

No. 95-0902

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

PAUL EVERS,

Plaintiff-Appellant,

v.

ERRATA SHEET

EVERETT FRYER,

Defendant-Respondent.

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PLEASE TAKE NOTICE that the attached page 3 is to be substituted for page 3 in the above-captioned opinion which was released on October 24, 1995.

Dated this 25th day of December, 2006.

On May 28, Evers served Fryer with a small claims summons and complaint for wrongful withholding of his security deposit. Three days later, Evers cashed Fryer's check. A small claims hearing was held on February 13, 1995, where the trial court stated:

My understanding is that when the security deposit return was made, that Mr. Evers held on to the check for about four weeks and that then there were some discussions between himself and Mr. Fryer where Mr. Fryer was claiming additional damages for a carpet he claimed had been destroyed by pets owned by Mr. Evers, and so Mr. Evers then decided to cash the check upon advice of counsel.

[Evers] claimed he talked to [a legal aid attorney] who told him it was probably best to cash the check so you at least have some reimbursement for your security deposit.

The trial court concluded that an accord and satisfaction existed between the parties and dismissed Evers's complaint. Evers appeals.

Whether the facts fulfill a particular legal standard presents a legal question. See *City of Brookfield v. Milwaukee Metro. Sewerage Dist.*, 141 Wis.2d 10, 14, 414 N.W.2d 308, 309 (Ct. App. 1987). This court independently reviews the trial court's determination. See *In re Estate of Karrels*, 148 Wis.2d 448, 450, 435 N.W.2d 739, 740 (Ct. App. 1988). Evers argues that an accord and satisfaction was not reached and, alternatively, if one did exist, that it would be contrary to public policy.