

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 25, 2011

A. John Voelker
Acting 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. 2010AP2684

Cir. Ct. No. 2010CV947

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

NATHAN MEINHARDT,

PLAINTIFF-APPELLANT,

V.

RICHARD C. STROBEL, JR.,

DEFENDANT-RESPONDENT,

AMERICAN FAB, INC.,

DEFENDANT.

APPEAL from an order of the circuit court for Marathon County:
PATRICK M. BRADY, Judge. *Reversed and cause remanded with directions.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Nathan Meinhardt, pro se, appeals that part of an order dismissing his lawsuit against Richard Strobel, Jr. Meinhardt argues the circuit court erred by dismissing the action as to Strobel based on a “stipulation of dismissal” entered between Meinhardt and American Fab, Inc. We agree and, therefore, reverse the order and remand the matter for further proceedings.

BACKGROUND

¶2 Meinhardt, as the assignee of Timothy Naef, filed suit against American Fab and Strobel, alleging various violations of the statutes governing consumer transactions, marketing and trade practices. Meinhardt claimed that Strobel, as an independent dealer of American Fab merchandise, approached Naef in a parking lot about purchasing tools at closeout prices, and Naef ultimately bought merchandise totaling \$4,150. Within a few days, Naef contacted Strobel demanding to return the merchandise for a full refund. Strobel purportedly refused unless an \$800 restocking fee was paid. Meinhardt’s complaint alleged that American Fab, through Strobel: (1) misrepresented the value of the tools, indicating they had a value of over \$14,000; (2) failed to give written notice of Naef’s right to cancel the transaction; and (3) required Naef to sign an invoice stating he waived his right to rescind.

¶3 From the record, it appears that American Fab and Strobel were served with the summons and complaint on June 28, 2010 and July 6, 2010, respectively. On August 13, 2010, Meinhardt moved for a default judgment based on the defendants’ failure to timely answer the complaint. Before the motion hearing, Meinhardt settled his claim against American Fab in exchange for an undisclosed amount of money and, at the hearing, presented the court with the resultant stipulation and proposed dismissal order.

¶4 When the court asked Meinhardt what compensation he received pursuant to the settlement agreement, Meinhardt declined to answer, indicating the agreement forbid him from disclosing the amount. From the court's statements, it appears it perceived that Meinhardt was attempting to achieve a double or triple recovery. Ultimately, based on its reading of the stipulation, the court dismissed the lawsuit as to both American Fab and Strobel. This appeal follows.

DISCUSSION

¶5 Principles of contract law apply in interpreting stipulations and “interpretation of a stipulation must, above all, give effect to the intention of the parties.” *Stone v. Acuity*, 2008 WI 30, ¶67, 308 Wis. 2d 558, 747 N.W.2d 149 (quoting *Pierce v. Physicians Ins. Co. of Wis.*, 2005 WI 14, ¶31, 278 Wis. 2d 82, 692 N.W.2d 558. In determining the parties' intentions, the terms of the stipulation should be given their plain or ordinary meaning. *Id.* If the agreement is not ambiguous, ascertaining the parties' intent “ends with the four corners of the contract, without consideration of extrinsic evidence.” *Huml v. Vlazny*, 2006 WI 87, ¶52, 293 Wis. 2d 169, 716 N.W.2d 807.

¶6 Here, the subject document was entitled “Stipulation of Dismissal with Prejudice and Order – American Fab, Inc.” and it was signed by Meinhardt and an “authorized signer” for American Fab. Further, the text of the stipulation provided:

Pertaining to Defendant American Fab, Inc., the above captioned matter having been fully compromised and settled, it is hereby stipulated by and between the parties (Nathan Meinhardt and American Fab, Inc.) hereto that this matter is dismissed with prejudice and without further cost to either party. The Clerk of the aforementioned Court is hereby authorized and directed to dismiss said action with prejudice and without cost to either party.

Based on the stipulation's unambiguous language, the agreement for dismissal was between Meinhardt and American Fab only.

¶7 Because the circuit court erred when it dismissed Strobel based on this stipulation, that part of the order dismissing Strobel is reversed and the matter is remanded to the circuit court to determine Meinhardt's motion for a default judgment against Strobel. We note, without deciding, that if the court grants Meinhardt a default judgment, the amount he accepted to settle his claim with American Fab *may* be relevant to the damages sought against Strobel, regardless of any nondisclosure language in the settlement agreement.

By the Court.—Order reversed and cause remanded with directions.

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

