

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 15, 2007**

David R. Schanker  
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. 2006AP626**

**Cir. Ct. No. 2004CV359**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**DANIEL J. EASTMAN,**

**PLAINTIFF-APPELLANT,**

**v.**

**ROBERT C. BENNETT AND JEANETTE BENNETT,  
D/B/A BENNETT COACHWORKS,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order<sup>1</sup> of the circuit court for Milwaukee County:  
RICHARD J. SANKOVITZ, Judge. *Reversed and cause remanded.*

Before Wedemeyer, P.J., Curley and Kessler, JJ.

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<sup>1</sup> Daniel J. Eastman petitioned this court for permission to appeal the trial court's order granting a second trial. We granted Eastman's petition and this appeal followed.

¶1 KESSLER, J. Daniel J. Eastman appeals from an order awarding Robert C. Bennett and Jeanette Bennett, d/b/a Bennett Coachworks (collectively “Bennett”) a second trial. Because we conclude that the statutory time period for granting a new trial had expired over four months before the trial court’s *sua sponte* order, we affirm the trial court’s order denying the parties’ motions after verdict, reverse the trial court’s grant of a second trial, and remand this case for an entry of judgment for Eastman in accordance with the jury verdict and this opinion, and for further proceedings as required to conclude this matter.

### BACKGROUND

¶2 Eastman purchased a 1969 Austin Healy Sprite automobile for \$1500 as a family project for himself and his children. Robert Bennett met with Eastman in Eastman’s driveway on December 15, 2001, to discuss Bennett and his company painting and performing bodywork on the Sprite. Eastman contends that in this “driveway conversation,” Bennett represented that the work would cost between six and eight thousand dollars. Bennett claimed that he has never provided an estimate of how much an automobile restoration project will cost as he never knows until the work has been completed how much it will cost. Based upon the December 15, 2001 conversation, Eastman agreed to have Bennett do the painting and bodywork on the Sprite. On December 20, 2001, Eastman paid Bennett \$2000, as a down payment, and Bennett transported the Sprite from the Eastman driveway to Bennett’s shop that same day. Bennett also agreed that the Eastman children could use Bennett’s shop to work on the Sprite’s suspension system.

¶3 After Eastman had received invoices from Bennett of over \$10,000, Eastman wrote a letter to Bennett on September 20, 2002, expressing surprise at

the additional costs. In this letter, Eastman noted that the metal work billing was between two and three thousand dollars more than Bennett's estimate and that Eastman was concerned given the modest retail value of the vehicle. Eastman paid the bill in order to get the work completed on the Sprite in a timely manner.

¶4 Eastman continued paying the invoices, for a total of \$23,359.15, until Bennett informed Eastman that completing the job would cost approximately an additional \$7000, for a total of approximately \$30,000. At that time, Eastman sued Bennett for Bennett's failure to provide a written estimate of the repair costs in violation of WIS. ADMIN. CODE §§ ATCP 132.02,<sup>2</sup> 132.03(1) and (2),<sup>3</sup>

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<sup>2</sup> WISCONSIN ADMIN. CODE § ATCP 132.02, entitled "Repair authorization," provides that:

No shop may perform any repair that has not been authorized by the customer. Before a shop starts any repairs whose total price may exceed \$50, a shop representative shall record the repair authorization on a written repair order under s. ATCP 132.03.

<sup>3</sup> WISCONSIN ADMIN. CODE § ATCP 132.03, entitled "Written repair order," states, in pertinent part:

**(1) REQUIREMENT.** Before a shop starts any repairs whose total price may exceed \$50.00, a shop representative shall prepare a written repair order that clearly and legibly describes the repairs authorized by the customer. The repair order shall be dated and signed by the shop representative, and shall include all of the information required under sub. (3).

**(2) CUSTOMER COPY.** Before a shop starts any repairs whose total price may exceed \$50, a shop representative shall provide the customer with a complete and accurate copy of the repair order under sub. (1) for those repairs, except that a customer copy is not required if there was no face-to-face contact between the customer and a shop representative when the repairs were authorized.

132.04(4)(c),<sup>4</sup> 132.05(1),<sup>5</sup> and 132.06(1)(b) (Oct. 2004).<sup>6</sup> Bennett counterclaimed for *quantum meruit* relief and for storage charges for the Sprite.

¶5 Eastman filed a motion for partial summary judgment and the trial court granted Eastman’s motion holding that Bennett violated WIS. ADMIN. CODE ch. 132 by failing to provide a written estimate to Eastman for the work on the Sprite.

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<sup>4</sup> WISCONSIN ADMIN. CODE § ATCP 132.04, entitled “Repair price information,” states, in pertinent part:

(4) ESTIMATE REQUIRED. If any of the following has occurred, a shop representative shall give the customer an oral or written estimate, and shall write that estimate on the repair order before the shop starts any repairs whose total price may exceed \$50:

....

(c) The shop has accepted any prepayment from the customer.

<sup>5</sup> WISCONSIN ADMIN. CODE § ATCP 132.05, entitled “Estimated completion date,” states in pertinent part:

(1) Before a shop starts any repairs for which the shop has accepted a prepayment of \$250 or more, a shop representative shall give the customer an oral or written estimate of the repair completion date and shall record that estimated completion date on the repair order.

<sup>6</sup> WISCONSIN ADMIN. CODE § ATCP 132.06, entitled “Additional authorization,” provides, in pertinent part:

(1) ADDITIONAL REPAIRS; AUTHORIZATION REQUIRED.

....

(b) No shop may perform any additional repairs, beyond those previously authorized by the customer, unless the customer authorizes those additional repairs after receiving the information required under par. (a). Authorization may be given by telephone or other means.

¶6 A trial was held on Bennett's counterclaims for *quantum meruit* and storage charges. The parties and the trial court held a jury instruction and verdict conference and neither party objected to the final form of the jury instructions or the special verdict. On July 14, 2005, the jury provided the following answers to the special verdict questions:

**Question No. 1:** Did Robert Bennett state to Daniel Eastman in December 2001 words to the effect that the cost to perform all the repairs to Mr. Eastman's Sprite contemplated by Mr. Eastman at that time would total between \$6,000 and \$8,000?

Answer: Yes

**Question No. 2:** Did Robert Bennett state to Daniel Eastman in December 2001 words to the effect that the cost to perform all the repairs to Mr. Eastman's Sprite contemplated by Mr. Eastman at that time would total between \$6,000 and \$9,000 for paint and materials, a minimum of \$5,000 to \$10,000 to repair the tub, plus an undetermined amount to strip and e-coat the components and an undetermined amount for parts?

Answer: No

**Question No. 3:** Did Mr. Eastman agree to pay for all of the repairs for which he was billed by Bennett Coachworks through March 15, 2003?

Answer: Yes

**Question No. 4:** Using the amounts stated in the invoices submitted by Bennett Coachworks, what amount of the repairs for which Mr. Eastman was billed did Mr. Eastman agree to pay?

Not answered because answer to No. 3 was not "no."

**Question No. 5:** What is the value of the services performed by Bennett Coachworks through March 15, 2003?

Answer: \$15,000

**Question No. 6:** What sum of money should be paid by Mr. Eastman to Bennett Coachworks for storage charges?

Answer: 0

¶7 On July 18, 2005, the trial court set a briefing schedule for post-verdict motions. On August 4, Eastman filed his motion for judgment on the verdict, requesting: dismissal of Bennett’s counterclaim; a determination of Eastman’s pecuniary loss (for calculation of double damages pursuant to WIS. STAT. § 100.20(5)<sup>7</sup> based upon the trial court’s order granting Eastman partial summary judgment); and a hearing on reasonable attorney fees and costs pursuant to § 100.20(5). On August 19, Bennett filed his motion after verdict requesting that the trial court change the jury’s answers to question number four [actually five] from \$15,000 to \$23,359.15 and question number five [actually six] from zero to \$13,925. Bennett also moved the court to grant Bennett’s counterclaim for

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<sup>7</sup> All references to the Wisconsin statutes are to the 2005-06 version unless otherwise noted.

WISCONSIN STAT. § 805.15, entitled “New trials” states, in pertinent part:

(1) MOTION. A party may move to set aside a verdict and for a new trial because of errors in the trial, or because the verdict is contrary to law or to the weight of evidence, or because of excessive or inadequate damages, or because of newly-discovered evidence, or in the interest of justice. Motions under this subsection may be heard as prescribed in s. 807.13. Orders granting a new trial on grounds other than in the interest of justice, need not include a finding that granting a new trial is also in the interest of justice.

(2) ORDER. Every order granting a new trial shall specify the grounds therefor. No order granting a new trial shall be valid or effective unless the reasons that prompted the court to make such order are set forth on the record, or in the order or in a written decision. In such order, the court may grant, deny or defer the awarding of costs.

storage costs and for an order denying Eastman’s claim for pecuniary loss. A hearing was held on August 29, 2005, at which the parties requested additional briefing time. The trial court set a briefing schedule and a hearing date of October 31, 2005, where it noted that it would “hear argument and rule” on the motions. At the October 31, 2005 hearing, the court did not rule on the motions after verdict, but rather took the matter under advisement, advising the parties that the court would provide a written ruling within thirty days. On March 3, 2006, 232 days after the jury verdict, the trial court held a hearing where it denied Bennett’s motion after verdict, denied Eastman’s motion for judgment on the verdict and ordered a second trial. On March 27, 2006, Eastman filed a petition for leave to appeal non-final judgment or order or alternatively, for a supervisory writ directing the trial court to enter judgment on the verdict. We granted Eastman’s petition to appeal on April 10, 2006.

### STANDARD OF REVIEW

¶8 This case involves the interpretation of WIS. STAT. §§ 805.15 and 805.16 (2005-06).<sup>8</sup> We review questions of statutory interpretation *de novo*. *State*

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<sup>8</sup> WISCONSIN STAT. § 805.16, entitled “Time for motions after verdict” states, in pertinent part:

(1) Motions after verdict shall be filed and served within 20 days after the verdict is rendered, unless the court, within 20 days after the verdict is rendered, sets a longer time by an order specifying the dates for filing motions, briefs or other documents.

(2) The time for hearing arguments on motions after verdict shall be not less than 10 nor more than 60 days after the verdict is rendered, unless enlarged pursuant to motion under s. 801.15 (2) (a).

(3) If within 90 days after the verdict is rendered the court does not decide a motion after verdict on the record or the

(continued)

*v. Stenklyft*, 2005 WI 71, ¶7, 281 Wis.2d 484, 697 N.W.2d 769. Statutory interpretation begins with the text of the statute; we give the text its common, ordinary, and accepted meaning, except that we give technical or specially defined words their technical or special definitions. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis.2d 633, 681 N.W.2d 110. We interpret statutory language “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶46.

## DISCUSSION

### A. *Second trial*

¶9 Eastman has appealed the trial court’s granting of a second trial in this matter. WISCONSIN STAT. §§ 805.15 and 805.16 govern a trial court’s authority to grant a new trial. Section 805.15 provides the procedures for requesting and granting a new trial, while § 805.16 addresses the time period in which the trial court may grant a new trial. Section 805.16(3) specifically notes that:

If within 90 days after the verdict is rendered the court does not decide a motion after verdict on the record or the judge, or the clerk at the judge’s written direction, does not sign an order deciding the motion, the motion is considered denied and judgment shall be entered on the verdict.

Therefore, under § 805.16(3), “a trial court loses its competency to decide post-verdict motions after the expiration of ninety days from the date of the jury

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judge, or the clerk at the judge’s written direction, does not sign an order deciding the motion, the motion is considered denied and judgment shall be entered on the verdict.

verdict.” *Watts v. Watts*, 152 Wis. 2d 370, 378, 448 N.W.2d 292 (Ct. App. 1989); *see also Brandner v. Allstate Ins. Co.*, 181 Wis. 2d 1058, 1070, 1071, n.10, 512 N.W.2d 753 (1994). Further, this time period cannot be extended by a trial court’s simple establishment of a briefing schedule. *See Schmorrow v. Sentry Ins. Co.*, 138 Wis. 2d 31, 37, 405 N.W.2d 672 (Ct. App. 1987) (“[S]trict compliance with procedural statutes is necessary ... when procedural rules affect the court’s ... competency to act .... [The] loss of competency to proceed necessarily depends on a date certain; extensions of that date must therefore be based on an unequivocal and precise action by the trial court.”).

¶10 In this case, the trial court set a briefing schedule and hearing date which extended beyond the time required by WIS. STAT. § 805.16(3) for ruling on the motions after verdict. The record does not indicate that the trial court explicitly attempted to extend the § 805.16(3) deadline. Additionally, even after the trial court indicated it would provide a decision first within thirty days of the October 31, 2005 hearing, and then notifying the parties that it would have a decision “during the week of December 12,” the trial court finally issued its decision on March 3, 2006, 232 days after the jury verdict, and approximately four months after the expiration of the time period set forth in § 805.16(3). Accordingly, we reverse the trial court’s order for a new, or second, trial.

*B. Pecuniary loss*

¶11 The trial court granted Eastman’s motion for partial summary judgment, holding that Bennett had violated WIS. ADMIN. CODE ch. ATPC 132, and that as a consequence, Eastman was entitled to recover twice the amount of his pecuniary loss proven at trial. Eastman, in his motion for judgment on the verdict, requested that the trial court determine his pecuniary loss based upon the

jury verdict. Bennett's motion after verdict argued that Eastman was entitled to no pecuniary loss. In its order on motions after verdict, the trial court ordered a second trial for, among other reasons, a new jury verdict for it to use to determine the pecuniary loss suffered by Eastman.

¶12 On appeal, Eastman argues that Bennett's failure to comply with WIS. ADMIN. CODE ch. ATCP 132 and WIS. STAT. § 100.20<sup>9</sup> makes the contract between the parties unenforceable by Bennett; therefore, Eastman is entitled to recover, as a pecuniary loss, the difference between the amount he paid Bennett, \$23,359.15, and the \$8000 which Bennett told Eastman the repair, at most, would cost during the parties' December 15, 2001 conversation in Eastman's driveway. Bennett argues that Eastman suffered no pecuniary loss, presumably based upon the jury's answer to special verdict question number three, where the jury found that "Eastman agree[d] to pay for all of the repairs for which he was billed by Bennett Coachworks through March 15, 2003."

¶13 WISCONSIN STAT. § 100.20(5) allows for recovery of pecuniary losses caused by an administrative code violation. "[T]he meaning of 'pecuniary loss' as used in WIS. STAT. § 100.20(5) and how that term bears upon the methodology intended by the legislature in calculating damages under that section ... presents a question of statutory interpretation that we review de novo."

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<sup>9</sup> WISCONSIN STAT. § 100.20, entitled "Methods of competition and trade practices," states in pertinent part:

(5) Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee.

*Benkoski v. Flood*, 2001 WI App 84, ¶24, 242 Wis. 2d 652, 626 N.W.2d 851. Implicit in this determination is what damages, or pecuniary loss, flowed from Bennett’s violation of WIS. ADMIN. CODE ch. ATCP 132. See WIS. STAT. § 100.20(5); *Snyder v. Badgerland Mobile Homes, Inc.*, 2003 WI App 49, ¶19, 260 Wis. 2d 770, 659 N.W.2d 887 (pecuniary loss must result from the violation in order to sue for recovery under § 100.20(5)).

¶14 “The controlling analysis in determining whether a statutory or regulatory violation renders a contract unenforceable is the intent underlying the provision that was violated.” *Snyder*, 260 Wis. 2d 770, ¶15 (internal quotations and citation omitted). “Where a statute is intended to protect one party to a contract, that party may seek enforcement notwithstanding the violation of the statute enacted for their protection.” *Baierl v. McTaggart*, 2001 WI 107, ¶20, 245 Wis. 2d 632, 629 N.W.2d 277. The “major purpose behind Wis. Adm. Code, ch. [ATCP] 132 ... is to prevent ‘uncommissioned’ repairs from being performed by repair shops ... [and] to prevent shops from proceeding with repairs unless they have received permission to do so.” *Huff & Morse, Inc. v. Riordon*, 118 Wis. 2d 1, 9, 345 N.W.2d 504 (Ct. App. 1984), *abrogated on other grounds*, *Baierl*, 245 Wis. 2d 632, ¶¶16-17.

¶15 To determine the amount of pecuniary loss suffered, the *Benkoski* court noted that “the ‘pecuniary loss’ concept set out in WIS. STAT. § 100.20(5) is similar to this concept of damages set out in the law of contracts,” and therefore, a “party who is injured should, as far as it is possible to do by monetary award, be placed in the position in which he or she would have been had the contract been performed.” *Benkoski*, 242 Wis. 2d 652, ¶32 (second quotation quoting WIS. STAT. § CIVIL 3735). Consequently, we consider whether the record establishes what Eastman’s position would have been had the unenforceable contract been

performed. Implicit in this determination is what pecuniary loss flowed from Bennett's violation of WIS. ADMIN. CODE ch. ATCP 132. *See* sec. 100.20(5); *Snyder*, 260 Wis. 2d 770, ¶19.

¶16 Here, the jury found that “Bennett state[d] to [] Eastman in December 2001 words to the effect that the cost to perform *all the repairs* to []Eastman's Sprite contemplated by []Eastman at that time would total between \$6,000 and \$8,000” (emphasis added). As such, the maximum amount Eastman agreed to pay, in the parties' contract, was \$8000. It is undisputed that the amount actually paid by Eastman to Bennett was \$23,359.15. Accordingly, pursuant to *Benkoski*, *Snyder* and *Huff & Morse*, Eastman's pecuniary loss is what he actually paid (\$23,359.15) minus what the contract required him to pay (\$8000), which equals \$15,359.15. Under WIS. STAT. § 100.20(5), Eastman is thus entitled to recover double this pecuniary loss.

¶17 Also, under WIS. STAT. § 100.20, Eastman is entitled to recover his reasonable attorney fees and costs. Accordingly, we remand for entry of judgment for Eastman in the amount of double the pecuniary loss, \$30,718.30, plus reasonable attorney fees and costs as determined by the trial court.

*By the Court.*—Order reversed and cause remanded.

Not recommended for publication in the official reports.

