

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

September 28, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**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.

**No. 00-0487**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**LA CROSSE PLUMBING SUPPLY COMPANY,**

**PLAINTIFF-RESPONDENT,**

**WISCONSIN SUPPLY CORPORATION D/B/A FIRST SUPPLY  
DUBUQUE F/K/A KRETSCHMER-TREDWAY COMPANY,**

**PLAINTIFF,**

**v.**

**STEVEN V. FISHLER,**

**DEFENDANT-APPELLANT,**

**HERMSEN PLUMBING & HEATING, INC., KIM & MIKE  
ERDENBERGER, INC., KURT M. JAYNES, MICHAEL J.  
ERDENBERGER AND KIMBERLY A. ERDENBERGER,**

**DEFENDANTS.**

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

Before Dykman, P.J., Eich and Deininger, JJ.

¶1 PER CURIAM. Steven Fishler appeals from a money judgment in favor of La Crosse Plumbing Supply Company. The issue is whether Fishler should be relieved of his obligation to pay debts pursuant to a personal guaranty. We affirm.

¶2 In this litigation, La Crosse Plumbing is seeking to recover money owed by Hermsen Plumbing & Heating, Inc. The issue was decided on motions for summary judgment. The parties agree that the facts are not in dispute, and that the issue before us is one of law.

¶3 In 1994, Fishler executed a personal guaranty guaranteeing a contract for commercial credit which was granted to Hermsen Plumbing by La Crosse Plumbing. In 1996, Fishler sold his interest in Hermsen corporation to Mike Erdenberger and others. Fishler's personal guaranty to La Crosse Plumbing contained a clause which would have allowed him to terminate the guaranty with written notice to La Crosse, but Fishler did not provide such a notice when he sold his interest.

¶4 After the sale, the Hermsen corporation continued to accrue debt with La Crosse. At some point, Kim and Mike Erdenberger, Inc., replaced the Hermsen corporation as the operator of the Hermsen plumbing business. In April 1998, the Erdenberger corporation, doing business as Hermsen Plumbing, applied for and received a line of commercial credit from La Crosse Plumbing. In addition, in May 1998, Michael and Kimberly Erdenberger, and another owner of

the Hermsen business, signed notes with La Crosse Plumbing in which they agreed to pay certain amounts owed by Hermsen.

¶5 In this suit by La Crosse Plumbing to collect Hermsen's debt, the trial court held that Fishler was liable for the debts in accordance with his unrevoked guaranty. On appeal, Fishler argues that La Crosse released him from his guaranty in two ways. First, by accepting the commercial credit agreement from the Erdenberger corporation, and second, by accepting the note in which the Erdenbergers assumed the Hermsen business debts.

¶6 Fishler relies on a case which states that if the creditor receives "payment or other satisfaction," the surety is discharged. *Continental Bank & Trust Co. v. Akwa*, 58 Wis. 2d 376, 388, 206 N.W.2d 174 (1973). His argument, essentially, is that he should be released from the guaranty because La Crosse Plumbing received "other satisfaction" of the debts when it obtained the new credit agreement and note. Fishler further relies on a federal case which states that "[t]he taking of a bill of exchange or promissory note for a debt will operate as payment if so intended. In many jurisdictions the receipt by the creditor of the instrument as payment will be enough" to extinguish the debt. *Holcombe v. Solinger & Sons Co.*, 238 F.2d 495, 500 (5th Cir. 1956). In sum, Fishler asks us to "adopt" this concept into Wisconsin law and thereby relieve him of his obligation as surety.

¶7 We reject the argument. We decline to adopt the rule Fishler proposes. He has offered no support for that rule in Wisconsin law. Nor does he offer any sound policy reason for adopting such a rule. We see no reason why the creditor's receipt of new pieces of paper, which may not ultimately produce any

payment, should relieve a surety of its obligation to make an actual payment. Accordingly, we affirm the judgment.

*By the Court.*—Judgment affirmed.

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

