COURT OF APPEALS
DECISION
DATED AND FILED

June 27, 2013

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 Nos. 2012AP1302
2012AP2391

Cir. Ct. Nos. 2012SC123
2012SC118

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

2012AP1302:
RONNIE MORGAN CLARK AND JOYCE ANN CLARK,

PLAINTIFFS-RESPONDENTS,

V.

PETER APPLEMAN,

DEFENDANT-APPELLANT,

CORRINE APPLEMAN,

DEFENDANT.

2012AP2391:
PETER J. APPLEMAN,

PLAINTIFF-APPELLANT,

V.

RONNIE CLARK,

DEFENDANT-RESPONDENT.

APPEALS from a judgment and an order of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] In these consolidated cases, Peter and Corrine Appleman, pro se, appeal a small claims judgment and order awarding Ronnie and Joyce Clark $7,986.27 in damages relating to the Applemans' lease of property owned by the Clarks. The Applemans challenge the court's determination that they are not entitled to reimbursement for expenditures they incurred improving a portion of the land they leased and the court's determination that they are responsible for damages caused to a barn located on the leased property. I affirm.

BACKGROUND

¶2 The Applemans rented 169 acres of land and its associated buildings, including barns and silos, from the Clarks from approximately 2002 until 2011. In August 2007, flooding caused washout damage to a gravel road located on the leased property which led to a three-sided cattle shed used by the Applemans. It is undisputed that following the flood, Peter and Ronnie discussed possible repairs and that Peter indicated that, in addition to repairing the road, he wanted to install a guardrail around part of the leased property. Ronnie did not object to Peter's proposed renovations to the property and in November 2007, the project was completed at a cost of $9,698.24, which was paid for by Peter. In December 2007 at Ronnie's request, Peter installed additional guardrail at a cost of $156.00.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶3 Near the end of the Applemans' lease in 2011, the Applemans presented the Clarks with a written itemization of amounts owing between the parties. The itemization indicated that the Applemans owed the Clarks $4,400 for rent and $3,403.45 for damage caused to a grain elevator, for a total of $7,803.45. The itemization also provided that the Clarks owed the Applemans: $9,698.24 for the renovations done to the leased property following the 2007 flood; $1883.18 for grass seed purchased by the Applemans in 2010 and 2011; and $156 for the additional guardrail installed in December 2007 at Ronnie's request. According to the Applemans' itemization, the net result was that the Clarks owed the Applemans $3,933.97. In March 2012, the Clarks prepared their own itemization. The Clarks' itemization indicated that the Applemans owed them: $4,400 for rent; $3,403.45 for damage caused to the grain elevator; $1,600 for the removal of manure; $3,066 for damage caused by the Applemans to a barn; $720 for the rental of a Haymow; and $75 for amended income tax returns. The itemization indicated a credit to the Applemans in the amount of $1,883.18 for grass seed, which resulted in a balance owing to the Clarks of $11,381.27.

¶4 In 2012, the Applemans filed a small claims action against the Clarks, and the Clarks filed a small claims action against the Applemans, each seeking money damages. The cases were consolidated and tried before the small claims court. The circuit court found that the Applemans owed the Clarks: $4,400 for rent; $3,403.45 for damage caused to the grain elevator; and $3,066 for damage caused to the barn. The court found that the Clarks owed the Applemans: $1,883.18 for grass seed; and only $1,000 for repairs done to the road following the 2007 flood, which resulted in a balance owing to the Clarks of $7,986.27. With regard to its determination that the Clarks were only responsible for $1,000 of the expenses the Applemans incurred improving the leasehold property

following the 2007 flood, the court observed that Ronnie denied that he agreed to pay for the project but helped with the installation of the guardrails, and the court found:

> [A]cquiescence to the work does not prove that [Ronnie] agreed to pay for it…. [W]hile it is possible that a landlord would forego almost one year of rent to improve and repair the property, it seems unlikely.
>
> Furthermore the absence of any amendment of the rental agreement to provide for reduced rent to offset Appleman's expenses for the repairs is telling. Appleman explains his failure to seek reimbursement until the end of the lease period with his testimony that he was seeking flood reimbursement funds from government sources.
>
> This explanation is unpersuasive for at least two reasons: First, Appleman offered no documents, such as letters, memoranda or applications to establish that he pursued flood relief funds. Second, there is no evidence to suggest that any available funds would have covered anything other than repairs to the road; and while a breakdown between road repairs and the renovation of the barnyard has not been provided, the reasonable inference from the testimonies is that the minimally necessary repairs to the road attributable to the flood were a small portion of this project.

¶5 The court rejected the Applemans' claim that they should be reimbursed for their expenditure on equitable grounds because the renovation of the barnyard added value to the farm. The court stated that determining if or how the renovations added value to the farm was speculative, and it further stated that the Applemans, not the Clarks, enjoyed the benefit of the improvements in the three or four years following their completion.

¶6 The Applemans appeal.

DISCUSSION

¶7 The Applemans challenge the small claims court's determination that the Clarks were only liable for $1,000 of the expenses the Applemans incurred while renovating the farm yard of the leased premises following the 2007 flood. The Applemans argue that the terms of the parties' lease agreement obligated the Clarks to pay for the guardrails installed as part of the barnyard renovation following the 2007 flood. However, the Applemans did not raise this argument before the small claims court and it will not be considered now. Arguments not raised before the circuit court are forfeited on appeal. *See* ***State v. Rogers***, 196 Wis. 2d 817, 825-26, 539 N.W.2d 897 (to preserve arguments for appeal, a litigant must raise them before the circuit court).

¶8 The Applemans also dispute the small claims court's finding that Ronnie had not agreed to pay for the barnyard renovations, and its finding that the Clarks were not unjustly enriched by those renovations. A circuit court's factual findings will not be set aside unless clearly erroneous, and we give due regard to the trial court's opportunity to judge the credibility of the witnesses. WIS. STAT. § 805.17(2). The Appelmans have not established that the court's finding that Ronnie's testimony that he did not tell the Appelmans he would pay for the barnyard renovations was more credible than Peter's claim to the contrary is clearly erroneous. In addition, given Ronnie's testimony at trial that the improvements undertaken by the Applemans were of "no benefit to [him]," Ronnie's testimony that the wash-out damage to the road could have been rectified with a couple loads of gravel, and the lack of evidence showing an increased value to the leased property as a result of the improvements, I cannot say the court was

clearly erroneous in rejecting the Applemans' claim that the Clarks were unjustly enriched by the improvements.[2]

¶9 The Applemans also challenge the court's determination that the Applemans were liable to the Clarks for damage caused to the barn, which amounted to $3,066. I read the Appleman's brief as arguing that the damages to the barn were not "legitimate" because: (1) the Clarks did not demand payment for those damages until the day of trial, when they presented a repair estimate; (2) the Clarks had apparently not undertaken any actual repairs at the time of trial, which was held on April 9, 2012; and (3) the Clarks did not seek to file a claim for those damages under the Applemans' liability insurance policy. However, the court found, and the Appelmans do not dispute, that the parties "agree that the Applemans damaged the barn during the leasehold." To the extent that the Applemans are challenging the extent of the damages caused to the barn, the court determined that repairs to the barn would cost $3,066 based on an estimate prepared by Town & County Construction and presented to the court by the Clarks. The Appelmans have not established that the court was clearly erroneous in finding that the amount of damage to the barn was the amount specified in the estimate.[3]

[2] The Applemans also claim that the Clarks were obligated under Universal Commercial Code's implied warranty of fitness. *See* WIS. STAT. § 411.213. However, that section applies to "goods," not land.

[3] To the extent the Applemans have raised arguments challenging the small claims court's decision that I have not addressed, I consider those arguments to be either inadequately developed or lacking in sufficient merit to warrant individual attention. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (an appellate court may decline to address issues that are inadequately brief); ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (an appellate court need not address arguments that lack sufficient merit).

CONCLUSION

¶10 For the reasons discussed above, I affirm.

By the Court.—Judgment and order affirmed.

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