

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-0565

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

KENNETH PASCOE D/B/A KEN PASCOE CONSTRUCTION,

PLAINTIFF-APPELLANT,

v.

JOHN HOOKS AND WANDA HOOKS,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Grant County:
JOHN R. WAGNER, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

PER CURIAM. Kenneth Pascoe appeals from a judgment of the circuit court after a trial dismissing his action for breach of contract against John Hooks and Wanda Hooks. The issue on appeal is whether the proposal signed by Pascoe and the Hooks was an enforceable contract. Because we conclude that the

terms of the document were too indefinite to constitute a binding contract, we affirm.

In 1995, the Hooks decided to build a new home and contacted Pascoe, a building contractor. During their first meeting, the Hooks and Pascoe looked at standard plans for new homes and discussed the type of plan the Hooks wanted to use. In their second meeting, Pascoe presented a proposal which included a floor plan he had drawn. The proposal stated:

To build house as per plans drawn by Ken Pascoe & signed by John Hooks with following exceptions[:] the bathroom in mudroom to be moved to basement & add shower & walls. French doors (6') in kitchen[.] Customer to furnish carpeting & linoleum[.] Septic system to paid for by customer.¹

The proposal specified a price of \$109,280 and the time frame for paying. The proposal also contained a guarantee and an acceptance provision. The Hooks signed the proposal. The testimony at the trial to the court consisted primarily of what happened after the proposal was signed. In essence, the Hooks and Pascoe could not agree about many aspects of the proposed construction.

Eventually, the Hooks and Pascoe had a stormy meeting in which it was determined that Pascoe would not build the home.² Shortly after their last meeting with Pascoe, the Hooks contracted with another builder to construct their home. Work began on the new home almost immediately. Nearly six months

¹ The floor plan prepared by Pascoe contained few additional details.

² The Hooks claim that Pascoe was the first to rescind the contract while Pascoe claims that the Hooks were the first to breach the contract.

later, Pascoe made a demand on the Hooks for his lost profit. The Hooks refused to pay and Pascoe brought suit in the circuit court for breach of contract.

A trial to the court was held and the circuit court determined that there was no contract in fact, and if there was one, it was illusory and therefore nonbinding. The court, noting that Pascoe had called the document a proposal rather than a contract, determined that there was not a binding contract because of the language in the proposal which said: “Note: This proposal may be withdrawn by us if not accepted within _____ days.” The circuit court determined that this language made the contract illusory, and consequently, there was no contract in fact.

We affirm the trial court’s determination that there was not an enforceable contract. However, we reach this conclusion for different reasons. We conclude that there was not a contract because the proposal was too indefinite to constitute a binding agreement. We may affirm a trial court’s determination if the court was right in deciding as it did, if for the wrong reasons. *State v. Davis*, 171 Wis.2d 711, 722, 492 N.W.2d 174, 178 (Ct. App. 1992).

The issue of the definiteness of a contract may be a question of fact to be decided by the jury or a question of law to be decided by the court. *Management Computer Serv., Inc. v. Hawkins, Ash, Baptie & Co.*, 206 Wis.2d 158, 178, 557 N.W.2d 67, 75 (1996). In *Shetney v. Shetney*, 49 Wis.2d 26, 38, 181 N.W.2d 516, 521-22 (1970), the court concluded that a contract was indefinite as matter of law because, after review of the voluminous record, the court could not find “any evidence of a clear understanding or even a clear assertion of any contractual terms.” We conclude that is the case here.

The relevant evidence is the proposal signed by both parties. This court is able to review this document and determine, as a matter of law, whether this constitutes an enforceable contract.

Indefiniteness in the essential terms of a contract prevents the creation of an enforceable contract. *Management Computer Serv., Inc.*, 206 Wis.2d at 178, 557 N.W.2d at 75.

1 CORBIN, CONTRACTS § 95, at 394, provides:

A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract; they must have expressed their intentions in a manner that is capable of understanding. It is not even enough that they have actually agreed, if their expressions, when interpreted in the light of the accompanying factors and circumstances, are not such that the court can determine what the terms of the agreement are. Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement, have often been held to prevent the creation of a contract.

Shetney, 49 Wis. 2d at 38-39, 181 N.W.2d at 522.

We conclude that the proposal presented by Pascoe and signed by the Hooks, even in light of the accompanying factors and circumstances, simply is missing too many terms to make it a valid and binding agreement to construct a new home.³ The proposal does not contain any specific details about such things as the materials to be used or many of the dimensions of the construction project.⁴

³ The contract the Hooks eventually entered into with another builder, which was offered as an exhibit at trial, contains the type of detail necessary to create an enforceable contract to construct a home.

⁴ At a meeting after the proposal was signed, Pascoe presented a rider to the proposal which contained some specifications. It is undisputed, however, that the Hooks never signed the rider.

As was mentioned at trial, the proposal does not even indicate whether the house will have a roof. Because these essential terms of a contract to build a home are missing from the proposal, we conclude that a contract was never created. We agree with the circuit court's determination that the proposal signed by the parties was not an enforceable contract. Therefore, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

