

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).² We affirm.

In 2017, David N. Ruedinger, a certified public accountant (CPA), was hired at the request of West Pointe Bank to assist Jay Manufacturing. Jay was having severe financial problems. West Pointe had loaned Jay over ten million dollars, Jay's corporate checking account at West Pointe had a negative balance that rose as high as \$900,000, and Jay was operating without a CFO to assist with necessary financial reporting to its creditors.

Jameson was a five-percent owner and the CEO of Jay. In the summer of 2017, Jay was manufacturing parts for G.S. Engineering (GSE). GSE was placing regular orders with Jay in large, predictably sized lots and was reliably paying its invoices, which generally totaled \$89,222.

Ruedinger is the sole shareholder of Buckingham. Through Buckingham, he wrote Jay three separate checks, each in the amount of \$86,126, for a total of \$258,378. In August and September 2017, GSE paid three \$89,222 invoices by check to Jay, for a total of \$267,666. The checks were deposited into Jay's corporate account. Jay repaid Buckingham a total of \$106,922.

Buckingham sued Jameson individually, on the theory that they had entered into an oral factoring contract by which Buckingham had purchased from Jay three of GSE's accounts receivable, each worth \$89,222, at the discounted price of \$86,126 each. Buckingham's claims against Jameson included conversion and theft. Buckingham asserted that Jameson converted

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

funds by depositing the checks from GSE into Jay's corporate account rather than immediately signing them over to Buckingham by endorsement.

Jameson filed an answer and affirmative defenses denying that the parties had an oral factoring contract, and alleging that Buckingham sued the wrong party and failed to include indispensable parties. Jameson also alleged that the suit was frivolous and barred by the statute of frauds.

At a bench trial, Ruedinger testified that Buckingham formally purchased three distinct accounts receivable from Jay at a slightly discounted price as a factored purchase. He testified that Buckingham was not interested in making an unsecured loan to Jay given Jay's dire financial situation and the fact that West Pointe already had liens on all of Jay's assets.

Jameson testified that he understood Buckingham to be providing "a cash flow loan," explaining that Buckingham would "infuse cash" and Jay would use "future GS ... receivables to pay him off." Jameson testified that Jay would pay Buckingham back as funds were available, as it did for the first invoice. He characterized it as "very much a moving target," explaining that they had weekly meetings about cash flow and decided on "a week by week basis on what we could pay, which vendors we could pay, what obligations we could take care of." Jameson testified that he had always deposited customers' checks into Jay's corporate account and had "[n]ever" endorsed a check belonging to Jay over to a third party.

After closing arguments, the circuit court dismissed Buckingham's claims, finding that Ruedinger's testimony was not credible, that the parties "did not have an agreement as there was no meeting of the minds," and that Buckingham failed to meet its burden of proof on all claims. The court found that Buckingham's evidence "strain[ed] credibility," explaining:

It strains credibility that Mr. Ruedinger through Buckingham Real Estate Ventures would hand over 250-plus-thousand-dollars to Jay Manufacturing without any type of written agreement as to the terms that either of the two entities understood. There was much testimony about the purchase of a specific asset of Jay Manufacturing and yet no one from Jay Manufacturing signed an agreement with Buckingham Real Estate Ventures to memorialize that purchase.

It strains credibility that a qualified certified public accountant with access to all the financial documentation of Jay Manufacturing, who knew that Jay Manufacturing had a minus \$10 million worth, that they would purchase accounts receivable without a written document knowing that there are \$10 million ahead of him on any way to collect if in fact this purchase agreement failed.

It strains credibility to me that a CPA with 40 years of experience who was hired as an independent contractor to come in and give financial advice to a company would try to enter into some form of an agreement, not in writing, when he is in the position of acting as the financial advisor to that company.

It further strains credibility that having written checks in the amount of over \$250,000 to Jay Manufacturing that when none of this came out the way the plaintiff expected that the remedy was chosen to sue Matthew Jameson personally even though the allegation is that the sale of the specific asset was an asset of Jay Manufacturing even though it was never in writing.

Parties both agree that they didn't want GS Engineering to know about this factoring purchase, so if Mr. Jameson had endorsed the checks to Buckingham Real Estate Ventures I think GS would know it right away, so I mean that kind of defeats the purpose of the argument that, well, we didn't want anybody to know.

No one here knows what was purchased because there was no writing memorializing what the purchase was, so we don't know what the terms of any agreement was. I don't know, I haven't been able to hear from both Mr. Ruedinger and Mr. Jameson that there was a meeting of the minds

The circuit court denied Buckingham's motion to reconsider. Buckingham appeals.

“When the [circuit] court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and of the weight to be given to each witness's testimony.” *Lessor v.*

Wangelin, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998). We must uphold the circuit court’s findings of fact unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2) and (4).

Here, the circuit court’s credibility findings together with ample evidence adduced at trial support its ultimate conclusions. It properly determined that there was no meeting of the minds between Buckingham and Jameson and thus, no enforceable contract. The court explained at length why Ruedinger’s testimony about the oral contract “strain[ed] credibility,” and this finding is not clearly erroneous. The court’s credibility finding is well-supported by the absence of any written contract despite Ruedinger’s wealth of experience as an accountant and his familiarity with Jay’s dire financial straits. Further, as the court noted, Jameson deposited the GSE checks into Jay’s corporate account, defeating Buckingham’s strained conversion and theft claims. Additionally, it defies common sense to believe that the parties had a clear agreement that Jay would endorse GSE’s checks over to Buckingham given the undisputed testimony that neither Ruedinger nor Jameson wanted GSE to know about Jay’s financial problems. Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals