

FILED
04-12-2019
Clerk of Circuit Court
Brown County, WI
2018CV000902

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH VI

BROWN COUNTY

VOS ELECTRIC, INC.,

Plaintiff,

v.

Case No. 18-CV-902

Case Code: 30301

GLENARBOR PARTNERS, INC.,

Defendant,

**DEFENDANT’S, GLENARBOR PARTNERS, INC.’S,
AMENDED ANSWER TO PLAINTIFF’S COMPLAINT,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

NOW COMES the Defendant, GlenArbor Partners, Inc. (“GlenArbor Partners” or “Defendant”), by and through its attorneys, Davis & Kuelthau, s.c., and as to the Plaintiff’s, Vos Electric, Inc. (“Vos” or “Plaintiff”), Complaint, the Defendant amends its answers as follows:

GENERAL ALLEGATIONS

1. In answering Paragraph 1, GlenArbor Partners lacks sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph, and therefore, deny.
2. In answering Paragraph 2, GlenArbor Partners admits the allegations.

VENUE

3. In answering Paragraph 3, GlenArbor Partners asserts that the allegations in this paragraph are legal conclusions to which no response is required, to the extent a response is required, GlenArbor denies the allegations.

CAUSE OF ACTION – BREACH OF PROMISSORY NOTE

4. In answering Paragraph 4, GlenArbor Partners asserts that Exhibit A speaks for itself and denies any allegations inconsistent therewith.
5. In answering Paragraph 5, GlenArbor Partners denies the allegations.
6. In answering Paragraph 6, GlenArbor Partners lacks sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph, and therefore, denies. GlenArbor Partners further asserts that Exhibit B speaks for itself and denies any allegations inconsistent therewith.
7. In answering Paragraph 7, GlenArbor Partners denies the allegations.
8. In answering Paragraph 8, GlenArbor Partners asserts that the allegations in this paragraph are legal conclusions to which no response is required, to the extent a response is required, GlenArbor lacks sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph, and therefore, denies.

AFFIRMATIVE DEFENSES

1. The Defendant, GlenArbor Partners, Inc., re-asserts and re-alleges all of its answers to Paragraphs 1 through 8 to the Plaintiff's Complaint, as affirmative defenses.
2. Plaintiff failed to serve Defendant pursuant to the requirements of Wisconsin Statute § 801.11.
3. Plaintiff's alleged service of summons by publication was insufficient pursuant to Wisconsin Statute Chapter 985.
4. Plaintiff has, to date, failed to timely serve Defendant in person and cannot timely serve Plaintiff via publication because Plaintiff is required to serve the authenticated summons and complaint by October 23, 2018, and, pursuant to Wisconsin Statute §§ 801.11(1)(c)

and 985.07(3), service by publication requires the summons to be published for three consecutive weeks.

5. The Court lacks personal jurisdiction over Defendant.
6. The Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.
7. The Plaintiff's alleged damages, if any, were caused in whole or in part by the Plaintiff's own conduct.
8. Plaintiff has failed to mitigate its damages.
9. Plaintiff's harm was caused by a superseding cause or breach.
10. Plaintiff's recovery is barred in whole or in part by the doctrine of unclean hands.
11. The Promissory Note is void for lack of consideration.
12. Plaintiff's claims are barred in whole or in part under the doctrine of estoppel, waiver, and/or laches.
13. Plaintiff's claims are barred in whole or in part under the doctrines of accord and satisfaction.
14. Upon information and belief, the Promissory Note at issue in this matter, or certain terms contained therein, are void, unenforceable and/or unconscionable.
15. Defendant pleads the limitations on punitive damages set forth in Wis. Stat. § 895.043.
16. Defendant asserts that the imposition of punitive damages sought by Plaintiff would violate the rights of the Defendant under the United States and Wisconsin Constitutions.
17. Defendant re-alleges and incorporates herein by reference the defenses set forth in Wis. Stat. § 802.02(3) and Wis. Stat. § 802.06(2), as if fully set forth in full herein, so as to avoid

waiver of such defenses pending discovery, and reserves the right to amend and supplement these defenses as litigation proceeds.

COUNTERCLAIMS

1. On or about April 7, 2017, Tim Van Den Heuvel, Dave Van Den Heuvel, Steve Van Den Heuvel, and Ron Van Den Heuvel discussed borrowing \$1,750,000 in order to provide Reclamation Technology Systems, LLC (“RTS”), the funding necessary to close out a project in De Pere (the “De Pere Project”).
2. Tim Van Den Heuvel is the president of Plaintiff Vos Electric.
3. Ron informed Tim, Dave, and Steve that the funding would go through GlenArbor Partners’ bank account, who would then oversee the disbursement of funds and project closing requirements.
4. The purpose of directing the funds through GlenArbor Partners’ bank account and having GlenArbor Partners issue the predetermined disbursements was so Tim, Dave, Steve, Vos Electric, and the family holding company could avoid having the funds connected directly with Ron Van Den Heuvel’s entities and, given the pending appeal in a financially significant lawsuit with the Internal Revenue Service (“IRS”) against the family’s holding company, avoid alerting the IRS as to their investment in Ron Van Den Heuvel’s business and to provide cash directly to Ron and Kelly Van Den Heuvel personally.
5. The loan would be repaid from the proceeds of the De Pere Project or from proceeds recovered in a separate litigation (the “Tak Litigation”). RTS is majority owned by entities controlled by Ron Van Den Heuvel and his family.
6. On May 3, 2017, the Promissory Note was signed. GlenArbor Partners received the loan amount and then all loan proceeds were disbursed to RTS, Green Box, and Ron Van Den

Heuvel per the instructions provided to and approved by Dave Van Den Heuvel. Upon information and belief, Ron, Tim, Dave, and Steve are affiliated through an EPC contract with RTS and Green Box, and stand to monetarily benefit from the respective company projects.

7. When questioned by the representative of the Defendant as to the necessity of the Note given the circumstances of the funds transfer and ultimate use, the Plaintiff stated that the Note was only necessary for its file in case of a specific inquiry by the IRS or a demand by its auditor of the use the funds.
8. Within two days, the money had been disbursed as presented to and approved in advance by Dave Van Den Heuvel.
9. Neither GlenArbor Partners nor Stephen A. Smith (its President and majority Owner) ever benefited personally from the Promissory Note proceeds.
10. Pursuant to verbal communications, GlenArbor Partners was not responsible for the repayment of the loan. Rather, Plaintiff agreed in advance that the Promissory Note would be repaid by the De Pere Project or the Tak Litigation.
11. The Note was to mature on December 31, 2017, unless extended by both parties.
12. On July 26, 2018, without any prior discussion or notice except for an allegedly undeliverable demand letter sent by Plaintiff in March 2018, Plaintiff brought suit for breach of the Promissory Note.
13. Prior to the filing of the suit, Plaintiff and Defendant were in communications about extending the maturity date of the Note, renewing the Note, or placing the Note in forbearance because neither the De Pere Project nor the external litigation had yielded proceeds, which Plaintiff had agreed would be the source of repayment for the Note.

14. Prior to filing the suit, Plaintiff provided no other notice of default nor did Plaintiff attempt to renew and extend the Note.

FIRST COUNTERCLAIM – BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

15. Defendant, GlenArbor Partners, Inc., re-alleges and incorporates Paragraphs 1 through 12 as though fully set forth herein.

16. By entering into the Promissory Note, Plaintiff had a duty to act in good faith and fair dealing.

17. Plaintiff acted in bad faith through inactions, evasion of the spirit of the bargain, lack of diligence and by failing to renew and extend the Note.

18. Plaintiff acted in bad faith by filing suit while purporting to negotiate new terms of the Promissory Note.

19. Plaintiff acted in bad faith by seeking repayment of the Note despite Plaintiff's knowledge that Defendant received no monetary benefit from the Note.

20. Plaintiff acted in bad faith by filing suit without issuing a notice of default that was received by Defendant.

SECOND COUNTERCLAIM - MISREPRESENTATION

21. Defendant, GlenArbor Partners, Inc., re-alleges and incorporates Paragraphs 1 through 20 as though fully set forth herein.

22. Plaintiff engaged in misrepresentation about the repayment of the Promissory Note, upon which Defendant relied and was harmed.

23. Plaintiff represented to Defendant and agreed with Defendant that the Promissory Note would be repaid by the De Pere Project or the Tak Litigation, and Defendant would not be responsible for repayment of the Promissory Note.

24. Plaintiff's representations are false because Plaintiff now seeks repayment of the Note from Defendant.
25. Defendant relied on Plaintiff's representations when it agreed to enter into the Promissory Note and has been sued by Plaintiff because of Plaintiff's misrepresentations.
26. Plaintiff had an economic interest in the execution of the Promissory Note because it was used to invest in RTS and Green Box.
27. Plaintiff's misrepresentations were made on Plaintiff's own personal knowledge, because the arrangement involved Plaintiff's president.

WHEREFORE, Defendant, GlenArbor Partners, Inc., by and through its attorneys, Davis & Kuelthau, s.c., respectfully requests judgment as follows:

- a. Immediate dismissal of Plaintiff's Complaint with prejudice and without costs;
- b. Immediate dismissal of Plaintiff's demand for attorneys' fees and costs;
- c. An Order declaring the Promissory Note invalid and unenforceable;
- d. Damages against Plaintiff in an amount to be determined by the Court;
- e. For costs, disbursements, and attorneys' fees incurred by the Defendant; and
- f. For any other relief that the Court deems just and equitable.

DEFENDANT DEMANDS A TRIAL BY JURY FOR ALL TRIABLE ISSUES.

Dated: April 12, 2019.

DAVIS & KUELTHAU, s.c.
Attorneys for Defendant,
GlenArbor Partners, Inc.

By: Electronically signed by Sherry D. Coley
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