

FILED
07-01-2024
Clerk of Circuit Court
Winnebago County, WI
2024CV000519

STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY

BAYLAND BUILDINGS, INC.

Plaintiff,

-vs-

FOX VALLEY PRO BASKETBALL, INC.,

Case No. 2024CV000519

GREGORY PIERCE,

TWO WILLOWS, LLC,

CINTAS CORPORATION,

and

STATE OF WISCONSIN,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES

Defendants, Fox Valley Pro Basketball, Inc. and Gregory Pierce, through their attorneys, Kerkman & Dunn, hereby answer the complaint as follows:

THE PARTIES

1. Plaintiff, Bayland Buildings, Inc. (“Bayland”), is a domestic corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located at 3323 Bay Ridge Court, Green Bay, Wisconsin, 54155.

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore deny and put Plaintiff to its burden of proof.

2. Bayland is a construction company that specializes in commercial and industrial construction projects throughout the United States and Canada.

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore deny and put Plaintiff to its burden of proof.

3. Upon information and belief, Defendant Fox Valley Pro Basketball, Inc. (“FVPB”), is a domestic corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located at 2370 State Road 44, Suite A Oshkosh, Wisconsin, 54902.

ANSWER: Admit.

4. Upon information and belief, FVPB is in the business of operating an event arena, located at 1212 S. Main St., Oshkosh, Wisconsin 54902, capable of hosting sporting and other entertainment events (the “Arena”).

ANSWER: Admit.

5. Upon information and belief, Defendant, Gregory Pierce, is a resident of Wisconsin and residing at 1156 Westwind Drive, Neenah, Wisconsin 54956 (“Pierce”).

ANSWER: Admit.

6. Upon information and belief, Pierce is the President of FVPB and manages the day-to-day operations of FVPB.

ANSWER: Admit that Pierce is President of FVPB. Deny remainder.

7. Upon information and belief, Defendant, Two Willows, LLC, is a domestic limited liability company organized and existing under the laws of the State of Wisconsin with its principal place of business located at 3243 French Road, De Pere, Wisconsin, 54115.

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore deny and put Plaintiff to its burden of proof.

8. Upon information and belief, Defendant, Cintas Corporation, is a Washington corporation with its principal place of business located at 6800 Cintas Blvd., Mason, OH 45040.

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore deny and put Plaintiff to its burden of proof.

9. Defendant, State of Wisconsin is, upon information and belief, a sovereign entity and body politic with an office located at 17 W. Main Street, Madison, Wisconsin 53707.

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore deny and put Plaintiff to its burden of proof.

JURISDICTION AND VENUE

10. This Court has jurisdiction over FVPB pursuant to WIS. STAT. § 801.05(1)(c) because FVPB is a Wisconsin corporation.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

11. This Court has jurisdiction over Pierce pursuant to WIS. STAT. § 801.05(1)(b) because Pierce is a natural person domiciled in the State of Wisconsin.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

12. Venue is proper in the Wisconsin Circuit Court located in Winnebago County, Wisconsin, pursuant to Section 801.50(2), Wis. Stats., as it is the county in which the claim arose and is the county lawfully designated by the Plaintiff, Bayland.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

13. Bayland accepted a promissory note from FVPB (“Secured Promissory Note”) providing that FVPB would pay the amount owed at that time, which equaled \$13,155,307.33, by or before the maturity date of August 31, 2018. A copy of the Secured Promissory Note, dated May 25, 2018, is attached hereto and incorporated herein as **Exhibit A**.

ANSWER: Admit.

14. FVPB filed for Chapter 11 Bankruptcy protection on August 19, 2019 in the Eastern District of Wisconsin (E.D. Wis. Bankr. 19-28025).

ANSWER: Admit.

15. A Chapter 11 Plan of Reorganization was proposed by FVPB and approved by the Bankruptcy Court on or about August 26, 2020 (the “Chapter 11 Plan”). A copy of the Chapter 11 Plan is attached hereto and incorporated herein as **Exhibit B**.

ANSWER: Admit.

16. As part of the Chapter 11 Plan, FVPB and Bayland agreed to amend the Secured Promissory Note, as reflected in the First Amendment to Secured Promissory Note (the “Amended Note”) dated August 17, 2020. A copy of the Amended Note is attached hereto and incorporated herein as **Exhibit C**. The Secured Promissory Note and Amended Note shall be collectively referred to herein as the “Note.”

ANSWER: Affirmatively allege that Exhibit C speaks for itself. Deny remainder.

17. As security for repayment of the Note, FVPB executed a Collateral Assignment of Land Lease on May 25, 2018 (“Collateral Assignment”) and a Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated May 25, 2018 (“Mortgage”) in favor of Bayland for property located at 1212 S. Main St., Oshkosh, Wisconsin

54902, capable of hosting sporting and other entertainment events (the “Arena”). A copy of the Collateral Assignment is attached and marked as **Exhibit D** and a copy of the Mortgage is attached and marked as **Exhibit E**.

ANSWER: Affirmatively allege that Exhibit D and Exhibit E speak for themselves.

Deny remainder.

18. The Mortgage granted Bayland an interest in the Arena and all assets of FVPB (“Collateral”).

ANSWER: Affirmatively allege that Exhibit E speaks for itself. Deny remainder.

19. In addition to the Collateral Assignment and Mortgage, Pierce executed a personal guaranty dated May 25, 2018 for the benefit of Bayland (“Personal Guaranty”), which irrevocably and unconditionally guaranteed “the full and timely payment and performance” of FVPB’s obligations under the Note. A copy of the Personal Guaranty is attached hereto and incorporated herein as **Exhibit F**.

ANSWER: Affirmatively allege that Exhibit F speaks for itself. Deny remainder.

20. FVPB and Pierce failed to comply with their obligations under the Note by, among other things, failing to make required monthly payments and failing to pay real estate taxes.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof. To the extent a response is required, deny.

21. FVPB has not made a payment to Bayland since March of 2024 and has consistently been delinquent with payments.

ANSWER: Admit FVPB last made a payment to Bayland in March of 2024. Deny remainder.

22. FVPB is currently delinquent on its 2023 real estate tax obligation and owes the City of Oshkosh, upon information and belief, at least \$625,575.69 as of the date of this filing.

ANSWER: Admit that FVPB had not yet paid the 2023 real estate tax obligations as of the date of the complaint. Defendants lack knowledge and information sufficient to form a belief as to the truth of the remaining allegation and therefore deny and put Plaintiff to its burden of proof.

23. FVPB has failed and refused to provide Bayland with Financial Reports pursuant to the terms of the Amended Note.

ANSWER: Deny.

24. Pursuant to the Chapter 11 Plan, “If [FVPB] (i) fails to make any installment to Bayland within 15 days after it is due; (ii) commits waste as the [Arena], including the failure to pay real estate taxes or keep the [Arena] insured, or (iii) materially defaults in other obligations to Bayland under the Plan and does not cure the default within 30 days after Bayland gives notice of the default, the entire amount due Bayland shall be due and payable to Bayland. In the event of such an uncured default, and at the sole election of Bayland, Bayland shall be able to foreclose its mortgage and obtain the appointment of a receiver, and injunction under the Plan shall not apply to Bayland’s collection efforts.”

ANSWER: Affirmatively allege that Exhibit B speaks for itself. Deny remainder.

25. Bayland has continuously notified FVPB of its default under the Note. Copies of default notices that were sent to FVPB by Bayland are collectively attached hereto as **Exhibit G**.

ANSWER: Admit Exhibit G is a default notice sent to FVPB by Bayland. Deny remainder.

26. FVPB remains in default of the Note.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

27. At the time of this submission, FVPB owes Bayland an outstanding balance of Twelve Million Four Hundred Seventeen Thousand Four Hundred Sixty-four and 82/100 Dollars (\$12,417,464.82).

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore deny and put Plaintiff to its burden of proof.

28. Pursuant to, among other things, the Note, FVPB and Pierce are obligated to pay Bayland's attorney fees and all costs incurred by Bayland as a result of the default.

ANSWER: Affirmatively allege that Exhibit C speaks for itself. Deny remainder.

29. Bayland has incurred attorneys' fees and other costs resulting from FVPB's breach of contract and attempts to obtain payments from FVPB, which are not included in the balance set forth above.

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore deny and put Plaintiff to its burden of proof.

30. Defendant, Two Willows, LLC may claim an interest in the Collateral by virtue of a Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing.

ANSWER: Paragraph 30 does not make a factual allegation requiring a response. Defendants put Plaintiff to its burden of proof.

31. The interest of Two Willows, LLC is junior and subordinate to the interest of Bayland.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

32. Defendant, Cintas Corporation, may claim an interest in the Collateral by virtue of a Judgment lien stemming from Winnebago County Case No. 23CV810.

ANSWER: Paragraph 32 does not make a factual allegation requiring a response. Defendants put Plaintiff to its burden of proof.

33. The interest of Cintas Corporation is junior and subordinate to the interest of Bayland.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

34. Defendant, State of Wisconsin, may claim an interest in the Collateral by virtue of a Unemployment Tax Lien stemming from Winnebago County Case No. 23UC100.

ANSWER: Paragraph 34 does not make a factual allegation requiring a response. Defendant puts Plaintiff to its burden of proof.

35. The interest of the State of Wisconsin is junior and subordinate to the interest of Bayland.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

36. To date, FVPB has demonstrated an inability to pay Bayland the amount owed pursuant to the Note.

ANSWER: Deny.

37. Upon information and belief, in addition to the default under its obligation to Bayland, FVPB is also in default of the Development Agreement with the City of Oshkosh, its obligations to the Milwaukee Bucks, LLC, and its obligations to other creditors.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

38. Waste is being committed by FVPB.

ANSWER: Deny.

COUNT I – RECEIVERSHIP

39. Bayland restates paragraphs 1 – 38 as if fully set forth herein.

ANSWER: Defendant incorporates and realleges all answers or responses to the proceeding paragraphs herein by reference.

40. FVPB has failed to make payments to Bayland when due, has failed to meet its obligations to the City of Oshkosh, and has failed to meet its obligations to the Milwaukee Bucks, LLC.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

41. By its actions, FVPB has demonstrated an inability to (a) pay obligations due to Bayland and other creditors, or (b) refinance or raise additional capital to pay such obligations now or in the future.

ANSWER: Deny.

42. Upon information and belief, FVPB is insolvent or in imminent danger of insolvency.

ANSWER: Deny.

43. Pursuant to the terms of the Mortgage, upon the filing of a complaint to foreclose the Mortgage, “the court in which such complaint is filed **shall**, upon petition by Mortgagee [i.e.,

Bayland], appoint a receiver for the Premises in accordance with Wisconsin law” (emphasis added) and “[s]uch appointment may be made either before or after sale, without notice...”.

ANSWER: Affirmatively allege that Exhibit E speaks for itself. Deny remainder.

44. By this action, Bayland seeks the immediate appointment of Paul Swanson, Esq., 107 Church Avenue, Oshkosh, Wisconsin 54901 (“Receiver”) as Receiver of FVPB (the “Receivership”), and requests that the Receiver have control over all property of FVPB, both real and personal, tangible and intangible, of whatever description and location, including, without limitation, the Collateral, all of FVPB’s cash on hand or on deposit with a financial institution, all accounts receivable, claims, demands and causes of action, liquidated and unliquidated, together with all collateral or security therefore, all machinery, equipment, fixtures, furnishings, vehicles, supplies, inventory, contract rights, general intangibles, patents, trademarks, copyrights, trade names, licenses, intellectual property, books and records, customer lists and any and all other assets owned by FVPB (collectively, the “Property”), all of the Property to be held, administered and disposed of by Receiver in trust and upon the terms and conditions of the Court’s Order, for the benefit of all of the creditors of FVPB, the Receiver having all of the usual powers vested in him pursuant to Chapter 128 of the Wisconsin Statutes, and the laws applicable thereto, including, but not limited to:

- a. Authority to take possession of the Property and notify all creditors of FVPB of the Receivership and thereafter to liquidate the Property upon notice, free and clear of all liens, claims and encumbrances, with liens, claims and encumbrances attaching to the proceeds of the sale, through public or private proceedings in a commercially reasonable manner, subject to the prior consent of Bayland, to the

extent it is subject to its security interests, and subject to the prior approval of this Court;

- b. Authority to commence or continue litigation or other proceedings regarding any claims or causes of action now existing in favor of FVPB or which arise during the course of the Receivership and inure to the benefit of the estate;
- c. Authority to enforce, collect, settle, compromise, sell or dispose of any accounts receivable, rents receivable, claims, demands and causes of action existing in favor of FVPB, as the case may be, and to settle and compromise any and all claims against FVPB, as the case may be;
- d. Authority to employ such help and incur such reasonable expenses as he may deem necessary to properly carry out the Receivership and to employ the services of attorneys, consultants, accountants, property managers, brokers, investment bankers, appraisers, liquidators and other professionals and independent contractors when it appears to him necessary and advisable to do so;
- e. Authority to retain appropriate brokers/consultants to market the Property; and
- f. Authority to execute, acknowledge and deliver all agreements, leases, contracts, bills of sale, assignments, releases, deeds, conveyances, transfers and other documents necessary and proper to carry out the Receivership.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

45. As further support of its request for the immediate appointment of a Receiver, the Affidavit of Chad Calmes, has been filed contemporaneously herewith in support of Bayland's

Ex Parte Motion for Temporary Injunction/Temporary Restraining Order and Motion for Appointment of Receiver and is incorporated herein by reference.

ANSWER: Paragraph 45 does not make a factual allegation requiring a response. Defendants put Plaintiff to its burden of proof.

COUNT II - BREACH OF CONTRACT
(Against Fox Valley Professional Basketball, Inc.)

46. Bayland restates paragraphs 1 – 45 as if fully set forth herein.

ANSWER: Defendant incorporates and realleges all answers or responses to the proceeding paragraphs herein by reference.

47. FVPB had and continues to have a contractual duty to make timely payments to Bayland under the Note.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

48. FVPB has failed to make payments to Bayland and is in material breach of its contractual obligations.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

49. As a result of FVPB's breach of its obligations, and considering Bayland's compliance with any of its obligations and satisfaction of any conditions therein, FVPB owes Bayland, and Bayland is entitled to a money judgment in the amount of Twelve Million Four Hundred Seventeen Thousand Four Hundred Sixty-four and 82/100 Dollars (\$12,417,464.82), plus attorneys' fees and costs that have accrued and will continue to accrue, plus all other fees, costs, charges, penalties, and expenses allowed under the Note, the Chapter 11 Plan and related documents.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

COUNT III - BREACH OF CONTRACT
(Against Greg Pierce)

50. Bayland restates paragraphs 1 – 49 as if fully set forth herein.

ANSWER: Defendant incorporates and realleges all answers or responses to the proceeding paragraphs herein by reference.

51. Under the terms of the Personal Guaranty, Pierce promised to irrevocably and unconditionally make full payment of the amount owed to Bayland under the Note upon FVPB's default, plus costs of collection, interest and attorneys' fees.

ANSWER: Affirmatively allege that Exhibit F speaks for itself. Deny remainder.

52. Although FVPB defaulted and continues to be in default of the Note, Pierce has failed to make timely payment despite demand by Bayland.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

53. As a result, Pierce is in material breach of his contractual obligations owed to Bayland.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

54. Pierce owes Bayland, and Bayland is entitled to a money judgment in the amount of Twelve Million Four Hundred Seventeen Thousand Four Hundred Sixty-four and 82/100 Dollars (\$12,417,464.82), plus attorneys' fees and costs that have accrued and will continue to accrue, plus all other fees, costs, charges, penalties, and expenses allowed under the Personal Guaranty and related documents.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

COUNT IV – FORECLOSURE
(Against Fox Valley Professional Basketball, Inc. and Two Willows, LLC)

55. Bayland restates paragraphs 1- 54 as if fully set forth herein.

ANSWER: Defendant incorporates and realleges all answers or responses to the proceeding paragraphs herein by reference.

56. Defaults under the Mortgage have occurred and, furthermore, the Mortgage provides that upon a default thereunder, Bayland is entitled to foreclose the Mortgage.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

57. By reason of the default, and pursuant to applicable law and the terms of the Mortgage, Bayland is entitled to foreclose the Mortgage and Bayland is entitled to a judgment of foreclosure on the Mortgage related to the Arena.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

COUNT V – REPLEVIN
(Against Fox Valley Professional Basketball, Inc. and Two Willows, LLC)

58. Bayland restates paragraphs 1-57 as if fully set forth herein.

ANSWER: Defendant incorporates and realleges all answers or responses to the proceeding paragraphs herein by reference.

59. Pursuant to the Mortgage, upon default by FVPB, Bayland is entitled to the immediate possession of the Collateral.

ANSWER: Affirmatively allege that Exhibit E speaks for itself.

60. FVPB is wrongfully detaining the Collateral by failing and refusing to turn it over to Bayland.

ANSWER: Deny.

61. Upon information and belief, the tangible Collateral is located within the Arena.

ANSWER: Seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof. To the extent a response is required, Defendants admit personal property is located within the Arena.

62. The value of the Collateral is unknown, but, upon information and belief, is less than the amount of the debt it secures.

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore denies and puts Plaintiff to its burden of proof.

63. No proceedings have been had at law or otherwise for the recovery of the sums due under the Note and Mortgage.

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore denies and puts Plaintiff to its burden of proof.

64. Bayland is still the lawful owner and holder of the Note and Mortgage which have not been sold or assigned.

ANSWER: Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation and therefore denies and puts Plaintiff to its burden of proof. Further, seeks a conclusion of law to which no response is required; Defendants put Plaintiff to its burden of proof.

65. Continued possession and use by FVPB will diminish the value of the Collateral and substantially impair the value of Bayland's security interest in the Collateral.

ANSWER: Deny.

Affirmative Defenses

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred by the doctrines of unclean hands, waiver, laches, or estoppel.

Dated: July 1, 2024.

/s/ Electronically Signed by Evan P. Schmit

Evan P. Schmit
State Bar No. 1057109
Kerkman & Dunn

Attorneys for Defendants Fox Valley Pro
Basketball, Inc. and Gregory Pierce

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