

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 4, 2017

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. 2016AP1103

Cir. Ct. No. 2015CV1835

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

ARTHUR D. DYER,

PLAINTIFF-APPELLANT,

V.

GARY W. THOMPSON AND THOMPSON LAW OFFICES, S.C.,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Racine County:
FAYE M. FLANCHER, Judge. *Affirmed.*

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Arthur D. Dyer appeals a judgment awarding Thompson Law Offices, S.C., the monetary amount of \$27,264.99 and immediate

possession of two of Dyer's vehicles to account for legal services rendered under a fee agreement, and dismissing Dyer's action for declaratory judgment against Thompson Law Offices and Attorney Gary W. Thompson. We conclude that the circuit court properly (1) dismissed Dyer's claim against Thompson as an individual, and (2) granted summary judgment in favor of Thompson Law Offices and against Dyer. We affirm.¹

¶2 Starting in 2008, Dyer retained Thompson Offices to represent him in various circuit court matters arising out of Racine, Waukesha, and Milwaukee Counties. There were three separate fee agreements for legal services rendered by Thompson Offices. The first was captioned *Parkland Venture v. City of Muskego* (the *Parkland* litigation). The second related to a foreclosure action filed by Countrywide Home Loans against Dyer (the *Countrywide* litigation), which continued for years and resulted in a settlement agreement. Ultimately, upon Dyer's breach of the settlement agreement with Countrywide, Thompson purchased the subject property. As part of the August 15, 2011 purchase agreement, Thompson waived all legal fees and costs incurred in connection with his office's representation of Dyer in the *Countrywide* litigation.

¶3 The third fee agreement was executed on September 21, 2010, to provide a contract covering all legal services not otherwise subject to a written fee

¹ Also pending is Dyer's motion asking this court to reconsider an April 7, 2017 order. In that order, we rejected for filing Dyer's 117-page faxed submission entitled "Motions and Memorandum for Relief with Addendum." Our order informed Dyer that his motion failed to meet this court's length and copy number requirements, improperly raised claims for the first time in this court, and failed to establish that summary reversal was warranted. Having considered Dyer's reconsideration motion, we conclude that he has not established his entitlement to the relief requested. Further, given the release of this decision, we deny Dyer's pending motion as moot.

agreement, including several consumer collections cases in which Thompson Offices represented Dyer, and to provide additional security for legal services and costs advanced in all matters. In pertinent part, the agreement provided that Dyer would pay Thompson Offices “on an Hourly Fee basis at the rate of \$450/hr.,” and would additionally reimburse Thompson Offices “for costs and disbursements expended on [Dyer’s] behalf.” The fee agreement also provided Thompson Offices a security interest in Dyer’s vehicles as follows:

Security for Payment of Attorney fees & Charges.

Client, to secure payment of past, present and future attorney fees, late charges and expenses advanced on clients’ (sic) behalf, hereby grants to Thompson Law Office, S.C. ... a general security interest in Clients business and personal property including but not limited to the following property:

1988 HD Cycle – VIN [number]

2003 Ford Pickup- VIN [number]

¶4 Dyer signed motor vehicle lien applications to allow Thompson Law Offices to perfect its security interest created by the fee agreement. The vehicle titles reflect the perfected liens.

¶5 In November 2015, Dyer commenced an action for declaratory judgment against Thompson² seeking a determination that Thompson was not entitled to any security interest in Dyer’s vehicles and requiring that Thompson execute the documents necessary to release the security interest. Dyer alleged that he had no outstanding obligations or commitments to Thompson secured by the

² Though Dyer’s complaint named as defendants both Thompson Law Offices and Gary W. Thompson, its allegations referred to the defendants collectively, without distinguishing between the office and the individual.

vehicles and that Thompson had not responded to Dyer's requests for a release of security interest.

¶6 Less than two weeks later, Thompson filed an answer, affirmative defenses, and a counterclaim for breach of contract seeking replevin of the two secured vehicles and a money judgment for outstanding legal fees. In addition, Thompson filed a motion to dismiss the complaint as to him in his individual capacity, and a motion for summary judgment seeking to dismiss Dyer's claims against the Thompson Offices, and granting judgment to Thompson Offices on its counterclaims. Thompson Offices' summary judgment papers asserted that Dyer was in default under the parties' fee agreements for \$27,136.81.³ The circuit court scheduled a hearing on the motions for February 2016, but rescheduled the hearing until May 2, 2016, at Dyer's request, to allow him additional time to respond to Thompson's dispositive motions.

¶7 Four days before the May hearing, Dyer filed his answer to the replevin counterclaim and a memorandum opposing Thompson's motions to dismiss and for summary judgment. Dyer's submissions generally alleged that the fee agreements and lien documents were the product of "fraudulent inducement." Though Dyer disputed owing money to Thompson Offices, he did not produce any invoices or checks to show that the billing amounts had been paid or were inaccurate.

³ This amount represented \$22,000 in unpaid costs in the *Parkland* litigation, and a little more than \$4200 in legal fees provided to Dyer for several consumer collections matters.

¶8 At the hearing, the circuit court ruled that Thompson was entitled to judgment because Dyer's responsive pleadings were late and, in addition, did not establish a material factual dispute.

Nothing in these affidavits, other than what I will refer to as Mr. Dyer's somewhat colorful characterization of the fee agreements where in essence Mr. Dyer challenges the authenticity of these [fee agreement] contracts, nothing supports that.

The 24 exhibits that were submitted [by Dyer] have nothing to do with the authenticity and legality of the contracts that were entered into over the years with Mr. Thompson and his office.

Given that there is nothing submitted by Mr. Dyer to contest the fact that significant funds are still owing Mr. Thompson and his firm, I guess I would have expected invoices and checks paying those invoices as proof for today. I didn't receive that.

The motion to dismiss for failure to state a claim as to Mr. Thompson personally is appropriate and that motion is granted.

Similarly, as there is nothing to put any fact at issue that there is a balance due and owing and that remains due and owing, the motion for summary judgment is granted.

With respect to the judgment for replevin on the counter-claim, I would note again that Mr. Thompson filed his answer, his affirmative defenses and the counter-claim back on November 25 of 2015.

Mr. Dyer did not file an answer until April 28th of 2016. It was long overdue, and again, there is nothing to indicate that not granting the motion would be inappropriate.

¶9 On May 16, 2016, the circuit court entered an order for judgment and judgment memorializing its oral rulings, and Dyer commenced this appeal. Thereafter, Dyer filed postjudgment motions in the circuit court seeking reconsideration of the court's May 16, 2016 judgment, relief from any forfeiture effects caused by his late submissions, and a stay of enforcement of the replevin

judgment pending appeal. The circuit court granted a stay of replevin pending appeal but denied Dyer's substantive motions by order entered August 12, 2016. Dyer did not appeal that order.

¶10 As a preliminary matter, we emphasize that the scope of our review is limited to the circuit court's May 16, 2016 judgment and any prior nonfinal rulings. Because Dyer did not appeal from the August 12, 2016 order denying his postjudgment motions, we do not have jurisdiction to review the circuit court's postjudgment rulings or to consider Dyer's postjudgment arguments.

¶11 “A motion to dismiss tests the legal sufficiency of the complaint.” *Ladd v. Uecker*, 2010 WI App 28, ¶7, 323 Wis. 2d 798, 780 N.W.2d 216. On a motion to dismiss, the court accepts as true the facts alleged in the complaint and reasonable inferences from those facts. *Id.* “The purpose of a complaint in a notice pleading jurisdiction is to provide ‘sufficient detail’ such ‘that the defendant, and the court, can obtain a fair idea of what the plaintiff is complaining, and can see that there is some basis for recovery.’” *United Concrete & Constr., Inc. v. Red-D-Mix Concrete, Inc.*, 2013 WI 72, ¶21, 349 Wis. 2d 587, 836 N.W.2d 807. We independently determine whether the complaint was legally sufficient. *Ladd*, 323 Wis. 2d 798, ¶7.

¶12 We review summary judgment decisions de novo, applying the same methodology as the circuit court. *Palisades Collection LLC v. Kalal*, 2010 WI App 38, ¶9, 324 Wis. 2d 180, 781 N.W.2d 503. Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as

to any material fact and that the moving party is entitled to judgment as a matter of law.” WIS. STAT. § 802.08(2).⁴

¶13 The circuit court properly dismissed Dyer’s complaint against Thompson individually for failure to state a claim. Dyer was in default for failing to file a timely and meritorious opposing response to Thompson’s motion to dismiss. Additionally, Thompson Law Offices was the named lienholder on Dyer’s vehicle titles and Dyer’s complaint did not establish a cognizable claim as to Thompson individually. Dyer’s allegations of fraud and misrepresentation were not included in his complaint.

¶14 We further conclude that Thompson Offices was entitled to summary judgment dismissing Dyer’s claims and granting its counterclaims for breach of contract and replevin. Thompson’s summary judgment papers establish the existence of the relevant fee agreements, including the September 21, 2010 contract in which Dyer agreed to pay attorney’s fees, costs and disbursements, and to grant Thompson a security interest in two vehicles. The security interest provision applies to unpaid attorney fees for legal services rendered in the consumer collection matters, and to unpaid costs advanced by Thompson in the *Parkland* litigation. As established by the plain language of the August 15, 2011 purchase agreement, the *Countrywide* litigation is the only matter in which

⁴ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Thompson agreed to waive legal fees and costs.⁵ The unpaid fees underlying Thompson's counterclaim were not incurred in connection with the *Countrywide* litigation. The undisputed facts show that Dyer was in default under the fee agreements for legal services and costs in the sum of \$27,136.81, and that Dyer signed motor vehicle lien applications to allow Thompson Law Offices to perfect its security interest created by the fee agreement.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

⁵ The August 15, 2011 purchase contract contained clear language providing for a limited waiver of fees and costs “which includes all past amounts for costs advanced and legal fees provided by Attorney Gary W. Thompson related to this property.” We construe the unambiguous contract according to its literal terms. *Tufail v. Midwest Hospitality, LLC*, 2013 WI 62 ¶26, 348 Wis. 2d 631, 833 N.W.2d 586. Further, the purchase contract contains an unambiguous integration clause, and we will not consider evidence of any prior understandings or agreements between the parties, even on the issue of integration. *Id.*, ¶30.

