

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 14, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2004AP2255

Cir. Ct. No. 2002CV421

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

BUSINESS DEVELOPMENT GROUP, INC.,

PLAINTIFF-APPELLANT,

V.

ADVANCED HOME TECHNOLOGIES, INC.,

DEFENDANT-RESPONDENT,

DANIEL G. BROTZMAN,

DEFENDANT.

APPEAL from an order of the circuit court for Waupaca County:
JOHN P. HOFFMANN, Judge. *Affirmed.*

Before Deininger, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Business Development Group, Inc. (BDG) appeals from an order granting summary judgment to Advanced Home Technologies (AHT) on a breach of contract action. AHT defends the circuit court's decision and moves for costs and attorney fees on the grounds that the appeal is frivolous. We conclude that summary judgment was properly entered, but we do not find the appeal frivolous.

¶2 On February 1, 2000, BDG and AHT entered into a contract whereby BDG agreed to provide AHT certain marketing and management services. Section II of the contract provided that BDG would issue monthly invoices to AHT according to a compensation schedule that was attached to the contract. The schedule set forth increasing base fees and incentives for the years 2000, 2001, and 2002. Section III of the contract provided, among other things, that the contract was "voidable by a 30-day, written or oral notice by either party." On November 29, 2001, AHT provided BDG written notice that it wished to terminate the contract. BDG initiated this breach of contract action, alleging that the contract was for a term of three years and that BDG was entitled to the compensation set forth in the schedule for 2002. The trial court dismissed the action on summary judgment, and this appeal followed.

¶3 This court reviews summary judgment decisions de novo, applying the same method employed by the circuit court. *Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶¶20-24, 241 Wis. 2d 804, 623 N.W.2d 751; *Brownelli v. McCaughtry*, 182 Wis. 2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994).

¶4 We construe contracts to achieve the parties' intent, giving terms their plain and ordinary meaning. *Goldstein v. Linder*, 2002 WI App 122, ¶12, 254 Wis. 2d 673, 648 N.W.2d 892. If the words of a contract convey a clear and

unambiguous meaning, our analysis ends without resorting to extrinsic evidence.
Id.

¶5 Here, the language in Section III of the contract plainly permits either party to terminate the contract with thirty days' notice. BDG argues that ambiguity nonetheless arises due to a conflict between the termination provision of Section III and the compensation provisions of Section II. We disagree. We see nothing in the compensation provisions that guarantees a term of three years for the contract. Rather, those provisions merely set forth what level of compensation will apply in each of three years if the contract is still in effect. Because the contract unambiguously allows either party to terminate it with thirty days' notice, the trial court properly granted AHT summary judgment.

¶6 While we are not persuaded by BDG's argument that the contract is internally inconsistent, we are satisfied that BDG had a reasonable basis in law for its argument. Therefore, the appeal is not frivolous and we do not award attorney fees under WIS. STAT. RULE 809.25(3). AHT is, however, entitled to its standard costs as the prevailing party under WIS. STAT. RULE 809.25(1).

By the Court.—Order affirmed.

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

