

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 22, 2009

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. 2009AP107

Cir. Ct. No. 2008CV8

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

BERNARD SEIDLING, D/B/A JM ENTERPRISES,

PLAINTIFF-APPELLANT,

V.

**PAUL A. ROEDL AND Verna L. ELLIOT, A/K/A Verna L. ROEDL,
A/K/A Verna L. ELLIOT-ROEDL,**

DEFENDANTS-THIRD-PARTY

PLAINTIFFS-RESPONDENTS,

V.

**BERNARD SEIDLING, AS TRUSTEE OF THE CHRISTINE A. SEIDLING
LIVING TRUST,**

THIRD-PARTY DEFENDANT.

APPEAL from a judgment of the circuit court for Barron County: TIMOTHY M. DOYLE, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Bernard Seidling appeals a judgment of foreclosure on a land contract that set Paul and Verna Roedl’s redemption price at \$10,540.60. He argues that, under the terms of the land contract, the redemption price should have included interest at 19.99% from the date the contract was executed until it is fully paid. He also argues that the contract called for deposition transcript fees and title commitment fees to be added to the redemption amount. We conclude the trial court properly disallowed the requested interest payments because they violate the Consumer Act. However, Seidling was entitled to litigation expenses and title commitment fees. We remand the matter for the trial court to amend the judgment to add the transcript fees and title commitment fee to the redemption price and set a deadline for the Roedls to make the additional payment.

¶2 The Consumer Act applies to consumer credit transactions, which include a land contract between a merchant and a customer. *See* WIS. STAT. § 421.301(10).¹ Seidling qualifies as a “merchant” because he regularly advertises or deals in real property. WIS. STAT. § 421.301(25). The Roedls qualify as “customers” because they contracted to acquire real property for personal purposes. *See* WIS. STAT. § 422.301(17). WISCONSIN STAT. § 422.203(1) prohibits consumer credit transaction delinquency charges that exceed ten dollars

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

or 5% of the unpaid amount of the installment, whichever is less. The land contract violates the law in two ways. First, the 19.99% delinquency interest rate far exceeds the statutory limit. Second, the contract applies the rate to the entire amount due, not just the unpaid installment amount. Therefore, under the Consumer Act, the interest provisions set out in the land contract are unenforceable because they violate the statute.

¶3 Seidling complains that the trial court's simultaneous briefing schedule kept him from responding to the Roedl's post-trial brief in which the violation of the Consumer Act was first raised. He apparently would have argued, as he does on appeal, that the Roedls could not claim a Consumer Act violation because the Act was not introduced into evidence at trial. The Consumer Act is not a factual matter that is proved by evidence at trial. Its application is a question of law. Courts do not enforce contract provisions that violate statutes. *See Jezenski v. Jezenski*, 2009 WI App 8, ¶11, 316 Wis. 2d 178, 763 N.W.2d 176. Therefore, it was not necessary for the Roedls to prove the existence of a statute at trial.

¶4 Seidling is entitled to court reporter and title commitment fees pursuant to the contract. His unrefuted testimony regarding these fees incorporated exhibits that reflect these expenses. Although they are ordinarily considered discretionary costs, these expenses can be added to the redemption price by terms of the contract. *See Fellenz v. Gonring*, 113 Wis. 2d 228, 230-31, 335 N.W.2d 884 (Ct. App. 1983). Upon remand, the trial court shall amend the judgment by adding the transcript and title commitment fees, and shall set the time for the Roedls to pay the revised redemption price.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions.

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

