

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 4, 2001

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.

No. 00-2965

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

WILLIAM DRILIAS,

PLAINTIFF-APPELLANT,

V.

CAPITAL CITY PARTNERSHIP,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for St. Croix County:
C.A. RICHARDS, Judge. *Reversed and cause remanded.*

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

¶1 PER CURIAM. William Drilias appeals a summary judgment dismissing his breach of contract action against Capital City Partnership. The trial court concluded that Drilias lacked the capacity to sue on a contract between Capital City and Festival Events, Inc. (FEI), because FEI's assignment of the 1997 Management Agreement was invalid. We conclude that the record does not

conclusively establish that the assignment was invalid. Therefore, we reverse the summary judgment and remand for further proceedings.

¶2 Under the terms of the Management Agreement, FEI was to manage the Taste of Minnesota July 4th festival. Because of some dissatisfaction with the 1996 festival, Capital City renegotiated the contract to require that Drilias, acting as FEI's agent, perform all of the terms and conditions of the contract. At the time the new contract was signed, February 14, 1997, FEI had been administratively dissolved by the Minnesota Secretary of State.¹ Five weeks later, FEI assigned its rights, title and interest in the Management Agreement to Drilias. Drilias brought this action against Capital City, alleging that FEI was not appropriately compensated for its services under the Management Agreement. The trial court dismissed the action, concluding that the assignment was invalid because FEI lacked the capacity to assign its interest in the Management Agreement due to its dissolution.²

¶3 Capital City concedes that an involuntarily dissolved Minnesota corporation continues to live for its creditors' benefit. *See Lyman Lumber v. Favorite Constr. Co.*, 524 N.W.2d 484, 487 (Minn. App. 1994). MINNESOTA STAT. § 302A.821 acknowledges the possibility of selling or distributing assets

¹ Capital City Partnership does not argue that the Management Agreement was a nullity or voidable as a result of FEI's prior administrative dissolution. We express no opinion on that question.

² Drilias also contends that he can sue in his own right. He cannot. Drilias was not a party to the contract. The contract called for him to be FEI's agent and did not promise him any compensation. His right to sue is based entirely on his ability to enforce FEI's rights under the contract. Drilias also argues that he can sue on theories of novation or delegation. We disagree. The contract called for Drilias to act as FEI's agent. When a party to a contract accepts work from an individual whom it believes to be the other party's agent or employee, that acceptance does not constitute a novation or delegation.

after involuntary dissolution. Therefore, if Drilias was assigned the rights to the Management Agreement because he was FEI's creditor, FEI continued to exist for the limited purpose of satisfying obligations to its creditor and the assignment would be valid for that purpose under Minnesota law.

¶4 The record does not conclusively establish that Drilias was not FEI's creditor. Summary judgment is appropriate only when the record conclusively shows as a matter of law that the plaintiff has no factual basis for proceeding. *See Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25 ¶7, 241 Wis. 2d 804, 810, 623 N.W.2d 751. The assignment recites that Drilias performed obligations of FEI under the Management Agreement for which he had not received compensation. The truthfulness of that assertion and whether the assignment was a sham transaction are matters for the trier of fact to determine. On the basis of the record before us, we cannot conclude as a matter of law that Drilias was not a legitimate creditor of FEI.

By the Court.—Judgment reversed and cause remanded for further proceedings.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

