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DISTRICT I

July 7, 2026

To:

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You are hereby notified that the Court has entered the following opinion and order:

2025AP106

April Townsend v. Napleton Bluemound Imports LLC
(L.C. # 2024CV3781)

Before Donald, C.J., Colón, P.J., and Geenen, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

April Townsend and Denise Yarborough appeal the circuit court order granting Napleton Bluemound Imports LLC and Toyota Motor Credit Corporation's motion to stay litigation and compel arbitration.¹ The motion was supported only by an affidavit from Napleton's litigation attorney, which did not establish his personal knowledge of the documents that were attached.

¹ For ease of reading, we collectively refer to Townsend and Yarborough as the appellants and Napleton Bluemound Imports LLC and Toyota Motor Credit Corporation as the respondents, unless the context requires otherwise.

Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).² We reverse and remand.

BACKGROUND

Townsend and Yarborough, who are mother and daughter, both bought cars at the Lexus of Milwaukee dealership in June 2022. Napleton does business as Lexus of Milwaukee. The appellants took out loans to purchase the cars.

Two years later, the appellants filed a lawsuit against the respondents alleging eight causes of action stemming from the sales process that led to the purchase of the two cars. Among other things, their complaint alleges that Napleton forged signatures and dates on documents from the two sales. The appellants additionally allege in their complaint that Toyota accepted assignment of both of the sales contracts related to the cars.

Napleton filed a motion to stay the proceedings and compel arbitration. A brief accompanied the motion and as factual support, Napleton exclusively relied on an affidavit from its attorney, Benjamin Jonas (“the Jonas affidavit”). Jonas averred that he “obtained documents from Napleton in the course of this litigation,” and the documents included proffered arbitration agreements, which were attached as exhibits. Toyota joined the Napleton motion without adding any evidence of its own.

² All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

The appellants opposed the motion, arguing, among other things, that the Jonas affidavit was fundamentally flawed because Jonas lacked personal knowledge of the facts to which he averred. During the motion hearing, the circuit court discussed the documents included with the Jonas affidavit without ever directly addressing the adequacy of the affidavit as a vehicle to introduce the documents. The circuit court ultimately granted the respondents' motion, stayed the proceedings, and ordered the parties to arbitrate their dispute. This appeal follows.

DISCUSSION

The parties agree that the respondents bear the burden of establishing the existence of an enforceable arbitration agreement. The dispositive question on appeal is whether they made a sufficient showing in this regard.

The appellants contend that the evidentiary standard that applies to the circuit court's determination of whether arbitration may be judicially compelled is the same as that applied at summary judgment, citing *Tinder v. Pinkerton Sec.*, 305 F.3d 728, 735 (7th Cir. 2002). Because the respondents have not directed our attention to any legal authority refuting the appellants' position that summary judgment principles are applicable, we will proceed accordingly.³

³ The respondents assert:

Notably, Napleton's Motion to Stay Proceedings and Compel Arbitration is not a summary judgment motion subject to the requirements of WIS. STAT. § 802.08(3). Even if it were—the Affidavit of Benjamin W. Jonas in Support of Motion to Stay Proceedings and Compel Arbitration meets the statutory requirements of 'personal knowledge and shall set forth such evidentiary facts as would be admissible in evidence.'" Sec. 802.08(3).

(continued)

Affidavits supporting summary judgment “shall be made on personal knowledge and shall set forth such evidentiary facts as would be admissible in evidence.” WIS. STAT. § 802.08(3). “Portions of affidavits which are made by persons who do not have personal knowledge or which contain allegations of ultimate facts, conclusions of law or anything other than evidentiary facts do not meet the statutory requirements and will be disregarded.” *Hopper v. City of Madison*, 79 Wis. 2d 120, 130, 256 N.W.2d 139 (1977).

The respondents submit that the underlying arbitration agreement exhibits “were obtained by Attorney Jonas and then produced in the course of written discovery among the parties and Attorney Jonas facilitated the certification of the subject written discovery by Napleton’s own agent, Preston Stewart.” According to the respondents, “[t]his is ‘personal knowledge’ sufficient to set forth the evidentiary fact of the existence of the true and accurate copies of the subject arbitration agreements[.]”

The respondents further contend that “[i]t is a well-established rule that counsel may make the affidavit when a party is a corporate entity,” citing *Clark v. London & Lancashire Indemnity Co. of America*, 21 Wis. 2d 268, 124 N.W.2d 29 (1963), and *Monroe County Finance Co. v. Thomas*, 243 Wis. 568, 11 N.W.2d 190 (1943). The *Monroe* court did not, however, indicate that an affidavit filed without personal knowledge is sufficient; rather, that case provides that in some cases, the deficiency may not matter. *Id.*, 243 Wis. at 570-71 (explaining that while the affidavit did not establish the attorney had personal knowledge of the

Beyond this, the respondents cite case law that generally relates to a circuit court’s discretionary determinations as to whether to admit evidence at trial. This court is not convinced that the cases on which the respondents rely control the outcome here.

facts therein, it was irrelevant under the circumstances presented where the plaintiff would have been entitled to judgment even if a supporting affidavit had not been filed).

Similarly, the *Clark* court did not issue a blanket approval of all affidavits made by an attorney representing a corporate client. Instead, it observed that the old summary judgment statute essentially required an affidavit of the moving party indicating that he or she believed the action had no merit. *Id.*, 21 Wis. 2d at 272 (referencing WIS. STAT. § 270.635(2) (1961-62)). Accordingly, “[t]his affidavit does not stand in the same category as affidavits which aver certain specific evidentiary facts. These latter must be made on personal knowledge and not on information and belief.” *Clark*, 21 Wis. 2d at 273. Affidavits like the one at issue in *Clark* are no longer required; instead, all affidavits now must be made on personal knowledge and must set forth evidentiary facts. *See* WIS. STAT. § 802.08(3).

Thus, while an attorney may submit an affidavit on behalf of a corporation, only those portions alleging evidentiary facts and supported by personal knowledge are admissible. Despite the respondents’ attempts to bolster it in their briefing, in its entirety, the Jonas affidavit provides as follows:

1. I am one of the attorneys retained to represent Defendant, Napleton Bluemound Imports, LLC in this litigation. I make this affidavit in support of Napleton’s Motion to Stay Proceedings and Compel Arbitration and I am authorized to do so.

2. I have obtained documents from Napleton in the course of this litigation, including the attached Exhibit.

3. Attached as Exhibit 1 is a true and correct copy of the Contract and Arbitration Agreement entered into the [sic] by the parties related to the 2011 Audi A5.

4. Attached as Exhibit 2 is a true and correct copy of the Contract and Arbitration Agreement entered into by the parties related to the 2012 Infiniti G37.

These averments fail to pass muster under WIS. STAT. § 802.08(3).⁴

Because there was no admissible evidence of an arbitration agreement offered in support of the motion to compel arbitration, we reverse and remand. Consequently, we need not address the other issues raised by the appellants. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (“[C]ases should be decided on the narrowest possible ground[.]”).

Therefore,

IT IS ORDERED that the order of the circuit court is summarily reversed and the cause remanded. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

⁴ The appellants reference additional problems with the affidavit that we need not delve into for purposes of resolving this appeal.