COURT OF APPEALS
DECISION
DATED AND FILED

November 13, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 01-0939

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

MICHAEL T. MULQUEEN, INDIVIDUALLY AND AS TRUSTEE OF THE MICHAEL T. MULQUEEN REVOCABLE TRUST, THE MICHAEL T. MULQUEEN REVOCABLE TRUST AND EARL'S AUTOMOTIVE SERVICE, INC.,

PLAINTIFFS-RESPONDENTS,

V.

BARBARA GELLER,

DEFENDANT,

DANIEL GELLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS P. DONEGAN, Judge. *Affirmed.*

¶1 CURLEY, J.[1] Daniel Geller appeals from the judgment entered against him on March 2, 2001 granting a judgment of eviction to the plaintiff, Michael T. Mulqueen, et al., and terminating all of Geller's contractual rights under four leases. Geller raises three issues on appeal.[2] First, he contends that he was denied his due process rights because: (a) the oral stipulation placed on the record pursuant to WIS. STAT. § 807.05 (1999-2000) was not valid;[3] (b) the subsequent written order based on the oral stipulation did not accurately reflect the parties' intent; and (c) the written order was entered in violation of the five-day rule. Second, Geller claims that his options to purchase the properties in question were not extinguished by early termination of the leases. Third, Geller argues that other contractual provisions in the leases were not nullified by early termination of the leases. This court concludes that an enforceable stipulation exists and any violation of the five-day rule constitutes harmless error. Further, this court determines that Geller's options to purchase and other contractual rights expired upon termination of the leases.

I. BACKGROUND.

¶2 Daniel Geller was Mulqueen's longtime employee at "Earl's Automotive Service," an automotive repair business. In 1992, Mulqueen informed Geller of his desire to retire and move to California. Geller told Mulqueen that he was interested in taking over the business and, on November 18, 1993, Barbara

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

[2] The Gellers are now divorced and only Daniel Geller participates in this appeal.

[3] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

and Daniel Geller, as tenants, and Michael T. Mulqueen, as their landlord, signed four separate leases.

¶3 The land in question consisted of residential and commercial properties. Apartments stood on four of the parcels, and the fifth contained land and buildings comprising "Earl's Automotive Service." Each lease states: "Landlord does hereby lease to Tenant and Tenant takes and rents from Landlord that certain space hereinafter referred to as 'Premises.'" The leases are identical in all respects except for the designation of the rental property and each property's corresponding rent. In all, the Gellers agreed to rent five properties for a period of ten years each (one lease contains two of the properties and the other leases contain one property each). Geller also contemporaneously purchased "Earl's Automotive Service" from Mulqueen.

¶4 The parties operated satisfactorily under the provisions of these leases until April of 1998. At that time, Mulqueen alleged that the Gellers owed back rent totaling $12,000. On April 1, 1998, the Gellers were served with a five-day notice. On August 7, 1998, Mulqueen filed a small claims eviction action. Mulqueen filed only one complaint with four separate causes of action pursuant to each of the four leases. Mulqueen also sought $50,000 in damages.

¶5 On August 26, 1998, the parties met before the circuit court and entered into an oral stipulation, which was placed on the record. The parties agreed that a writ of restitution would be granted on that day as to all five of the properties, but that the court would stay the execution of the writ for sixty days to provide the Gellers with an opportunity to cure their default by fulfilling certain conditions regarding the five properties: (1) paying back real estate taxes from 1996 and 1997; (2) paying any and all outstanding sewer and water charges; and

(3) paying all unpaid rent through October 25, 1998. If the Gellers did not meet the conditions at the end of the sixty days, Mulqueen would be entitled to obtain an immediate writ of restitution *ex parte* and evict the Gellers.

¶6 After the hearing, the circuit court directed Mulqueen's attorney to draft a written stipulation consistent with the oral stipulation, submit this draft to the opposing parties for their approval, and then submit it to the court for its approval. Mulqueen's attorney drafted a proposed order, which he then submitted to counsel for each of the Gellers.[4] Barbara Geller's attorney signed and returned the order without any changes. However, Daniel Geller's attorney returned the proposed order with a number of changes and a letter stating in part:

> I was somewhat surprised to see the ambiguous language in your proposed Order that could be interpreted to unfairly and improperly reconstitute this as a single eviction action under a single lease….
>
> As I have mentioned to you from the beginning, it may well be that my client is able to cure the defaults as to the commercial property … and not have sufficient capital … to cure the defaults on the rental residential leases.

Mulqueen's attorney disregarded these objections, and, on September 10, 1998, submitted the proposed order for the court's approval.

¶7 On September 16, 1998, the circuit court approved the proposed order. On October 16, 1998, counsel for Daniel Geller filed a motion to reopen the September 16 order. The circuit court denied his motion, finding that while Geller had cured all defaults as to the parcel of land containing the auto repair business, the oral stipulation of August 26 clearly required Geller to cure the

[4] Barbara and Daniel Geller were represented separately throughout the circuit court proceedings because they were going through the process of divorce.

defects on all parcels to avoid eviction from the properties. The court then entered a judgment of eviction against the Gellers and issued an immediate writ of restitution.

II. ANALYSIS.

A. The oral stipulation is valid.

¶8 Generally, oral stipulations made in open court and taken down by the reporter are valid and binding. ***Wyandotte Chems. Corp. v. Royal Elec. Mfg. Co.***, 66 Wis. 2d 577, 589, 225 N.W.2d 648 (1975). "Whether a stipulation was validly entered into is a question of law, which we review *de novo*." ***Cavanaugh v. Andrade***, 191 Wis. 2d 244, 264, 528 N.W.2d 492 (Ct. App. 1995). Construction of a stipulation is also a question of law, reviewed *de novo*. ***Cummings v. Klawitter***, 179 Wis. 2d 408, 415, 506 N.W.2d 750 (Ct. App. 1993), *overruled on other grounds by* ***Johnson v. A.B.C. Ins. Co.***, 193 Wis. 2d 35, 532 N.W.2d 130 (1995).

¶9 Here, the parties clearly complied with WIS. STAT. § 807.05, as the oral stipulation was made in open court and recorded by the court reporter.[5] *See* ***Czap v. Czap***, 269 Wis. 557, 560, 69 N.W.2d 488 (1955). Nevertheless, Geller contends that the stipulation is unenforceable because the parties never had a

[5] WISCONSIN STAT. § 807.05 provides:

> **Stipulations.** No agreement, stipulation, or consent between the parties or their attorneys, in respect to the proceedings in an action or special proceeding shall be binding unless made in court or during a proceeding conducted under s. 807.13 or 967.08 and entered in the minutes or recorded by the reporter, or made in writing and subscribed by the party to be bound thereby or the party's attorney.

meeting of the minds as to the essential terms of the stipulation and, therefore, it is impossible to give the stipulation adequate meaning. Geller claims:

> No meeting of the minds had actually occurred and both sides' counsel knew it. [Mulqueen] thought that [Geller] had agreed to pay within 60 days **all** delinquencies on **all** leases as a condition of the stipulation. [Geller] thought [he] had agreed to pay **all** delinquencies on **each** of the leases [he] wished to preserve.

This court agrees with Geller that, on its face, the stipulation is reasonably susceptible to more than one meaning. However, examination of extrinsic evidence resolves this ambiguity and suggests that the parties had a meeting of the minds on the essential terms of the stipulation.

¶10 On August 26, 1998, the parties met before Judge Gieringer. After meeting in chambers, the parties informed the court that they had reached an agreement and wanted to place their stipulation on the record pursuant to WIS. STAT. § 807.05. Counsel for Mulqueen began by summarizing the agreement, as he understood its terms:

> My understanding is that the parties have agreed that subject to the conditions, that I'll enumerate hereafter, that the Court is going to grant a writ today for all five of the properties that are described in the complaint.
>
> However, that writ will be stayed for a period of 60 days…. And I believe then that assuming that the conditions, that I will describe, are not met … I would be entitled to obtain the writ on Monday, October 26th, 1998.
>
> The conditions that need to be met … are, as I understand them, as follows: Number one, that all of the 1996 and 1997 real estate taxes … have been paid by the defendants….
>
> In addition, that any and all unpaid sewer and water charges for the five properties described in the complaint will also be paid…. That's the second condition.

> The third condition is that all of the rent that is unpaid … will be transmitted to me as counsel for the plaintiffs ….

The court then asked counsel for each of the Gellers if they would like to comment on the stipulation. Counsel for Daniel Geller added:

> I have a few points of clarification. We have talked in general terms as to the writ …. I need to be very particular that we have four separate leases here covering five different parcels and each one has a different rent[] stated in it.
>
> … I want to be very clear that each property has a separate lease.

Finally, counsel for Barbara Geller concluded: "It's my understanding that the stipulation as recited by [counsel for Mulqueen] and clarified by [counsel for Daniel Geller] is correct, and we ask the court to accept that stipulation."

¶11 Such stipulations are contractual in nature, *see* ***Cummings***, 179 Wis. 2d at 415, and principles of contract law may illuminate a stipulation dispute even to the point of being dispositive, ***Phone Partners Ltd. v. C.F. Communications***, 196 Wis. 2d 702, 710-11, 542 N.W.2d 159 (Ct. App. 1995). Thus, a stipulation exists only if the minds of the parties meet on the essential terms. *See* ***Cummings***, 179 Wis. 2d at 412, 417; s*ee also* ***Messner Manor Assocs. v. Wisc. Hous. and Econ. Dev. Auth.***, 204 Wis. 2d 492, 498, 555 N.W.2d 156 (Ct. App. 1996). Further, where the intent of the parties is ambiguous, this court may consider extrinsic evidence to determine the parties' intent. ***Cummings***, 179 Wis. 2d at 415. Language is ambiguous if it is reasonably susceptible to more than one meaning. ***Id.***

¶12 This court agrees with Geller that the language of the agreement is reasonably susceptible to more than one meaning because the parties never specifically stated whether the Gellers had to meet the conditions as to all five

parcels *in toto* to prevent eviction from any one parcel, or if the Gellers could satisfy all of the conditions as to any individual parcel under one of the four leases by paying the total monies owed on that parcel and, thereby, prevent eviction from properties on a lease-by-lease basis. However, we may resolve this ambiguity by resorting to extrinsic evidence to clarify the circumstances surrounding the execution of the stipulation. *See* ***Stevens Constr. Corp. v. Carolina Corp.***, 63 Wis. 2d 342, 355, 217 N.W.2d 291 (1974).

¶13 Any extrinsic evidence examined to clarify a stipulation must have existed at the time of the stating of the stipulation on the record. *See* ***Kovarik v. Vesely***, 3 Wis. 2d 573, 579, 89 N.W.2d 279 (1958). This extrinsic evidence may include any "statements of counsel made in the presence of the trial judge," ***D'Angelo v. Cornell Paperboard Products Co.***, 33 Wis. 2d 218, 227, 147 N.W.2d 321 (1967), but belated explanations to the court regarding the terms of an agreement are unacceptable, *see* ***Marks v. Gohlke***, 149 Wis. 2d 750, 753, 439 N.W.2d 157 (Ct. App. 1989) (stating that belated explanations of the terms of an agreement are merely attempts to circumvent WIS. STAT. § 807.05).

¶14 Here, three pieces of extrinsic evidence indicate that compliance with *all* the conditions for *all* five of the properties was necessary in order to avoid execution of the writ of restitution. First, Mulqueen filed only one summons and complaint. If Mulqueen had sought compliance on a lease-by-lease basis, as argued by Geller, it is more likely that he would have filed four separate pleadings, one for each lease.

¶15 Second, on the record of the August 26 hearing, the attorneys for all sides continually referred to a single writ and, ultimately, the court issued only one writ of restitution for all five of the properties. If Geller intended to cure the

defaults on a lease-by-lease basis, he should have requested a separate writ under each lease. Otherwise, execution of only one writ containing multiple properties results in eviction from all properties listed in the writ, regardless of whether they are the subject of separate leases. *See* WIS. STAT. § 799.45(2).

¶16 Third, and finally, in discussing the conditions of compliance at the August 26 hearing, Mulqueen's attorney made an additional comment regarding the third condition: "The rents are [$]1,148.39 per month. That's what … is to be paid in order to avoid issuance of the writ within 60 days." The amount of $1,148.39 constitutes the combined rent for all five of the properties. Geller never objected to this clarification of the third condition. Therefore, we assume that Geller understood that he was required to pay the rent owed on all five of the properties in order to avoid eviction.

¶17 Geller and his counsel were present at the hearing, but failed to clarify the agreement. Daniel Geller's attorney later explained his reasoning: "We specifically discussed this issue with [Barbara Geller's attorney], and his advice to me was don't raise the issue because you don't know which way it will go. Stick with the all for each [language]. That was [Barbara Geller's attorney's] position on the day the stipulation was placed on the record." Thus, Geller was aware of Mulqueen's intent. Geller was also aware of the ambiguity in the oral stipulation, but chose to ignore it for strategic reasons. This court will not allow Geller to bury his head in the sand and then claim that he didn't understand the other parties' intent. *See* ***Shawn B.N. v. State***, 173 Wis. 2d 343, 372, 497 N.W.2d 141 (Ct. App. 1992) (stating that a parties cannot create their own error by deliberate choice of strategy and then ask to receive the benefit from that error on appeal).

¶18 Moreover, Geller's personal understanding of the stipulation is irrelevant. *See* ***Bertler v. Employers Ins. of Wausau***, 86 Wis. 2d 13, 17, 271 N.W.2d 603 (1978) (stating that "objective rather than subjective intent is the test" for determining a party's intent). Here, the extrinsic evidence objectively indicates that the stipulation required compliance with *all* the conditions for *all* five of the properties to avoid execution of the writ. Because examination of the extrinsic evidence has clarified the parties' intent and demonstrates a meeting of the minds, a valid and enforceable stipulation was created pursuant to WIS. STAT. § 807.05.

B. Any violation of the five-day rule was harmless.

¶19 On October 16, 1998, Geller filed a motion to re-open the September 16 order alleging that Mulqueen failed to comply with the five-day rule.[6] Geller claimed that neither he nor his counsel received a copy of the proposed order until September 17, 1998, and that because he had not received the proposed order until the day after its approval, September 16, 1998, Mulqueen violated the five-day rule. In denying his motion, the circuit court concluded that although Geller may not have been given adequate time to object under the five-day rule, any error was harmless because Geller was not prejudiced.

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[6] The "five-day rule" is contained in Milwaukee County Circuit Court Local Rule 323(b):

> Prior to the submission of any document to the court for signature, a copy shall be served upon all counsel of record and/or parties not represented by counsel of record, with a cover letter stating that the document is being submitted to the court and that objections, if any, shall be filed with the court and a copy served on all counsel of record and/or parties not appearing by counsel of record within five business days after receipt.

¶20 "The trial court is given discretion on whether to grant relief from a stipulation pursuant to [WIS. STAT.] § 806.07."[7] ***Phone Partners Ltd.***, 196 Wis. 2d at 709. "A discretionary determination, to be sustained, must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law." ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). "Additionally, and most importantly, a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination."

[7] WISCONSIN STAT. § 806.07 provides:

> **Relief from judgment or order. (1)** On motion and upon such terms as are just, the court … may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;
>
> (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15(3);
>
> (c) Fraud, misrepresentation, or other misconduct of an adverse party;
>
> (d) The judgment is void;
>
> (e) The judgment has been satisfied, released or discharged;
>
> (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
>
> (g) It is no longer equitable that the judgment should have prospective application; or
>
> (h) Any other reasons justifying relief from the operation of the judgment.

Id. This court concludes that the circuit court properly determined that any violation of the five-day rule was harmless.

¶21 An error is harmless if there is no reasonable possibility that the error contributed to the result in the case. *See* ***State v. Dyess***, 124 Wis. 2d 525, 543, 370 N.W.2d 222 (1985); *see also* ***Town of Geneva v. Tills***, 129 Wis. 2d 167, 185, 384 N.W.2d 701 (1986) (stating that the rule of harmless error explicated in ***Dyess*** is applicable in civil cases). WISCONSIN STAT. § 805.18(2) states:

> No judgment shall be reversed or set aside or new trial granted in any action or proceeding … for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment, or to secure a new trial.

¶22 After review of the oral stipulation and the September 16 order, this court concludes that the order correctly summarized the oral stipulation entered on the record pursuant to § 807.05. Further, as previously stated, Geller's interpretation of the oral stipulation is unsupported by the record and the extrinsic evidence. Accordingly, Geller's objections to the wording of the proposed order would have been fruitless, and, therefore, any violation of the five-day rule denying Geller his right to object to the proposed order was harmless.

C. The options to purchase expired upon termination of the leases.

¶23 On August 3, 2000, the circuit court denied Geller's partial summary judgment motion, which sought a declaratory judgment that the options to purchase contained in each of the leases remained in effect and were not terminated by his default and subsequent eviction. Geller contends that the circuit

court erroneously concluded that the options to purchase were extinguished by early termination of the subject leases.[8]

¶24 We review the granting and denial of summary judgment motions *de novo*, applying the same methodology and standards as the trial court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). If there are no disputed issues of material fact, summary judgment is appropriate where the moving party is entitled to judgment as a matter of law. ***Id.*** When both parties move for summary judgment, as in the present case, the practical effect is that the parties have stipulated to the facts and only issues of law are before us. *See* ***Lucas v. Godfrey***, 161 Wis. 2d 51, 57, 467 N.W.2d 180 (Ct. App. 1991).

¶25 Each lease in question contains a section entitled "Option To Purchase," which states: "In consideration of the Tenant executing this Lease, the Landlord hereby grants to the Tenant the option to purchase the Premises at the time, for the consideration, and upon the terms and conditions hereinafter set forth…." According to subsequent subsections in the agreement, the Gellers could exercise the option any time between January 10, 2003 and September 10, 2003 by giving Mulqueen notice by certified mail and paying the purchase price specified for each parcel.

¶26 The supreme court outlined the nature of an option to purchase in ***Bratt v. Peterson***, 31 Wis. 2d 447, 143 N.W.2d 538 (1966):

[8] On April 1, 1998, Mulqueen mailed the Gellers a notice terminating their tenancies. The circuit court found that the tenancies terminated on May 3, 1998. While Geller now submits various dates of termination, he failed to challenge the date of termination at trial. Accordingly, this court concludes that May 3, 1998 is the termination date. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980) (stating that an appellate court will not review a factual issue raised for the first time on appeal).

> An option to purchase is a continuing promise or offer given by the landowner to sell real estate to another at a specified price within a specified period of time. The offer ripens into a binding and irrevocable "option contract" if consideration is given, but can be withdrawn any time before acceptance if not based on consideration. Once the "option contract" or offer is accepted, a contract of sale arises.

Id. at 451 (footnotes omitted).

¶27 Mulqueen concedes that under the language of the option to purchase, once the leases are "executed," the offer ripens into a binding contract. However, Mulqueen argues that the term "execute" does not mean only to sign the lease, but also to comply with the terms of the lease. This court agrees that the parties intended "executing this lease" to mean more than merely signing a document. As consideration for the options, the Gellers were required to pay rent in a timely manner until they were able to exercise the options. Because the Gellers defaulted by failing to make timely payments, the options expired upon termination of the underlying leases.

¶28 "The primary objective in interpreting a contract is to ascertain and carry out the intentions of the parties." ***General Cas. Co. v. Hills***, 209 Wis. 2d 167, 175, 561 N.W.2d 718 (1997). "Where the terms of a contract are clear and unambiguous, we construe the contract according to its literal terms." ***Gorton v. Hostak, Henzl & Bichler, S.C.***, 217 Wis. 2d 493, 506, 577 N.W.2d 617 (1998). Where a term is not defined within the four corners of the document, the court will give words their ordinary meaning. *See* ***id.*** at 507.

¶29 While "executing" is not defined within the four corners of any of the leases, "dictionary definitions are dispositive of the ordinary meanings ascribed to contract terms." *See* ***Gorton***, 217 Wis. 2d at 507. "Execute" is defined

as "[to] carry out fully and completely." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 794 (1993). Further, a contract is fully executed when "the parties owe[] no further contractual duties to each other." BLACK'S LAW DICTIONARY 589 (7th ed. 1999). Thus, "execute" ordinarily implies more than simply signing a document.

¶30 Here, the rental of the properties "was neither incidental nor ancillary to the option[s]." ***Bozzacchi v. O'Malley***, 211 Wis. 2d 622, 627, 566 N.W.2d 494 (Ct. App. 1997). "Rather, it was a significant part of the consideration for the option[s]." ***Id.*** Because the Gellers failed to pay rent in a timely manner up to the option date, January 10, 2003, Mulqueen did not receive the consideration sought, *i.e.*, execution of the leases.

¶31 This case is analogous to ***Bozzacchi***:

> In ***Bozzacchi***, an option to purchase real estate was granted on the condition that "[b]uyer shall rent [the property] for $650[ ] per month beginning June 1, 1994." The option further provided that "[b]uyer and seller will enter into a rental agreement as of closing of [a related piece of property]." The buyers and sellers entered into the rental agreement, but the buyers did not pay their rent on time--the rent for April through September 1995 was not paid until October 1995. The sellers did not honor the option to purchase. The buyers contended that they had complied with express terms of the option, which conditioned the option on the entry into a rental agreement, but did not expressly condition the exercise of the option on the timely payment of rent. We rejected the buyers' claim, concluding that their untimely rent payment breached the covenant of good faith and fair dealing implicit in every contract. We reasoned that in entering into the rental agreement, the buyers had complied only with the form of the option contract, but by paying rent extremely late, they had failed to comply with the substance of the agreement. "'Compliance in form, not in substance' breaches that covenant of good faith."

Chase Lumber and Fuel Co., Inc. v. Chase, 228 Wis. 2d 179, 193-94, 596 N.W.2d 840 (Ct. App. 1999) (citations omitted) (footnote omitted) (alterations in original). Accordingly, the options to purchase never ripened into option contracts and cannot stand alone. *See* ***Harmann v. French***, 74 Wis. 2d 668, 672, 247 N.W.2d 707 (1976) (stating that while a lease agreement and option to purchase may be incorporated into a single instrument, they are independent agreements only to the extent set forth).

D. Geller's other contractual rights also expired upon termination of the leases.

¶32 Finally, Geller contends that the circuit court erred in ruling on summary judgment that his contractual rights pursuant to "Addendum A" of the leases expired upon termination of the leases. Each lease contains a provision entitled "Addendum A" stating:

> Tenant may terminate this Lease at any time after November 10, 1994 and Landlord agrees to release the Tenant from any and all obligations under the Lease if the Tenant terminates the Lease after November 10, 1994.
>
> If Tenant decides to terminate the Lease after November 10, 1994 the Tenant agrees to continue to maintain the Premises until such time the Landlord can sell the Premises to an acceptable purchaser. If Tenant maintains the Premises until the landlord can sell the Premises to an acceptable purchaser, then the Landlord agrees to the following:
>
> 1. To rebate back to the Tenant all rent monies paid to the Landlord under this Lease. Landlord's liability to payment of the rebate is limited to the gross sales price realized by the Landlord from the sale of the Premises to an acceptable purchaser; and
>
> 2. If Landlord sells the Premises plus all of the properties … for a gross sales price of $200,000.00 or greater, the Landlord agrees to divide equally with the Tenant the net profit realized from said sale.

Geller claims that because termination occurred in 1998, well after November 10, 1994, he is entitled to rebated back rent and a portion of any proceeds from the sale of the properties pursuant to "Addendum A.."

¶33 In his analysis, Geller ignores one very important fact. The addendum clearly states that these provisions take effect only upon termination *by the tenant*. The circuit court found that the tenancies in question were terminated *by the landlord* on May 3, 1998. This fact was determined pursuant to cross-motions for partial summary judgment and is not challenged on appeal. Therefore, the parties have stipulated to this fact. *See* ***Chase Lumber***, 228 Wis. 2d at 190 ("[W]hen both parties move by cross-motions for summary judgment, it is the equivalent of a stipulation of facts permitting the trial court to decide the case on the legal issues.").

¶34 Because the leases were terminated by the landlord, Geller may not claim the benefits of "Addendum A." Accordingly, the decision of the circuit court is affirmed.

By the Court.—Judgment affirmed.

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