

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

FORTUNE AVENUE, LLC,

Plaintiff(s),

v.

**MOTION HEARING re: [10] Plaintiff's Motion for
Summary Judgment
Case No. 18-C-1362**

HOWARD BEDFORD,

Defendant(s).

HONORABLE WILLIAM C. GRIESBACH presiding
Proceeding Held: July 17, 2019
Deputy Clerk: Lori

Time Called: 2:26 pm
Time Concluded: 2:48 pm
Tape: 071719

Appearances:

Plaintiff(s): Robert Janssen, Ryan M. Froelich

Defendant(s): Jonathan T. Smies

2:27 pm Mr. Smies addresses Wisconsin Statute § 403.604 - Discharge by cancellation or renunciation through an intentional voluntary act for an agreement not to sue or otherwise renounce rights against another party by signed writing. Counsel sets forth the 7th Circuit Court of Appeals has spoken on this issue as it applies to Illinois law (*SMS Demag Aktiengesellschaft v. Material Sciences Corp*). Mr. Smies addresses Wisconsin Statute § 403.601, this portion talks about the fact that an instrument may be discharged as stated in this chapter or by an or agreement with the party which would discharge an obligation to pay money under a simple contract.

The Court addresses stopped payment after the conversation and balance of principle due with late charges and interest, now totaling over \$500,000.00. The Court inquires as to equitable argument. Mr. Smies responds that in 2012, Mr. Bedford paid roughly \$42,000 over multiple payments. The payments ceased after meeting with David Vanden Heuvel. There was no further contact between the parties until 2017.

2:32 pm Mr. Janssen responds that his client does not recall any meeting in person with Mr. Bedford, but there was a call. Counsel sets forth that Wisconsin Statute §403.604 addresses this matter and sets forth specific methods as to release of contractual obligations. Counsel sets forth that Mr. Bedford did not ask for Note back and this was addressed during deposition.

2:34 pm The Court inquires as to where the meeting took place. Mr. Smies said the meeting occurred in the offices of VHC, one of the Van Den Heuvel offices. Mr. Janssen responds as to the separation of Van den Heuvel family businesses as it pertains to Ron Van Den Heuvel. Mr. Janssen sets forth that David Van Den Heuvel is an authorized agent of Fortune Avenue, LLC, and there are additional Van Den Heuvel family members involved.

2:35 ppm The Court and parties discuss verification of jurisdiction.

Mr. Smies addresses that there were several years that there were no communications between the parties as to this issue. Now there have been some proceedings in the tax court involving VVH for debts associated with Mr. Ron Van Den Heuvel and his companies.

Mr. Janssen responds. A renewal note was issued, there was no response and counsel were contacted to proceed. Counsel sets forth his client's position was he would not discharge \$350,000.

Mr. Smies sets forth his client clearly recollects this meeting and he took Mr. Van Den Heuvel at his word as to discharge of obligation. No further payments were issued, and his records reflect this.

The Court has reviewed the statute and the interpretation of the Illinois law. The Court will take the matter under advisement.

2:41 pm Mr. Janssen addresses 8/25/2011 incident between Ron Vanden Heuvel and Mr. Bedford. This involved Mr. Van Den Heuvel punching Mr. Bedford. It appears in the briefing that all relationship ended with Ron Van Den Heuvel on 8/25/2011.

2:43 pm Mr. Smies clarifies the settlement agreement with Stonehill and Mr. Bedford's involvement.

2:44 pm The Court inquires as to the \$350,000 note to Fortune Avenue.

Mr. Smies clarifies the note is because Fortune Avenue made a payment to Stonehill to release the guarantee against Bedford. There were judgments against Ron Van den Heuvel held by Stonehill and Bedford was a guarantor on one.

2:46 pm Mr. Janssen responds as to loss of money by Van Den Heuvel companies.

Mr. Smies addresses raising laches and estoppel defenses. An

Mr. Janssen has raised equity defense.

The parties may supplement their arguments by a short letter as to additional argument or case law. The court will hold off addressing the matter for ten days. The parties are to notify the Court if the matter settles.

The Court takes the motion under advisement.