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DISTRICT II

November 9, 2022

To:

Hon. Michael O. Bohren
Circuit Court Judge
Electronic Notice

Kendrick Yandell
Electronic Notice

Joseph Cortez

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

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

2021AP1790

Blue Jay Communications, Inc. v. Joseph Cortez
(L.C. #2019CV693)

Before Gundrum, P.J., Grogan and Lazar, 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).

Blue Jay Communications, Inc., appeals from an order of the circuit court granting Joseph Cortez's motion for summary judgment. Cortez did not file a respondent's brief. We conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ Based on Cortez's failure to file a respondent's brief, we reverse the order and remand the matter for further proceedings.

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

Blue Jay is a national telecommunications company. Cortez is a former employee of Blue Jay. In 2019, Blue Jay terminated Cortez's employment and filed suit against him, alleging (1) breach of contract; (2) bad faith breach of contract; (3) tortious interference with contract; and (4) breach of fiduciary duty.

Cortez moved for summary judgment on Blue Jay's claims. Blue Jay voluntarily dismissed its first two claims but opposed summary judgment on the rest. It also moved to enlarge the time to take depositions. After a hearing on the matter, the circuit court granted Cortez's motion and dismissed the claims. It then denied Blue Jay's motion to enlarge the time to take depositions. This appeal follows.

On appeal, Blue Jay contends that summary judgment was inappropriate for two reasons. First, the circuit court improperly denied Blue Jay's motion to enlarge the time to take depositions without considering the facts of the case. Second, Blue Jay presented evidence that raises material issues of fact regarding the claims at issue.

As noted, Cortez does not respond to Blue Jay's arguments. See *Charolais Breeding Ranches, Ltd. v. FPC Securities Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded). On March 7, 2022, we informed Cortez that his respondent's brief was delinquent. On April 11, 2022, we warned that if he failed to file a respondent's brief, we could exercise our discretion and summarily reverse the circuit court provided that we determine that he has abandoned the appeal. *Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 660 N.W.2d 647; see also *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 259-60, 500 N.W.2d 339 (Ct. App. 1993) (summary reversal is appropriate sanction for respondent's violation of briefing requirements). Finally, on October 3, 2022, using his last two

known addresses, we indicated that a respondent's brief was necessary to the resolution of the appeal and warned that the failure to file one would constitute an abandonment of the appeal resulting in summary reversal. Despite these admonitions, Cortez has failed to file a respondent's brief.

We decline to address the merits of the appeal under these circumstances. We conclude only that Cortez has abandoned the appeal and that summary reversal is appropriate as a sanction. *See* WIS. STAT. RULE 809.83(2). Accordingly, we reverse the order of the circuit court and remand the matter for further proceedings.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed pursuant to WIS. STAT. RULE 809.21, and the cause is remanded for further proceedings.

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

Sheila T. Reiff
Clerk of Court of Appeals