



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

June 12, 2024

To:

Hon. Michael P. Maxwell
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Samantha Huddleston Baker
Electronic Notice

Ohioma Emil Ovbiagele
Electronic Notice

Benjamin Patrick Payne
Electronic Notice

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

2023AP453

Greenwoods Equipment Finance, LLC
v. David Weitzman MD PC (L.C. #2022CV654)

Before Gundrum, P.J., Neubauer 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).

David Weitzman MD PC and David Weitzman (collectively, “Weitzman”) appeal the circuit court’s grant of summary judgment in favor of Greenwoods Equipment Finance, LLC (“Greenwoods”). Weitzman purchased medical equipment from Cynosure, LLC and financed the purchase through Greenwoods. On appeal, Weitzman argues the circuit court erred by granting judgment in favor of Greenwoods because a genuine issue of material fact remains in dispute. 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 (2021-22).¹ We affirm.

Weitzman defaulted on the financing agreement, and, on May 11, 2022, Greenwoods brought suit against Weitzman seeking a money judgment and replevin. Weitzman answered and filed affirmative defenses. On September 16, the circuit court entered a scheduling order. Discovery closed on November 3.

On November 17, 2022, Greenwoods moved for summary judgment. Greenwoods argued it was entitled to judgment as a matter of law because there was no dispute that Weitzman was in default of the parties' financing agreement. Greenwoods acknowledged that Weitzman asserted it did not believe it should be required to pay because Cynosure had purportedly made misrepresentations about its medical equipment; however, Greenwoods argued that whatever Cynosure did or did not tell Weitzman had nothing to do with the financing agreement between Weitzman and Greenwoods. Greenwoods emphasized the financing agreement between it and Weitzman provided, in part:

NON-CANCELLABLE. THIS IS A NON-CANCELLABLE AGREEMENT AND MAY NOT BE CANCELLED BY YOU FOR ANY REASON WHATSOEVER. YOU WILL MAKE ALL PAYMENTS AND PERFORM ALL OF YOUR OBLIGATIONS UNDER THIS AGREEMENT REGARDLESS OF WHETHER OR NOT YOU ARE SATISFIED WITH THE EQUIPMENT OR THE SUPPLIER.^[2] YOU AGREE THE SUPPLIER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF SUPPLIER IS OUR AGENT OR HAS ANY AUTHORITY TO SPEAK FOR US OR ALTER OR AMEND THIS AGREEMENT IN ANY

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² There is no dispute that Cynosure was the "Supplier."

MANNER. You also acknowledge that you choose the Equipment and Supplier based solely on your own evaluation of the Supplier and the Equipment and without any advice, assistance, or input of any kind from us. You acknowledge that you recognize we have agreed to pay the Supplier for the Equipment based solely on your request and in consideration of your entering into this Agreement. You recognize that we make no representations or warranties of any kind whatsoever, express or implied, pertaining to the Supplier or the Equipment and we have no responsibility for the Supplier's performance, actions, or lack thereof and no dissatisfaction on your part regarding any delay in delivery of the Equipment, difficulties or failure of the Equipment to perform satisfactorily, title to the Equipment, or your or the Supplier's ability to rectify any such issues, will relieve, amend, alter, or change in any manner your obligations to us under this Agreement. You shall remain fully responsible under all the terms and conditions of this Agreement.

Weitzman opposed the summary judgment motion. On January 10, 2023, Weitzman submitted an affidavit averring he had been induced to enter into the financing agreement to purchase the equipment by a man named Josh Smith who Weitzman believed was both Cynosure's and Greenwoods' agent. According to Weitzman, Smith made various misrepresentations to Weitzman. Weitzman argued summary judgment was improper because, based on his affidavit, there was a genuine issue of material fact as to whether Greenwoods participated in a fraudulent scheme that would nullify the financing agreement.

The circuit court granted summary judgment in favor of Greenwoods. It determined there was no dispute that Greenwoods and Weitzman had a financing agreement, Weitzman did not make payments under the agreement, and Greenwoods was entitled to a money judgment and replevin. The court also determined there was no admissible evidence that Greenwoods had made any material misrepresentation to induce Weitzman to enter into the agreement. Weitzman appeals.

This court reviews a circuit court's grant of summary judgment independently. *Tews v. NHI, LLC*, 2010 WI 137, ¶40, 330 Wis.2d 389, 793 N.W.2d 860. Summary judgment is

appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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). When one party moves for summary judgment, “an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party’s response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial.” Sec. 802.08(3). If the party opposing summary judgment fails to set forth specific facts showing that there is a genuine issue of material fact, summary judgment shall be entered against that party. *Id.*

On appeal, Weitzman argues the circuit court’s grant of summary judgment was improper because Weitzman’s “individual ... perception of agency, supported by personal knowledge” was enough to create a genuine issue of material fact as to whether Josh Smith was an agent of Greenwoods and defeat the summary judgment motion. We disagree.

Principals may be held responsible for the conduct of their agents where an explicit, implied, or apparent agency relationship exists. *Skrupky v. Elbert*, 189 Wis. 2d 31, 43-44, 526 N.W.2d 264 (Ct. App. 1994) (explicit and implicit agency); *Vandervest v. Kauffman Pizza, Inc.*, 60 Wis. 2d 230, 245, 208 N.W.2d 428 (1973) (apparent agency). Explicit agency occurs when there is a communication or contract between the principal and the agent. *Skrupky*, 189 Wis. 2d at 44. Implied authority exists “when the agent, not the third party, reasonably believes he or she has authority as a result of the action of the principal.” *Id.*

Under apparent agency, a principal may be held liable for an agent’s conduct against a third party, even if the principal has not authorized the agent’s authority either explicitly or

implicitly, if the principal manifests to the third party that it consents to the agent's conduct. *Hansche v. A.J. Conroy, Inc.*, 222 Wis. 553, 559-560, 269 N.W. 309 (1936). Three elements are required to establish apparent agency: "(1) Acts by the agent or principal justifying belief in the agency; (2) knowledge thereof of the party sought to be held; and (3) reliance thereon consistent with ordinary care and prudence." *Vandervest*, 60 Wis.2d at 245. "[A]pparent agency and authority cannot rest solely upon the statements made to third parties by the agent but are dependent upon the principal's manifestation of consent." *Id.*

The record developed in this case does not establish that an explicit, implied, or apparent agency relationship existed between Smith and Greenwoods. Nothing in the record reveals an explicit communication or contract between Smith and Greenwoods so as to establish an explicit agency relationship. The record also reveals no evidence of an implicit agency relationship between Smith and Greenwoods. Although Weitzman may have believed Smith acted as Greenwoods' agent as established in Weitzman's affidavit, implied authority exists when *the agent* (in this case, Smith) reasonably believes that he has authority as a result of the principal's action. As for apparent agency, Weitzman has not presented any evidence that Greenwoods was aware of and consented to Smith acting on its behalf, or that Greenwoods even knew of Smith's conduct.

Upon the foregoing,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals