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DISTRICT II

December 20, 2017

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

2017AP897-FT	Talmer Bank and Trust v. Donna L. Sardina (L.C. #2010CV596)
2017AP898-FT	Talmer Bank and Trust v. Donna L. Sardina (L.C. #2010CV596C)
2017AP899-FT	Talmer Bank and Trust v. Donna L. Sardina (L.C. #2010CV596D)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In these consolidated cases, Donna L. Sardina appeals from orders denying her motions to dismiss in part and/or for partial judgment. She contends that the omission of postjudgment

interest from multiple garnishments barred Talmer Bank and Trust from attempting to collect postjudgment interest against her. Pursuant to a presubmission conference and this court's order of May 31, 2017, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2015-16).¹ Upon review of those memoranda and the record, we summarily affirm the orders. WIS. STAT. RULE 809.21.

In 2009, Sardina guaranteed a promissory note for her husband's business. When the business defaulted, the circuit court entered a judgment against her for the note's balance plus interest. Sardina neither appealed the judgment nor otherwise challenged the award of interest.

Several years later, Talmer filed multiple garnishments against Sardina in an attempt to recover funds subject to the judgment. Two of those garnishments filed in July 2016 omitted the postjudgment interest due. Sardina did not respond to the July 2016 garnishments, which eventually either expired or were dismissed.

In October 2016, Talmer filed three more garnishments against Sardina. This time, they included the postjudgment interest due. Sardina answered all three garnishments by objecting that "no post-judgment interest is due." Talmer, in turn, objected to Sardina's answers.

Sardina subsequently filed motions to dismiss in part and/or for partial judgment. She claimed that Talmer's omission of postjudgment interest from the July 2016 garnishments barred it from attempting to collect postjudgment interest against her because (1) the omission constituted a judicial admission and (2) the doctrines of claim and issue preclusion applied.

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

Following a hearing on the matter, the circuit court entered orders denying the motions. These appeals follow.

On appeal, Sardina renews the arguments made in her motions. We begin with her assertion that Talmer's omission of postjudgment interest from the July 2016 garnishments constituted a judicial admission.

A judicial admission is an express waiver, made in court by a party or a party's attorney, conceding for the purposes of trial the truth of some alleged fact. See *Fletcher v. Eagle River Mem'l Hosp., Inc.*, 156 Wis. 2d 165, 175, 456 N.W.2d 788 (1990). It has the effect of a confessory pleading in that the fact is then taken as true. *Id.* Determining whether a party or a party's attorney has made a binding judicial admission is committed to the circuit court's sound discretion. See *Olson v. Darlington Mut. Ins. Co.*, 2009 WI App 122, ¶5, 321 Wis. 2d 125, 772 N.W.2d 718. We review discretionary decisions under the deferential erroneous exercise of discretion standard. *Id.*

Here, the circuit court denied Sardina's motions, in part, because it believed that the omission of postjudgment interest from the July 2016 garnishments was "an honest mistake." Judicial admissions "must be clear, deliberate, and unequivocal." *Fletcher*, 156 Wis. 2d at 174. In other words, they are something that a party or a party's attorney should do intentionally, not inadvertently. Aside from the omission of postjudgment interest in the July 2016 garnishments, there is no indication that Talmer intended to excuse Sardina from her interest obligation under the judgment. Accordingly, we are satisfied that the circuit court properly rejected Sardina's argument for a judicial admission.

Sardina next contends that the doctrines of claim and issue preclusion bar Talmer from attempting to collect postjudgment interest against her. In making this argument, Sardina suggests that the issue was litigated in the July 2016 garnishments and her failure to respond to them amounted to a default judgment excluding any postjudgment interest due.

Claim preclusion provides that a judgment is conclusive in all subsequent actions between the same parties or their privies involving all matters litigated, and all matters that could have been litigated, in the proceeding leading to the judgment. *State v. Parrish*, 2002 WI App 263, ¶14, 258 Wis. 2d 521, 654 N.W.2d 273. Issue preclusion, meanwhile, bars a party from relitigating a factual or legal issue that was actually litigated in an earlier action. *Id.* Whether either doctrine applies to bar an action is a legal question that we review de novo. *Id.*

We are not persuaded that the doctrines of claim and issue preclusion assist Sardina in this case. To begin, there is no judgment that she can cite for preclusive effect. Talmer never sought or obtained a default judgment on the July 2016 garnishments, and the only judgment entered by the circuit court required Sardina to pay the note's balance plus interest. Moreover, the issue of postjudgment interest was not actually litigated in the July 2016 garnishments. Rather, it was actually litigated in the earlier judgment, which Sardina chose not to appeal. Accordingly, there is nothing to bar Talmer from attempting to collect postjudgment interest against her.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals