

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 25, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-1601

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CHAMBERS & OWEN, INC.,

PLAINTIFF-RESPONDENT,

V.

STEVEN FOX AND GAS N GO, INC.,

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Rock County:
JAMES P. DALEY, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Steven Fox and Gas N Go, Inc., appeal from an order holding Fox personally liable for a contract debt to Chambers & Owen, Inc. We reject Fox's argument that he should not be held personally liable because he signed the contract only as an agent of Gas N Go, Inc. We also reject his argument that the contract was one of adhesion. We therefore affirm.

BACKGROUND

Chambers & Owen is a wholesale dry goods distributor. Fox, the president of Gas N Go corporation, signed a contract under which Chambers & Owen were to supply cigarettes for resale. The contract contained the following clause:

In the event any invoice is not paid when due, the customer's account shall be considered in default. Customer agrees to pay the finance charge of one and one-half percent (1-1/2%) per month (18% annually) on all accounts in default, reasonable attorneys fees, and all costs of collection. The individual signing below personally agrees to pay all amounts due Chambers & Owen, Inc. from customer, reasonable attorneys fees, and all costs of collection.

On a line under this clause, titled "OWNER'S SIGNATURE," Fox signed "Steven Fox-PRES."

Chambers & Owen sued Fox personally for \$17,610.73, which was overdue. At trial, Fox testified he did not believe he was personally liable for debts under the contract. Rather, he understood Gas N Go to be the "individual signing below" who "personally agrees to pay all amounts due." Fox specifically relied on the fact that he had signed "Pres." after his name. The circuit court held the plain meaning of the contract did not support this interpretation, and found Fox personally liable.

AGENCY

Fox argues that he signed the contract as an agent of Gas N Go, Inc., because he wrote “Pres.” after his name. Relying on case law and statutory law that distinguishes between corporations and their officers or agents, Fox argues that his signature obligated only Gas N Go to pay the debt to Chambers & Owen. Citing *Benjamin Plumbing Inc. v. Barnes*, 162 Wis.2d 837, 470 N.W.2d 888 (1991), Fox also argues that Chambers & Owen knew he was the agent for Gas N Go, because he “disclosed” his agency and he disclosed Gas N Go as his principal. We reject these arguments.

Construction of a contract is a question of law. *Lambert v. Wrensch*, 135 Wis.2d 105, 115, 399 N.W.2d 369, 373-74 (1987), and we determine questions of law independently from the trial court. *Ball v. District No. 4 Area Bd.*, 117 Wis.2d 529, 537, 345 N.W.2d 389, 394 (1984). Whether a contract is ambiguous is a question of law. *Borchardt v. Wilk*, 156 Wis.2d 420, 427, 456 N.W.2d 653, 656 (Ct. App. 1990). When contract language is unambiguous, we construe the contract as it stands. *Yee v. Giuffre*, 176 Wis.2d 189, 192-93, 499 N.W.2d 926, 927 (Ct. App. 1993). Contractual language is ambiguous only when it is reasonably susceptible of more than one construction. *Id* at 193, 499 N.W.2d at 927.

The contract clause at issue required the “individual signing below” to “personally agree[] to pay all amounts due Chambers & Owen, Inc....” This language is not reasonably susceptible of more than one construction. The language provides for a “personal agree[ment],” and the act of “signing” unambiguously refers to an “individual.” In the guise of construing a contract, a court cannot insert what has been omitted or rewrite the contract made by the parties. *Batavian Nat’l Bank v. S & H, Inc.*, 3 Wis.2d 565, 569, 89 N.W.2d 309, 312 (1958). We cannot attach a different meaning to the plain language of the contract. When he signed this agreement, Fox did so in his “personal[]” capacity.

ADHESION

Fox argues that even if he did sign in his personal capacity, he should not be bound because the contract was one of adhesion.¹ A contract of adhesion exists where a disadvantaged buyer has no realistic opportunity to bargain over the terms of a contract, and thus has little choice but to accept the contract. *Katze v. Randolph & Scott Mut. Fire Ins. Co.*, 116 Wis.2d 206, 212-213, 341 N.W.2d 689, 692 (1984). Whether a contract is one of adhesion is a question of contract interpretation. *Clark Oil & Refining Corp. v. Leistikow*, 69 Wis.2d 226, 239, 230 N.W.2d 736, 744 (1975). Contract interpretation is a question of law. *Lambert*, 135 Wis.2d at 115, 399 N.W.2d at 373-74.

Courts also address very similar issues using the term “unconscionable contracts.” Unconscionability arises where there is an absence of a meaningful choice on the part of one party, together with contract terms which unreasonably favor the other party. *Leasefirst v. Hartford Rexall Drugs, Inc.*, 168 Wis.2d 83, 89, 483 N.W.2d 585, 587 (Ct. App. 1992). In order to find unconscionability a court must find both procedural and substantive unconscionability. *Id.*, 168 Wis.2d at 89-90, 483 N.W.2d at 587-88. *See also Kohler Co. v. Wixen*, 204 Wis.2d 327, 339-40, 555 N.W.2d 640, 645 (Ct. App. 1996). Procedural unconscionability arises from inequalities between the parties as to age, intelligence, business acumen and relative bargaining power. Also relevant are who drafted the contract, whether alterations in the printed terms were possible, and whether alternative sources of goods or services exist. *Discount Fabric House v. Wisconsin Tel. Co.*, 117 Wis.2d 587, 602, 345

¹ We are uncertain whether Fox raised this issue before this trial court. However, since Chambers & Owen responds to the merits of the argument and does not argue waiver, we address the merits.

N.W.2d 417, 424-25 (1984). Substantive unconscionability arises where the terms of the contract unreasonably favor one of the parties. *Id.* Whether a contract term is unconscionable is a question of law which we review de novo. *Leasefirst*, 168 Wis.2d at 89, 483 N.W.2d at 587.

Fox argues that Chambers & Owen had a superior bargaining position, that little competition exists in the dry goods wholesale supply business, and that he therefore had no choice but to sign the contract. However, Fox offered no testimony on whether he attempted to alter the printed form, and he testified that at least two other sources of dry goods were available. The record does not support a finding that the terms of the contract unconscionably favored Chambers & Owen.

In addition, Fox testified that he was an experienced businessman and had been involved with over fifty different corporations. He also testified that he carefully read the contract before signing it. Where the disputed language “clearly provides” the terms of the contract, where the buyer has read the contract before signing it and where the buyer is an experienced business person, the position of the parties is not so unequal as to require the court to refuse to enforce the contract. *See Sorce v. Rinehart*, 69 Wis.2d 631, 641-42, 230 N.W.2d 645, 651 (1975).

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

