

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 20, 2000

Cornelia G. Clark
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. 99-3322-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ONEIDA HOUSING AUTHORITY,

PLAINTIFF-RESPONDENT,

V.

KATHY GILSOUL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County:
JAMES T. BAYORGEON, Judge. *Reversed.*

¶1 CANE, C.J.¹ Kathy Gilsoul appeals from a judgment granting a writ of eviction against her and in favor of the Oneida Housing Authority.² Gilsoul argues that

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

² This is an expedited appeal under WIS. STAT. RULE 809.17.

the circuit court erred by failing to invalidate a notice of termination. Specifically, Gilsoul contends that Oneida failed to provide certain notice provisions required to terminate the parties' Mutual Help and Occupancy Agreement. Gilsoul additionally argues that she did not breach the terms of the agreement. Because Gilsoul was not afforded the process guaranteed under the agreement's notice of termination provision, the judgment is reversed.

BACKGROUND

¶2 In October 1978, Gilsoul and Oneida entered into an agreement pursuant to the Mutual Help Homeownership Opportunity Program, which provides families the opportunity of home ownership. In essence, the agreement is best described as a lease with an option to purchase, whereby the purchase price of the home is amortized over a period of occupancy—in this case, twenty-five years. The agreement contains provisions governing the homebuyer's obligations. Section 5.3 provides:

The Homebuyer agrees to furnish [her] own utilities. [Oneida] shall have no obligation to do so. However, if [Oneida] determines that the Homebuyer is unable to provide [her] utilities, and that this inability creates conditions which are hazardous to the life, health or safety of the occupants, [Oneida] may provide the utilities and charge the Homebuyer's [monthly equity payments account]³ for doing so [subject to certain limitations].

¶3 The agreement further states that “in the event the Homebuyer fails to comply with any of [her] obligations under this Agreement, [Oneida] may terminate this Agreement.”

³ Section 6.2 of the agreement provides that Oneida “shall maintain a separate [monthly equity payments account] for the Homebuyer ... [and] shall credit this account with the amount by which each Required Monthly Payment exceeds the Administration Charge.”

¶4 Sometime prior to July of 1999, Gilsoul incurred delinquent utility bills; however, it is undisputed that Oneida had not yet become obligated to pay these bills. On July 16, Oneida served Gilsoul with a five-day termination notice, citing her failure to pay utilities as the basis for the agreement's termination. The notice stated that Gilsoul had five days to remedy the breach before an eviction action would be filed against her. On July 24, Gilsoul received a thirty-day notice of termination, again citing Gilsoul's failure to pay her utilities. The thirty-day notice stated, in pertinent part:

You are hereby given formal Notice of the Termination of your Mutual Help and Occupancy Agreement (MHOA) with the Oneida Housing Authority (OHA). This notice requires you to **VACATE THE PREMISES WITHIN 30 DAYS** because you have violated your MHOA, as follows:

Delinquent utility bills ... violates MHOA 5.3 Homebuyer's Responsibility for Utilities. ...

If you wish to contest the termination of your tenancy, you may appeal to OHA **IN WRITING STATING YOUR REASONS WITHIN 10 DAYS** in order to appear before the:

OHA BOARD OF COMMISSIONERS APPEAL HEARING

If you do not appeal and appear before the Board and/or fail to vacate the premises within 30 Days, an eviction action will be filed against you.

Please be advised that, at the above hearing, you may be represented by an advocate, a person of your choice, including a representative of the tribal government.

¶5 It is undisputed that Gilsoul did not appeal in writing within ten days, but rather, discussed the thirty-day termination notice with Julie Cornelius, an Oneida representative. On Cornelius's advice, Gilsoul contacted the utility companies directly and agreed to a payment plan in order to pay off the delinquent bills.

¶6 Oneida commenced an eviction action against Gilsoul in small claims court. The circuit court granted the writ of eviction and this appeal followed.

ANALYSIS

¶7 Gilsoul contends that Oneida did not comply with the agreement's notice of termination requirements. Contract interpretation is a question of law that this court reviews de novo. *See Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990). Where a contract's terms are plain and unambiguous, this court will construe it as it stands. *See id.* A contract is ambiguous, however, "when its terms are reasonably or fairly susceptible of more than one construction." *Id.* "Whether a contract is ambiguous is itself a question of law." *Id.*

¶8 Here, the agreement's provision governing the notice of termination provides:

Termination of this Agreement by [Oneida] for any reason shall be by written Notice of Termination. Such notice shall state (a) the reason for termination; (b) that the Homebuyer may respond to [Oneida] in writing *or in person* within a specified reasonable period of time regarding the reason for termination; (c) that in such response [she] may be represented or accompanied by a person of [her] choice, including a representative of the tribal government; (d) that [Oneida] will advise the tribal government concerning the termination; (e) that if, within 30 days after the date of receipt of the Notice of Termination, the Homebuyer presents to [Oneida] evidence or assurances satisfactory to [Oneida] that [she] will cure the breach and continue to carry out [her] [obligations under the agreement][Oneida] may rescind or extend the Notice of Termination; and (f) that unless there is such a rescission or extension, the lease term and this Agreement shall terminate on the 30th day after the date of receipt of the Notice of Termination. ... In all cases [Oneida]'s procedures for termination of this Agreement shall afford a fair and reasonable opportunity to have the Homebuyer's response heard and considered by [Oneida].

Gilsoul argues that Oneida's notice of termination did not comply with the agreement. Specifically, she contends that the notice (1) failed to state that she had the option of

responding to the notice in person; and (2) failed to inform her that if she made assurances that the breach would be cured and that she would continue to carry out her obligations under the agreement, Oneida could rescind or extend the notice of termination.

¶9 Oneida, arguing that it “substantially complied” with the agreement’s notice of termination provision, concedes that it did not comply with all of the provision’s requirements. Consistent with the circuit court’s determination, Oneida nevertheless argues that as a party to the agreement, Gilsoul had notice of any missing provisions, thus effectively validating the notice of termination. This court disagrees. Whether Gilsoul had knowledge of these provisions as a party to the contract does not alter Oneida’s notice obligations under the agreement. The provision governing notice of termination unambiguously requires that specific information be included in the notice. Because Gilsoul was not afforded the process guaranteed under the agreement’s notice of termination provision, the circuit court erred by granting the writ of eviction.⁴

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

⁴ This court refrains from addressing any alternative arguments because only dispositive issues need be addressed. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

