

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.,

Case No. 14-C-1203

Plaintiffs,

v.

TAK INVESTMENTS, LLC,

Defendant.

**TAK INVESTMENTS, LLC'S AMENDED AFFIRMATIVE DEFENSES
AND COUNTERCLAIM**

Tak Investments, LLC ("Tak Investments"), by and through its attorneys, Godfrey & Kahn, S.C., submits this Amended Affirmative Defense and Counterclaim as directed by the Court in its Decision and Order of Dismissal dated March 19, 2018 [ECF No. 94] and pursuant to Rule 15 of the Federal Rules of Civil Procedure.

AMENDED AFFIRMATIVE DEFENSES

In addition to its affirmative defenses asserted in its original Answer and Affirmative Defenses to Amended Complaint [ECF No. 52], Tak Investments alleges the following:

1. The relief the Plaintiffs seek in enforcing the four notes (the "Investment Notes") at issue in the Amended Complaint is barred by the Final Business Terms Agreement (the "FBTA"). Specifically, Paragraph 2(G) of the FBTA states:

Through the third anniversary of the date of each Investment Note, the OFTI Group agrees to pay any payments due for interest or principal required per the terms of the Investment Notes. Each member of the OFTI Group jointly and severally agrees to indemnify [Tak Investments] and to hold it harmless from and against any and all damages, losses, deficiencies, actions, demands, judgments, fines, fees, costs and expenses, including,

without limitation, attorneys' fees, of or against [Tak Investments] resulting from the OFTI[] Group's failure to make such payments, which shall include, without limitation, any claims made by any current or future holder of such Investment Notes against [Tak Investments] relating to such interest payments. If such Investment Notes are deemed cancelled by the OFTI Group after the third anniversary of the date of the Investment Notes, the OFTI Group shall receive an undiluted 27% ownership interest of the highest class in [Tak Investments] . . . ; provided however, if phase 2, as defined below, occurs after the transfer of ownership interest and prior to the tenth anniversary of the date of the Investment Notes, the OFTI Group shall return any ownership interests received from the Investment Notes.

(ECF No. 49-1 at 2.) In addition, Paragraph 2(I) of the FBTA provides:

Each member of the OFTI Group jointly and severally agrees to indemnify [Tak] Investments and to hold it harmless from and against any and all damages, losses, deficiencies, actions, demands, judgments, fines, fees, costs and expenses, including, without limitation, attorneys' fees, or or against Investments resulting from enforcement of the Investment Notes by any member of the OFTI Group (other than the enforcement of the pledge described above), or any enforcement of or other claims made [sic] any other current or future holder of such Investment Notes against [Tak] Investments relating to the Investments Notes.

(ECF No. 49-1 at 3.)

In the Amended Complaint, Plaintiffs seek to enforce the very Investment Notes for which they have promised to indemnify Tak Investments against any liability and to hold it harmless from any attempts to enforce the Investment Notes by any party, including themselves. In the unequivocal terms of the FBTA, Plaintiff Tissue Products Technology Corporation, the payee on the Investment Notes, along with the other three Plaintiffs, agreed that they would indemnify and hold harmless Tak Investments, the payor on the notes, for all principal and interest payments that came due over the three-year term of the Investment Notes. The Plaintiffs also agreed that they would indemnify Tak Investments from any attempts to enforce the Investment Notes by any of the Plaintiffs or their successors in interest. Accordingly, the relief Plaintiffs seek in the Amended Complaint is barred by the indemnity provisions of the FBTA.

COUNTERCLAIM

Tak Investments, LLC (“Tak Investments”), by and through its attorneys, Godfrey & Kahn, S.C., as and for its counterclaim against Plaintiffs, alleges as follows:

1. Tak Investments is a Delaware limited liability company with its principal place of business at 9201 Corporate Blvd., Suite 420, Rockville, Maryland 20850. The two members of Tak Investments are Sharad Tak, a Florida resident, and Mahindra Tak, a Maryland resident.

2. Partners Concepts Development, Inc. (“PCDI”) is a Wisconsin corporation with its principal place of business at 2077B Lawrence Drive, De Pere, Wisconsin 54115. PCDI’s registered agent is Ronald H. Van Den Heuvel, with an address of 2077B Lawrence Drive, De Pere, Wisconsin 54115.

3. Tissue Technology, LLC (“Tissue Technology”) is a Wisconsin limited liability company with its principal place of business at 2077B Lawrence Drive, De Pere, Wisconsin 54115. Tissue Technology’s registered agent is Ronald H. Van Den Heuvel, with an address of 2077B Lawrence Drive, De Pere, Wisconsin 54115.

4. Tissue Products Technology Corp. (“Tissue Products”) is a Wisconsin corporation with its principal place of business at 2077B Lawrence Drive, De Pere, Wisconsin 54115. Tissue Products’ registered agent is Ronald H. Van Den Heuvel, with an address of 2077B Lawrence Drive, De Pere, Wisconsin 54115.

5. Oconto Falls Tissue, Inc. (“OFTI”) is a Wisconsin corporation with its principal place of business at 2077B Lawrence Drive, De Pere, Wisconsin 54115. OFTI’s registered agent is Ronald H. Van Den Heuvel, with an address of 2077B Lawrence Drive, De Pere, Wisconsin 54115.

6. This Court has supplemental and ancillary jurisdiction pursuant to 28 U.S.C. § 1367(a).

7. On or around April 16, 2007, Tak Investments, on the one side, and PCDI, Tissue Technology, OFTI and Tissue Products, collectively, on the other side, entered into a written agreement entitled “Final Business Terms Agreement” (“FBTA”). A copy of the FBTA is attached to the Plaintiffs’ Amended Complaint [ECF No. 49] and incorporated by reference.

8. Venue in this district is proper pursuant to the FBTA, under which the parties agreed that “venue for any disputes shall be a court of competent jurisdiction within the State of Wisconsin.”

9. Paragraph 2(I) of the FBTA provides:

Each member of the OFTI Group jointly and severally agrees to indemnify [Tak] Investments and to hold it harmless from and against any and all damages, losses, deficiencies, actions, demands, judgments, fines, fees, costs and expenses, including, without limitation, attorneys’ fees, or or against Investments resulting from enforcement of the Investment Notes by any member of the OFTI Group (other than the enforcement of the pledge described above), or any enforcement of or other claims made [sic] any other current or future holder of such Investment Notes against [Tak] Investments relating to the Investments Notes.

(ECF No. 49-1 at 3.)

10. On January 9, 2017, Plaintiffs filed a motion requesting leave to file an Amended Complaint seeking payment from Tak Investments pursuant to the four Investment Notes referenced in the FBTA and abandoning all other claims against Tak Investments. (ECF No. 43.)

11. The Court granted the Plaintiffs leave to file the Amended Complaint, and the Amended Complaint was filed on April 3, 2017. (ECF No. 49.)

12. Tak Investments incurred attorneys’ fees, costs and other expenses in defending against the efforts to enforce the four Investment Notes from, at the latest, the date of the

Plaintiffs' first attempt to enforce the Investment Notes through their filing of the motion on January 9, 2017, up to and through the Court's dismissal of the Plaintiffs' claims after a trial to the Court.

13. Tak Investments is entitled to a judgment for indemnification for its attorneys' fees, costs and expenses incurred resulting from the Plaintiffs' attempt to enforce the Investment Notes.

WHEREFORE, Tak Investments respectfully requests the following relief:

1. Judgment in Tak Investments favor on all claims pled against it;
2. Judgment granting Tak Investments all amounts owed it under its Counterclaim;
3. Judgment granting Tak Investments its attorneys' fees and costs; and
4. Any other and further relief as the Court deems appropriate and just.

Dated this 29th day of March, 2018.

By: s/ Jonathan T. Smies
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