

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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THE BANK OF NEW YORK MELLON  
TRUST COMPANY, NATIONAL ASSOCIATION,  
f/k/a/ The Bank of New York Trust Company,  
National Association, as trustee for Morgan Stanley  
Capital I Inc., Commercial Mortgage Pass-Through  
Certificates, Series 2007-IQ14,

Plaintiff,

v.

MICHAEL A. BRUSCA,

Defendant.

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ORDER

12-cv-377-bbc

Plaintiff Bank of New York Mellon Trust Company is suing defendant Michael Brusca for breach of contract. According to the complaint, defendant guaranteed a loan for more than \$6,000,000 in 2007. When the borrower defaulted and filed for bankruptcy, plaintiff sought to collect the balance from defendant, but defendant failed to pay. Plaintiff now seeks nearly \$10,000,000, which includes the balance, interest, penalties and fees. Plaintiff has filed a motion for summary judgment, dkt. #8, which defendant has not opposed.

In an order dated December 18, 2012, dkt. #15, I directed plaintiff to submit additional evidence regarding defendant's citizenship so that I could determine whether subject matter jurisdiction was present under 28 U.S.C. § 1332. In response, plaintiff has

submitted a stipulation in which plaintiff and defendant agree that defendant is domiciled in Wisconsin because he has lived there for the last six years, has no plans to move, is registered to vote there and is licensed to drive there. Dkt. #16-1. That is sufficient to establish defendant as a Wisconsin citizen under § 1332. Heinen v. Northrop Grumman Corp., 671 F.3d 669, 670 (7th Cir. 2012). Because plaintiff is a citizen of California, the parties' citizenship is diverse.

With respect to the merits, it is undisputed that defendant is the guarantor of a promissory note held by plaintiff; that the borrower defaulted on the loan; that defendant is legally responsible for paying the balance of the loan and related fees, which are \$9,770,595.27; and that defendant has not made any payment to plaintiff. Plt.'s PFOF ¶¶ 4, 7-9, 11 and 17, dkt. #10. Although defendant raised a number of affirmative defenses in his answer, he failed to prove them in response to plaintiff's motion for summary judgment on those defenses, so they are waived.

## ORDER

IT IS ORDERED that plaintiff Bank of New York Mellon Trust Company's motion for summary judgment, dkt. #8, is GRANTED. The clerk of court is directed to enter

judgment in favor of plaintiff in the amount of \$9,770,595.27.

Entered this 28th day of December, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge