**COURT OF APPEALS**
**DECISION**
**DATED AND RELEASED**

July 17, 1997

**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. 96-1076**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT IV**

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**MAURICE D. WILLIAMS,**

**PLAINTIFF-RESPONDENT,**

**V.**

**THE PUB, INC.,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Columbia County: JAMES EVENSON, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. The Pub, Inc. appeals from a judgment by which the circuit court granted specific performance to Maurice D. Williams. The court found that Williams had validly exercised a repurchase option in a land contract for four acres in the southeast corner of the subject parcel. Accordingly, the court ordered The Pub to prepare a transfer deed to Williams for those four acres. The

Pub appeals, arguing that the repurchase option of the land contract was void for ambiguity under the Statute of Frauds; that Williams breached the land contract because he failed to conform to various terms imposed by a modification to the contract and by the original contract; and that the circuit court's judgment was overly broad. For the reasons set forth below, we reject each of these arguments and affirm the judgment.

## BACKGROUND

On March 26, 1975, The Pub and Williams entered into a ten-year land contract whereby The Pub would acquire from Williams a 135-acre parcel in Columbia County. Among other provisions, the contract contained an option whereby Williams could repurchase a four-acre lot "in the Southeast corner" in shape "approximately square" for $450 per acre.[1] The Pub made all payments, tendering its last payment on March 25, 1985.

Three days later, on March 28, 1985, Williams' daughter, acting as his agent, tendered a check for $1,800 (4 x $450) to John J. Schwoegler, Sr., one of the principals of The Pub, at his home. Williams' daughter received a signed receipt which read: "Received of Maurice Williams $1,800.00 for exercise of

[1] The exact language is as follows:

> OPTION TO PURCHASE: The Vendor herein [Williams] retains an option to purchase a four acre parcel, approximately square, in the Southeast corner of the above described property for the sum of Four Hundred and Fifty ($450.00) Dollars per acre. Should the Vendor choose to exercise this option he shall give purchaser [The Pub] notice, in writing, at its principal office, of his intention to exercise the option. The Purchaser shall then have thirty (30) days within which to tender a Warranty Deed to the said parcel to the Vendor, free and clear of any encumbrances arising after execution of this contract….

option subject to ability of optionor and optionee to agree upon terms and conditions of sale." The parties dispute whether Williams or Schwoegler prepared the receipt, but it is undisputed that Schwoegler signed it and accepted the check. Schwoegler did not cash the check, however, and apparently did not do so until after this litigation commenced.

On April 17, 1985, the parties met for what the circuit court later characterized as the "ultimate closing" of the land contract. The parties settled their accounting, exchanged checks and signed deed papers conveying the entire lot to The Pub. Williams did not receive a deed to the four acres, however.

In December 1993, Williams sued to have The Pub specifically perform according to the option by granting him a deed for the four acres. The court found for Williams, directing The Pub to prepare and convey to Williams a deed for four acres in the southeast corner of the parcel. The court retained jurisdiction over the matter if the parties were unable to agree on the exact legal description of the property. The Pub appeals.

## ANALYSIS

### Statute of Frauds

The Pub argues that reference to "a four acre parcel, approximately square in the Southeast corner of the above described property" does not describe the parcel specifically enough to support specific performance. Alternatively, The Pub argues the description is void for vagueness under the Statute of Frauds. We reject this argument. The Pub appears to equate the "Southeast *corner*" with the "Southeast *quarter*," arguing that the four acres could have been intended to be anywhere within the thirty-three acres of the southeast portion of the property. A "corner," however, is a "*point* or place where converging lines, edges, or sides

meet." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 507 (1993) (emphasis added). Thus, four acres in the southeast corner means four acres, the southeast corner of which coincides with the southeast corner of the larger property. Having located one corner of the property, the option sufficiently "identifies the land," as required by the Statute of Frauds. *See* § 706.02(1)(b), STATS.

As to the parcel description as "approximately square," reference to a map of the parcel demonstrates that the "Southeast corner" forms an acute, rather than a right angle. Consequently, a parcel whose southeast corner coincides with the southeast corner of the larger parcel could never be truly square, only "approximately," and this description, too, sufficiently "identifies the land."

Receipt Language

As set forth above, the receipt states that Williams' $1,800 is received "subject to ability of optionor and optionee to agree upon terms and conditions of sale." The Pub argues that Williams constructively agreed to this modification either because he drafted the receipt or because the receipt was accepted by his daughter as agent. The Pub apparently desired various easements over the four acres and the parties could not agree about these. Therefore, argues The Pub, Williams breached the contract as modified by the receipt and the Pub was not obliged to perform. We reject this argument.

The Statute of Frauds specifically requires that real estate transactions be "signed by or on behalf of all parties, if a … contract to convey." Section 706.02(1)(e), STATS. Before the receipt can modify the land contract's options to convey the four acres, Williams would have had to sign it. Further, it is irrelevant whether Williams drafted the receipt or whether his daughter took the

receipt as his agent because constructive consent is insufficient to fulfill the Statute of Frauds. *See* ***Zapuchlak v. Hucal***, 82 Wis.2d 184, 191, 262 N.W.2d 514, 518 (1978) (failure to comply with Statute of Frauds renders contract void). Because Williams did not sign the receipt, the receipt is void as a modification to a conveyance under the Statute of Frauds.

"Principal Office"

The contract specifies that Williams must exercise the repurchase option by delivering a writing to The Pub's "principal office." The contract is silent, however, as to the location of The Pub's "principal office." Williams, through his daughter, delivered the check to Schwoegler's home. The Pub now argues that under a strict construction, Williams voided the contract because Schwoegler's home is not The Pub's "principal office."

Contrary to The Pub's argument, there is no "unambiguous contract language" to "enforce as written." While the contract specifies that Williams must deliver a writing to The Pub's "principal office," the contract is silent as to where that is located. Further, testimony at trial established that at least some of The Pub's business was conducted at Schwoegler's home. Finally, Schwoegler did not object at the time the check was tendered. Under these circumstances, we conclude that Williams substantially performed under the contract because he fulfilled the essential purpose of conducting business in a formal manner by exercising his option, in writing, to the corporate entity. *See* ***Davis v. Allstate Ins. Co.***, 101 Wis.2d 1, 7, 303 N.W.2d 596, 599 (1981) (where party has met essential purpose of contract, substantial performance has occurred.)

Timeliness

The Pub argues that Williams exercised his option too late because he tendered his check three days past The Pub's last payment under the land contract. We reject this argument also. The contract contains no time specification within which Williams must exercise his option. We decline to insert a requirement that payment under the option be made before the final payment was tendered under the land contract. *See* ***Batavian Nat'l Bank v. S & H, Inc.***, 3 Wis.2d 565, 569, 89 N.W.2d 309, 312 (1958) (in the guise of construing a contract, the court cannot insert what has been omitted or rewrite the contract made by the parties). Where a contract is silent as to time, Wisconsin courts will imply a reasonable time for performance. *See* ***William B. Tanner Co. v. Sparta-Tomah Broad. Co.***, 716 F.2d 1155, 1159 (7th Cir. 1983). In our analysis, an option payment tendered three days past the last payment on a ten-year contract, and at a time before the "ultimate closing," is not unreasonable.

Overly Broad

The Pub last argues that the circuit court's judgment was overly broad because it exceeded its authority by *sua sponte* conforming the pleadings to the evidence. Although couched in terms of conforming pleadings, The Pub in essence argues that the court issued an opinion concerning issues not yet raised and litigated. We reject this argument.

It is fundamental that courts may not render purely advisory opinions. ***State v. Witkowski***, 163 Wis.2d 985, 988, 473 N.W.2d 512, 513 (Ct. App. 1991). Thus, when the court held that the financial obligations under the land contract "have been fulfilled exactly" and that "accord and satisfaction have been achieved," this was a holding on the issues presented to it. If in the future

The Pub wishes to litigate matters not raised before the court, it may do so subject to law.[2] We will not compound the error of The Pub's argument by now ruling whether the circuit court's holding operates to preclude possible future litigation concerning billboards, ingress, egress and the like, because no such litigation is currently within our jurisdiction, and we will not issue advisory opinions either.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[2] For an example of legal restrictions on possible future litigation, *see, e.g.,* ***Great Lakes Trucking Co. v. Black***, 165 Wis.2d 162, 477 N.W.2d 65 (Ct. App. 1991), and ***A.B.C.G. Enters., Inc. v. First Bank Southeast, N.A.***, 178 Wis.2d 370, 504 N.W.2d 382 (Ct. App. 1993) (mandatory counterclaims discussed).