

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 16, 2003

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. 02-0363
STATE OF WISCONSIN

Cir. Ct. No. 01-CV-54

**IN COURT OF APPEALS
DISTRICT IV**

JOHN T. BIRKELO,

PLAINTIFF-RESPONDENT,

v.

CURTIS J. FORDE,

DEFENDANT-APPELLANT,

MICHAEL C. ABLAN,

DEFENDANT-(IN T. CT.).

APPEAL from a judgment of the circuit court for Vernon County:
MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Curtis Forde appeals a judgment evicting him from property owned by John Birkelo. The issue is whether the circuit court correctly

denied Forde's motion to compel Birkelo's performance of a settlement stipulation made during the litigation. We affirm.

¶2 This action was originally commenced by Birkelo as one to evict Forde after the termination of a farm lease in March 2001. Forde counterclaimed, asserting, among other things, a contractual right to purchase the property. Birkelo amended his complaint to include a slander of title claim against Forde's attorney, Michael Ablan. At a court appearance on October 22, 2001, the parties entered an oral stipulation for a settlement. The main term, as expressed by counsel, was that the matter "would be resolved within 60 days. Either Mr. Forde will have the financing to buy the property or he'll be evicted." Birkelo's attorney then added that the transaction must close by December 22, 2001, and that this means that "all the terms are fulfilled and that the money is paid to the plaintiff and that the deal is completed." He further stated that if the closing did not occur, the lease would expire and the writ of replevin would be issued immediately, eviction would be granted, and "the claims of all the parties would be dismissed then with prejudice."

¶3 In late December 2001, Ablan filed a "motion to compel performance." Affidavits by Birkelo and counsel for Forde also were filed. The motion, relying on the affidavits, stated that Forde appeared at the closing ready and able to tender complete payment for the property, but Birkelo refused to provide a warranty deed transferring the property to Forde's "assignee" Armand Bringe, as Forde requested. The transaction did not close, and the motion sought to compel Birkelo to perform in accordance with the stipulation.

¶4 At the hearing on the motion, Birkelo argued that the stipulation was for him to sell to Forde, not Bringe, and that Birkelo could properly refuse to

transfer the property to Bringe. The court ruled that the stipulation “was pretty straightforward and it did not involve anything about a Mr. Bringe and any assignment of an interest to him.” After noting that Birkelo objected, the circuit court stated: “And I find in the agreement he had a right to do that; he had a right to say I’m not going to sell this to Mr. Bringe.”

¶5 On appeal, Forde appears pro se. He argues that he has the right to purchase the property and direct the seller to title it to whomever Forde chooses. He likens it to an automobile purchase from a dealer, where he would be able to pay the price for the vehicle, and then direct the dealer to title it in the name of some other person of his own choosing. Like the auto dealer, Forde argues, Birkelo has no interest or right in the property other than collecting full payment for the agreed sale price. In response, Birkelo argues that the stipulation unambiguously does not allow Forde to assign his purchase right to a third party.

¶6 Forde has not presented an argument that convinces us the circuit court erred in interpreting the parties’ stipulation. That agreement was for a conveyance to Forde, and only Forde. Birkelo was within his right to refuse to close on any other terms than that. Forde’s argument by analogy to an automobile purchase is not persuasive, and he has presented no legal authority for his contention that he had the right to direct Birkelo to title the property in whomever he chooses. Accordingly, we affirm the decision of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

