IN THE 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,

v. Case No. 14CV1203

TAK INVESTMENTS, LLC, and
SHARAD TAK,

Defendants.

PLAINTIFFS' POST TRIAL BRIEF

INTRODUCTION

The plaintiffs sue upon four promissory notes executed on April 16, 2007. The maker is Tak Investments, LLC. The Payee is Tissue Products Technology Corporation and/or Tissue Technology LLC. The result in this case should be fairly easy to arrive at since the Notes speak for themselves both as to the nature of the promise and the acknowledgement that value was given. They identify the principal, interest and dates of payment. Moreover, the actions of the parties both before the execution of these Notes and thereafter, are entirely consistent with the parties deeming these Notes to be valid instruments. The defense has made every effort to invalidate these Notes and, among all of the back and forth, would have this Court believe that at all times, the parties considered the Notes to be worthless. Sharad Tak's testimony in this regard is not just implausible, but absurd, when he testified that the Notes were either a line of credit and/or of no value. He staked out this position at his deposition and was forced to continue with that position at the time of the trial.

Sharad Tak's own lies were exposed when it was pointed out to him that he had agreed to assign the Notes as collateral to Baylake Bank. Pl. Ex.15.; Trial Tr.41-31 Sept. 19, 2017. The last testimony offered at the trial was that of Mr. Tak when he looked the presiding judge in the eye, and admitted that he had executed Assignments for delivery to Baylake Bank of the "worthless Notes" essentially admitting to what is best loosely termed bank fraud. He had no choice but to make these admissions in light of his staked out claims that the Notes were worthless. He was cornered with no possible escape. The colloquy between the Court and Mr. Tak is as follows:

> **The Court:** Mr. Tak –
> **The Witness:** Yes, sir.
> **The Court:** -- talking about referring to the four investment notes.
> **The Witness:** Yes sir.
> **The Court:** And your testimony, as I understand it, is that you signed those at Mr. Van Den Heuvel's request with the understanding that they were worthless, you would never have to pay on them.
> **The Witness:** That's right.
> **The Court:** Is that correct?
> **The Witness:** Yes sir.
> **The Court:** But then you also participated in transactions where they were pledged or assigned as collateral in order to – in order to remove the liens on the paper mill, or the assets of the paper mill you were buying. Is that correct?
> **The Witness:** No. I did not participate in assignment to remove the liens. I thought that Mr. Van Den Heuvel needed money, which he always had needed in the past before I came to know him, and I – after I came to know him, and I thought he was using these notes to borrow the money after the fact that we had signed it. Before that I did not know. Before that I only knew that he was trying to get those so that he extend – he can extend us money if we need.
> **The Court:** But if – if you thought the notes were worthless, why would you have assigned any kind of document acknowledging that they can be used as collateral or as security for loans or for replacement collateral?
> **The Witness:** That was a error on my part, and that was a great mistake. In hindsight, I wouldn't have dealt with Mr. Van Den Heuvel. I did it, but now it's kind of pretty late. He came to me that he needed some money to borrow from either Baylake Bank or Nicolet Bank and could I agree to sign these notes.
> **The Court:** And you – and your testimony is you had no idea what he intended to use the notes for.
> **The Witness:** That's correct.
> **The Court:** To you it made no sense, but you signed anyhow?
> **The Witness:** Yes, sir.

The Court: Well, why? Why would you sign notes of – valued at over $16 million if you thought they had no value?
The Witness: Because Mr. Van Den Heuvel told me that if we do need money in second phase to put as additional equity for making deal done, then he will be able to lend me that money against these notes. That is the kind of thing we do with the banks all the time, like with Johnson Bank, before we made the deal. I signed a note of $20 million from Johnson Bank. And at that time we signed the note we did not receive no money, but it was in anticipation that I can borrow from Johnson Bank up to $20 million if and when we need it.
The Court: Paragraph (g) –
The Witness: Yes, sir.
The Court: -- of the covenants also talks about an agreement to convey 27-percent ownership interest in the highest class of investments. Why would you have signed – why would you have agreed to convey 27 percent of the stock of your company for the – in interest in your LLC if – if these notes are – based on a cancellation of notes that have no value?
The Witness: It was my understanding at that time, and that's what I thought, that if – if we borrowed the money against these notes in future, which is after the date was signed, and then if our companies don't pay it back, that $16.4 million we borrow, to put as a equity in another company, and if we don't pay it back, then we can give in lieu of payment 27-percent interest.
The Court: What was the purchase price, as you understood it, that you paid for the Oconto Falls tissue mill?
The Witness: I think purchase price was, I – I guess, $86 million or something like that.
The Court: And wasn't this $16 million necessary in order to complete your share of the purchase of the company?
The Witness: No, it wasn't. Only requirement was – the seller notes (indisc.), which is approximately $30 million, which was the notes payable to Oconto Falls, Inc. So, the $16.4 million had nothing to do with purchase of the mill.
The Court: So, why call the purchase price 85 million instead of 65 million?
The Witness: It might have been because – I think – I have to go back and look at the transaction. I think – I think it was 85 plus 7 million dollars. I have to look back at the – at the – at document we have to recollect how – how – what is exactly purchase price was. So, purchase price was paid by – by the equity plus the loan from Goldman Sachs. So, there was no – no role paid – or played by $16.4 million investment notes.
The Court: Any follow-up?
Mr. Smies: No, your Honor.
Mr. Ganzer: No.
The Court: All right. Thank you, Mr. Tak. You can step down.

Trial Tr. 58-62 Sept 19, 2017. *See also*, Trial Tr. 41-43 Sept. 19, 2017.

From a macro prospective, Mr. Tak took a position in this case that he believed would exonerate him from having to pay the investment notes. However, that position taken to its logical conclusion put Mr. Tak in jeopardy of having committed bank fraud. That fraud takes two forms. First, Mr. Tak claims to have issued the "worthless" notes so Ron Van Den Heuvel could use them to obtain financing from conventional sources. That is, he willingly executed the "worthless" notes for Mr. Van Den Heuvel to present to lending institutions to obtain more financing. Trial Tr. 58-62, Sept 19, 2017. *See also*, Trial Tr. 41-43 Sept. 19, 2017. Second, Mr. Tak executed documents granting his approval of the use of the Notes as collateral by lending institutions, notes that he claims were of no value but were nevertheless utilized to secure borrowing. Trial Tr. 58-62, Sept 19, 2017. *See also*, Trial Tr. 41-43 Sept. 19, 2017. Of course, his testimony in this regard is not worthy of any belief as he was clearly motivated to lie so as not to have to pay the plaintiffs the money he had promised on behalf of his company. Sharad Tak is a liar and his testimony should be disregarded in its entirety. He lied to the Court on repeated occasions leaving the only reasonable version of facts upon which this Court can rely to be those presented by the plaintiffs. Despite the fact that the strict falsus in uno inference has been abandoned, the modified doctrine applies here. When a witness' falsehoods have been so pervasive, as have Mr. Tak's, that his entire testimony is tainted, the trier of fact can reject the entirety of the witness' testimony. *United States v. Edwards*, 581 F3d 604 at 612 (7th Cir, 2009). Mr. Tak's lies were pervasive and central to the substance of the case thereby enabling the modified falsus in uno analysis. It is respectfully requested that this Court order judgment in favor of the plaintiffs on the four Notes with interest and attorney's fees.

FACTS

Ron Van Den Heuvel and Sharad Tak are the principals of the respective parties herein. Their stories and clashes have been recounted numerous times in the various pleadings submitted to this Court. Their business relationship commenced in 2005 when they talked about various projects including the building of tissue mills in De Pere, Wisconsin, the State of Utah and Oconto Falls, Wisconsin. In fact, the parties prepared a document on December 27, 2005 describing the scope of their anticipated projects. Pl. Ex.1. This yielded a memorandum of understanding executed by the same parties on May 5, 2006. Pl. Ex.2. They executed a joint business development agreement on the same date. Pl. Ex.3. At trial, the defense tried to hone in on the fact that these were non-binding agreements--which is true. However, the documents were submitted in order to demonstrate the background that brought the parties to the execution of the Final Business Terms Agreement and the four Promissory Notes on April 16, 2007. Trial Tr. 53-54 Sept 18, 2017. The four Notes, termed the "Investment Notes", were executed in anticipation of some rather significant construction projects that would benefit Mr. Van Den Heuvel's construction company, Spirit Construction. Pl. Ex.11. The scope of the project was as significant as $550 to $600 million. Pl. Ex.3. Nevertheless, all of the documents taken together serve as the backbone for what became the Final Business Terms Agreement. Pl. Ex.11. This background is vitally important to understanding why the four Investment Notes were issued, how and why they relate to the Final Business Terms Agreement and how those Notes were to be terminated should the parties enter into the overarching construction contracts they had anticipated.

The parties' agreements were paired down in scope as they neared the April 16, 2007 closing at which time the defendant was to complete the purchase of the assets of the Oconto Falls tissue mill. It is clear that the financing of the project was cut substantially immediately

before the closing by Goldman Sachs. Trial Tr. 47-54 Sept 18, 2017; Trial Tr. 40-41 Sept 19, 2017; Pl. Ex. 4 and 6. Because of that reduction in funding and the fact that there were various outstanding loans that needed to be satisfied at or before closing, Ron Van Den Heuvel and his companies made certain agreements, including with Mr. Van Den Heuvel's brothers, to ensure that Sharad Tak received clean title. Pl. Ex. 6 and 9; Trial Tr. 47-60 Sept 18, 2017. It was clear that the Investment Notes and the Final Business Terms Agreement were to further reflect the agreement between the parties, to wit: Sharad Tak and his companies and Ron Van Den Heuvel and his companies, to clear title as well as to prospectively govern their conduct. Pl. Ex. 11. As set forth in the Closing Statement, Pl. Ex. 8, there were various parties who were not paid out of closing, but were paid outside of closing and were otherwise given security for the loans in order to have the deal go through. This included certain side deals that satisfied debts with Nicolet Bank, Johnson Bank, Associated Bank, William Bain, Mr. Van Den Heuvel's brothers' companies and others. Trial Tr. 48-51 Sept 18, 2017. Trial Exhibit No. 9 expressly provides that significant sums of money were to be paid outside of closing. Pl. Ex. 9. Buttressing this position is the fact that various UCC financing statements were terminated at closing even though debts survived and were otherwise undertaken by Mr. Van Den Heuvel. PL. Ex 10.

The result of all the aforementioned chaos and uncertainty at the last minute was the need for the four Investment Notes totaling $16,400,000.00 and the accompanying Final Business Terms Agreement Pl. Ex. 11. Part and parcel of that was the Final Business Terms Agreement which, in effect, said the Notes could be terminated in the event the parties moved forward with their $315 million anticipated building plan. Pl. Ex. 11. Of course, that plan never came to fruition. Trial Tr. 24-25 Sept 19, 2017.

The defense has repeatedly looked to paragraph G of the Final Business Terms Agreement and in particular the confusing language of the first sentence for the proposition that the OFTI Group was to "pay itself". Pl. Ex. 11. How can anyone seriously advocate that position? Subparagraph G must be read as a whole. The paragraph provides that for the first three (3) years of the existence of the Investment Notes, the OFTI Group would agree to make any payments due for interest or principal demanded as a result of an assignment. Gleaned from the document language itself, and looking at the parties' actions at about that time, it was clearly the parties' intentions that the Notes themselves were going to be assigned as collateral to various parties so the paper mill could be sold as a free and clear asset. Read together, the first and second sentences of paragraph G provide that the OFTI Group was to ensure that Tak Investments would be held harmless from any claims against those Notes. It also provided that if the Notes were deemed "cancelled" by the OFTI Group, at any time after the third anniversary of the date of the Investment Notes, the OFTI Group would receive 27% ownership interest in Tak Investments LLC. The Court has already ruled that Tak Investments could not issue a membership interest in itself. Doc. 40. It is clear, when reading subparagraph G in its entirety, that the parties anticipated that there would be assignments for the purpose of collateral, of the four Notes. It is also clear that the OFTI Group would hold Tak Investments harmless from any claims against those pledges. It is clear that that hold harmless language would only last for a period of three (3) years. It is also clear that after the third anniversary of the execution date, the hold harmless was to be terminated. The OFTI Group had the right to cancel the Notes and receive a 27% ownership interest instead of payment under the Notes at that time as well. It is also clear, that if there was a $315 million construction deal with Spirit Construction that the Notes themselves would be canceled, in their entirety, reflecting the far greater value and profit

to be had in the contemplated construction project. This logical progression makes commercial sense of the document and is entirely consistent with the parties' actions and agreements leading up to and following the transaction.

At the same time and place the Final Business Terms Agreement was signed, the four Promissory Notes were signed and the transfer of the mill was completed. The Promissory notes all called for a specific percentage of interest, a payment plan and a final payment date for each of the Notes. Pl. Ex.11. The Notes themselves also provided that the final payment was due on April 16, 2010. Pl. Ex. 11. Later, one of the Notes was replaced so as to foster additional borrowing. That Note is dated March 8, 2008 and was executed by and with the full knowledge and agreement of Sharad Tak when he signed off on the new Note and an assignment of collateral to Baylake Bank. Pl. Ex. 15.

On April 17, 2010, the Note in the amount of $4,400,000.00 was assigned to William Bain but was later, in August 2014, assigned back to Tissue Technology LLC. PL. Ex. 12. It should further be noted that the $5 million Note was assigned as collateral to VHC Inc. which was approved by Sharad Tak. PL. Ex. 13. Further, Associated Bank received an Unconditional Collateral Assignment of the $4 million Note which has now been satisfied.[1] PL. Ex. 14. The $4,400,000.00 Note was assigned as collateral to Baylake Bank which assignment was approved by Sharad Tak on March 12, 2008. Pl. Ex 15. Ultimately, no payments were made under the four Notes to either the plaintiffs or any of the pledgees and demands to pay were made by the Plaintiffs of Tak Investments, initially for the 27% and then later for payment under the Notes.

[1] At the demand of the Defendant, first raised in its Final Pretrial Report, the Plaintiffs were able to produce three original Notes being held as collateral at the time of trial. The fourth original Note, held by Associated Bank, has now been returned to the Plaintiff and is in the custody of this writer and is available for inspection at any time. In all, the Plaintiffs have produced the four Notes consistent with Mr. Van Den Heuvel's testimony that all four were pledged as collateral.

Trial Tr. 145-146 Sept 18, 2017; Pl. Ex. 20. Mr. Tak refused to accept cancellation of the Notes so as to permit the transfer of the 27% interest in any event. Trial Tr.27-38 Sept 19, 2017; Pl. Ex. 21.

Principal and interest due on the four Notes currently at issue is $33,583,968.00 as of September 1, 2017. Trial Tr.207-208, Sept 18, 2017. As of December 1, 2017, the principal and interest due, utilizing basic interest calculations, is $34,191,050.00. Testimony was adduced at trial that there are two other cases currently pending, both in Oconto County Circuit Court. Both of those cases emanate from this same transaction. The first, regarding the Sales and Marketing Agreement, is before the Court on competing Motions for Summary Judgment, and has been fully briefed by the parties, awaiting the decision of the Honorable Jay Conley, Circuit Court Judge. *Tissue Technology, LLC v. ST Paper, LLC,* Oconto County Case No. 14CV156. The other financial vehicles emanating from the transaction involve four Promissory Notes, the principle value of which was $30,589,000.00 at the time of closing. Those "Seller Notes" are now due and remain unpaid. That lawsuit, too, is before Hon. Jay Conley in Oconto County. *Oconto Falls Tissue, Inc. v. ST Paper, LLC* Oconto County Case No. 17CV104. In all, Sharad Tak and his companies have not honored any of their agreements with Mr. Van Den Heuvel's companies, thereby placing Mr. Van Den Heuvel in a precarious financial position.

MR. TAK'S OWN ACTIONS PROVE HIS TESTIMONY WAS FALSE

On and before April 16, 2007, companies controlled by Sharad Tak, primarily, Tak Investments, LLC and ST Paper LLC, promised to pay Ronald Van Den Heuvel's companies, the plaintiffs herein, in various fashions, $16.4 million in "Investment Notes", $30,589,000.00 in "Seller Notes" and payments under the Sales & Marketing Agreement which currently has an unpaid balance somewhere in excess of $15 million and which engender monetary penalties

authorized under Wisconsin's Sales Commission statute, Wis. Stats. §134.93. At trial, it was the plaintiffs' intent to show that Sharad Tak reneged on his agreements, failed to tell the truth, and all the while, continued to lead people into believing that payment is about to come. The history we have presented to the Court regarding Mr. Tak's actions is no different. Subsequent to signing the Notes at issue here, Sharad Tak continued to do business with Mr. Van Den Heuvel in an attempt to obtain financing to complete the $315 million contemplated contract with Spirit Construction. He agreed to assign various notes as collateral. When Mr. Van Den Heuvel tried to obtain the 27% interest in Tak Investments, LLC, Mr. Tak refused to allow Mr. Van Den Heuvel to cancel the Notes. Pl. Ex.21. In follow-up to another provision of the Final Business Terms Agreement, Mr. Tak purportedly offered to give Mr. Van Den Heuvel 22% of the stock in his company. Pl. Ex. 22.

Mr. Tak continued to work with Mr. Van Den Heuvel regarding one of the four Notes, the $4.4 million loan. Mr. Tak acknowledged in an email of February 26, 2009 that the parties would try to obtain additional collateral for the $4.4 million Note that had already been pledged to Baylake Bank as collateral. Pl. Ex. 23. Mr. Tak sought out Ron Van Den Heuvel's business assistance at various points in their relationship. Pl. Ex.24 and 26. However, Mr. Tak falsely testified as to a rupture in his relationship with Mr. Van Den Heuvel regarding some dealings with Straubel Company of De Pere, though apparently he had worked all of this out on April 17, 2009 Pl. Ex. 25; Trial Tr.44-48, Sept 19, 2017. Yet, Mr. Tak claimed he could not do business with Mr. Van Den Heuvel after April 2009 because Mr. Van Den Heuvel had "taken money" of his. Trial Tr. 44-48, Sept 19, 2017. Curiously, these claims are made at the same time Sharad Tak's companies owed Mr. Van Den Heuvel's companies many millions of dollars. Mr. Tak, after that purported business rupture, in May 2009, had asked Mr. Van Den Heuvel to tour his

mill and advise as to various elements of the business. Pl. Ex. 26. Exhibit 26 reflects Mr. Van Den Heuvel's memo to Sharad Tak regarding his visit to the mill and some of the issues they had--particularly as it related to the outstanding Notes that are at issue in this case. Pl. Ex. 26; Trial Tr. 46, Sept 19, 2017. As of May 18, 2009, they continued to "work through" lending issues with Nicolet, Baylake and Johnson Banks. Trial Tr.46-48, Sept. 19, 2017. In September 2009, Sharad Tak sought out Mr. Van Den Heuvel's assistance in obtaining a bridge loan. Pl. Ex. 28.

Mr. Tak also told the Court that the mill was appraised in the area of $20 to $25 million by Goldman Sachs prior to closing. Trial Tr. 33-37 Sept. 19, 2017. Of course, Goldman Sachs' lending was $65 million. After he made this claim, Mr. Tak was then confronted with a copy of an appraisal done by Poyry that was completed before the transaction and which stated the appraised value as $130 million. Trial Tr. 33-37 Sept 19, 2017. This evidence is not offered to prove the truth of the matter asserted. Rather, it is offered to demonstrate the significant contempt exhibited by Mr. Tak toward the truth and toward the Court. No one in this world would believe for a minute that the pre-closing appraisal was $20 million, yet Goldman Sachs lent $65 million. Moreover, not a single document was offered to support Mr. Tak's claim, of course, because it was a complete fantasy.

The actions detailed in these various lines of questioning and the exhibits offered as to each, show that Mr. Tak had repeatedly acknowledged the viability of the loans at issue in this lawsuit. He continued to try to work with Mr. Van Den Heuvel to resolve manufacturing and lending issues, in fact discussing the very Investment Notes litigated in this Court while also denying the same. With that history, and particularly with the execution of documents permitting

the assignment of Notes as collateral, how can Sharad Tak say with a straight face that the Notes were of no value? He has lied to this Court in a brazen fashion. His testimony must be discounted and the Notes, his promise to pay, must be enforced.

APPLICABLE LEGAL ARGUMENTS

Promissory Notes are nothing more than contracts that are promises to pay a fixed sum. Wis. Stat. §409.102(q) defines promissory note:

> (q) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

Id. It is clear under Wisconsin law that a promissory note is assignable for the purpose of collateral. Wis. Stat. §402.210. Wis. Stat. §409.313 clearly endorses the precise procedures utilized in this case for the assignment of collateral. Here, the parties with security interests held the notes as collateral for the debts they secured. The testimony of David Van Den Heuvel, Brad Hutjens and Ron Van Den Heuvel said precisely that. Trial Tr. 9, 79-80,70-74 Sept 18, 2017; Pl. Ex. 14, 15, 16 and 17. Holding a Note as collateral is a fairly common practice, endorsed by the Uniform Commercial Code and a practice employed by the various parties who testified in this case. *See eg, Lanser v.. First Bank Fin. Ctr. (In re Voboril*, 568 B.R.797 USBS ED Wis., 2017). The Court stated:

> In *Stephenson v. First Union Nat'l Bank (In re Berry)*, 189 B.R. 82, 87 (Bankr. D.S.C. 1995), the court identified a number of factors relevant to determining whether an assignment is an absolute transfer of ownership that falls outside Article 9 and its perfection requirements or a grant of security that must be perfected. Generally, an assignment of accounts creates a security interest where: (1) the assignee retains a right to a deficiency on the debt; (2) the assignee acknowledges that his rights in the assigned property would be extinguished if the debt owed were to be paid through some other source; (3) the assignee must account to the assignor for any surplus received from the assignment over the

> amount of the debt; (4) the assignor's debt is not reduced on account of the assignment; or (5) the contract language itself expresses the intent that the assignment is only for security.

Id at 799. As stated by the witnesses, the collateral assignment was only meant to cover the debts owed and was intended only as security as is provided under the analysis outlined above. The assignment of the promissory notes herein was solely for collateral purposes. Trial Tr. 9, 79-80, 70-74 Sept 18, 2017; Pl. Ex. 14, 15, 16 and 17. There is no contrary testimony before the Court.

Throughout these proceedings, the Defendant has flailed away, trying to negate the meaning of its own contracts. Mr. Tak's deception has already been laid out above and his conduct is absolutely consistent with the astute observations of Judge Richard Posner as to the conduct of those trying to avoid contractual obligations:

> The formation or negotiation stage is pre-contractual, and here the duty is minimized. It is greater not only at the performance but also at the enforcement stage, which is also post contractual. A party who hokes up a phony defense to the performance of his contractual duties and then, when that defense fails (at some expense to the other party) tries on another defense for size can properly said to be acting in bad faith.

Market Street Associates Limited Partnership v. Frey, 941 F.2d 588 at 595 (7th Cir. 1991), *citing, Harbor Ins. Co. v. Continental Bank Corp.*, 922 F.2d 357 at 363 (7th Cir. 1990). Mr. Tak's conduct and testimony is entirely consistent with Judge Posner's observation—everything was just fine until it was time for Tak's performance and then, he acted in bad faith to try to avoid his company's obligation. The duty of good faith requires that each party to a contract will not do something to injure or destroy the rights of another party to that contract. *Metropolitan Ventures v.. GEA Assoc.*, 2006 WI 71, 291 Wis.2d 393, 717 N.W.2d 58. Mr. Tak's companies hold all right, title and interest in the Oconto Falls tissue mill. All of Mr. Van Den Heuvel's post

contractual rights have been destroyed by Mr. Tak and Defendant Tak Investments, LLC. The Plaintiffs have absolutely nothing to show for the promise to pay under the Investment Notes offered in consideration of the mill transfer.

The defense has continued to complain about lack of consideration. This issue has been briefed in the past. It is quite clear that there was significant consideration to support the Notes. The Notes themselves recite: "FOR VALUE RECEIVED" and by which the Makers acknowledge they received sufficient consideration. Pl. Ex. 11. The Notes in question were executed on the same day and as a part of the same transaction when the Oconto Falls tissue mill was transferred to ST Paper LLC which was owned by Tak Investments, LLC. Pl. Ex. 7, 8 and 11. In previous submissions to this Court, and as was testified at trial, it was pointed out that Mr. Van Den Heuvel and his companies had to satisfy certain liens and debts so that he could pass clear title which served as the basis for these Investment Notes. Trial Tr. 53-60, Sept 18, 2017. Mr. Van Den Heuvel and his companies incurred significant debt in exchange for these Notes and the Final Business Terms Agreement. Trial Tr. 53-60, Sept 18, 2017. In addition, the Notes were to be cancelled in the event the parties reached agreement for anticipated $315 million worth of construction with Spirit, one of the Van Den Heuvel family companies. Pl. Ex. 11. Mr. Van Den Heuvel also believed he was receiving security for these debts with the membership interests that were offered as part of the security for these debts. Trial Tr. 65-66, Sept 18, 2017.

In *Hattens Estate*, 233 Wis. 199 at 216, 288 N.W.2d 278 (1940) the Wisconsin Supreme Court held that any consideration is sufficient to support a simple contract. It is only when there is no consideration whatsoever that a contract can be negated. The Notes were created so as to ensure all debts were cleared so the sale of the assets could proceed. Ron Van Den Heuvel took on that debt upon Tak's assurance of payment through the Investment Notes. The Final Business

Terms Agreement, which is part and parcel of these four Notes, must be construed in a way that will make it a rational business instrument so as to effectuate what appears to have been the intention of the parties. *Borcherdt v. Wilk*, 156 Wis.2d 420 at 427, 456 N.W.2d 653 (Ct. App. 1990), *Bruns v. Rennebohm Drug Stores, Inc.*, 151 Wis.2d 88, 442 N.W.2d 591 (Ct. App. 1989). Sharad Tak would have the Final Business Terms Agreement and its references to the Investment Notes become a nullity. However, the law in Wisconsin is quite clear, that a contract, in this case the Final Business Terms Agreement and the four Notes, must be read so as to give the contracts meaning. Mr. Tak does not provide any information upon which this Court can rely to make sense of the Final Business Terms Agreement and the Notes. They are rational business instruments that effectuate the intentions of the parties. *Id.* However, and contrary to stated Wisconsin law, Mr. Tak takes the position that these documents are nullities and make no sense. Trial Tr. 28-29, Sept 19, 2017.

> So far as reasonably practicable it [a contract] should be given a construction which will make it a rational business instrument and will effectuate what appears to have been the intention of the parties. *Bitker & Gerner Co. v. Green Investment Co.*, 273 Wis.2d 116, 120 76 N.W.2d 5490, 552 (1956) (quoting *Waldo Bros. Co. v. Platt Contracting Co.*, 25 N.E.2d 770, 773 (Mass. 1940) (brackets added in *Bitker*)

Bruns v. Rennebohm Drug Stores, Inc., 151 Wis.2d 88, 94, 442 N.W.2d 591, 593 (Ct. App. 1989).

Sharad Tak's claim that the Final Business Terms Agreement makes no sense, so as to deem it unenforceable, obviates his input into the Court's determination of the meaning of the document. Courts must avoid illogical or unreasonable interpretations of contracts. *Estate of Ermenc v. American Family Mut. Ins. Co.*, 221 Wis.2nd 478 at 484, 585 N.W.2d 679 (Ct. App. 1998). *See also, Borchardt v. Wilk*, 156 Wis.2d 420 at 427, 456 N.W.2d 653 at 657 (Ct. App. 1990). The Final Business Terms Agreement, and the attending Investment Notes, must be read

to make business sense. The Plaintiffs have posited the only viable interpretation of those documents that makes business sense. Mr. Tak has forfeited his right in this regard. Not only should Mr. Tak's testimony be disregarded as disingenuous, deceitful and even criminal--his testimony as to the meaning of the documents is not consistent with the Wisconsin requirement that the documents must be read so as to make sense.

CONCLUSION

It is time for the Defendant's charade to end. Mr. Tak has lied to this Court in brazen fashion. He has tried in every way to avoid his legal obligations and promises. The Plaintiffs are entitled to judgment in this case as of December 1, 2017 in the amount of $ $34,191,050.00 along with actual attorney's fees as called for in the Notes. It is respectfully requested that the Court so order.

Dated this 3rd day of November, 2017.

TERSCHAN, STEINLE, HODAN
& GANZER, LTD.
ATTORNEYS FOR PLAINTIFFS,

BY: /S/ MICHAEL J. GANZER
MICHAEL J. GANZER
STATE BAR NO. 1005631

P. O. ADDRESS:
309 NORTH WATER STREET
SUITE 215
MILWAUKEE, WI 53202
414-258-1010