

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 30, 2008

David R. Schanker
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. 2007AP245

Cir. Ct. No. 2004CV1330

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE: COLOR ARTS, INC, RECEIVERSHIP:

BLAIR SIGN COMPANY, INC.,

CLAIMANT-APPELLANT,

v.

**MICHAEL S. POLSKY , AS CHAPTER 128 RECEIVER OF COLOR ARTS,
INC.,**

RECEIVER-RESPONDENT,

**DANIEL L. PLACKO, DEPARTMENT OF WORKFORCE DEVELOPMENT,
TAYLOR MADE EXPRESS, BRODEK & GILLARD, SC, CITY OF RACINE,
ENVIRO-SAFE CONSULTING LLC, CONDITIONED AIR DESIGNED,
INC., GREGORY INS, HARLEY DAVIDSON MOTOR CO. GROUP, INC.
D/B/A HARLEY DAVIDSON MOTOR CO., C.R. INDUSTRIES, INC.,
PATRICK A. COCORAN , PKA PATRICK A. CORCORAN, JANSSON,
SHUPE & MUNGER, LTD, WILLIAM O. NAHIKIAN, MARK BOLLMEIER,
DANIEL MOUW, RALPH RHEIN, JOSEPH M. SCHRANDT, HARLEY-DAVIDSON,
INC., CNH AMERICA LLC, BANK ONE, SERICOL, INC., GAMA REKLAM, LTD.,
PETER CARROLL, 3M AND HAROLD J. SCHMITZ,**

CLAIMANTS.

APPEAL from an order of the circuit court for Racine County:
CHARLES H. CONSTANTINE, Judge. *Affirmed.*

Before Brown, C.J., Anderson, P.J., and Snyder, J.

¶1 PER CURIAM. Blair Sign Company, Inc., appeals from the order of the circuit court that sustained the objection of the bankruptcy receiver to Blair Sign’s proof of claim. Blair Sign argues that the circuit court erred by finding that the receiver had met his burden of proof in objecting to the claim, that the circuit court erred in the way it interpreted a letter agreement between Blair Sign and a third party, and that the circuit court erred when it found certain testimony to be incredible. Because we conclude that the circuit court applied the correct burden of proof and made findings of fact that are supported by the record, we affirm.

¶2 Blair Sign produced signs for BP Amoco. At BP’s direction, Blair Sign sold its “signage material” to Color Arts, Inc., who would then ship it to the appropriate BP sites. In 2004, Color Arts went into receivership. Blair Sign filed a proof of claim with supporting documents in the amount of \$448,449.85. Blair Sign also filed liens against certain BP locations where its product had been shipped, but not paid for, by Color Arts. In September 2004, BP and Blair Sign reached an agreement by which BP agreed to pay Blair Sign \$246,656 for the outstanding amounts owed by Color Arts to Blair Sign. The next year, the receiver filed an objection to Blair Sign’s proof of claim.

¶3 The court held a hearing on the objection. Blair Sign and the receiver stipulated to reduce the amount of Blair Sign’s claim to \$441,532.58. The receiver argued that the amount of Blair Sign’s claim should be further reduced by the amount paid by BP to Blair Sign. Blair Sign argued that the payment from BP was made to settle claims between Blair Sign and BP, and that only \$80,000 of the

amount paid should be credited towards the amount owed by Color Arts to Blair Sign.

¶4 The president of Blair Sign, Phillip Devorris, testified at the hearing. Devorris stated that Color Arts acted as, in essence, a middleman between Blair Sign and BP: BP would give directions to Blair Sign, and then Blair Sign would send its invoices to Color Arts. He further stated that as Color Arts became less reliable about paying the invoices, Blair Sign filed liens against the BP sites. He testified, however, that Blair Sign had a number of disputes with BP. As a result of the agreement Blair Sign and BP reached, Blair Sign had to perform certain obligations that resolved all of these disputes. The payment BP made to Blair Sign, he said, included about \$80,000 to cover the unpaid Color Arts' invoices. The rest of the amount covered price increases, attorneys' fees and other amounts Blair Sign expended for filing the liens, and additional costs incurred by Blair Sign. He claimed that \$166,000 of the amount paid by BP was not attributable to the Color Arts invoices.

¶5 The receiver did not offer any testimony to contradict Devorris's testimony. Instead, the receiver offered two documents: (1) an accounting document, and (2) the agreement between Blair Sign and BP. The receiver argued that the total amount paid by BP to Blair Sign should be treated as a dollar for dollar credit against the invoices.

¶6 The circuit court was "not persuaded" by Blair Sign's position. The court noted that the agreement between Blair Sign and BP did not mention attorneys' fees or the additional costs. The court found that Devorris's testimony was not credible, and stated: "Blair Sign is, in this Court's opinion, trying to collect moneys from Color Arts that it is simply not entitled to." The court

concluded that the credible evidence in the case established that the entire amount paid by BP to Blair Sign should be credited against the amount owed to Blair Sign by Color Arts.

¶7 Blair Sign now argues that the circuit court erred because the receiver did not meet his burden of proof to object to its claim. Blair Sign argues that under the statute, it is required to file a verified claim. *See* WIS. STAT. § 128.14(1) (2005-06).¹ Blair Sign further argues that the requirement that the claims be verified ensures the validity of those claims. Because the receiver's objection to a claim does not need to be verified, it does not "provide the same inherent safeguards as the requirement that proofs of claim be verified." Blair Sign concludes that given the lack of verification, the receiver bears the burden of proving his objection to the claim. Because the only evidence at trial was Devorris's testimony, and the receiver did not introduce any evidence to dispute its claim, Blair Sign argues that the receiver did not meet his burden, and the court erred when it sustained his objection.

¶8 We disagree. The circuit court in this case made a finding of fact that Devorris's testimony was incredible. We review the circuit court's findings of fact using a clearly erroneous standard:

Under this standard, even though the evidence would permit a contrary finding, findings of fact will be affirmed on appeal as long as the evidence would permit a reasonable person to make the finding. To command reversal, the evidence supporting a contrary finding must constitute the great weight and clear preponderance of the evidence.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Sellers v. Sellers, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996) (citation omitted). “When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact.” *Bank of Sun Prairie v. Opstein*, 86 Wis. 2d 669, 676, 273 N.W.2d 279 (1979). “When the circuit court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to given to each witness’s testimony.” *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345.

¶9 Blair Sign asserts that there was no evidence to dispute the testimony it offered. This is not true. The receiver introduced the documents, and the court relied on those documents in reaching its decision. The court noted that the agreement between Blair Sign and BP did not support Blair Sign’s position. The court found that BP could have structured the agreement any way it wanted to, but “it was quite clear from [the agreement] that the intent of the parties was to deal with that [sic] amounts due Blair from Color Arts.” We conclude that the evidence was sufficient to rebut the validity of Blair Sign’s claim and to support the receiver’s objection to the claim.

¶10 Blair Sign also argues that the circuit court erred in its interpretation of the agreement between BP and Blair and in failing to give credit to Devorris’s testimony. These claims, however, are also challenges to the circuit court’s findings of fact. For the same reasons, we reject these arguments and affirm the order of the circuit court.

By the Court.—Order affirmed.

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

