

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 13, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2799-FT

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

ANTIGO REFRIGERATION & HEATING, LTD.,

PLAINTIFF-RESPONDENT,

V.

ANTIGO CO-OP CREDIT UNION,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Langlade County:
JAMES P. JANSEN, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Antigo Co-op Credit Union appeals a judgment for damages entered after a court trial. The sole issue on appeal is whether the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

evidence was sufficient for the trial court to find that Antigo Refrigeration and Heating (ARH) sustained damages when the Credit Union negligently accepted an insurance check payable to two parties that had been endorsed by only one of the parties. The judgment is affirmed.

¶2 This court will recite briefly the underlying facts. ARH installed a new air conditioner at the Cutlass Motor Inn with the understanding that the Inn's insurer would pay for this unit because the old air conditioner had been damaged by lightning. After the air conditioner was installed, the insurer sent a check to the Inn to cover the installation. The insurance check was made payable to the Inn and Banner Bank, which held the mortgage on the Inn.

¶3 Without obtaining Banner Bank's endorsement, the Inn endorsed the check and presented it to the Credit Union. It is undisputed that the Credit Union negligently deposited the check into the Inn's account without requiring an endorsement from both parties named on the check. The Inn never paid ARH and subsequently declared bankruptcy.

¶4 After receiving an assignment from Banner Bank, ARH sued the Credit Union to recover its costs for the air conditioner. ARH alleged that it suffered damage when the Credit Union negligently accepted the check because, if Banner Bank had been given the opportunity to endorse the check, Banner Bank would have turned over the check to ARH as payment for the air conditioner. After a small claims trial to the court, the trial court agreed and awarded a judgment for \$5,000 to ARH.

¶5 On appeal, the Credit Union argues that the bank suffered no loss and, therefore, it is not liable to ARH. This court disagrees with the Credit Union's framing of the issue. Banner Bank assigned its potential rights against the

Credit Union to ARH. Furthermore, the critical issue tried to the court was whether ARH would have been paid if the Credit Union had not negligently accepted the check without Banner Bank's signature. There is sufficient evidence in the record to support the trial court's finding that the Credit Union's negligence damaged ARH.

¶6 Specifically, the manager of Banner Bank testified that if the check had been presented for his bank's endorsement, he would have paid ARH with the check. The trial court, as the trier of fact, weighed the various witnesses' credibility and the evidence and concluded that Credit Union's negligence resulted in nonpayment of ARH's bill. Because there is evidence to support the trial court's finding, the judgment is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

