

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 9, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP1896

Cir. Ct. No. 2005CV36

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PATRICK J. SHEA,

PLAINTIFF-APPELLANT,

V.

FOREMOST FARMS USA COOPERATIVE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Lafayette County:
DANIEL L. LAROCQUE, Judge. *Affirmed.*

Before Higginbotham, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Patrick Shea appeals from a judgment dismissing his claim against Foremost Farms USA Cooperative. Shea sued for breach of contract. The issue is whether Foremost is entitled to summary judgment on the claim. We affirm.

¶2 The facts are not in dispute. For many years Shea, operating as an independent contractor, hauled milk for Foremost and its predecessor, both milk producer cooperatives. Foremost initially paid Shea \$.705 per hundred weight of milk hauled. In 1997 he demanded an increased rate and sued Foremost when it refused. Shea dismissed his suit when Foremost increased his rate to \$.80 per hundred weight. Foremost communicated its offer orally, and there is no evidence of a written contract.

¶3 Shea hauled milk at the \$.80 rate for the next six years, until April 2003, when Foremost notified Shea that it was reducing his rate to \$.055 per hundred weight. Shea continued to haul milk and accepted payment at the new rate, but also submitted demands for payment at the old rate. When Foremost refused those demands, Shea commenced this action alleging in his breach of contract claim that Foremost was contractually bound to pay him at the \$.80 rate. The trial court granted summary judgment, concluding that Foremost had rightfully terminated the contract to haul at the \$.80 rate and replaced it with a contract to haul at \$.055, which Shea accepted by cashing the checks Foremost paid him based on that rate.

¶4 We review summary judgments de novo, applying the same method employed by circuit courts. *Brownelli v. McCaughtry*, 182 Wis. 2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994). That method is well established and we need not elaborate on it. *See, e.g., Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶¶20-24, 241 Wis. 2d 804, 623 N.W.2d 751. Pertinent here, summary judgment is appropriate when undisputed facts show that a party is entitled to judgment as a matter of law. *Id.*, ¶24.

¶5 There is no evidence that Foremost was bound by contract to pay Shea \$.80 per hundred weight after May 1, 2003. Shea argues in effect that the 1997 contract guaranteed him at least \$.80 per hundred weight as long as he hauled milk for Foremost. However, courts are reluctant to interpret contracts to provide for perpetual or unlimited rights unless the parties clearly state that to be their intention. *See Capital Invs., Inc. v. Whitehall Packing Co.*, 91 Wis. 2d 178, 193, 280 N.W.2d 254 (1979). Here, Shea produced no evidence of any such stated intent, or implied intent for that matter. Under the only reasonable interpretation of the 1997 rate agreement, Foremost retained the right to terminate that agreement at any time. Consequently, Foremost committed no breach when it cancelled the \$.80 rate, and offered Shea a lower rate. In any event, Shea is estopped from recovering on his claim because he accepted the new rate. “Where one having the right to accept or reject a transaction takes and retains benefits thereunder, he ratifies the transaction, is bound by it, and cannot avoid its obligation or effect by taking a position inconsistent therewith.” *Pick Foundry, Inc., v. General Door Mfg. Co.*, 262 Wis. 311, 317, 55 N.W.2d 407 (1952) (citation omitted).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

