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DISTRICT II

May 4, 2022

To:

Hon. Peter L. Grimm
Circuit Court Judge
Electronic Notice

Keith Glaser
Electronic Notice

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Brian D. Hamill
Electronic Notice

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

2020AP2067

John Rom v. Kandu Installations, LLC (L.C. #2019CV175)

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).

Kandu Installations, LLC, and Michael Williams, the sole owner and only member of Kandu, appeal from an order for summary judgment granting monetary judgments in favor of John Rom, and dismissing their counterclaims against Rom.¹ Based upon our review of the

¹ As will be explained, Rom's claims arise from money he indisputably provided to both Kandu and Williams, purportedly as a loan, the bulk of which was never repaid. Williams and Kandu counterclaimed against Rom alleging that he improperly retained property without their permission. Williams and Kandu do not challenge the dismissal of the counterclaims. Indeed, the joint reply brief affirmatively asserts: "All of these issues are moot because the property was correctly adjudged to be available for Williams and he is not being deprived of it at this time because he may obtain it." As such, we do not review this aspect of the circuit court's order for summary judgment.

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).² For the reasons that follow, we affirm.

The following facts are undisputed. Through numerous transactions, Rom provided money to both Williams, personally, and to Kandu. At the time, Williams was dating Rom's daughter. Specifically, in 2015, Rom provided over \$17,000 to Williams individually. Between 2015 and 2018, Rom provided nearly \$100,000 to Kandu in a series of cash payments, wire transfers, and credit card purchases. Rom expressly designated three of the wire transfers as "business loans" contemporaneous with the actual delivery of funds.

In 2016, Kandu repaid Rom \$14,500 through three checks written on Kandu's account and signed by Williams. In the memo line of each check, Williams wrote "loan repayment."

In 2018, Rom demanded that Williams and Kandu repay the loans. Rom retained an attorney and sent a written demand. In August 2018, Williams sent correspondence to Rom on Kandu letterhead acknowledging the existence of loans in the amount of \$114,856.90, that Kandu had repaid the amount of \$14,500, and that the remaining balance due totaled \$100,356.90. Williams made an additional payment of \$500, and offered to commence \$500 monthly repayments. No further payments were made, and in 2019, Rom commenced this action to collect the balance due plus statutory interest.

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

On Rom's motion, the circuit court granted summary judgment in his favor, directing the entry of a judgment against Williams in the amount of \$21,397.51 plus costs, and against Kandu in the amount of \$98,304.34 plus costs. Kandu and Williams appeal.

This court reviews summary judgment decisions de novo, using the same methodology as the circuit court. *Palisades Collection LLC v. Kalal*, 2010 WI App 38, ¶9, 324 Wis. 2d 180, 781 N.W.2d 503. Summary judgment is proper if 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).

The circuit court properly entered its order for summary judgment. Rom established a prima facie case that the money he provided to Kandu and Williams constituted a series of loan contracts, and that Kandu and Williams breached the contracts by failing to repay the loans. A contract requires "offer, acceptance, and consideration" to be enforceable. *Runzheimer Int'l, Ltd. v. Friedlen*, 2015 WI 45, ¶20, 362 Wis. 2d 100, 862 N.W.2d 879 (citation omitted). The subsequent "conduct and words of the parties" can imply a contract where one is not memorialized in writing. *Cal. Wine Ass'n v. Wis. Liquor Co.*, 20 Wis. 2d 110, 122, 121 N.W.2d 308 (1963).

Here, the affidavits supporting Rom's summary judgment motion establish that the monetary transactions were offered and accepted as loans to be repaid. The supporting facts include the following: Rom offered the money with an expectation of repayment; wire transfer requests designated that the monies were a "business loan"; Kandu's accounting treated the money as loans; Williams repaid some of the money to Rom via three checks drawn from Kandu's account, each of which contained a memo line designating it a "loan repayment"; after delivering these three "loan repayment" checks, Kandu accepted further money from Rom; Rom

demanded repayment when payments stopped after three installments; and Williams sent correspondence on Kandu's letterhead to Rom admitting that Rom "loaned" it \$114,856.90, that the outstanding loan balance was \$100,356.90, and that it intended to repay the loan. In sum, Rom's summary judgment pleadings set forth a prima facie case entitling him to relief.

Further, Williams and Kandu failed to present any genuine issue of material fact sufficient to overcome Rom's prima facie case. "Once the moving party has made a case for summary judgment, a party opposing summary judgment may not rest on the mere allegations or denials of the pleadings." *Tews v. NHI, LLC*, 2010 WI 137, ¶82, 330 Wis. 2d 389, 793 N.W.2d 860.

Here, as in the circuit court, Williams's and Kandu's arguments seeking reversal of the circuit court's summary judgment decision are conclusory, unsupported, and undeveloped. Williams's assertions on appeal that he contests "[a]ll of the allegations that are contained in the summary judgment motion" and that "all of the facts are in dispute," are self-serving, inconsistent, and conclusory. Williams's suggestion that the unwritten nature of the loan's terms by itself creates a triable issue is undeveloped. Neither Williams nor Kandu has proffered any admissible evidence that would create a material dispute.

Finally, Rom argues that the entire appeal is frivolous and requests attorney fees and costs pursuant to WIS. STAT. RULE 809.25(3). Though the arguments made by Williams and Kandu are unpersuasive, we are not convinced that they are made in bad faith or without any basis in law. 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 Rom's motion for costs and attorney fees under WIS. STAT. RULE 809.25(3), is denied.

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

Sheila T. Reiff
Clerk of Court of Appeals