

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 11, 2016**

Diane M. Fremgen  
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. 2016AP522**

**Cir. Ct. No. 2015SC1379**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**LARRY R. MURPHY,**

**PLAINTIFF-APPELLANT,**

**v.**

**BRIAN PIERCE AND WP DELTON DEVELOPMENT LLC  
PIERCE SUPERMARKET REEDSBURG,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Sauk County:  
MICHAEL P. SCRENOCK, Judge. *Affirmed.*

¶1 BLANCHARD, J.<sup>1</sup> Larry Murphy, pro se, appeals an order of the circuit court dismissing his small claims action against Brian Pierce and WP

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Delton Development, LLC.<sup>2</sup> Murphy contends that he is entitled to \$10,000 pursuant to a real estate contract that he entered into to sell property to WP Delton. The contract required WP Delton to place \$10,000 in escrow. If Murphy vacated the subject property on or before a date and time set by the contract, Murphy was entitled to the \$10,000. If Murphy did not timely vacate, WP Delton was entitled to retain the \$10,000. The circuit court conducted a trial and concluded that Murphy did not timely vacate the premises and was therefore not entitled to the \$10,000. Murphy appeals, and I affirm the court's decision for the following reasons.

¶2 The circuit court made factual findings after trial, which included the following. Murphy and WP Delton entered into a contract, memorialized in several documents, for WP Delton to purchase real property from Murphy. As part of the contract, the parties entered into an agreement under which WP Delton would place \$10,000 into an escrow account. The contract provided that Murphy would be entitled to the escrowed funds if he “vacated the premises” on or before 10:00 a.m. on October 1, 2015, but otherwise WP Delton would retain the escrowed funds. The parties agreed that time was of the essence with respect to Murphy's obligation to vacate the premises.

¶3 The contract defines the term “premises” to be synonymous with the term “Property,” and therefore there is no reasonable argument that Murphy was

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<sup>2</sup> Murphy fails to make any argument supporting a legal theory that could create liability for Brian Pierce as an individual. The circuit court dismissed the action against Pierce because Pierce did not sign any of the pertinent real estate contracts at issue and because Murphy did not advance any theory under which Pierce could be personally liable for WP Delton's acts or as a result of any of its obligations. For these reasons, I affirm the dismissal of Pierce as an individual, and focus on the dispute between Murphy and WP Delton.

obligated to vacate only a limited area within the property that he sold to WP Delton. The contract included the requirement that, at the time that WP Delton took occupancy, the “Property shall be in broom swept condition and free of all debris and personal property except for personal property ... sold to [WP Delton] or left with [WP Delton’s] consent.”

¶4 As of 10:00 a.m. on October 1, 2015, the premises were not free of all debris or of Murphy’s personal property. “As of the end of the day on October 1, 2015,” items of Murphy’s personal property remained on the premises, including a wood stove and a boat hull that was filled with additional items of Murphy’s personal property.

¶5 On October 1, 2015, WP Delton made the following offer to Murphy: WP Delton would consent to accept occupancy of the premises and release the escrowed \$10,000 to Murphy, despite the fact that Murphy had left items of personal property on the premises past the contract deadline, so long as Murphy disclaimed, at that time, any further ownership interest in those items of personal property. Murphy refused to disclaim his ownership interest in those items at that time, and WP Delton refused to consent to Murphy leaving those items on the premises. On October 2, Murphy returned to the property to retrieve the wood stove from inside the premises, but he could not enter because WP Delton had changed the locks when it took occupancy of the premises.

¶6 Several days after October 1, Murphy forfeited his ownership rights to the wood stove in writing. In mid-to-late October 2015, Murphy retrieved from the premises the hull and the items that he had left behind in the hull.

¶7 On appeal, Murphy argues that he met his obligation to “vacate the premises” by the deadline in the contract. I affirm the circuit court for the

following reasons: (1) the sole source of legal authority that Murphy cites in support of his arguments is one landlord-tenant statute, WIS. STAT. § 704.05(5), which I conclude does not apply to this action because “a person holding possession of real property under a contract of purchase ... is not a tenant under [WIS. STAT. chapter 704],”<sup>3</sup> see WIS. STAT. § 704.01(5); and (2) in his reply brief, Murphy fails to address any of the developed, supported arguments that are presented by WP Delton in its response brief, thereby effectively conceding all of these arguments. See *United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578.

¶8 I proceed to briefly explain why it is evident that, if I were to reach the merits, the result would be the same.

¶9 Murphy purports to advance 13 arguments on appeal, but all of them appear to fall into one or more of the following three categories of arguments: (1) challenges to the circuit court’s findings of fact; (2) challenges to the circuit court’s interpretation of the contract; and (3) challenges to the circuit court’s dismissal of the action based on the general requirements of “equity [and] justice.”<sup>4</sup> I briefly address each category in turn.

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<sup>3</sup> In addition, beyond my conclusion that WIS. STAT. § 704.05(5) does not apply as a matter of law, WP Delton correctly points out that the occupancy agreement between the parties explicitly states that, pursuant to chapter 704, “a person holding possession of real property under a contract of purchase is not a tenant under the statute,” and that “this Addendum does not create a landlord/tenant relationship, and thus is not subject to the provisions of WIS. STAT. Ch. 704 ....”

<sup>4</sup> I have examined Murphy’s brief and reply in an attempt to discern all arguments of any potential merit, taking into account his pro se status as appropriate. To the extent that I do not address a statement that Murphy intends to offer as an argument, I conclude that the statement is not sufficiently developed as an argument to merit discussion. See, e.g., *State v. Waste Mgmt. of Wisconsin, Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“issues raised and not discussed ... can be deemed to lack sufficient merit or importance to warrant individual attention.”).

¶10 Murphy's assertions generally fail to take into account the standard of review. I must defer to the circuit court's credibility determinations and findings of fact, setting them aside only if they are "clearly erroneous." WIS. STAT. § 805.17(2).

¶11 The findings that Murphy takes issue with do not matter to the analysis on appeal, given other findings that he does not challenge or cannot logically challenge. To cite two examples, it does not matter whether the hull that Murphy left behind was being used to store other items, so long as the hull itself was left behind past the contract deadline, nor does it matter whether Murphy was obligated to vacate the premises by 10:00 a.m. as opposed to midnight on October 1, 2015, so long as he did not fulfill his contractual obligations by midnight. Moreover, based on my review, I conclude that the record supports each of the court's factual findings.

¶12 Turning to Murphy's challenge to the court's interpretation of the contract for the sale of the premises, contract interpretation presents a question of law, which I review de novo. See *Town Bank v. City Real Estate Dev., LLC*, 2010 WI 134, ¶32, 330 Wis. 2d 340, 793 N.W.2d 476.

¶13 The circuit court concluded that, in agreeing that Murphy would receive the escrowed money if he "vacate[d] the premises" in a timely fashion, the parties intended to obligate Murphy to "give occupancy to" WP Delton, "which included the requirement that the 'Property shall be in broom swept condition and free of all debris and personal property except for personal property ... sold to [WP Delton] or left with [WP Delton's] consent.'"

¶14 Murphy challenges this interpretation, asserting that by "vacate the [premises]" the parties meant that Murphy was obligated only to physically

“depart from the property and to leave it in such condition that it can be re-occupied for like tenancy.” Murphy cites to no authority to support his asserted interpretation of the contract. In any event, based on my review of the contract documents, I conclude that the contract required that, in order to “vacate the premises,” Murphy was obligated to make sure that the premises were “in broom swept condition and free of all debris and personal property” no later than 10:00 a.m. on October 1, 2015.

¶15 Even if Murphy were correct (and he is not) that he had until midnight on October 1 to vacate under the contract, the evidence adduced at trial clearly demonstrates that Murphy left items of personal property on the premises well past midnight on the 1st. For all these reasons, if I were to reach the merits I would conclude that Murphy did not timely vacate the premises and was not entitled to the escrowed funds under the terms of the contract, because Murphy breached the agreement.

¶16 Finally, Murphy’s suggestions that the circuit court’s decision must or should be reversed because the decision is not fair and because the court was biased against Murphy are plainly without merit. On the first point, the record reflects that the court’s dismissal of this action is supported by both the pertinent facts and applicable law, and Murphy fails to identify any applicable rule of equity or law that could support reversal, much less require it. On the second point, the record reflects no indication of bias on the part of the circuit court judge. To the contrary, my review of the trial transcript shows that the judge respectfully encouraged Murphy to present whatever relevant evidence and to articulate whatever arguments he might have.

*By the Court.*—Order affirmed.

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

