**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**April 24, 2003**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 02-1323** **Cir. Ct. No. 00-CV-1873**

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

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**KENNETH C. MURRAY,**

**PLAINTIFF-APPELLANT-CROSS-RESPONDENT,**

**V.**

**ROUNDHOUSE MARKETING & PROMOTION, INC. F/K/A TOWELL PROMOTIONAL SERVICES, INC.,**

**DEFENDANT-RESPONDENT-CROSS-APPELLANT.**

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APPEAL and CROSS-APPEAL from a judgment of the circuit court for Dane County: RICHARD J. CALLAWAY and DANIEL L. LAROCQUE, Judges. *Affirmed*.

Before Dykman, Deininger and Lundsten, JJ.

¶1 LUNDSTEN, J. Kenneth C. Murray appeals a summary judgment granted in favor of Roundhouse Marketing & Promotion, Inc. Murray argues that

summary judgment was inappropriate because (1) the circuit court erred by sua sponte ordering supplemental briefing and factual development; (2) the circuit court granted summary judgment on a theory not contained in Roundhouse's motion for summary judgment; and (3) issues of fact remain regarding whether Murray was terminated in violation of his employment contract. We disagree with all of Murray's arguments and affirm.

¶2 In a cross-appeal, Roundhouse challenges the denial of its request for attorneys' fees. Roundhouse argues that, under the terms of the employment contract, it is entitled to recover its attorneys' fees in this action. We disagree and affirm the circuit court.[1]

***Background***

¶3 William Towell is the owner and CEO of Roundhouse. In 1997, Towell began a search for an executive to manage Roundhouse's day-to-day operations. After lengthy negotiations, Roundhouse and Murray entered into an employment contract and Murray began working for Roundhouse on June 1, 1998. Murray served as Roundhouse's executive vice-president and president during his tenure. His job duties included department operations, skill development, human resource management, and general day-to-day management of operations.

¶4 The employment contract includes a termination-for-cause provision, which reads, in pertinent part:

[1] Judge Callaway presided over the motions for summary judgment. Judge Callaway's order actually granted *partial* summary judgment to Roundhouse and it is that order which is the subject of this appeal. Subsequently, Judge LaRocque issued an order dismissing Murray's remaining claim and Murray does not challenge that order on appeal. Judge LaRocque also presided over the motion for attorneys' fees.

> 7. *Termination.*
>
> (a) *Termination by the Company for Cause.* The Company may, by resolution of a majority of its Board of Directors, excluding the Employee, terminate this Agreement and the Employee's employment effective at any time during the term hereof upon written notice to Employee upon occurrence of any of the following events:
>
> ….
>
> (iii) Intentional and prolonged failure of Employee to devote his best efforts to performance of his duties hereunder, negligent or incompetent performance of such duties or a breach of any term or condition of this Agreement. Such intentional and prolonged failure, negligent or incompetent performance or breach shall be deemed to exist if Employee has not substantially corrected such failure, negligent or incompetent performance, or breach within thirty (30) days after having been so requested in writing by the President of the Company ….

¶5 While employed by Roundhouse, Murray engaged in behavior which Towell considered insensitive, inappropriate, and belittling to Roundhouse employees. On June 2, 1999, Towell met with Murray for Murray's first performance review. At the meeting, Towell gave Murray a document entitled "Performance Discussion Outline." Under the heading "Developmental Areas," the outline stated: "watch 'digs,' personal 'jabs.' These can be viewed as condescending or patronizing …. [E]mployees have mentioned they do not like this behavior." Under the heading "Action Steps: Specific Actions/Timing/Responsibility," the outline states: "Watch personal attacks ('digs'/'jabs')." Also under the heading "Action Steps," the outline notes that Towell and Murray "[d]iscussed personalities/styles (need to follow up)."

¶6 Over the next several months, Murray continued to make comments that Towell and Roundhouse employees considered inappropriate. On May 25, 2000, Towell sent Murray a letter terminating Murray's employment.

¶7 Subsequently, Murray initiated this action. Both parties moved for partial summary judgment. Roundhouse based its motion on the theory that the parties did not reach a valid employment contract. On appeal, Roundhouse no longer contests the validity of the employment contract. Murray's motion for summary judgment asserted that Roundhouse terminated him in violation of his employment contract. In support of his motion, Murray attached an affidavit including the following statement:

> I at all times devoted my best efforts to the performance of my duties. I never engaged in any intentional or prolonged failure, negligent or incompetent performance or breach of my duties.… Notwithstanding this, I was never given written contractual notice by Roundhouse requesting that I correct any such alleged failure.

¶8 Roundhouse filed a responsive brief in opposition to Murray's partial summary judgment motion, and attached affidavits from Towell and seven past and current Roundhouse employees. In his affidavit, Towell alleged that he provided Murray a copy of the performance discussion outline at the June 2, 1999, meeting. The outline included the statements about "jabs/digs" described above. Towell's and five of the other affidavits set forth specific examples of Murray's poor conduct.

¶9 Murray filed a reply brief in support of his motion for partial summary judgment, but did not attach any affidavits. After receiving both parties' briefs on the motions for partial summary judgment, the circuit court, on its own initiative, issued an order noting that Murray "asserts that the circumstances of his termination show that he was not terminated for cause because he was terminated by William Towell, as opposed to the Board of Directors …." The order required Roundhouse to provide a supplemental brief and supporting evidence regarding

"the usual decision-making methodology used by [Roundhouse's] Board of Directors" within twenty-one days, and gave Murray fifteen days to respond.

¶10 Roundhouse filed a supplemental brief and attached affidavits from William Towell and from Elizabeth Towell, Towell's wife. William averred that, as Roundhouse's CEO, he makes personnel decisions for the corporation and those decisions are routinely ratified by the board of directors at the end of each year. His affidavit established that he and Elizabeth Towell were the only members of Roundhouse's board of directors. Attached to William Towell's affidavit were copies of the minutes to Roundhouse's board of directors' annual meetings for the years 1998, 1999, and 2000. The minutes for the 2000 annual meeting, held on December 31, 2000, contain the following provision:

> RESOLVED, that all contracts, leases, notes, and representations entered into and made by the officers and other agents since the last annual meeting, to the extent such actions have been taken for and on behalf of this corporation, and to the extent prior consent has not been given, be and hereby are accepted, affirmed and ratified.

¶11 The circuit court granted summary judgment to Roundhouse.

## Murray Appeal

¶12 Murray argues that summary judgment in favor of Roundhouse was inappropriate for the several reasons we address below. This court reviews summary judgment decisions *de novo*, applying the same methodology employed by the circuit court. ***Brownelli v. McCaughtry***, 182 Wis. 2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994). "[W]e examine the moving party's affidavits to determine whether they establish a *prima facie* case for summary judgment. If they do, we look to the opposing party's affidavits to determine whether there are any material facts in dispute that entitle the opposing party to a trial." ***Frost v.***

***Whitbeck***, 2001 WI App 289, ¶6, 249 Wis. 2d 206, 638 N.W.2d 325 (citations omitted), *aff'd*, 2002 WI 129, 257 Wis. 2d 80, 654 N.W.2d 225. "If the movant's papers before the court fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied." ***Grams v. Boss***, 97 Wis. 2d 332, 339, 294 N.W.2d 473 (1980). "A summary judgment should not be granted unless the moving party demonstrates a right to a judgment with such clarity as to leave no room for controversy …." ***Id***. at 338.

*Whether the Circuit Court Erred by Considering Roundhouse's Affidavits Submitted in Response to Murray's Motion for Summary Judgment*

¶13 Murray argues that the circuit court engaged in incorrect summary judgment methodology when it considered affidavits submitted by Roundhouse responding in detail to Murray's general assertion in his affidavit that he did not breach his employment contract. Murray contends that the circuit court should never have looked past his initial summary judgment motion because, in Murray's words, "[o]nly when a prima facie case for summary judgment is made does the court look to the opposing party's affidavits." In effect, Murray argues that his motion for summary judgment was insufficient on its face and, therefore, the circuit court erred by even looking at Roundhouse's responsive affidavits.[2] We disagree.

[2] In his reply brief, Murray argues that Roundhouse waived its argument that Murray's alleged conclusory statements in his affidavit are inadmissible evidence by not raising that argument before the circuit court. However, we note that "[r]espondents are not bound to the same constraints of the waiver rule as appellants. We may sustain the trial court's holding on a theory not presented to it, and it is inconsequential whether we do so *sua sponte* or at the urging of a respondent." ***State v. Truax***, 151 Wis. 2d 354, 359, 444 N.W.2d 432 (Ct. App. 1989) (citations omitted).

¶14 The circuit court was correct to consider both Murray's submissions and Roundhouse's counter-affidavits. Although Murray's assertion that he did not violate his employment contract had limited evidentiary weight for purposes of summary judgment, as we explain in a later section of this opinion, Murray nonetheless made a prima facie case.

¶15 Murray's general statement that he devoted his best efforts to his job and never engaged in any negligent or incompetent performance simply asserts a nullity: that he did not breach his contract. Because he was asserting a nullity, it was not necessary for Murray to submit more specific averments to prove that he did not breach his contract. Thus, Murray *did* make a prima facie case based on his pleading that he did not breach his contract. Once Murray's prima facie case was made, the circuit court was entitled to examine Roundhouse's opposing affidavits. *See* ***Frost***, 249 Wis. 2d 206, ¶6 (once prima facie case is made, we look to the opposing party's affidavits to determine whether summary judgment is proper).

*Whether the Circuit Court Erred by Granting Summary Judgment on a Theory Not Advanced by Roundhouse*

¶16 Murray observes that Roundhouse's motion for summary judgment, as distinguished from Roundhouse's response to Murray's motion for summary judgment, was predicated on the nonexistence of the employment contract. Murray contends that because Roundhouse now concedes there was an employment contract, summary judgment for Roundhouse, based on a theory not advanced by Roundhouse, is inappropriate. Once again we disagree.

¶17 WISCONSIN STAT. § 802.08(6) (2001-02)[3] provides: "If it shall appear to the court that the party against whom a motion for summary judgment is asserted is entitled to a summary judgment, the summary judgment may be awarded to such party even though the party has not moved therefor." Under the plain language of this statute, Roundhouse is entitled to summary judgment on Murray's motion for summary judgment, even if Roundhouse did not seek summary judgment and regardless whether Roundhouse sought summary judgment on the basis of a losing argument.

*Whether the Circuit Court Erred by Requesting Additional Factual Submissions Relating to Summary Judgment*

¶18 Murray asserts that the circuit court erred when, on the court's own initiative, it ordered the parties to submit evidence on a material issue of fact which, Murray contends, was previously not addressed in Roundhouse's submissions to the circuit court. Murray concedes that a circuit court may, on its own initiative, ask parties to address *legal* issues when it does so in a fair manner. This concession is appropriate. *See* ***State v. Holmes***, 106 Wis. 2d 31, 38-41, 315 N.W.2d 703 (1982) (concluding that circuit courts have the power to sua sponte raise and decide the constitutionality of a statute). Still, Murray argues that a court may not similarly ask parties to address a *factual* issue.

¶19 Murray provides no authority for his contention, and we find none. To the contrary, it is well established that a circuit court has the "'right to clarify questions and answers and make inquiries where obvious important evidentiary

[3] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

matters are ignored or inadequately covered on behalf of'" the parties. ***Schultz v. State***, 82 Wis. 2d 737, 742, 264 N.W.2d 245 (1978) (quoting ***State v. Asfoor***, 75 Wis. 2d 411, 437, 249 N.W.2d 529 (1977)); *see also* WIS. STAT. § 906.14(2) ("The judge may interrogate witnesses, whether called by the judge or by a party."); ***Sommers v. Friedman***, 172 Wis. 2d 459, 477, 493 N.W.2d 393 (Ct. App. 1992) ("'[J]udges are not referees at prize-fights but functionaries of justice [with] the power to call and examine witnesses to elicit the truth,'" quoting ***State v. Nutley***, 24 Wis. 2d 527, 562, 129 N.W.2d 155 (1964), *overruled on other grounds*, ***State v. Stevens***, 26 Wis. 2d 451, 132 N.W.2d 502 (1965)). We discern no reason why a court's authority to elicit additional facts, which the court deems relevant, should be limited to the trial of an action. A court's ability to raise both legal and factual issues sua sponte rests within the court's inherent duty to provide justice between the parties. *See* ***Holmes***, 106 Wis. 2d at 39. Thus, we conclude that a court may also elicit additional evidentiary submissions it deems relevant to a determination on summary judgment.

¶20 This reasoning also disposes of Murray's claim that a court may not sua sponte raise a legal or factual issue so as to "turn a [party's] loser into a winner." Obviously, any time a court raises a significant factual or legal issue, such action by the court may affect the outcome of the proceeding.

¶21 We conclude the circuit court's order for supplemental briefing and evidence was proper.

*Whether the Circuit Court Erroneously Failed to Order or Permit Murray to Respond to Roundhouse's Factual Assertions that Murray Breached the Employment Contract*

¶22 Murray also argues that the circuit court's order was unfair because the court did not similarly act on its own initiative to order or permit Murray to submit affidavits contesting Roundhouse's affidavits alleging that Murray breached the contract. It appears to be Murray's position that a judge must take this proactive approach because, Murray asserts, the summary judgment statute, WIS. STAT. § 802.08, does not contemplate reply affidavits.

¶23 Murray ignores the plain language of WIS. STAT. § 802.08. Section 802.08(3) reads, in relevant part: "The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits." The statute permits parties to supplement their affidavits and explicitly permits parties to supplement their affidavits with "further affidavits."[4] In the instant case, Murray had ample opportunity to file a supplemental affidavit contesting the specific factual assertions in affidavits submitted by Roundhouse.

*Whether Roundhouse Waived its Right to Terminate Murray Based on a Violation of the Employment Contract*

¶24 Murray argues that Roundhouse waived its right to terminate Murray's employment because, even if it provided proper notice under the contract in June of 1999, Roundhouse did not even arguably exercise its right to terminate Murray until the May 2000 termination letter. According to Murray, whether a party has waived its right to assert a contract right, claim, or privilege is

[4] *See also* WIS. STAT. § 802.08(4), which permits a party to request the court to delay consideration of a motion for summary judgment "to permit affidavits to be obtained or depositions to be taken or discovery to be had …."

a question of fact because it incorporates an element of intent. *See* WIS JI-CIVIL 3057 (person waiving right must do so intentionally and voluntarily). Consequently, in Murray's view, summary judgment is inappropriate here because an unresolved issue of fact—Roundhouse's intent to waive its right to terminate—remains.

¶25 Roundhouse responds that Murray waived this issue by failing to raise it before the circuit court. Roundhouse argues that had Murray raised this issue before the circuit court, Roundhouse could have presented evidence demonstrating its intent and, therefore, Murray should not be allowed to raise this issue for the first time on appeal. We agree.

¶26 Although this court engages in summary judgment review *de novo*, we nonetheless may apply waiver to arguments presented for the first time on appeal. *See*, *e.g.*, ***Hopper v. City of Madison***, 79 Wis. 2d 120, 137, 256 N.W.2d 139 (1977). Application of the waiver rule is appropriate where a waived argument could have been rebutted with factual information. Had Murray raised his intent-to-waive-right-to-terminate claim before the circuit court, Roundhouse would have had the opportunity to demonstrate that there was no material dispute over intent.

¶27 Murray counters that the application of waiver is unfair here because, had he raised the intent issue in the circuit court, he would have effectively torpedoed his own motion for summary judgment. Because Murray is arguing he made a tactical decision to not raise an issue in order to preserve his motion for summary judgment, he cannot now complain that summary judgment is inappropriate. A motion for summary judgment is not a motion free of adverse consequences. *See* WIS. STAT. § 802.08(6) ("If it shall appear to the court that the

party against whom a motion for summary judgment is asserted is entitled to a summary judgment, the summary judgment may be awarded to such party even though the party has not moved therefor.").

*Whether the Updated Performance Discussion Outline Conformed to the "Written Notice" Required by the Employment Contract*

¶28 Murray argues that summary judgment was improperly granted because a factual issue exists as to whether Roundhouse provided Murray with written notice. The employment contract permits Roundhouse to terminate Murray for cause if the company president provides Murray with written notice and, in the case of alleged negligent or incompetent performance of Murray's duties, Murray has not "substantially corrected" his performance within thirty days of being notified in writing.

¶29 Murray argues that the performance discussion outline did not constitute sufficient written notice under the contract. First, Murray disputes that the evidence demonstrates that he was provided with the performance discussion outline. However, William Towell's affidavit states: "[Murray's] major achievements …, developmental areas … and action steps … were summarized in an updated outline *provided to* [Murray] at lunch" (emphasis added). Towell's claim is not contested in any of the submissions provided by Murray.

¶30 Murray next contends that the notice was insufficient because it did not request that he correct any intentional failure to perform his duties or request that he correct any negligent or incompetent performance. Murray complains that the performance discussion outline "does not purport to be a Section 7(a)(iii) notice." In essence, Murray argues that for a document to conform to the notice

required in section 7(a)(iii), the document must contain formal trappings, including language similar to the language used in the employment contract.

¶31 Roundhouse argues, and we agree, that the employment contract does not require the use of "magic" words. Under the plain language of the contract, notice must:

(1) be in writing;

(2) be written by the president of the company; and

(3) request that Murray substantially correct "negligent or incompetent performance of [his] duties or a breach of" the employment contract.

There is no dispute that the performance discussion outline was in writing, and that the outline was written by Towell, Roundhouse's president. The only question is whether the updated performance discussion outline requested that Murray substantially correct negligent or incompetent performance of his duties.

¶32 Under the heading "Developmental Areas," the outline stated that Murray "watch 'digs,' personal 'jabs.' These can be viewed as condescending or patronizing …. [E]mployees have mentioned they do not like this behavior." Under the heading "Action Steps: Specific Actions/Timing/Responsibility," the outline states "Watch personal attacks ('digs'/'jabs')." Also under the heading "Action Steps," the outline notes that Towell and Murray "[d]iscussed personalities/styles (need to follow up)." This language plainly requests that Murray change his behavior to be more respectful to Roundhouse's employees. Murray does not and cannot plausibly argue that treating Roundhouse employees with reasonable respect is not one of his job duties.

*Whether Murray Failed to Substantially Correct his Negligent or Incompetent Performance as Required by the Employment Contract*

¶33 Murray contends that summary judgment was inappropriate because factual issues remain regarding whether he corrected his behavior.[5] Murray's affidavit alleged that he devoted his best efforts to the performance of his duties and that he did not engage in negligent or incompetent performance of his duties. Roundhouse submitted six affidavits alleging specific acts of misconduct by Murray. According to Murray, the opposing affidavits raise a factual question as to whether Murray corrected his behavior as required by section 7(a)(iii) of the employment contract.

¶34 Roundhouse responds that Murray's affidavit is conclusory and self-serving, and thus not admissible evidence. In reply, Murray contends that he is allowed to "testify as to the non-occurrence of a contractually identified event." Murray argues that his affidavit contains statements of fact regarding whether "contractual 'events'" occurred.

¶35 We conclude that Murray's affidavit presents mere conclusory statements and is insufficient to counter the specific allegations of misconduct in Roundhouse's affidavits. *See* ***Heiden v. Ray's, Inc.***, 34 Wis. 2d 632, 638, 150 N.W.2d 467 (1967) ("Affidavits in support of a motion for summary judgment must allege evidentiary facts, not merely conclusions."). For example, Murray never states that any of the specific allegations of misconduct did not occur.

[5] Murray also argues that factual issues remain as to whether he committed acts that constitute a breach of his job duties before receiving notice from Towell. Because the arguments are the same, we direct our analysis at whether Murray corrected his behavior, as demonstrated in the affidavits.

Instead, he broadly asserts in conclusory fashion that he performed well and not incompetently. Murray's affidavit was insufficient to create a factual dispute.

*Whether Roundhouse Properly Passed a Resolution to Terminate Murray's Employment*

¶36 Murray argues he was never terminated under the terms of his employment contract because no resolution by Roundhouse's board of directors preceded his termination. We conclude that Murray was terminated in compliance with the contract.

¶37 "Section 7" of Murray's contract provides that Roundhouse "may, by resolution of a majority of its Board of Directors, … terminate this Agreement and the Employee's employment" for cause. Murray argues that, under this clause, passage of a resolution terminating his employment must occur prior to termination. Because no resolution preceded Towell's letter of termination on May 25, 2000, Murray contends "[t]here never was a Section 7 resolution." Accordingly, we must construe the contract and apply that construction to uncontested facts.

¶38 "The interpretation of a written contract, including the determination of whether its terms are ambiguous, is a legal matter that we decide independently." ***Town of Neenah Sanitary Dist. No. 2 v. City of Neenah***, 2002 WI App 155, ¶9, 256 Wis. 2d 296, 647 N.W.2d 913.

> [T]he primary goal in contract interpretation is to determine and give effect to the parties' intention at the time the contract was made. When the language is unambiguous, we apply its literal meaning. If, on the other hand, we determine that a contract provision is ambiguous, we then look to extrinsic evidence to discern its meaning.

***Farm Credit Servs. v. Wysocki***, 2001 WI 51, ¶12, 243 Wis. 2d 305, 627 N.W.2d 444 (citations omitted). "Contractual language is ambiguous only when it is 'reasonably or fairly susceptible of more than one construction.'" ***Neenah Sanitary Dist.***, 256 Wis. 2d 296, ¶9 (quoting ***Borchardt v. Wilk***, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990)).

¶39 It is readily apparent that Roundhouse passed a resolution terminating Murray. Roundhouse submitted the minutes from its board of directors meeting held on December 31, 2000, establishing that the board passed a resolution ratifying Towell's representations made on behalf of Roundhouse, including Towell's representation to Murray that he was terminated. There is no dispute that this resolution was passed by a majority of the board of directors. The plain language of the contract requires nothing more from the board of directors in order to terminate Murray. The resolution need not include the grounds for termination, and there is no requirement that board members have any particular knowledge of the facts justifying termination. We conclude, therefore, that the December 31, 2000, resolution satisfied the requirement that Murray's termination be "by resolution of a majority of [Roundhouse's] Board of Directors."[6]

**Roundhouse Cross-Appeal**

¶40 Roundhouse argues that, under a provision of the employment contract, it is entitled to attorneys' fees because it is the prevailing party in this

[6] Murray's argument is based on the premise that he was never properly terminated under the contract. Consequently, he does not address when his termination was effective, May 25, 2000, or December 31, 2000, and that issue is not before us. We also note that both Murray and Roundhouse make additional arguments which we do not address, either because we conclude that they are without merit or because our disposition renders it unnecessary to address them.

lawsuit. The circuit court disagreed, and Roundhouse cross-appeals the circuit court's denial of attorneys' fees.

¶41 Wisconsin follows the American Rule, under which "parties to litigation are generally responsible for their own attorney's fees unless recovery is expressly allowed by either contract or statute, or when recovery results from third-party litigation." ***DeChant v. Monarch Life Ins. Co.***, 200 Wis. 2d 559, 571, 547 N.W.2d 592 (1996). We "will not construe an obligation to pay attorneys' fees contrary to the American Rule unless the contract provision clearly and unambiguously so provides." ***Hunzinger Constr. Co. v. Granite Res. Corp.***, 196 Wis. 2d 327, 340, 538 N.W.2d 804 (Ct. App. 1995).

¶42 The employment contract contained the following provision:

> In the event of a breach or other default by either party under the terms of this Agreement, the prevailing party … shall be entitled to recover from the other party in any resulting legal action or other proceeding its/his reasonable attorney's fees and expenses.

Roundhouse argues that the contract unambiguously permits Roundhouse to recover its legal fees because, Roundhouse asserts, "[t]his litigation arose as a consequence of Murray's breach of the Employment Agreement." In Roundhouse's view, simply because Murray initiated the litigation and Roundhouse raised Murray's breach as a defense does not prevent Roundhouse from recovering its attorneys' fees.

¶43 The circuit court, however, concluded there was an alternative reasonable reading. In the circuit court's view, the attorney fees provision can be read as limiting an award of fees to the prevailing party in any legal action that results from a contract breach. This construction flows from the words: "In the

event of a breach ... in any resulting legal action ….” We agree that this is a reasonable reading of the contract provision and, at a minimum, compels the conclusion that the provision is ambiguous.

¶44 Roundhouse counters that the circuit court’s reading is unreasonable because, under this view of the attorney fees provision, Roundhouse would never be able to recover attorney fees. We disagree. For example, if Roundhouse had sued Murray alleging some harm resulting from a breach of the contract and prevailed, Roundhouse could recover its attorneys’ fees.

¶45 We conclude that the only breach of the employment contract was by Murray and the legal action did not “result” from that breach. Therefore, the circuit court did not err in determining that Roundhouse was not “clearly and unambiguously” entitled to recover its attorneys’ fees. *See* ***Hunzinger***, 196 Wis. 2d at 340.

¶46 Accordingly, we affirm the circuit court’s decision denying Roundhouse’s request for attorneys’ fees.

*By the Court.*—Judgment affirmed.

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