

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2012

Diane M. Fremgen
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. 2011AP2719

Cir. Ct. No. 2011SC8379

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

R & D POINT PLAZA,

PLAINTIFF-RESPONDENT,

V.

LINDA RILEY,

DEFENDANT-APPELLANT,

TYRASSA RILEY AND ULTANIA RILEY,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee
County: PAUL R. VAN GRUNSVEN, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Linda Riley appeals from a judgment of the small claims court awarding R & D Point Plaza (“R & D”) \$87,238.72 for unpaid rent and various other costs.² Riley argues that the small claims court was in error because: (1) Riley rented commercial space from R & D for her business, Riley’s Hair & Beauty Supply Store, a limited liability company that is to be held harmless against all judgments and costs; (2) R & D did not fulfill its obligations under the lease; and (3) the judgment was in excess of \$10,000, contrary to WIS. STAT. § 799.01. We disagree and affirm the small claims court.

BACKGROUND

¶2 According to the complaint, R & D is a limited liability company based in Waukegan, Illinois. On October 1, 2010, R & D and Riley entered into a three-year written lease for the rental of the premises at 8329 West Appleton Avenue, Milwaukee. On March 16, 2011, R & D gave a written notice of default to Riley based on unpaid rent and other charges. The default notice stated that Riley owed \$1,334.48, due on March 1, 2011, that Riley did not pay. The complaint states that R & D terminated Riley’s tenancy on March 16, 2011. R & D filed a small claims action requesting a judgment for eviction and a money judgment.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted

² The small claims court entered judgment against three defendants: Linda, Tyrassa and Ultania Riley. On November 22, 2011, a notice of appeal was filed listing all three defendants; however, the notice was only signed by Linda Riley. On December 12, 2011, we issued an order requiring the parties to file an amended notice of appeal with all three signatures. An amended notice was not filed. Therefore, only Linda Riley is properly before us as an appellant. We note, however, that even if a proper notice of appeal was filed with all three signatures, the outcome of this case would not have differed.

¶3 The matter proceeded to a trial before the small claims court. The small claims court ruled in favor of R & D, determining that the total amount of rent lost by R & D, based on its three-year lease with Riley, was \$85,139.72. Ultimately, the small claims court issued a judgment against Riley, which assessed the total amount owed to R & D, including attorney's fees and other costs, to be \$87,238.72. This appeal follows.

DISCUSSION

¶4 First, we note that Riley was properly found to be personally liable to R & D. Riley was identified on the lease individually and signed the lease agreement individually. The lease contains no reference to a limited liability company owned or operated by Riley. Riley's signature appears after a clause in which she "acknowledge[d] and agree[d]" to be "joint[ly] and severally liable" under the lease.³ Further, it is unclear from the record whether Riley even asserted the status of Riley's Hair & Beauty Supply Store as a limited liability company at trial. There is no trial transcript, nor are there corporate documents in the record identifying the debtor in this case as Riley's Hair & Beauty Supply Store. We are satisfied that the small claims court properly entered judgment against Riley personally.

¶5 Second, Riley argues that R & D did not fulfill its obligation under the lease to keep the premises tenantable. Specifically, Riley asserts that R & D failed to repair water damaged ceiling tiles, causing the tiles to fall. Due to the water damage, Riley argues that she was only able to utilize approximately half of

³ The lease was also signed by Tyrassa and Ultania Riley.

her leased space. According to R & D, appropriate repairs were made and were attested to at trial by an R & D employee. As stated, a transcript of the small claims trial is not included in the record before us. It is the appellant's responsibility to ensure that the record is complete, including providing relevant trial transcripts. See *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). We must assume that the missing material supports the small claims court's findings. See *Duhamel v. Duhamel*, 154 Wis. 2d 258, 269, 453 N.W.2d 149 (Ct. App. 1989). Therefore, we must assume that an R & D employee did, in fact, attest to repairs made to the premises at issue, and that the small claims court found the testimony credible. See *Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 643-44, 340 N.W.2d 575 (Ct. App. 1983) (When the trial court makes findings of fact, we shall not reverse those findings unless they are clearly erroneous.).

¶6 Finally, Riley argues that the judgment entered, \$87,238.72, is well in excess of the amount allowed by WIS. STAT. § 799.01. Riley is mistaken. WISCONSIN STAT. § 799.01(1)(a) permits the use of small claims courts for eviction actions, regardless of the amount of rent sought. WISCONSIN STAT. § 799.01(1)(d) allows for small claims jurisdiction in other civil actions where the amount claimed is \$10,000 or less. The small claims court determined the amount of rent lost to be \$85,139.72, as permitted by § 799.01(1)(a). Additional costs, such as the \$1920 awarded in attorney's fees, were well within the \$10,000 small claims limit on non-rental money damages.

¶7 For the forgoing reasons, we affirm the small claims court.

By the Court.—Judgment affirmed.

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

