COURT OF APPEALS
DECISION
DATED AND RELEASED

February 13, 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. 96-2334-FT

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

L. QUILLIN & ASSOCIATES, INC.,

Plaintiff-Respondent,

v.

SNOW FLAKE SKI AND GOLF CLUB,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Vernon County: MICHAEL T. KIRCHMAN, Judge. *Affirmed*.

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Snow Flake Ski and Golf Club appeals from a money judgment in favor of L. Quillin & Associates, Inc., an advertising agency. Snow Flake paid Quillin $4,200 for advertising services. Quillin demanded an

additional $2,400, resulting in this lawsuit. Because we conclude that the trial court properly granted judgment on Quillin's claim, we affirm.[1]

In 1994, Quillin provided advertising services for Snow Flake's annual ski jump competition. Quillin billed $3,900 in printing costs for brochures, posters, etc., and $1,600 for agency labor costs. In 1995, Snow Flake again hired Quillin to provide a set of printed advertising materials for the event. This time Quillin billed $4,900 for printing costs and $2,000 for agency labor costs. Snow Flake refused to pay more than $4,200, however, contending that it had only agreed to pay printing costs plus tax in that amount, and had never agreed to pay a separate charge for labor.

Evidence at the bench trial showed that in 1994 Snow Flake's representative knew that Quillin billed labor costs separately from printing costs, which were determined by bids received from printing concerns. Quillin's agent on the account, Karen Sibenaller, assumed in 1995 that Snow Flake remained aware that printing costs and labor costs were separate billing items. She provided Snow Flake with a $3,996 written estimate of printing costs, but never discussed labor costs with its representatives, Greg Lunde and Jeff Houghtaling.

The dispute arose because Lunde and Houghtaling were not involved in the 1994 contract and, contrary to Sibenaller's assumption, did not know that labor costs were extra. They believed that the estimate Sibenaller provided for printing costs was going to be the entire bill, and their agreement to engage Quillin was based on that belief. Snow Flake subsequently computed the contract price at $3,996, plus sales tax, and tendered that amount. Quillin accepted Snow Flake's check but reserved its claim for an additional $2,400.

The trial court found all witnesses for both sides credible, and concluded that the dispute arose from a mutual misunderstanding. Sibenaller assumed that Lunde and Houghtaling knew about and implicitly agreed to pay Quillin's labor costs over and above printing, while they, without knowing details of the 1994 agreement, believed that the printing costs were the total

[1] This is an expedited appeal under RULE 809.17, STATS.

charge. Sibenaller also intended the $3,996 figure as a nonbinding estimate, again assuming that Lunde and Houghtaling knew that the final charge was out of Quillin's hands, based as it was on whatever printing bids were submitted. On the other hand, Lunde and Houghtaling thought Quillin did its own printing and that the $3,996 estimate was therefore a firm offer. Because of the parties' mutual misunderstandings, the court determined that there was in fact no contract. Quillin received its $2,400 award based on a *quantum meruit* theory.

The sole issue on appeal is whether the trial court clearly erred by finding that the parties did not have a contract with a total charge of $3,996, plus tax, for all of Quillin's services. If there is no meeting of the minds on essential terms, there is no contract to enforce. ***Novelly Oil Co. v. Mathy Const. Co***., 147 Wis.2d 613, 617, 433 N.W.2d 628, 630 (Ct. App. 1988). We review the trial court's finding on this issue under the clearly erroneous standard. ***Id***. at 617-18, 453 N.W.2d at 630.

The trial court's finding is substantially supported by the facts and is not clearly erroneous. Snow Flake contends that Sibenaller, as Quillin's agent, gave it a firm contract offer of $3,996, after learning from Lunde and Houghtaling that the price must be reduced from the 1994 charges. Sibenaller testified, however, that she did not take their comments regarding costs as a contract demand, and intended the printing cost estimate not as a firm offer of total cost, but only as a best estimate of what the printers might charge. If believed, that testimony establishes that there was no meeting of the minds on the price terms of the contract. The trial court's decision to believe it is not subject to review. ***Noll v. Dimiceli's, Inc.***, 115 Wis.2d 641, 643-44, 340 N.W.2d 575, 577 (Ct. App. 1983).

In its reply brief, Snow Flake sets forth an argument based on provisions of the Uniform Commercial Code. We do not consider arguments first raised in a reply brief. ***In re Estate of Bilsie***, 100 Wis.2d 342, 346 n.2, 302 N.W.2d 508, 512 (1981).

By the Court.—Judgment affirmed.

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