

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 13, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

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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. 2008AP3160

Cir. Ct. No. 2001CV619

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

LAWRENCE RAYNER AND SALLY RAYNER,

PLAINTIFFS-RESPONDENTS-CROSS-APPELLANTS,

V.

REEVES CUSTOM BUILDERS, INC. AND BETH E. REEVES,

DEFENDANTS,

ARTHUR J. REEVES,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from judgments of the circuit court for Walworth County: MICHAEL S. GIBBS and ROBERT J. KENNEDY, Judges. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Anderson, J.

¶1 NEUBAUER, P.J. Arthur J. Reeves appeals from a trial court judgment awarding Lawrence and Sally Rayner \$100,000 in compensatory damages. The award stemmed from a stipulation dismissing the Rayners' claims against Reeves for breach of contract and numerous violations of the Home Improvement Practices Act, WIS. ADMIN. CODE ch. ATCP 110 (ATCP 110). The court found that the Rayners were entitled to judgment under the terms of the parties' stipulated order for dismissal because Reeves misrepresented his assets and provided testimony that was not "essentially truthful." Based on our review of the record, we conclude that the Rayners were entitled to the \$100,000 judgment under the terms of the parties' stipulation. The Rayners cross-appeal from a later, related judgment denying their request for double damages, plus attorney fees and costs, under WIS. STAT. § 100.20(5) (2007-08).¹ After a trial at which the jury found that the Rayners had not sustained damages as a result of Reeves' ATCP 110 violations, the court declined the Rayners' request for double damages. We uphold the trial court's rulings as to both issues and affirm the judgment.²

BACKGROUND

¶2 This case dates back to 2001 when the Rayners commenced an action against Reeves Custom Builders, Inc., Arthur Reeves and Beth Reeves

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² We note that Reeves appeals from a June 7, 2007 judgment entered by Judge Michael S. Gibbs. That judgment awarded the Rayners \$100,000 in compensatory damages pursuant to the terms of the parties' stipulated order for dismissal. The judgment entered by Judge Gibbs reserved the court's decision as to the Rayners' request for double damages, plus attorney fees and costs. By the time the trial court reached the issue, there had been a judicial rotation and Judge Robert J. Kennedy presided over the remaining issue of whether the Rayners were entitled to double damages. Judge Kennedy entered judgment on the issue of double damages on December 10, 2008.

alleging breach of contract and numerous violations of ATCP 110. The Rayners had entered into a written contract with Reeves and Reeves Custom Builders in 1999 for the remodeling and construction of an addition on an existing residence. The Rayners sought a judgment for not less than \$155,188.15 in compensatory damages and double damages under ATCP 110 and WIS. STAT. § 100.20(5).³ The litigation between the parties became the subject of an appeal, and pursuant to our decision in *Rayner v. Reeves Custom Builders, Inc.*, 2004 WI App 231, ¶21, 277 Wis. 2d 535, 691 N.W.2d 705, Beth Reeves was dismissed from the action and the matter proceeded against Reeves Custom Builders and Arthur Reeves. Reeves Custom Builders was later dismissed due to bankruptcy. Arthur Reeves is the sole remaining defendant in this action.

¶3 On the first day of the scheduled trial on the Rayners' claims against Reeves, the parties informed the court that they had reached a stipulation to dismiss the action with prejudice and without costs, subject to be reopened under certain conditions. The Rayners' attorney summarized the agreement on the record:

The settlement is made upon the representation of Mr. Reeves that he has no assets other than those that might be ... exempt under Federal Bankruptcy Law.

³ WISCONSIN ADMIN. CODE ch. ATCP 110 was adopted under the authority of WIS. STAT. § 100.20, the fair trade practices statute. The note at the beginning of ATCP 110 provides in relevant part: "A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20(5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees."

Consistent with this note, WIS. STAT. § 100.20(5) provides: "Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee."

Further, he's made no transfer of assets without fair consideration or in the ordinary course of business after the commencement of this action.

Three, if it's later determined that he's been untruthful in such assertion of no assets, then in that event, the Rayners without further proof would be entitled to judgment in the amount of \$100,000. In that event, they could also argue the issue of whether they are entitled to double that amount or add attorney's fees to that amount, but Mr. Reeves would have the right to contest that issue as a matter of law.

The parties clarified their understanding that, given federal bankruptcy limits on exempt assets, Reeves' assets could not amount to more than \$25,000. The Rayners additionally reserved the right to submit reasonable written discovery on Reeves' assets or income, and the parties stipulated that the court would retain jurisdiction to monitor the reasonableness of the discovery requests and to enforce the terms and conditions of the stipulation.

¶4 After accepting the stipulation, the court held a supplemental hearing at which Reeves testified as to his assets. While the relevant details of Reeves' testimony will be set forth later in this opinion, the testimony at issue on appeal pertained to (1) his transfer of assets, including the November 1995 sale of a residence and land to Indian Hills Properties, LLC, for \$779,160 and the disbursements made from the net proceeds of that sale and (2) the sum total of his personal assets, including automobiles, furniture and tools.

¶5 On February 6, 2006, the trial court entered an order for dismissal with prejudice and without costs, subject to be reopened under the terms of the provisions stated therein. The relevant provisions included in the written order are as follows:

2. Although there shall be no payment of money or entry of judgment in favor of any party, the stipulation of the parties and settlement is based upon the representations

of the Defendant, Arthur J. Reeves 1) that his assets at the time of the January 23, 2006, hearing did not exceed the \$25,000 federal bankruptcy exemption limit, and 2) that he has not subsequent to January 1, 2001, transferred personally or caused to be transferred by any entity which he owns or controls any asset except in the ordinary course of business or except for fair consideration.

3. On January 23, 2006, Defendant Arthur J. Reeves gave certain testimony under oath concerning his and his wife's assets and income and transfer of assets. In the event it is later determined by this Court that either of the representations of Arthur J. Reeves in paragraph 2 above were untrue, or that his testimony at the January 23, 2006, hearing was not essentially truthful, then this Court shall enter judgment in favor of the Plaintiffs, Lawrence Rayner and Sally Rayner against the Defendant, Arthur J. Reeves, in the sum of \$100,000 compensatory damages. In addition, upon such determination, Plaintiffs shall also be entitled to request the Court to award double damages, plus their reasonable attorney's fees pursuant to the provisions of Chapter ATCP 110, provided that Defendant, Arthur J. Reeves shall be entitled to contest the legality of awarding double damages and reasonable attorney's fees under Chapter ATCP 110.

The order additionally allowed for the Rayners to conduct limited written discovery for purposes of "verification of Defendant Reeves' income, assets or liabilities as of January 23, 2006."

Facts Related to the Appeal

¶6 On January 23, 2007, approximately one year after reaching a stipulation, the Rayners filed a motion for judgment pursuant to the court's February 6, 2006 order for dismissal. The Rayners requested judgment of \$100,000 for compensatory damages, double damages as allowable under WIS. STAT. § 100.20(5) and ATCP 110 and attorney fees and costs. The Rayners alleged that (1) Reeves' assets at the time of the January 23, 2006 hearing exceeded \$53,000 in value; (2) in August 2003, Reeves and his wife conveyed for considerably less than fair market value a residential lot located in Fontana,

Wisconsin, to the Reeves Family Revocable Trust for the recorded price of \$10,000; and (3) Reeves failed to be “essentially truthful” in his testimony regarding the November 2005 sale of a residence and land to Indian Hills Properties, LLC.

¶7 In response to the Rayners’ allegations, Reeves disputed their computation of the value of his assets at the time of the hearing and challenged the allegation that he had been essentially untruthful regarding the November 2005 sale of a residence and land. He also submitted an affidavit noting that the appraisal used to support the Rayners’ contention that he had transferred land for less than fair market value appeared to be the valuation of an incorrect plat of land (Lot 2 of C.S.M. 3592) that is adjacent to the plat actually transferred (“land appurtenant to Lot 2 C.S.M. 2791”). According to Reeves, at the time of the transfer to the Trust, the lands were “land locked” and “an undersized, unbuildable parcel” and were not transferred for less than fair market value. On April 5, 2007, the Rayners responded to Reeves’ arguments. The Rayners submitted an affidavit from their appraiser clarifying that he had in fact appraised the correct parcel of land, and the Rayners cited to easements on the certified survey map providing for ingress and egress to the parcel.

¶8 On May 2, 2007, the trial court held a hearing on the Rayners’ motion for entry of judgment in the amount of \$100,000 for stipulated compensatory damages. Reeves participated in the hearing via telephone from his residence in Colorado. Reeves’ counsel informed the court that he intended to proceed by relying on the submitted affidavits, public record and Reeves’ prior testimony, but that Reeves would potentially offer testimony as to the issue of the contested appraisal. During argument, Reeves’ counsel indicated the need to clarify the appraisal issue. He represented that “Mr. Reeves will testify that the

only [parcel] he transferred to his brother was a non-buildable lot which then adjoined the lands that were already owned by his brother's trust." The Rayners reiterated to the court that "[t]here is access to that [transferred] lot." At the close of the hearing, the court found a lack of evidence that the transferred property was in fact "landlocked and not accessible." Reeves did not provide testimony at the hearing.

¶9 Following the hearing, the trial court entered a written order for judgment setting forth its findings that (1) at the time of the January 23, 2006 hearing, Reeves had assets in excess of the \$25,000 bankruptcy limit; (2) based on the affidavit of a certified appraiser, the actual fair market value of the land transferred to the Trust in 2003 was \$52,000 and, therefore, it was transferred for less than fair market value; and (3) Reeves was not "essentially truthful" in his testimony regarding the involvement of his brother-in-law in the sale of a residence and land to Indian Hills Properties, LLC. The court reserved its decision on the Rayners' request for double damages and attorney fees under WIS. STAT. § 100.20(5).⁴ Reeves appeals from the trial court's judgment for \$100,000 compensatory damages under the terms of the parties' stipulation.

Facts Related to the Cross-Appeal

¶10 As to the Rayners' request for double damages, the trial court entered a written decision on December 14, 2007, resolving the parties' dispute. The trial court identified the issue as "whether or not it should be a court trial or a

⁴ Reeves filed a notice of appeal from this judgment. Because the trial court reserved decision on double damages and, therefore, had not disposed of the entire matter in litigation, *see* WIS. STAT. § 808.03(1), the appeal was dismissed by this court in an order dated October 30, 2007.

jury trial on the [Rayners'] request to the Court to find that [Reeves] committed ATCP 110 violations which entitle the [Rayners] to double damages plus reasonable attorney's fees." The court evaluated the relevant provision in the February 6, 2006 order of dismissal and determined that the stipulation contemplated a jury trial on the Rayners' double damages claim.⁵ The trial court then entered a written order that the Rayners' ATCP 110 claims, as originally set forth in their pleadings, would be decided by a jury trial.

⁵ In construing the stipulation provision, the trial court reasoned:

[P]aragraph three meant that if Arthur J. Reeves was found to be untruthful the minimum judgment the [Rayners] would be entitled to would be \$100,000 compensatory damages. However, as the court sees the language, if the [Rayners] wanted to try to seek more than \$100,000 they would have to literally conduct the entire trial in regard to the ATCP 110 claims in the original pleadings and prove that the defendant violated ATCP 110 and what damages if any flowed from each such violation.... Literally that means the [Rayners] would have to prove the entire case that they would have had to have proved had the trial gone ahead on January 23, 2006. But they would have been assured of at least a \$100,000 compensatory judgment. If they could prove ATCP 110 violations and if the damages that they proved from those violations when doubled added to attorney's fees exceeded \$100,000 then they would be entitled to the higher judgment over the \$100,000. If on the other hand what they proved ended up with a total of less than \$100,000, they would still be entitled to that minimum of \$100,000 for compensatory damages.

The [Rayners] claim[s] that the [Reeves] gave up his right to a jury trial in this process on the question of ATCP 110 violations. This court does not agree. The clear reading of paragraph three of the Dismissal Order entitles the parties to basically go ahead with the original trial limited to the ATCP 110 claims to see if the [Rayners] could get even a higher judgment than \$100,000 compensatory damages. There does not appear to be any grounds for the court to take over the jury's function in that regard.

¶11 On June 18, 2008, the Rayners moved for summary judgment on the issue of double damages based on the outcomes in Reeves’ criminal proceedings and Reeves Custom Builders’ bankruptcy proceedings. The Rayners’ motion was based in part on Reeves’ January 2008 guilty plea to theft by a contractor as a party to the crime, contrary to WIS. STAT. § 779.02(5) and WIS. STAT. § 939.05.⁶ The allegations underlying Reeves’ conviction on this count pertained to Reeves’ work as a general contractor on the Rayners’ home improvement project. The Rayners also relied on their unchallenged general secured claim in the bankruptcy proceedings of Reeves Custom Builders. Reeves opposed the Rayners’ motion. Reeves argued that, regardless of his criminal conviction or the bankruptcy proceedings, genuine issues of material fact remained as to the existence of a WIS. ADMIN. CODE ch. ATCP claim, the entitlement to damages relating to such a claim and whether doubling would be appropriate. The trial court denied the Rayners’ motion for summary judgment.

¶12 After further litigation, the matter proceeded to a nine-day jury trial in September 2008. The jury returned a special verdict finding Reeves had violated four out of the five cited ATCP sections. The jury did not award the Rayners any damages.⁷ The Rayners filed several posttrial motions relating to the damages award, including a motion for a new trial. Following a hearing on November 4, 2008, the trial court entered an order denying the Rayners’ motions, finding that “a reasonable jury, looking at the evidence in the light most favorable

⁶ *State v. Reeves*, Walworth County Circuit Court Case No. 2005CF217.

⁷ Question 6 of the special verdict asked: “What amount of damages did the [Rayners] incur because of the Wisconsin Administrative Code ATCP violation or violations?” The jury indicated, “\$0.”

to the defendant, could reasonably find that said ... ATCP violations ... did not result in any damages to the plaintiff.” On December 10, 2008, the trial court entered a final judgment denying the Rayners’ request for reasonable attorney fees and double damages. The Rayners cross-appeal.

DISCUSSION

1. Reeves’ Appeal

¶13 *Standard of Review.* The parties agree that our review of the trial court’s judgment awarding the Rayners \$100,000 in compensatory damages under the stipulated order for dismissal is de novo. Insofar as the trial court’s decision was based primarily on documentary evidence, we agree. See *Racine Educ. Ass’n v. Racine Bd. of Educ.*, 145 Wis. 2d 518, 521, 427 N.W.2d 414 (Ct. App. 1988) (no special deference to trial court findings when based on documentary evidence). However, when appropriate, we will defer to the trial court’s determinations, especially credibility determinations. *Estate of Schultz v. Schultz*, 194 Wis. 2d 799, 807, 535 N.W.2d 116 (Ct. App. 1995) (an appellate court defers to a trial court’s determination when the trial court was in a better position to make that particular determination).

¶14 Reeves contends that the trial court erred in entering judgment because there was no evidence in the record to support invoking the provision of the stipulation awarding the Rayners \$100,000 in compensatory damages. While Reeves addresses each of the grounds cited by the trial court, we deem it necessary to address only the 2003 transfer of lands to the Trust. See *Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if resolution of one issue disposes of appeal, we need not address other arguments raised by appellant). We

agree with the Rayners that the unrefuted evidence demonstrates that Reeves transferred this property for less than fair market value.

¶15 The terms of the stipulated order for dismissal provide at paragraph two that the stipulation and settlement is based on Reeves' January 23, 2006 representations (1) that he did not have assets in excess of \$25,000 and (2) "that he has not subsequent to January 1, 2001, transferred personally or caused to be transferred by any entity which he owns or controls any asset except in the ordinary course of business or except for fair consideration." Paragraph three of the stipulation and order for dismissal provides that if *either* of the representations made by Reeves is untrue "then this Court shall enter judgment in favor of the Plaintiffs ... in the sum of \$100,000 compensatory damages."

¶16 In support of their motion for judgment, the Rayners submitted an August 20, 2003 quit claim deed by which Reeves and his wife transferred real estate to the Trust. The deed is a public record, and based on the transfer tax fee, the Rayners determined that the property was sold for \$10,000. The Rayners engaged the services of an independent certified real estate appraiser to appraise the fair market value of the property as of the date of the 2003 transfer. The appraisal submitted to the court reflected a 2003 fair market value of \$52,000. The appraisal states that "[a]ccess to the subject is via a gravel road."

¶17 Reeves argues that the documents do not support the Rayners' contention that he transferred real estate for less than fair market value. Reeves cites to his affidavit in which he explained that the submitted appraisal appeared to appraise an incorrect plat of land (Lot 2 of C.S.M. 3592) that is adjacent to the plat actually transferred ("land appurtenant to Lot 2 C.S.M. 2791"). Reeves also averred that, at the time of the transfer to the Trust, the lands were "not part of

Certified Survey 3592,” they were “land locked,” constituted “an undersized, unbuildable parcel,” and were not transferred for less than fair value. While Reeves acknowledges that the certified appraiser subsequently submitted an affidavit clarifying that he appraised the proper parcel (“land appurtenant to Lot 2 C.S.M. 2791”), Reeves objects to the trial court’s acceptance of this clarifying affidavit.

¶18 We have reviewed the appraisal and appraiser’s affidavit in light of Reeves’ objections. We conclude, as did the trial court, that the appraiser’s affidavit refuted Reeves’ concerns. The appraiser was able to verify that despite misstating the plat number, he had appraised the correct parcel of property. He pointed to his handwritten notations of the measurements of the property appraised on the certified survey map and noted that “[t]hese numbers reflect the size of the lot at issue.” While Reeves contended that the appraisal failed to take into account the landlocked nature of the parcel, the Rayners argued that the certified survey map notes an easement to the property. Although Reeves knew of the Rayners’ contention regarding the easement prior to the motion hearing, he provided no documentary support that it was land locked prior to the transfer.⁸ Reeves took no

⁸ The only certified survey map (C.S.M.) in the record, C.S.M. 3592, reflects that the parcel transferred to the Trust is now identified as “lands appurtenant to Lot 2 C.S.M. 2791.” Reeves’ representation that the transferred property was a “portion of Lot 3 C.S.M. 2791” is supported by the quit claim deed recorded on August 21, 2003.” In his affidavit, Reeves states that at the time the parcel was transferred to the Trust, it was a “portion of Lot 3 C.S.M. 2791” that was landlocked and unbuildable. However, the record contains only C.S.M. 3592 which was recorded on August 26, 2003, *after* the transfer of the parcel. Reeves provided no evidentiary support for his contentions regarding the alleged “landlocked” status of the land *prior* to the transfer. He did not provide the court with C.S.M. 2791 or any other certified survey map prior to or at the time of transfer to support his contention that the property was landlocked.

steps to refute either the appraiser’s clarifying affidavit or the Rayners’ interpretation of the certified survey map.⁹ As the trial court stated in its decision,

There was a transfer to the Reeves Family Trust of land for \$10,000. Mr. Reeves’ parents were the trustees, and it was—apparently, turned up in his brother’s hands somehow. I’m not exactly sure how [sic] the mechanism is for that, but that property was transferred for \$10,000 and was appraised by Mr. Lidbetter at \$52,000. I don’t have any other appraisal that indicates it for less than that or that the value is less than that. There is some statement that it’s—it’s landlocked and not accessible, but I don’t have any proof of that, and the assertion that comes from the Plaintiffs’ side is that it is accessible. Mr. Lidbetter in any event put a value of \$52,000 on it, which is more than the \$10,000.

¶19 The Rayners provided evidence that Reeves transferred an asset to the Trust for less than fair market value. Absent any independent evidence to the contrary, the trial court agreed with the Rayners thus triggering the \$100,000 judgment provision of the order for dismissal. Based on our review of the record, we uphold the trial court’s ruling.

2. The Rayners’ Cross-Appeal.

¶20 *Standard of Review.* The Rayners cross-appeal the trial court’s judgment denying its request for double damages. They contend that the double damages relating to the WIS. ADMIN. CODE ch. ATCP violations were provided for in the parties’ stipulated order for dismissal and that the trial court erred in its

⁹ In his appellate brief, Reeves raises several grounds for disputing the appraiser’s valuation. For example, he points to specific language on the plat map to dispute the existence of an access route for the “lands appurtenant to lot 2 CSM 2791” and cites to zoning ordinances that he contends would prohibit the construction of a single-family home on the lot. However, Reeves did not raise these arguments with any specificity before the trial court nor did he submit evidence in support of them.

determination that the stipulation required further proof of damages. The construction of a stipulation is a question of law that we review de novo. *Duhame v. Duhame*, 154 Wis. 2d 258, 262, 453 N.W.2d 149 (Ct. App. 1989). The cornerstone of contract construction is to ascertain the true intention of the parties as evidenced in the language of the contract. *State ex rel. Journal/Sentinel, Inc. v. Pleva*, 155 Wis. 2d 704, 710-11, 456 N.W.2d 359 (1990).

¶21 The order for dismissal provision addressing damages states as follows:

3. On January 23, 2006, Defendant Arthur J. Reeves gave certain testimony under oath concerning his and his wife's assets and income and transfer of assets. In the event it is later determined by this Court that either of the representations of Arthur J. Reeves in paragraph 2 above were untrue, or that his testimony at the January 23, 2006, hearing was not essentially truthful, then this Court shall enter judgment in favor of the Plaintiffs, Lawrence Rayner ad Sally Rayner against the Defendant, Arthur J. Reeves, in the sum of \$100,000 compensatory damages. In addition, upon such determination, Plaintiffs shall also be entitled to request the Court to award double damages, plus their reasonable attorney's fees pursuant to the provisions of Chapter ATCP 110, provided that Defendant, Arthur J. Reeves shall be entitled to contest the legality of awarding double damages and reasonable attorney's fees under Chapter ATCP 110.

The stipulation clearly provides the Rayners with a \$100,000 judgment for compensatory damages in the event that Reeves' representations were determined to be untrue. The stipulation contemplates further action on the Rayners' part if they wished to pursue double damages and attorney fees.¹⁰ First, the language

¹⁰ The Rayners cite to the oral recitation of the stipulation as set forth in the transcript of the January 26, 2003 proceedings. There, the Rayners' counsel stated:

(continued)

requires the Rayners to request the court to award double damages plus reasonable attorney fees *pursuant to the provisions of* ATCP 110. Second, the stipulation clearly entitles Reeves to contest “the legality” of such an award under ATCP 110. In short, the stipulation clearly requires the Rayners to prove that they were entitled to double damages under ATCP 110 on the merits.

¶22 The Rayners also contend that they were entitled to summary judgment based on both Reeves’ guilty plea to theft by a contractor and their unchallenged general unsecured claim of \$428,414.55 in the bankruptcy proceedings involving Reeves Custom Builders. However, as the trial court determined, neither the criminal conviction nor the bankruptcy proceeding resolved whether the Rayners were entitled to double damages based on Reeves’ violation of ATCP 110. As to the bankruptcy, the trial court further determined that there was no evidence that Reeves was a party to those proceedings or had any reason to dispute the Rayners’ claim. Further, the Rayners provided no indication as to what portion of the \$428,414.55 was attributable to ATCP violations as opposed to non-ATCP violations, such as violation of the contract or negligence.¹¹ Based on our review of the record, a genuine issue of material fact

[I]f it’s later determined that [Mr. Reeves has] been untruthful in such assertion of no assets, then in that event, the Rayners without further proof would be entitled to a judgment in the amount of \$100,000. In that event, they could also argue the issue of whether they are entitled to double that amount or add attorney fees to that amount, but Mr. Reeves would have the right to contest that issue as a matter of law.

The Rayners seize on the phrase “without further proof” as underscoring their position. However, this language expressly refers to the entry of the \$100,000 judgment in compensatory damages. Further, it did not appear in the written stipulation resulting from back and forth between counsel and entered by the court on February 6, 2006.

¹¹ As the trial court explained in its summary judgment ruling:

(continued)

existed as to the amount of damages the Rayners sustained as a result of Reeves' ATCP 110 violations.

¶23 Finally, the Rayners contend that the trial court erred in denying their posttrial motions. The Rayners had made several requests including: to change the jury's answer to the special verdict damage question from \$0 to at least \$5767.68, to enter judgment notwithstanding verdict or to grant a new trial because the jury's answer was contrary to law and against the great weight of the evidence. In support of their argument on appeal, the Rayners point to specific instances in which Reeves used or misappropriated portions of the Rayners' partial payments to Reeves Custom Builders for expenses completely unrelated to the Rayners' project. However, as the trial court explained in its oral decision, a misappropriation and resulting ATCP 110 violation does not always cause damage.¹² The court, affording the appropriate deference to the jury's verdict,

[T]he ATCP violations ruled on by the jury, after a trial in this matter, may well show that [the] ATCP violation involving theft by a contractor resulted in a loss to the plaintiffs of, say, \$50,000. That may be. And it may be that the contract violations and the lousy work Mr. Reeves allegedly did may account for the rest. I don't know. There is nothing absolute there that causes this triggering of doubling.

[I]t seems to be the [Rayners are] almost saying "I'll take the hundred thousand, but double it, judge."

I can't do that under these circumstances. It was agreed that a hundred thousand dollars would be the amount and that they could ask for more.

¹² In their posttrial motions, the Rayners relied on the jury's finding that Reeves had violated ATCP 110.02(10) which prohibits a seller from using "[a]ny home improvement contract payment, received from a buyer prior to the completion of a home improvement, for any purpose other than to provide materials or services for the home improvement."

In its oral ruling on the Rayners' posttrial motions, the trial court used an example to illustrate how an ATCP violation may not result in damages to the buyer.

(continued)

determined that “[t]he evidence, if taken in the light most favorable to [Reeves], would justify a reasonable jury in deciding that although the defendant violated ATCP 110.02(10), said violation was not the cause of any damage to the [Rayners].” See *Morden v. Continental AG*, 2000 WI 51, ¶¶38-39, 235 Wis. 2d 325, 611 N.W.2d 659 (if there is “any credible evidence in the record on which the jury could have based its decision,” a court will affirm the verdict). The trial court thus declined to change the jury’s answer, insert a different amount of damages or

Let us presume that a general contractor enters into a contract to remodel a home for a hundred thousand dollar contract.

Further assume that he gets a down payment of \$30,000....

Further assume that he uses part of the [\$]30,000 to pay a \$10,000 prior debt that is unrelated to the contract and which his work has not yet earned.

In that case, the defendant has violated ATCP 110.02(10). In fact, if the [\$]10,000 is not the general contractor’s proportional share of the \$30,000 for work the general contractor is entitled to at the time ... and the general contractor takes it and uses it, then the general contractor has ... also committed the crime of theft by a contractor.

....

Further assume that despite the misuse of the \$10,000, the general contractor completes the remodeling job completely as called for by the contract. In that case, despite the violation of [ATCP] 110.01(10), the homeowner is not damaged.

As a corollary, assume that the general contractor does not complete the job as called for in the contract, but that he did complete the job to the extent he was able to but for the homeowner’s interference or actions which prevented the contract from being completed in the way and in the time that the contract called for. In short, assume that the failure to complete the contract had nothing to do with the earlier diverted \$10,000.

In that case also, despite the violation of [ATCP] 110.02(10), there are no damages that resulted

rule that the damage verdict was inadequate. While there is evidence in the record that Reeves used a portion of the \$30,000 initial payment to pay expenses not related to the Rayners' project, there is also evidence that by the time he had received that initial payment, he had already expended in excess of that amount on expenses related to the Rayners' project. Based on our review of the record, we likewise conclude that there is credible evidence to support the jury's verdict.

¶24 We conclude that the unambiguous terms of the stipulation (1) permit the Rayners to seek double damages and reasonable attorney fees under ATCP 110 and (2) permit Reeves to contest the legality of such an award. The trial court conducted a jury trial following which the jury determined that the Rayners had not sustained damages resulting from ATCP violations. Based on the terms of the stipulation, we reject the Rayners' contention that the trial court erred in requiring further proof and in failing to award double damages and reasonable attorney fees, either at summary judgment or in response to their posttrial motions.

CONCLUSION

¶25 We conclude that the Rayners were entitled to receive a judgment for \$100,000 in compensatory damages as provided for under the terms of the stipulated order for dismissal. The evidence submitted by the Rayners supports the conclusion that subsequent to January 1, 2001, Reeves transferred an asset for less than fair consideration. We further conclude that the trial court's requirement that the Rayners prove their claim for double damages and reasonable attorney fees was in keeping with the unambiguous terms of the stipulation. The Rayners were not entitled to summary judgment and the trial court did not err in denying their motions for posttrial relief. We therefore deny both Reeves' appeal and the Rayners' cross-appeal. We affirm the judgments.

¶26 No costs to either party.

By the Court.—Judgments affirmed.

Not recommended for publication in the official reports.

