

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 9, 2002

Cornelia G. Clark
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. 01-2929
STATE OF WISCONSIN**

Cir. Ct. No. 98-CV-761

**IN COURT OF APPEALS
DISTRICT II**

**NATIONAL PETROLEUM, INC.,
F/K/A BOURQUE PETROLEUM, INC.,**

PLAINTIFF-APPELLANT,

v.

W. LEE HUCKER,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Kenosha County:
S. MICHAEL WILK, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. National Petroleum, Inc. appeals from a judgment dismissing its action to recover from W. Lee Hucker unpaid amounts for petroleum, returned checks, and interest on a promissory note, and awarding Hucker judgment on his counterclaim. National argues that the circuit court erred

in determining that Hucker's debts were paid and that it improperly relieved Hucker of his burden of proof on his counterclaim. We affirm the judgment.

¶2 Hucker operated several gas stations and began purchasing petroleum and other items from National on an open account. Hucker fell behind in payments and signed a promissory note on June 16, 1993, for \$86,894.13 (the 1993 note). In November 1993, National procured a buyer for one of Hucker's stations and "remained involved in the sale." The buyers, Satinder Kaur and Gursahib Singh, commenced an action in the Kenosha County Circuit Court alleging that Hucker had breached the sales agreement by falsely representing that he had no outstanding creditors. They sought to recover sums paid to creditors. The buyers asserted that they were entitled to credit against the purchase price for assuming and paying Hucker's debts to National. In *Singh v. Hucker*, Kenosha County Circuit Court No. 94-CV-988, judgment was entered in Hucker's favor for the unpaid purchase price less credits for the buyers' assumption of debt.

¶3 Shortly after the conclusion of the *Singh* litigation and because Hucker had refused to honor his agreement to credit Singh's purchase price for debts paid to National, National brought this action against Hucker to recover \$45,532.22 for checks returned to National for insufficient funds, \$35,020.70 for outstanding account receivables, and \$2,000 for interest on the 1993 note. Hucker filed a counterclaim alleging that National had charged him a higher than agreed upon mark-up on petroleum. He later amended the counterclaim to one for breach of contract for overpayment on the open account.

¶4 Hucker moved to dismiss National's complaint. Hucker produced receipts showing that the amounts claimed to be due had been paid. National filed an affidavit explaining that the receipts had been issued at Singh's insistence at

closing but were conditioned on Singh receiving credit for those amounts against his purchase price. The circuit court concluded that no material issue of fact existed as to whether Hucker owed National the amounts claimed and granted summary judgment dismissing the complaint. After further proceedings, the circuit court awarded Hucker \$29,538.11 on his counterclaim, an amount determined to be an overpayment by Hucker.

¶5 We review the circuit court's grant of summary judgment using the same methodology as the circuit court. *City of Beaver Dam v. Cromheecke*, 222 Wis. 2d 608, 613, 587 N.W.2d 923 (Ct. App. 1998). There is no need to repeat the well-known methodology; the controlling principle is that when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. *Id.*; WIS. STAT. § 802.08(2).

¶6 The only significant fact in this case is that National issued receipts to Hucker for all the amounts claimed. These receipts demonstrate that the debts were paid in full and National's right to collect them extinguished. The source of payment is not a relevant inquiry. The receipts do not indicate any reservation of rights. Even if, as National claims, the receipts were conditioned on credit to Singh against the purchase price, the condition was fulfilled as determined in the *Singh* litigation.

¶7 Much of National's appellate argument is devoted to whether or not proper credit was applied to Singh's purchase price. It argues that the summary judgment decision must be reversed because Singh did not receive credit for paying Hucker's debts to National. We recognize that the circuit court reviewed the *Singh* litigation and concluded that all debts had been considered in the calculations made by the ruling court in that litigation. However, the circuit

court's acknowledgment that the *Singh* litigation determined credits against the purchase price does not translate to authority to decide if the correct decision was made. National's claim is nothing more than an attempt to rectify what it believes to be the wrong result in the *Singh* litigation. That National refunded amounts to Singh cannot change the fact that the receipts evidence payment of Hucker's debts.

¶8 Regarding Hucker's counterclaim, National argues that the circuit court improperly relieved Hucker of his burden of proving that he actually made payments to National in excess of the total amount of National's invoices. The parties stipulated that National issued invoices to Hucker in the total amount of \$1,324,206.33; that cancelled checks showed payment of \$1,155,708.85; and that Hucker was entitled to an additional credit of \$30,588.75. The circuit court then credited Hucker with the \$86,894.13 payment of the 1993 note, the \$45,532.22 reflected on National's receipt for NSF checks, and \$35,020.70 reflected on National's receipt for outstanding account receivables. The result was that Hucker had overpaid the total invoiced amount by \$29,538.11.

¶9 National claims that the circuit court improperly applied issue preclusion. At the outset of its decision, the circuit court made a single reference to issue preclusion. National's focus on issue preclusion is nothing more than a red herring and we will not discuss it in detail. The circuit court was merely making reference to factual determinations made earlier in this action—that National had been paid for the NSF checks and outstanding account receivables. Reliance on those facts was not a matter of relieving Hucker of his burden of proof. The circuit court was not required to reconsider facts already established by the record. To hold otherwise would permit National to litigate on Hucker's counterclaim the very issue that was not subject to dispute on National's

complaint—whether Hucker owed additional monies. The circuit court’s determination was an accounting based on the parties’ stipulations and the facts demonstrated by the receipts issued by National.

¶10 National contends that reliance on the receipts is misplaced because it was Hucker’s burden to prove that he personally overpaid the invoices and the receipts do not demonstrate who paid. Even accepting National’s contention that the receipts reflect amounts paid by Singh, the amounts were still paid on behalf of Hucker. National cites no rule of law that would require the court to disregard payments made on an open account on behalf of a debtor. The source of the payments is not the relevant inquiry.

By the Court.—Judgment affirmed.

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

