

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RNS SERVICING, LLC, and Illinois Limited  
Liability Company,

Plaintiff,

v.

SPIRIT CONSTRUCTION SERVICES, INC.,  
a Delaware Corporation, STEVEN VAN DEN  
HEUVEL, a citizen of the State of Wisconsin,  
and SHARAD TAK, a Citizen of the State of  
Florida,

Defendants.

Case No. 17-cv-108

Judge Edmond E. Chang

**DECLARATION OF MARC R. LANGS**

I, Marc R. Langs, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Marc R. Langs. I am over the age of 21 and am in all respects competent to make this declaration. I have personal knowledge of the matters set forth below, and the factual matters set forth below are true and correct. I have read and submit this declaration in opposition to Defendants' Rule 56.1 Statement of Facts, Defendants' Motion for Summary Judgment, and Defendants' Memorandum in Support of Defendants' Motion for Summary Judgment, which were filed in the above-captioned case by Defendants SPIRIT CONSTRUCTION SERVICES, INC. ("Spirit"), STEVEN VAN DEN HEUVEL ("Steve VDH"), and SHARAD TAK ("Tak") (collectively, "Defendants").

2. I began working for IFC Credit Corporation ("IFC") in 2003 as a corporate development consultant. In 2006, I was hired on as IFC's Chief Financial Officer ("CFO").

3. I resigned as CFO and any other position I may have had at IFC on June 25, 2009.

4. Rudy Trebels (IFC's President) and I had met with Tak in at IFC's offices in Morton Grove, Illinois at some time shortly before the March 28, 2007 Settlement Agreement, Master Lease No. 801109, Master Amendment Agreement, Continuing Pledge Agreement, and Schedules A and B to the Continuing Pledge Agreement were executed. At this meeting, Tak made multiple misrepresentations to IFC which IFC relied on at that time (a) to enter into the Settlement Agreement, Master Lease No. 801109, the Master Amendment Agreement, and Continuing Pledge Agreement; (b) to require Ron VDH, TPTC, and PCDI to execute Schedule A to the Continuing Pledge Agreement; and (c) to require Steve VDH and Spirit to execute Schedule B Continuing Pledge Agreement as part of the global settlement transaction. To wit:

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

b. Tak confirmed that TPTC and PCDI would be used as subcontractors under the CPA EPC Contracts;

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

d. Tak told us that due to regulatory concerns, Spirit and Tak could not allow IFC to review the four CPA EPC Contracts at that time; and

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

5. Rudy Trebels and I were the only people at IFC who were intimately involved with the due diligence, details, and negotiation related to the original Fortress transaction (the "Fortress Transaction"), which involved Fortress Credit Corporation ("Fortress"), Ron Van Den Heuvel ("Ron VDH"), Tissue Products Technology Corp. ("TPTC"), Partners Concept

Development, Inc. (“PCDI”), Oconto Falls Tissue, Inc. (“Oconto Inc.”), and Eco-Fibre, Inc. (f/k/a Re-Box Paper, Inc.) (“Eco-Fibre”), as well as David Van Den Heuvel (David VDH”), and VHC, Inc. (“VHC”) as guarantors. The Fortress Transaction did not require approval from the IFC Credit Committee because Fortress funded the transaction, not IFC. Rudy Trebels and I used our business judgment to enter into the Fortress Transaction on behalf of IFC because we thought that the transaction was satisfactorily secured and would result in profits for IFC.

6. Rudy Trebels and I were the only people at IFC who were intimately involved with the due diligence, details, and negotiation related the litigation and settlements that arose from the Fortress Transaction, which involved the same persons and entities, except that the guaranties of David VDH and VHC were replaced in the resulting Settlement Agreement<sup>1</sup> by the Continuing Pledge Agreement and attached Schedules A and B. Schedule B was a “Consent and Acknowledgement” executed by Steve VDH and Spirit which provided IFC assurance that the collateral described in the Continuing Pledge Agreement was valuable. The Settlement Agreement did not require approval from the IFC Credit Committee because it was a settlement of litigation, not an original credit transaction. Both Rudy and I used our business judgment to enter into the Settlement Agreement and related leases and agreements on behalf of IFC because we thought the transactions were satisfactorily secured and would eventually result in profits for IFC.

7. Steve VDH, Spirit, and Tak had very strong business reputations at the time Rudy Trebels and I were conducting due diligence for and negotiating the Settlement Agreement and related leases and agreements—including the Continuing Pledge Agreement—on behalf of IFC. Steve VDH was running Spirit, which was one of the leading U.S. construction companies in the

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<sup>1</sup> All capitalized terms in this document shall have the meaning ascribed to them in the First Amended Complaint unless otherwise noted in this document.

category for paper and paper technology. Tak was wealthy businessman who had become very wealthy by securing various, very lucrative business contracts with the United States government and performing under those agreements.

8. Before IFC entered into (a) the Settlement Agreement; (b) the Master Lease No. 801109, (c) Master Amendment Agreement, and (d) the Continuing Pledge Agreement (which included Schedules A and B to the Continuing Pledge Agreement), Ron VDH, Steve VDH, Spirit, and Tak had all represented to Rudy Trebels and me—again, on separate occasions—that three of the four EPC Contracts referenced in the Continuing Pledge Agreement and Schedules A and B to the Continuing Pledge Agreement (the “CPA EPC Contracts”) were for new construction of new facilities and that each of these three CPA EPC Contracts included a fixed price for the Owner (Tak) of \$200 million – \$400 million. They each also represented that the fourth CPA EPC Contract was for upgrades to an existing facility for a fixed price of less than \$100 million.

9. Before IFC entered into (a) the Settlement Agreement; (b) the Master Lease No. 801109, (c) Master Amendment Agreement, and (d) the Continuing Pledge Agreement and Schedules A and B to the Continuing Pledge Agreement, I asked both Spirit and Tak (on separate occasions) to produce the four CPA EPC Contracts for IFC’s review. However, Spirit and Tak informed me on these separate occasions that they could not produce the CPA EPC Contracts for IFC’s review because regulatory concerns required Spirit and Tak to keep them confidential while Tak was seeking financing for the projects. Because of Steve VDH’s, Spirit’s, and Tak’s good business reputations at the time, I took them at their word on this point at that time.

10. However, Steve VDH and Spirit did allow Rudy Trebels and I to review another EPC Contract Spirit had executed with another owner (other than Tak), which contemplated a

project that had already been financed and was either in the process of construction or had been completed. Steve VDH and Spirit explained that, in general, once financing was secured for a project and it had become public knowledge that work had begun on the project, regulatory concerns no longer required that the EPC Contract associated with the project remain confidential. Again, because of Steve VDH's and Spirit's good business reputations at the time, I took them at their word on this point at that time.

11. The EPC Contract Steve VDH and Spirit allowed Rudy Trebels and me to review was for a fixed price of somewhere between \$200 million and \$400 million. That EPC Contract demonstrated that Spirit and the owner of that project had each invested significant amounts of money into the project (in the form of down payments, engineering costs, zoning permits, and other upfront costs) before outside financing for the project had been secured. This led me to believe that at least three of the four CPA EPC Contracts required the same type of pre-financing investment on the part of Spirit and Tak—*i.e.*, that both Spirit and Tak had already invested a significant amount of pre-financing money into at least the three new construction projects contemplated by the new construction CPA EPC Contracts—and I knew that neither Spirit nor Tak were in the business of throwing away money. As such, Rudy Trebels and I were under the impression at the time that Spirit and Tak were supremely confident that Tak would not only be able to secure financing for at least the three new construction CPA EPC Contracts, but that he would make it a priority due to the significant amount of money he had already invested into the three new construction projects.

12. Our review of the EPC Contract we were allowed to see and our knowledge that (a) Spirit and the owner of that project had invested significant upfront costs into that project before financing had been secured; (b) that financing had been secured for that project; and (c)

that construction had begun on that project, gave IFC additional assurance that the collateral defined in the Continuing Pledge Agreement was valuable.

13. The four CPA EPC Contracts at issue in this matter are each dated November 14, 2006 and are identified in this matter as follows:

- a. CPA EPC Agreement between Spirit and ST Paper regarding upgrades at Oconto Falls and De Pere, Wisconsin (Bates No. SCS\_00001 - SCS\_000056);
- b. CPA EPC Agreement between Spirit and ST Paper at St. George, Utah (Bates No. SCS\_000057-SCS\_000116);
- c. CPA EPC Agreement between Spirit and ST Paper at a Pennsylvania Site (Bates No. SCS\_000117-SCS\_000176); and
- d. CPA EPC Agreement between Spirit and ST Paper at De Pere, Wisconsin (Bates No. SCS\_000237-SCS\_000296).

14. I have personal knowledge that no one at IFC (including myself and Rudy Trebels) ever reviewed, or even saw, any of the four CPA EPC Contracts before Rudy Trebels and I resigned from IFC on or about June 27, 2009.

15. On March 31, 2009, the court in the Second IFC Lawsuit denied IFC's motion for summary judgment on its claim for injunctive relief against Spirit and granted Spirit's motion for summary judgment on that claim. Both IFC's attorneys at the time and me, as a layman, understood this ruling then (and I still understand it now) as follows: The court (a) found that CPA EPC Contracts were in effect; (b) found that Spirit's construction on the projects contemplated by the CPA EPC Contracts had not yet begun and could not therefore have hired or paid monies to TPTC or PCDI as subcontractors; and (c) found that IFC therefore did not have standing for its claim against Spirit at that time because IFC had not yet and might not ever sustain an injury as a result of Spirit's conduct—*i.e.*, IFC would not be injured once Spirit began

construction on the projects contemplated by the CPA EPC Contracts and paid IFC the monies owed according to the Continuing Pledge Agreement.

16. After the March 31, 2009 ruling in the Second IFC Lawsuit, I recall (a) that I discussed the ruling with IFC's attorneys at that time and (b) that after rereading Steve VDH's April 8, 2008 deposition transcript, the Continuing Pledge Agreement, and Schedules A and B to the Continuing Pledge Agreement, whether correctly or not in light of additional discoveries RNS Servicing has made in this litigation, we came to the following conclusions at that time:

a. During Steve VDH's April 8, 2008 deposition, Spirit's and Steve VDH's counsel stated that Spirit had not produced the CPA EPC Contracts during discovery in the Second IFC Lawsuit;

b. During Steve VDH's April 8, 2008 deposition, Steve VDH had corrected his earlier testimony and had unequivocally testified that Exhibit 3 to his April 8, 2008 deposition, an EPC contract for upgrades at the Oconto Falls Tissue Mill, was not one of the four CPA EPC Contracts;

c. The CPA EPC Contracts are referenced in the Continuing Pledge Agreement as "four (4) Fixed Price Engineering, Procurement, and Construction Agreements between Spirit Construction Services, Inc. and ST Paper, LLC for 'upgrades' and construction for 'St. George, Utah,' 'De Pere, Wisconsin,' and 'Pennsylvania' facilities"—*i.e.*, that as Steve VDH testified at his April 8, 2008 deposition, the EPC Contract for upgrades to the Oconto Falls Tissue Mill which he was shown at his April 8, 2008 deposition was not actually one of the CPA EPC Contracts;

d. We had been mistaken regarding Steve VDH's testimony at his April 8, 2008 deposition because the EPC Contract for upgrades to the Oconto Falls Tissue Mill IFC's

counsel had shown Steve VDH at his deposition (marked as Exhibit 3 at that deposition) was not actually one of the four CPA EPC Contracts;

e. Since Spirit had never produced the CPA EPC Contracts in the Second IFC Lawsuit, as Steve VDH had testified at his April 8, 2008 deposition, none of the EPC Contracts Steve VDH had been shown at his April 8, 2008 deposition was one of the four CPA EPC Contracts;

f. While Ron VDH had told IFC that the CPA EPC Contracts would be “funded in a matter of weeks,” we had never heard that from Steve VDH, Spirit, or Tak;

g. While we now knew that Tak had not been able to secure financing for the projects contemplated by the CPA EPC Contracts as quickly as Ron VDH had suggested he would or as quickly as IFC would have obviously preferred, we still thought (1) that the CPA EPC Contracts existed, had been executed, and were in full force and effect and (2) that regulatory concerns required that the CPA EPC Contracts had to be kept confidential while Tak was out trying to secure financing; and

h. The court was correct in its March 31, 2009 ruling that IFC did not have standing to assert any claims against Spirit (for injunctive relief, fraud, or otherwise) because IFC had not been injured by Spirit’s conduct. While IFC did not have any faith in Ron VDH at this point in time, IFC still believed in Steve VDH’s and Spirit’s representations in Schedule B to the Continuing Pledge Agreement and Tak’s representations that he made to IFC at the March 2009 meeting which are at issue in this case. This was due in large part to their good business reputations and mine and IFC’s belief at this time that both Tak and Steve VDH had each made large pre-financing investments of significant amounts of money into the projects contemplated by the CPA EPC Contracts (in the form of down payments, engineering costs, zoning permits, and other upfront costs) and that we knew that neither



Spirit nor Tak were in the business of throwing away money. Therefore, IFC and its lawyers decided that it could not in good faith appeal the court's order that IFC did not have standing for its claim injunctive relief or to make any claim of fraud against Spirit (or for that matter against Steve VDH or Tak).

17. Shortly after the March 31, 2009 decision by the court in the Second IFC Lawsuit, IFC was facing an imminent bankruptcy—which was primarily due to nonpayment by Ron VDH and his companies of debts owed to IFC as part of Fortress Transaction and various settlement agreements and judgments against him arising from the nonpayment under the Fortress Transaction and what I now know to be the misrepresentations of Steve VDH, Spirit, and Tak as alleged in the FAC.

18. Around that time, as IFC's bankruptcy was becoming imminent, IFC's Board of Directors began efforts to force Rudy Trebels and I to resign as officers of the company. I submitted my resignation on June 25, 2009 and Rudy Trebels submitted his resignation on June 26, 2009.

19. On or around January 26, 2016, RNS Servicing hired me as an independent consultant to assist RNS Servicing with enforcing, settling or selling the August 13, 2008 judgment in favor IFC and against Ron VDH, TPTC, and PCDI, which was entered in the Second IFC Lawsuit long before the March 31, 2009 decision granting Spirit's summary judgment motion because IFC had not yet been injured by Spirit and therefore lacked standing for claims against Spirit.

20. RNS Servicing's members, Rebecca Elli and Steve Csar had previously worked with me at IFC, but neither of them was involved in the Fortress Transaction or the litigation and settlements that arose from the Fortress Transaction.

21. At or around January 26, 2016, RNS Servicing provided me with a large amount of material to review which I understood it had bought out of the IFC bankruptcy estate.

22. Over the next month or so I reviewed the voluminous documentation provided to me by RNS Servicing. After my review, at some time, prior to March 21, 2016, I informed RNS Servicing of the existence of: (a) the Settlement Agreement; (b) Master Lease No. 801109; (c) Master Amendment Agreement; (d) the Continuing Pledge Agreement and attached Schedules A and B; and (e) Tak's meeting with Rudy Trebels and me, which is referenced in Paragraphs 60 and 61 of the FAC.

23. At or around this time, I also informed RNS Servicing that I would contact Steve VDH and Tak to inquire whether the projects in the CPA EPC Contracts were ever completed and, if so, inquire whether Steve VDH and Spirit made payments to TPTC and PCDI instead of the IFC bankruptcy estate. At this time, I believed that the projects had to have been built during the administration of IFC's lengthy bankruptcy proceedings.

24. Almost immediately after that conversation with RNS Servicing, I contacted Tak by email on March 1, 2016 and I called Steve VDH around that same time. When I spoke to Steve VDH over the phone, I asked him about the projects contemplated by the CPA EPC Contracts, and he informed that they had never been built. I asked him if I could come up to Green Bay, Wisconsin and meet with him face to face about this the CPA EPC Contracts, he agreed, and we scheduled a meeting.

25. On March 7, 2016, Tak responded to my email and we set up a phone conversation. We spoke on the phone about the CPA EPC Contracts, as well as the work Spirit had apparently completed on the Oconto Falls Tissue Mill, which Tak now owned through ST Paper. After this phone conversation, I sent him a follow up email on March 18, 2016 with more specific information about these contracts. I was hoping he would be able to tell me that some or

all of the projects contemplated by the CPA EPC Contracts had actually been completed. However, on March 21, 2016, Tak emailed me back and told me that the CPA EPC Contracts were frivolous.

26. When I received the March 21, 2016 email from Tak which is attached as Exhibit L to the FAC, I understood his statement that “[t]hese were frivolous contracts” to be referencing the CPA EPC Contracts at issue in this case, even though at that time, I had still never reviewed or even seen the CPA EPC Contracts.

27. After I received the March 21, 2016 email from Tak, which is attached as Exhibit L to the FAC, I suspected for the first time:

- a. that Spirit and Tak possibly had not invested significant amounts of money into the projects contemplated by the CPA EPC Contracts in the form of engineering, zoning, and other upfront costs—*i.e.*, before outside financing for the entire projects was secured;
- b. that there was a possibility that the CPA EPC Contracts had never been sufficient to secure financing for the projects contemplated; and/or
- c. that there was a possibility that neither TPTC nor PCDI were subcontractors under the CPA EPC Contracts.

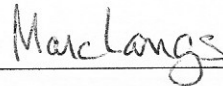
28. On some date right before or soon after the March 21, 2016 email from Tak, I met with Steve VDH in Green Bay, Wisconsin. At that meeting, Steve VDH reiterated that the projects contemplated by the CPA EPC Contracts had never been funded and were never completed. However, he told me that he still wanted the projects to go forward and that if they did, he would make good on the Spirit’s promises in Schedule B to the Continuing Pledge Agreement. At this meeting, Steve VDH pulled out a contract which he purported to be one of the CPA EPC Contracts, apparently to show me that the CPA EPC Contracts actually existed. I did not review the contract in detail at that time and asked for copies of the CPA EPC Contracts.

However, Steve VDH told me had to check with other people at Spirit regarding this request and that he would get back to me if he could give me copies of the CPA EPC Contracts. I left the meeting shortly thereafter, and he never sent me the CPA EPC Contracts.

29. After discussing all of this with RNS Servicing, I contacted Johnson & Bell, Ltd. on behalf of RNS Servicing. We diligently went through the voluminous documentation related to this lawsuit and decided to file a very detailed complaint in this lawsuit because of the complex nature of the facts and circumstances occurring over the span of about a decade. From that point on, we diligently worked on drafting the original complaint in this lawsuit and getting it on file.

30. Although I may have seen one of the CPA EPC Contracts at my meeting with Steve VDH in Green Bay in or around March/April 2016 (and I am not even sure that I did), I never reviewed any of the four CPA EPC Contracts in any sort of detail at any time before the four CPA EPC Contracts were produced in discovery in this matter by Steve VDH and Spirit.

Dated: May 5, 2019

A handwritten signature in cursive script that reads "MarcLangs". The signature is written in dark ink and is positioned above a horizontal line.

Marc R. Langs