Contracts

Uniform Commercial Code – Full Performance – Executed Contract – Penalty Provisions

***Balsimo v. Venture One Stop Inc.*, 2024 WI App 58 (Sept. 4, 2024) (ordered published Oct. 30, 2024)**

HOLDING: The purchaser of a recreational vehicle (RV) could not return it to the dealer under terms of the purchase contract.

SUMMARY: Balsimo bought an RV from a dealer (ACC) under terms of a contract dated July 1, 2021. The parties signed the contract. Balsimo hitched the RV to his vehicle and left the ACC lot at 6:30 p.m. Only 65 minutes later, he went back to the ACC lot and "returned" the RV. In a later email, he listed several problems with the RV. ACC refused to refund Balsimo's money or cancel the purchase contract. Balsimo sued ACC, contending that the contract's "penalty provision" entitled him to the refund. ACC contended that Balsimo was the legal owner. The circuit court granted summary judgment in favor of Balsimo.

The court of appeals reversed in an opinion authored by Judge Hruz. The case law and the Uniform Commercial Code (UCC) supported ACC's position.

"Applying these principles here, once both parties entered into the purchase contract, Balsimo's obligation was to accept the RV and pay the amount due on delivery for the RV, and ACC's obligation was to deliver the RV to Balsimo. ACC retained, under the Penalties Provision [of the purchase contract], its rights to the applicable forfeitures and pursuing actual damages caused by Balsimo's breach in canceling the purchase contract. Thus, had Balsimo decided he no longer desired to purchase the RV and canceled the purchase contract after ACC accepted his offer but before he paid for and accepted the RV and before ACC physically delivered the RV to him, the Penalties Provision would have applied – thereby discharging the parties of all their obligations. That scenario, however, is not what happened. Instead, Balsimo and ACC each completed their obligations under the purchase contract, including Balsimo taking possession of the RV and leaving ACC's lot with it. Once he did so, the Penalties Provision no longer applied" (¶ 28).

"Thus, pursuant to Wis. Stat. § 402.606(1)(a), Balsimo 'accepted' the RV when, after inspecting the RV and signifying to ACC that the RV was conforming, he took exclusive possession of the RV and left ACC's lot. At that moment, the purchase contract was fully performed, and Balsimo was precluded from rejecting the RV" (¶ 31).

"Balsimo improperly reads the Penalties Provision as a standalone provision without considering the purchase contract as a whole, the UCC, or the legal impact of a buyer accepting a sold good. The only reasonable application of the Penalties Provision occurs before the sale and purchase of the RV because the provision discharges the parties' obligations to actually sell and purchase the RV before that has occurred" (¶ 35).

BLINKA

HAMMER

In this column, Prof. Daniel D. Blinka and Prof. Thomas J. Hammer summarize select published opinions of the Wisconsin Court of Appeals. Full-text decisions are available online at www.wisbar.org/wislawmag.

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Criminal Procedure

Competency to Stand Trial – Involuntary Medication Order

***State v. J.D.B.*, 2024 WI App 61 (filed Sept. 10, 2024) (ordered published Oct. 30, 2024)**

HOLDING: The record did not support an order compelling the defendant to be involuntarily medicated to restore his competency to stand trial.

SUMMARY: At age 19, the defendant was charged with fighting with law enforcement officers after his mother reported threats he had made against her and his family. The defendant had shot himself when he was 11; this caused a traumatic brain injury and physical, emotional, and neurological impairments. Concerns about the defendant's competency to stand trial resulted in his commitment to a mental health facility. At some point, the defendant stopped taking psychotropic medications (*see* ¶ 15). Later the circuit court entered an involuntary-medication order. The defendant appealed.

The court of appeals reversed in an opinion authored by Judge Geenen. The court declined to dismiss the case on grounds of mootness. Although the involuntary-medication order had expired, the case raised significant constitutional issues as to which there are only a few Wisconsin appellate decisions (*see* ¶ 29).

On the merits, the court looked to *Sell v. United States*, 539 U.S. 166 (2003), which predicates involuntary-medication orders on the following showings: "(1) the State has an important interest in proceeding to trial; (2) involuntary medication will significantly further the State's interest; (3) involuntary medication is necessary to further the State's interest; and (4) involuntary medication is medically appropriate" (¶ 32).

After an extensive discussion, the court held that "the potential for [the defendant's] future civil commitment and the length and circumstances of his pretrial detention, taken together, undermine the importance of the State's interest in prosecution" (¶ 53). It further held that the proposed treatment plan was "not adequately individualized," as required by *Sell*'s second, third, and fourth factors (¶ 61).

Finally, the court of appeals held that the circuit court's findings of fact as required by Wis. Stat. section 971.14(3)(dm) and (4)(b) were "clearly erroneous" based on the record (¶ 62).

Family Law

Divorce – Equitable Division of Property – Social Security Benefits

***Danielson v. Danielson*, 2024 WI App 57 (filed Sept. 11, 2024) (ordered published Oct. 30, 2024)**

HOLDING: The circuit court erroneously exercised its discretion when it failed to consider the disparity in expected Social Security benefits of the parties while attempting to achieve its goal of an equitable marital property division.

SUMMARY: The spouses, both Wisconsin residents, divorced after 31 years of marriage. When attempting to divide the parties' marital property equally, the circuit court did not consider their disparate Social Security benefits. Throughout the marriage, the husband contributed to Social Security through his employment.

The wife is ineligible to receive Social Security from her career because she was employed as a teacher in Illinois and was required to stop contributing to Social Security and instead participate in the Illinois Teacher Retirement System, as do all public-sector teachers in Illinois. The court did equalize the parties' pensions (of which the wife's expected pension payments would be seven times greater than the husband's).

On appeal, the wife argued that the circuit court erred when it divided the parties' assets without considering the effect of their disparate Social Security benefits. In an opinion authored by Judge Lazar, the court of appeals reversed.

"While federal and state law are clear that [S]ocial [S]ecurity benefits may not be divided in a divorce, the question of their impact on the fairness of marital property division is yet to be addressed in this state. We are asked to consider how disparate [S]ocial [S]ecurity benefits should be taken into account by a trial court in a divorce proceeding in general, and in particular, when one spouse is a public sector employee who does not contribute to [S]ocial [S]ecurity but relies solely upon a government pension" (¶ 10).

The Wisconsin Legislature has created a rebuttable presumption of equal division of marital property, but the court may alter this distribution after considering *inter alia* 1) whether one of the parties has substantial assets not subject to division by the court; 2) the contributions of each party to the marriage; and 3) other economic circumstances of each party, including pension benefits, vested or unvested, and future interests. *See* Wis. Stat § 767.61(3).

Applying these factors to this case, the court of appeals concluded that 1) the husband's Social Security benefits are not subject to division, 2) both parties made separate and distinct contributions out of their marital income toward their retirement plans (pension and Social Security), and 3) a failure to weigh the husband's expected Social Security benefits would violate the third factor listed above regarding other economic circumstances (*see* ¶¶ 20-22).

Said the court: "Wisconsin law mandates that all relevant factors shall be considered by the trial court in order to fairly and equitably divide marital property. Social [S]ecurity benefits constitute a relevant factor that courts should consider in their deliberations. *See* Wis. Stat. § 767.61(3). While they cannot be divided between spouses, a failure to consider [S]ocial [S]ecurity benefit payments could result in a distorted and inequitable division of marital property" (¶ 37).

Accordingly, the court of appeals concluded that the circuit court erroneously exercised its discretion when it failed to consider the disparity in expected Social Security benefits of the parties when it attempted to achieve its goal of an equitable marital property division (*see* ¶ 38). The court of appeals remanded the matter to the circuit court for consideration of the parties' Social Security benefits and pensions with respect to marital property division as well as to determine the effect of this factor on the award and holding open of maintenance (*see* ¶ 2).

Probate

Reopening Estates – Finality in Estate Administration

***Kaiser v. Townline CTH-N LLC (In re Est. of Kaiser)*, 2024 WI App 59 (filed Sept. 4, 2024) (ordered published Oct. 30, 2024)**

HOLDING: The circuit court erred in reopening an estate that had been closed for 15 years.

SUMMARY: The estate of Raymond Kaiser conveyed real property to purchasers in 2002; the deed included a restriction limiting the use of the property to single-family-residential or agricultural use only. The estate was closed in 2005. Throughout the years the property was sold multiple times with the deed restriction in place. Ultimately, Townline CTH-N LLC purchased the property in 2019 with knowledge of the restriction. In 2020, Townline moved to reopen the estate, questioning the legal basis for the deed restriction and seeking a determination of the estate's personal representatives' authority to place the restriction on the deed to the property. Townline was successful in obtaining a circuit court order striking the deed restriction.

In an opinion authored by Judge Hruz, the court of appeals reversed. Though the parties raised various legal arguments, ultimately the court of appeals resolved the appeal on public policy grounds. Said the court: "Public policy calls for finality in estate administration as well as having a sensible and just stopping point for challenging closed estates" (¶ 3).

A combination of factors led the court to conclude, as a matter of law, that such finality outweighs a decision on the merits of Townline's current challenge to the administration of the estate. Specifically, the court considered 1) the amount of time that had passed between the closing of the estate and Townline's motion to reopen it (15 years); 2) Townline's having had no interaction with the estate, paired with the relief it sought; 3) the alternative method available for Townline to obtain similar relief (a quiet title action to remove the restriction); and 4) intervening circumstances that would make it inequitable to reopen the estate for the specific relief sought (the death of the attorney who acted as co-personal representative of the estate, the loss of documents regarding that attorney's handling of the estate, Townline's knowledge of the deed restriction when it purchased the property, and the estate's lack of a reason to believe that a subsequent purchaser would challenge the estate's administration).

Accordingly, the court of appeals reversed the decision of the circuit court to reopen the estate and strike the deed restriction.

Real Property

Action Against Real Estate Agent for Indemnification and Contribution – Statute of Repose – Wis. Stat. Section 452.142

***Eddings v. Estate of Young*, 2024 WI App 60 (filed Sept. 18, 2024) (ordered published Oct. 30, 2024)**

HOLDING: A third-party complaint against a realtor was barred by the two-year statute of repose codified in Wis. Stat. section 452.142.

SUMMARY: A married couple closed on the purchase of property from Young in January 2020. On June 21, 2022, they and their minor children filed a complaint against Young's estate (Young died in October 2021) alleging they sustained damages, including personal injury due to mold exposure, as a result of misrepresentations about the property made by or on behalf of the estate. In September 2022, the estate filed a third-party complaint against the realtor whom Young had enlisted to sell the property, asserting that any damages sustained by the homebuyers were solely caused by the realtor's negligent acts and omissions. The estate sought equitable indemnification by the realtor or, alternatively, contribution from her.

The realtor moved to dismiss the estate's third-party complaint on the basis that it is barred by the two-year statute of repose codified in Wis. Stat. section 452.142. The circuit court agreed and dismissed the estate's complaint. In an opinion authored by Judge Gundrum, the court of appeals affirmed.

Wis. Stat. section 452.142 establishes a two-year statute of repose for actions concerning any act or omission of a firm or any licensee associated with the firm relating to brokerage services. As applicable here, that two-year period began to run from the date on which the sale of the property closed. A statute of repose, like the one at issue in this case, puts an outer limit on the right to bring a civil action (*see* ¶ 7). The court of appeals concluded that Wis. Stat. section 452.142 is unambiguous on its face in precluding any action, other than a disciplinary action, that is filed after two years from a closing on property. This includes the estate's third-party action for indemnification and contribution (*see* ¶ 22).

Said the court: "The clear intent of Wis. Stat. § 452.142 is to limit the liability of realtors and their firms after the passage of two years from the completed transaction. Allowing third-party claims like those of the [e]state would significantly undermine that legislative purpose" (¶ 19). "The repose the legislature clearly intended with Wis. Stat. § 452.142 is not usurped by common law indemnification or contribution claims" (¶ 27). **WL**