

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 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. 02-0909
STATE OF WISCONSIN**

Cir. Ct. No. 01 SC 26538

**IN COURT OF APPEALS
DISTRICT I**

SID GRINKER COMPANY, INC.,

PLAINTIFF-RESPONDENT,

v.

RUDY TREML,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed and cause remanded with directions.*

¶1 WEDEMEYER, P.J.¹ Rudy Treml appeals *pro se* from a judgment entered after a small claims trial wherein he was ordered to pay Sid Grinker Company, Inc. \$1,894.26, plus costs, for work performed following a fire on a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

rental property owned by Treml. Treml claims that the trial court erred when it allowed Sid Grinker to assert both a breach of contract and an unjust enrichment theory; that Sid Grinker failed to prove it performed any work on the property; that prejudgment interest should not have been awarded, and the trial court erred in finding that his defenses were frivolous. Because each issue is resolved in favor of affirming the judgment and order, this court affirms.

I. BACKGROUND

¶2 On January 18, 2001, a fire occurred at 2107-09 South 84th Street in the City of West Allis. Treml owned the property, but had his employee, Mary Stephanek, attend to addressing immediate repairs. Stephanek signed an authorization certificate on Treml's behalf authorizing Sid Grinker to proceed with repairs. Sid Grinker proceeded with several repairs including: attempting to secure appropriate permits, providing temporary electrical service to the property, and removing carpeting and plaster.

¶3 A dispute arose between Sid Grinker and Treml, which eventually led to hiring a different company (Thiesenhuse Construction) to repair the premises. Sid Grinker requested payment in the amount of \$1,894.26 for the work it had performed. Treml refused to pay, claiming no work was actually done by Sid Grinker. Sid Grinker then filed a small claims summons and complaint seeking the money. The trial court found that the work had been completed, and entered judgment in favor of Sid Grinker for \$1,894.26 plus costs. Sid Grinker filed a motion seeking attorney's fees based on the fact that Treml raised frivolous defenses. The trial court granted the motion and ordered Treml to pay \$495 in attorney's fees. Treml now appeals.

II. DISCUSSION

¶4 Treml spends much of his brief discussing whether the trial court erred in allowing Sid Grinker to assert both a breach of contract and an unjust enrichment theory. The real issue in this case, however, is whether or not Sid Grinker performed services for which it is entitled to be paid. Treml asserts that Sid Grinker did not do any work on the property, and that there was no evidence during trial that Sid Grinker did any work on the property. This court rejects Treml's claim.

¶5 Findings of fact in a trial to the court are reviewed under the clearly erroneous standard of review. *See* WIS. STAT. § 805.17. This court has reviewed the testimony in the record. The testimony of Michael Grinker and Diane Thiesenhusen clearly and unequivocally demonstrates that Sid Grinker performed the work on the property for which it billed \$1,894.26. Grinker testified that the company began the work, including the permit process, temporary electric, carpet and plaster removal. Thiesenhusen, who came in later to complete the work, testified that this work had been completed. She testified that she saw the one and one-half inches of paperwork Sid Grinker had submitted to the City of West Allis for the permits. The trial court's findings, therefore, are not clearly erroneous.

¶6 Moreover, the record clearly reflects that Treml's agent authorized the repairs which Sid Grinker performed. Although Treml attempts to narrowly limit the scope of the repairs authorized by the authorization certificate, the language of the certificate is broad enough to include the work Sid Grinker performed. Accordingly, this court concludes that the trial court's judgment in favor of Sid Grinker was not erroneous.

¶7 Tremml next complains about the trial court's award of prejudgment interest. This court rejects his complaint. Prejudgment interest may be awarded at the discretion of the trial court for the purpose of compensating a party to whom payment is due for lack of use of the money. *Estreen v. Bluhm*, 79 Wis. 2d 142, 156, 255 N.W.2d 473 (1977). In order for an award to be made, there must be a fixed and readily determinate amount which could have been tendered. *DeToro v. DI-LA-CH, Inc.*, 31 Wis. 2d 29, 34, 142 N.W.2d 192 (1966). Here, there was a fixed and determinate sum. The trial court's decision to award prejudgment interest was not an erroneous exercise of discretion.²

¶8 Finally, Tremml complains that the trial court erred in assessing attorney's fees against him based on frivolous defenses. He argues that the trial court created the frivolous defenses and he did not. This is an unfounded argument.

¶9 In reviewing this claim, this court will not overturn a trial court's findings unless they are clearly erroneous. *Beupre v. Airriess*, 208 Wis. 2d 238, 249, 560 N.W.2d 285 (Ct. App. 1997). Whether an action is frivolous is a question of law. *Id.* Whether sanctions are warranted is a matter of discretion for the trial court. *Johnson v. Allis-Chalmers Corp.*, 155 Wis. 2d 344, 350, 455 N.W.2d 657 (Ct. App. 1990), *aff'd*, 162 Wis. 2d 261, 470 N.W.2d 859 (1991).

¶10 Here, Tremml asserted defenses that were without merit and lacked a reasonable basis in law or equity. He should have known better. Clearly, Sid Grinker performed authorized repairs at the property in question, and was entitled

² Sid Grinker points out an error made in the calculation of the amount of prejudgment interest. This amount should be corrected and the judgment amended accordingly.

to be paid for its work. The trial court's decision was reasonable and this court will not overturn it.

¶11 Sid Grinker also asks this court to award costs and fees associated with the appeal on the basis that the appeal is frivolous. This court concludes that Trembl knew, or should have known from reviewing the testimony and evidence at trial, that the issues he raised on appeal were frivolous. Accordingly, this court grants Sid Grinker's motion for costs and fees associated with the appeal and remands this issue to the trial court to conduct further proceedings necessary to determine an appropriate award.

By the Court.—Judgment affirmed and cause remanded with directions.

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

