entire unpaid principal balance of the disbursements to Maker made under this Amended and Restated Promissory Note to be immediately due and payable, together

with accrued and unpaid interest on such disbursements, without further notice to or demand on Maker.

7. If any suit or action is instituted to recover any sums due under this Amended and Restated Promissory Note, or on any part of this Amended and Restated Promissory Note, Maker promises to pay all costs of collection, including reasonable attorneys' fees, incurred by Hilliard. Maker, for themselves, and their successors and assigns, hereby expressly waives presentment for payment, notice of nonpayment, protest and notice of protest and diligence in collection, and consent to any and all extensions and renewals of this Amended and Restated Promissory Note without notice. In the event any one or more of the provisions contained in this Amended and Restated Promissory Note shall for any reason be held to be invalid or illegal in any respect, such invalidity or illegality shall not affect any other provision of this Amended and Restated Promissory Note, but this Amended and Restated Promissory Note shall be construed as if such invalid or illegal provision had never been contained herein.
8. This Amended and Restated Promissory Note shall be interpreted and construed under the internal laws of the State of Wisconsin, without regard to the principles of conflict of laws. Maker hereby consents to personal jurisdiction over Maker by the courts of the State of Wisconsin and the federal courts of the United States located in the Eastern District of Wisconsin. Any action to enforce the terms and conditions of this Amended and Restated Promissory Note may be brought therein by Hilliard, and venue shall be proper therein.

[Signature page(s) follow.]

IN WITNESS WHEREOF, Maker has signed, sealed and delivered this Amended and Restated Promissory Note, as of the day, month and year first above written.

Ronald H. Van Den Heuvel
Ronald H. Van Den Heuvel, Individually

EVERGREEN DEVELOPMENT, LLC

By: Ronald H. Van Den Heuvel
Ronald H. Van Den Heuvel
Its: Managing Member

STATE OF WISCONSIN

COUNTY OF BROWN

)
) SS
)

Personally came before me this 20 day of July, 2007, the above-named Ronald H. Van Den Heuvel, to me known to be the person who executed the foregoing document and acknowledged the same.

Debra S. Stary
Notary Public, State of Wisconsin
My commission: 12/20/2009

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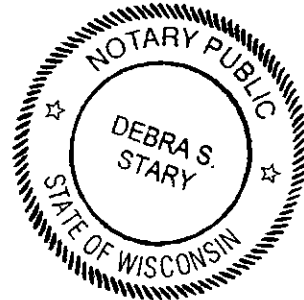
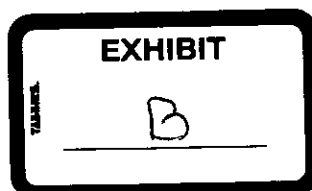


EXHIBIT B

Principal Amount	\$759,637.50
8% Interest through October 20, 2007	\$30,385.50
18% Default Interest From October 20, 2007 through December 23, 2008	<u>\$159,569.45</u>
Total Due as of December 23, 2008	\$949,592.45

3435951_1



STATE OF WISCONSIN

CIRCUIT COURT
BRANCH III

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

v.

Case No: 08-CV-2265

Case Code: 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

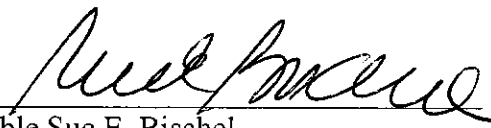
Defendants.

ORDER FOR WITHDRAWAL


The Court having reviewed Attorney Kirschling's Motion to Withdraw as Counsel and Affidavit in Support of said motion, and the Court having reviewed the record and file, the Court hereby orders that the law firm of Stellflug Law, S.C. and in particular, Michael Kirschling and David Stellflug, be granted permission to withdraw as counsel of record from this case for Evergreen Development, LLC and Ronald Van Den Heuvel. They and the firm shall have no further duties or obligations toward Evergreen Development and Ronald Van Den Heuvel in this matter.

Dated this 6 day of January, 2009.

BY THE COURT:



Honorable Sue E. Bischel
Circuit Court Judge Branch III



STATE OF WISCONSIN

CIRCUIT COURT
BRANCH III

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

v.

Case No: 08-CV-2265

Case Code: 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

**STELLPFLUG LAW, S.C.'S
NOTICE AND MOTION TO WITHDRAW AS ATTORNEYS**

TO: Hilliard Limited Partnership
c/o Ross J. Nova, Esq.
Godfrey & Kahn, S.C.
333 Main Street, Suite 600
P.O. Box 13067
Green Bay, WI 54307-3067

1. PLEASE TAKE NOTICE that Stellpflug Law S.C. hereby moves the court for an order pursuant to SCR 20:1.16(b)(4) permitting it to withdraw from representing Evergreen Development, LLC and Ronald Van Den Heuvel.

2. This motion will be heard at a time, date, and place to be set by the court.

3. The grounds for this motion is due to the clients having failed to substantially fulfill an obligation to the law firm regarding the law firm's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled as more fully set forth in the accompanying affidavit.



DATED this 2nd day of January, 2009.

STELLPFLUG LAW, S.C.

By: 

Michael J. Kirschling
State Bar No.: 1004642

POST OFFICE ADDRESS:

444 Reid Street, Suite 200
P.O. Box 5306
De Pere, WI 54115
Telephone: (920) 336-5766
Facsimile: (920) 336-5769

I CERTIFY THAT ON January 2, 2009
I SERVED THE WITHIN DOCUMENT, BY MAIL,
POSTAGE PREPAID, PURSUANT TO RULE
801.14(2) WIS. RULES OF CIVIL PROCEDURE.

Stellpflug Law, S.C.

BY: 

TO: Ross Nova, Esq.
Evergreen Development, LLC
Ron Van Den Heuvel.

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH III

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

v.

Case No: 08-CV-2265

Case Code: 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

**AFFIDAVIT OF MICHAEL J. KIRSCHLING
IN SUPPORT OF MOTION TO WITHDRAW AS ATTORNEYS**

STATE OF WISCONSIN)
)SS
BROWN COUNTY)

MICHAEL J. KIRSCHLING, being sworn on oath, states as follows:

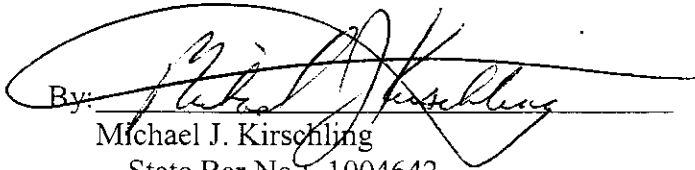
1. That I am an attorney duly licensed to practice law in the State of Wisconsin.
2. I was one of the attorneys for the Defendants Evergreen Development, LLC and Ronald Van Den Heuvel, in the above-entitled matter and I make this affidavit based upon personal knowledge.
3. Evergreen Development, LLC and Ronald Van Den Heuvel, both personally and as the managing member of the LLC, have failed to compensate the firm for its services incurred to date in representing the parties in this matter though they agreed they would provide such compensation.
4. The firm has made repeated requests of the LLC and Mr. Van Den Heuvel to pay the outstanding arrearages but to date, no payments have been forthcoming.



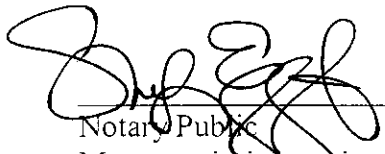
5. To continue representation of the LLC and Mr. Van Den Heuvel in this matter without payment for attorney fees incurred in continuing such representation will cause the firm undue financial hardship.

6. This affidavit is being submitted in Support of Motion to Withdraw as Attorneys.

DATED this 2nd day of January, 2009.

By: 
Michael J. Kirschling
State Bar No.: 1004642

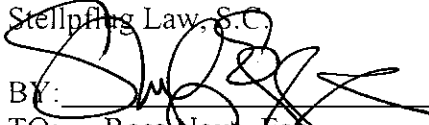
Sworn to and subscribed before
me this 2 day of January, 2009.


Notary Public
My commission expires on 12/11/11

POST OFFICE ADDRESS:

444 Reid Street, Suite 200
P.O. Box 5306
De Pere, WI 54115
Telephone: (920) 336-5766
Facsimile: (920) 336-5769

I CERTIFY THAT ON January 2, 2009
I SERVED THE WITHIN DOCUMENT, BY MAIL,
POSTAGE PREPAID, PURSUANT TO RULE
801.14(2) WIS. RULES OF CIVIL PROCEDURE.


BY: _____
TO: Ross Nova, Esq.
Evergreen Development, LLC
Ronald Van Den Heuvel

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

vs.

Code No.: 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

DEFENDANTS EVERGREEN DEVELOPMENT, LLC
AND RONALD VAN DEN HEUVEL'S ANSWER TO COMPLAINT

NOW COME THE DEFENDANTS Evergreen Development, LLC and Ronald Van Den Heuvel, by Stelpflug Law, S.C., and hereby answer the Complaint of the Plaintiff as follows:

1. Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore deny the same.

2. Defendants admit the allegations of paragraph 2 of the Complaint except that Defendants affirmatively allege that the proper address for Evergreen Development, LLC is 1555 Glory Road, Green Bay, Wisconsin.

3. Defendants admit the allegations contained in paragraph 3 of the Complaint.

4. Defendants admit the allegations contained in paragraph 4 of the Complaint except the allegation that a copy of the Note is attached to the Complaint as Exhibit A; this allegation is denied.

5. Defendants admit the allegations contained in paragraph 5 of the Complaint.

MB

6. In answering paragraph 6 of the Complaint, the Defendants admit that they did not repay the Note on or before October 15, 2007, but deny that this was in breach of their obligations under the Note, due to a compromise and settlement with the Plaintiff.

7. Defendants deny the allegations contained in paragraph 7 of the Complaint, due to the compromise and settlement with the Plaintiff.

8. Defendants deny the allegations contained in paragraph 8 of the Complaint.

9. Defendants deny the allegations contained in paragraph 9 of the Complaint.

10. Defendants deny the allegations contained in paragraph 10 of the Complaint.

AFFIRMATIVE DEFENSES

As and for affirmative defenses, the Defendants allege as follows:

11. Plaintiff's claim may be barred, in whole or in part, to the extent the Complaint fails to state claims upon which relief can be granted.

12. On July 20, 2007, after executing the Promissory Note as alleged in the Complaint, and before the commencement of this action, Plaintiff and Defendants entered into a compromise and settlement whereby Defendants caused an affiliate, Eco Fibre, Inc., to execute a mortgage in favor of the Plaintiff to secure payment of the Promissory Note in return for Plaintiff agreeing to refrain from any legal action and postpone the due date of the Promissory Note until Eco Fibre, Inc. completed the sale and expansion of their facility in De Pere, Wisconsin, which has not yet occurred. The mortgage was recorded July 27, 2007 as Document Number 2325129, Brown County Records.

13. Plaintiff ought not be permitted to allege that the Promissory Note is due and payable because Plaintiff represented to Defendants, to induce Defendants to cause the execution

of the mortgage set forth above, that they would wait for payment until Eco Fibre, Inc. completed the sale and expansion specified above, which has not yet occurred.

14. Defendants reserve the right to add any additional affirmative defenses that may become known in the course of discovery.

WHEREFORE, Defendants hereby demand judgment as follows:

- A. For dismissal of the Complaint with prejudice;
- B. For an award of statutory costs, disbursements and attorney fees as permitted by law;
- C. For any other and further relief that the Court may deem just and equitable.

DATED this 8th day of October, 2008.

STELLPFLUG LAW, S.C.

By: 

C. David Stellpflug

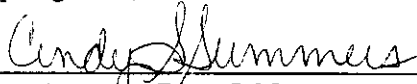
State Bar Member No.: 1010142

Attorney for Defendants

444 Reid Street
P.O. Box 5637
De Pere, WI 54115
Phone: (920) 336-5766
Fax: (920) 336-5769

I CERTIFY THAT ON OCTOBER 8, 2008,
I SERVED THE WITHIN DOCUMENT, BY
U.S. MAIL, POSTAGE PREPAID, PURSUANT
TO RULE 801.14(2) WIS. RULES OF CIVIL
PROCEDURE.

Stellpflug Law, S.C.

BY: 
TO: Attorney Ross J. Nova

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

vs.

Code No.: 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

OCT - 8 2008

DEFENDANTS EVERGREEN DEVELOPMENT, LLC
AND RONALD VAN DEN HEUVEL'S NOTICE OF RETAINER

TO: Attorney Ross J. Nova
Godfrey & Kahn, S.C.
333 Main Street, Suite 300
P.O. Box 13067
Green Bay, WI 54307-3067
Attorney for Plaintiff

PLEASE TAKE NOTICE that we appear for Defendants Evergreen Development, LLC and Ronald Van Den Heuvel in the above-entitled action. A copy of all pleadings subsequent to the Summons and Complaint in this action should be served upon us at the address stated below.

DATED this 8th day of October, 2008.

STELLPFLUG LAW, S.C.

By: 

C. David Stellpflug

State Bar Member No.: 1010142

MB

444 Reid Street
P.O. Box 5637
De Pere, WI 54115
Phone: (920) 336-5766
Fax: (920) 336-5769

I CERTIFY THAT ON OCTOBER 8, 2008,
I SERVED THE WITHIN DOCUMENT, BY
U.S. MAIL, POSTAGE PREPAID, PURSUANT
TO RULE 801.14(2) WIS. RULES OF CIVIL
PROCEDURE.

Stellpflug Law, S.C.

BY: Cindy Summers
TO: Attorney Ross J. Nova

AFFIDAVIT OF SERVICE

STATE OF WISCONSIN
Brown County Circuit Court
HILLARD LIMITED PARTNERSHIP vs EVERGREEN DEVELOPMENT, LLC
CASE NO: 08-CV-2265

On Thursday, September 18, 2008, at 11:17 AM, I served the within described SUMMONS AND COMPLIANT in the manner described below;

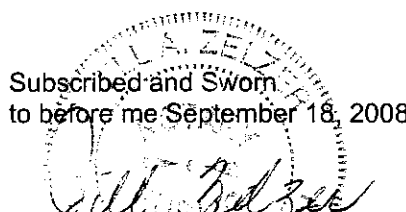
I served the within SUMMONS AND COMPLIANT upon the within named EVERGREEN DEVELOPMENT, LLC by delivering a true copy to RONALD VANDEN HEUVEL, AUTHORIZED AGENT. Said service was effected at EVERGREEN DEVELOPMENT, LLC, 1555 GLORY ROAD, GREEN BAY, WI.

I know the person I served was RONALD VANDEN HEUVEL, AUTHORIZED AGENT because he/she so stated it.

I, PATRICK ZELZER, swear that I am an adult over the age of 18 years, I am a resident of the State of Wisconsin and I am not a party to the above entitled action. I also certify that at the time of said service, I endorsed upon the copy so served, the date upon which the same was served, the time, place, manner of service and upon whom service was made and signed my name thereto.

Fee for Service: \$15.00

Subscribed and Sworn
to before me September 18, 2008.


Notary Public, State of Wisconsin
My Commission Expires: 12-06-09


PATRICK ZELZER, Process Server

PATRICK ZELZER & ASSOCIATES
P O Box 12554

Green Bay, WI, 54307-2554
(920) 362-7707 ,

Our Job Serial Number: 31505



AFFIDAVIT OF SERVICE

STATE OF WISCONSIN
Brown County Circuit Court
HILLARD LIMITED PARTNERSHIP vs RONALD VANDEN HEUVEL
CASE NO: 08-CV-2265

On Thursday, September 18, 2008, at 11:17 AM, I served the within described SUMMONS AND COMPLIANT in the manner described below;

I served the within SUMMONS AND COMPLIANT upon the within named RONALD VANDEN HEUVEL by giving a true copy to RONALD VANDEN HEUVEL personally. Said service was effected at 1555 GLORY ROAD, GREEN BAY, WI.

I know the person I served was RONALD VANDEN HEUVEL because he/she so stated it.

I, PATRICK ZELZER, swear that I am an adult over the age of 18 years, I am a resident of the State of Wisconsin and I am not a party to the above entitled action. I also certify that at the time of said service, I endorsed upon the copy so served, the date upon which the same was served, the time, place, manner of service and upon whom service was made and signed my name thereto.

Fee for Service: \$45.00


PATRICK ZELZER, Process Server

PATRICK ZELZER & ASSOCIATES
P O Box 12554

Green Bay, WI, 54307-2554
(920) 362-7707 ,

Our Job Serial Number: 31506

Subscribed and Sworn
to before me September 18, 2008.


Notary Public, State of Wisconsin
My Commission Expires 12-06-09

2385721

CATHY WILLIQUETTE
BROWN COUNTY RECORDER
GREEN BAY, WI

RECORDED ON
09/16/2008 09:31:09AM

REC FEE: 11.00
TRANS FEE:
EXEMPT #
PAGES: 1

Document Number

LIS
PENDENS

Drafted by: Duncan C. Delhey

Return to: Gray & Associates, L.L.P.
Attorneys at Law
600 North Broadway
Suite 300
Milwaukee, WI 53202

AL-441

Parcel Identification Number (PIN)

Deutsche Bank National Trust Company, as
Trustee for First Franklin Mortgage Loan Trust
2006-FF11

Case No.

OK 22266

Case Code 30404

(Foreclosure of Mortgage)

The amount claimed exceeds \$5000.00

Plaintiff,

v.

Amy Beth Francois and John Doe Francois

Defendants,

NOTICE IS HEREBY GIVEN that an action is pending in this court to foreclose a mortgage on real property located in BROWN county, State of Wisconsin, and described as follows:

Lot Six (6), Lot Seven (7) and the South 10 feet of Lot Eight (8), all in Block "C", Plat of Buchholz East Green Bay Addition Number 2, Village of Allouez, Brown County, Wisconsin.

Document No.: 2261202

GRAY & ASSOCIATES, L.L.P.
Attorneys for Plaintiff

By:

William N. Foshag
State Bar No. 1020417

STATE OF WISCONSIN
COUNTY OF BROWN

I hereby certify that this instrument is a true
and correct copy of the original record on file
in the Brown County Register of Deeds Office
Date: 9-16-08 No. of Pages 1

REGISTER OF DEEDS

BY: KG

Dated: September 12, 2008

Pursuant to the Fair Debt Collection Practices Act (15 U.S.C. Section 1692), we are required to state that we are attempting to collect a debt on our client's behalf and any information we obtain will be used for that purpose.

MS

STATE OF WISCONSIN

:

CIRCUIT COURT 3
BRANCH _____

:

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP
320 North Adams Street, Suite A
Green Bay, WI 54301,

Plaintiff,

v.

EVERGREEN DEVELOPMENT, LLC
2079-A Lawrence Drive
De Pere, WI 54115,

and

RONALD VAN DEN HEUVEL
2303 Lost Dauphin Road
De Pere, WI 54115,

Defendants.

Case No. 08-CV-2205

Code No(s). 30301

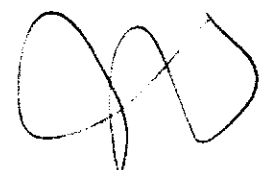
FILE

SUMMONS

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is P.O. Box 23600, Green Bay, Wisconsin 54305-3600, and to Godfrey & Kahn, S.C., Attention: Ross J. Nova, 333 Main



Street, Suite 600, P.O. Box 13067, Green Bay, Wisconsin 54307-3067. You may have an attorney help or represent you.

If you do not provide an answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 12 day of September, 2008.

GODFREY & KAHN, S.C.

By: 

Ross J. Nova
State Bar No. 1036723
Attorneys for Plaintiff

P.O. ADDRESS:

333 Main Street, Suite 600
Post Office Box 13067
Green Bay, WI 54307-3067
Phone: 920-432-9300
Fax: 920-436-7988
rnova@gklaw.com
3170331_1

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP
320 North Adams Street, Suite A
Green Bay, WI 54301,

Plaintiff,

v.

EVERGREEN DEVELOPMENT, LLC
2079-A Lawrence Drive
De Pere, WI 54115,

and

RONALD VAN DEN HEUVEL
2303 Lost Dauphin Road
De Pere, WI 54115,

Defendants.

Case No. 08-CV- 2265

Code No(s). 30301

COMPLAINT

NOW COMES the above-named Plaintiff, by its attorneys, Godfrey & Kahn, S.C., and as and for a claim against the Defendants, and each of them, jointly and severally, alleges and shows the Court as follows:

1. The Plaintiff, Hilliard Limited Partnership ("HLP"), is a Wisconsin domestic limited partnership with a principal office address of 320 North Adams Street, Suite A, Green Bay, Wisconsin 54301 and a registered agent of Neal Maccoux.

2. Defendant, Evergreen Development, LLC ("Evergreen"), is a Wisconsin limited liability company with a principal office address of 2079-A Lawrence Drive, De Pere, Wisconsin 54115 and a registered agent of Ronald Van Den Heuvel.

3. Defendant, Ronald Van Den Heuvel ("VDH"), is an adult resident of the State of Wisconsin residing at 2303 Lost Dauphin Road, De Pere, Wisconsin 54115.

4. On or about April 15, 2007, Evergreen and VDH executed a Promissory Note in favor of HLP for valuable consideration in the principal amount of Seven Hundred Fifty-nine Thousand Six Hundred Thirty-Seven and 50/100 Dollars (\$759,637.50) (the "Note"), a copy of which is attached hereto as Exhibit A.

5. The Note provided for repayment of principal and interest at the rate of eight percent (8%) per annum by no later than October 15, 2007.

6. Evergreen and VDH failed to repay the Note on or before October 15, 2007 in breach of their obligations under the Note.

7. Evergreen's and VDH's failure to adhere to the terms of the Note constitutes default thereunder.

8. Evergreen's and VDH's breach of the terms of the Note requires that all unpaid principal and accrued interest on the Note accrue interest at the rate of eighteen percent (18%) per annum from October 20, 2007 until the date of payment in full.

9. Evergreen's and VDH's default on the Note entitles HLP to all reasonable costs of collection, including reasonable actual attorney's fees and costs incurred in bringing this action.

10. Pursuant to the Note, there is due and owing from Evergreen and VDH, jointly and severally, the sum of Nine Hundred Ten Thousand Three Hundred Fifty-seven and 90/100 Dollars (\$910.357.90).

WHEREFORE, Plaintiff, Hilliard Limited Partnership, demands judgment against the Defendants, and each of them, jointly and severally, as follows:

A. Compensatory damages in the amount of Nine Hundred Ten Thousand Three Hundred Fifty-seven and 90/100 Dollars (\$910.357.90);

B. Post-Judgment interest at the rate of eighteen percent (18%) per annum, from the date of Judgment to the date of payment in full;

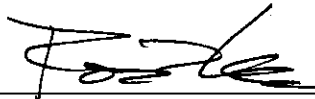
C. For all reasonable actual attorney's fees incurred in the prosecution of this action;

D. For all costs and disbursements incurred in prosecuting this action; and

E. For such other and further relief as the Court may deem just and equitable.

Dated this 12th day of September, 2008.

GODFREY & KAHN, S.C.

By: 

Ross J. Nova
State Bar No. 1036723

Attorneys for Plaintiff, Hilliard Limited
Partnership

P.O. ADDRESS:

333 Main Street, Suite 600
Post Office Box 13067
Green Bay, WI 54307-3067
Phone: 920-432-9300
Fax: 920-436-7988
rnova@gklaw.com
3170271_