COURT OF APPEALS
DECISION
DATED AND FILED

February 20, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2399 **Cir. Ct. No. 2006SC23413**

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

KYLE KOLENDA,

PLAINTIFF-RESPONDENT,

V.

ELECTROMANIA,

DEFENDANT-APPELLANT,

DHL EXPRESS USA, INC.,

DEFENDANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed; request for frivolous-appeal costs denied; no costs to either party.*

¶1 FINE, J. Electromania appeals a small-claims judgment entered in favor of Kyle Kolenda. As is permitted by WIS. STAT. § 799.06(2), Electromania appears by its owner, Dennis T. Krizan. We affirm.

I.

¶2 Kolenda does not live in Milwaukee. He bought a large-screen plasma television set at a substantial discount. It stopped working during the warranty period, and he had it with him during a stopover in Milwaukee. Learning that it was authorized to repair his television set, he took it to Electromania. Other than an apparently internal electronic problem, he testified that the television set was in good condition when he left it with Electromania.

¶3 Electromania fixed Kolenda's television set, and there is nothing in the Record that even hints that the company did not do a good job. But that is not the problem that brought this case into court.

¶4 Determining that it would be more convenient to have Electromania ship the repaired television set to him, rather than for him to return to Milwaukee to pick it up, Kolenda asked Electromania to do that. He testified that he specifically asked Electromania to insure the shipment; although he paid $4,800 for the television set, he testified that it had a retail price of "eight or nine thousand" dollars.

¶5 Electromania arranged for DHL Express USA, Inc., to ship the television set to Kolenda. Electromania not only did not insure the shipment but it did not specify a shipment-value on the DHL shipping label. When Kolenda opened the shipping container used by Electromania, he discovered that the plasma screen behind the set's front-glass panel was shattered; he testified the

front-glass panel was not damaged. He also testified that he had a repair estimate of $6,350. Kolenda sought reimbursement for the damage, and, ultimately sued both Electromania and DHL when they would not pay him.

¶6 The trial court found that Electromania was negligent in not insuring the shipment, and that DHL was also responsible for the damage. The trial court, however, limited DHL's responsibility to $100 because no value was specified on the shipping label. The trial court specifically indicated that it found Kolenda's testimony to be credible. It awarded Kolenda $4,900 to be paid by Electromania, and $100 to be paid by DHL. Although Electromania contends that DHL should be wholly responsible for the damages because it was the carrier and there was evidence that the box in which the television set shipped was not handled properly during shipment, and also because DHL's driver did not explain to Electromania that it needed to fill out the shipping label completely even though Electromania told the driver that the container had a very valuable plasma television set, Electromania did not file a cross-claim against DHL, *see* WIS. STAT. RULE 802.07(3), made applicable to small-claims actions by WIS. STAT. § 799.04(1), and DHL is not a party to this appeal. Accordingly, we do not discuss any issues that there might have been between Electromania and DHL had such a cross-claim been filed. We also do not discuss whatever problems Electromania may have had or may have in the future with its insurance company, which is also not a party in this case. *See* WIS. STAT. RULE 803.05(1) ("At any time after commencement of the action, a defending party, as a 3rd-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the defending party for all or part of the

plaintiff's claim against the defending party, or who is a necessary party under s. 803.03.").[1]

II.

¶7 Electromania essentially argues on this appeal that there is no evidence to support the trial court's findings and that the trial court erred in assessing Kolenda's credibility.[2] These are matters, however, that our system recognizes trial judges are better able to assess than are appeal tribunals. Thus, WIS. STAT. RULE 805.17(2) provides, in pertinent part: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." On our review of the Record, we cannot say that the trial court's determination that Electromania did not exercise ordinary care in not specifying the value of the shipment and in not insuring the shipment, as the trial court specifically found Kolenda asked it to do, is clearly erroneous.

¶8 We also cannot say that the trial court's acceptance of Kolenda's testimony as to the dollar-damage to his television set is clearly erroneous. First, owners of property may testify as to value and reduced value because of damage. ***Mayberry v. Volkswagen of Am., Inc.***, 2005 WI 13, ¶42, 278 Wis. 2d 39, 63, 692 N.W.2d 226, 238 ("Wisconsin case law is clear that an owner of property may

[1] We understand Krizan's frustration in connection with his immersion in the legal system. Ours is a specialized society: the average non-lawyer is as ill-equipped to adequately represent him- or herself as the average lawyer is ill-equipped to repair a non-working plasma television set or other complicated electronic devices.

[2] This latter contention is seemingly at odds with Krizan's comment to the trial court during his summation that he believed Kolenda was "an honorable guy."

testify as to its value and that such testimony may properly support a jury verdict for damages, even though the opinion is not corroborated or based on independent factual data."). Second, Electromania admits in its main brief on this appeal that "if the inside glass was broken [it would cost between] $5000 to $6000 to repair," as opposed to "around $900 to repair" if only the front glass was broken. It contends, however, that despite Kolenda's testimony that only the inside plasma screen was shattered, Kolenda's other testimony that the television set was "cracked in the face" refers to the front-glass plate and not the plasma screen behind. It also argues that a picture of the television set shows that the front-glass panel was broken. The photograph is, however, less-than-clear as to whether the breakage is of the front-glass panel or the plasma screen behind. Kolenda's "cracked in the face" assertion is also ambiguous. In light of our standard of review (that is, as explained, we may not overturn a trial court's findings of fact unless they are "clearly erroneous"), we cannot say that the trial court's assessment of Kolenda's testimony and the photograph is "clearly erroneous."[3]

[3] Electromania also faults the trial court's reference to the television set as a Panasonic when, in fact, it is a Pioneer. Given the similarity of names, however, the trial court's misstatements about the set's brand do not vitiate the rest of its analysis. Electromania further contends that it was improperly subjected to double-jeopardy by having to appear before small-claims commissioners as well as before the trial court. Protections against double jeopardy, however, apply only in criminal cases. U.S. CONST. amend. V ("[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb."); WIS. CONST. art. I, § 8 ("[N]o person for the same offense may be put twice in jeopardy of punishment.").

III.

¶9 Kolenda seeks frivolous-appeal costs under WIS. STAT. RULE 809.25(3). His argument supporting that request, and indeed, his brief in its entirety, is wholly undeveloped. Accordingly, we reject the request. *See* ***Vesely v. Security First Nat'l Bank of Sheboygan Trust Dep't***, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593, 598 n.5 (Ct. App. 1985). Further, because Kolenda's brief on this appeal does not comply with the requirements set out in WIS. STAT. RULE 809.19(1), made applicable to respondents' briefs by RULE 809.19(3)(a)2, we deny Kolenda the right to recover any appeal costs.[4] *See* WIS. STAT. RULE 809.83(2).

By the Court.—Judgment affirmed; request for frivolous-appeal costs denied; no costs to either party.

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

[4] The "argument" section of Kolenda's brief is wholly inadequate and it does not comply with WIS. STAT. RULE 809.19(1)(e), made applicable to respondents' briefs by RULE 809.19(3)(a)2. RULE 809.19(1)(e) requires that briefs have:

> An argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one sentence summary of the argument and is to contain the contention of the appellant, the reasons therefor, with citations to the authorities, statutes and parts of the record relied on as set forth in the Uniform System of Citation and SCR 80.02.