



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

April 27, 2016

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

David A. Bordow
Bordow Law Offices
219 N. Milwaukee St., Suite 2B
Milwaukee, WI 53202-5818

Thomas M. Devine
Devine Hahn S.C.
840 Lake Ave., Ste. 300
Racine, WI 53403-1566

Christianna L. Finnern
Winthrop Weinstine
Cailla Tower, Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629

Frederic Gordon
Gordon & Holmes
223 West Date St.
San Diego, CA 92101

Lance S. Grady
Grady, Hayes & Neary, LLC
N14 W23777 Stone Ridge Dr., Ste. 200
Waukesha, WI 53188-1140

Kari L. Gunderman
Daniel A. Haws
Murnane Brandt
30 E. Seventh St., Ste. 3200
Saint Paul, MN 55101

Patrick M. Harvey
Whyte Hirschboeck Dudek, S.C.
555 E. Wells St., Ste. 1900
Milwaukee, WI 53202

Jay E. Heit
Herrick & Hart, S.C.
P.O. Box 167
Eau Claire, WI 54702-0167

Mark M. Leitner
Pia, Anderson, Dorius, Reynard & Moss
400 N. Broadway, Ste. 303
Milwaukee, WI 53202-5510

Bradley W. Matthiesen
Matthiesen, Wickert & Lehrer, S.C.
P.O. Box 270670
Hartford, WI 53027-0670

Krista G. LaFave Rosolino
Arthur P. Simpson
Simpson & Deardorff, S.C.
P.O. Box 2183
Milwaukee, WI 53201-2183

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

2014AP1973

Club Cagney, Inc. v. Quality Egg LLC (L.C. #2012CV1074)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Primera Food Corp. appeals from a circuit court order enforcing a settlement agreement. Primera maintains that it is not bound by the agreement because it did not sign it. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We reverse the order of the circuit court and remand for further proceedings.

In 2012, Club Cagney, Inc. d/b/a Baker Street Restaurant and Pub (“Baker Street”) commenced a lawsuit, generally alleging that it suffered monetary damages as a result of its having served contaminated eggs at its restaurant. It sued Primera, an egg products distributor, and Reinhart FoodService, LLC, a food products distributor, among others, for breach of warranty.

Primera tendered a defense to its insurer, Acuity Mutual Insurance Company, who accepted it and hired Attorney Lance Grady to represent Primera. Grady filed Primera’s answer, asserting cross-claims against Acuity and Reinhart for indemnity and contribution. When Acuity subsequently sought a declaration that it did not owe Primera coverage, Grady notified Primera that, due to a conflict of interest, he could not represent it in the coverage dispute. At that point, Acuity retained alternative counsel to represent it on claims relating to coverage. The case

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

proceeded to mediation, and certain parties were able to settle their disputes. However, one issue left unresolved was Baker Street's claim for attorney fees and costs against Primera. On the morning of mediation, the circuit court informed the parties that the claim was not covered by Acuity's policy. Consequently, Acuity did not pay to settle the claim, and Primera did not sign the settlement agreement.

When the parties circulated a proposed order based upon the settlement agreement, Grady signed it. However, Primera's coverage counsel did not and instead sought to modify the language of the order so that Primera could maintain its cross-claims against Acuity and Reinhart, which related to Baker Street's claim for attorney fees and costs. Reinhart objected and moved the circuit court to enforce the settlement agreement. Following a hearing on the matter, the court granted the motion and dismissed all claims except Baker Street's claim against Primera. This appeal follows.

In this case, we are asked to determine whether a settlement agreement is enforceable under WIS. STAT. § 807.05. Section 807.05 provides that “[n]o agreement ... between the parties or their attorneys, in respect to the proceedings in an action ... shall be binding unless made in court ... or made in writing and subscribed by the party to be bound thereby or the party's attorney.” The interpretation and application of a statute to a set of facts presents a question of law that we review de novo. *Acuity v. Albert*, 2012 WI App 87, ¶8, 343 Wis. 2d 594, 819 N.W.2d 340.

Reviewing the settlement agreement at issue here, we conclude that it is not enforceable as to Primera. That is because Primera did not sign the agreement or otherwise indicate that it “subscribed” to it. See *Laska v. Laska*, 2002 WI App 132, ¶12, 255 Wis. 2d 823, 646 N.W.2d

393 (“[T]he plain meaning of the term ‘subscribe’ [in WIS. STAT. § 807.05] requires that a party’s assent or approval be formalized in some way on the document itself.”). Thus, the agreement was never formalized in the manner required by § 807.05.

Grady’s signature on the subsequent proposed order does not alter our analysis. As noted by Primera, following mediation, no claims remained against it that were covered by Acuity’s policy. Accordingly, Grady no longer had the responsibility to defend Primera against Baker Street’s claim for attorney fees and costs. *See Society Ins. v. Bodart*, 2012 WI App 75, ¶13, 343 Wis. 2d 418, 819 N.W.2d 298 (“An insurer’s duty to defend ends after all at least arguably covered claims are settled and dismissed.”). Likewise, he no longer had the authority to release Primera’s corresponding cross-claims. For these reasons, we reverse the order of the circuit court and remand for further proceedings. On remand, Primera may pursue its cross-claims against Acuity and Reinhart, who remain in the case.²

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed and the cause remanded, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

² We do not address the merits of Primera’s cross-claims in this appeal.