

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 RE: PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION

At a session of Court
Held in Pontiac, Michigan

MAY^{On} 05 2014

This case arises from Plaintiff Security Technologies, Inc's alleged default on loans extended by Defendants BRMC Equities and Murad Metro Properties. BRMC loaned Security Technologies, Inc., known as Securatech, \$100,000 in July 2012 in exchange for a promissory note. On July 30, 2012, Plaintiff Rudy Patros signed a promissory note on behalf of Securatech that imposes a 24.99% interest rate and requires a monthly interest and principal payment of \$2,500. Patros claims that after he signed that note, Defendant Bassam Murad contacted him about altering the terms. Patros signed a second note, also dated July 30, 2012, stating that the monthly interest-only payment is \$2,083 and requiring Securatech to pay BRMC \$417 per month for twelve months beginning in September 2012 to "reimburse lender for lender's attorney fees." Both notes state that the parties intend that the note complies with usury laws and, if the interest rate exceeds the maximum allowable rate, Securatech is not "obligated to pay the amount of such interest to the extent that it is in excess of the maximum permitted by law." The notes further

state that the interest rate “shall be automatically subject to reduction to the maximum lawful contract rate.” The BRMC loan was secured by the personal guaranties of Rudy Patros and his wife Hind Patros, a security agreement on Securatech’s assets, and a stock purchase agreement that allowed Defendant Rasha Murad, wife of Bassam Murad, to purchase 50% of Securatech’s stock for \$1.00 along with an agreement that allowed Patros to redeem the shares by paying \$100,000 within six months or \$150,000 within twelve months. Securatech claims it made \$102,500 in payments on the BRMC loan, satisfying the entire balance owed. BRMC admits that Securatech made eight \$10,000 cash payments, however, BRMC applied only \$7,500 of each payment to the principal. Murad Metro loaned Securatech \$22,000 in April 2013, which was to be repaid within three days along with a \$2,500 fee. Apparently, this loan was not memorialized in a promissory note or agreement and was unsecured. Securatech claims that it timely paid Murad Metro \$24,500 in satisfaction of the loan.

On June 24, 2013, BRMC filed an action against Rudy and Hind Patros for breach of their personal guaranty of Securatech’s debt, which is Docket No. 2013-134695-CK. That case was originally assigned to this Court, but was reassigned to Judge Nichols because it did not meet the criteria for Business Court jurisdiction. On July 22, 2013, Securatech and Rudy Patros filed the second action, Docket No. 2013-135199-CK, alleging several claims including a request for a declaratory judgment that the BRMC Defendants’ loans are usurious and unenforceable. The second case was originally assigned to Judge Nichols but he reassigned it to Business Court, and the parties agreed to reassign the first case to this Court and consolidate them.

The matter is now before the Court on the Securatech Plaintiffs’ motion for summary disposition under MCR 2.116(C)(10), which tests the factual support for the claim. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). The Securatech Plaintiffs assert that

the BRMC and Metro Murad loans are criminally usurious and the BRMC Defendants are barred from collecting on the loans under the wrongful conduct rule. Under the wrongful conduct rule, a party cannot pursue a cause of action based in whole or in part on illegal conduct. *Orzel v Scott Drug Co*, 449 Mich 550, 558; 537 NW2d 208 (1995).

These loans would generally not be considered usurious, much less criminally usurious. The note states that the interest rate is 24.99% which is within the 25% maximum rate in the criminal usury statute. MCL 438.41. The Securitech Plaintiffs contend that the \$417 monthly payment to reimburse BRMC for its attorney fees is a hidden interest charge, which pushes the effective rate for the BRMC loan well over 25%. However, even if the attorney fee is disguised interest, the loan would still not be usurious because the note expressly states that if the interest rate charged exceeds the maximum allowable rate, it would be automatically reduced. In addition, the Business Corporations Act exempts corporate loans from the usury statutes. Specifically, a corporation may “agree to pay a rate of interest in excess of the legal rate and the defense of usury shall be prohibited.” MCL 450.1275. Thus, neither the BRMC nor Murad Metro loans would be considered usurious under the law or the parties’ agreements.

Although the loans are not facially usurious, the BRMC Defendants did not timely respond to the Securitech Plaintiffs’ requests for admission and, in doing so, admitted that “the Promissory Note, that is the subject of this litigation, charges a usurious rate of interest.” The Securitech Plaintiffs served the requests for admission on the BRMC Defendants on October 24, 2013, however, they did not answer them until December 9, 2013. Because the BRMC Defendants did not timely answer the requests for admission, and have not asked the Court to set aside the admissions, they admitted that the BRMC loan was usurious. MCR 2.312(B)(1). However, this admission alone does not justify the Securitech Plaintiffs’ claim for summary

disposition because the loan agreement states that if the interest rate is found to be usurious, the rate will be adjusted to the maximum interest rate allowable. Which raises a question that was not briefed by the parties: what is the maximum interest rate allowable? If this was a consumer loan, the law is clear that the maximum allowable rate would be 25%. MCL 438.41. However, as noted above, this is a loan extended to a corporation, meaning that there is no maximum allowable rate. MCL 450.1275. Based on the arguments and evidence presented, the Court cannot determine as a matter of law whether the BRMC Defendants' admission that the loan is usurious would result in a 25% cap on the interest rate or would have no effect due to the usury exception for corporations. The Court will allow each side to submit a supplemental brief limited to five pages explaining the result of the BRMC Defendants' admission that the loan is usurious.

Moreover, the BRMC Defendants' admission that the "Promissory Note" is usurious does not resolve the Securatech Plaintiffs' claim in Count IV seeking a declaratory judgment that the Murad Metro loan is usurious. The Securatech Plaintiffs cite no "note" governing the Murad Metro loan, and thus the request for admission cannot be construed as applying to this loan. In sum, the Court cannot conclude as a matter of law that the Securatech Plaintiffs are entitled to summary disposition based on their wrongful conduct rule theory.

The Securatech Plaintiffs also assert that the BRMC Defendants' security agreement covers only the Securatech Plaintiffs' accounts "arising out of the sale of collateral" and thus does not apply to their accounts for monitoring security systems. However, the BRMC Defendants note that the security agreement incorporates by reference the UCC definitions of collateral, which provides a broad definition of accounts including various monetary obligations. MCL 440.9102(b). The Court cannot conclude as a matter of law that the security agreement does not cover the Securatech Plaintiffs' monitoring accounts.

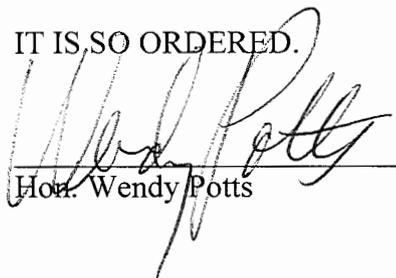
In their final argument, the Securatech Plaintiffs assert that there is no question of fact that they paid the BRMC and Murad Metro loans in full. In the alternative, the Securatech Plaintiffs assert that the BRMC Defendants admitted that the Securatech Plaintiffs paid \$80,000 towards the BRMC loan. The issue of payment was addressed in the requests for admission and by failing to timely answer those requests the BRMC Defendants have admitted that they received \$80,000 in payments on the BRMC loan. In addition, the BRMC Defendants admitted to the \$80,000 in payments in their complaint filed against the Securatech Plaintiffs in the first case. However, the BRMC Defendants have not admitted that the BRMC loan was paid in full and have consistently maintained that the Securatech Plaintiffs still owe at least \$40,000 in principal on that loan, plus unpaid interest and fees. As for the Murad Metro loan, Rudy Patros claims in an affidavit that he paid the loan in full and the BRMC Defendants present no admissible evidence contradicting this claim. Although the Securatech Plaintiffs fail to demonstrate that they are entitled to summary disposition on their claim that they paid the BRMC loan, there is no genuine dispute that the Murad Metro loan was fully paid and summary disposition is warranted on the Securatech Plaintiffs' claim regarding the Murad Metro loan.

For all of these reasons, the Court grants the Securatech Plaintiffs summary disposition of their Count V seeking a declaratory judgment that the April 2013 Murad Metro loan was paid in full and satisfied. The parties may file supplemental briefs on the effect of the BRMC Defendants' usury admission on the interest rate applicable to the BRMC loan. In all other respects, summary disposition is denied.

Dated:

MAY 05 2014

IT IS, SO ORDERED.



Hon. Wendy Potts