

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 then 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.

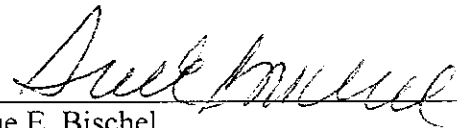
Plaintiffs' counsel is correct that Mr. Van Den Heuvel's brief is defective and in noncompliance with the Briefing Order in several respects. It was filed a few days late and does not comply with the briefing format. Nevertheless, the Briefing Order indicates that noncompliance may be the basis for imposition 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