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**DISTRICT II**

November 30, 2016

To:

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

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2016AP178

In re the award of damages and attorney's fees in: Jeffrey Parnau  
v. David Weiman (L.C. #2009CV964)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Jeffrey Parnau and Richardson Ventures, Ltd. appeal from a judgment entered in favor of David Weiman, Margaret Weiman, and Flyer Publications, Inc. following remand by this court. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm the judgment of the circuit court.

This case arises from a dispute concerning the purchase and sale of a periodical publication. The underlying contract was between two corporations, Flyer (the seller) and

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version.

Richardson (the buyer), but the lawsuit was commenced by Parnau, the owner of Richardson, against David Weiman, the owner of Flyer. Eventually Parnau filed amended pleadings naming the proper corporate parties along with David's wife, Margaret, but not before the statute of limitations on the corporation's contract claims expired.

The matter proceeded to trial, and the circuit court found in favor of Parnau and Richardson on their contract claims. The court concluded that those claims were not barred by the statute of limitations. The court also implicitly found in favor of the Weimans and Flyer on their counterclaim for nonpayment of a promissory note that was issued as consideration for the purchase. Accordingly, the court indicated that it would offset the amount of nonpayment from the damages awarded to Parnau and Richardson on their contract claims. The Weimans and Flyer appealed.

On appeal, this court reversed the circuit court's decision as to the contract claims. *Parnau v. Weiman*, No. 2013AP1795, unpublished slip op. (WI App Jan. 21, 2015). We determined that Parnau had no right to sue David Weiman individually for enforcement of the contract. *Id.*, ¶¶18-21. We further determined that the statute of limitations extinguished Richardson's contract claims. *Id.*, ¶¶22-29. Because we saw no basis for reversing the circuit court's implicit determination of a viable counterclaim, we remanded the matter to the circuit court to revisit its award of damages on it. *Id.*, ¶31.

On remand, the circuit court revisited its award of damages on the counterclaim and entered judgment in favor of the Weimans and Flyer for the amount left unpaid on the promissory note plus statutory interest. This appeal follows.

In this latest appeal, Parnau and Richardson contend that the circuit court failed to follow the mandate of this court on remand. They maintain that the circuit court should have revisited the viability of the counterclaim in light of its earlier findings regarding the contract claims. Whether the circuit court followed our mandate is a question of law that we review de novo. *See Tietsworth v. Harley-Davidson, Inc.*, 2007 WI 97, ¶22, 303 Wis. 2d 94, 735 N.W.2d 418.

Here, we are satisfied that the circuit court properly followed our mandate on remand. We required the court to revisit its award of damages on the counterclaim and that is exactly what it did. Although Parnau and Richardson may wish to relitigate the counterclaim with facts supporting an affirmative defense, it is too late to do so. There has already been a trial, a decision, and an appeal in this case. Again, in the appeal, we saw no basis for reversing the circuit court's implicit determination of a viable counterclaim. *Parnau*, No. 2013AP1795, ¶31. That decision established the law of the case, which must be followed in all subsequent proceedings. *See Univest Corp. v. General Split Corp.*, 148 Wis. 2d 29, 38, 435 N.W.2d 234 (1989).

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*