

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 7, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0451

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PROFESSIONAL PEST CONTROL,

Plaintiff-Respondent,

v.

TONY SHOMBERG,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
SARAH B. O'BRIEN, Judge. *Affirmed.*

SUNDBY, J. This is an appeal¹ from a small claims judgment. The defendant-appellant, Tony Shomberg, owned a number of residential rental properties to which plaintiff-respondent, Professional Pest Control (PPC), provided monthly pest control services. PPC terminated its services in January 1992 because Shomberg failed to make timely payments. However, beginning in September 1992, PPC resumed providing services to Shomberg. PPC sent

¹ This appeal is decided by one judge pursuant to § 752.31(2)(a), STATS. "We" and "our" refer to the court.

monthly statements itemizing the services performed until the services were terminated for nonpayment in August 1993. At that time, there was a balance due of \$3,308.39.

Shomberg testified that he asked Richard J. Freye, PPC's president, to do some special work for him and that Freye agreed to do so if Shomberg would make payments on the overdue obligations. Shomberg testified that he did not open or look at the monthly statements he received from PPC although he did make some payments corresponding to the amounts stated in the monthly statements.

Freye testified that Shomberg called him in September 1992 and asked him to clear up some pest problems in his apartment buildings. Freye testified that he told Shomberg he would resume servicing his apartment buildings and perform special services on two conditions: First, Shomberg would be placed on a monthly service plan, and second, Shomberg would make monthly payments on the outstanding obligation. He testified that Shomberg agreed to make a monthly payment of \$250. Plaintiff's office manager testified that this was her understanding of the agreement as related to her by Freye.

Shomberg testified that he told Freye he would make some payments on the past-due accounts if PPC would spray specific apartments as "one-shot jobs." Shomberg claimed that PPC resumed monthly services without his knowledge and billed him for those services. He testified that he made it clear to Freye that he did not want to continue the contract for monthly services. He argues that the trial court's decision is unfair because he should not have to pay for services that he did not request or agree to.

The trial court found Freye to be the more credible witness. When the trial court acts as the fact finder, it is the ultimate arbiter of the credibility of the witnesses. *Plesko v. Figgie, Int'l*, 190 Wis.2d 765, 776, 528 N.W.2d 446, 450 (Ct. App. 1994). The trial court, not this court, decides what inferences may be drawn from the testimony of the witnesses. *Id.* at 777, 528 N.W.2d at 450.

The trial court also stated that, "[a] couple of things other than the testimony of the parties leads me to think that Mr. Freye's account is more

credible." The court found from Shomberg's testimony that on occasion he did look at the monthly bills. The court found incredible Shomberg's testimony that over an extended period of time he never opened a bill from PPC. The court said: "That ... defies human nature, I think." Shomberg offered nothing but his testimony to corroborate his version of the agreement. If, as he testified, he didn't open the bills he was receiving monthly from PPC, he is estopped from arguing that he has no liability for those bills.

By the Court.--Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.