

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 27, 2008

David R. Schanker
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. 2007AP1697-FT

Cir. Ct. No. 2005CV148

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

D & D MECHANIZED TRUCKING, INC.,

PLAINTIFF-RESPONDENT,

V.

RIHM MOTOR COMPANY D/B/A RIHM KENWORTH AND DON DYE,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Jackson County:
GERALD W. LAABS, Judge. *Affirmed.*

Before Higginbotham, P.J., Lundsten and Bridge, JJ.

¶1 PER CURIAM. Rihm Motor Company appeals a judgment in favor of D&D Mechanized Trucking, Inc. Rihm Motor argues that the circuit court erred in concluding that it breached a contract with D&D. We affirm.

¶2 D&D brought this action against Rihm Motor for breach of contract, arguing that Rihm Motor failed to give it a \$13,000 credit for a truck D&D traded-in as part of a purchase. Don Dye, the salesperson for Rihm Motor who negotiated the sale, stated in writing that Rihm Motor would reimburse \$13,000 to D&D when “trade terms” were met regarding a trade-in 1997 truck. The “trade terms” were not specified in writing and Dye did not testify at trial, so no evidence was adduced as to his understanding of the meaning of the phrase “trade terms.” Ole Iverson, who negotiated the sale on behalf of D&D, testified that he understood the trade terms to be that D&D would fix both the transmission and the hood of the traded-in truck.

¶3 Rihm Motor contends that no enforceable contract was formed because there was no meeting of the minds regarding the phrase “trade terms”; each party thought “trade terms” meant something different. Rihm Motor’s argument that no enforceable contract was formed misses the mark. As explained by the supreme court, “a literal meeting of the minds is not required for an enforceable contract.” *See Management Computer Servs., Inc. v. Hawkins, Ash, Baptie & Co.*, 206 Wis. 2d 158, 179, 557 N.W.2d 67 (1996) (citation omitted). Instead, courts use an objective standard to determine whether the parties intended to enter a contract. *Id.* at 181. Here, the parties intended to enter into a contract because they agreed on the vehicle to be purchased, the price, the trade-in vehicle and the price for the trade-in vehicle.

¶4 Rihm Motors argues in the alternative that the circuit court erred in interpreting the contract. “The primary goal in contract interpretation is to give effect to the parties’ intentions.” *Seitzinger v. Community Health Network*, 2004 WI 28, ¶22, 270 Wis. 2d 1, 676 N.W.2d 426. Where, as here, reasonable people could understand a contract term differently, the term is ambiguous. *Jensen v.*

Janesville Sand & Gravel Co., 141 Wis. 2d 521, 530, 415 N.W.2d 559 (Ct. App. 1987). If a contract is ambiguous, we may consider the testimony of the parties on their intent. *Schilling v. Employers Mut. Cas. Co.*, 212 Wis. 2d 878, 893 n.6, 569 N.W.2d 776 (Ct. App. 1997). The meaning of ambiguous contract terms turns on the parties' intent and is a factual issue to be determined by the trier of fact. *Management Computer*, 206 Wis. 2d at 181.

¶5 The circuit court concluded that the phrase “trade terms” meant that D&D would repair the transmission and the hood of the trade-in vehicle. This determination is supported by Iverson’s testimony about what the parties intended. Rihm Motor provided no testimony to the contrary from anyone involved in negotiating the contract. The circuit court’s finding of fact regarding the parties’ intent was not clearly erroneous because it is supported by the trial testimony. *See* WIS. STAT. RULE 809.17 (2005-06) (“Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”). Since D&D fulfilled its end of the bargain by repairing the transmission and hood of the truck and turning it over to Rihm Motor, the circuit court properly concluded that Rihm Motor breached the contract by not providing D&D the \$13,000 credit.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

