

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

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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.

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**DEFENDANT SHARAD TAK'S ANSWER AND  
AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT**

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**ANSWER**

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

**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 lacks sufficient knowledge and information concerning the truth of the remaining allegations of Paragraph 1 of the Amended Complaint.

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

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

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

5. Admits that Tak Investments, LLC, the other Defendant, is a Delaware limited liability company and that Mahinder Tak is a member of Tak Investments. Tak denies that Tak

Investments, LLC's principal place of business is 400 Professional Drive, Suite 420, Gaithersburg, Maryland 20879. Rather, its principal place of business is 9201 Corporate Blvd, Suite 420, Rockville, MD 20850. Tak denies that he is a member of Tak Investments, LLC.

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.

**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, LLC 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 alleges that the notes, if otherwise 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 denies that Tak Investments, LLC made any of the other notes that “were executed at the time of closing” and denies that he personally is a party to any Sales and Marketing Agreement. Tak 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 denies the remaining allegations of Paragraph 12 of the Amended Complaint.

13. Admits that the language quoted in the Amended Complaint appears in the Final Business Terms Agreement. Answering further, Tak affirmatively asserts that the Final Business

Terms Agreement speaks for itself and denies any allegations inconsistent with that same agreement.

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

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

16. Admits that Goldman Sachs Credit Partners LP, at one point in time, provided a \$65 million loan and a \$5 million revolving loan to ST Paper, LLC. Tak denies the remaining allegations of 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 intended in concept to help facilitate, prospectively, 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 concerning the truth of the allegations in Paragraph 21 of the Amended Complaint.

22. Lacks sufficient knowledge or information concerning 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 affirmatively asserts that the Final Business Terms Agreement speaks for itself and denies any allegations inconsistent with that agreement. Tak also affirmatively alleges that the notes were without consideration and, thus, invalid and unenforceable. Further, upon information and belief, Tak alleges that certain of the notes have been assigned to third parties, precluding the OFTI Group from deeming the notes cancelled, or enforcing the notes in any way, a condition precedent to any alleged obligation to transfer any ownership interest.

25. Admits that no individual or entity has transferred a 27 percent interest in Tak Investments, LLC to the OFTI Group or anyone else, and that neither Tak Investments, LLC nor Tak has paid the notes or have an obligation to pay the notes. Answering further, Tak restates and incorporates by reference his responses to Paragraph 24 above as if fully set forth.

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

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,” but that, as a matter of law alleges that is not permissible. Tak 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 his affirmative defenses, Defendant Sharad Tak (“Tak”) 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 and remain assigned to third parties prior to their purported cancellation and, thus, the OFTI Group was and remains without a legal or equitable interest in the notes and could not cancel any or all four notes, a condition precedent to any obligation on the part of Tak 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, estoppel, laches and accord and satisfaction.
6. The specific claim against Tak for enforcement of the notes is barred by the applicable statute of limitations.

7. The relief sought against Tak in the Amended Complaint is impossible. Sharad Tak is not a member of Tak Investments and, therefore, cannot transfer to Plaintiffs the 27 percent interest in the entity they seek.

8. The Plaintiffs have pled inconsistent remedies. By electing to declare the notes at issue invalid, to try to obtain a 27 percent investment interest in Tak Investments, LLC, they have waived any claim to enforce the notes themselves. If they elect to pursue a remedy under the notes, they have waived any claim against Tak to specific performance. Plaintiffs cannot simultaneously maintain actions in law and in equity.

9. Tak reserves the right to amend its affirmative defenses as he learns additional information through discovery in this matter.

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

Dated this 8<sup>th</sup> day of August, 2017.

s/ Jonathan T. Smies

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