

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 7, 2000

Cornelia G. Clark
Acting 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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1416

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

BRUCE LURYE,

PLAINTIFF-RESPONDENT,

V.

GARY BUCHLI,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Douglas County:
MICHAEL T. LUCCI, Judge. *Affirmed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Gary Buchli appeals a money judgment based on a finding that he breached a contract with Bruce Lurye. The trial court found that Lurye paid Buchli \$10,000 to install kitchen cabinets, \$6,000 of which was paid by transferring trade credits at a barter exchange. Buchli argues that the evidence does not support that finding and that the court improperly considered hearsay

evidence. We reject these arguments and affirm the judgment. We also conclude that the appeal is frivolous, and we remand the cause to the circuit court to hold a hearing and award the reasonable attorney fees Lurye incurred as a result of this appeal.

¶2 Lurye testified that he paid Buchli \$6,000 in the form of barter credits as allowed under the parties' contract. That sum was deducted from a real estate transaction he had with the president of the barter exchange. His testimony was supported by several exhibits. Exhibit 5 is a letter from the president of the exchange indicating that on or about December 1, 1997, Lurye requested transfer of \$6,000 trade credits from his account to Buchli's as partial payment for kitchen cabinets. The letter states: "Subsequently, we did transfer the credits out of your account and closed it. Unfortunately, through clerical error, we did not thereafter complete a transfer of credits to Buchli's account." Exhibit 8, a letter from Lurye to Buchli dated June 10, 1998, states: "As you know you have been paid all but \$306.00 for this job." That letter was never answered and Buchli never informed Lurye that Buchli had not been paid.

¶3 Buchli represented himself at trial and testified that he was unsure whether the credits had been transferred to his account. The last written statement he had received from the exchange was three months after the contract was signed, five months before this action was commenced. He acknowledged that he had purchased several thousand dollars worth of vinyl siding with credits that may have come from Lurye, but he did not really know where they came from. Buchli also testified that, regardless of what the paperwork said, he knew that he could spend barter credits because the president of the exchange knew that he was receiving \$6,000 in credits from Lurye and that he was allowed to spend them in anticipation of completion of the paperwork.

¶4 The trial court asked the parties to submit their closing arguments in writing. Buchli attached documents to his argument that he claims support his contention that he never received the credits. The trial court refused to consider these documents and found that Lurye had paid the amounts he testified to at trial.

¶5 When reviewing the sufficiency of the evidence after trial to the court, this court must affirm the trial court's decision unless it is clearly erroneous. *See* WIS. STAT. § 805.17(2) (1997-98).¹ The credibility of witnesses is for the trial court to decide. *See Einhorn v. Culea*, 224 Wis. 2d 856, 874, 591 N.W.2d 908 (Ct. App. 1999). Lurye's testimony, Buchli's admissions, Lurye's uncontradicted letter sent almost six weeks before this action was commenced and the letter from the exchange constitute sufficient evidence to support the verdict.

¶6 Buchli argues that Lurye's testimony that Buchli received the credit was hearsay.² Buchli did not object to Lurye's testimony. Therefore, the issue is not properly preserved for appeal. *See* WIS. STAT. § 901.03(1)(a). Furthermore, Lurye testified and submitted other evidence that he paid the credits to the exchange. Even if his testimony that Buchli received the credits was hearsay, the significance of Lurye's testimony was that he deposited the payment with the exchange as required by the parties' contract. If Buchli did not receive the appropriate credit from the exchange, that is a matter between him and the

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

² Buchli also describes exhibit 5, the letter from the exchange, as hearsay, although he does not specifically argue that it should not have been considered. In fact, he argues that the letter supports his position on appeal. Buchli did not object to exhibit 5 on the basis of hearsay at the time it was offered. Therefore, that issue is not properly preserved for appeal. Even if exhibit 5 is not considered, the record adequately supports the finding that Lurye paid \$6,000 in the form of barter credits.

exchange. Buchli's own testimony established that he could spend the barter credits because the president of the exchange knew that he was receiving the \$6,000 regardless of the paperwork. It is irrelevant whether credit deposited for him in the exchange has been officially credited to his account. By making the payment to the exchange, Lurye fulfilled his obligation under the contract.

¶7 The trial court properly refused to consider the documents Buchli attached to his closing argument. They were not authenticated, identified or explained by any witness, subjected to examination by opposing counsel or admitted into evidence. Buchli argues that he should be granted additional leeway because he appeared *pro se*. The right to proceed *pro se* does not excuse compliance with relevant rules of procedure and substantive law. See ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Furthermore, the account summaries that Buchli impermissibly attached to his closing arguments in the trial court do not specifically identify Buchli or his business and do not include statements for the five months immediately preceding the filing of the complaint in this action. They also focus on whether Buchli received the credit from the exchange, not whether Lurye paid the exchange.

¶8 The appendix to Buchli's brief on appeal also includes documents that were never submitted to the trial court. This court will not consider these documents. See ***Jenkins v. Sabourin***, 104 Wis. 2d 309, 313-14, 311 N.W.2d 600 (1981). Including them in the appendix violates WIS. STAT. RULES 809.14 and 809.19(2).

¶9 We conclude that Buchli's appeal is frivolous. His brief contains arguments that have no reasonable basis in law or equity and cannot be supported by a good-faith argument for extension, modification, or reversal of existing law.

See WIS. STAT. RULE 809.25(3)(c)2. He essentially disagrees with the trial court's decision, but offers no arguable basis in the evidence for this court to conclude that the trial court erroneously determined the witnesses' credibility. Buchli's arguments depend on his assertions that Lurye's testimony is not evidence and that the documents submitted to the trial court along with the written closing arguments are evidence. Neither of these propositions is true, and minimal research should have disclosed that there was no basis for challenging the sufficiency of the evidence, regardless of the result of the hearsay issues. Therefore, we remand the cause to the trial court to award Lurye the reasonable attorney fees he incurred as a result of this appeal.

By the Court.—Judgment affirmed and cause remanded.

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

