COURT OF APPEALS
DECISION
DATED AND FILED

November 17, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2262 **Cir. Ct. No. 2014CV26**

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

PETER BRIGGS AND BRIGGS PROPERTIES, II, LLC,

PLAINTIFFS-APPELLANTS,

CINCINNATI INSURANCE COMPANY,

INTERVENING PLAINTIFF,

STEVENS & KUSS S.C.,

APPELLANT,

V.

ROGER ROMANSKI AND DAARAN REALTY, INC.,

DEFENDANTS-RESPONDENTS.

APPEAL from orders of the circuit court for Wood County: NICHOLAS J. BRAZEAU, JR., Judge. *Order affirmed; order reversed and cause remanded.*

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

¶1 PER CURIAM. Peter Briggs and Briggs Properties, II, LLC brought breach of contract and misrepresentation claims against Roger Romanski and Daaran Realty, Inc., concerning the alleged failure to disclose certain conditions affecting property sold to the Briggs plaintiffs.[1] The circuit court dismissed the Briggs plaintiffs' claims on summary judgment, denied their motion for reconsideration, and ordered Peter Briggs and his trial counsel to pay $2,000 in sanctions to the Romanski defendants' trial counsel for failure to determine the proper parties. Briggs Properties appeals the dismissal of its claims on summary judgment, and Briggs and his trial counsel appeal the sanctions order. We conclude that the Romanski defendants have failed to demonstrate that they are entitled to summary judgment dismissing Briggs Properties' claims, and that the circuit court properly exercised its discretion in imposing sanctions. Therefore, we affirm the sanctions order and reverse the summary judgment order.

BACKGROUND

¶2 The following facts are undisputed.

¶3 Romanski purchased property in Wisconsin Rapids in 1977 and shortly thereafter demolished the aboveground gas station structures on the

[1] We generally refer to Peter Briggs and Briggs Properties, II, LLC collectively as the Briggs plaintiffs, to Peter Briggs individually as Briggs, and to Briggs Properties, II, LLC individually as Briggs Properties. We refer to Roger Romanski and Daaran Realty, Inc., collectively as the Romanski defendants, to Roger Romanski individually as Romanski, and to Daaran Realty, Inc., individually as Daaran Realty. We refer to appellants Stevens & Kuss S.C., as Briggs's trial counsel.

property and removed an underground storage tank from the property.[2] Romanski subsequently transferred title to the property to Daaran Realty, which Romanski formed for the purpose of holding title to property.

¶4 Romanski and Daaran Realty entered into a contract to sell the property to "Peter Briggs or 'Assignee'" through a Commercial Offer to Purchase signed by the parties on March 17 and 18, 2008. Pertinent to this appeal, the Offer includes the following "Property Condition Representations" provision:

> Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge of conditions affecting the Property or transaction other than those identified in Seller's Real Estate Condition Report dated _____, which was received by Buyer prior to Buyer signing this Offer and which is made a part of this Offer by reference and to be delivered upon acceptance.

¶5 The Offer defines a "'condition affecting the Property or transaction'" as including underground gasoline storage tanks "which are currently or which were previously located on the Property," and "other conditions or occurrences which would significantly reduce the value of the Property to a reasonable person with knowledge of the nature and scope of the condition or occurrence." The Offer also provides that "Seller accepts this offer. The warranties, representations and covenants made in this offer survive closing and the conveyance of the property."

¶6 The Romanski defendants did not deliver a Seller's Real Estate Condition Report to Briggs or his assignee, and did not otherwise disclose the

[2] Romanski testified in his deposition that only one underground storage tank was removed, and that in 1978 there was only one kind of gasoline, regular, and the gas station had only one pump.

prior presence and removal of the gas station structures and underground storage tank before or when the Offer was signed in March 2008 or when the closing took place in April 2008. In 2012, Briggs learned of the tank's prior presence and removal when a bank processed his refinancing request.

¶7 Briggs filed an original complaint against Romanski and Daaran Realty alleging common law and statutory intentional misrepresentation against both defendants and breach of contract against Romanski, based on the Romanski defendants' failure to disclose the prior presence and removal of the aboveground gas station structures and the underground storage tank. Briggs subsequently filed an amended complaint, adding as a plaintiff Briggs Properties, the title holder of the property and an LLC of which Briggs is the owner and sole member, and alleging the misrepresentation and breach of contract claims against both Romanski and Daaran Realty. Finally, the Briggs plaintiffs filed a second amended complaint, maintaining the misrepresentation claims against both Romanski defendants and alleging the breach of contract claim against Daaran Realty only.

¶8 The circuit court granted the Romanski defendants' motion for summary judgment dismissing the misrepresentation and breach of contract claims. The circuit court also granted the Romanski defendants' motion for sanctions, ordering Briggs and his trial counsel to pay $2,000 for what the court described as Briggs and his trial counsel's "willful disregard for basic due diligence" in failing to determine the proper parties. The circuit court denied the Briggs plaintiffs' motion for reconsideration, and this appeal follows.

DISCUSSION

¶9 The Briggs plaintiffs argue that the circuit court erred by entering summary judgment dismissing Briggs Properties' claims against the Romanski defendants and imposing sanctions against Briggs and his trial counsel. We first address whether the Romanski defendants are entitled to summary judgment dismissing Briggs Properties' claims, and then turn to whether the circuit court properly imposed sanctions.

I. Summary Judgment Dismissing Briggs Properties' Claims

¶10 We review a circuit court's grant of summary judgment de novo. ***Chapman v. B.C. Ziegler and Co.***, 2013 WI App 127, ¶2, 351 Wis. 2d 123, 839 N.W.2d 425. "When reviewing a grant … of summary judgment, we apply the same methodology as the [circuit] court." ***Universal Die & Stampings, Inc. v. Justus***, 174 Wis. 2d 556, 560, 497 N.W.2d 797 (Ct. App. 1993). Summary judgment is appropriate when "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." ***Kruschke v. City of New Richmond***, 157 Wis. 2d 167, 169, 458 N.W.2d 832 (Ct. App. 1990) A court should not grant summary judgment unless the movant "demonstrates a right to judgment with such clarity as to leave no room for controversy." ***Waters v. United States Fidelity & Guar. Co.***, 124 Wis. 2d 275, 279, 369 N.W.2d 755 (Ct. App. 1985). "[W]e search the [r]ecord to see if the evidentiary material that the parties set out in support or in opposition to summary judgment supports reasonable inferences that require the grant or denial of summary judgment, giving every reasonable inference to the party opposing summary judgment." ***Chapman***, 351 Wis. 2d 123, ¶2.

¶11 "Summary judgment methodology prohibits the [circuit] court from deciding an issue of fact. The court determines only whether a factual issue exists, resolving doubts in that regard against the party moving for summary judgment." ***Preloznik v. City of Madison***, 113 Wis. 2d 112, 116, 334 N.W.2d 580 (Ct. App. 1983). "In deciding whether there are factual disputes, the circuit court and the reviewing court consider whether more than one reasonable inference may be drawn from undisputed facts; if so, the competing reasonable inferences may constitute genuine issues of material fact. We draw all reasonable inferences from the evidence in favor of the nonmoving party. Whether an inference is reasonable and whether more than one reasonable inference may be drawn are questions of law." ***H&R Block E. Enters., Inc. v. Swenson***, 2008 WI App 3, ¶11, 307 Wis. 2d 390, 745 N.W.2d 421 (2007) (citations omitted).

¶12 Consistent with the above principles, we review the Romanski defendants' motion for summary judgment as the circuit court would. Thus, we structure our discussion around the Romanski defendants' arguments as to why they are entitled to summary judgment. We review the arguments, pleadings, and summary judgment materials submitted by the parties, drawing reasonable inferences from the evidence in favor of the nonmoving party, the Briggs plaintiffs.

¶13 The parties agree that Briggs Properties' misrepresentation and breach of contract claims turn on whether the Romanski defendants had a contractual duty to disclose the prior presence and removal of the gas station structures and underground storage tank under the "Property Condition

Representations" provision in the Offer to Purchase.[3] The Romanski defendants argue that they are entitled to summary judgment dismissing Briggs Properties' misrepresentation and breach of contract claims based on the Romanski defendants' alleged failure to fulfill that contractual duty because: (1) Briggs Properties lacks standing to allege the misrepresentation and breach of contract claims; (2) the Addendum eliminated the Romanski defendants' obligation to disclose conditions affecting the property; and (3) Briggs Properties' breach of contract claim against Daaran Realty is time-barred. We address each argument in turn.

A. Whether Briggs Properties is a Proper Party

¶14 In March 2008, Buyer "Peter Briggs or 'Assignee'" and Seller "Daaran Realty Inc. by Roger Romanski" executed a Commercial Offer to Purchase the property at issue. The Romanski defendants argue that Briggs Properties lacks privity to the Offer to Purchase, and therefore lacks standing to bring the misrepresentation and breach of contract claims arising out of the Offer, because only Peter Briggs signed the Offer to Purchase contract and there is no evidence that Peter Briggs assigned his rights, as the signer of the Offer, to Briggs Properties. In response, Briggs Properties argues that it does have privity and standing because the evidence comprising Peter Briggs's averments in his affidavit shows that Peter Briggs assigned his contractual rights under the Offer to Purchase

[3] Briggs Properties also argues that the Romanski defendants had a common law duty to disclose the presence and removal of the gas station and underground storage tank. We do not reach the parties' common law duty arguments because our conclusion based on contractual duty disposes of this appeal. *See* ***Barrows v. American Family Ins. Co.***, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) ("An appellate court need not address every issue raised by the parties when one issue is dispositive.").

to Briggs Properties prior to closing, which took place approximately one month after the parties executed the Offer to Purchase.

¶15 The Romanski defendants respond that this evidence fails because Briggs Properties did not produce a written assignment of Peter Briggs's rights under the Offer to Briggs Properties. However, the Romanski defendants fail to provide any authority to support their argument that a written assignment of contractual rights was required. And we perceive no reason why Peter Briggs's sworn assertion that he did assign his rights to Briggs Properties is not proper evidence of the transaction. Accordingly, we do not consider the Romanski defendants' argument on this topic further. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 ("Arguments unsupported by legal authority will not be considered, and we will not abandon our neutrality to develop arguments." (citations omitted)).

¶16 In sum, the Romanski defendants have failed to demonstrate that Peter Briggs's assertion that he assigned his contractual rights under the Offer to Briggs Properties before closing is insufficient to raise a reasonable inference of such assignment, and consequently to preserve the issue for trial. Therefore, we conclude that the Romanski defendants are not entitled to summary judgment dismissing Briggs Properties' claims based on lack of standing.

B. Whether the Addendum had the Effect of Eliminating the Romanski Defendants' Obligation to Disclose Conditions Affecting the Property

¶17 The Romanski defendants argue that they are entitled to summary judgment dismissing Briggs Properties' breach of contract and misrepresentation claims because the Addendum to the Offer to Purchase eliminated any duty to

disclose the prior presence and removal of the gas station structures and underground storage tank under the "Property Condition Representations" provision in the Offer to Purchase. Briggs Properties argues that the Addendum does not eliminate that obligation. We agree with Briggs Properties.

¶18 The Addendum states: "The provisions of this Addendum are hereby added to and incorporated in the Terms and Conditions in the aforementioned [Offer to Purchase] Agreement. *Any provision of this Addendum which is not numbered and fully completed shall have no force or effect*. The Buyer and Seller agree to the following terms in addition to those in the attached Purchase Agreement." (Emphasis added.) The Addendum then lists two numbered terms that affect matters not pertinent here.

¶19 The Romanski defendants assert that the Addendum states that "any provision not numbered in the Addendum and already fully completed 'shall have no force or effect.'" The Romanski defendants then argue that, because the Property Condition Representations provision contained in the Offer to Purchase was not reiterated as a numbered provision in the Addendum, the Seller's Real Estate Condition Report requirement was waived. The Romanski defendants are effectively arguing that the Addendum negates *all* the provisions in the contract that are not reiterated as a numbered item. However, the Addendum by its plain language limits the "no force or effect" clause to any provisions *in the Addendum* that are not both numbered and completed. The Romanski defendants' argument is an untenable assertion that the Addendum is the entire contract. Moreover, the Addendum expressly states the obvious, which is that the Addendum terms are in addition to the terms and conditions of the Agreement, thereby making it additionally clear that the Agreement's terms are unaffected by the Addendum.

¶20 Because the Romanski defendants' waiver argument is based entirely on their misreading of the Addendum, which we have rejected, we conclude that they are not entitled to summary judgment dismissing Briggs Properties' claims based on waiver.[4]

C. Whether the Breach of Contract Claim is Time-Barred

¶21 Daaran Realty argues that it is entitled to summary judgment dismissing Briggs Properties' breach of contract claim against it as time-barred. Briggs Properties' breach of contract claim is subject to the six-year statute of limitations in WIS. STAT. § 893.43 (2013-14).[5] Here, the parties signed the Offer to Purchase in March 2008, and Peter Briggs filed the original complaint alleging a breach of contract claim against Romanski (along with various misrepresentation claims against both Romanski and Daaran Realty) in January 2014, within six years of the contract date and thus within the statute of limitations. After the six-year period had elapsed, an amended complaint was filed in September 2014 adding Briggs Properties as a plaintiff and alleging breach of contract against Daaran Realty as well as Romanski, and a second amended complaint was filed in October 2014 alleging breach of contract against Daaran Realty only.

[4] The Romanski defendants make a passing reference to deposition testimony by Peter Briggs that he waived all "contingencies" before purchasing the property. The Romanski defendants properly do not base their waiver argument on this testimony, because the "Property Condition Representations" provision requiring disclosure of conditions affecting the property is a "representation" and not a "contingency." *See* Commercial Real Estate Transactions in Wisconsin, Second Edition § 3.66 ("A *representation* is a statement that a given fact is true as of the date of the statement."); BLACK'S LAW DICTIONARY 386 (10th ed. 2014) (defining "contingency" as "[a]n event that may or may not occur in the future; a possibility").

[5] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶22 Daaran Realty argues that because Briggs Properties' breach of contract claim against it "was commenced more than six years after the breach," the claim must be dismissed. Briggs Properties argues that its claim was timely filed because the claim relates back to the original complaint filed by Peter Briggs. We agree with Briggs Properties.

¶23 As an initial matter, Daaran Realty incorrectly asserts that our review of this issue is under the erroneous exercise of discretion standard. While we generally review the issue of whether an amended complaint relates back to the original complaint under the erroneous exercise of discretion standard, *see* ***Thom v. OneBeacon Ins. Co.***, 2007 WI App 123, ¶8 n.5, 300 Wis. 2d 607, 731 N.W.2d 657, in this case we review the issue de novo because it comes to us on appeal from the circuit court's grant of summary judgment, *see, e.g.*, ***Tews v. NHI, LLC***, 2010 WI 137, ¶40, 330 Wis. 2d 389, 793 N.W.2d 860 (reviewing grant of summary judgment regarding relation back issue independent of the circuit court). *See also* ***Wiley v. M.M.N. Laufer Family Ltd P'ship***, 2011 WI App 158, ¶8, 338 Wis. 2d 178, 807 N.W.2d 236.

¶24 The relation-back statute, WIS. STAT. § 802.09(3) provides in pertinent part:

> If the claim asserted in the amended pleading arose out of the transaction, occurrence, or event set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the filing of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against such party, the party to be brought in by amendment has received such notice of the institution of the action that he or she will not be prejudiced in maintaining a defense on the merits, and knew or should have known that, but for a mistake concerning the identity

> of the proper party, the action would have been brought against such party.

The relation-back statute applies both when an amended complaint adds a new party, either plaintiff or defendant, and when an amended complaint adds a new cause of action. ***Tews***, 330 Wis. 2d 389, ¶72 & n.20; ***Korkow v. General Cas. Co. of Wis.***, 117 Wis. 2d 187, 196, 344 N.W.2d 108 (1984) (holding that the relation-back statute applies to amendments changing or adding plaintiffs). Here, as we will show, the amendments to the original complaint do both.

¶25 "The purpose of the relation-back statute ... is to ameliorate the effect of the statute of limitations in a situation where the opposing party has received fair notice of the claim," and it imposes a three-part test: (1) the claim asserted in the amended complaint must arise out of the same transaction, occurrence, or event as is set forth in the original complaint; (2) within the time period provided by law for commencing the action, the defendant received such notice of the institution of the action that the defendant will not be prejudiced in maintaining a defense on the merits; and (3) within the time period provided by law for commencing the action, the defendant knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it. ***Tews***, 330 Wis. 2d 389, ¶¶2, 72; *see also* ***Wiley***, 338 Wis. 2d 178, ¶9.

¶26 It is unclear which prong or prongs of this test Daaran Realty contends are not met here. As to the first prong, all three complaints concern the exact same transaction, the 2008 sale through the Offer to Purchase of the property by Seller "Daaran Realty Inc. by Roger Romanski" to Buyer "Peter Briggs or 'Assignee.'" All three complaints concern the exact same alleged failure by the seller to disclose the prior presence and removal of the gas station structures and

underground storage tank as required by the Offer to Purchase. All three complaints allege the same damages. Daaran Realty does not argue otherwise. Thus, we conclude that it is undisputed that the statutory requirement that the claim asserted in the amended pleadings arise out of the same "transaction, occurrence, or event set forth or attempted to be set forth in the original pleading" is met. WIS. STAT. § 802.09(3).

¶27 As for the second prong of the test, Daaran Realty does not argue on appeal how it was prejudiced in defending against the breach of contract claim alleged against it in the second amended complaint. Daaran Realty and Roger Romanski both participated in the 2008 sale to "Peter Briggs or 'Assignee'" as parties to the Offer to Purchase, and both were named as defendants in the original complaint that raised a breach of contract claim against Romanski and misrepresentation and other tort claims against both Romanski and Daaran Realty. Daaran Realty is Roger Romanski's holding company, and both have been represented by the same attorney from the outset of this case. These undisputed facts at least permit the reasonable inference that Daaran Realty's interests were protected so that it will not be prejudiced in maintaining a defense on the merits. *See* ***Tews***, 330 Wis. 2d 389, ¶75 (concluding existence of reasonable inference of no prejudice where new defendant had same offices and same attorney as defendant named in original complaint). In the absence of any argument by Daaran Realty to the contrary, we conclude that it is undisputed that this lack-of-prejudice prong of the test is met.

¶28 It appears that it is the third prong of the test that Daaran Realty contends is not met: that Daaran Realty knew or should have known that, but for a mistake as to the identity of the parties, Briggs Properties would have brought its breach of contract claim against Daaran Realty. Specifically, Daaran Realty

argues that it had no notice of a breach of contract claim against it by Briggs Properties because Briggs Properties is not mentioned in the original complaint. As we explain, we conclude that the undisputed facts raise competing reasonable inferences as to whether Daaran Realty knew or should have known that Briggs Properties would bring its breach of contract claim against Daaran Realty.

¶29 There are three pertinent differences between the original timely filed complaint and the first and second allegedly untimely filed amended complaints: (1) the addition as a plaintiff of Briggs Properties as Peter Briggs's assignee; (2) the addition of the breach of contract claim against Daaran Realty and the dropping of the breach of contract claim against Romanski; and (3) the assertion of the breach of contract claim against Daaran Realty as a holding company that holds title to real estate on behalf of Romanski and his family, rather than as a real estate agency for which Romanski acted as an agent. In light of these differences, we find instructive our supreme court's decision in ***Korkow***, 117 Wis. 2d 187.

¶30 In ***Korkow***, the circuit court allowed the original plaintiffs, whose tavern had been damaged due to a fire, to file an amended complaint adding as a plaintiff their son, to whom they had assigned their interest in the property. ***Id.*** at 190, 197. The court concluded that the amendment, which added a new plaintiff asserting a new claim based on the same events, related back to the original complaint because "there was but one tavern, one fire and one insurance policy." ***Id.*** at 197. The court reasoned:

> The evident purpose behind sec. 802.09(3), Stats. ... is to ameliorate the effect of the statute of limitations in situations where the original pleadings provided fair notice to the opposing party of the claim or defense raised. There is nothing in either the language or the purpose of the rule evidencing its inapplicability to amendments changing

> plaintiffs. Provided a defendant is fully apprised of a claim arising from specific conduct by the original pleading, his ability to protect himself will not be prejudicially affected if a new plaintiff is added and he should not be permitted to make a statute of limitations defense.

Id. at 196 (citation omitted).

¶31 Here, as in ***Korkow***, there was but one property, one Offer to Purchase that property, and one failure to disclose one set of conditions affecting that property. Daaran Realty was fully apprised of the claim based on that transaction by the original complaint. While the first amended complaint adds a new plaintiff, Briggs's assignee Briggs Properties, and adds Daaran Realty as a defendant to the breach of contract claim originally alleged only against Romanski, Daaran Realty was named as a defendant in the original complaint based on the exact same sale of property through the Offer to Purchase by Seller "Daaran Realty Inc. by Roger Romanski" to Buyer "Peter Briggs or 'Assignee.'" While the second amended complaint clarifies the role of Daaran Realty as a holding company rather than a real estate agency, the original complaint names the exact same defendant – Daaran Realty – on whose behalf Romanski acted; describes the exact same transaction involving Daaran Realty and Romanski; and maintains substantially the same breach of contract claim, based on the failure to disclose the prior presence and removal of the gas station structures and underground storage tank, as the amended complaint. Therefore, it is apparent that the original complaint at the least permits the inference that Daaran Realty was on notice of the institution of the action within the statute of limitations, *see* ***Tews***, 330 Wis. 2d 389, ¶77, so as to provide the "fair notice" described by the ***Korkow*** court as a predicate for allowing amendment under WIS. STAT. § 802.09(3).

¶32 Daaran Realty argues that because the original complaint does not identify either Briggs Properties as a plaintiff or state a breach of contract claim against Daaran Realty as the seller of the property, Briggs Properties' breach of contract claim against Daaran Realty should be dismissed based on our decision in ***Barnes v. WISCO Hotel Group***, 2009 WI App 72, 318 Wis. 2d 537, 767 N.W.2d 352. While the facts highlighted by Daaran Realty may permit the inference that it had no knowledge of Briggs Properties' breach of contract claim against it based on the original complaint, we are not persuaded that, under ***Barnes,*** it is the only reasonable inference here.

¶33 In ***Barnes***, we reviewed the circuit court's grant of the defendant's motion to dismiss two plaintiffs added in an amended complaint under the erroneous exercise of discretion standard. 318 Wis. 2d 537, ¶1. The original complaint was filed by one victim of a shooting rampage at a hotel. ***Id.***, ¶3. After the statute of limitations expired, an amended complaint was filed adding as plaintiffs two additional victims who had been staying in rooms at the hotel. One of the new plaintiffs had also been shot, and the other had been held hostage but not shot. ***Id.***, ¶4. The circuit court granted the defendant's motion to dismiss the two new plaintiffs because the original complaint failed to satisfy the notice requirements of the relation-back statute. ***Id.***, ¶¶5, 7. We affirmed the circuit court's exercise of discretion. We concluded that, in multiple-victim cases, allowing the addition as plaintiffs of new victims with different injuries resulting from different interactions with the shooter in separate discrete occurrences, fails to satisfy the notice requirement because the original complaint filed by only one of the victims does not give the defendant "sufficient notice as to the specific factual occurrences with respect to the additional victims *or* any notice that these victims would even be making a claim for their injuries." ***Id.***, ¶15 (alteration in

original). To conclude otherwise, we reasoned, would open the door to potentially unlimited amendments adding unknown plaintiffs regardless of the statute of limitations. ***Id.***, ¶12.

¶34 Here, in contrast, the action was limited to one Offer to Purchase, between one seller "Daaran Realty Inc. by Roger Romanski" and one buyer "Peter Briggs or 'Assignee,'" and concerning one alleged failure to disclose the prior presence and removal of the gas station structures and underground storage tank under the Property Condition Representations provision in the Offer. Daaran Realty points to nothing in ***Barnes*** to challenge our conclusion that the undisputed facts here permit the inference that Daaran Realty knew or should have known of Briggs Properties' breach of contract claim against it based on the original complaint.

¶35 In sum, we conclude that it can be reasonably inferred that the requirements of the relation-back statute are satisfied, and that Briggs Properties' breach of contract claim against Daaran Realty in the second amended complaint is not barred by the statute of limitations. Accordingly, we conclude that Daaran Realty is not entitled to summary judgment dismissing Briggs Properties' breach of contract claim as time-barred.

II. Sanctions Against Briggs and his Trial Counsel

¶36 Briggs and his trial counsel argue that the circuit court erroneously exercised its discretion in ordering Briggs and his trial counsel to pay $2,000 in sanctions to the Romanski defendants' trial counsel for failure to determine the proper parties. We reject Briggs's argument as follows.

¶37 "'A [circuit] court's decision whether to impose sanctions ... and what sanction to impose, is committed to the [circuit] court's discretion. Accordingly, we will affirm the … decision if [the court] examined the relevant facts, applied a proper standard of law, and reached a reasonable conclusion.' Our review of the various factual findings made by the [circuit] court in arriving at its determination is limited in that the court's '[f]indings of fact shall not be set aside unless clearly erroneous.'" ***Bettendorf v. Microsoft Corp.***, 2010 WI App 13, ¶15, 323 Wis. 2d 137, 779 N.W.2d 34 (2009) (citations omitted).

¶38 This case began on January 17, 2014, when Peter Briggs filed the original complaint alleging one breach of contract claim and three misrepresentation claims against Roger Romanski as the "seller" of the property, and four misrepresentation claims and one negligence claim against Daaran Realty as the real estate agency for whom Romanski was acting as an agent in connection with the sale of the property.

¶39 In their answer to the complaint, the Romanski defendants denied the claims and affirmatively stated "at least twenty-two separate times" that Romanski was not a real estate agent and that Daaran Realty was not a real estate agency. In August 2014, the Romanski defendants deposed Peter Briggs, who testified that he did not know whether Romanski was a real estate agent or whether Daaran Realty was a real estate agency.

¶40 On September 17, 2014, the Romanski defendants' counsel served Briggs and his trial counsel with a Notice of Motion and Motion for Sanctions, providing the twenty-one-day notice required under WIS. STAT. § 802.05(2) and

(3),[6] and alerting counsel that the allegations in the complaint that Romanski was the seller and real estate agent and that Daaran Realty was the real estate agency were false, and that the complaint in its entirety was unsupported and frivolous because all of the claims were based on those false allegations. Attached to the motion was an affidavit of Roger Romanski in which he testified that he had never been a real estate agent and had never owned the property, and that he signed the Offer to Purchase as president of Daaran Realty, which was not a real estate agency but rather a company that owned the property.

¶41 On September 22, 2014, the Briggs plaintiffs filed the first amended complaint, continuing to allege that Romanski was the seller and a real estate agent and that Daaran Realty was a real estate agency, alleging one breach of

[6] WISCONSIN STAT. § 802.05(3)(a)1. provides:

> By motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate sub. (2). The motion shall be served as provided in s. 801.14, but shall not be filed with or presented to the court unless, within 21 days after service of the motion or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion reasonable expenses and attorney fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

WISCONSIN. STAT. § 802.05(2)(c) provides:

> The allegations and other factual contentions stated in the paper have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

contract claim and two misrepresentation claims against both defendants, and adding Briggs Properties as a plaintiff.

¶42 On October 20, 2014, the Romanski defendants filed with the circuit court the Notice of Motion and Motion for Sanctions that had been served on Briggs and his trial counsel.

¶43 On October 29, 2014, the Briggs plaintiffs filed the second amended complaint, which alleged that Romanski made representations on behalf of his company Daaran Realty, that Daaran Realty was the seller of the property, that the Offer to Purchase was executed by Briggs and Daaren Realty, and that Briggs Properties was Briggs's assignee. The second amended complaint alleged one breach of contract claim against Daaran Realty and two misrepresentation claims against Romanski personally and as an agent of Daaran Realty.

¶44 After briefing and oral argument, the circuit court found "a willful disregard for basic due diligence in this case, not even looking at the contract to determine the parties," and found that although this "did result in additional costs," the defendants' counsel was not entitled to the full amount requested, which was roughly $17,000. The circuit court ordered Peter Briggs and his trial counsel to pay $2,000 to the Romanski defendants' counsel "for the additional work that [defendants' counsel] had to go through in their failure to even get the most basic facts in" the plaintiffs' pleadings, and "as a result of the willful disregard of Peter Briggs and his counsel to perform due diligence in bringing this action."

¶45 Briggs and his trial counsel argue that the circuit court erred for four reasons. None of these reasons withstands scrutiny.

¶46 First, Briggs and his trial counsel argue that the allegations in the complaint were corrected within the safe harbor period. However, the allegations were not corrected until the second amended complaint was filed after the twenty-one-day safe harbor period and after the sanctions motion was filed with the circuit court.

¶47 Second, Briggs and his trial counsel argue that any violation of WIS. STAT. § 802.05(2)(c) was inconsequential. This is plainly not true. The violations concerned the accurate identification of the parties and their roles in the underlying transaction. Indeed, once the roles were clarified, the claims were reduced from nine to three, with the breach of contract claim directed at Daaran Realty only and the misrepresentation claims directed at both Romanski defendants.

¶48 Third, Briggs and his trial counsel argue that the circuit court's order fails to "describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed." However, the record shows that the circuit court did describe the violating conduct and the basis for the sanction, as is clear from the excerpts from its ruling and order quoted above.

¶49 Fourth, Briggs and his trial counsel argue that no unusual circumstances justified the order. This argument fails to come to grips with the circuit court's explanation of why it ordered that the sanctions be paid to the Romanski defendants' counsel: to reflect "expenditures made because of [Briggs's] failure to act more quickly and to realize" that corrections were required in light of the answer and the contract itself.

¶50 In sum, Briggs fails to show that the circuit court erroneously exercised its discretion when it awarded sanctions to the Romanski defendants' counsel.

CONCLUSION

¶51 For the reasons stated, we affirm the sanctions order against Peter Briggs and his trial counsel, reverse the summary judgment order dismissing Briggs Properties' claims, and remand for further proceedings.

By the Court.— Order affirmed; order reversed and cause remanded.

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