

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 29, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

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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. 2010AP1353

Cir. Ct. No. 2008CV312

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

JOHN E. STORCK,

PLAINTIFF-APPELLANT-CROSS-RESPONDENT,

V.

PAUL EICHMILLER AND ELLEN EICHMILLER,

DEFENDANTS-RESPONDENTS-CROSS-APPELLANTS.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Walworth County: JOHN R. RACE, Judge. *Judgment reversed and cause remanded.*

Before Brown, C.J., Neubauer, P.J. and Reilly, J.

¶1 PER CURIAM. This is a dispute about whether Paul Eichmiller and Ellen Eichmiller breached a contract to lease farm land to John E. Storck.

Storck appeals from the judgment entered after a jury trial in which the jury found that there was a contract but that the Eichmillers did not breach it. The Eichmillers cross-appeal arguing that the evidence did not support the jury's finding that there was a contract, and the circuit court erred when it would not admit evidence at trial that supported their defenses of waiver or estoppel. We conclude that the jury's verdicts were inconsistent with each other, and that the circuit court erred when it would not allow the Eichmillers to introduce evidence supporting waiver and estoppel. Consequently, we reverse the judgment of the circuit court and remand the matter for a new trial.

¶2 Storck began leasing farmland from Paul Eichmiller's father in 1990. They had written leases between 1990 through 1993. After that, they had oral agreements. Storck continued to lease the land from Paul and Ellen after Paul's father died. Storck generally paid the same amount of money for the land, although he voluntarily increased the payment at least one time. In October 2007, Storck brought his fall payment to the Eichmillers. Shortly after that, Storck began tilling and fertilizing the land preparing it for the spring. The Eichmillers were aware that Storck was preparing the land.

¶3 In November 2007, the Eichmillers contacted Storck and asked him to come to their home to discuss leasing the land. The Eichmillers, Storck, and two others, Chuck and Mike Pope, attended this meeting on November 26. The Eichmillers were aware at the time that Storck had just leased some land that the Popes had been farming. The purpose of the meeting was to determine who would

be leasing the Eichmillers' land. Storck offered to pay \$10 more per acre than the Popes did. The Eichmillers, however, leased the land to the Popes.

¶4 Storck eventually brought this action alleging that the Eichmillers breached a contract to lease him the land in 2008. A long jury trial was held, and the jury responded “yes” to the special verdict question asking if the parties had a contract, but “no” to the special verdict question asking whether the Eichmillers had breached that contract.

¶5 Storck then brought a motion after verdict arguing that the evidence was insufficient to support the jury's “no” answer to the breach question. Storck argued that it was undisputed that the Eichmillers had not allowed him to lease the land, and therefore, once the jury found that there was a contract, then the answer to whether the contract had been breached must be “yes.” The Eichmillers replied that the jury could have found that Storck waived his rights under the contract by his actions during the fall of 2007.

¶6 The court denied the motion. The court stated:

The party who wants you to answer the question yes has the burden of proof as to those questions. The burden is to satisfy you by the greater weight of the credible evidence to a reasonable certainty that yes should be your answer. Now in this particular answer they wrote no. And in that particular instance I believe that the jury found that the plaintiff had not met its burden of proof to show that there was a breach by the defendants and that was the simple question they answered no. And I don't believe this question was answered incorrectly by the jury.

The court concluded that the verdict was not contrary to the weight of the evidence. The parties appealed and cross-appealed.

¶7 We will sustain the circuit court’s refusal to change a special verdict answer if there is any credible evidence that under any reasonable view supports the jury’s verdict. *Hanson v. American Family Mut. Ins. Co.*, 2006 WI 97, ¶18, 294 Wis. 2d 149, 716 N.W.2d 866. A contract must generally be definite and certain as to its basic terms and requirements to be enforceable. *Herder Hallmark Consultants, Inc. v. Regnier Consulting Group, Inc.*, 2004 WI App 134, ¶8, 275 Wis. 2d 349, 685 N.W.2d 564. “Certainty of contract terms concerns whether the parties had a meeting of the minds.” *Id.* A literal meeting of the minds is not required. *Id.* Rather, “we give effect to the parties’ intent to contract if such intent is discernible from their conduct or the contract language.” *Id.*

¶8 We conclude that the evidence established that the jury’s answers to the verdict questions were inconsistent. We conclude that there was sufficient evidence presented to support the jury’s finding that the parties had a contract. Once the jury made that finding, however, the only conclusion the jury could reasonably reach based on the evidence presented was that the Eichmillers did not allow Storck to farm the land and, therefore, the contract had been breached. Consequently, we reverse the judgment.

¶9 In their cross-appeal, the Eichmillers argue that there was no contract between the parties for 2008 because they had not agreed on a price for the leased land, that Storck is estopped by his own conduct from claiming a breach, and that the trial court erred when it made two evidentiary rulings. We have already determined that the evidence was sufficient to support the jury’s determination that the parties had a contract. A contract may be found even when the parties’ “conduct evidences sufficient definiteness of an intent to contract, even if an essential term is left vague or indefinite.” *Id.*, ¶10. The fact that the

parties may not have reached a definite agreement on the price for the land, therefore, does not defeat the jury's findings that they had entered into a contract.

¶10 We also conclude, however, that the circuit court erred when it would not allow the Eichmillers to argue waiver or estoppel. The circuit court would not allow the Eichmillers to introduce two pieces of evidence to support their defenses: (1) a letter from Storck's attorney to the Eichmillers stating that the contract could be terminated with the proper notice; and (2) evidence that Storck had rejected an offer by the Popes to be reimbursed for the expenses he incurred fertilizing and tilling the land in the fall of 2007.¹ The circuit court did not admit the evidence on relevancy grounds.

¶11 “A trial court's decision to admit or exclude evidence is a discretionary determination that will not be upset on appeal if it has ‘a reasonable basis’ and was made ‘in accordance with accepted legal standards and in accordance with the facts of record.’” *State v. Jenkins*, 168 Wis. 2d 175, 186, 483 N.W.2d 262 (Ct. App. 1992) (citations omitted). “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” WIS. STAT. § 904.01 (2009-10).

The criterion of relevancy is whether the evidence sought to be introduced would shed any light on the subject of inquiry. Evidence is relevant when it indicates that a fact in controversy did or did not exist because the conclusion in question may be logically inferred from the evidence. Any fact which tends to prove a material issue is relevant.

¹ Storck argued that the evidence was not relevant because he was not seeking damages for these costs.

Rogers v. State, 93 Wis. 2d 682, 688, 287 N.W.2d 774 (1980) (citations omitted).

¶12 We conclude that the letter from Storck’s attorney as well the evidence that the Popes offered to reimburse Storck for his fall preparation costs is relevant because the evidence might have “shed light” on the question of whether Storck had taken actions that waived his right to enforce the contract. Consequently, we also remand the case for a new trial so that this evidence may be presented, and the Eichmillers may argue waiver and estoppel as a defense to the claim. For the reasons stated, we reverse the judgment and remand the case to the circuit court for a new trial.

No costs to either party.

By the Court.—Judgment reversed and cause remanded.

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

