

FILED
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Oconto County WI
2017CV000104

BY THE COURT:

DATE SIGNED: July 29, 2019

Electronically signed by Jay N. Conley Oconto Circuit Judge Branch II
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT OCONTO COUNTY

OCONTO FALLS TISSUE, INC.,
Plaintiff,

MEMORANDUM DECISION

vs.

Case No. 17 CV 104

ST PAPER, LLC,
A Delaware limited liability company,
VHC, INC., DAVID VAN DEN HEUVEL,
NICOLET BANKSHARES, INC.,
and ABILITY INSURANCE COMPANY,
Defendants.

Defendants, Nicolet Bankshares, Inc., hereinafter "Nicolet", and David Van Den Heuvel, hereinafter "Van Den Heuvel", have both moved to dismiss the Amended Complaint and the claims against them, respectively.

In deciding these motions, the Court accepts as true facts that are, properly, plead. The Court can ignore legal conclusions alleged. The following facts are not contested: Plaintiff is not a party to the Escrow Agreement, Exhibit L of the Amended Complaint. According to the litigants, Nicolet acted as an escrow agent only in the transactions at issue. As an aside, Exhibit L never refers to "Nicolet Bankshares, Inc." The document does include "Nicolet National Bank". Plaintiff transferred notes 3 and 4 to Defendant, VHC, Inc., in Exhibits E and F of the Amended Complaint. Van Den Heuvel was acting in

his corporate capacity for VHC, Inc., in the transactions at issue. Van Den Heuvel was not a party to Exhibit L in his individual capacity.

The only contentious fact, for purpose of these Motions, is Plaintiff's contention in the Amended Complaint that notes 3 and 4, Exhibits E and F, were transferred to VHC, Inc., for security purposes, see paragraph 17 of the Amended Complaint. Plaintiff further alleges in paragraphs 102 and 103 of the Amended Complaint that notes 3 and 4 were always intended to be collateral only in the hands of VHC, Inc. Plaintiff alleges, upon payment of the debt, the notes would be returned to Plaintiff. These claims are disputed.

The Court finds the provisions of notes 3 and 4 to be clear and unambiguous. The Court, also, finds that these documents, Exhibits E and F, which were attached to the Amended Complaint by Plaintiff, contradict the allegations of the Amended Complaint. They represent an outright transfer of the notes to VHC, Inc. without any reference to collateral. When the allegations of a pleading are inconsistent with the terms of a document (here documents) attached as an exhibit, the terms of the document fairly construed prevail over averments differing in the complaint, see Friends of Kenwood v. Green, 2000 WI App 217. In this case, Exhibits E and F prevail over the pleadings. Plaintiff has not alleged any other sufficient basis in which to sue Van Den Heuvel individually.

The Court, consequently, finds a failure to state a claim upon which relief can be granted, pursuant to Sec. 802.06(2)(a)6. Wis Stats. as to each Defendant, respectively. The Court grants each Motion to Dismiss. The Court will grant costs and reasonable attorney fees to each Defendant as allowed by law. Counsel for the movant Defendants shall prepare Orders consistent with this decision which I will sign under the "5 day rule".