

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION

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FORTUNE AVENUE, LLC,  
Plaintiff,

Case No. 18-CV-1362

v.

HOWARD BEDFORD,  
Defendant.

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**DEFENDANT’S ADDITIONAL PROPOSED FINDINGS OF FACT**

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Defendant Howard Bedford (“Bedford”), by and through his counsel, Godfrey & Kahn, S.C., pursuant to Civil L.R. 56(b)(2)(B)(ii), proposes the following additional proposed findings of fact:

1. Bedford was introduced to Ronald Van Den Heuvel (“Ron”) in 2010. Ron pitched a new business opportunity to Bedford involving the recycling of food-contaminated waste into energy. Ron referred to this concept, which Ron claimed was comprised of proprietary processes he had developed, as “Green Box.” Ron asked Bedford to invest and assist him in seeking additional investors. (Declaration of Howard Bedford (“Bedford Decl.”) ¶ 2.)

2. Bedford did invest in Ron’s companies and aided him in obtaining soliciting additional investments. (Bedford Decl. ¶ 3.)

3. Ron and the companies he ran had difficulty with a number of creditors. One such creditor was SHF XII, LLC (“Stonehill”). In 2010, Stonehill and Ron entered into settlement discussions, resulting in a Settlement Agreement and Mutual Release effective as of December 31, 2010 (the “Settlement Agreement”). As part of that agreement, Bedford executed a guaranty of a payment to be made to Stonehill of \$750,000. (Bedford Decl. ¶ 4.)

4. Based upon Bedford's discussions with Ron and his brothers at the time, Bedford understood Spirit Construction Services, Inc. ("Spirit") to be a company owned by Ron's brothers. In 2011, Dave Van Den Heuvel contacted Bedford about his discussions with Spirit's bank, Baylake Bank, concerning the payments required under the Settlement Agreement. Part of that discussion contemplated Spirit paying \$750,000 to Stonehill. Dave Van Den Heuvel stated in an e-mail to Bedford, "we will borrow you the monies to pay them or something like that." (Bedford Decl. ¶ 5.)

5. On August 25, 2011, Bedford learned information that caused him to believe that Ron was involved in fraud. Bedford confronted Ron about it and announced the fact Bedford was leaving and would no longer do business with him. Ron reacted angrily, and proceeded to punch Bedford in the face as he was leaning over to pick up his briefcase. As a result, Bedford obtained medical treatment that day at a hospital in Sheboygan, Wisconsin, on his drive back to his home in Illinois. (Bedford Decl. ¶ 6.)

6. As part of the effort to placate Stonehill, on October 21, 2011, Bedford signed the \$350,000 Unsecured Promissory Note at issue in this litigation in favor of Fortune Avenue, LLC, a company he took to be affiliated with Spirit. By this time Bedford wanted nothing more to do with Ron or any of his companies. (Bedford Decl. ¶ 7.)

7. Between February and July of 2012 Bedford made five payments on the Note to Fortune Avenue, LLC totaling \$42,365.74. (Bedford Decl. ¶ 8.)

8. On a few occasions in 2012 prior to December 5<sup>th</sup> of that year Bedford received e-mails from Dave Van Den Heuvel ("Dave") reminding him to make payments on the Note. (Bedford Decl. ¶ 9.)

9. On November 29, 2012, Bedford received an e-mail from Dave Van Den Heuvel (“Dave”) stating, “Howard need some more payments.” Bedford responded that day and noted that he would be in Green Bay the following Tuesday and Wednesday (December 4<sup>th</sup> and 5<sup>th</sup>), and that he could meet with him. (Bedford Decl. ¶ 10.)

10. Bedford received a telephone call from Dave Van Den Heuvel on Bedford’s cell phone number, which was (847) 910-7190. Dave Van Den Heuvel invited Bedford to meet with him at his offices. (Bedford Decl. ¶ 11; Smies Decl. ¶ 3, Ex. 2.)

11. On December 5, 2012, Bedford went to Dave Van Den Heuvel’s offices in De Pere and met with him. In the course of that meeting, Dave Van Den Heuvel expressed to Bedford that Bedford need not worry about any payments pursuant to the Note the Plaintiff in this lawsuit is seeking to enforce. Bedford understood Dave Van Den Heuvel to be speaking on behalf of Fortune Avenue, LLC, and indicated that because the Note was originally related to debts attributable to his brother Ron, this debt held by Fortune Avenue was a family concern. Dave Van Den Heuvel indicated that because this really the debt of his brother Ron, it was a family problem. Dave expressed that Bedford should never have been brought into the situation and that he would not be looking for any more money from Bedford. He told Bedford not to worry about making any more payments. The plain implication of Dave Van Den Heuvel’s oral comments to Bedford that day was that Bedford was relieved of any obligation to make further payments on the Note. (Bedford Decl. ¶ 12.)

12. Bedford’s calendar for December 5, 2012 contains an entry reflecting a meeting with Dave Van Den Heuvel at 9:00 a.m. (Bedford Decl. ¶ 13, Ex. 3.)

13. After Bedford’s meeting with Dave Van Den Heuvel on December 5, 2012, Bedford did not receive any communications from Fortune Avenue, LLC seeking to enforce the

promissory note at issue in this case until counsel for Fortune Avenue, LLC sent Bedford a demand letter dated June 13, 2018. (Smies Decl. ¶ 2, Ex. 1, Plaintiff's Response to Defendant's First Set of Requests for Admission; Bedford Decl. ¶ 14.)

14. Fortune Avenue, LLC did not make a demand on Bedford for payment of the Note from December 5, 2012 until June 13, 2018. (Smies Decl. ¶ 2, Ex. 1, Plaintiff's Response to Defendant's First Set of Requests for Admission.)

Dated this 28<sup>th</sup> day of May, 2019.

By: s/ Jonathan T. Smies  
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