

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 31, 1996

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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3417

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

State of Wisconsin,

Plaintiff-Respondent,

v.

Andrew G. Busalacchi,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL D. GUOLEE, Judge. *Affirmed.*

SCHUDSON, J.¹ Andrew G. Busalacchi appeals from the trial court's grant of summary judgment to the State of Wisconsin and from the imposition of a civil forfeiture against him for improper asbestos removal that occurred before he became record title "owner" but after his offer to purchase the property was accepted. Busalacchi argues that the trial court erred in concluding that he was a "constructive owner." This court affirms.

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

The relevant facts are undisputed. In March 1992, Busalacchi submitted an offer to purchase on an old leather manufacturing plant in Milwaukee. The offer was accepted by the seller, Mitchell Bank, and the closing was scheduled for April 30, 1992. The closing, however, was rescheduled to May 20, 1992. Between the time the offer to purchase was accepted and the time the closing occurred, the bank gave Busalacchi keys to the building so that he could clean out the building and do some renovation work.

On May 19, 1992, acting on a complaint, the Milwaukee Health Department inspected the property. Once inside, the inspector observed what she believed to be improper asbestos handling and removal. According to the summary judgment submissions, a worker told the inspector that he was an employee of Busalacchi and that workers had been removing asbestos in the building for several weeks.

Following further investigation by the DNR, the State filed an action against Busalacchi claiming that as the "owner," Busalacchi violated state law by having asbestos removed contrary to applicable DNR regulations. The complaint specifically alleged: failure to provide the DNR with pre-removal notice; failure to wet the asbestos before removal; and failure to properly lower asbestos to the ground during the removal process.

On cross-motions for summary judgment, Busalacchi argued that he was not liable because he was not the record title owner and because chapter 144, STATS., and WIS. ADM. CODE CH. NR 447 did not contain definitions of "owner" applicable to him at the time of the violations.² The trial court, however, concluded that Busalacchi was the constructive owner of the property. Therefore, the trial court granted summary judgment in favor of the State.

Summary judgment shall be granted when there is "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Section 802.08(2), STATS. An appellate court independently reviews a trial court's summary judgment decision, applying the same

² The DNR subsequently adopted a detailed definition of "owner." See WIS. ADM. CODE § NR 447.02(30).

methodology as did the trial court. *Envirologix Corp. v. City of Waukesha*, 192 Wis.2d 277, 287, 531 N.W.2d 357, 362 (Ct. App. 1995). That methodology has often been recited, *see, e.g., Grams v. Boss*, 97 Wis.2d 332, 338, 294 N.W.2d 473, 476 (1980), and it need not be repeated here. Additionally, interpretation of a statute is a question of law reviewed independently without deference to the trial court's decision. *See Door County Highway Dept. v. DILHR*, 137 Wis.2d 280, 291, 404 N.W.2d 548, 553 (Ct. App. 1987).

Because no applicable definition of "owner" appears under the statute or administrative regulation, the ordinary and accepted meaning of a word can be established by reference to a recognized dictionary. *Id.*, 137 Wis.2d at 293-294, 404 N.W.2d at 554. BLACK'S LAW DICTIONARY 1105 (6th ed. 1990) broadly defines the term "owner" as:

The person in whom is vested the ownership, dominion, or title of property; proprietor. He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right.

Additionally, THE AMERICAN HERITAGE DICTIONARY 888 (1985) defines to "own" as "to have or possess." While Busalacchi is correct that he did not hold record title until the closing, this court nevertheless concludes that under these definitions he was an "owner" at the time of the violations.

During the weeks prior to closing, Busalacchi had access to and dominion over the property. According to the deposition of the bank representative who handled the closing, the reason that all prorations were postdated effective April 30, 1992, was because Busalacchi had been operating out of the building and had taken possession of it prior to May 20, 1992, the actual date of the closing. Additionally, Busalacchi had hired the workers who were engaged in cleaning and renovation inside the building prior to the closing. Therefore, the trial court correctly concluded that Busalacchi was the "constructive owner."

Alternatively, Busalacchi argues that even if he was an “owner” under the applicable law, this court should nevertheless conclude that he is not liable “because he hired an apparently qualified contractor to conduct the asbestos removal.” The various authorities he cites, however, fail to support his position. The plain language of WIS. ADM. CODE §§ NR 447.07 and 447.08 clearly state that the rules apply to both facility owners and operators.

In conclusion, summary judgment was properly granted to the State.

By the Court. – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.