**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**April 29, 2010**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal No. 2009AP779** **Cir. Ct. No. 2008SC2913**

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

**NAILAH ADAMA,**

**PLAINTIFF-APPELLANT,**

**V.**

**WESLEY CHRISTIAN METHODIST EPISCOPAL CHURCH,**

**DEFENDANT-RESPONDENT.**

APPEAL from a judgment of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Nailah Adama appeals a judgment of the circuit court dismissing her claims stemming from a real estate transaction. Adama

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

entered into a contract with Wesley Christian Methodist Episcopal Church to purchase a house owned by the Church. The contract provided that the Church would pay up to a certain amount for house repairs. At closing, the parties entered into an escrow agreement for the repair funds. Adama alleges that this escrow agreement requires the Church to pay more for repairs than originally agreed. For the reasons that follow, I affirm the circuit court's judgment dismissing this claim.

¶2 Wesley Christian Methodist Episcopal Church entered into an offer to purchase contract with Nailah Adama for the sale of a house owned by the Church. The purchase contract included the following clause: "If any repairs are ordered to the seller by the home inspector seller will pay up to $2500.00 for repairs at closing." The subsequent inspection revealed problems with the sidewalks and a set of concrete steps sloping toward the foundation, a rotten sill plate, water damage to window corners, and past signs of moisture on a basement wall.

¶3 At the closing, a title company employee drafted an escrow agreement providing that $1750 be deposited in escrow. The escrow agreement allowed for disbursements related to three house repairs. Adama had already obtained written bids for two of these repairs, the sill plate (referred to as "ceil plate") and the ridge vent, requiring initial payments totaling $750 dollars. The third repair was for "concrete work." The escrow agreement stated, in relevant part:

> Escrowee is authorized to disburse said escrowed funds [as follows]:
>
> > Completion of Ceil Plate Replacement by Kamppi Construction, Inc.
> >
> > Completion of Ridge Vent Installation by Kamppi Construction, Inc.

> *Completion of Concrete Work by TO BE DETERMINED*
>
> ….
>
> ... Escrowee shall:
>
> > Pay from the escrowed funds such sums as may be necessary to cause the specified conditions to be satisfied. *In the event the escrowed funds are insufficient, Seller shall be responsible for the excess cost necessary to cause the specified conditions to be satisfied.*

(Emphasis added; emphasis in original omitted.)

¶4 Adama later sued in small claims court, alleging that the Church breached the escrow agreement when it refused to pay for the excess cost related to "concrete work" for the house's concrete patio and steps. She demanded $5000 in damages. After a court commissioner dismissed her claims, Adama requested a bench trial. Following this trial, the circuit court entered judgment dismissing Adama's claims on their merits. I affirm for the following reasons.

¶5 Adama seeks the costs related to the removal and replacement of a concrete patio and steps that contribute to water infiltration to her basement. She argues that the escrow agreement did not limit the Church's obligation to pay for concrete repairs. She points to the language authorizing escrow funds for the "Completion of Concrete Work by TO BE DETERMINED" and the agreement's general statement that "[i]n the event the escrowed funds are insufficient, Seller shall be responsible for the excess cost necessary to cause the specified conditions to be satisfied."

¶6 Adama suggests a number of ways to view the escrow agreement. She contends that any of those views would render the agreement enforceable as she interprets it. First, she states that the escrow agreement is a valid contract

separate from the offer to purchase contract. Alternatively, she argues that the parties intended that the escrow agreement modify the purchase contract. Finally, she posits that, if the escrow agreement and purchase contract are read together, then the more specific language in the escrow agreement should prevail over the ambiguous, conflicting language in the purchase contract.

¶7 I reject Adama's arguments because I conclude that the escrow language that she relies on is ambiguous and that the larger context of the agreement makes her interpretation unreasonable.

¶8 Regarding ambiguous contract provisions, we have stated:

> "Contract language is considered ambiguous if it is susceptible to more than one reasonable interpretation." If the contract is ambiguous, we turn to extrinsic evidence to determine the parties' intent. Admissible extrinsic evidence might include "the surrounding circumstances including factors occurring before and after the signing of an agreement."

***Kernz v. J.L. French Corp.***, 2003 WI App 140, ¶10, 266 Wis. 2d 124, 667 N.W.2d 751 (citations omitted).

¶9 The escrow agreement does not describe the concrete work to be done and, therefore, is ambiguous. It could mean any concrete work that Adama chooses to have done or it could be, as the Church asserts, a reference to the previously agreed-on repair terms. Although the circuit court did not specifically find the escrow language ambiguous, it is apparent that the court considered the circumstances and found that the only reasonable reading of the agreement was the Church's interpretation. I agree with the circuit court. Furthermore, in reviewing the extrinsic evidence, I will assume that factual disputes were resolved in a manner that supports the circuit court's ultimate decision. *See* ***State v. Pallone***,

2000 WI 77, ¶44 n.13, 236 Wis. 2d 162, 613 N.W.2d 568 (when an express finding is not made, appellate courts normally assume the circuit court made findings in a manner that supports its final decision).

¶10 Prior to closing, the Church's agent negotiated with Adama's agent to determine how the Church would fulfill its obligation to pay for repairs up to a $2500 cap. It was determined that Adama wanted repairs to the house's sill plate and ridge vent at a cost totaling $1500, of which $750 was due at the time of closing. In addition, Adama wanted the concrete steps repaired and, although she did not have a final price at closing, she had received a verbal bid for $400.

¶11 Viewing the escrow agreement in light of this evidence, it is clear that the $1750 placed in escrow reflected the $2500 purchase contract amount minus the $750 already due. Of the $1750 placed in escrow, $750 was to go to final payments for the sill plate and ridge vent, with the remaining $1000 available for the concrete steps. In other words, the provision stating "seller will pay up to $2500.00 for repairs at closing" was effectuated by paying the portion due at closing and escrowing the remainder for payments not yet due. Also, regarding the "excess cost" language in the escrow agreement, the title company representative who prepared the agreement testified at trial that this was boilerplate language that she had inadvertently not changed and that it had no connection to the parties' discussions about concrete work.

¶12 These circumstances show that the parties intended the "concrete work" to be consistent with the underlying purchase contract and the parties' subsequent discussions. *See* ***Kernz***, 266 Wis. 2d 124, ¶9 ("'The ultimate aim of all contract interpretation is to ascertain the intent of the parties.'" (citation omitted)). Specifically, "concrete work" referred to costs for repairing the concrete steps in

an amount up to what was remaining of the purchase contract's repair limit. The Church provided these funds and, for this reason, Adama's arguments that the Church breached the agreement fail.

¶13 Adama raises a number of other issues that were not presented to the circuit court, and I decline to consider them. *See* ***Apex Elecs. Corp. v. Gee***, 217 Wis. 2d 378, 384, 577 N.W.2d 23 (1998) (issues not raised in the circuit court need not be considered for the first time on appeal).

*By the Court.*—Judgment affirmed.

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