

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 13, 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. 2007AP429

Cir. Ct. No. 2005CV122

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

VILLAGE OF ENDEAVOR,

PLAINTIFF-APPELLANT,

V.

RUSSELL GRAY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Marquette County:
RICHARD O. WRIGHT, Judge. *Reversed and cause remanded for further proceedings.*

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

¶1 PER CURIAM. The Village of Endeavor appeals the circuit court's judgment dismissing its action against Russell Gray. The issue is whether the Village's claim is barred by the statute of limitations. We reverse.

¶2 Gray borrowed a total of \$11,595 from the Village of Endeavor in 1994. The Village discovered that it had no loan documents and asked Gray to sign a recompiled promissory note in 2003, backdated to 1994. Gray signed the note and made a series of \$75 payments on the loan, commencing in November 2003 and continuing until July 2004. After a dispute over back-interest on the loan, Gray stopped making payments. The Village then brought this action. The circuit court concluded that the Village's claim against Gray was barred by the statute of limitations.

¶3 “It is well established in this state that in order to renew a debt once barred, there must be an express acknowledgment of the debt with the intention to renew it as a legal obligation.” *Davison v. Hocking*, 3 Wis. 2d 79, 86, 87 N.W.2d 811 (1958). “A partial payment, to operate as a new promise and avoid the bar of the statute of limitations, must be made under such circumstances as to warrant a clear inference that the debtor recognized the debt as an existing liability, and indicated his willingness, or at least an obligation, to pay the balance.” *Id.*

¶4 Gray explicitly acknowledged his debt to the Village and indicated a willingness to pay it in several ways. Gray made a series of payments toward the debt starting in November 2003. He testified at trial that he did so because he owed the money to the Village, and making the payments was what he was supposed to do. Gray signed a promissory note on or before December 13, 2003, that plainly sets out the amount of the obligation and its terms, including the 4% interest rate. By making the payments and signing the reconstructed note in 2003, Gray recognized his obligation to the Village and indicated that he intended to make good on that obligation. Thus, the statute of limitations does not bar the Village's claim.

¶5 The circuit court concluded that Gray was in the “midst of settlement negotiations” with the Village over his debt when he made the payments and signed the note, and thus had not expressly acknowledged the continuing validity of the debt. The circuit court’s factual finding that Gray was in the midst of negotiations when he began making payments and signed the note is clearly erroneous. Gray may have made an assumption that the Village did not expect him to pay back-interest, but he neither raised the issue of back-interest with the Village Board before he began making payments in November 2003 nor raised the issue before he signed the promissory note, which was signed sometime on or before December 13, 2003. Gray also did not explicitly condition his actions on future agreement about the interest. Therefore, the circuit court’s factual finding that the parties were in the midst of negotiations when Gray made payments on the debt and signed the note was clearly erroneous.

¶6 The Village contends that Gray is obligated to pay back-interest of 4% on the debt under the terms of the promissory note. We agree. The note signed by Gray plainly provides that he owes the debt with interest accruing at 4%. The promissory note also provides that the Village is entitled to its costs in collecting the debt, including attorney fees. Therefore, we remand for a determination of the Village’s costs and attorney fees as provided in the promissory note.

By the Court.—Judgment reversed and cause remanded for further proceedings.

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

