COURT OF APPEALS
DECISION
DATED AND RELEASED

March 5, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to § 808.10, STATS., within 30 days hereof, pursuant to RULE 809.62(1), STATS.

NOTICE

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

No. 96-1069

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

ARING EQUIPMENT COMPANY, INC., a Wisconsin corporation,

Plaintiff-Respondent,

v.

ALL-WAYS SNOW & ICE CONTROL CONTRACTORS, INC., a Wisconsin corporation,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Waukesha County: ROGER MURPHY, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Anderson, JJ.

PER CURIAM. All Ways Snow and Ice Control Contractors, Inc. has appealed from a judgment in favor of Aring Equipment Company, Inc. for unpaid rent on a bulldozer and loader. All Ways argues that the rental

contracts are null and void because they were not signed by an officer of Aring and therefore were never accepted by Aring. In the alternative, All Ways contends that the parties' two contracts pertaining to the loader should be deemed ambiguous as to whether they constituted an agreement for sale or rental. It contends that this ambiguity should be resolved in its favor, and it should be permitted to purchase the loader with credit given for payments already made. We affirm the trial court's judgment.

The record indicates that in June 1993, All Ways contacted Aring about purchasing a loader. Patrick Kneeland, the Aring salesperson who dealt with All Ways, testified that he and Christopher Michels, All Ways' president, agreed that All Ways would have to rent the loader for a period of time to build up sufficient equity to obtain financing for the purchase. He testified that they agreed that if All Ways purchased the loader, the rental payments would be applied to the purchase amount.

On June 11, 1993, All Ways executed a document captioned "RENTAL AGREEMENT--WITH ACCEPTANCE" agreeing to lease a loader from Aring "for a minimum guaranteed rental period of 2 DAY 16 HR. DEMO." The rental agreement further specified daily, weekly and monthly rental rates, and provided that the lessee was required to pay in full the rent due for the minimum rental period and to continue to pay rent after the expiration of that period if the equipment was not returned.

On June 18, 1993, All Ways signed a purchase order for the loader. In addition, in July 1993, it signed a second rental agreement, this time

pertaining to a bulldozer. The contract form was the same as that used for the loader, and the minimum rental period specified in the agreement was two months. Ultimately, Aring could not locate financing for All Ways' purchase of the loader or bulldozer, and All Ways returned the bulldozer. The loader was repossessed by Aring, which then sued for unpaid rental amounts for the periods during which the equipment was possessed by All Ways.

All Ways' primary argument is that the rental contracts are null and void because they were not signed by an officer of Aring. It relies on language in each contract providing that "[t]his offer, ... when accepted by an officer of the Aring Equipment Co., Inc., shall constitute the entire contract" between Aring and All Ways. It also relies on language in each contract providing that "[i]n the event this offer is not accepted, it shall become null and void."

It is undisputed that the contracts were not signed by an officer of Aring. However, the law is well established that a party to a contract may waive a condition that is for its benefit. ***Godfrey Co. v. Crawford***, 23 Wis.2d 44, 49, 126 N.W.2d 495, 497 (1964). This waiver doctrine also applies to contractual conditions of acceptance of a contract. ***C.G. Schmidt, Inc. v. Tiedke***, 181 Wis.2d 316, 321, 510 N.W.2d 756, 757-58 (Ct. App. 1993).

The condition requiring acceptance by an officer of Aring was for Aring's benefit, insuring proper management and oversight of its contractual obligations. While an Aring officer never signed the contracts, Aring released the equipment to All Ways and accepted rental payments pursuant to the

contracts. By its conduct, it waived the condition that acceptance of the offers be made by an officer and entered into binding and enforceable contracts with All Ways. *See* ***id.*** at 320-21, 510 N.W.2d at 757-58. As Aring was bound, so was All Ways.

The remaining issue is whether the purchase agreement for the loader superseded the rental contract. All Ways contends that the use of the words "2 DAY 16 HR. DEMO" and "DEMONSTRATION" in the rental agreement for the loader, combined with the execution of a purchase order for the loader, establish that the rental agreement was simply a temporary agreement to cover insurance matters and was superseded by the purchase agreement.

This is, in essence, a sufficiency of the evidence issue. Kneeland testified that All Ways could not afford to purchase the loader and agreed to rent it. Kneeland's version of the parties' arrangement was corroborated by a check written by All Ways to Aring on June 28, 1993 in the amount of $3150, ten days after the purchase contract was signed. That check stated on its face that it was for "Loader lease." While Kneeland also testified that Aring agreed to apply the rental payments to the purchase price if All Ways ultimately succeeded in financing and purchasing the loader, the record indicates that when financing was not obtained by January 1994, Aring repossessed the loader.

Based upon the jury's verdict, it is clear that the jurors accepted Aring's version of the agreement and found that All Ways agreed to pay rent to

Aring for the period in which it retained the loader. Because credible evidence supports this finding, the judgment cannot be disturbed by this court. *See* ***Fehring v. Republic Ins. Co***, 118 Wis.2d 299, 305-06, 347 N.W.2d 595, 598 (1984).

Because we reject both of All Ways' arguments for reversal, we need not address Aring's argument that it was also entitled to judgment based on principles of quantum meruit.

By the Court.—Judgment affirmed.

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