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**DISTRICT II**

January 19, 2022

To:

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

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2021AP259

Peter Katris v. Tom Butzen (L.C. #2019CV190)

Before Gundrum, P.J., Neubauer 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).**

Peter Katris appeals from a circuit court order dismissing his claim for breach of contract against Tom Butzen after the court granted Butzen's summary judgment motion. 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.

Katris filed this action, alleging breach of contract, based on a two-sentence document drafted by Butzen, signed by both parties, and dated July 13, 2018. The document stated:

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

This is a binding contract between Tom Butzen and Peter Katris in regards to the sale of 101 North Main St in Fond du Lac, WI 54935. Within 24 hours of the existing tenants eviction Tom Butzen will sell the property located at 101 North Main St in Fond du Lac, WI to Peter Katris in the amount of \$210,000.00.

When the parties signed this document, an eviction action brought by Butzen against the then-current tenants at 101 North Main Street in Fond du Lac was pending. The eviction action subsequently was dismissed per stipulation through a mediated dismissal and, thus, no eviction judgment was granted.

Butzen sold the property to a third party, and Katris subsequently filed a complaint alleging breach of contract against Butzen.

After Katris brought this action, Butzen moved for summary judgment. The circuit court granted the motion, finding that, as a matter of law, Butzen did not breach the contract because there was no eviction judgment. Katris appeals.

Summary judgment is properly granted when the record reflects the absence of a genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). This court reviews summary judgment decisions de novo, applying the same standards employed by the circuit court. *See id.* The summary judgment methodology is well established and need not be exhaustively repeated here. *See, e.g., Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶¶20-24, 241 Wis. 2d 804, 623 N.W.2d 751. We view the materials “in the light most favorable to the party opposing the motion.” *Id.*, ¶23. A party opposing summary judgment, however, “may not rest upon the mere allegations or denials of the pleadings but ... must set forth specific facts showing that there is a genuine issue for trial.” WIS. STAT. § 802.08(3).

The interpretation of a contract is a question of law that we review de novo. *Ford Motor Co. v. Lyons*, 137 Wis. 2d 397, 460, 405 N.W.2d 354 (Ct. App. 1987). When construing a contract, summary judgment is proper when the terms of the contract are unambiguous and the intent of the parties is clear. See *Energy Complexes, Inc. v. Eau Claire County*, 152 Wis. 2d 453, 466-67, 449 N.W.2d 35 (1989); *Lyons*, 137 Wis. 2d at 460 (“Where the terms of a contract are plain and unambiguous, we will construe it as it stands.”). We do not impose “obligations that the parties did not undertake.” *Frost ex rel. Anderson v. Whitbeck*, 2002 WI 129, ¶17, 257 Wis. 2d 80, 654 N.W.2d 225. “Whether a contract is ambiguous is itself a question of law.” *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990).

Katris argues that the purported agreement plainly reflects the parties’ intention that Butzen would sell the property to Katris within twenty-four hours of the tenants’ removal—whether by eviction or voluntarily. Katris further argues that the document is ambiguous.

We disagree. The parties’ purported agreement did not impose an obligation on Butzen to sell the property to Katris, as it is undisputed that no eviction took place. As the circuit court properly concluded, the parties’ unequivocal use of “eviction” means a legal proceeding—the very proceeding that was taking place when the document was signed. The circuit court aptly noted that an eviction, or the denial of one, has legal (and likely financial) consequences for the owner of the property, consequences that may or may not be comparable to the upshot of a tenant’s departure. As defined in Black’s Law Dictionary, “eviction” means: “Dispossession by process of law; the act of depriving a person of the possession of land or rental property which he has held or leased. Act of turning a tenant out of possession, either by re-entry or legal proceedings, such as an action of ejectment.” *Eviction*, BLACK’S LAW DICTIONARY (6th ed. 1990). WISCONSIN STAT. § 799.40(1) similarly provides that “[a] civil action of eviction may be

commenced by a person entitled to the possession of real property, or by that person’s agent authorized in writing, to remove therefrom any person who is not entitled to either the possession or occupancy of such real property.”

Considering these definitions of “eviction,” the agreement is not ambiguous. By its terms, the agreement to sell the property to Katris was contingent upon the eviction of the then-current tenants. Since no eviction occurred, as evidenced by the stipulated dismissal, Butzen had no obligation to sell the property to Katris. Thus, Butzen did not breach the purported agreement by selling the property to someone other than Katris.

We further note that Katris’ entire argument is premised on his unsupported factual contention that the tenants voluntarily removed themselves from the property prior to its sale. As Butzen points out, the stipulated dismissal agreement states that, in addition to payment for past-due rent, the tenants will continue to pay rent pursuant to the lease. Butzen further notes that Katris has failed to identify *any facts* in the record to support Katris’ repeated statements that the tenants removed themselves. Notably, in reply, Katris has failed to address this factual vacuum. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded); *DNR v. Building & All Related or Attached Structures Encroaching on Lake Noquebay Wildlife Area*, 2011 WI App 119, ¶21, 336 Wis. 2d 642, 803 N.W.2d 86 (same).<sup>2</sup>

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<sup>2</sup> Butzen raises several additional alternative arguments in support of the circuit court’s decision. Prior to the summary judgment, the circuit court rejected Butzen’s challenges to the agreement’s enforceability set forth in his motion to dismiss. Because our conclusion that Butzen did not breach the purported agreement is dispositive, we need not address the parties’ other arguments. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if we resolve an appeal based on one issue, we need not decide the other issues).

(continued)

For the above reasons, we affirm the circuit court's grant of summary judgment to Butzen.

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*

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Butzen asks this court to award fees and costs against Katris on the ground that this appeal is frivolous under WIS. STAT. § 895.044. We deny this motion as insufficiently developed.