

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

FORTUNE AVENUE, LLC,

Case No. 18-CV-1362

Plaintiff,

v.

HOWARD BEDFORD,

Defendant.

DEFENDANT’S PRETRIAL REPORT

Defendant Howard Bedford (“Bedford”), by and through his counsel, Godfrey & Kahn, S.C., submits the following pretrial report pursuant to Civil L. R. 16(c):

I. Short Summary of Facts, Claims and Defenses

Plaintiff Fortune Avenue, LLC (“Fortune Avenue”), seeks to enforce a promissory note (“Note”) made by Bedford on October 21, 2011. Bedford made the Note in conjunction with a payment that was to be made to a third party, Stonehill XII, LLC (“Stonehill”), as part of a settlement agreement with Stonehill intended to resolve Stonehill’s claims against Ronald Van Den Heuvel (“Ron”). Bedford made five payments on the Note beginning in 2012, totaling \$42,365.74.

Bedford’s principal defense to Fortune Avenue’s attempt to enforce the Note is that Fortune Avenue released Bedford of any obligation to make further payments through oral statements made by David Van Den Heuvel (“Dave”) on behalf of Fortune Avenue on December 5, 2012.

II. Statement of Issues

A. Whether Fortune Avenue released Bedford of any obligation to make further payments on the Note on December 5, 2012.

B. Whether Fortune Avenue should be estopped from seeking to enforce any provisions of the Note relating to interest and late fees after December 5, 2012.

III. The Name and Address of Any Witnesses Expected to Testify

1. Howard Bedford
c/o Godfrey & Kahn, S.C.
200 S. Washington Street, Ste. 100
Green Bay, WI 54301
2. David Van Den Heuvel
c/o Janssen Law
3000 Riverside Dr., Ste. 210
Green Bay, WI 54301
3. Jim Kellam
c/o Janssen Law
3000 Riverside Dr., Ste. 210
Green Bay, WI 54301

The defense reserves the right to call rebuttal witnesses who have not been identified above, as well as any witness identified by Plaintiff.

IV. Background of Expert Witnesses

Bedford does not anticipate calling any expert witnesses.

V. Defendant's Exhibits

Bedford will file a separate exhibit list. The Defendant anticipates conferring with Plaintiff prior to trial concerning the exhibits to be offered at trial in an effort to stipulate to the admissibility of such exhibits.

VI. Deposition Designations

The Defendant does not intend to offer any testimony through portions of transcripts or other recordings or depositions to be read into the record or played at trial as substantive evidence.

VII. Estimated Time Needed for Trial

The Defendant estimates that the trial in this matter will take one day. This matter is scheduled for a trial to the Court.

VIII. Proposed Findings of Fact and Conclusions of Law

A. Findings of Fact

1. Bedford invested in certain companies associated with Ron and aided Ron in soliciting additional investments.

2. Ron and the companies he ran had difficulty with a number of creditors. One such creditor was 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.

3. In 2011, Dave, Ron’s brother, contacted Bedford about his discussions with Spirit Construction Services, Inc.’s (“Spirit”) bank, Baylake Bank, concerning the payments required under the Settlement Agreement. Part of that discussion contemplated Spirit paying \$750,000 to Stonehill. Dave stated in an e-mail to Bedford, “we will borrow you the monies to pay them or something like that.”

4. Bedford executed the Note dated October 21, 2011 payable to Fortune Avenue in the principal amount of \$350,000.

5. Spirit is Fortune Avenue’s sole member. Fortune Avenue’s Operating Agreement is dated October 7, 2011.

6. Between February and July of 2012, Bedford made five payments to Fortune Avenue pursuant to the Note totaling \$42,365.74.

7. On a few occasions in 2012 prior to December 5th of that year Bedford received e-mails from Dave Van Den Heuvel (“Dave”) reminding him to make payments on the Note.

8. On November 29, 2012, Bedford received an e-mail from 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 4th and 5th), and that he could meet with him.

9. On the morning of December 5, 2012, Bedford received a telephone call from Dave.

10. Dave invited Bedford to meet with him at Dave’s offices.

11. On December 5, 2012, Bedford and Dave met at Dave’s offices in De Pere.

12. In the course of that meeting, Dave 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 to be speaking on behalf of Fortune Avenue, 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 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.

13. After Bedford’s meeting with Dave on December 5, 2012, Bedford did not receive any communications from Fortune Avenue seeking to enforce the Note until counsel for Fortune Avenue sent Bedford a demand letter dated June 13, 2018.

14. Fortune Avenue did not make a demand on Bedford for payment of the Note from December 5, 2012 until June 13, 2018.

B. Conclusions of Law

1. Fortune Avenue released Bedford from any further obligation under the Note on December 5, 2012.

2. To the extent the claim under the Note was not released, Fortune Avenue is estopped from collecting interest and penalty charges on the principal amount as of December 5, 2012.

Dated this 28th day of August, 2019.

By: s/ Jonathan T. Smies

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