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**DISTRICT I**

October 11, 2022

To:

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

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2021AP796

Wisconsin Electric Power Company and Wisconsin Gas, LLC v.  
Morocco Investments, LLC. (L.C. # 2019CV7546)

Before Brash, C.J., Donald, P.J., and White, J.

**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).**

Morocco Investments, LLC, appeals from a money judgment entered in favor of Wisconsin Electric Power Company and Wisconsin Gas, LLC (We Energies) after the circuit court partially granted We Energies' motion for summary judgment. After reviewing 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 further conclude that the circuit court's decision entered on October 13, 2020, which partially granted We Energies' summary judgment motion

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

and ultimately resulted in the money judgment at issue in this appeal, identified and applied the proper legal standards to the relevant facts to reach the correct conclusion. We therefore incorporate into this order the circuit court's decision, which we are attaching, and summarily affirm on that basis. *See* WIS. CT. APP. IOP VI (5)(a) (providing that the court of appeals may adopt a circuit court opinion).

Between 2016 and 2019, We Energies provided electrical and gas services to forty-two rental properties owned by Morocco Investments. We Energies charged a total of \$32,152.77, of which \$7,779.06 was paid, leaving an outstanding balance of \$24,373.71 for all forty-two accounts.

There are a number of different ways for utility services to start at a particular property. The circuit court's decision explains with specificity how services were billed for all forty-two accounts at issue. We Energies filed the lawsuit underlying this appeal seeking judgment to collect the outstanding balance on those accounts. Ultimately, We Energies moved for summary judgment. The circuit court partially granted the motion, finding that questions of fact existed as to thirteen accounts. This appeal follows.

The circuit court's decision partially granting We Energies' summary judgment motion and awarding a money judgment in its favor states the relevant legal standards and applicable facts. Accordingly, we adopt the circuit court's decision, which offers a complete and thorough analysis of the issues Morocco Investments now raises on appeal.<sup>2</sup>

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<sup>2</sup> We agree with We Energies that the affidavits provided by Morocco Investments do not create issues of material fact.

IT IS ORDERED that the money judgment is summarily affirmed pursuant to Wis. STAT. RULE 809.21(1).

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*

**FILED**  
**10-13-2020**  
**John Barrett**  
**Clerk of Circuit Court**  
**2019CV007546**

**BY THE COURT:**

**DATE SIGNED: October 13, 2020**

Electronically signed by David Swanson  
Circuit Court Judge

**STATE OF WISCONSIN**

**CIRCUIT COURT  
BRANCH 11**

**MILWAUKEE COUNTY**

WISCONSIN ELECTRIC POWER COMPANY and  
WISCONSIN GAS, LLC d/b/a We Energies,

Plaintiff,

v.

Case No. 19-CV-7546

MOROCCO INVESTMENTS, LLC,

Defendant.

**DECISION AND ORDER**

Plaintiff Wisconsin Electric Power Company and Wisconsin Gas, LLC, doing business as We Energies (“We Energies”), filed a Complaint against Defendant Morocco Investments, LLC (“Morocco Investments”) for unpaid utility bills for forty-two residential rental properties and subsequently filed a motion for summary judgment. Both parties filed briefs and in its Reply, We Energies conceded that genuine issues of material fact remain regarding nine of these accounts. The Court then heard arguments at a hearing held on September 1, 2020. For the reasons stated herein, the Court grants in part and denies in part Plaintiff’s motion for summary judgment.

**FINDINGS OF FACT**

We Energies is in the business of providing electrical and gas utility services to its customers. Morocco Investments owns many residential rental properties. (Affidavit of Warren Dugan (“Dugan Aff.”), ¶ 3.) Between 2016 and 2019, We Energies provided electrical and gas

utility services to forty-two residential rental properties<sup>1</sup> owned by Morocco Investments for which We Energies charged amounts totaling \$32,152.77. (Complaint, ¶ 3; Dugan Aff., ¶¶ 4-6, Ex. A.) According to the Affidavit of Warren Dugan, Morocco Investments has paid We Energies \$7,779.06 of the total amount, leaving a balance due of \$24,373.71 for all 42 accounts at issue.<sup>2</sup> (*Id.*)

Utility services were started at these properties in Morocco Investments' name in several ways. For accounts 1-3, We Energies billed utility services to Morocco Investments pursuant to Wis. Stat. § 196.643, which provides that when a tenant terminates utility services, the utility provider must notify the property owner and provide the property owner the opportunity to inform the utility provider of the new party responsible for the utility services. (Dugan Aff. at ¶¶ 10-11.) If the property owner does not contact the utility provider within 15 days, the property owner becomes liable for utility services for the property. (Wis. Stat. § 196.643; Plaintiff's Brief in Support of Summary Judgment at 2.) Further, pursuant to the winter moratorium, between November 1 and April 15, the utility provider may not disconnect utility services until it has verified that the property is vacant, so the property owner must provide the utility provider access to verify vacancy. (*Id.*) The property owner must also provide the utility provider access to the property if a meter is inaccessible. (*Id.*) If the property owner fails to provide the necessary access, the utility provider cannot terminate service and the property owner will be billed for the utility charges. (*Id.*) For accounts 1-3, We Energies mailed letters to Morocco Investments pursuant to Wis. Stat. § 196.643. (Dugan Aff. at ¶¶ 10-11, Ex. A, C.) We Energies never received a response

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<sup>1</sup> For purposes of this Decision and the Order issued herewith, the Court adopts the same definitions used by the parties for the properties and related utility accounts at issue and refers to these utility bill accounts as accounts numbered 1 through 42, respectively, herein.

<sup>2</sup> Because We Energies concedes that genuine issues of material fact remain regarding accounts 24-25, 27, 32-35, 38 and 41, those accounts are not discussed further herein.

from Morocco Investments and therefore utility services were placed in Morocco Investments' name for accounts 1-3. (*Id.*)

For accounts 4-23, Morocco Investments had lock/disconnect agreements with We Energies. (*See*, Dugan Aff.) A lock/disconnect agreement is an agreement whereby the property owner has indicated to We Energies that when a tenant vacates a property and terminates service, the property owner does not want utility service to be placed in the property owner's name. (Dugan Aff. at ¶ 12; Alana Sherard Holmes Aff. at ¶ 1.) In these instances, We Energies will attempt to terminate service; however, if the tenant terminates service during the winter months, We Energies must be given access to the property to verify vacancy. (Dugan Aff. at ¶ 12.) We Energies must also be provided access to the utility meters if needed to terminate service. (*Id.*) When a tenant terminates service, We Energies mails a letter to the property owner or will attempt to contact the property owner by phone. (*Id.*) If the property owner fails to respond or does not provide the necessary access to the property or the meter so that We Energies can terminate service, utility service will be billed to the property owner. (*Id.*)

For accounts 4-17, We Energies sent letters to Morocco Investments attempting to gain access to the property meters or to verify vacancy during winter months, but Morocco Investments failed to respond or provide the access. (*Id.* at ¶¶ 13-14, Ex. A, C.) Therefore, utility service was placed in Morocco Investments' name for these accounts. (*Id.*)

For accounts 18-23, We Energies did not have a tenant listed at the properties, but there was some utility consumption recorded. (*Id.* at ¶ 15.) We Energies sent Morocco Investments letters requesting information as to how Morocco Investments wanted to be billed for the utility services. (*Id.*) Morocco Investments failed to respond and utility service was billed to Morocco Investments for accounts 18-23. (*Id.*)

For accounts 26, 28-31, 36 and 37, utility service was started in Morocco Investments' name by specific request. (*Id.* at ¶ 16, Ex. A.) We Energies' records list the names of Morocco Investments' representatives who are authorized to speak on behalf of Morocco Investments with We Energies as including Frank Johnson, William J. (Will) Sherard, Alana Sherard (n/k/a Alana Sherard Holmes) and Tammy Sherard. (*Id.* at Ex. C-55.) For accounts 26 and 30, We Energies states that it started service in Morocco Investments' name after speaking with Alana Sherard.<sup>3</sup> (*Id.*) For accounts 28, 29 and 31, We Energies started service in Morocco Investments' name after speaking with Kristine Davis. (*Id.*) We Energies started service for account 36 after speaking with Frank Johnson. (*Id.*) For account 37, service was started in Morocco Investments' name at the request of Lisa Banty. (*Id.*)

For accounts 39 and 40, after a tenant terminated service at each property, We Energies contacted Morocco Investments to schedule an appointment to verify vacancy. (*Id.* at ¶¶ 17-18, Ex. A, C.) For account 39, We Energies spoke with Tammy Sherard and scheduled an appointment, but Morocco Investments later canceled the appointment. (*Id.* at ¶ 17.) For account 40, We Energies attempted to call Morocco Investments to schedule an appointment and sent a letter, but Morocco Investments failed to respond. (*Id.* at ¶ 18). Consequently, utility services for both accounts were billed to Morocco Investments. (*Id.* at ¶¶ 17-18, Ex. A.)

For account 42, Morocco Investments purchased the property but never contacted We Energies to initiate utility service. (*Id.* at ¶ 20.) We Energies billed utility service to Morocco Investments beginning when Morocco Investments purchased the property. (*Id.*)

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<sup>3</sup> At the September 1, 2020 hearing, Morocco Investments' attorney asserted that Alana Sherard Holmes denies authorizing services for the accounts at issue; however, in her affidavit, she states only that she was not working during the period at issue. She does not specifically deny giving such authorization for accounts 26, 30 and/or 40 nor does she deny participating in the telephone contacts with We Energies during which We Energies asserts she did authorize such services for accounts 26, 30 and 40. (Holmes Aff. at ¶ 26, 30 and 40.)

### LEGAL STANDARD

The Court grants summary judgment when “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2). The burden is on the moving party to demonstrate its entitlement to summary judgment “beyond a reasonable doubt” and with “such clarity as to leave no room for controversy.” *Kraemer Bros., Inc., v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 566, 278 N.W.2d 857 (1979). The Court takes “evidentiary facts in the record as true if not contradicted by opposing proof.” *Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶ 23, 241 Wis. 2d 804, 623 N.W.2d 751. The parties set forth evidentiary facts through “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.” Wis. Stat. § 802.08(2). However, credibility of witnesses may not be determined at this stage. *Pum v. Wisconsin Physicians Serv. Ins. Corp.*, 2007 WI App 10, ¶ 16, 298 Wis. 2d 497, 727 N.W.2d 346.

The moving party has the burden of showing the absence of genuine issues of material fact. *Central Corp. v. Research Products Corp.*, 2004 WI 76, ¶ 19, 272 Wis. 2d 561, 681 N.W.2d 178. A “material fact” is one that is “of consequence to the merits of the litigation.” *Schmidt v. N. States Power Co.*, 2007 WI 136, ¶ 24, 305 Wis. 2d 538, 742 N.W.2d 261 (Ct. App. 1994). A factual issue is “genuine” if the evidence is such that a reasonable juror could return a verdict for the nonmoving party. *Kenefick v. Hitchcock*, 187 Wis. 2d 218, 522 N.W.2d 261 (Ct. App. 1994). Where material facts are in dispute, or where “reasonable inferences leading to conflicting results can be drawn from undisputed facts,” summary judgment is inappropriate. *Maynard v. Port Publications, Inc.*, 98 Wis. 2d 555, 563, 297 N.W.2d 500 (1980) (citing *Jones v. Sears Roebuck & Co.*, 80 Wis. 2d 321, 325, 259 N.W.2d 70 (Wis. 1977)).



## DECISION

On summary judgment, We Energies claims that there is no genuine issue as to any material fact as to accounts 1-23, 26, 28-31, 36-37, 39-40 and 42, and that it is entitled to a judgment against Morocco Investments as a matter of law as to those accounts. We Energies concedes that genuine issues of material fact remain regarding accounts 24-25, 27, 32-35, 38 and 41.

### **a. Accounts 1-3**

For each of accounts 1-3, Morocco Investments did not assert any specific disputed material facts at issue. Services were started for these accounts in Morocco Investments' name after We Energies sent letters as required by Wis. Stat. § 196.643. Morocco Investments failed to respond. Morocco Investments does not deny that We Energies sent the letters or that it failed to respond. Pursuant to the findings of fact above, the Court finds that We Energies has shown that there is no genuine issue of material fact as to these accounts and that We Energies is entitled to judgment as a matter of law. The Court thus grants summary judgment as to accounts 1-3.

### **b. Accounts 4, 5, 10, 11 and 13-23**

For accounts 4, 5, 10, 11 and 13-23, Morocco Investments asserts that its custom and practice is to meet with We Energies when necessary to provide We Energies with access to the property. However, Morocco Investments does not deny that it failed to meet with We Energies when requested regarding these accounts. Pursuant to the findings of fact above, the Court finds that We Energies has shown that there is no genuine issue of material fact as to these accounts and that We Energies is entitled to judgment as a matter of law. The Court thus grants summary judgment as to accounts 4, 5, 10, 11 and 13-23.

### **c. Accounts 6-9 and 12**

For accounts 6-9 and 12, Morocco Investments has not asserted any specific disputed material facts at issue. Morocco Investments does not deny that We Energies sent a letter for each of these accounts and that Morocco Investments failed to respond. Pursuant to the findings of fact above, the Court finds that We Energies has shown that there is no genuine issue of material fact as to these accounts and that We Energies is entitled to judgment as a matter of law. The Court thus grants summary judgment as to accounts 6-9 and 12.

**d. Accounts 26, 30 and 40**

For accounts 26, 30 and 40, Morocco Investments has not asserted any specific disputed material facts at issue. Morocco Investments does not specifically deny that Alana Sherard Holmes authorized We Energies by telephone to start service for accounts 26 and 30 in Morocco Investments' name, or that Morocco Investments failed to respond to We Energies' inquiries regarding account 40. Pursuant to the findings of fact above, the Court finds that We Energies has shown that there is no genuine issue of material fact as to these accounts and that We Energies is entitled to judgment as a matter of law. The Court thus grants summary judgment as to accounts 26, 30 and 40.

**e. Accounts 28, 29, 31, 36, 37 and 39**

For accounts 28, 29, 31, 36, 37 and 39, Morocco Investments asserts that the employee who started service was not authorized to do so and that We Energies should have asked for authorization from William Sherard. However, according to We Energies' records, Frank Johnson, Alana Sherard Holmes and Tammy Sherard also had authority to start service in Morocco Investments' name. Utility service for account 36 was started at the request of Frank Johnson and utility service for account 39 was started at the request of Tammy Sherard. Pursuant to the findings of fact above, the Court finds that We Energies has shown that there is no genuine issue of material

fact as to these two accounts and that We Energies is entitled to judgment as a matter of law. Thus, the Court grants summary judgment as to accounts 36 and 39.

As to accounts 28, 29, 31 and 37, the Court finds that there are genuine issues of material fact in dispute. Utility services for accounts 28, 29 and 31 were started at the request of Kristine Davis, and service for account 37 was started at the request of Lisa Banty. Neither Kristine Davis nor Lisa Banty are listed as authorized representatives for Morocco Investments in We Energies' records. Thus, the Court denies summary judgment as to accounts 28, 29, 31 and 37.

**f. Account 42**

For account 42, Morocco Investments admits that it should be billed for the utility services at this property during the time Morocco Investments owned the property. The Court thus grants summary judgment as to account 42.

**g. Accounts 24, 25, 27, 32-35, 38 and 41**

For accounts 24, 25, 27, 32-35, 38, and 41, We Energies concedes that issues of material fact remain in dispute. The Court thus denies summary judgment as to accounts 24, 25, 27, 32-35, 38 and 41.

**CONCLUSION**

Pursuant to its Motion as modified by its Reply, We Energies seeks judgment for the outstanding balances for the accounts numbered 1-23, 26, 28-31, 36-37, 39-40 and 42, and concedes that genuine issues of material fact remain regarding the remaining accounts numbered 24, 25, 27, 32-35, 38 and 41. Having reviewed the parties' briefs, filings and arguments, and as discussed above, the Court finds that there are no genuine issues of material facts as to the twenty-nine accounts numbered 1-23, 26, 30, 36, 39, 40 and 42, and that We Energies is entitled to judgment as a matter of law as to those twenty-nine accounts. On that basis, the Court **GRANTS**

**SUMMARY JUDGMENT** to Plaintiff as to the amounts claimed for the twenty-nine accounts numbered 1-23, 26, 30, 36, 39, 40 and 42 and **DENIES SUMMARY JUDGMENT** as to the remaining thirteen accounts numbered 24, 25, 27-29, 31-35, 37, 38 and 41.