



3. Sharad Tak is an individually-named defendant in this matter. In 2007, he was the Manager of ST Paper Holdings, LLC which is the Manager of ST Paper, LLC (“ST Paper”). *See* Declaration of Sharad K. Tak (ECF No. 41), filed November 27, 2017) (“**Exhibit 3**”), ¶ 3.

4. RNS Servicing, Inc., is an LLC located in Illinois, with two members: Stephen Csar and Rebecca Elli. (Exhibit 1, ¶ 4).

5. ST Paper is a Delaware limited liability company with its principal place of business in the State of Wisconsin. *See* Exhibit 3, ¶ 3.

## **II. IMPORTANT NON-PARTIES**

6. IFC was an Illinois corporation which provided, among other services, equipment lease financing to commercial and industrial entities throughout the United States. IFC filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on or about July 27, 2009. (Exhibit 1, ¶ 20).

7. Marc Langs began working for IFC in 2003, in corporate development. By 2006, he became CFO, and he remained in that role until 2009. (Transcript of December 18, 2018 Deposition of Marc Langs (“**Exhibit 4**”), 10:15-18, 11:4-5). Langs now works as a consultant for RNS in relation to various contracts of IFC’s acquired by RNS. (Exhibit 4, 6:6-9).

8. RNS’s members are Steve Csar and Rebecca Elli, both of whom were formerly affiliated with IFC. Csar worked on nonrecourse and middle market credit transactions, and was part of IFC’s credit committee. Rebecca Elli served as general counsel for IFC. (Exhibit 4, 25:4-19).

9. Ron Van Den Heuvel is Steve VDH’s brother. He ran several businesses in the paper manufacturing industry, not affiliated with Spirit Construction, including Tissue Products

Technology Corp. (“TPTC”), Partners Concepts Development, Inc., (“PCDI”), and Eco-Fibre, Inc. (“Eco-Fibre”). (Exhibit 2, 31:14-32:24).

### **III. THE FORTRESS TRANSACTION**

10. On June 10, 2005, IFC, as lessor, entered into Master Equipment Lease Agreement No. 801056 (“Master Lease No. 801056”) with TPTC, PCDI, and Oconto Falls, jointly and severally, as co-lessees, for the lease of certain equipment and attachments used for tissue paper manufacturing at the Oconto Falls tissue paper plant in Oconto Falls, Wisconsin. (Exhibit 1, ¶ 23; Exhibit 1, at Exh. C, ¶ A.)

11. IFC thereafter sold, assigned, and transferred to Fortress rights to certain specified lease payments related to Master Lease No. 801056 pursuant to a “Lease Agreement Rights Purchase Agreement” between IFC and Fortress. (Exhibit 1, ¶ 24; Exhibit 1, at Exh. C, ¶ A.)

12. On September 30, 2005, IFC, as lessor, entered into Master Lease Agreement No. 801070 (“Master Lease No. 801070”) with TPTC and Eco-Fibre, jointly and severally, as co-lessees, for the lease of sixteen industrial after-dryers (the “After-Dryers”), along with related equipment and attachments (the “After-Dryer Equipment”). (Exhibit 1, ¶ 25.)

13. Ron, PCDI, and Oconto Falls each executed an unconditional written guaranty of TPTC’s and Eco-Fibre’s obligations under Master Lease No. 801070 and attached Lease Schedules (the “Master Lease No. 801070 Guaranties”). (Exhibit 1, ¶ 26.)

14. By October 2005, it had become apparent to IFC, Fortress, and GWS Bank that TPTC, PCDI, Oconto Falls, and Eco-Fibre—all companies owned and operated by Ron—would default on Master Lease No. 801056 and Master Lease No. 801070. (Exhibit 1, ¶ 28.)

#### **IV. THE FORTRESS WORKOUT**

15. Ron Van Den Heuvel made various proposals to Fortress and IFC to avoid a foreclosure and possible takeover of the Oconto Falls Tissue plant. (Exhibit 4, 40:9-23; 42:10-20).

16. These proposals involved the construction or upgrade of tissue paper plants in Wisconsin, Maryland, and Utah, to be owned or co-owned by Sharad Tak or his companies. Under these proposals, Spirit would be hired to perform construction work, and Ron Van Den Heuvel would be designated as a subcontractor for certain tasks, and would use this revenue to repay his obligations to IFC and Fortress. (Exhibit 4, 43:17-47:1; Transcript of the Deposition of Steven Van Den Heuvel, IFC Credit Corp. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill., April 8, 2008) (“**Exhibit 5**”), 107:16-24)

#### **V. RON VDH’S DEFAULT AND IFC LAWSUIT I**

17. In 2006, TPTC, PCDI, Oconto Falls, and Eco-Fibre defaulted under the terms of Master Lease No. 801056 and Master Lease No. 801070. TPTC, PCDI, Oconto Falls, and Eco-Fibre failed to cure their defaults. (Exhibit 1, ¶ 36.)

18. On August 25, 2006, IFC filed a lawsuit in the United States District Court for the Northern District of Illinois, Eastern Division, against TPTC and Eco-Fibre (as lessees) and Ron, PCDI, and Oconto Falls (as guarantors) (collectively, the “Ron Defendants”), Case No. 06 CV 4618 (the “IFC Lawsuit I”), asserting claims for breach of Master Lease No. 801070 and the related Lease Schedules; for breach of the Master Lease No. 801070 Guaranties; and for injunctive relief for return of the After-Dryer Equipment. (Exhibit 1, ¶ 37.)

## **VI. IFC LAWSUIT I SETTLEMENT DISCUSSIONS**

19. On November 14, 2006, Spirit and ST Paper I executed four EPC Contracts. These four EPC Contracts were all executed by Steve VDH, on behalf of Spirit, as Contractor, and Sharad Tak, on behalf of ST Paper I, as Owner. (Tak Decl, ¶ 6; Exhibit 4, 178:11-179:7).

20. On December 22, 2006, in furtherance of a possible settlement agreement, IFC and the Ron defendants executed a “Memorandum of Understanding for Equipment Purchase Agreement and Lease Pay-Off” (the “MOU”). *See* Exhibit 1, ¶ 49; Exhibit 1, at Exh. C.

21. In addition to a full payoff to Fortress and GWS Bank and a partial payoff to IFC, the December 22, 2006 MOU contemplated the execution of a new Master Lease whereby IFC would lease the sixteen After-Dryers to the Ron entities in exchange for \$3.4 million dollars, to be paid back to IFC in installments. *See* Exhibit 1, at Exh. C, Sec. 2.B.

22. The MOU also contemplated assignment of the Ron Defendants’ “rights to receive payments under the Fixed Price Engineering, Procurement and Construction Agreement dated as of August 4, 2006 between ST Paper, LLC and Spirit Construction Services, Inc. up to \$340,000 per month and in an aggregate amount of \$3,400,000.” *See* Exhibit 1, at Exh. C, Sec. 2.B.iv.

23. On April 13, 2007, IFC and the Ron Defendants entered into a Settlement Agreement, effective March 28, 2007, resolving all claims then pending by and among IFC and the Ron Defendants in the IFC Lawsuit I as well as any potential claims IFC and Fortress may have had against the Ron Defendants with respect to the default on Master Lease No. 801056 (the “Settlement Agreement”). Pursuant to the Settlement Agreement, the Ron Defendants agreed to pay a Total Settlement Amount of approximately \$23,400,000 (the “Total Settlement Amount”). (Exhibit 1, ¶ 51; Exhibit 1, at Exh. D).

24. As part of the Settlement Agreement, IFC agreed that the remaining \$3.4 million of the Total Settlement Amount could be paid by PCDI and TPTC to IFC in ten consecutive monthly installments pursuant to a new Master Lease Agreement (“Master Lease No. 801109”), whereby IFC leased ten of the After-Dryers previously leased under Master Lease No. 801070 to PCDI and TPTC, as described in attached Lease Schedules, with amendments. (Exhibit 1 ¶ 53; Exhibit 1 at Exh. E.)

25. Ron also executed an unconditional written guaranty of PCDI’s and TPTC’s obligations under the new Master Lease No. 801109 and attached Lease Schedules, with amendments (the “Master Lease No. 801109 Guaranty”). (Exhibit 1, ¶ 54.)

26. As a condition for IFC entering into the Settlement Agreement and new master Lease No. 801109, TPTC and PCDI executed a Continuing Pledge Agreement dated March 28, 2007 (the “Continuing Pledge Agreement”). Pursuant to the Continuing Pledge Agreement, TPTC and PCDI pledged and assigned to IFC their right to receive \$3,400,000 in subcontractor payments that the two companies were to receive from Spirit in connection with the four, fully executed EPC Contracts related to the four separate tissue paper plant construction projects as collateral for their indebtedness and lease obligations under the Settlement Agreement and new Master Lease No. 801109. (Exhibit 1, ¶ 55; Exhibit 1, at Exh. F.)

27. On April 18, 2007, in connection with the Settlement Agreement, new Master Lease No. 801109, and Continuing Pledge Agreement, PCDI and TPTC also borrowed an additional \$440,000 from IFC pursuant to a Master Amendment Agreement. (the “Master Amendment Agreement”). The Master Amendment Agreement made explicit reference to and amended the Continuing Pledge Agreement by increasing the amount of subcontractor payments

pledged to IFC as collateral from \$3,400,000 to \$3,902,220. (Exhibit 1, ¶ 56; Exhibit 1, at Exh. G.)

28. Pursuant to the Continuing Pledge Agreement (as amended by the Master Amendment Agreement), TPTC and PCDI pledged and assigned any and all rights to payment of up to \$390,222 per month and payments in the aggregate of \$3,902,220. The Continuing Pledge Agreement further stated that “IFC shall have the first and paramount rights to receive payment under those contracts.” (Exhibit 1 ¶ 57; Exhibit 1 at Exh. F, Sec. 1).

## **VII. SPIRIT’S ALLEGED REPRESENTATIONS AS PART OF IFC LAWSUIT I SETTLEMENT**

29. On or about March 28, 2007, Steve VDH and Spirit executed two copies<sup>2</sup> of Schedule B to the Continuing Pledge Agreement entitled “Acknowledgment and Consent to Assignment” (“Acknowledgment and Consent”) which stated that TPTC and PCDI “are subcontractors in connection with the [EPC Contracts] and that substantial sums of money in excess of \$3,902,220 will become owing to them pursuant to said contracts.” *See* Exhibit 1, at Exh. F, Sch. B.

30. The Acknowledgment and Consent stated as follows:

We confirm that after the date hereof and until receipt by us of written notice to the contrary from you, we will pay all amounts due or to become due by us to TPTC or PCDI, up to \$390,222 per month and in the aggregate amount of \$3,900,222 under the EPC Contracts to you by making payments to you at 8700 N. Waukegan Road, Suite 100, Morton Grove, IL 60053, or pursuant to such wire transfer instructions as you may from time to time provide to us.

**We confirm that the terms of the EPC Contracts remain in full force and effect and that Tissue Products Technology Corporation and Partners Concepts Development, Inc. are subcontractors there under** and that neither we nor TPTC or PCDI are presently in breach of the terms of the EPC Contracts.

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<sup>2</sup> The second of these two copies was for a different, lower amount, but was otherwise identical to the second one. For purposes of this Motion, these differences are not relevant.

See Exhibit 1, ¶ 59; Exhibit 1, at Exh. F, Sch. B (emphasis added).

### **VIII. TAK'S ALLEGED REPRESENTATIONS AS PART OF IFC LAWSUIT I SETTLEMENT**

31. Plaintiff alleges that Tak met with Ron and IFC's CEO, Rudolph Trebels, and CFO, Marc Langs, at IFC's offices in Morton Grove, Illinois in late March or early April of 2007. (Exhibit 1, ¶ 60).

32. At that meeting, Tak is alleged to have made the following representations to IFC which IFC relied on in order to enter into the Settlement Agreement, Master Lease No. 801109, and Master Amendment Agreement. To wit:

a. Tak confirmed that the EPC Contracts had been executed by Steve VDH, on behalf of Spirit, as Contractor, and by Sharad, as Owner;

b. Tak confirmed that Ron's TPTC and PCDI (Ron's companies) would be used as subcontractors under the EPC Contracts;

c. Tak confirmed that he fully intended to build the four projects contemplated by the EPC Contracts;

d. Tak told IFC that due to confidentiality concerns, Spirit and Sharad could not allow IFC to review the four EPC Contracts; and

e. Tak confirmed that the four EPC Contracts were sufficient to secure financing for the projects contemplated.

(Exhibit 1, ¶ 61).

### **IX. PCDI AND TPTC DEFAULT AND IFC FILES IFC LAWSUIT II**

33. PCDI and TPTC never made any payments under the terms of the Settlement Agreement, and accordingly, defaulted almost immediately on their obligations under the Settlement Agreement. PCDI and TPTC failed to cure their defaults. (Exhibit 1, ¶ 63; Exhibit 4, 87:11-19).



34. On September 6, 2007, IFC filed a second lawsuit against the Ron Defendants and also against Spirit, alleging: (1) breach of the Settlement Agreement by all of the Ron Defendants; (2) breach of Master Lease No. 801109 by PCDI and TPTC; (3) breach of the Master Lease No. 801109 Guaranty by Ron, and requesting (4) a preliminary injunction prohibiting Spirit from transferring any money to PCDI or TPTC until the Ron Defendants' obligations under the Settlement Agreement, Master Lease No. 801109, and Master Amendment Agreement, and Continuing Pledge Agreement were paid to IFC in full. (Exhibit 1, ¶ 64.)

35. On April 8, 2008, as part of discovery in the IFC Lawsuit II, counsel for IFC took the deposition of Steve VDH. During the deposition, counsel for IFC showed Steve VDH some or all of the EPC contracts, and questioned him on specific terms. (*See*, e.g., Exhibit 5, 51:1-21; 107:16-24).

36. During that deposition, Steven VDH testified to the following:

a. As of that date, Spirit had been paid approximately \$9 to \$10 million under one of the EPC contracts, but neither PCDI or TPTC had served as a subcontractor or been paid any sum by Spirit (Exhibit 5, 52:16-24), nor had PCDI or TPTC been engaged under or paid any money under any of the other EPC contracts (Exhibit 5, 141:2-6).

b. Spirit had self-performed or used other contractors for certain engineering work that IFC claimed was to be done by Ron VDH under the contract. (Exhibit 5, 57:8-13).

c. The list of subcontractors in the EPC contract was a list of subcontractors that could have been used, not a list of those that had to be used by Spirit, or that Spirit necessarily intended to use. (Exhibit 5, 73:1-9)

d. Ron Van Den Heuvel had not been engaged in any work under the one EPC contract where there had been performance, and there was no plan at that point to engage him to perform any such work. (Exhibit 5, 100:10-13).

e. Steve VDH believed that as of March or April of 2007, IFC understood that the projects relative to the EPC contracts had not yet been funded. (Exhibit 5, 105:3-16).

37. On June 18, 2008, IFC's Chief Financial Officer, Marc Langs signed a sworn declaration in IFC Lawsuit II which stated in part:

IFC would not have agreed to allow PCDI and TPTC a ten-month payment schedule if we had known that the EPC Contracts were not going to be funded for many months (to our knowledge, the EPC Contracts are still not funded.) Nor would IFC have allowed PCDI and TPTC a ten-month payment schedule if we knew that those companies were not going to receive 'substantial payments' under the EPC Contracts.

(Affidavit of Marc Langs, IFC Credit Corp. et al. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill. June 18, 2008), ECF No. 54-11 ("**Exhibit 6**") ¶ 12; RNS7703.)

38. IFC moved for summary judgment in the IFC Lawsuit II. In its Motion for Summary Judgment, IFC stated:

From the deposition testimony of Spirit Construction's President taken in April 2008, Plaintiff discovered that Spirit Construction misrepresented to Plaintiff at the time the Settlement Agreement was executed the likelihood that Defendants TPTC and PCDI would soon be receiving any substantial sums as subcontractors under those construction contracts... According to Spirit Construction's president, neither TPTC nor PCDI were ever seriously considered by Spirit Construction to be likely subcontractors in connection with the construction contracts. In any event, those construction contracts are still not funded.<sup>3</sup>

(IFC Credit Corporation's Motion for Summary Judgment, IFC Credit Corp. et al. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill., June 18, 2008), ECF No. 51 ("**Exhibit 7**") p. 6, n. 2.)

39. On October 10, 2008, IFC filed a Motion to Strike in IFC Lawsuit II. In that motion, IFC stated in reference to representations made by Spirit in the March 28, 2007 Acknowledgment and Consent to Assignment:

[T]hey evidence the fraud committed by Spirit Construction to induce IFC to enter into the Settlement Agreement. . . . It is clear that, notwithstanding its

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<sup>3</sup> Spirit and Steve VDH do not concede IFC's characterization of Steve Van Den Heuvel's 2008 testimony.

statement to IFC, Spirit Construction never intended to engage TPTC or PCDI in connection with the EPC Contracts. . . . Similarly, IFC's statement that Spirit Construction's representations were not true is, by now, obvious.

(IFC Credit Corporation's Motion to Strike Certain of the Denials by Defendants to IFC Credit Corporation's Rule 56.1 Statement for Failure to Conform to Rule 56 of the Local Rules of the U.S. District Court for the Northern District of Illinois, IFC Credit Corp. et al. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill., October 8, 2008), ECF No. 82 ("**Exhibit 8**"), p. 3).

40. On March 31, 2009, the court entered its opinion in IFC Lawsuit II. With respect to Ron Van Den Heuvel, IFC obtained a judgment. With respect to Spirit, the case was dismissed for lack of standing because Spirit was not yet obligated to pay any money to Ron Van Den Heuvel, and, therefore, there was no standing to seek injunctive relief, which was the only relief sought by IFC. (Memorandum Opinion and Order, IFC Credit Corp. et al. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill., March 31, 2009), ECF No. 101 ("**Exhibit 9**"), p. 18).

41. IFC Lawsuit II was, according to the testimony of Marc Langs, the "beginning of a process to look at and go back and find out what happened," with respect to the transactions with Ron Van Den Heuvel. "[T]he first step of this was a case against Ron and Ron familiarly to Spirit . . . Something more may have gone down further from that, but at that point, bankruptcy came in, management changed, the ownership of the company changed before the bankruptcy . . . This was one part of the process, a step that got interrupted, I would say, best case." (Exhibit 4, 174:3-14).

## **X. IFC FILES FOR BANKRUPTCY PROTECTION**

42. On July 27, 2009, IFC filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. (Exhibit 1, ¶ 67.)

43. In the course of the bankruptcy, the bankruptcy trustee analyzed the leases and accounts held by IFC and performed a litigation review of accounts that could bring recovery to the bankruptcy estate. (First Interim Report of David P. Liebowitz, Chapter 7 Trustee, In re: IFC Credit Corporation, No. 09-27094 (Bankr. N.D. Ill., December 29, 2009), ECF No. 471, (“**Exhibit 10**”) pp. 7-8).

44. Rebecca Elli and Stephen Csar, RNS’s members, were hired by the bankruptcy estate to assist in the liquidation of IFC from 2009 through 2016, and worked to collect on numerous equipment lease accounts. (RNS Servicing, LLC, Rebecca Elli, and Steve Csar’s Response to Trustee’s Motion for Leave to Conduct a Rule 2004 Exam, Case No. 09-27094 (Bankr. N.D. Ill., November 15, 2017), ECF No. 1776, (“**Exhibit 11**”) p. 2).

45. On August 7, 2014, the IFC Bankruptcy court authorized the IFC Bankruptcy Trustee to enter into an “Asset Purchase and Transition Services Agreement” with Plaintiff RNS Servicing (the “First RNS Asset Purchase Agreement”). Through the First RNS Asset Purchase Agreement, RNS Servicing purchased certain of IFC’s bankruptcy estate’s assets, including IFC’s rights under the Settlement Agreement, Master Lease No. 801109, Master Amendment Agreement, and Continuing Pledge Agreement and all claims and rights, and benefits arising there from, with or against all persons or entities relating to IFC’s rights under those agreements, including the claims against Steve VDH and Spirit made in this Complaint. *See* First RNS Asset Purchase Agreement at Art. 1.1, Art. 2.2, attached as Exhibit J. Further, pursuant to the First Asset Purchase Agreement, RNS Servicing did not assume any of the IFC Bankruptcy estate’s liabilities. (Exhibit 1, ¶ 68; Exhibit 1 at Exh. J, Art. 2.6.)

46. The sale of these assets came after the IFC Bankruptcy Trustee concluded (in RNS's characterization) "that the remaining collections were too troublesome and speculative to continue to be worthwhile." (Exhibit 11, p. 2).

#### **XI. MARC LANGS AND SHARAD TAK 2016 EMAIL EXCHANGE**

47. Marc Langs contacted Sharad Tak by email on March 1, 2016, and stated that he was investigating "certain judgments that a company has against Ron personally and many of this companies." (Exhibit 1, at Exh. L).

48. On March 18, 2018, Langs stated in an email to Sharad Tak that, with Tak's help, "we may have substantial leverage with Spirit Construction against RVDH." (Exhibit 1 at Exh. L).

49. On March 21, 2016, in an email to Marc Langs, IFC's former CFO, Sharad Tak referred to the EPC Contracts as "frivolous" contracts. (*See* Exhibit 1, at Exh. L.)

50. This suit was brought by RNS Servicing against Steve VDH and Spirit on January 1, 2017. (Complaint, Dkt. 1). The Amended Complaint, adding Tak as a Defendant, was filed on September 25, 2017. (Exhibit 1).

51. Tak was deposed in this case on September 21, 2017. At his deposition, Tak testified that he may have attended one meeting with IFC in or around 2006, because IFC had lent money to Ron VDH and never got it back, but that he no longer recalled specifics because the meeting was a long time ago. (Transcript of September 21, 2017 Deposition of Sharad K. Tak ("**Exhibit 12**"), 28:6-18).

52. In 2018, Marc Langs testified that he had not seen the EPC contracts prior to this suit, but if he had, he would have recommended against IFC entering into the Settlement Agreement. (Exhibit 4, 86:10-87:5).

Dated March 18, 2019.

Respectfully submitted,

By: /s/Brian C. Spahn

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 18, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Brian C. Spahn

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