

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2004

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. 03-1427

Cir. Ct. No. 02CV000382

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

JOHN J. CIANCIOLO,

PLAINTIFF-APPELLANT,

v.

PHILLIP S. ANELLO,

DEFENDANT-RESPONDENT,

RONALD M. SCHULTZ AND BRIAN E. KRUEGER,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Washington County: PATRICK J. FARAGHER, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

¶1 PER CURIAM. John Cianciolo appeals from a circuit court judgment vacating a previously granted default judgment against Phillip Anello

and entering a new default judgment for a reduced amount of damages. Because the circuit court did not misuse its discretion in reducing the damages awarded on default judgment, we affirm.

¶2 Cianciolo sold shares in a racehorse to Anello and others. In May 2002, Cianciolo sued Anello and others to recover amounts relating to the horse. Cianciolo alleged breach of contract because Anello and others did not meet their obligations under the contract. The complaint specifically alleged that “[p]ursuant to the contract, each of the defendants were required to pay various expenses associated with training, boarding, and general maintenance and use of [the horse].” Cianciolo further alleged that “[t]he defendants failed to make payment of all expenses of [the horse] pursuant to the contract....”

¶3 Anello did not answer the complaint, and in August 2002, Cianciolo sought a default judgment against him. Cianciolo sought damages in the amount of \$30,000 for Anello’s shares in the horse, \$1947 in unpaid expenses for the horse, and interest. The circuit court entered a default judgment in favor of Cianciolo for these amounts.

¶4 In December 2002, counsel for Anello filed a notice of appearance. In February 2003, Anello moved the circuit court under WIS. STAT. § 806.07(1) (2001-02)¹ for relief from the judgment because the judgment awarded damages Cianciolo did not demand in his complaint. Anello argued that Cianciolo’s complaint did not seek \$30,000 in damages for Anello’s shares in the horse.

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Rather, the complaint limited the requested damages to “expenses associated with training, boarding, and general maintenance and use of [the horse].”

¶5 Cianciolo opposed Anello’s motion for relief from the judgment. As grounds, he argued that under the notice pleading rules, the complaint gave adequate notice that Cianciolo sought recovery for Anello’s shares in the horse in addition to expenses.

¶6 After a hearing, the circuit court found that Anello’s motion was timely and properly brought under WIS. STAT. § 806.07. Even if § 806.07 did not apply, the court stated that it would have granted relief on its own motion to correct the obvious error in the damage award. The court determined that it had improvidently granted default judgment and awarded damages in the amount requested by Anello because the complaint did not seek \$30,000 in damages relating to shares in the horse. The complaint only sought to recover expenses, and Cianciolo’s affidavit in support of damages did not track the allegations in the complaint. Therefore, Anello did not have notice that Cianciolo sought to recover \$30,000 for his shares in the horse. Accordingly, the court reduced the damage award to reflect only \$1,947 in expenses. Cianciolo appeals.

¶7 Whether to grant relief from a default judgment is within the circuit court’s discretion. *Carmain v. Affiliated Capital Corp.*, 2002 WI App 271, ¶¶23-24, 258 Wis. 2d 378, 654 N.W.2d 265. We will affirm the circuit court’s exercise of discretion if there is a reasonable basis for the court’s decision. *Id.*, ¶24.

¶8 Cianciolo contends that his complaint sought damages for the \$30,000 Anello allegedly owes for unpaid shares in the horse. Cianciolo theorizes that because the complaint alleged breach of contract, that claim necessarily encompassed Anello’s contractual obligation to pay for his shares in the horse.

Cianciolo urges this court to consider that the complaint is consistent with a demand letter he sent to Anello seeking payment of expenses and \$30,000 for Anello's shares in the horse.²

¶9 A pleading must give the defendant fair notice of the plaintiff's claim and of the grounds upon which the claim rests. *Hlavinka v. Blunt, Ellis & Loewi, Inc.*, 174 Wis. 2d 381, 403, 497 N.W.2d 756 (Ct. App. 1993). A party cannot use the rule of viewing a complaint in a liberal light to supply missing or forgotten elements. *See Wilson v. Continental Ins. Cos.*, 87 Wis. 2d 310, 319, 274 N.W.2d 679 (1979).

¶10 We conclude that Cianciolo's complaint does not satisfy the rules of notice pleading because it does not notify Anello of Cianciolo's intent to recover \$30,000 from Anello for his shares in the horse. The only reasonable and fair reading of the complaint is that Cianciolo sought to recover the enumerated expenses associated with the training, boarding, general maintenance and use of the horse.

¶11 A party cannot recover on default judgment those damages which have not been pled. *See Stein v. Illinois State Assistance Comm'n*, 194 Wis. 2d 775, 783, 535 N.W.2d 101 (Ct. App. 1995).³ The circuit court properly exercised its discretion when it reduced the damages to reflect the claims made in the complaint. *See*

² Cianciolo does not cite any authority for the proposition that the notice pleading rules permit resort to outside documents to understand what is alleged in a complaint. Such an approach would be particularly problematic in this case because the demand letter is neither referred to in the complaint nor appended to the complaint as an exhibit.

³ Because we conclude that the complaint does not seek to recover the debt associated with Anello's shares in the horse, we need not address any of the arguments relating to whether Anello actually owed this amount.

Carmain, 258 Wis. 2d, ¶29 (court must determine damages to be awarded in default judgment).

By the Court.—Judgment affirmed.

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

