COURT OF APPEALS
DECISION
DATED AND FILED

February 21, 2007

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2006AP1951 **Cir. Ct. No. 2006SC338**

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

JOHN C. WEICHMAN, JR.,

PLAINTIFF-APPELLANT,

V.

JODY KRUEGER, D/B/A LONG SHOT SALOON, BRYCE GHOELKE, D/B/A INTERSTATE LUMBER AND GHOELKE BUILDERS, AND BJ KELCK, D/B/A LONG SHOT SALOON,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment and an order of the circuit court for Fond du Lac County: PETER L. GRIMM, Judge. *Affirmed.*

¶1 BROWN, J.[1] This appeal is about contract interpretation; more precisely, it calls for us to interpret a buy-sell agreement of a tavern business. The main document clearly shows that the seller agreed to sell "all" his personal property in the business to the buyer. But appended to the document is a list of personal property items. The seller argues that this means he only agreed to sell "all" the personal property items listed in the appended document and no other items. He wants those other items back, which he asserts are not items of "personal property," but "trade fixtures." Thus, the major question is whether we should construe the agreement to mean that the seller agreed to sell *all* of his personal property, including what he calls "trade fixtures" or only all those items listed in the appended document. The trial court held that the agreement means that the seller agreed to convey everything, *including but not limited to* the list of items appended. The seller appeals. After independent review of the pertinent documents, we agree with the trial court and affirm.

¶2 John C. Weichman, Jr., owned a tavern in Ripon called Der Bier Haus. He sold the business, along with certain assets, to Bryce Ghoelke, who renamed the business Longshot Saloon. Weichman thereafter brought a small claims action against Ghoelke and others, asserting that the sale of assets did not include an ANSUL fire protection system and the exhaust hood and fan system that existed over the grill or fryer area. He maintained that the items belonged to him, that Ghoelke retained possession of them and refused to give them over to Weichman and that the court should order their transfer along with a "usage" charge.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶3 A trial was held before the small claims court. The court heard sworn testimony and also reviewed the written documentation related to the case. The court first held that, contrary to Weichman's contention, the disputed items were personal property rather than trade fixtures. The court then focused on Exhibit 3 of the evidence, which was the written documentation of the transaction between Weichman and Ghoelke. The court construed this document to mean that Weichman, by this transaction, agreed to transfer "all" of the personal property connected with his business in return for consideration. The court further held that the document evidenced a "global release" of *all* claims by Weichman. Thus, the trial court concluded, Weichman was thereafter foreclosed from asserting a claim on other individual items of personal property. Weichman moved for reconsideration and provided the court with an affidavit by the attorney who aided him in the sale of his business which said that the appended document was the exclusive list of the items sold. The trial court issued an order denying the motion and this appeal ensued.

¶4 The interpretation of a written contract is a question of law that we review de novo. ***Jones v. Jenkins***, 88 Wis. 2d 712, 722, 277 N.W.2d 815 (1979). Thus, when reviewing contracts, we owe no deference to the trial court's construction. *See* ***Harris v. Metropolitan Mall***, 112 Wis. 2d 487, 503-04, 334 N.W.2d 519 (1983). Nonetheless we value the input that the trial court's decision provides us. *See* ***Hull v. State Farm Mut. Auto. Ins. Co.***, 222 Wis. 2d 627, 636, 586 N.W.2d 863 (1998). "[T]he cornerstone of contract construction is to ascertain the true intentions of the parties as expressed by the contractual language." ***State ex rel. Journal/Sentinel, Inc. v. Pleva***, 155 Wis. 2d 704, 711, 456 N.W.2d 359 (1990). If the contract is unambiguous, our inquiry is limited to the four corners of the contract, and we do not consider other evidence as to what

the parties intended. ***Huml v. Vlazny***, 2006 WI 87, ¶52, 293 Wis. 2d 169, 716 N.W.2d 807.

¶5 We have carefully reviewed Exhibit 3 which is entitled "Acknowledgement Transfer, Release, and Relinquishment of All Claims." It is signed by Weichman. The document clearly tells the reader that Weichman acknowledges receipt of $18,250. The document then clearly provides, in pertinent part, that in return for this consideration:

> I do further transfer *any and all* rights to *all personal property* owned by me … located at [the tavern's address] *including the property described in the attached Exhibit "A"*…. (Emphasis added).

¶6 There is no ambiguity on the face of the document. The document says that Weichman agrees to sell all of his personal property *including* that which is listed in the appended page. Weichman argues, however, that the disputed items are not items of personal property, but trade fixtures. As such, the items are not covered by the document.

¶7 That argument won't fly. Trade fixtures are a species of personal property. Case law teaches that trade fixtures are items of personal property which a tenant places or affixes to leased property for the purposes of conducting his or her business during the term of the lease. ***Orange County-Poughkeepsie M.S.A Ltd. P'ship v. Bonte***, 754 N.Y.S.2d 312, 312 (N.Y. App. Div. 2003). The trade fixture retains its classification as personal property to the extent that it can be removed without substantial injury to the freehold. ***J.K.S.P. Restaurant, Inc. v. Nassau County***, 513 N.Y.S.2d 716, 720 (N.Y. App. Div. 1987). In fact, trade fixtures are properly classified as personal property for taxation purposes. *See* ***Supervisor of Assessments v. Hartge Yacht Yard, Inc.***, 842 A.2d 732, 735 (Md.

2004). Thus, Weichman's attempt to read the disputed items out of the sale document by changing their legal name from "personal property" to "trade fixtures" will not work. If Weichman had truly meant to delineate a difference between what he now considers to be "trade fixtures" and what he sold as "personal property," he could easily have done so in the document. He did not do so.

¶8 Weichman also contended in his motion for reconsideration that Exhibit 3 is not, in fact, the buy-sell agreement for the tavern and its equipment, but rather a settlement document signed to allow Respondents to obtain a liquor license. Included in that motion was an affidavit stating that the items listed in the attachment to the contract were the only ones intended to be sold. However, the document on its face states that Weichman is transferring all of his personal property found in the tavern. In view of the lack of ambiguity in the contract, we cannot consider Weichman's claims that it really means something other than what it appears to mean. *See* ***Huml***, 293 Wis. 2d 169, ¶52.

¶9 Another way of putting it is that Weichman wants us to consider an alleged prior or contemporaneous oral agreement to get at what he claims to be the reason behind the written document. But the law is clear that, unless the contractual language is ambiguous, the contract must be enforced as written. ***Dykstra v. Arthur G. McKee & Co.***, 92 Wis. 2d 17, 38, 284 N.W.2d 692 (Ct. App. 1979), *aff'd*, 100 Wis. 2d 120, 301 N.W.2d 201 (1981). Oral testimony is admissible under what the law calls the "parol evidence rule" only when it clarifies an existing ambiguity in a written contract and cannot be admitted to establish an understanding at variance with the terms of the written document. *See* ***Conrad Milwaukee Corp. v. Wasilewski***, 30 Wis. 2d 481, 488, 141 N.W.2d 240 (1966).

¶10 There are a few other issues raised by Weichman which must be addressed. First, it appears that Weichman is arguing that a court may not issue a directed verdict at the close of the plaintiff's case, but must instead find the ultimate facts and then separately state its conclusions of law. We appreciate that Weichman is pro se. But he is simply wrong. It has been the law in Wisconsin for over a century that, at the close of the plaintiff's case, the defendant may move for a directed verdict if it is clear that the sole issue before the court is one of law. *See* ***Calteaux v. Mueller***, 102 Wis. 525, 530, 78 N.W. 1082 (1899). As we said earlier in this opinion, courts will not hear evidence regarding the true intent of the parties about the meaning of the document unless the document itself is unambiguous. Here, once the court learned from Weichman's testimony that he considered the disputed items to be "trade fixtures" and therefore not covered by Exhibit 3, all that remained for the trial court was to determine whether Exhibit 3 could be construed, on its face, in the manner asserted by Weichman's testimony. Thus, the case came down to a question of law, not fact.

¶11 Weichman also claims that "the [trial] court, in its articulation, stated [that] 'the contract, Exhibit 3, in writing, under oath'… [was] a presumption that was incorrectly made on the part of the court." We are at a loss to understand the reasoning of this argument. Exhibit 3 is a document that was signed, under oath, by Weichman himself. That is clear from the face of the document. It was not error for the court to make this observation because it is undeniably true.

¶12 In the next breath, Weichman apparently switches gears because he then makes an argument that pertains not to the signature made under oath by him in Exhibit 3, but rather an affidavit submitted by the defense in support of a motion to dismiss. He claims that the affidavit "knowingly and intentionally misstated the facts" and was made in bad faith. At the risk of repeating what we

have already ruled, the issue came down to a question of law for the court and that is all that the affidavit in support of the motion to dismiss was advocating.

¶13 Finally, Weichman refers in his brief to ex parte communications between opposing counsel and the circuit court. We do not address this claim for several reasons. First, Weichman provides no record citation or evidence that these communications actually occurred. Second, Weichman has raised the issue for the first time on appeal. Third, he does not explain what the content of these alleged communications was, and so we have no way of determining whether the communications (even assuming that they occurred) resulted in prejudice to Weichman.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.