

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

FORTUNE AVENUE, LLC,

Plaintiff,

Case No. 18-C-1362

v.

HOWARD BEDFORD,

Defendant.

PLAINTIFF'S PRETRIAL REPORT

Plaintiff, Fortune Avenue, LLC ("Fortune Avenue"), by and through its attorneys, Janssen Law LLC, submits the following Pretrial Report pursuant to Civil L.R. 16(c):

I. Summary of Facts, Claims and Defenses

This case arises out of a breach of promissory note by defendant, Howard Bedford. On October 21, 2011, he executed a Promissory Note payable to Fortune Avenue in the amount of \$350,000.00, with interest ("Note"). However, Mr. Bedford made five (5) payments to Fortune Avenue totaling only \$42,365.74.

Fortune Avenue claims that Mr. Bedford failed, neglected and refused to pay the Note although due demand has been made by Fortune Avenue.

Mr. Bedford claims that on December 5, 2012, David Van Den Heuvel, acting on behalf of Fortune Avenue, made oral statements, releasing him from any obligation to make further payments on the Note.

II. Statement of Issues

1. Whether the Note is valid and enforceable.

2. Whether Mr. Bedford is in default on the Note, and if so, the total balance due.
3. Whether Fortune Avenue's claim is barred by a release of its right to bring a claim against Mr. Bedford.

III. Witnesses Expected to Testify

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

Fortune Avenue reserves its right to call rebuttal witnesses not identified above, as well as any witnesses identified by Mr. Bedford.

IV. Background of Expert Witnesses

Fortune Avenue does not anticipate calling any expert witnesses.

V. Plaintiff Exhibits to be Offered at Trial

Fortune Avenue will file a sperate exhibit list and confer with Mr. Bedford prior to trial in an effort to stipulate to the admissibility of exhibits.

VI. Depositions to be Read into the Record at Trial

Fortune Avenue intends to offer any testimony through portions of deposition transcripts being read into the record at trial.

VII. Time Needed to Try Case

Fortune Avenue estimates that one (1) day will be needed for trial of this case to the Court.

VIII. Proposed Findings of Fact and Conclusions of Law

a. Findings of Fact

1. Mr. Bedford executed the Note.
2. The Note provides for a variable interest rate, adjusting to one (1) percentage point above the Index Rate, with a minimum interest rate of no less than 5.5% until the maturity date.
3. The Note has detailed language which provides for an accelerated interest rate of an additional 5% in the event of default, and delinquency charges of 5% of the unpaid monthly payment.
4. The Note provides for the application of Wisconsin law as the governing law and states the Note “may not be supplemented or modified except in writing and signed by Maker and Lender.”
5. Mr. Bedford made five (5) payments to Fortune Avenue totaling \$42,365.74 (\$8,395.83 on February 29, 2012; \$8,434.31 on March 31, 2012; \$8,472.97 on April 30, 2012; \$8,511.81 on May 31, 2012; and \$8,550.82 on July 31, 2012).
6. Despite multiple requests by Fortune Avenue for repayment, Mr. Bedford has failed, neglected and refused to pay the remaining balance due on the Note according to its terms.
7. As of August 29, 2019, the total balance due under the Note is \$606,168.62, which includes the unpaid principal of \$322,499.81, interest of \$1,527.39 (at the rate of 5.5% through August 31, 2012, prior to loan being in default), interest of \$240,141.42 (at the rate of 10.5% from

September 1, 2012, to August 29, 2019, after the loan was in default), and delinquency charges of \$42,000.00 (84 months x \$500.00 per month between September 2012 and April 2019), plus all costs of collection before and after judgment, including actual attorneys' fees, as provided for in the Note.

8. Mr. Bedford signed the Note.

9. Mr. Bedford reviewed and understood the Note prior to signing.

10. Mr. Bedford asserts that on December 5, 2012, David Van Den Heuvel stated to him that he did not have to pay any remaining debt on the Note.

11. Mr. Bedford did not follow up with Mr. Van Den Heuvel or send any written communication to document or confirm his belief that Fortune Avenue had forgiven the remaining balance due under the Note.

12. On or about January 18, 2017, Jim Kellam, one of Fortune Avenue's representatives, sent Mr. Bedford a letter with a renewal note for the Note.

13. Mr. Bedford did not contact Mr. Kellam, Mr. Van Den Heuvel or any other representatives or employees of Fortune Avenue to dispute or assert that the Note had been forgiven.

b. Conclusions of Law

1. The Note is valid and enforceable.

2. Fortune Avenue did not release Mr. Bedford from his remaining obligation under the Note.

3. Mr. Bedford is in default on the Note, and as of August 29, 2019, owes Fortune Avenue \$606,168.62, plus all costs of collection before and after judgment, including actual

attorneys' fees, as provided for in the Note.

Dated this 29th day of August 2019

By: s/ Robert J. Janssen
Robert J. Janssen
State Bar No. 1000525
Janssen Law, LLC
3000 Riverside Drive, Suite 210
Green Bay, WI 54301
Phone: (920) 425-4844
Fax: (920) 425-4845
Email: bob@janssenlawfirm.com

Attorneys for Plaintiff, Fortune Avenue, LLC