

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

TISSUE TECHNOLOGY LLC, PARTNERS
CONCEPTS DEVELOPMENT, INC.,
OCONTO FALLS TISSUE, INC., and TISSUE
PRODUCTS TECHNOLOGY CORP.,

Plaintiffs,

Case No. 14-C-1203

v.

TAK INVESTMENTS, LLC, and
SHARAD TAK,

Defendants.

**TAK INVESTMENTS, LLC'S ANSWER AND
AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT**

ANSWER

Defendant Tak Investments, LLC ("Tak Investments"), by and through its attorneys, Godfrey & Kahn, S.C., answers the Plaintiffs' Amended Complaint as follows:

The Plaintiffs (collectively, the "OFTI Group") lodged their first complaint related to this dispute on December 21, 2012, with their filing in Eastern District of Wisconsin Case Number 12-CV-1305. Since then, the Court has considered various issues on motion. In the initial case, the Court dismissed the OFTI Group's claim after granting summary judgment to Tak Investments. The OFTI Group again brought suit, filing a second complaint in this matter on September 30, 2014. Tak Investments again filed a motion for summary judgment, which the

Court granted in part. After determining once more that Tak Investments could not be liable on Plaintiffs' stated claims, the Court has granted Plaintiffs leave to amend their complaint.¹

PARTIES AND JURISDICTION

1. Admits that Tissue Technology, LLC is a Wisconsin limited liability company with a principal place of business at 2077B Lawrence Drive, De Pere, Wisconsin 54115. Tak Investments lacks sufficient knowledge and information concerning the truth of the remaining allegations of Paragraph 1 of the Amended Complaint.

2. Admits the allegation of Paragraph 2 of the Amended Complaint.

3. Admits the allegation of Paragraph 3 of the Amended Complaint

4. Admits the allegations of Paragraph 4 of the Amended Complaint.

5. Admits that it is a Delaware limited liability company and that Mahinder Tak is a member of Tak Investments. Tak Investments denies that its principal place of business is 400 Professional Drive, Suite 420, Gaithersburg, Maryland 20879, as its principal place of business is located at 401 Professional Drive, Suite 110, Gaithersburg, Maryland 20879. Tak Investments denies that Sharad Tak is a member of Tak Investments, as the other member is Tak Investments, Inc.

6. Admits the allegations of Paragraph 6 of the Amended Complaint.

7. Admits the allegations of Paragraph 7 of the Amended Complaint.

8. Admits the allegations of Paragraph 8 of the Amended Complaint.

9. Admits the allegations of Paragraph 9 of the Amended Complaint.

¹ This Answer is filed on behalf of Tak Investments and it alone. Although the Court has granted Plaintiffs leave to amend their complaint to include a specific performance claim against Sharad Tak in his individual capacity, he has neither been served nor appeared in this matter, and this Answer is not filed on his behalf. If and when service of process has been accomplished on Mr. Tak, a separate Answer will be filed.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

10. Admits the allegations of Paragraph 10 of the Amended Complaint.

11. Admits that, on or about April 16, 2007, Tak Investments executed four promissory notes in the amounts of \$3,000,000.00, \$4,400,000.00, \$4,000,000.00 and \$5,000,000.00 (totaling \$16,400,000.00) in favor of Tissue Products Technology Corp. (“Tissue Products”). Answering further, Tak Investments affirmatively alleges that the notes, if valid, are subject to their terms but that no consideration has ever been given for these promissory notes, making them invalid and unenforceable.

12. Tak Investments denies that it made any of the other notes that “were executed at the time of closing,” and denies it is a party to any Sales and Marketing Agreement. Tak Investments admits that there is an action pending in the Circuit Court for Oconto County against ST Paper, LLC concerning an Amended and Restated Sales and Marketing Agreement between Tissue Technology, LLC and ST Paper, LLC. Tak Investments denies the remaining allegations of Paragraph 12 of the Amended Complaint.

13. Admits that the language quoted appears in the Final Business Terms Agreement. Answering further, Tak Investments affirmatively asserts that the Final Business Terms Agreement speaks for itself and denies any allegations inconsistent with that same agreement.

14. Tak Investments denies that it has, or ever had, a subsidiary named ST Paper, Inc. Tak Investments denies that it received title to any assets of the Oconto Falls Tissue Inc. tissue mill, as it was not a party to the applicable contract – that is, the Second Amended and Restated Asset Purchase Agreement.

15. Lacks sufficient knowledge or information as to the truth of the allegations in Paragraph 15 of the Amended Complaint.

16. Lacks sufficient knowledge or information as to the truth of the allegations in Paragraph 16 of the Amended Complaint.

17. Denies the allegations of Paragraph 17 of the Amended Complaint. The four notes at issue in this litigation were not made to finance the purchase of the tissue mill. Instead, the notes were in place to facilitate what is referred to in the Final Business Terms Agreement as “Phase 2 Financing” for a separate transaction, which never materialized.

18. Admits the allegations of Paragraph 18 of the Amended Complaint.

19. Admits the allegations of Paragraph 19 of the Amended Complaint.

20. Admits the allegations of Paragraph 20 of the Amended Complaint.

21. Lacks sufficient knowledge or information as to the truth of the allegations in Paragraph 21 of the Amended Complaint.

22. Lacks sufficient knowledge or information as to the truth of the allegations in Paragraph 22 of the Amended Complaint.

23. Admits the allegations of Paragraph 23 of the Amended Complaint.

24. Denies the allegations of Paragraph 24 of the Amended Complaint. Answering further, Tak Investments affirmatively asserts that the Final Business Terms Agreement speaks for itself and denies any allegations inconsistent with that agreement. Tak Investments also affirmatively alleges that the notes were without consideration and, thus, invalid and unenforceable. Further, upon information and belief, Tak Investments alleges that certain of the notes have been assigned to third parties, precluding the OFTI Group from deeming the notes cancelled, a condition precedent to any alleged obligation to transfer any ownership interest.

25. Denies the allegations of Paragraph 25 of the Amended Complaint. Answering further, Tak Investments restates and incorporates by reference its responses to Paragraph 24 above as if fully set forth herein.

26. Admits that it has not paid the notes, but denies it is under any obligation to do so. Tak Investments denies the remaining allegations of Paragraph 26 of the Amended Complaint. Answering further, Tak Investments restates and incorporates by reference its responses to Paragraph 24 above as if fully set forth herein.

27. Denies the allegations of Paragraph 27 of the Amended Complaint.

28. Admits the allegations of Paragraph 28 of the Amended Complaint.

29. Denies the allegations of Paragraph 29 of the Amended Complaint.

30. Admits that Plaintiffs seek to have the Court construe “the contracts against the drafters.” Tak Investments denies the remaining allegations of Paragraph 30 of the Amended Complaint.

31. Denies the allegations of Paragraph 31 of the Amended Complaint.

32. Admits that Plaintiffs seek the relief specified, but denies that Plaintiffs are entitled to any relief of any kind.

SECOND CAUSE OF ACTION – UNJUST ENRICHMENT

Dismissed by Order of the Court.

AFFIRMATIVE DEFENSES

As for its affirmative defenses, Tak Investments, LLC (“Tak Investments”) states:

1. The Plaintiffs’ Amended Complaint fails to state a claim upon which relief may be granted.

2. The notes referenced in the Amended Complaint are invalid and unenforceable for lack of consideration.

3. Upon information and belief, one or more of the notes were assigned to third parties prior to their purported cancellation and, thus, the OFTI Group was without a legal or equitable interest in the notes, and could not cancel all four notes, a condition precedent to any obligation on the part of Tak Investments under the Final Business Terms Agreement.

4. Upon information and belief, Plaintiffs' claim is limited or barred by their failure to mitigate damages.

5. Plaintiffs' claim may be barred by other legal and equitable defenses, including, but not limited to, unjust enrichment, the statute of limitations, estoppel, laches and accord and satisfaction.

6. The specific claim against Tak Investments for enforcement of the notes is barred by the applicable statute of limitations.

7. Tak Investments reserves the right to amend its affirmative defenses as it learns additional information through discovery in this matter.

WHEREFORE, Defendant Tak Investments, LLC requests that the Amended Complaint be dismissed and that it be awarded its costs incurred, together with all other appropriate relief.

Dated this 17th day of April, 2017.

s/ Jonathan T. Smies

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