COURT OF APPEALS
DECISION
DATED AND FILED

January 30, 2007

A. John Voelker
Acting 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. 2004AP2396 **Cir. Ct. No. 2000CV10118**

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

ADVANCE MECHANICAL CONTRACTORS, INC.,
A DOMESTIC CORPORATION,

PLAINTIFF-APPELLANT,

SHERWIN WILLIAMS COMPANY,
CENTRAL PENSION FUND OF THE OPERATING ENGINEERS LOCAL 139,
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 139,
JOINT LABOR MANAGEMENT WORK INDUSTRY ADVANCEMENT
PROGRAM AND OPERATING ENGINEERS LOCAL 139,

INVOLUNTARY-PLAINTIFFS,

V.

SOUTHEAST WISCONSIN PROFESSIONAL BASEBALL PARK DISTRICT,
A MUNICIPAL CORPORATION, AND
HCH MILLER PARK JOINT VENTURE,

DEFENDANTS-RESPONDENTS,

HUNT CONSTRUCTION GROUP, INC.,
F/K/A HUBER, HUNT & NICHOLS, INC.,
A SUBSIDIARY OF THE HUNT CORPORATION,
A FOREIGN CORPORATION,

CLARK CONSTRUCTION GROUP, INC.,
A FOREIGN CORPORATION,
HUNZINGER CONSTRUCTION COMPANY
AND A DOMESTIC BUSINESS,

DEFENDANTS,

FEDERAL INSURANCE COMPANY AND
UNITED COASTAL INSURANCE,

INTERVENORS.

APPEAL from judgments of the circuit court for Milwaukee County: DANIEL A. NOONAN, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 CURLEY, J. Advance Mechanical Contractors, Inc. (Advance Mechanical) appeals the grant of summary judgment to Southwest Wisconsin Professional Baseball Park District (the District) and HCH Miller Park Joint Venture (HCH), as well as the trial court's award of attorney's fees to the District and HCH. This appeal arises out of an action by Advance Mechanical, a subcontractor retained to perform certain work on a construction project, against the District, a municipal corporation in charge of overseeing the construction, and HCH, the project's general contractor. Advance Mechanical alleged that HCH and the District had wrongfully refused to pay it for work it had performed. The trial court granted the District and HCH summary judgment on grounds that a Partial Waiver and Release Form, that Advance Mechanical signed every month during construction to get paid, had released all of the claims.

¶2 Advance Mechanical contends that the trial court erred in concluding that by signing the Partial Waiver and Release Form it had released all of its claims because: (1) the Partial Waiver and Release Form applies only to work for which payment is "due," and since Advance Mechanical's Advance Quote Logs cannot constitute work for which payment is "due" as they had not yet been approved, Advance Mechanical's claims listed in the Advance Quote Logs are not subject to the release; (2) the trial court failed to consider the parties' intent; and (3) HCH and the District are estopped from asserting that Advance Mechanical's claims are released by the Partial Waiver and Release Form because Advance Mechanical was unaware that it had to attach claims on an exhibit to preserve them. Advance Mechanical also contends that the trial court erred in awarding attorney's fees and costs to HCH and the District because the indemnification language from the release relied on by the trial court does not allow for the award of attorney's fees. Finally, Advance Mechanical also submits that the trial court erred in awarding the District the attorney's fees it did because: (1) the request was not properly before the court as the District failed to raise its entitlement prior to the entry of judgment; (2) the District was not entitled to more than nominal attorney's fees under an August 6, 2004 judgment, and the trial court therefore should not have allowed an amended judgment and extension of the time for perfecting the judgment; and (3) the trial court failed to apply the correct standard set forth in ***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2004 WI 112, 275 Wis. 2d 1, 683 N.W.2d 58, in determining the reasonableness of the District's attorney's fees.

¶3 We conclude that the trial court properly found that by signing the Partial Waiver and Release Form, Advance Mechanical released all of its claims because: (1) the release is not limited to work for which payment is "due"; (2) the release is unambiguous and, as such, the court had no reason to consider the

parties' intent; and (3) Advance Mechanical's alleged unfamiliarity with the contents of the release document does not estop the District and HCH from relying on the release. We further conclude that although the trial court did err in relying on the indemnification clause of the Partial Waiver and Release Form, it did not err in awarding attorney's fees and costs to HCH and the District because other contractual provisions support the award. Finally, we also conclude that the trial court correctly awarded attorney's fees to the District because: (1) the District's request for attorney's fees was properly before the court; (2) the District was not limited to nominal attorney's fees and was properly allowed to amend the judgment and to extend the time to perfect the judgment because the District properly requested the extensions and the extensions were necessary to adequately address the issue of attorney's fees; and (3) the trial court properly applied the ***Kolupar*** standard. Therefore, we affirm.

I. BACKGROUND.

¶4 The District is a municipal corporation that was formed to develop and oversee the design and construction of Miller Park, a major league baseball stadium, where the Milwaukee Brewers play their home games. HCH is a joint venture made up of three separate construction companies: The Hunt Construction Group, f/k/a Huber, Hunt & Nichols, Inc.; The Clark Construction Group, Inc.; and Hunzinger Construction Company.

¶5 On or about April 1, 1998, HCH and the District entered into a Construction Management Services Agreement for Miller Park and General Conditions of the Contracts for the Construction of Miller Park (collectively, Construction Agreement) for the construction of Miller Park. HCH was the District's general contractor for the Miller Park construction. Through a

competitive bidding process, HCH retained subcontractors to provide labor and materials and perform the construction of Miller Park.

¶6 Advance Mechanical became one such subcontractor when HCH accepted Advance Mechanical's bid to complete the above-ground plumbing work for Miller Park. HCH and Advance Mechanical entered into Subcontract Agreement CF 19A (Subcontract 19A) dated June 17, 1998, and Subcontract Terms and Conditions of CF 19B (Subcontract 19B),[1] setting forth the terms of the agreement. Subcontracts 19A and 19B also defined the terms by which Advance Mechanical was to be paid for its services. Under Article III of Subcontract 19A, Advance Mechanical was to submit a Monthly Progress Payment Application (Payment Application) to HCH, which was then forwarded to the District for payment. Pursuant to Article 3.K. of Subcontract 19B, Advance Mechanical was also required to submit a fully-executed Affidavit and Partial Waiver of Claims and Liens and Release Form (Partial Waiver and Release Form), along with the Payment Application each month.

¶7 By signing the Partial Waiver and Release Form, Advance Mechanical agreed to release all rights to any "causes of action, claims, suits and demands" that it could bring against HCH and the District for the work completed through the date of the Payment Application. Advance Mechanical did, however, have the option to exempt from the release particular claims and to preserve them by listing them on Exhibit A to the Partial Waiver and Release Form. In addition, if, after entering into the contract, Advance Mechanical wished to request changes

[1] Although Subcontract 19A bears the date June 17, 1998, the two signatures are dated July 27, 1998 (Advance Mechanical) and July 30, 1998 (HCH).

to its contractual conditions, under Article 18 of Subcontract 19B, Advance Mechanical was required to submit a written change order request to HCH. Advance Mechanical was to designate each request as an "Advance Quote Log."

¶8 Advance Mechanical began work on the stadium in 1998. Throughout construction, Advance Mechanical submitted the monthly Payment Applications as agreed, but never included an Exhibit A to exempt any claims from the release. During the course of construction, Advance Mechanical did, however, request various changes to its contract conditions by submitting several Advance Quote Logs for additional compensation for additional work that it alleged it had completed. Per the Construction Management Agreement, HCH turned over these change order requests to the District for review. After reviewing the requests, it was determined that all of Advance Mechanical's claims were meritless because they were either grossly overpriced or the work had not in fact changed to warrant changing the contractual conditions.

¶9 On July 14, 1999, a crane referred to as "Big Blue" (not owned or operated by Advance Mechanical), collapsed on the partially-completed Miller Park during construction. Unfortunately, three iron workers were killed and several other workers were injured. Construction was delayed by a full year. The crane collapse required many subcontractors, including Advance Mechanical, to work on the Miller Park project thirteen months longer than anticipated. The extra work for Advance Mechanical included removing and replacing plumbing that had been damaged by the crane collapse.

¶10 Before construction began, the District had purchased a builders risk insurance policy for the Miller Park project from the Federal Insurance Company (Federal) to cover costs resulting from damage or destruction to the project during

construction. All subcontractors were covered by this policy, and on February 28, 2001, Advance Mechanical settled its claim with Federal for $1,600,000 for the extra work resulting from the crane collapse.[2] Among the claims Advance Mechanical brought and settled were extended home office overheads, interest expenses and lost profits resulting from the delay. In settling, Advance Mechanical explicitly released the District and HCH from losses, damages and claims resulting from the crane-collapse.

¶11 In the meantime, on September 8, 2000, Advance Mechanical filed two public improvement lien claims against HCH, alleging that it was owed $2,478,952.29. HCH denied that it owed Advance Mechanical the money and timely filed a written objection, as a result of which it could be held responsible for the sum only if so ordered by a court.

¶12 In response, Advance Mechanical initiated this action against HCH and the District on December 4, 2000, by filing a complaint seeking to enforce the lien, and alleging that the District wrongfully refused to pay it for additional work required because of the crane-collapse.

¶13 In April 2001, after settling with Federal, after the completion of the project, and after the filing of its complaint, Advance Mechanical made additional demands for almost $2,000,000 in damages for costs resulting from delays, additional costs resulting from the crane-collapse, and other claims allegedly

[2] During discovery, Advance Mechanical conceded that in recovering $1,600,000, it actually earned a $600,000 profit.

incurred during construction.[3] Advance Mechanical, as noted, did not state any such claims on an Exhibit A when it submitted the signed Partial Waiver and Release Form.

¶14 On July 16, 2001, Advance Mechanical filed an amended complaint that contained a total of sixteen causes of action in contract and tort, five against the District and eleven against HCH.[4] After settlement negotiations and mediation were unsuccessful, both HCH and the District moved for summary judgment. Both HCH and the District maintained, as relevant to this appeal, that Advance Mechanical's claims were barred by the Partial Waiver and Release Form signed by Advance Mechanical each month. The District also maintained, among other things, that the claims against it were barred because Advance Mechanical had failed to comply with WIS. STAT. § 893.80 (2003-04).[5]

---

[3] These other claims included: $551,089 for "extra overhead due to the increased duration of the project"; $900,098 for "loss of business/gross profit due to the extended contract duration"; $86,748 for "labor inefficiencies after the crane collapse"; and $235,004 for "extra engineering work."

[4] The causes of action filed against the District were: (1) negligent misrepresentation regarding the architectural and mechanical drawings; (2) enforcement of public improvement lien; (3) unjust enrichment; (4) implied contract; and (5) negligent misrepresentation with respect to insurance coverage.

The causes of action against HCH were: (1) breach of contract; (2) negligent misrepresentation regarding the architectural and mechanical drawings; (3) unjust enrichment; (4) implied contract; (5) breach of implied warranty and duty of good faith and fair dealing with respect to additional and modified work; (6) breach of implied duty of good faith with respect to payments owing to Advance Mechanical for additional and modified work; (7) breach of contract with respect to damages associated with the crane collapse; (8) negligent misrepresentation with respect to insurance coverage; (9) breach of implied duty of good faith with respect to damages associated with the collapse of "Big Blue"; (10) breach of contract for retention of retainage; and (11) breach of duty of good faith and fair dealing with respect to nonpayment of retainage.

[5] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

(continued)

¶15 The trial court found that the Partial Waiver and Release Form was clear and unambiguous, and that because Advance Mechanical signed it on a monthly basis without ever attaching an Exhibit A carving out an exemption to the release, HCH and the District relied on its being true and made payments accordingly. The court therefore concluded that: "Plaintiff, having agreed to release both HCH and the District from '… any causes of action, claims, suits and demands …' in return for payment each month, cannot now claim that more is owed," and that "[t]he language in the release is broad enough to cover all claims in Plaintiff's Amended Complaint." The court also found that Advance Mechanical had not met the requirements of WIS. STAT. § 893.80. On June 10, 2004, the trial court granted summary judgment to the District and HCH, and thereby dismissed all of Advance Mechanical's claims. On August 6, 2004, the trial court issued an order for judgment and entered a judgment in favor of HCH and the District, specifically stating that HCH and the District would recover from Advance Mechanical all allowable fees and costs under WIS. STAT. ch. 814 and any other applicable law.

¶16 On August 11, 2004, following entry of judgment, the District sought payment of attorney's fees by filing a notice of taxation, and HCH, which had brought a counter-claim for attorney's fees in October 2001, filed a motion based on its counter-claim. On November 5, 2004, following additional briefing on the issue of attorney's fees, the trial court granted both HCH's and the

---

Under WIS. STAT. § 893.80, to bring an action against a governmental entity, like the District, a party must: (1) provide written notice of the circumstances of the claim within 120 days after the event giving rise to the claim, § 893.80(1)(a); and (2) present a claim containing the address of the claimant and an itemized statement of relief sought to the appropriate clerk, and the claim is disallowed, § 839.80(1)(b).

District's motions, awarding the District $626,324.18 and HCH $324,826.33 in attorney's fees and costs. An amended judgment in favor of the District was entered on November 8, 2004, and judgment on the counter-claim in favor of HCH was entered on November 15, 2004.

¶17 Advance Mechanical appeals the summary judgments and the attorney's fees awards.

II. ANALYSIS.

¶18 We review a grant of summary judgment *de novo*, using the same methodology as the trial court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2).

A. Partial Waiver and Release Form

¶19 Advance Mechanical contends that the trial court erred in concluding that it released all of its claims when it signed the Partial Waiver and Release Form.

¶20 A release is a contract and will be construed using standard principles of contract interpretation. ***Gielow v. Napiorkowski***, 2003 WI App 249, ¶14, 268 Wis. 2d 673, 673 N.W.2d 351. "[T]he cornerstone of contract construction is to ascertain the true intentions of the parties." ***State ex rel. Journal/Sentinel, Inc. v. Pleva***, 155 Wis. 2d 704, 711, 456 N.W.2d 359 (1990). We "determine what the parties contracted to do as evidenced by the language

they saw fit to use." ***Id.*** "Contract language is considered ambiguous if it is susceptible to more than one reasonable interpretation." ***Danbeck v. American Family Mut. Ins. Co.***, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150. "When the terms of a contract are plain and unambiguous, we will construe the contract as it stands." ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶14, 257 Wis. 2d 421, 651 N.W.2d 345. When construing a contract, "courts cannot insert what has been omitted or rewrite a contract made by the parties." ***Levy v. Levy***, 130 Wis. 2d 523, 533, 388 N.W.2d 170 (1986) (citation omitted). A contract "should be given a reasonable meaning so that no part of the contract is surplusage." ***Journal/Sentinel***, 155 Wis. 2d at 711. In addition, a contract is to be interpreted in the manner that it would be understood by persons in the business to which the contract relates. ***McNamee v. APS Ins. Agency, Inc.***, 112 Wis. 2d 329, 333, 332 N.W.2d 828 (Ct. App. 1983).

¶21 "The construction of an unambiguous contract is a question of law." ***Wausau Underwriters Ins. Co. v. Dane County***, 142 Wis. 2d 315, 322, 417 N.W.2d 914 (Ct. App. 1987). "Whether a contract is ambiguous is itself a question of law." ***Id.*** "We review questions of law de novo, while benefiting from the trial court's analysis." ***Northern States Power Co. v. National Gas Co.***, 232 Wis. 2d 541, 545, 606 N.W.2d 613 (Ct. App. 1999).

¶22 The relevant language in the Partial Waiver and Release Form reads:

> **II. WAIVER AND RELEASE**
>
> In accord with the Subcontract Agreement and the Purchase Order, as applicable, [Advance Mechanical] does hereby forever waive and release in favor of HCH and its sureties [the District] and its lenders and guarantors, the Project and the title company or companies examining and/or insuring title of the Project, and any and all successors and assignees of the above, all rights that presently exist or hereafter may accrue to the undersigned

> by reason of work performed in the construction of the Project through the Period Date: (1) to assert a lien upon the land and/or improvement comprising the Project, and (2) to assert or bring any causes of action, claims, suits and demands which [Advance Mechanical] ever had or now has against HCH and/or its sureties, [the District] and/or its lenders and guarantors, to the Project, except for such claims as set forth on Exhibit A attached hereto, if any, and no such claims set forth on Exhibit A have been included in the Application of Payment dated as of the application Date.

(Underlining in original.)

¶23 The trial court, as noted, concluded that because Advance Mechanical signed the Partial Waiver and Release Form every month without ever attaching Exhibit A setting forth any exemptions, Advance Mechanical released its right to bring claims against HCH and the District. Advance Mechanical submits that the trial court erred in reaching this conclusion and contends that the trial court's interpretation of the release renders the phrase "work performed in the construction of the Project" meaningless. Advance Mechanical specifically claims that the phrase "work performed in the construction of the Project" is a defined term that means "work … for which payment is due under the Subcontract." Advance Mechanical retrieves the phrase "work … for which payment is due" from Section I.1. of the Partial Waiver and Release Form, entitled "Certifications, Affirmations and Warranties."

¶24 On this basis, Advance Mechanical explains that its Advance Quote Logs were not "work … for which payment is due" because the Advance Quote Logs were subject to the approval of the District and HCH before payment was actually "due." According to Advance Mechanical, "'Work' for which payment is 'due' under the monthly payment procedure does not extend to unapproved change order requests, such as the [Advance Quote Log]s" because "payment on

an [Advance Quote Log] would only become 'due' after a written change order had been issued, the additional cost had been incorporated into the Subcontract Amount, and payment had been received from the [District]." Thus, the argument goes, only after an Advance Quote Log is "due" would it be subject to the language of the Partial Waiver and Release Form, and because the Advance Quote Logs were never the subject of an approved change order request, they were never "due," and thus fall outside the scope of the release.

¶25 As an initial matter, we note that we are satisfied that the relevant language of the Partial Waiver and Release Form is clear and unambiguous, and we therefore construe the language as it stands. *See* ***Peppertree***, 257 Wis. 2d 421, ¶14.

¶26 We reject Advance Mechanical's approach of reading into the language of the Partial Waiver of Release Form an exception by incorporating into it what it terms a definition to conclude that only "work … for which payment is due" is meant by "work performed in the construction of the Project." This conclusion is contrary to the plain meaning of the release. First, if Advance Mechanical's reading were correct, such a reading allows for an implicit exception to the release and renders the explicit exception according to which Exhibit A must be attached, meaningless. *See* ***Journal/Sentinel***, 155 Wis. 2d at 711 (contract interpreted so that nothing is surplusage). Advance Mechanical does not provide any clarification for why the release requires the inclusion of Exhibit A to preserve claims if claims can in fact be preserved without such an exhibit.

¶27 Second, Advance Mechanical's logic is fundamentally flawed. The foundation of Advance Mechanical's entire argument is the premise that the release applies only to "work … for which payment is due," which Advance

Mechanical reaches by insisting that that is how "work performed in the construction of the project" as referenced in the release, is defined. Nothing indicates that what Advance Mechanical characterizes as a definition is in fact a definition, and in actuality constitutes taking two unrelated statements out of context and combining them. The purported definition is the first sentence of Section I.1., entitled "Certifications, Affirmations and Warranties," which provides:

> Payment request No._____ represents the actual value of *work* performed through the above indicated Period Date *for which payment is due* under the terms of the Subcontract or Purchase Order (and all authorized changes thereto) between the undersigned and HCH relating to the Project, including (i) all labor expended in the construction of the Project; (ii) all materials, fixtures and equipment delivered to Project; (iii) all materials, fixtures and equipment for the Project stored offsite to the extent authorized by HCH and for which payment therefore is permitted by HCH's contract with the Owner and all requirements of said contract with respect to materials stored offsite have been fulfilled; (iv) all services performed in the construction of the Project; and (v) all equipment used, or provided for use in the construction of the Project. Such work including items (i) through (v) is hereafter collectively referred to as "work performed in the construction of the Project."

(Emphasis added.) As is clear from the above, this section sets forth the period for the payment request. Nothing indicates that "work to be performed in the construction of the project" is to be limited to only "work for which payment is due." Rather, the first part of the sentence on which Advance Mechanical concentrates, "Payment request No._____ represents the actual value of work performed through the above indicated Period Date for which payment is due under the terms of the Subcontract or Purchase Order," represents that Advance Mechanical is agreeing to provide an accurate representation of the value of the

work performed during the period in question and for which payment becomes due at the end of that period.

¶28 Moreover, because a contract must be read in the manner it would be understood by persons in the business to which the contract relates, *see* ***McNamee***, 112 Wis. 2d at 333, here the contract reveals that the monthly release was included as a tool to protect the District and HCH and to make sure that they were aware of any potential claims via Exhibit A in a timely manner. Reading the document otherwise eliminates this protection and effectively renders the entire release meaningless. *See* ***Journal/Sentinel***, 155 Wis. 2d at 711.

¶29 To the contrary, the Partial Waiver and Release Form could hardly have been clearer. By signing it, Advance Mechanical "forever waive[d] and release[d]" all rights "to assert or bring any causes of action, claims, suits, and demands" against HCH and the District, except those reserved in Exhibit A. The plain meaning of this language is that the contract is a comprehensive release that clearly covers "all rights" to "any causes of actions, claims, suits and demands." Equally clearly the release provides that Advance Mechanical could have reserved its right to bring claims had it simply listed them on Exhibit A. It is, as mentioned, undisputed that Advance Mechanical never attached an "Exhibit A" to any of its Payment Applications when it signed the Partial Waiver and Release Form. With the exception of the here, inapplicable, Exhibit A, nothing indicates that any further exceptions existed or that the release was otherwise limited.

¶30 Moreover, not insignificant is the fact that the change order requests listed on its Advance Quote Logs were all considered, but they were rejected as meritless, because it was determined that they were either grossly overpriced or no

claimed expansion had taken place.[6] However, Advance Mechanical's argument entirely ignores this fact.

¶31 Advance Mechanical also submits that the trial court was obligated to review the parties' intent and erred in failing to do so. Advance Mechanical claims that the parties' actions demonstrate that the Advance Quote Logs were exempted from the release and that the arguments presented by HCH and the District raised a potential ambiguity which required construction of the release in a manner that was consistent with the parties' intent.

¶32 We have already concluded that the relevant language in the Partial Waiver and Release Form is unambiguous, and thus construe it as it stands. *See* ***Peppertree***, 257 Wis. 2d 421, ¶14. What the parties contracted to do is clearly evidenced by the language they saw fit to use, and we therefore decline Advance Mechanical's invitation to look beyond the contractual language itself to determine the parties' intent. *See* ***Journal/Sentinel***, 155 Wis. 2d at 711.

¶33 Finally, Advance Mechanical also contends that HCH and the District are estopped from using the Partial Waiver and Release Form as a defense because it was never informed by HCH, the contract, the payment application or the release form that it had to attach the information contained in the Advance Quote Logs as an exhibit to the Partial Waiver and Release Form, and claims that,

[6] As the District notes, it is unclear why Advance Mechanical characterizes all of its claims as change order requests because a number of its claims are tort claims and are not and never were change order requests. However, because we reject Advance Mechanical's arguments, we need not further examine the possibility of Advance Mechanical having incorrectly categorized its claims.

had it known, it could have easily included its Advance Quote Log list to Exhibit A. We are not convinced.

¶34 Equitable estoppel bars a party from asserting a new position that contradicts a previously held position and requires: "(1) action or non-action; (2) on the part of one against whom estoppel is asserted; (3) which induces reasonable reliance thereon by the other, either in action or non-action; (4) which is to the relying party's detriment." ***Affordable Erecting, Inc. v. Neosho Trompler, Inc.***, 2006 WI 67, ¶33, 291 Wis. 2d 259, 715 N.W.2d 620. Advance Mechanical cannot satisfy these requirements.

¶35 The clear and unambiguous language of the Partial Waiver and Release Form stated that Advance Mechanical was required to attach an Exhibit A when submitting a signed release to preserve a particular claim. Advance Mechanical nevertheless claims that it was simply unaware that it had to do so because nothing—including the contract language—ever said as much. This claim is unsupported. First, it was Advance Mechanical's responsibility to read the contents of the Partial Waiver and Release Form, ***Rayborn v. Galena Iron Works Co.***, 159 Wis. 164, 169, 149 N.W. 701 (1914) (there is a presumption that contents of a signed instrument are understood by the signer), which would have plainly revealed to Advance Mechanical that if it wished to preserve any claims it had to list them on Exhibit A. It was not HCH's and the District's responsibility to assume that Advance Mechanical had not read the release and to notify Advance Mechanical of the implications of the release. Failure to do so is therefore not an "action or non-action" by HCH and the District to satisfy the requirement for estoppel. *See* ***Affordable Erecting***, 291 Wis. 2d 259, ¶33.

¶36 Second, it is especially unclear and hard to conceive why Advance Mechanical would have been unaware of the exhibit requirement, given that it complied with the remaining requirements of the Partial Waiver and Release Form in order to get paid, and thus appears to have fully understood the implications of at least that part of the document. As such, Advance Mechanical's alleged failure to sufficiently familiarize itself with the terms of the Partial Waiver and Release Form does not estop HCH from holding Advance Mechanical to them.

¶37 In sum, we are satisfied that, by signing the Partial Waiver and Release Form, Advance Mechanical released all of its claims.[7]

B. Attorney's Fees and Costs

¶38 Advance Mechanical next challenges the trial court's award of attorney's fees and costs to the District and HCH.

¶39 In general, attorney's fees may be awarded when the fees are authorized by statute or contract, or when, by a wrongful act, the defendant subjects the plaintiff to litigation with a party other than the defendant. ***Gorton v. Hostak, Henzl & Bichler, S.C.***, 217 Wis. 2d 493, 510-11, 577 N.W.2d 617 (1998). It is well-settled that specific contractual provisions for reimbursement of attorney's fees and costs are valid and enforceable. *See* ***State Bank of Hartland v. Arndt***, 129 Wis. 2d 411, 422, 385 N.W.2d 219 (Ct. App. 1986). In addition, when

[7] Advance Mechanical also contends that the trial court's dismissal of Advance Mechanical's claims against the District based on WIS. STAT. § 893.80 was erroneous. We need not address § 893.80 in order to resolve this appeal because we have already held that the Partial Waiver and Release Form prohibits Advance Mechanical from bringing this suit against the District. Therefore, we decline to address this issue. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the "narrowest possible ground").

a party prevails in a contract action and the contract allows for the recovery of attorney's fees, those expenses are taxable as costs under WIS. STAT. § 814.10 and may be asserted under WIS. STAT. § 806.06(4). ***Purdy v. Cap Gemini Am., Inc.***, 2001 WI App 270, ¶15, 248 Wis. 2d 804, 637 N.W.2d 763.

¶40 The language relevant to attorney's fees in the Partial Waiver and Release Form reads:

> **III. INDEMNIFICATION**
>
> The undersigned hereby agrees to indemnify and hold harmless HCH and its sureties, the [District] ... from any and all damages, costs, expenses, demands, and suits (including reasonable legal fees) directly or indirectly relating to any cause of action, claim or lien filing by any party with respect to (1) work performed in the construction of the Project through the Period date, (2) any rights waived or released herein, and (3) any misrepresentation or breach of any certification, affirmation or warranty made by [Advance Mechanical] in this Affidavit, Waiver and Release of Liens, and upon the request of HCH, its sureties, [the District] or its lenders and guarantors, will undertake to defend such causes of action, claims or lien filings at its sole cost and expense.

¶41 Advance Mechanical contends that in awarding attorney's fees, the trial court erroneously read the indemnification clause as allowing for the award of such fees to HCH and the District, even though the release does not in fact do so and allows for attorney's fees only in causes of action brought by third parties. According to Advance Mechanical, this reading is the illogical result of the requirement that Advance Mechanical hold HCH and the District harmless for "any causes of action … by any party" as including not only third parties, but also Advance Mechanical itself.

¶42 HCH and the District respond that because the indemnification provision requires Advance Mechanical to indemnify and hold harmless HCH and

the District relating to "any causes of action … by any party," the trial court correctly concluded that Advance Mechanical is responsible for all costs and expenses of this litigation since "any party" includes Advance Mechanical. In the alternative, HCH also contends, however, that regardless of the trial court's reliance on the indemnification clause, two other contractual provisions, Articles 10(D) and 10(B) of Subcontract 19A, make Advance Mechanical responsible for attorney's fees.

¶43 As we held with regard to the waiver and release provision, we similarly hold that the indemnification language of the Partial Waiver and Release Form is clear and unambiguous. *See* ***Peppertree***, 257 Wis. 2d 421, ¶14. Therefore, we will construe the language in the Partial Waiver and Release Form as it stands. *See* ***id.***

¶44 First, we agree with Advance Mechanical that, contrary to the trial court's conclusion, the indemnification language does not make Advance Mechanical responsible for HCH's and the District's attorney's fees incurred in defending a lawsuit against Advance Mechanical. We agree with Advance Mechanical that it would be illogical to read the indemnification clause's requirement that Advance Mechanical indemnify and hold harmless HCH and the District from "damages, costs, expenses, demands and suits (including reasonable attorney's fees)" relating to any causes of action "by any party" as implying that all causes of action, including its own, are included. We are satisfied that the only sensible way to read the provision is to conclude that it was not intended to apply between Advance Mechanical, HCH and the District, but that Advance Mechanical was to indemnify and hold harmless HCH and the District from any causes by third-parties against HCH and the District.

¶45 Hence, unlike the previously-discussed release language from the Partial Waiver and Release Form (which does refer to claims by Advance Mechanical against HCH and the District), the indemnification clause obligates Advance Mechanical to indemnify and hold harmless HCH and the District in third-party claims against HCH and the District. It does not, in other words, imply that in a claim brought by Advance Mechanical against HCH and the District, Advance Mechanical is obligated to pay HCH's and the District's attorney's fees.

¶46 However, while we are satisfied that the indemnification clause does not support the trial court's award of attorney's fees, we agree that Articles 10(D) and 10(B) from Subcontract 19B do. Article 10 is entitled "Claims, Disputes and Arbitration." Article 10(B) reads in relevant part: "[Advance Mechanical] shall cooperate and assist in the preparation and prosecution of all such claims, and shall pay or reimburse [HCH] for all expenses and costs, including, but restricted to, cost of litigation incurred by [HCH] in connection with the preparation and prosecution of such claims." Article 10(D) reads:

> If [HCH] wholly or partially prevails in any litigation or arbitration with [Advance Mechanical] arising under the Subcontract, the court or arbitrators, as the case may be, shall award to [HCH] all costs of litigation, in addition to any other relief or recovery to which [HCH] may be entitled.

¶47 Article 10(D) clearly provides that if HCH, and as the owner of the Project by extension the District, prevails in litigation against Advance Mechanical, Advance Mechanical is liable to HCH and the District for all costs of litigation. We emphasize that the contractual language is mandatory, as demonstrated by the use of the words "shall award," and the determination of whether to award costs and fees is thus not left to the discretion of the court. Because the trial court's grant of summary judgment to HCH and the District

unambiguously means that HCH and the District "prevailed" in an action against Advance Mechanical, it follows, pursuant to Article 10(D), that Advance Mechanical is required to pay all of HCH's and the District's costs of litigation.

¶48 In addition, Advance Mechanical makes three additional arguments for why the District should not have been awarded the attorney's fees it was. First, Advance Mechanical submits that the District was not entitled to the attorney's fees it was awarded because entitlement must be established pre-judgment and the District made no effort to plead or raise any contractual entitlement to recover its actual attorney's fees prior to causing a final judgment in its favor to be entered. Advance Mechanical rejects the trial court's reliance on ***Richland School District v. Department of Industry, Labor & Human Relations***, 166 Wis. 2d 262, 285-86, 479 N.W.2d 579 (Ct. App. 1991), *aff'd*, 174 Wis. 2d 878, 498 N.W.2d 826 (1993), and ***ACLU v. Thompson***, 155 Wis. 2d 442, 446, 455 N.W.2d 268 (Ct. App. 1990), for the proposition that the trial court is not precluded from determining an award for fees on a request made after entry of a final order of judgment, asserting that they are inapplicable because they are civil rights cases. According to Advance Mechanical, it had no reason to suspect such a claim.

¶49 We disagree with Advance Mechanical's attempt to distinguish ***Richland*** and ***Thompson***. ***Richland*** specifically explained that motions for attorney's fees filed after judgment has been entered are independent of the merits of the underlying action, and that oftentimes an earlier inquiry into the entitlement of fees may be "futile and a waste of time." ***Id.***, 166 Wis. 2d at 285-87. The court therefore held that the trial court "is not precluded from determining an award for fees on a request made even after a final order or judgment is entered and even if the requester failed to prove up the award before that time." ***Id.*** at 286. This

holding is not qualified as being limited only to certain cases. Accordingly, we are satisfied that the District's request for attorney's fees was properly before the trial court.

¶50 Second, Advance Mechanical submits that even if the request was proper, the grant of anything more than nominal attorney's fees (that is, the more than $600,000 that the District requested), was erroneous because the August 6, 2004, judgment set forth only WIS. STAT. § 814.04 as a basis for recovery of fees, which allows for only nominal attorney's fees. On this basis, Advance Mechanical submits that the trial court erred in allowing the District to file an amended judgment because the District would have had to demonstrate "mistake, inadvertence, surprise, or excusable neglect" or any other justifying reason under WIS. STAT. § 806.07. Advance Mechanical also claims that because WIS. STAT. § 806.06(4)[8] requires that judgment be perfected within thirty days and the District did not perfect the August 6, 2004 judgment within this statutory requirement, its right to costs was forfeited. Advance Mechanical thus claims that because the trial court issued orders extending the deadline despite § 806.06(4), and because such extensions may be permitted only by stipulation or stay (citing ***Hartman v. Winnebago County***, 216 Wis. 2d 419, 574 N.W.2d 222 (1998)), the court did so without authority. We disagree.

¶51 First, rather than limit fees to WIS. STAT. ch. 814, the August 6, 2004 judgment provides that the District and HCH "shall recover from Plaintiff all allowable fees and costs of this action pursuant to Chapter 814 of the Wisconsin

[8] WISCONSIN STAT. § 806.06(4) provides, as relevant: "If the party in whose favor the judgment is rendered causes it to be entered, the party shall perfect the judgment within 30 days of entry or forfeit the right to recover costs."

Statutes *and any other applicable law*" (emphasis added). The District's right to recover costs and fees is thus not limited to ch. 814; ch. 814 is merely among the applicable laws pursuant to which the District may recover costs and fees.

¶52 Moreover, Advance Mechanical leaves out some significant details about the proceedings. After it was granted summary judgment, the District sought payment of the costs by filing a timely notice for taxation on August 11, 2004, only five days after the judgment was entered on August 6, 2004. The District, apparently foreseeing the need for additional briefing on the issue of attorney's fees, also moved for an extension of time to perfect the judgment and to stay the entry of judgment. The court granted both motions. The trial court held a hearing on the issue of attorney's fees on September 2, 2004, but adjourned it until October 28, 2004, because the court requested supplemental briefing.

¶53 We are not convinced that the trial court erred in allowing the extension. The District timely requested payment and then requested additional briefing for valid reasons, only five days after August 6, 2004. The trial court obviously considered the extensions necessary in light of the need for additional briefing on the issue. We cannot agree with Advance Mechanical's claim that ***Hartmann*** dictates that the thirty-day time limit for perfection may be overcome only by stipulation or stay pending appeal. The key reason for why the court in ***Hartmann*** insisted that the parties could not circumvent the time limit was because a timely request for attorney's fees had not been filed in the first place. *See* ***Hartmann***, 216 Wis. 2d at 438. That was not the case here. The District made its request immediately following August 6, 2004, on August 11, 2004. Because the court thereafter ordered additional briefing that ultimately further delayed the award of attorney's fees, and because these delays were not the result of any inaction on the part of the District, we are satisfied that the action the

District took toward the perfection of the judgment *within* thirty days following the entry of judgment satisfies WIS. STAT. § 806.06(4). The District acted properly and in a timely fashion and cannot be penalized for delays it did not cause.

¶54 Finally, Advance Mechanical also argues that the trial court failed to apply the proper standard set forth in ***Kolupar*** in determining the reasonableness of the District's attorney's fees. ***Id.***, 275 Wis. 2d 1.

¶55 In ***Kolupar***, the Wisconsin Supreme Court set forth twelve factors to be considered in determining whether attorney's fees are reasonable:

> (1) time and labor required; (2) novelty and difficulty of issues; (3) skill required; (4) loss of other employment in taking the case; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by client or circumstances; (8) amount involved and result obtained; (9) counsel's experience, reputation, and ability; (10) case undesirability; (11) nature and length of relationship with the clients; and (12) awards in similar cases.

Id., 275 Wis. 2d 1, ¶28 n.5 (citation omitted). We will affirm the trial court's determination of reasonable attorney's fees and costs unless the trial court erroneously exercised its discretion. ***Anderson v. MSI Preferred Ins. Co.***, 2005 WI 62, ¶19, 281 Wis. 2d 66, 697 N.W.2d 73. The trial court properly exercises its discretion when it employs a "logical rationale based on the appropriate legal principles and facts of record." ***Id.*** (citation omitted).

¶56 Advance Mechanical contends that the trial court erroneously exercised its discretion when it awarded the District $626,324.18 in attorney's fees, insisting that the court failed to adequately examine the ***Kolupar*** factors in determining whether the District's attorney's fees were reasonable. Specifically, Advance Mechanical maintains that the court refused to examine whether the

amount of time the District's lawyers spent performing various tasks was in fact reasonable, and instead deferred to the subjective opinions of the District's attorneys.

¶57 We disagree. Our review of the record satisfies us that the trial court adequately applied the twelve ***Kolupar*** factors. In the trial court's November 5, 2004 decision, the trial court stated that both the District and HCH provided evidence "of the hours spent on this case, by which attorney, what task the person performed, and the cost per hour of each attorney or paralegal." The trial court noted that this case required a great deal of time for discovery and dealt with complex legal issues that required more skilled attorneys. The court also made an explicit finding that "[t]he fees charged by each attorney and paralegal on the case do not offend the sensibilities of this court; the fees charged are customary in this community and for this level of litigation." Based on these determinations, the court concluded that "[c]onsidering all twelve factors, the fees charged were not unreasonable." This reasoning satisfies the ***Kolupar*** standard. The trial court's reasoning for awarding the District's attorney's fees is not an erroneous exercise of discretion.[9]

¶58 For the reasons stated, we affirm.

By the Court.—Judgments affirmed.

Not recommended for publication in the official reports.

[9] We also note that it is curious that Advance Mechanical does not dispute the trial court's determination that the attorney's fees requested by HCH were reasonable, even though the court applied the same standard to the District as it did to HCH, and in fact addressed HCH's and the District's attorney's fee requests in the same discussion. It is unclear why Advance Mechanical considers the same standard sufficient when applied to HCH, yet insufficient when applied to the District.