COURT OF APPEALS
DECISION
DATED AND FILED

June 19, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-3214 **Cir. Ct. No. 01-SC-3337**

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

HRIBAR TRUCKING, INC.,

PLAINTIFF-RESPONDENT,

V.

HMB CONTRACTORS, INC.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County: EMMANUEL J. VUVUNAS, Judge. *Affirmed*.

¶1 SNYDER, J.[1] HMB Contractors, Inc. appeals from a judgment of the trial court in favor of Hribar Trucking, Inc.[2] in this small claims breach of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] Hribar has not filed any response brief whatsoever in this appeal. Such failure is a clear violation of WIS. STAT. RULE 809.19(3) of the rules of appellate procedure.

contract action. HMB argues that the trial court erroneously determined that accord and satisfaction by use of a negotiable instrument did not apply to this contract dispute. We disagree and affirm the judgment of the trial court.

FACTS[3]

¶2 On July 18, 2000, HMB and Hribar entered into a contract for the rental of a trailer; the contract stated that HMB was to rent the trailer from Hribar for five weeks at $400 per week. HMB made a $500 deposit on the lease contract.

¶3 On August 2, 2000, HMB returned the trailer. On or about August 28, 2000, HMB sent Hribar a check in the amount of $300, with the words "paid in full" on the check. Hribar cashed the check and on August 6, 2001, filed this action for the balance remaining on the contract, plus late charges.

¶4 The matter proceeded to trial on October 15, 2001. While Hribar argued that the terms of the contract had not been met, HMB contended that Hribar's cashing of the check labeled "paid in full" constituted accord and satisfaction of the debt. After testimony, the trial court ruled in favor of Hribar, holding that the terms of the contract were clear and HMB had not fulfilled its obligations under the contract. HMB appeals.

[3] HMB has not provided in its brief on appeal citations to the record to corroborate the facts set out in its brief. Such failure is a violation of WIS. STAT. RULE 809.19(1)(d) of the rules of appellate procedure which requires parties to set out facts "relevant to the issues presented for review, with appropriate references to the record." An appellate court is improperly burdened where briefs fail to cite to the record. *Cf.* ***Meyer v. Fronimades***, 2 Wis. 2d 89, 93-94, 86 N.W.2d 25 (1957).

DISCUSSION

¶5 HMB argues that the trial court erroneously determined that accord and satisfaction by the use of a negotiable instrument did not apply to this contract dispute; HMB argues that the law governing accord and satisfaction of disputed debts is governed by WIS. STAT. § 403.311 and all the requirements of § 403.311 have been met. We disagree.

¶6 The construction of a written contract presents a question of law which this court reviews de novo. ***Heritage Mut. Ins. v. Truck Ins. Exch.***, 184 Wis. 2d 247, 252, 516 N.W.2d 8 (Ct. App. 1994). WISCONSIN STAT. § 403.311 addresses accord and satisfaction by use of instrument and states:

> **(1)** Subsections (2) to (4) apply if a person against whom a claim is asserted proves that all of the following conditions have been met:
>
> (a) That person in good faith tendered an instrument to the claimant as full satisfaction of the claim.
>
> (b) The amount of the claim was unliquidated or subject to a bona fide dispute.
>
> (c) The claimant obtained payment of the instrument.
>
> **(2)** Unless sub. (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.
>
> **(3)** Subject to sub. (4), a claim is not discharged under sub. (2) if any of the following applies:
>
> (a) The claimant, if an organization, proves that all of the following conditions have been met:
>
> 1. Within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument

> tendered as full satisfaction of a debt, are to be sent to a designated person, office or place.
>
> 2. The instrument or accompanying communication was not received by that designated person, office or place.
>
> (b) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with par. (a) 1.
>
> **(4)** A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

HMB's reliance on § 403.311 is misplaced because the requirements of this statute have not been met here.

¶7 For the terms of WIS. STAT. § 403.311 to apply, para. (1)(b) requires that the amount of the claim be unliquidated or subject to a bona fide dispute. Here, the amount of the claim was not subject to a bona fide dispute because the terms of the contract are clear and unambiguous. The lease agreement was for five weeks at $400 per week, with past due balances subject to a 1.5% monthly finance charge. A court must construe the contract as it is written when the terms of a contract are clear and unambiguous. ***Campion v. Montgomery Elevator Co.***, 172 Wis. 2d 405, 416, 493 N.W.2d 244 (Ct. App. 1992).

¶8 HMB argues that the contract was ambiguous because it was signed with the understanding that the lease term would be for anywhere from two to ten weeks at $400 per week. This understanding is not a part of the contract. A person signing a document has a duty to read it and know the contents of the

writing. ***Richards v. Richards***, 181 Wis. 2d 1007, 1017, 513 N.W.2d 118 (1994). Again, where the terms of a contract are plain and unambiguous, the court must interpret it as it stands, even though the parties may have interpreted it differently. ***Campion***, 172 Wis. 2d at 416. The terms of this contract are plain and unambiguous and the amount owed was not subject to a bona fide dispute.

CONCLUSION

¶9 We reject HMB's arguments that the provisions of WIS. STAT. § 403.311 are applicable here. The terms of the contract are clear and the amount owed is not subject to dispute. We therefore affirm the judgment of the trial court.

By the Court.—Judgment affirmed.

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