STATE OF WISCONSIN

COURT OF APPEALS
DISTRICT III

NICK BALSIMO,

Plaintiff-Respondent,

District III Appeal No.: 2022AP001715

v.

Circuit Court Case No.: 2021CV000540

VENTURE ONE STOP, INC.
d/b/a APPLETON CAMPING CENTER,

Defendant-Appellant.

DEFENDANT-APPELLANT'S BRIEF

On Appeal from a Final Order of Circuit Court for Outagamie County, The Honorable Mitchell J. Metropulos, Presiding

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STATEMENT OF ISSUES FOR REVIEW

1. Does a seller breach a purchase contract for the sale of a recreational vehicle by refusing to allow cancellation of the contract and return of the vehicle after the buyer accepted delivery, took exclusive possession of the vehicle and removed the vehicle from the seller's lot?

The Circuit Court answered: "Yes."

2. Does the "Penalties for Cancellation" clause of a purchase contract, as set forth below, permit the buyer to cancel the contract at any time, even after the contract was fully performed and the sale was completed?

> "If the Purchaser elects to cancel this Contract it is the Dealer's option to require the following forfeitures:
>
> 1. If cancellation is initiated within 24 hours after acceptance by the Dealer, the amount forfeited is 2% of the total cash price of the Recreational Vehicle.
>
> 2. If cancellation is initiated after 24 hours from acceptance by the Dealer, the amount forfeited is 5% of the total cash price of the Recreational Vehicle.
>
> Dealer retains right to bring action for actual damages caused by breach of this contract."

The Circuit Court answered: "Yes."

STATEMENT ON PUBLICATION AND ORAL ARGUMENT

Unless the Court determines that it will be helpful to clarify or expound upon the parties' arguments, oral argument should not be necessary because the evidence is documentary and review will be relatively limited under the applicable and well-known standard of review for summary judgment. Publication is inappropriate as this is a straightforward contract matter determination of which will not add guidance to existing Wisconsin law.

STATEMENT OF THE CASE

I. Nature of the Case.

Plaintiff-Respondent, Nick Balsimo ("Balsimo"), contracted with Defendant-Appellant, Venture One Stop, Inc. d/b/a Appleton Camping Center ("ACC"), for purchase of a recreational vehicle ("RV"). After the parties entered into a written purchase contract, Balsimo paid to ACC the purchase price, inspected and accepted delivery of the RV, took exclusive possession of it, and removed it from ACC's lot. Approximately one hour later, Balsimo brought the RV back to ACC's lot, after business hours, and left it there. Nearly five hours after that, Balsimo sent an email to ACC explaining that he would need to purchase a different truck to tow the RV and, therefore, was cancelling the contract. ACC refused to cancel the purchase contract, accept Balsimo's return of the now used RV unit, and issue Balsimo a refund. Balsimo sued ACC alleging it breached the purchase contract's "Penalties for Cancellation" clause (the "Penalties Clause"), which he alleged permitted him to cancel the contract regardless of the fact he already accepted delivery and took possession of the RV. ACC counter-sued Balsimo seeking monetary damages for trespass and a declaration that Balsimo was the legal owner of the RV, or alternatively, had abandoned it. Therefore, this appeal ultimately concerns whether the Circuit Court properly held ACC breached the Penalties Clause by refusing to accept Balsimo's cancellation of the purchase contract and return of the RV, and issue him a refund of the purchase price less a 2% penalty forfeiture.

II. Statement of Facts.

A. Negotiation and execution of the RV purchase contract.

On June 11, 2021, Balsimo paid to ACC a $1,000.00 down payment to secure purchase of an RV. (R. 2, ¶10). On June 15, 2021, ACC sent Balsimo via e-mail a proposed contract for the sale of the RV. (R. 22, ¶ 3, Ex. B, A.App.009,

015-019). Although the parties had discussed including additional items in the sale, such as certain warranty and service contracts, the contract sent on June 15 included only the RV unit and no additional add-on items. (Id.).

In its June 15 e-mail sending the contract to Balsimo, ACC explained that if Balsimo did not desire to add any add-on items to the transaction, he could sign and return the contract as written. (Id.). Conversely, if he wanted to add any additional items, ACC would update the contract accordingly and return a new copy to him. (Id.). Balsimo signed the contract and sent it back to ACC as written via e-mail, explaining he would pay for any additional items he may ultimately wish to purchase "out of pocket." (Id.). On June 15, 2021, ACC counter-signed the contract (the "June Contract") and returned a copy to Balsimo via e-mail. (Id., ¶ 2, Ex. A, A.App.008, 013-014). Pursuant to the June Contract, ACC agreed to sell, and Balsimo agreed to purchase, an RV for a total cash price of $43,892.00, with the balance of $42,892.00 to be paid upon ACC's delivery of the RV to Balsimo. (Id.).

The parties agreed Balsimo would pay the balance of the purchase price and pick up the RV from ACC's lot on July 1, 2021. (Id. ¶ 5, A.App.009). In the days leading up to July 1, 2021, Balsimo and ACC continued to discuss over e-mail Balsimo's potential purchase of additional items as part of the transaction. Ultimately, ACC agreed to allow Balsimo to make his final determination as to these additional items on the July 1, 2021 pick-up date, and, if necessary, modify the June Contract at that time accordingly. (Id.).

B. Purchase of additional service items and delivery of the RV.

On the July 1, 2021 pick-up date, Balsimo met with ACC staff in-person and decided he wanted to add two additional service items to the June Contract: a Route 66 seven-year Service Contract for $2,855.00 and a Route 66 five-year Roadside Tech 24 Service Contract for $649.75. (Id. ¶6, A.App.009). As a result, ACC modified the June Contract's terms to add these two additional products and

their corresponding costs to the transaction, and the parties executed the resulting contract and dated it July 1, 2021 (the "Modified Contract"). (Id. Ex. C, A.App.021-022). As detailed in Section II(D) below, ACC generated the Modified Contract on a separate form, rather than incorporating the items into the original copy of the June Contract, because the purchase contract form it uses for all RV sales does not have a way to enter changes to the total price except by physically crossing out and rewriting the prior numbers. (*See*, Id. ¶¶ 4, 7, Exs. A and C, A.App.009, 014, 021-022).

After adding the two service items, Balsimo conducted an inspection of the RV with ACC's staff. (Id. ¶ 8, A.App.009-010). Other than a minor concern with the RV's furnace, which ACC repaired before Balsimo took the RV, Balsimo had no concerns or complaints about the RV or its condition and, accordingly, signed and returned to ACC a "Delivery Acceptance" form. (Id. Ex. D, A.App.024). After signing the Delivery Acceptance form, Balsimo paid to ACC the balance of the purchase price, which now included the cost of the seven-year service and five-year service contracts in addition the RV unit's price, which remained unchanged from the June Contract. (R. 7 ¶¶ 10-13).

Once the minor problem with the RV's furnace was fixed, ACC delivered exclusive possession and control of the RV to Balsimo. (R. 22 ¶ 9, A.App.010). Balsimo installed a third-party tow hitch on his vehicle in ACC's lot, hitched the RV to his vehicle, and left ACC's lot with the RV at approximately 6:30 p.m. on July 1, 2021. (Id. ¶ 11, Ex. E, A.App.010, 025).

C. Balsimo's return of the RV and alleged cancellation of the Modified Contract.

At approximately 7:35 p.m. on July 1, 2021, Balsimo is viewed on ACC's security camera footage returning the RV to ACC's lot. (Id. ¶ 13, Ex. F, A.App.010, 026). ACC lacks any knowledge as to where Balsimo took the RV, or what he did with it or to it, while he was gone. (Id. ¶12, A.App.010). Then, at

12:15 a.m. on July 2, 2021, Balsimo e-mailed ACC explaining that after hitching the RV to his vehicle:

> "We realized there was too much tongue weight for our expedition after adjusting the hitch a few different times. Wouldn't be safe pulling essentially; especially up or down hills/mountains. Also, we noticed 2 drain caps missing. So we decided to leave it there as we'd likely need a new heavy duty truck to pull it. Hoping you can help us with cancelling this one out."

(Id. ¶ 14, Ex. G, A.App.010, 028-029). The two drainage caps were located inside the RV, and Balsimo did not claim there to be any other defects with the RV until he sued ACC. (Id. ¶¶ 14-16, Ex. G, A.App.010-011, 028-029).

As it is required to do so upon every recreational vehicle sale, ACC submitted the RV's title transfer paperwork to the Wisconsin Department of Transportation ("DOT"), and on July 7, 2021, the DOT issued a Confirmation of Ownership confirming Balsimo's legal ownership of the RV. (Id. ¶18, Exs. I and J, A.App.011, 049-057). Because Balsimo paid for the RV in full, accepted delivery of the RV and removed it from ACC's premises, ACC refused Balsimo's attempts to cancel the contract and, instead, demanded that Balsimo remove his RV from ACC's lot. (Id. ¶ 19, A.App.011).

D. The purchase contract's form and terms.

Importantly, ACC uses the same DOT-approved RV offer to purchase form (the "DOT-Approved Form") for all of its RV sales and both the June Contract and Modified Contract were created by using the pre-printed DOT-Approved Form. (Id. ¶¶ 4, 6, A.App.009). The DOT-Approved Form does not physically allow for post-execution additions or modifications, so when additional items are added to a transaction after execution of an original form, it is ACC's standard custom and practice[1] to generate a new DOT-Approved Form with the new items added. (Id. ¶ 7, A.App.009). When no changes are made to the RV unit itself, ACC does not consider nor intend a DOT-Approved Form that merely

[1] ACC's custom and practice is based on its owner's professional experience and conversations with DOT staff over the years, and it has always been ACC's understanding that when a potential customer wants to make changes to a purchase contract, a new DOT Form *must* be filled out. ACC follows this practice accordingly. (R. 22, ¶ 7, A.App.009).

incorporates add-ons from a previously existing contract to be a brand-new contract, but instead a modified or updated contract. (Id.). Although such a modified contract is printed on a brand-new DOT-Approved Form, its purpose is the same as the original: for the sale and purchase of the RV unit originally contracted for. This is what occurred in this case, and the only difference between the June Contract and Modified Contract was that the latter also listed and included in the purchase price the two service contract add-ons (accordingly, and for ease of reference, the parties' agreement will be referred to hereafter as the "Contract").

The very top of the Contract contains an explanatory provision (the "Acceptance Clause") which reads:

> "RECREATIONAL VEHICLE PURCHASE CONTRACT. This is an offer to purchase that, *if accepted by the dealer* or his authorized agent, *will become a binding purchase contract for the purchase of a recreational vehicle*…"

(R. 22, Ex. C, A.App.021) (emphasis added). Therefore, by its express terms the Contract became legally binding and enforceable on both parties the moment ACC accepted Balsimo's offer to purchase. In this case, that occurred on June 15, 2021. (R. 22, ¶ 2, A.App.008).

Also relevant is the Contract's Risk of Loss provision (the "Risk of Loss Clause") which provides, in full:

> "Risk of loss to the [RV] and the options and accessories covered by this contract passes to Purchaser *upon delivery at Dealer's lot, or upon completion of delivery*…the Purchaser agrees to hold Dealer harmless from any and all claims due to loss or damage prior to acceptance of insurance coverage by an insurance company."

(R. 22, Ex. C, A.App.022) (emphasis added). Though this provision speaks specifically to insurance coverage, it expressly and unambiguously informs the contracting parties that the *buyer* becomes legally responsible for the RV upon acceptance of delivery.

Finally, the Contract contains a provision titled "Price Changes" which provides that "[a]ny increases in price to a purchaser after the Dealer has accepted

an offer is an unfair practice and prohibited except when the price increase is due to [four specific circumstances.]" (Id.). In light of the Acceptance Clause, it is clear this provision refers to price increases *to the RV itself* and not price changes caused by addition or removal of items made at the buyer's request and with his approval.

1. The Penalties Clause.

The Penalties Clause, which Balsimo relied on in demanding ACC cancel the Contract and accept his return of the RV, is required to be included in all RV contracts used in Wisconsin, and provides in full:

> "If the Purchaser elects to cancel this Contract it is the Dealer's option to require the following forfeitures:
>
> > If cancellation is initiated within 24 hours after acceptance by the Dealer, the amount forfeited is 2% of the total cash price of the Recreational Vehicle.
> >
> > If cancellation is initiated after 24 hours from acceptance by the Dealer, the amount forfeited is 5% of the total cash price of the Recreational Vehicle.
>
> Dealer retains right to bring action for actual damages caused by breach of this contract."

(R. 22, Ex. C, A.App.021). This language is required by law to be included in all RV purchase contracts in Wisconsin. Wis. Admin. Code Trans. § 142.04(4). Notably, the Penalties Clause does not grant the buyer any express *rights* to cancel the contract, and speaks nothing about cancelling a *sale*. It also does not grant to the buyer any rights to seek additional damages, nor could it, because any party's refusal to perform a binding contract is a legal breach. The Penalties Clause also does not state the seller is obligated to accept such a cancellation, but instead *permits* the seller to require the forfeitures, without bringing legal action, while still reserving to it the right to bring legal action for additional damages suffered by the breach.

Taking these contractual terms and omissions together, the DOT-mandated Penalties Clause's intended purpose becomes unmistakable: 1) it creates a written

notice requirement for a buyer to back out of a sale, precluding a buyer from ceasing communications with the seller and leaving the seller in contractual limbo; 2) it provides to the seller an option to recover, at most, 2% or 5% of the purchase price as liquidated damages *without necessitating legal action*; and, in doing so, 3) it alerts the buyer to the fact it cannot enter and exit RV purchase contracts on a whim, or to leverage better contracts elsewhere, as doing so may require forfeiting a portion of the purchase price to the seller.

Requiring this language in all RV purchase contracts in Wisconsin benefits both the buyer and the seller: the buyer is protected from being pressured into contracts granting a seller an unreasonably high liquidated damages for cancellation, or precluding pre-sale cancellation entirely; the seller is protected from being left with no recourse for its time and expense in procuring an RV, short of expensive and tedious legal action, in the event a buyer gets cold feet on a sale or changes his mind; and by disincentivizing buyers from jumping in and out of purchase contracts at will, both parties gain more finality and certainty in their contracting, adding stability to the entire market.

E. Circuit Court Disposition

Balsimo sued ACC alleging it breached the Contract by refusing to honor the Penalties Clause, refund Balsimo the purchase price less 2%, and take back ownership of the RV. (R. 2). ACC filed a Counterclaim seeking orders declaring Balsimo to be the legal titleholder and owner of the RV[2], enjoining Balsimo from his continued use of ACC's business lot to store his RV, and declaring Balsimo's continued use of Appleton's Camping lot to be an act of trespass warranting monetary damages. (R. 7).

ACC and Balsimo filed cross-motions for summary judgment. (R. 14; R. 20). Neither party disputed that a binding contract existed between the parties, the timeline of events, or the Contract's terms. (Id.). Although Balsimo argued the

[2] At this point, the RV was already titled in Balsimo's name. (R. 22, ¶ 18, Exs. I-J, A.App.011, 049-057). However, he refused, and still refuses, to acknowledge it.

Modified Contract executed on July 1, 2021 constituted a new agreement for the purchase of the RV, while ACC argued the parties entered their agreement in June and merely modified that existing agreement on July 1, 2021, they agreed that dispute was not material for purposes of construing the Penalties Clause on summary judgment. (R. 26:2-3). Balsimo asserted that he was entitled to refund of the purchase price less a 2% penalty under the Penalties Clause because he cancelled the Contract within 24-hours of "acceptance by dealer." (R. 15:8-10). Thus, Balsimo argued ACC breached the Contract by refusing to issue a refund and accept return of the RV unit. (R. 15:10)

ACC argued that Balsimo could not cancel the Contract after he took possession of the RV because once both parties fully performed, the sale was complete and the Penalties Clause was no longer enforceable. (R. 21:7-9) ACC also argued that effectuating the Penalties Clause *after* Balsimo accepted and took possession of the RV created an absurd result: a buyer of an RV could return it at *any time into the future*, regardless of the RV's condition or how many miles the buyer put on it, and be entitled to the purchase price less a 2% or 5% penalty. (R. 21:9-11) Accordingly, ACC argued accepting Balsimo's argument was not only absurd, but contrary to public policy: construing the Penalties Clause as enforceable even after the buyer accepts delivery eliminates all certainty and finality of the Contract, particularly in this context, as Wisconsin law requires the language within the Penalties Clause to be included in *all* RV purchase contracts. (Id.).

The Circuit Court granted Balsimo's motion, holding that the "clear reading of [the Penalties Clause] is that the plaintiff did have the right to cancel the contract." (R. 33:2-3, A.App.006-007). As ACC's counter-claims turned on whether Balsimo was the lawful owner of the RV, which the Court necessarily decided was not the case by granting Balsimo's motion, ACC's motion was denied. (Id.) The Circuit Court reasoned Balsimo retained the right to cancel the Contract after complete performance because a "clear reading" of the Penalties

Clause provides such a "right" to the buyer, and the Contract contains no language prohibiting him from exercising that "right" after taking possession of the RV. (R. 33:2, A.App.006).

In addition, the Circuit Court found the Acceptance Clause "important in interpreting the [Penalties Clause]." The Court explained:

> "The two options given to the dealer [in the Penalties Clause] refer to 'acceptance by the Dealer.' Acceptance read in the context of the full contract, is in reference to the acceptance of the contract. There is no provision that states that the purchaser waives his right to cancel the contract upon taking possession of the RV."

(Id.). Although the Circuit Court noted it was "sympathetic to [ACC's] argument that this interpretation…could allow a purchaser to return an RV well into the future and only suffer a 5% total cash price penalty" it determined that "in the context of this case, [it] only needs to analyze the cancellation provision within the 24 hour period." (Id.). Accordingly, the Court concluded ACC breached the Contract and awarded Balsimo the cash value of the contract less 2%, or $46,448.82 in damages. (Id. at 3, A.App.007). The Court's decision stated it was retaining jurisdiction over "other relief sought by [Balsimo]." (Id.).

Thereafter, Balsimo filed a Motion requesting addition of his monthly principal and interest payments already paid towards his RV loan be added to the judgment amount, as well as an order adding the sum of any future monthly loan payments to the damage amount "until judgment is paid in full." (R. 34). Balsimo asserted both his past and future monthly loan payments were reasonably foreseeable damages stemming from ACC's breach. (R. 34).

ACC opposed the Motion, arguing that in light of the Court's narrow interpretation of the Contract and the reasoning behind its summary judgment decision, the only reasonably foreseeable damages for ACC's breach were precisely what the language of the Penalties Clause allowed: the purchase price less 2%. (R. 40). ACC also asserted Balsimo failed to provide evidence that his principal and interest payments were reasonably foreseeable at the time of

contracting; ACC could not have reasonably contemplated that it would be potentially liable for Balsimo's third-party RV loan *after* it delivered the RV to Balsimo as promised. (R. 40:8-9). ACC's brief also argued Balsimo's request for such damages only further highlighted the absurdity of the Circuit Court's summary judgment decision, as nothing in the Contract required Balsimo to return the RV unencumbered (or at all) or transfer title back to ACC. (R. 40:4-5, 9, 13-14). Thus, if the Court awarded the damages Balsimo sought, nothing would preclude him from simply collecting the judgment amount and never paying off his loan, leaving ACC with an encumbered, used RV unit. (Id.).

Finally, ACC's brief highlighted that the type of damages Balsimo sought are only recognized under Wisconsin law where a seller fails to provide the goods, or provides defective goods, under a purchase contract. (R. 40:10-11). In the alternative, ACC argued that, at most, Balsimo could recover his past interest payments, as receipt of any principal payments would amount to a double-recovery of the purchase price. (R. 40:12-13).

In an oral ruling, the Court granted Balsimo's Motion in part, permitting addition of his interest payments already paid on his loan to the final judgment. (R. 62:4-5, A.App.076-077). The Court denied his request to add principal payments already paid, or future payments. (Id.). Additionally, in response to ACC's concerns about the lack of contractual language or Court order mandating Balsimo pay off his loan in full with the judgment amount, Balsimo stipulated at the hearing to satisfy the lien against the RV upon full satisfaction of the judgment. (Id. at 3, A.App.075). On September 12, 2022, the Court entered its final order and judgment awarding Balsimo $46,448.82 for the purchase price less 2%, plus $2,446.46 for his interest payments made to date, plus statutory costs. (R. 47; R. 48, A.App.001-004). On October 4, 2022, ACC timely appealed. (R. 52).

ARGUMENT

I. Standard of Review

This appeal challenges the Circuit Court's denial of ACC's motion for summary judgment, and grant of Balsimo's motion for summary judgment on his breach of contract claim, which is subject to *de novo* review, applying WIS. STAT. § 802.08(2) in the same manner as the Circuit Court. *See Maxwell v. Hartford Union High School District*, 2012 WI 58, ¶ 26, 341 Wis. 2d 238, 814 N.W.2d 484. The construction of a written contract is a question of law which may be reviewed independently on appeal. *Jones v. Jenkins*, 88 Wis. 2d 712, 722, 277 N.W.2d 815 (1979).

II. ACC cannot be held to have breached a contract it fully performed.

It is undisputed that the purpose of the Contract was for the sale and purchase of an RV. (R. 21:3; R. 26:2). If the parties' obligations under such a purchase contract are not already obvious by its purpose, the Wisconsin Uniform Commercial Code ("UCC") provides further guidance. *See*, Wis. Stat. §§ 402.105(1)(c) and 402.106(4). Both the Contract and UCC make clear that ACC's contractual obligation was to transfer and deliver the RV to Balsimo, and Balsimo's contractual obligation was to accept the RV (presuming it was without defects and the unit he bargained for) and pay ACC in accordance with the Contract. Wis. Stat. §§ 402.301, 402.607(1).

It is undisputed that the both parties fulfilled their respective obligations. (R. 15:5-6; R. 21:4). Moreover, Balsimo's acceptance[3] of the RV carries significant legal import under the UCC, as well as common-sense. Pertinent here,

[3] There can be no dispute Balsimo accepted delivery of the RV. Not only did he execute a written Delivery Acceptance form, but he removed the RV from ACC's lot. (*see* R. 22 ¶¶ 8, 11, Exs. D & E, A.App.009-010, 024-025) Pursuant to the UCC, a buyer's acceptance of the goods occurs when: the buyer signifies to the seller that the goods are conforming, or will take them in spite of any nonconformity, after a reasonable opportunity to inspect the goods; the buyer fails to make an effective rejection of the goods; or the buyer does any act inconsistent with the seller's ownership of the goods. Wis. Stat. § 402.606(1).

the law unambiguously provides that once Balsimo accepted the RV, he was legally precluded from rejecting the RV or revoking his acceptance of it. Wis. Stat. § 402.607(2). The Circuit Court's analysis should have stopped here: Balsimo undisputedly became the lawful owner of the RV, and was precluded from rejecting it, once he accepted delivery. *See also,* Wis. Admin. Code Trans. §§ 142.02(5) and (10) (defining a "new [RV]" as one "which has not been previously occupied, used or sold" and a "used [RV]" as "any untitled or titled [RV] which has been occupied, used or sold…").

Moreover, proving breach of contract requires ACC to have *breached* the parties' Contract, or put differently, to fail "what it undertook to do." *Brew City Redevelopment Grp., LLC v. The Ferchill Grp.*, 2006 WI App 39, ¶ 11, 289 Wis. 2d 795, 714 N.W.2d 582. Here, ACC did precisely what it was obligated to do and delivered to Balsimo the exact RV unit he agreed to purchase, and actually did purchase and accept. The moment Balsimo took possession of the RV the sale was complete and the Contract was fully performed by both parties. *See,* Wis. Stat. § 402.106(6) (defining "sale" as "passing of title[4] from the seller to the buyer for a price").

That Balsimo's attempt to enforce the Penalties Clause was *not* based in any breach by ACC confirms it could not be effectuated after he accepted delivery of the RV; the sale was already complete when he attempted to undo it. *Cont'l Cas. Co. v. Wisconsin Patients Comp. Fund*, 164 Wis. 2d 110, 119, 473 N.W.2d 584 (Ct. App. 1991) (finding no breach of contract where "both parties fully performed their obligations" thereunder). The only reasonable interpretation of the Contract is that it provides notice to the buyer that, upon cancellation prior to delivery, the seller has a right to recovery a liquidated damage amount automatically and without legal action. Neither the Contract itself, nor the UCC,

[4] Wis. Stat. § 402.401(2) clarifies, "[u]nless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes the seller's performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place…"

supports the Circuit Court's decision that a buyer has a "right" to unilaterally cancel a *completed sale* and return a *used RV* under the Penalties Clause.

A. The Penalties Clause effectuates a "termination" of the Contract under the UCC, and a termination cannot occur after performance is complete.

The UCC defines "termination" of a contract as occurring when a party puts an end to a contract "pursuant to a power created by agreement…otherwise than for its breach." Wis. Stat. § 402.106(7). On the other hand, "cancellation" occurs when a party "puts an end to the contract for breach by the other[.]" Wis. Stat. § 402.106(1) (emphasis added). Accordingly, although the Penalties Clause refers to a seller's "cancellation" instead of "termination," exercise of it must be considered a "termination" as used as a term of art in the UCC: the Penalties Clause clarifies that if the buyer ends the agreement without any breach by the seller, the seller then has a right to recover liquidated damages without further legal proceeding, or actual damages if it brings a legal proceeding to recover them.

The absurdity of the Circuit Court's decision is demonstrated by the paradoxical result applying such a "termination" clause to a purchase contract *after* the sale is complete. Upon termination the UCC directs that, "all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives." Wis. Stat. § 402.106(7) (emphasis added). "An executed contract is a contract under which all promises have been fulfilled and nothing remains to be done**…**An executory contract is a contract in which the parties have bound themselves to future activity that is not yet completed." *Edwards v. Petrone*, 160 Wis. 2d 255, 258, 465 N.W.2d 847 (Ct. App. 1990) (internal quotations omitted).

This statutory result aligns perfectly with the Penalties Clause when applied *prior to a completed sale*: when the buyer "terminates," his executory obligation to pay the full purchase price and accept delivery of the RV are discharged, as is the seller's executory obligation to deliver the RV; however, recognizing the seller

almost certainly spent time and resources finding a buyer or taking preliminary steps towards delivering the RV (i.e., the seller's "prior performance"), the clause saves for the seller a right to recover liquidated damages based on its prior performance. Moreover, because invocation of the Penalties Clause necessitates breach of the Acceptance Clause and binding contract as a whole, the Penalties Clause also expressly saves for the seller the right to recover actual damages for the buyer's breach if the seller wants to expend the resources to prove them in court.

Bearing in mind the Penalties Clause is a "termination clause" as defined in the UCC, there are two possible conclusions to be drawn where a buyer attempts to enforce such a termination after a sale is completed. The first conclusion, mirroring ACC's position, is straightforward: the buyer *cannot* terminate an agreement for the sale of a good once the sale is complete. Once the sale occurred, neither party owed any executory obligations to the other, meaning the contract became fully executed. Therefore, such a clause cannot be enforced post-sale because: 1) there are no executory obligations left to terminate once the transaction is complete, and 2) the only remaining right "based on prior performance" is the seller's right that the buyer not turn around and reject a good it already accepted. Wis. Stat. §§ 402.301 and 402.607. Besides being grounded in common-sense logic, this conclusion follows application of "termination" of an agreement as defined in the UCC precisely, whether applied to the facts of this case or sales agreements more generally.

The second possible conclusion is that, because a termination clause exists at all, such a termination must be permitted to occur *at any time into the future and regardless of whether the sale was already completed*. The mental gymnastics needed to draw this conclusion are impressive: if contract says a buyer may "elect" to terminate it, the seller is forever "bound" to the "future activity" of accepting that termination (notwithstanding its prior performance); and "saved" for the buyer is a right to return the good it purchased, apparently based on the

seller's prior performance of selling it to him under the contract containing the language in the first place. This requires leaving with the buyer an indefinite and perpetual right to return the good at his leisure, and with the seller an indefinite and perpetual executory obligation to accept that return and issue a refund. Moreover, this ignores the rights saved for the seller by its prior performance: "The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract." Wis. Stat. § 402.301. But if a termination clause exists in perpetuity, the seller has *no surviving rights based on its transfer and delivery of the good* because they buyer can decide at any time and on any whim to suddenly reject the accepted good, in direct violation of the UCC. Wis. Stat. § 402.607(2) ("Acceptance of goods by the buyer precludes rejection of the goods accepted…").

Not only is this conclusion logically confounding, but it is contrary to the Contract's terms: the Penalties Clause does not grant a buyer a "right" to terminate the contract, let alone a completed sale; the Circuit Court created this "right" out of thin air. Instead, the Penalties Clause recognizes that a buyer's termination is a breach, and the only "rights" it creates are the seller's: upon a buyer's termination, the seller *may* recover liquidated damages for the breach automatically, *and* bring legal action to recover actual damages for the breach if the seller so chooses. (R. 22, Ex. C, A.App. 021-022).

The Circuit Court's determination that ACC breached the Contract by failing to accept Balsimo's return of the already-accepted RV and refund him the purchase price less 2% fee was erroneous. First, ACC fully performed its obligations under the Contract, and the UCC, and so cannot be held in breach. In fact, Balsimo must be held in breach for rejecting the good he already accepted. Second, the UCC informs what must occur upon exercise of the Penalties Clause, a termination clause under the law, and applying that law further demonstrates the Contract could not be cancelled once the sale was complete.

III. The Circuit Court's construction of the Penalties Clause fails to consider the entire Contract, creates absurd results, and is contrary to public policy.

The Circuit Court's decision relied on the language in the Penalties Clause, which it held created a "right" for Balsimo to terminate the Contract and receive a refund of the purchase price, notwithstanding the lack of any express language stating the same. (R. 33:2, A.App.006). Instead of construing the entire contract in light of its purpose, the Circuit Court reached this conclusion by examining only a portion of the Penalties Clause in a vacuum. In taking this narrow approach, the Circuit Court ignored well-established maxims of contract interpretation, as well as the crucial fact that the Penalties Clause's language must be included in all RV purchase contracts under Wisconsin law. In holding the Penalties Clause created an unending right for a buyer to return an already-accepted RV and receive a refund from the seller, the Circuit Court construed the Contract in a manner contrary to Wisconsin law and the facts of this case, creating an absurd result contrary to public policy.

A. The Circuit Court's interpretation of the Contract cherry-picked language supporting its decision, leaving an unfair, unreasonable, and unrealistic result.

The Court's goal in interpreting contracts is to determine and carry out the parties' intentions. *MS Real Est. Holdings, LLC v. Donald P. Fox Fam. Tr.*, 2015 WI 49, ¶ 37, 362 Wis. 2d 258, 864 N.W.2d 83. Here, the parties' intent in contracting, and the purpose of the Contract, are undisputed: Balsimo intended to purchase an RV and ACC intended to sell him one. (R. 33:1, A.App.005). Additionally, as noted above, the Wisconsin DOT requires all RV dealers, like ACC, to include certain language in all RV purchase contracts. One of these mandated provisions is the Penalties Clause.

Specifically, the subsection of the DOT rules governing RV dealer trade practices provides:

> "The purchase contract shall clearly state that cancellation of a recreational vehicle contract by a purchaser within 24 hours after acceptance by the dealer

> may subject the purchaser to a penalty of up to 2% of the cash price of the recreational vehicle and that cancellation of the recreational vehicle contract by the purchaser after the 24 hour period may subject the purchaser to penalty of up to 5% of the cash price of the recreational vehicle. Modification of the purchase contract shall not extend the 24 hour period. Documented proof of notification of cancellation is required regardless of the method of notification."

Wis. Admin. Code Trans. § 142.04(4)(a) (emphasis added). Notably, the rule expressly clarifies that "[m]odification of the purchase contract shall not extend the 24 hour period[,]" further supporting that the Modified Contract was a *modification* of the June Contract, meaning ACC accepted Balsimo's offer on June 15, 2021 and not July 1, 2021. *Id*.

In construing this mandatory contractual language, the Circuit Court first found that because the Acceptance Clause, like the Penalties Clause, referred to "acceptance by dealer" it followed that the Penalties Clause must be enforceable after a sale because "no provision [states] the purchaser waives his right to cancel upon taking possession of the RV." (R. 33:2, A.App.006). The Circuit Court does not point to any provision that grants Balsimo an express "right to cancel," but apparently presumes one exists because the Contract discusses penalties ACC may bring for such a cancellation. In fact, that *ACC* is entitled to a liquidated damage amount upon a buyer's cancellation of the Contract demonstrates such cancellation is a breach of the contract.

Second, rather than acknowledge this construction permits a buyer to take an RV for an unlimited test-drive and "cancel" the Contract at any time thereafter while only suffering a 5% of the purchase price penalty, the Court determined "in this case" it only "needs to analyze the [Penalties Clause] within the 24 hour period." (R. 33:3, A.App.007). Besides the fact Balsimo *did* attempt to cancel far more than 24-hours after ACC's acceptance in June of 2021, the Circuit Court's cherry-picking approach ignores Wisconsin law's rules of contract construction.

The meaning of a particular contractual provision must be ascertained with reference to the contract as a whole, and construction of a contract that renders an unfair or unreasonable result must be rejected. *MS Real Est. Holdings, LLC*, 2015

WI 49 at ¶ 38 (collecting cases). Contracts must be interpreted to give them common sense and realistic meaning, and interpretations that give reasonable meaning to each provision in the contract are preferred over interpretations that render a portion of the contract superfluous. *Id*.; *Ash Park, LLC v. Alexander & Bishop, Ltd.*, 2015 WI 65, ¶ 37, 363 Wis. 2d 699, 866 N.W.2d 679.

One provision the Circuit Court ignored entirely was the Risk of Loss Clause. That provision should have halted this dispute before it began, as it expressly explains the buyer takes on all risk of loss to the RV "upon delivery…or upon completion of delivery." (R. 22, Ex. C, A.App. 021-022). Though it speaks specifically to insurance coverage, its implication is clear: once delivery occurs, the RV belongs to the buyer and the Contract is complete. Analysis of the UCC is not necessary to reach this conclusion, but it supports it all the same.

Next, the Circuit Court ignored that the Penalties Clause does not grant Balsimo a "right" to cancel the Contract, nor mandate ACC accept his invocation of it. Instead, it uses exclusively permissive language and explains that "it is the [buyer's] option to require" forfeiture of the purchase price less the applicable penalty. (Id). It only grants two rights *to the seller*: the right to recover a liquidated damage amount without legal action, and the right to bring legal action to recover actual damages caused by the breach. (Id). As described in the foregoing sections, this language only makes sense if applied prior to the buyer's acceptance of the goods, and applying it after leaves an unfair and unreasonable result. Even so, the Circuit Court created for Balsimo a "right to cancel" the Contract within 24-hours of the seller's acceptance, and while doing so, simply disregarded the second part of the Penalties Clause and the necessary implication of creating that right: that a buyer may then enforce the Penalties Clause *at any time after acceptance* and receive back the purchase price less a 5% penalty. (Id.).

Fully understanding the potential harm to public policy caused by the Circuit Court's decision requires further examination of what the Contract *does not say*. First, it does not mandate that a cancelling buyer return an accepted and

delivered RV to the dealer upon cancellation; it only requires the dealer to pay back to the buyer the purchase price less the applicable fee. Relatedly, nothing in the Contract requires a cancelling buyer return an RV to the dealer in good, or even reasonably working, condition. Thus, nothing in the Contract precludes a buyer from: "cancelling" the contract and returning to the seller a damaged RV, or a unit that runs at all. Of course, the seller could bring legal action against the buyer in such a hypothetical case, but besides being entirely unfair to the seller, this conclusion eviscerates the purpose of the contract as a whole: to effectuate sale of an RV.

Second, the Contract does not mandate that a cancelling buyer transfer title of an accepted and delivered RV back to the dealer upon cancellation. Similarly, the Contract does not require a cancelling buyer to utilize the refunded payment to pay off any existing loans, nor require any lender to release any existing liens on the title upon cancellation. This means that *even if* a buyer returns the RV in the same condition they received it, the seller has no contractual recourse to ensure it is returned free and clear. The seller's only recourse in such a scenario would be to bring further legal action, likely involving not just the cancelling buyer but any lienholders as well. Again, while this may make sense in the world of hypotheticals, in reality, it leaves a seller with little more than a sham sales contract.

Third, even if a buyer returns an RV after acceptance in perfect condition, unencumbered, and, somehow, without placing any added miles on it, the Contract does not require the DOT to rescind issuance of a RV title upon a buyer's "cancellation" so that the dealer can resell the RV as the same "new" unit which the buyer is purporting to return. Presumably, the DOT could not do this even if it wanted to under Wisconsin's definitions of a "new" and "used" RV. *See*, Wis. Admin. Code Trans. §§ 142.02(5) and (10).

Finally, the Contract contains no provisions entitling a buyer to any damages once the RV is accepted and delivered, as Balsimo received in this case.

However, it does expressly provide that the dealer is not liable for any damages or losses to the RV once delivered, and the Penalties Clause itself further grants to the *dealer* a right to recover liquidated damages and bring action for the breach.

To be sure, outside the context of this dispute these omissions make perfect sense. After all, why would a DOT-Approved purchase contract for the sale of an RV include terms explaining the obligations placed on a buyer, his lender, or the DOT upon return of the RV after the sale is done? The answer is not because the DOT presumes a buyer will do the right thing, pay off his lien, and return the RV in the exact condition he purchased it in after cancelling a completed sale, but because the Penalties Clause is not intended to allow for cancellation of a completed sale. As described in Section II(D)(1) above, the only logical purpose of the Penalties Clause is to limit the seller's ability to demand unfair penalties for a buyer's pre-sale cancellation, while simultaneously disincentivizing buyers from terminating purchase contracts on a whim by permitting the seller to recover a measure of liquidated damages without costly and burdensome legal action. This purpose promotes finality and certainty in contracting to the benefit of all involved. On the other hand, applying such a clause to completed sales benefits only the buyer by giving them a right to take an unlimited test-drive, doing little more than beg the question: what rational RV dealer would ever do business in a state where such a provision is required by law in all purchase contracts?

Additional legal obligations placed on RV dealers like ACC solidifies this interpretation. Specifically, a seller is required to process the buyer's application for certificate of title within seven (7) business days of a sale, and must mail the requisite documentation to the DOT within one business day of processing the application. Wis. Stat. § 342.16(2)(a); Wis. Admin. Code Trans. § 141.03(1). Moreover, just as the Contract contains no requirements that the buyer actually return the RV to the seller after "cancellation" or transfer back title free of encumbrances, neither do the statutes or administrative code. Instead, the only

requirement placed on buyers to exercise their right to cancel is proof of notice of the cancellation. Wis. Admin. Code Trans. § 142.04(4)(a).

Providing a buyer with an indefinite right to unilaterally cancel a sale after it is completed is so contrary to the entire purpose of sales agreements it is hard to fathom a buyer arguing such is the case. Unfortunately for ACC, however, the Circuit Court looked to the Acceptance Clause alone in construing the Penalties Clause, or more accurately, half of it. By ignoring the entirety of the Penalties Clause, and the very purpose of the Contract as a whole, the Circuit Court construed the Contract in a manner contrary to Wisconsin law, rendering an unfair and unreasonable result.

B. The Circuit Court's construction of the Contract is unconscionable and contrary to public policy.

As described in herein, the Circuit Court's decision not only results in paradox, but is entirely unfair and unreasonable for RV dealers across the state of Wisconsin. The Circuit Court's construction of the Penalties Clause, which *must* take into consideration the entirety of the Clause pursuant to the well-established rules of contract interpretation, not only lets a buyer return a used RV after an hour of taking possession of it, but *indefinitely into the future.* This construction destroys the purpose of the Contract, to effectuate a sales transaction, and eliminates all finality and certainty in contracting. It is patently unreasonable and directly contrary to public policy.

The true purpose of the Penalties Clause is clear, both by the Contract's terms and its omissions as described above. The Penalties Clause is intended to provide a seller with a measure of liquidated damages, without necessitating legal action, in the event a buyer terminates, i.e., breaches, the purchase contract *before the sale is completed*. This makes good sense as there is often long delay between entering a contract to purchase any vehicle, recreational or otherwise, and delivery of it. Often, the vehicle needs to be delivered from the manufacturer to the dealer, modified, or otherwise prepared for delivery, or as was the case here, the buyer

lives out-of-state and the transaction is entered into over e-mail. Thus, in the event a buyer changes his mind and desires to cancel (i.e., breach) the purchase contract *while the sale is pending*, the Penalties Clause protects the seller's rights to receive some compensation for work it already performed: receipt of 2% or 5% of the purchase price as liquidated damages, or a suit for other damages, for the seller's breach. To the contrary, accepting the Circuit Court's decision that a buyer may change his mind *at any point after the sale is completed* destroys both the purpose of this legally mandated Penalties Clause and purchase contracts more generally.

The Circuit Court's decision is particularly concerning in light of the fact that *all Wisconsin RV dealers must include an identical Penalties Clause in their purchase agreements*. If this Court accepts this construction of the Contract, nothing would preclude each and every purchaser of an RV in this state whose purchase contract contained this mandated language from now "cancelling" the contract and demanding a refund of the purchase price less 5% penalty. One does not even need to look to the UCC to deduce that no reasonable RV dealer would engage in business in this state if a buyer could simply demand refund of the purchase price less a 5% forfeiture *at any time after purchasing an RV and regardless of the RV's condition.* This is not a "slippery slope" argument, but the direct, logical result of accepting the Circuit Court's cherry-picked construction of contractual language found in potentially thousands of RV purchase contracts across Wisconsin. There is no basis for this Court to uphold the Circuit Court's determination in such a case: it is not only unreasonable and unfair, but flies in the face of public policy, common sense and reality.

C. The Circuit Court incorrectly held it did not need to consider the entirety of the Penalties Clause in its decision.

As detailed above, the Circuit Court's determination that "in the context of this case, [it] only needs to analyze the cancellation provision within the 24 hour period" is contrary to well-established rules of contract interpretation. (R. 33:3,

A.App.007). However, the Circuit Court's error goes even further: in this case, Balsimo's attempt to return the RV *was after 24-hours* of ACC's acceptance. The Modified Contract executed on July 1, 2021 was just that: a *modification* of the June Contract which changed *nothing* in terms of the RV unit being purchased, or its price, and merely added two more service contract items to the existing transaction.

In his summary judgment briefs, Balsimo asserted that the Modified Contract constituted a new agreement, and therefore, entitled Balsimo to refund of the purchase price less a 2% forfeiture, instead of 5%. (R. 9). In support, Balsimo pointed to an internal ACC email, the fact the June Contract did not include a defined "anticipated delivery date," and that the Modified Contract had a higher price. (R. 25:3-4). Therefore, he argued, when ACC signed the Modified Contract on July 1, 2021, that constituted acceptance and so his cancellation on July 2, 2021 was within 24-hours. (R. 25:6). The Circuit Court agreed, and as a result, felt it unnecessary to consider the entirety of the Penalties Clause in its decision, nor the implication of its interpretation on the portion of the clause permitting cancellation *after* 24-hours of "acceptance by dealer." This was incorrect not only under rules of contract construction, but the facts of this case.

First, the internal email Balsimo referenced only supports ACC's view. On July 6, 2021, after the dispute began, an ACC employee wrote in a message to ACC's owner a description of what occurred, explaining:

> "Nick [Balsimo and his wife] Tija wanted to have Tija added to the contract, and asked to keep the availability <u>of adding products on the day of signing</u> as Nick has been unable to research and decide on what products he wanted.
>
> The day of signing, Nick and Tija informed me that they did not want Tija on the loan, due to a conversation with their bank. We went through the products again, and they chose to do a Warranty and Roadside Tech24. <u>As he had requested to keep the availability to add products</u> open, I <u>updated his contract</u> with the additions and <u>finalized it on 7/1/21</u>."

(R. 17:2-3, Ex. A) (emphasis added). Clearly, the Modified Contract did not constitute a new agreement. Balsimo himself requested to "add" products, neither

of which was a new or different RV, and ACC "updated" and "finalized" the June Contract to add those products on July 1, 2021 accordingly. The Modified Contract changed nothing in terms of the RV unit contracted for June, it merely included two extra items.

ACC's owner's testimony supports this as well, as does the format of the DOT-Approved Form. As ACC's owner explained by affidavit, and anyone looking at the Contract can see, the DOT-Approved Form does not have space for modifications, meaning ACC would have had to physically cross out and re-write the final price, taxes, and add-on items into the June Contract if it were to reuse that original form. (R. 22 ¶¶ 4, 7, Exs. A and C, A.App.009, 013-014, 020-022). Thus, when Balsimo added the two items, which he had been discussing doing with ACC since signing the June Contract, ACC simply printed a new form with those items included and the parties signed it that day. (Id. ¶ 6). This was not a new agreement merely because it was on a new form. The parties entered into their agreement on June 15, 2021 when ACC accepted Balsimo's offer, and the fact the parties signed the Modified Contract is equivalent to them initialing and dating hand-written or crossed-out changes if the original June Contract form had been used. There was no new "acceptance" by ACC; ACC accepted Balsimo's offer to purchase the RV in June.

Second, Balsimo points out that the June Contract lacked a written pick up date. (R. 25). But Balsimo does not explain how this written omission invalidates the June Contract or means the Modified Contract was a new one. Neither party disputes that the pick-up date was set as July 1, 2021, nor that Balsimo was clear in his desire to leave open a chance to add more items on that date.

Finally, Balsimo claimed that accepting the Modified Contract as a change to their existing June Contract would be an admission that ACC engaged in an unfair trade practice. (R. 15:9). He asserted that because the Modified Contract had a higher final price, it implicated the Contract's "Price Changes" provision providing, "[a]ny increase in price to a purchaser after the Dealer has accepted an

offer is an unfair practice[.]" (Id.). This argument is without merit. ACC did not increase the price of the RV unit after it accepted Balsimo's offered price; it changed the total price of the Contract because Balsimo added two additional items on the pick-up date. While it makes perfect sense that unilaterally increasing the agreed-upon price of an RV unit, which the dealer already accepted an offer on, would constitute an unfair trade practice, Balsimo points to no legal authority or contract language that supports this language should apply to *extra items added to the transaction at the buyer's request.*

Moreover, as touched on above, the Wisconsin Administrative Code *recognizes* modifications such as this, and expressly provides modifications "do not extend the 24 hour period" for purposes of the Penalties Clause. Wis. Admin. Code Trans. § 142.04(4)(a). Once again, Balsimo's argument leads to absurdity: he claims an RV dealer cannot *ever* modify an existing RV purchase contract that increases the total price without engaging in an unfair trade practice, while the governing regulations *expressly* permit modifications. It is obvious that the reference to "increase in price" refers to the *offered and accepted price of the RV itself*. In other words, it is an unfair trade practice for an RV dealer to accept an offer to purchase, and then increase the price of the RV thereafter and bind the buyer to a higher-than-bargained for price. This is obviously distinguished from the buyer's choice to add *additional* products to the agreement.

Wisconsin law also supports ACC's position. The Wisconsin Supreme Court has long recognized that, with respect to executory contracts, "[p]arties can agree to change or modify their agreements without any new consideration." *Ruege v. Gates*, 71 Wis. 634, 638, 38 N.W. 181 (1888); *see also Brown v. Everhard*, 52 Wis. 205, 8 N.W. 725 (1881). The theory underlying this rule is that "the same consideration which existed for the old agreement is imported into the new agreement which is substituted for it." *Brown*, 52 Wis. at 207–08 (citation omitted). In this case, Balsimo paid to ACC valid consideration of a $1,000.00 down payment when the parties entered their Contract in June of 2021. He did not

pay to ACC any additional consideration when they executed the Modified Contract in July of 2021 *because it was merely a modification of their existing agreement*.

Accordingly, even if this Court agrees Balsimo was able to cancel the Contract and return the RV, after the sale was complete and after he took possession of the RV, it must reverse the Circuit Court's determination that he is entitled to refund of the purchase price less 2% and, at most, award him damages equaling the purchase price less 5%. His cancellation was not only initiated far more than 24-hours after ACC accepted his offer to purchase in June of 2021, but after the Contract was fully performed and the RV was rightfully his. More concerning about the Circuit Court's error here, however, is its conclusion that it need not even consider in its analysis the Penalties Clause's *complete* language regarding a buyer's cancellation *more than* 24-hours after the dealer's acceptance. As described above, this determination was not only contrary to law surrounding contract interpretation, but the specific facts and circumstances of this dispute.

CONCLUSION

This appeal presented two closely related issues for the Court's review. First, whether a seller could generally be held in breach of a purchase contract by refusing to allow termination of it after the contractual sale was completed and the buyer accepted delivery and possession of the item purchased. Second, and specific to this case, whether the Contract's Penalties Clause allows the buyer of an RV unit to cancel the purchase contract at any time, and regardless of whether the sale was complete or remained executory. The Circuit Court answered both these questions yes, when Wisconsin law, common sense, and the Contract itself all clearly answer no.

As to the general question raised in the first issue, the UCC is clear that a buyer accepts delivery of a good upon taking possession of it. Equally clear under the UCC, and common sense, is that the buyer's acceptance of the good contracted

for carries legal import which precludes rejection of the good after the fact. Here, Balismo attempted to reject the RV and return it to ACC after he inspected it, accepted it, and took it off ACC's lot for a full hour, during which time ACC has no knowledge of what he did with it or to it. There is no basis in law, or reality, that supports the Circuit Court's determination he was legally able to do so.

The more specific question involved the Penalties for Cancellation Clause contained in the parties' Contract at issue under these specific facts. In addition to the UCC's guidance demonstrating why the Circuit Court's decision that this Clause granted the buyer a "right" to cancel after the sale was completed is incorrect, the Contract itself is contrary to the Court's holding. The Contract does not give the buyer any "right" to cancel the contract, let alone a completed sale, but recognizes such a cancellation is a breach. As a result, the Contract provides to the seller a right to recover a measure of liquidated damages automatically and the right to seek actual damages if it deems doing so worthwhile. The purpose of such a clause is not to give a buyer a right to an unlimited test-drive, but to disincentivize buyers from terminating unperformed RV purchase contracts at will or as a means to leverage better deals at different dealers. This view is supported by Wisconsin law governing RV sellers and the terms of the Contract itself, when looked at in its entirety and in light of its unambiguous purpose.

For these and the foregoing reasons, ACC respectfully requests this Court reverse the Circuit Court's grant of summary judgment to Balsimo, grant ACC's motion for summary judgment, declare Balsimo the legal owner of the RV, and remand this case to the Circuit Court for a determination of ACC's damages caused by Balsimo's ongoing trespass on ACC's lot.

Dated this 22nd day of December, 2022.

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Form and Length Certification (§ 809.19(8g))

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 9,585 words.

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