

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 22, 2009

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. 2009AP526-FT

Cir. Ct. No. 2008CV238

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CUSTOM STEEL, INC.,

PLAINTIFF-RESPONDENT,

V.

JOHN WANTA BUILDERS, INC.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
CONRAD A. RICHARDS,¹ Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¹ The judgment was signed by Honorable Conrad A. Richards after trial was held and a decision was reached by Honorable Dorothy L. Bain.

¶1 PER CURIAM. John Wanta Builders, Inc., (Builders) appeals a judgment awarding Custom Steel, Inc., (Custom) \$23,363.39 on a contract for the delivery of a specially manufactured steel product. Builders contends there was no valid contract because the “quote letter” was never validly accepted by Builders. We conclude a contract was formed by acceptance of the quote letter by a person with apparent authority.²

¶2 After personal conversations between John Wanta and a representative of Custom, Dallas Walker, Walker faxed a quote letter to Builders along with some drawings. Builders made some changes to the drawings and faxed them back to Walker, and Walker prepared and faxed a revised quote letter. After a Custom employee received a phone call from a Builders’ employee asking when the steel would be delivered, he replied that Custom had not received a signed quote letter. He was informed that John Wanta was out of town and an employee would attempt to contact him. Later that day, Custom received a fax from Builders’ office accepting the quote. The signature on the document was illegible, but under the signature there is a notation “per J gave verbal OK.”

¶3 Builders contends the contract required John Wanta’s signature on the acceptance line in order to constitute a valid contract. The quote letter was faxed “attn: John Wanta” and indicated he should sign and date the letter to indicate his acceptance. Uncontradicted testimony established that John Wanta was in Costa Rica at that time. Wanta indicated that only Matthew Zick was authorized to sign such an agreement and Zick testified he was not in the office on that date. Builders contends the quote letter was not signed by Wanta or an

² This is an expedited appeal under WIS. STAT. RULE 809.17 (2007-08).

authorized representative and therefore did not constitute a valid acceptance of the agreement.

¶4 The trial court considered the parties' history of making contracts by fax. The court found the evidence showed no notification to Custom that a third party was responsible for payment, and Custom reasonably relied on the signature and indication of "J's" verbal okay on the document faxed to John Wanta.

¶5 The doctrine of apparent authority binds a principal to the acts of another who reasonably appears to a third person to be authorized to act as the principal's agent, because of acts of the principal or agent, if the principal had knowledge of the acts and acquiesced to them. *Pamperin v. Trinity Mem'l Hosp.*, 144 Wis. 2d 188, 203, 423 N.W.2d 848 (1988). Because the quote letter was faxed to Builders' office "attn: John Wanta," and it was returned with a signature indicating "J gave verbal OK," Custom reasonably believed the agreement was accepted by an authorized person. Builders' failure to promptly challenge the invoice constitutes acquiescence in the agreement. Zick was aware of faxes between the parties and did not notify Custom that Builders did not consider itself bound by the signature and notation that "J gave verbal OK." Because the signed document came from Builders' office and the signature indicated "J's" acceptance, and because Zick had knowledge of the faxes, and Custom reasonably relied on the representation that Builders approved the agreement, a valid contract was formed by a person with apparent authority to bind Builders.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

