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**DISTRICT II**

December 8, 2021

*To:*

Hon. Michael O. Bohren  
Circuit Court Judge  
Electronic Notice

Monica Paz  
Clerk of Circuit Court  
Waukesha County  
Electronic Notice

Thomas J. Binder  
Electronic Notice

David J. Turiciano  
Electronic Notice

Brian Bautz  
Electronic Notice

Linda Bautz  
W297 S3185 Boettcher Rd.  
Waukesha, WI 53189

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

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2020AP1387

Munson, Inc. v. Brian Bautz (L.C. #2016CV829)

Before Gundrum, P.J., Reilly and Grogan, 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).**

Brian and Linda Bautz (hereafter Bautz) appeal pro se from a circuit court order enforcing a settlement agreement with Munson, Inc. and Infinity Exteriors, Inc. 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 (2019-20).<sup>1</sup> We affirm because the circuit court properly enforced the settlement agreement.

Munson and Infinity Exteriors sued Bautz to recover amounts due for property improvements. Bautz, who was represented by counsel in the circuit court and during mediation, counterclaimed that Munson damaged his property while installing a fence and Munson's insurer, Acuity Insurance, should pay Infinity for the work it did to remedy the damage Munson caused. After settling in court-ordered mediation<sup>2</sup> and signing a settlement agreement, Acuity complied with the agreement by tendering its required payment to Bautz's counsel's trust account. Bautz, however, failed to comply with the agreement by making his required payments to Munson and Infinity. Thereafter, Munson and Infinity moved the circuit court to enforce the agreement and impose the remedy for Bautz's default: dismissal of Bautz's counterclaim and judgment against Bautz and in favor of Munson and Infinity in the amounts specified in the agreement. Bautz opposed enforcing the settlement agreement and argued that it should be invalidated on the following grounds:

[T]he "Agreement" was substandard as prepared because it was sloppily handwritten, difficult at best to read and follow, and especially to understand the terms and conditions which could or would result if it were to become a judgment. Bautz was represented by counsel, yet auspiciously, his counsel's signature does not appear anywhere on the "Agreement" nor does the "Agreement" mention that Bautz was represented by counsel, nor that Bautz had read or understood the "Agreement."

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

<sup>2</sup> The mediation was held in Bautz's counsel's office, and his counsel attended the mediation.

In his supporting affidavit,<sup>3</sup> Brian Bautz averred that his counsel forced him to sign the agreement which did not reflect what he understood from his counsel about the settlement terms, he did not understand the agreement, and the handwritten inserts should have been incorporated into a typed form of the agreement for all mediation participants to review, approve and sign.

After a hearing, the circuit court rejected Bautz's challenges and concluded that the agreement was enforceable. The court reviewed the agreement's terms, including the default provisions, and concluded that they were set forth "clearly and apparently accurately" and reflected the parties' negotiations during mediation. The agreement consisted of an offer, acceptance and consideration. The court found that Acuity's \$5,250 payment to Bautz was intended for Bautz's counterclaim. When Bautz defaulted on the agreement by not making his required payments to Munson and Infinity, he triggered the default provision that required dismissal of his counterclaim and return to Acuity of its \$5,250 payment. The court determined that to the extent Bautz had complaints about how his counsel handled the mediation, those were matters between attorney and client and did not undermine the agreement.

As a threshold matter, we observe that Bautz's appellant's brief cites little if any relevant legal authority for the propositions it asserts. Even though Bautz is pro se, we cannot "abandon our neutrality to develop arguments" for him. See *Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82; see also *State v. Pettit*,

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<sup>3</sup> We reject Bautz's claim that the circuit court did not fully consider his affidavit supporting his request to invalidate the settlement agreement. The affidavit's weight was for the circuit court to determine. See *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 (weight and credibility are for the circuit court to determine).

171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (“We cannot serve as both advocate and judge.”). We do not address inadequately briefed issues. *Id.* at 646.

On appeal, Bautz argues that he did not have an opportunity to meaningfully participate in the mediation process. He also complains about the mediator, including that the mediator did not insure that he understood the proceedings. Bautz cites no legal authority for his complaints about the mediator<sup>4</sup> and does not offer citations to the record as required by WIS. STAT. RULES 809.19(1)(d) and (e) to show that he raised these issues in the circuit court.<sup>5</sup> “An appellate court is improperly burdened where briefs fail to properly and accurately cite to the record.” *Hedrich v. Bd. of Regents*, 2001 WI App 228, ¶1 n.2, 248 Wis. 2d 204, 635 N.W.2d 650; *Roy v. St. Lukes Med. Ctr.*, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256 (“We have no duty to scour the record to review arguments unaccompanied by adequate record citation.”). We do not address these inadequately briefed issues. *Pettit*, 171 Wis. 2d at 646.

Bautz next argues that the settlement agreement is not sufficiently definite to be enforceable. Settlement agreements are governed by WIS. STAT. § 807.05 and basic contract law applies (offer, acceptance and consideration required). *See Paul R. Ponfil Tr. v. Charmoli*

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<sup>4</sup> Bautz’s reliance upon WIS. STAT. § 802.12(1)(e) does not provide any authority for this proposition. That statute provides:

“Mediation” means a dispute resolution process in which a neutral 3rd person, who has no power to impose a decision if all of the parties do not agree to settle the case, helps the parties reach an agreement by focusing on the key issues in a case, exchanging information between the parties and exploring options for settlement.

<sup>5</sup> Citations to the appendix to the brief are not sufficient and do not fulfill the requirement of citations to the record. Such citations “do not conform to the rules of appellate procedure because they do not inform the court where the facts he assert may be found in the record.” *See Jensen v. McPherson*, 2004 WI App 145, ¶6 n.4, 275 Wis. 2d 604, 685 N.W.2d 603.

*Holdings, LLC*, 2019 WI App 56, ¶¶15-16, 389 Wis. 2d 88, 935 N.W.2d 308. To be enforceable, “[a] contract must be definite and certain as to its material terms and requirements.” *Id.*, ¶18. “[A] contract is ambiguous when its terms are reasonably or fairly susceptible of more than one construction.” *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990). Construction of a contract, including the determination of whether its terms are ambiguous, is also a legal question we decide de novo. *See id.* “Whether a settlement agreement is binding and enforceable is a question of law we review de novo.” *Paul R. Ponfil Tr.*, 389 Wis. 2d 88, ¶13.

We conclude that the agreement complied with WIS. STAT. § 807.05. Section 807.05 provides:

No agreement, stipulation, or consent between the parties or their attorneys, in respect to the proceedings in an action or special proceeding shall be binding unless made in court or during a proceeding conducted under [WIS. STAT. §§] 807.13 or 967.08 and entered in the minutes or recorded by the reporter, or made in writing and subscribed by the party to be bound thereby or the party’s attorney.

The agreement was “made in writing and subscribed by the party to be bound thereby [Bautz].”<sup>6</sup>

We further conclude that the terms of the agreement are set forth clearly and unambiguously. The agreement states that the parties settled in mediation, specifies the amounts to be paid by the parties, the date by which payments were to be made, where payments had to be made, the steps to be taken if the required payments were made, and the remedy if a party

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<sup>6</sup> Bautz cites no authority for his claim that his counsel also had to sign the agreement for it to be enforceable. WISCONSIN STAT. § 807.05 requires that a settlement be “made in writing and subscribed by the party to be bound thereby *or* the party’s attorney.” (Emphasis added.)

defaults. The agreement also contains Bautz’s representation that he had his spouse’s approval to enter into the agreement along with Bautz’s signature affirming that the “[a]greement is final and binding upon any and all parties to this case and is enforceable in any court of law....” The elements of a contract are present and satisfied: offer, acceptance, consideration (the parties agreed to various payments to resolve their various claims).<sup>7</sup> Bautz’s reliance on *Paul R. Ponfil Tr.* is unavailing. Unlike the agreement at issue in *Paul R. Ponfil Tr.*, 389 Wis. 2d 88, ¶¶22, 25, the agreement in this case does not reserve for a subsequent document additional terms.

Finally, Bautz argues that the agreement should have been invalidated because he received poor legal representation. The circuit court addressed this issue and concluded that any dispute between Bautz and his counsel did not invalidate the agreement. Bautz’s appellate briefs do not convince us that the circuit court erred in rejecting this claim.

We conclude that the circuit court did not err in enforcing the settlement agreement.<sup>8</sup>

Upon the foregoing reasons,

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<sup>7</sup> Bautz cites no authority for the proposition that the settlement agreement had to set forth how and why the parties settled as they did. We do not address inadequately briefed issues. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

<sup>8</sup> To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*