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**DISTRICT IV**

September 19, 2014

To:

Hon. Richard G. Niess  
Circuit Court Judge  
215 South Hamilton, Br 9, Rm 5103  
Madison, WI 53703

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You are hereby notified that the Court has entered the following opinion and order:

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2013AP2141

Koua Vang v. Daren E. Maron, Melquiades M. Virrueta, and Cairie Virrueta (L.C. # 2012CV3754)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Koua Vang appeals the circuit court's judgment dismissing Vang's complaint for breach of contract against Melquiades and Cairie Virrueta.<sup>1</sup> Based upon our review of the briefs and

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<sup>1</sup> Vang also raises arguments as to another named defendant, Daren Maron. However, the record does not contain an appealable order or judgment as to Maron. We therefore lack jurisdiction to address Vang's arguments as to Maron or to address Maron's challenge to the circuit court's oral ruling that Vang is entitled to a judgment of \$1,500 plus costs against Maron. *See* WIS. STAT. § 808.03(1) (2011-12).

record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>2</sup> We summarily affirm.

Vang sued the Virruetas for breach of contract for failing to transport a four-car garage structure to Vang's residence. Vang moved for default judgment on the grounds that the Virruetas' pro se answer did not comply with the pleading rules and that the Virruetas failed to appear at a scheduling conference. The circuit court held a motion hearing and denied Vang's motion, determining that Vang had not established grounds for a default judgment. After a trial to the court, the court entered a judgment dismissing Vang's complaint.

Vang contends that he was entitled to a default judgment against the Virruetas because the Virruetas' pro se answer failed to comply with statutory requirements and local court rules. Vang argues that the Virruetas' first attempted answer lacked a signature, date, caption, designation, and title, and thus could not be accepted for filing. Vang then contends that the Virruetas' second attempted answer was untimely because it was not within twenty days of the complaint, and should not be considered a timely amended answer because the first attempted answer was insufficient for filing. *See* WIS. STAT. § 802.06(1) (answer must be served within twenty days of service of complaint); WIS. STAT. § 801.14(4) (all papers must be filed within reasonable time after service); WIS. STAT. § 802.09(1) (pleading may be amended once as a matter of course within six months of filing of complaint). Vang also contends that the second attempted answer was insufficient because, although it was signed, it still did not contain a caption, title, or designation. Vang argues that he was entitled to a default judgment because the

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Virruetas did not file an answer sufficient to join any issue of law or fact, and because the Virruetas failed to appear at the scheduling conference. We are not persuaded.

A circuit court has discretion to grant a default judgment if no issue of law or fact is joined and the time for joining issue has expired. WIS. STAT. § 806.02(1); *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶9, 242 Wis. 2d 153, 624 N.W.2d 375. Default judgment may also be granted based on a party's egregious conduct in failing to follow scheduling orders. See *Smith v. Golde*, 224 Wis. 2d 518, 526, 592 N.W.2d 287 (Ct. App. 1999) ("To enter a default judgment, the trial court must determine that the 'noncomplying party's conduct is egregious or in bad faith and without a clear and justifiable excuse.'" (quoted source omitted)).

Here, the circuit court denied the motion for a default judgment because the court determined that the technical defects in the pro se amended answer were insufficient to warrant a default judgment. See WIS. STAT. § 802.02(5)(a) ("No technical forms of pleading or motions are required."). The court recognized that, despite the technical defects, both answers were, in fact, accepted for filing, and thus the amended answer was timely. The court determined that the amended answer substantively complied with the pleading requirements because it was signed, responded to the allegations in the complaint, and framed the issues to be tried. The court also explained that missing one scheduling conference was not the sort of conduct that would support a default judgment. Additionally, the court noted that default judgments are highly disfavored in the law. See *Casper v. American Int'l S. Ins. Co.*, 2011 WI 81, ¶38, 336 Wis. 2d 267, 800 N.W.2d 880. Thus, the court properly exercised its discretion by denying Vang's motion for a default judgment. See *Howard v. Duersten*, 81 Wis. 2d 301, 305, 260 N.W.2d 274 (1977) (court properly exercises its discretion if it relies on the proper facts and law and reaches a reasonable determination).

Next, Vang argues that he is entitled to a judgment against the Virruetas because, Vang asserts, the facts in Vang's complaint trigger application of the unfair trade practices laws under WIS. STAT. § 100.20(1t). However, as the circuit court explained, Vang did not plead a statutory claim in his complaint, but rather pled only a breach of contract claim. We discern no erroneous exercise of the circuit court's discretion in denying Vang's request to assert that claim for the first time several days before trial. See *Hess v. Fernandez*, 2005 WI 19, ¶12, 278 Wis. 2d 283, 692 N.W.2d 655 (“[A] decision by the circuit court to grant leave to amend a complaint is discretionary.”).

Finally, Vang asserts that he is entitled to damages for breach of contract because the Virruetas offered to move the garage for Vang for \$5,000 but failed to do so. However, Vang also concedes that the evidence at trial established that negotiations between the Virruetas and Vang had broken down and no contract was ever signed. Ultimately, Vang has presented no basis to disturb the circuit court's finding that there was no contract between Vang and the Virruetas for delivery of the garage.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*