

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SECURITY TECHNOLOGIES, INC, et al,

Plaintiffs,

v

BRMC EQUITIES, LLC, et al,

Defendants.

Case No. 2013-135199-CK
Hon. Wendy Potts

Consolidated with
Case No. 2013-134695-CK

OPINION AND ORDER DETERMINING DAMAGES ON DEFENDANTS' CLAIMS

At a session of Court
Held in Pontiac, Michigan

On
FEB 13 2015

The matter is before the Court to determine the amount of damages Plaintiffs Security Technologies, Inc. (Securatech) and Rudy Patros owe Defendant BRMC Equities, LLC for a July 2012 \$100,000 loan BRMC extended to Securatech. In rulings on Plaintiffs' dispositive motions, the Court concluded that there was no question of fact that Securatech made \$80,000 in cash payments towards the BRMC loan. The Court further held that BRMC admitted that the interest rate on the loan was usurious, however, the loan agreement had a savings provision that allowed the interest rate to be adjusted to the maximum rate allowed by law. On the date set for trial, Plaintiffs admitted their liability for the BRMC loan and waived a jury trial on the amount of damages owed. The parties submitted their damages arguments and proofs on brief, and the Court is now charged with determining the amount Plaintiffs owe.

The Court notes at the outset that some of Defendants' damages arguments appear to be a disguised motion for reconsideration of the Court's prior rulings. In particular, Defendants

appear to be contesting the Court's conclusion that there is no question of fact that Plaintiffs paid in full Defendant Murad Metro Properties, LLC's April 2013 loan. To the extent that Defendants are attempting to relitigate this issue, the Court will not reconsider its ruling. Further, the Court will also not reconsider its conclusion that Defendants admitted that Plaintiffs paid \$80,000 toward the BRMC loan. Defendants note that both Securatech and BRMC stated in bankruptcy filings that as of June 2013 Plaintiffs owed BRMC \$62,500. However, Defendants present no authority that a statement made in a bankruptcy court filing serves to contradict admissions Defendants made in this case. Thus, the only issues before this Court are (1) did Plaintiffs pay the BRMC loan in full, (2) if not, how the \$80,000 in established payments Plaintiffs made on the BRMC loan should be allocated to determine the amount still owed, and (3) are Defendants entitled to additional damages such as attorney fees.

Regarding the first question, Plaintiffs maintain that BRMC actually only received \$90,000 on the \$100,000 loan because Securatech made a \$10,000 payment to BRMC when the initial note was signed in July 2012. However, Plaintiffs cite no evidence to support this claim and nothing within the loan documents supports this position. Because the note states that the principal loaned was \$100,000, and there is no evidence to the contrary, the Court rejects Plaintiffs' claim that the amount loaned was actually \$90,000. Likewise, the Court finds no merit to Plaintiffs' claim that they made more than \$80,000 in payments. This claim is based on an affidavit of the late Michael George that was filed in Securatech's bankruptcy proceeding. Although Plaintiffs assert that Mr. George's affidavit is "independent" and he had "nothing to gain" from making his claims, George states in the affidavit that he was a creditor of Securatech in the bankruptcy proceeding. Thus, contrary to Plaintiffs' claim, George had a personal interest in convincing the bankruptcy court that the BRMC loan was fully repaid. Based on the evidence

presented, the Court concludes that the BRMC loan was not paid in full and Plaintiffs made only \$80,000 in payments on that loan.

The question then becomes how to determine the amount owed. Defendants' loan calculations was based on the assumption that Securatech owed \$62,500 and calculated the interest owed based on that amount. In fact, neither party's brief gives this Court guidance on how to calculate the amount still owed in principal and interest. While Defendants assume a \$62,500 balance as of June 2013, Plaintiffs assume that the loan was paid in full or, as Plaintiffs' accounting expert contends, overpaid. A proper calculation of the remaining debt must take into account the \$80,000 in payments Plaintiffs made and must properly allocate those payments to the \$100,000 in principal and 24.99% interest accrued. Therefore, the Court orders BRMC recalculate the amount owed based on the original \$100,000 in principal and 24.99% interest, and properly apply the \$80,000 in payments made.

As for BRMC's request for various attorney fees as damages, the Court agrees with Plaintiffs that Defendants fail to present evidence that these fees were incurred as a result of Securatech's breach of the note. Under the terms of the note, BRMC is entitled to seek "costs incurred by the Lender in the collection of this Note, including, without limitation, actual attorney fees" However, Defendants are claiming attorney fees for counsel who were never involved in this case, and Defendants present no evidence that the attorneys performed services for BRMC to collect on this debt. Even if Defendants had presented evidence that the claimed fees were incurred in the collection of this debt, there is no evidence to support the amount of fees claimed. Defendants have the burden of proving that their damages with reasonable certainty. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). Because Defendants present no evidence supporting the amount of fees claimed and that those

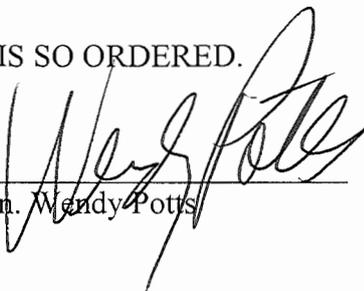
fees were incurred to collect on this debt, they fail to meet their burden and the Court will not award any attorney fees.

For all of these reasons, the Court orders Defendants to efile and serve on Plaintiffs a proposed judgment within 14 days with a recalculation of principal and interest owed based on the Court's ruling in this opinion. Plaintiff will have 14 days after service of the proposed judgment to file any objections to Defendants calculation. If Plaintiffs have objections, they must notice the matter for hearing. If the Court receives no objections, it will enter Defendants' proposed judgment.

Dated:

FEB 13 2015

IT IS SO ORDERED.



Hon. Wendy Potts