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**DISTRICT II**

May 7, 2025

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

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2023AP1187

Patricia A. Ciamarichello v. Community First Credit Union  
(L.C. #2021CV635)

Before Gundrum, P.J., Neubauer, and Grogan, JJ.

**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).**

Community First Credit Union appeals the order denying its motion to compel arbitration against Eileen Storzer. 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).<sup>1</sup>

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

This appeal arises from a class action alleging improper fee maximizing practices. In September of 2021, Patricia Ciamarichello initiated the class action, alleging that Community First breached its contract with her and others and violated WIS. STAT. § 100.18, Wisconsin’s Deceptive Trade Practices Act, by improperly assessing overdraft fees and/or non-sufficient funds fees on a single item returned for insufficient funds—also known as “multi-NSF fees.” In October of 2022, Ciamarichello amended the complaint, adding Eileen Storzer and others who alleged that Community First improperly assessed overdraft fees on debit-card transactions that were authorized into a positive balance and settled on a negative balance—also known as “APPSN [t]ransactions.”

On July 8, 2022, between the time when the first complaint and the amended complaint were filed, Community First amended its membership agreement to add a new, mandatory arbitration agreement, and class-action waiver. The new arbitration agreement required that almost all disputes with Community First be resolved through arbitration on an individual basis. A letter enclosed with the new agreement provided that members could opt out of the new arbitration agreement, but they had to do so no later than August 8, 2022. Prior to this amendment, the membership agreement did not contain an arbitration agreement or a class-action waiver. The agreement did include the following change-in-terms provision allowing Community First to change or amend the agreement:

**Notice of Amendments.** Except as prohibited by applicable law, we may change the terms of this Agreement at any time. We will notify you of any change in terms, rates, or fees as required by law. We reserve the right to waive any terms of this Agreement. Any such waiver shall not affect our right to future enforcement.

Community First then filed the motion to compel arbitration against Storzer at issue here. The trial court denied that motion, and Community First appeals.

We review motions to compel arbitration, which involve issues of contract interpretation, *de novo*. See *Pruett v. WESTconsin Credit Union*, 2023 WI App 57, ¶20, 409 Wis. 2d 607, 998 N.W.2d 529. We begin with the language of the agreement. *Id.*, ¶33. Where the terms are “clear and unambiguous,” we construe the agreement “‘according to its plain or ordinary meaning’ and ‘consistent with what a reasonable person would understand the words to mean under the circumstances.’” *Id.* (citation omitted). If, on the other hand, the terms of the agreement are “ambiguous—in other words, ‘fairly susceptible of more than one construction’”—then we may use extrinsic evidence to determine the parties’ intent. *Id.* (citation omitted). “The burden to prove that the parties agreed to arbitration rests with the moving party.” *Id.*, ¶20.

Having reviewed the parties’ briefs, pertinent portions of the record—including the member agreement in effect when Storzer first opened her account and the amended agreement containing the arbitration amendment—and the relevant case law, we conclude that the case before us is squarely on all fours with *Pruett*, in which we held that an arbitration amendment to a credit union’s member agreement—substantively identical to the provision at issue here—was unenforceable. See *id.*, ¶3. In *Pruett*, the plaintiff (Pruett) brought a class action lawsuit against a credit union alleging improper assessment of overdraft fees. *Id.*, ¶4. As with Storzer, the governing member agreement at the time Pruett opened his account did not contain an arbitration agreement but did contain a change-of-terms provision—again substantively identical to the change-in-terms provision here—that permitted the credit union to “change the terms of this [a]greement” upon providing notice to the member. See *id.*, ¶5. Nearly 30 years later, the credit

union added an arbitration provision and class-action waiver to its account agreement and mailed notice to its members, including Pruett. *Id.*, ¶¶5-6. The credit union argued that when Pruett took no action to opt out and continued to use his account, he assented to arbitration. *Id.*, ¶¶9-10. The trial court denied the credit union’s motion on several grounds and this court affirmed, holding that: (1) the contractual authority to “change the terms” of the member agreement did not authorize it to unilaterally add the arbitration clause absent evidence that it was the type of change contemplated by the parties at the time of the original agreement, *see id.*, ¶¶12-13, 16, 33, 40-41, and (2) that the credit union “did not act in good faith when it attempted to add a new term to the original [a]greement seeking to retroactively deprive another party of a legal right,” *see id.*, ¶45.

Consequently, we incorporate the reasoning in *Pruett* and conclude, for the same reasons, that Community First’s contractual authority to “change the terms” of its member agreement did not authorize it to unilaterally add the arbitration clause and that Community First did not act in good faith when it attempted to add a new term to the original agreement seeking to retroactively deprive Storzer and others of their legal right. We therefore affirm the trial court’s order denying Community First’s partial motion to compel arbitration as to Storzer.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*