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DISTRICT IV

February 11, 2021

To:

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

2019AP1550

Paul Bugar Trucking, Inc. v. Rem-Jem Dairy, LLC
(L.C. # 2018CV63)

Before Blanchard, Graham, and Nashold, JJ.

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).

Paul Bugar Trucking, Inc., appeals an order granting summary judgment to Rem-Jem Dairy, LLC, in Bugar's action for unpaid invoices for concrete services. 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 (2017-18).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

In April 2018, Bugar brought this action against Rem-Jem seeking a money judgment for unpaid concrete services. Bugar asserted that Rem-Jem had failed to pay invoices for concrete services Bugar performed for Rem-Jem between August 2003 and March 2017. Rem-Jem denied liability for any unpaid invoices. Bugar moved for summary judgment and Rem-Jem opposed the motion. Rem-Jem argued that the unpaid invoices belonged to Richard Meyer individually, but that Bugar had failed to name Meyer in the complaint. Rem-Jem argued that it had paid on all of the invoices for services provided to it rather than to Meyer. Rem-Jem also argued that Bugar had signed lien waivers that precluded it from pursuing damages against Rem-Jem.

The circuit court denied summary judgment to Bugar and granted summary judgment to Rem-Jem. The court determined that the undisputed facts established that Rem-Jem is not liable on any unpaid invoices.

We independently review a circuit court's order on summary judgment, using the same methodology as the circuit court. *Malzewski v. Rapkin*, 2006 WI App 183, ¶11, 296 Wis. 2d 98, 723 N.W.2d 156. The purpose of summary judgment is “to avoid trials where there is nothing to try.” *Rollins Burdick Hunter of Wis., Inc. v. Hamilton*, 101 Wis. 2d 460, 470, 304 N.W.2d 752 (1981). Summary judgment is properly granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

Bugar argues that there are disputed issues of material fact that preclude summary judgment related to Bugar's accounting of the payments Rem-Jem and Meyer made to Bugar and whether equitable estoppel applies to prevent Rem-Jem from arguing that Meyer, rather than Rem-Jem, is liable for unpaid invoices. Bugar also argues that there are genuine issues of

material fact related to the lien waivers that Bugar signed. However, Bugar merely asserts in conclusory fashion that facts are in dispute, and neither sets forth what those facts are nor provides any citations to the record to assist this court in locating any facts in dispute.² “The ultimate burden ... of demonstrating that there is sufficient evidence ... to go to trial at all (in the case of a motion for summary judgment) is on the party that has the burden of proof on the issue that is the object of the motion.” *Transportation Ins. Co. v. Hunzinger Constr. Co.*, 179 Wis. 2d 281, 290, 507 N.W.2d 136 (Ct. App. 1993). Bugar has failed to adequately develop an argument with proper citations to the record to show that the circuit court erred by determining that there is no genuine issue of material fact that would require a trial, and we affirm the circuit court on this basis. See *League of Women Voters v. Madison Cmty. Found.*, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 707 N.W.2d 285 (appellant “must present developed arguments if it desires this court to address them”); *Tam v. Luk*, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990) (we do not consider arguments unsupported by proper citations to the record; we have no duty to “sift and glean” the record for facts to support the appellant’s arguments).

Therefore,

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

² To the extent that Bugar identifies facts and provides citations to the record in the argument section of its reply brief, we conclude that those arguments are improperly asserted for the first time in reply, see *Bilda v. County of Milwaukee*, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661, and also that the arguments remain insufficiently developed for this court to address them, see *League of Women Voters v. Madison Cmty. Found.*, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 707 N.W.2d 285.

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

Sheila T. Reiff
Clerk of Court of Appeals