

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

TISSUE TECHNOLOGY, LLC,)	CASE NO: 1:14-CV-01203-WCG
ET AL.,)	
)	CIVIL
Plaintiffs,)	
)	Green Bay, Wisconsin
vs.)	
)	Monday, September 18, 2017
TAK INVESTMENTS, LLC, ET AL.,)	(9:02 a.m. to 12:05 p.m.)
)	(1:20 p.m. to 4:27 p.m.)
Defendants.)	

COURT TRIAL - DAY 1

BEFORE THE HONORABLE WILLIAM C. GRIESBACH,
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiffs:	MICHAEL J. GANZER, ESQ. Terschan Steinle Hodan & Ganzer, Ltd. 309 N. Water Street, Suite 215 Milwaukee, WI 53202-5713
For Defendants:	JONATHAN T. SMIES, ESQ. Godfrey & Kahn, SC 200 S. Washington Street, Suite 100 Green Bay, WI 54307-3067
Court Reporter:	Digital Recording
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1 Fabs out of Wrightstown and has Best Build, which is home
2 building, and then we own approximately 400 (indiscernible).

3 Q Getting down to the main reason you're here, you've
4 brought some original notes with you today, promissory notes,
5 is that correct?

6 A Yes.

7 Q And you hold those two originals, is that right?

8 A Yes.

9 Q They are sitting in front of you, correct?

10 A Yes.

11 MR. GANZER: And, your Honor, for the record we do
12 have copies of these notes in our exhibits. Is there any need
13 to mark the originals?

14 THE COURT: No, but identify them by exhibit numbers,
15 please.

16 MR. GANZER: I will.

17 BY MR. GANZER:

18 Q And the first note that you have there in front of you,
19 what amount is that for?

20 A Three million dollars.

21 Q And we can find that on Exhibit 11. The note is dated
22 April 16th, 2007, is that correct?

23 A Yes.

24 Q And why do you hold that note?

25 A As a payment for my brother, Ron, he owed us a bunch of

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1 money.

2 Q Okay. Is it fair to say that the -- you are holding that
3 as collateral for payment of the money that your brother and
4 his companies own you -- owe to you?

5 A Yes.

6 THE COURT: Now you've identified it as Exhibit 11?

7 MR. GANZER: Yes, your Honor, it's in the back.

8 There are four promissory notes on 11.

9 THE COURT: Oh, I see, so 11 is the Final Business
10 Terms Agreement and then the promissory notes attached to it?

11 MR. GANZER: Correct. The truth is, Judge, there was
12 a clerical error that we had all of this stuff ready and we
13 forgot the notes so with Mr. Smies' approval we put those in
14 the back of 11, so.

15 THE COURT: Okay. And just so, you know, you agree,
16 Mr. Smies, that the -- the actual original note he's looking at
17 is the same as the -- one of the notes behind Exhibit 11?

18 MR. SMIES: I agree, your Honor, that the originals
19 held by the witness are reflected in copies in Exhibit 11A, or
20 11, how they're referring to it.

21 THE COURT: Okay. 11A is -- are the four notes, all
22 as one exhibit 11A?

23 MR. SMIES: That's correct.

24 MR. GANZER: That's right.

25 THE COURT: Okay.

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1 BY MR. GANZER:

2 Q And you also have with that note a consent to pledge of
3 the promissory note, is that correct?

4 A Yes.

5 Q And that is an original document?

6 A Yes.

7 Q And that is Exhibit --

8 MR. GANZER: That one, your Honor, is an expert
9 exhibit we have not pre-marked. It is identical, though, to
10 Exhibit 13.

11 Q And you have also a 5 million dollar note with you, is
12 that correct?

13 A Yes.

14 MR. GANZER: And that is also at Exhibit 11, your
15 Honor.

16 Q And just like the previous note you are holding that as
17 collateral for money that is owed to you by your brother, Ron,
18 in his companies, is that correct?

19 A Yes.

20 Q And you also have an original consent to pledge a
21 promissory note with respect to that, is that true?

22 A Yes.

23 Q And you continue to hold that original, is that right?

24 A Yes.

25 Q Did you hold any other original promissory notes that were

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David Van Den Heuvel - Cross / By Mr. Smies

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1 Let me ask you this, is it correct to say that you
2 bailed your brother, Ron, out financially?

3 A No.

4 Q Okay. Have you in any way, or has VHC, in any way,
5 covered any of his debts?

6 A Yes.

7 Q And what is the extent of the indebtedness you believe Ron
8 or his companies has to VHC?

9 A I think 50 million dollars.

10 Q And when did -- when did that debt first begin to accrue?

11 A '98.

12 Q So as you sit here today it's your view, at least, that
13 Mr. Van Den Heuvel or his companies in some way owe you or more
14 precisely VHC 150 million dollars approximately?

15 A Roughly.

16 Q Do your companies owe Mr. Van Den Heuvel anything?

17 A We do not. He does have some shares at VHC, but they're
18 pledged to us against his personal debt that he owes us. The
19 personal debt is more than the value of the shares.

20 Q What are the value of the shares?

21 A A million 7.

22 THE COURT: Say that again?

23 THE WITNESS: I think a million 7.

24 THE COURT: Okay.

25 //

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David Van Den Heuvel - Cross / By Mr. Smies

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1 BY MR. SMIES:

2 Q And you've already taken a look at Exhibit 1003 which
3 contains the two consents to pledge what we've been calling
4 investment notes, one in the amount of 5 million and one in the
5 amount of 3 million.

6 Do you view these two notes, the originals that you
7 possess, as being assigned to VHC?

8 A They're pledged to us.

9 Q And what's the difference in your mind?

10 A In my mind assigned would be that it's my note; a pledge
11 would be that if Ron would have paid back all the debts he owed
12 us we'd give it back to him.

13 Q Do you think that if there were ever any collection under
14 either of these notes you would have the right to be paid
15 first?

16 A Absolutely.

17 Q And that would be 8 million dollars?

18 A Yes.

19 Q And do these notes then secure other indebtedness beyond
20 that 8 million?

21 A No.

22 Q Mr. Van Den Heuvel, you have that smaller binder if it's
23 still in front of you? If you'd take a look, yes, please, at
24 Exhibit 1002, it's a one-page document. Yeah, there.

25 Do you recognize this document?

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David Van Den Heuvel - Cross / By Mr. Smies

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1 A Yes, I do.

2 Q And what is this, for the Court?

3 A This is them eight notes that I had mentioned earlier, the
4 four I call sellers notes and the four ST notes.

5 Q And this is a document that came from your company, VHC.

6 Do you see a column there where it says "assigned
7 to?"

8 A I do.

9 Q And with the 5 million dollar note and the 3 million
10 dollar note does it indicate that those two notes are assigned
11 to VHC?

12 A Yes, it does.

13 Q Mr. Van Den Heuvel, VHC never took any action to transfer
14 these two notes back to Mr. Van -- your brother or any of his
15 companies, did it?

16 A No.

17 Q So, again, your view and reflected in the fact that you
18 actually brought with you the two original prom -- the two
19 original investment notes is that these are currently held by
20 VHC?

21 A Yes.

22 Q Isn't it true that VHC finds itself in a matter in the US
23 Tax Court concerning debt associated with your brother?

24 A Yes.

25 Q Can you explain that for us?

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1 DIRECT EXAMINATION

2 BY MR. GANZER:

3 Q How are you employed?

4 A I'm employed by Nicolet National Bank.

5 Q And you've been asked to bring an original note here
6 today. Is that correct?

7 A Correct.

8 Q You've brought that --

9 A Yes.

10 Q -- and you would agree that he has showed you the original
11 note?12 A Yeah, I would agree it's the original -- excuse me, of the
13 2008 note, the 4.4 million dollar --

14 Q Right.

15 A -- note.

16 Q I'm going to have him verify that Exhibit.

17 (Pause)

18 Q You have some exhibits here in front of you.

19 A Okay.

20 Q And what we want to do is to compare Exhibit 15. At the
21 back is a note and is that a copy of the original you brought
22 here today?

23 A It appears so. Yes.

24 Q And you're holding that note as collateral. Is that
25 correct?

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Hutjens - Cross / By Mr. Smies

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1 A Correct.

2 Q And how is it that your bank ended up holding that note?

3 A Baylake Bank merged into Nicolet National Bank in early
4 2016.

5 Q And you had -- and Baylake Bank had received that as
6 collateral and it just continued to be held by now Nicolet. Is
7 that correct?

8 A Yes.

9 MR. GANZER: No further questions of this witness.

10 THE COURT: You may proceed.

11 MR. SMIES: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. SMIES:

14 Q Mr. Hutjens, you have a smaller binder in front of you
15 there. Please turn in that binder to Exhibits beginning with
16 10-12 through 10-15.

17 A Okay.

18 Q And those four exhibits, are those notes made in favor of
19 Baylake Bank?

20 A All the tabs?

21 Q Yes, 10-12, 10-13 --

22 A Okay.

23 Q -- 10-14, and 10-15.

24 A Yes.

25 Q And do all four of these notes reflect indebtedness of

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Hutjens - Cross / By Mr. Smies

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1 Ron or companies affiliated with him to Baylake Bank?

2 A Yes.

3 Q I'd like you to jump back to Exhibit 15 and before I do
4 though, does any of this debt remain?

5 A Yes.

6 Q Now please look at Exhibit 15 in the other binder.

7 A Fifteen in the other binder?

8 Q Correct.

9 A Okay.

10 Q You see there a document, it says, "Baylake Bank
11 Assignments of Note" and it's dated March 12th, 2008. It's
12 kind of hard to read, but do you see that?

13 A Yes.

14 Q And this then reflects the assignment of that original
15 note you produced earlier from, let's make sure I get the right
16 entity here, Tissue Technology, LLC as an assignor to Baylake
17 Bank. Is that correct?

18 A Yes.

19 Q And does this then secure the indebtedness we talked about
20 earlier reflected in Exhibits 10-12 through 10-15?

21 A Yes, it does.

22 Q Mr. Hutjens, please now flip ahead to Exhibit 17. It's in
23 the same binder, the larger binder.

24 A Okay.

25 Q You'll see another document there. It says, "Baylake Bank

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1 Assignment of Note." This one's a little bit more legible.

2 It's dated December 28th, 2009. Does this also reflect an
3 additional assignment, if you will, from Tissue Technology to
4 Baylake of that -4.4 million-dollar note we discussed earlier?

5 A Yes.

6 Q And same question with regard to the indebtedness we spoke
7 of earlier, does this secure that existing debt?

8 A Yes.

9 Q Is it -- is this note then still assigned to Baylake Bank
10 as we sit here today?

11 A Yes, it is.

12 MR. SMIES: That's all I have for this witness, Your
13 Honor.

14 THE COURT: Okay. Anything else?

15 MR. GANZER: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. GANZER:

18 Q It's assigned as collateral, it's not an outside -- an
19 outright assignment, correct?

20 A It's assigned as collateral.

21 Q Very good. Thank you.

22 THE COURT: Thank you, Mr. Hutjens. You may step
23 down.

24 MR. GANZER: Your Honor, is he free to go?

25 THE COURT: Yes. He's free to go.

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Ronald Van Den Heuvel - Cross / By Mr. Smies

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1 says, "Associated Bank." The debtor is, "Partners Concepts
2 Development," various versions of that name. And then if you
3 go to the second page, the entry you're referring to, I think,
4 is the termination of February 28, 2017; is that right?

5 A That's correct.

6 Q So it wasn't until February 28, 2017, that Associated Bank
7 at least filed a document with the state indicating they were
8 releasing a lien; is that fair?

9 A That's correct.

10 Q They didn't, though, at that time send you the original
11 note or any other document?

12 A No, they did not.

13 Q And that's how many years after the final payment was due
14 under the investment notes? Would you dispute that it's nearly
15 seven years after the April 16, 2010, maturity date?

16 A Mr. Smies --

17 Q Smies.

18 A Smies. I'm sorry.

19 Q That's all right.

20 A I apologize. Mr. Smies, I got my butt handed to me
21 financially over 2010 to 2007 [sic]; sold all my houses; sold
22 my airplane; sold my stock; a very difficult time. Okay. My
23 assets are the notes and the monies receivable from ST Paper.
24 I sold \$155 million asset and I didn't get paid for it.

25 Q I have two follow-up questions for you based on that

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