

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 1, 2005**

Cornelia G. Clark  
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. 2005AP321**

**Cir. Ct. No. 2003CV3635**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**GARY OLSON AND TODD OLSON,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**RONALD LUND, SHERI LUND AND RUTH MARY OLSON,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Dane County:  
MARYANN SUMI, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Gary and Todd Olson appeal from a judgment dismissing their claims against Ruth Mary Olson, Ronald Lund, and Sheri Lund. Ruth agreed to sell 100 acres of farmland to her nephews, Gary and Todd, and signed an agreement to that effect on August 29, 2003. She later changed her

mind and sold the acreage to the Lunds. In this proceeding Gary and Todd sought specific performance of what they alleged was an enforceable contract. In the alternative, they sought equitable reformation of the written agreement with Ruth, if it was not enforceable under contract law. The trial court held on summary judgment that the agreement did not constitute an enforceable agreement. After a bench trial the court declined to grant equitable reformation. We affirm those determinations.<sup>1</sup>

¶2 The signed agreement between Gary, Todd and Ruth is as follows:

EXHIBIT C

1-1-1

Land contract of 15 years  
 180 acres plus or minus  
 purchase price \$200,000.00  
 5% interest  
 Ruth Olson to have life use of house  
 and ~~one shed~~ attached shed  
 Ruth ~~to~~ agrees to pay utilities on house  
 and attached ~~g~~ shed and also upkeep  
 on house and shed  
 All property taxes will be paid by Gary  
 and Todd Olson starting January 1st 2004

Payment "initial payment" to be made in  
 January.

This is a binding agreement  
 between Ruth Olson and Gary Olson and  
 Todd Olson as of August 29, 2003 Friday

Gary J Olson Todd A Olson  
 Ruth Mary Olson

amendment: Gary & Todd Olson have  
 permission to build a grain bin  
 on this property prior to possession  
 possession on January 1st 2004 at their  
 App - p. 30 Exhibit

<sup>1</sup> Gary and Todd presented other claims, which the trial court dismissed as well. However, those claims are not the subject of this appeal.

Before signing the agreement, Gary and Todd had rented and farmed the land for thirteen years and had invested substantial sums to improve it on the assumption that they would one day own it. There was no dispute that when Ruth signed the agreement she intended to sell the land to Gary and Todd.

¶3 The August 29, 2003 agreement contained no reference to the number, frequency, or dollar amount of Gary and Todd's payments. Payment terms such as these are material to a land conveyance contract. See *Kinner v. Edwards Realty and F. Co.*, 204 Wis. 2d 575, 579, 583, 236 N.W.2d 597 (1931). If terms are material and are not included in the contract, or in a written addendum or supplement to it, the contract is not valid and enforceable. See WIS. STAT. §§ 706.02(1)(c) and 706.02(2) (2003-04).<sup>2</sup> Consequently, the contract is not enforceable as a matter of law, and summary judgment was therefore appropriate. See WIS. STAT. § 802.08(2).

¶4 The trial court properly denied equitable relief as well. WISCONSIN STAT. § 706.04 provides the trial court with discretion to enforce a land transaction notwithstanding its noncompliance with WIS. STAT. § 706.02. However, § 706.04 bars the use of that discretion unless all elements of the transaction are clearly and satisfactorily proved and (1) the deficiency of the conveyance may be supplied by reformation and equity; or (2) a party against whom enforcement is sought would be unjustly enriched; or (3) the party against whom enforcement is sought is equitably estopped from asserting the deficiency.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

In the latter case, the court may apply estoppel on evidence of a party's good faith detrimental reliance on the unenforceable agreement. WIS. STAT. § 706.04(3).

¶5 Here there was no evidence of any agreement, written or otherwise, on payment terms. Therefore, the elements of the transaction were not clearly and satisfactorily proved. Additionally, even if they had been, Gary and Todd still failed to meet the criteria for equitable relief. First, with no agreement on payment terms, none could be supplied in equity. Second, there was no issue of unjust enrichment and no relevant evidence of detrimental reliance. The only evidence of detrimental reliance concerned Gary and Todd's investment in the property before the August 29 agreement, which only established reliance on earlier oral promises that are not the subject of their claims. There was no evidence of detrimental reliance based on the events of August 29, 2003.

¶6 The evidence showed that for years Gary and Todd had a reasonable expectation that they would some day own the property, that they invested in the property because of that expectation, and that they acted in good faith. However, judicial authority to grant relief, contractually or equitably, is substantially limited by the terms of WIS. STAT. §§ 706.02 and 706.04. Unfortunately those statutory limitations and not the equities of the situation control the result.

*By the Court.*—Judgment affirmed.

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

