WISCONSIN COURT OF APPEALS
DISTRICT III

Appeal No. 2019AP000288

DANIEL J. PLATKOWSKI,

Plaintiff-Respondent,

v.

HOWARD BEDFORD,

Defendant-Appellant,

QUOTIENT PARTNERS, TISSUE TECHNOLOGY, LLC and RON VAN DEN HEUVEL,

Defendants

Appeal from a Final Judgment of the Circuit Court of Brown County, the Honorable Kendall M. Kelley Presiding, Circuit Court Case No. 2016CV001137

BRIEF OF DEFENDANT-APPELLANT HOWARD BEDFORD

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PRELIMINARY STATEMENT

No good deed goes unpunished. Plaintiff-Respondent Daniel Platkowski ("Platkowski"), who found himself the owner of two large pieces of paper converting machinery, leased the machines to a paper company. The lease permitted Platkowski to unilaterally terminate the lease if he sold the machines before the end of 2010. Otherwise, he would have no such unilateral right, and the lease would continue into 2015.

For Platkowski, this was a problem, as that company was not paying him anything for the use of the machines. With the months remaining in 2010 turning to weeks, and the weeks into days, Platkowski and Ronald Van Den Heuvel, a man now twice convicted of fraud charges in federal court, *United States v. Van Den Heuvel et al.*, Case No. 16-CR-64 (E.D. Wis. filed April 19, 2016); *United States v. Van Den Heuvel*, Case No. 17-CR-160 (E.D. Wis. filed Sept. 19, 2017), conspired to create the appearance of a sale of the machines. To that end, Platkowski and Van Den Heuvel requested that Defendant-Appellant Howard Bedford ("Bedford"), a man with no experience whatsoever in the paper industry, sign an Equipment Purchase Agreement purporting to convey title to the machines from Platkowski to Bedford for $3.2 million.

Bedford testified that he signed the document without reading it because he thought he was doing Platkowski a favor. Bedford never thought he was actually purchasing the large machines designed to make paper napkins. He only thought that aiding Platkowski and Van Den Heuvel in this undertaking, which entailed terminating the leasing company's rights to the machines, would be part of a larger project Van Den Heuvel was quarterbacking involving the recycling of food-contaminated waste.

Despite the fact Bedford thought he was doing Platkowski a favor, he now is in the unenviable position of having a judgment against him of nearly $4 million premised on the validity of the Equipment Purchase Agreement. Because the document was nothing other than an attempt to defraud the company that had been leasing the machines through sham transaction, the contract is void as contrary to public policy. Platkowski's own misconduct should also be a bar to any recovery under these circumstances.

ISSUES PRESENTED FOR REVIEW

1. Contracts against public policy are void and cannot be ratified. Promises to commit torts, like fraud, are contrary to public policy. In this case, Platkowski and Bedford entered into a transaction to terminate an unprofitable lease with Stonehill. The

transaction involved sham monetary transfers meant to dupe Stonehill into believing that the purchase price had been paid in full. Did the trial court err in concluding that the transaction was an enforceable contract?

2. The doctrine of unclean hands allows a court to deny a plaintiff relief if he seeks relief resulting from his own wrongdoing. Platkowski induced Bedford into signing an agreement to purchase two Bretting Machines in order to terminate an unprofitable lease with Stonehill by telling Bedford he would not be liable on the contract. Did the trial court err by enforcing the contract?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not necessary, as the case can be adequately addressed by written briefs.

Publication of this Court's decision is warranted. A decision in this appeal meets the criteria for publication contained in Wis. Stat. § 809.23(1)(a)1and 4 because: (1) it will clarify an existing rule of law; and (2) it will contribute to the legal literature by collecting case law.

STANDARD OF REVIEW

The issues on appeal involve mixed questions of law and fact. *State v. Gollon*, 115 Wis. 2d 592, 600, 340 N.W.2d 912 (Ct. App. 1983). Mixed questions involve a two-step analysis. *Id.* First, the Court determines "what happened." Id. Under this step, the Court must uphold the trial court's factual findings "unless clearly erroneous . . . ." Wis. Stat. § 805.17(2). On appeal, the Court may not second-guess the trial court's factual findings "unless they are against the great weight and clear preponderance of the evidence." *HMO-W Inc. v. SSM Health Care Sys.*, 2000 WI 46, ¶ 55, 234 Wis. 2d 707, 611 N.W.2d 250. Second, the Court determines "whether those facts fulfill a particular legal standard". *Gollon*, 115 Wis. 2d at 600. The Court reviews legal conclusions "*de novo* without deference to the trial court." *Godfrey Co. v. Lopardo*, 164 Wis. 2d 352, 366, 474 N.W.2d 786 (Ct. App. 1991).

When a trial court fails to make findings of fact, the appellate court may examine the factual record and reverse the trial court. *State v. Williams*, 104 Wis. 2d 15, 22, 310 N.W.2d 601 (1981) (citing *Walber v. Walber*, 40 Wis. 2d 313, 319, 161 N.W.2d 898 (1968)).

STATEMENT OF THE CASE

I. Nature of the Case

This case arises out of a putative contract between Bedford and Platkowski, an Equipment Purchase Agreement. The Equipment Purchase Agreement Platkowski seeks to enforce called for a purchase by Bedford of two pieces of paper converting machinery, known as Bretting Machines (the "Machines"), which produce paper napkins.

Platkowski alleges that Bedford breached the Equipment Purchase Agreement by failing to pay the $3.2 million purchase price for the Machines specified in the document. Bedford denies that the Equipment Purchase Agreement was a valid contract.

II. Procedural Posture

Platkowski's claims against Bedford were tried to the court on August 27-28, 2018. After hearing the evidence presented, the trial court made oral findings of fact and conclusions of law. (App. 103-115.) The trial court dismissed Platkowski's claims for fraudulent transfer and conversion, but found that the Equipment Purchase Agreement was a valid and enforceable contract. After the trial court entered its findings concerning liability on the contract claim,

the parties stipulated to the damages which would be due pursuant to the Equipment Purchase Agreement.

The trial court entered judgment in favor of Platkowski and against Bedford in the amount of $3,863,436.47 on January 14, 2019. (R. 197.) The trial court did not make any findings of fact or conclusions of law with respect to Bedford's affirmative defense that the contract, if otherwise enforceable, should not be enforced on account of Platkowski's unclean hands.

Bedford timely filed a notice of appeal on January 25, 2019. (R. 217.)

III. Statement of Facts

The common link between Platkowski and Bedford is Ronald Van Den Heuvel ("Van Den Heuvel"). Bedford first met Van Den Heuvel in the Spring of 2010. (R. 243 at 111-112.) Van Den Heuvel convinced Bedford to invest in various of his companies, which, generally speaking, sought to turn food-contaminated waste into recycled paper and fuel. (R. 264 at 116.) In 2010, Van Den Heuvel introduced Platkowski to Bedford. (R. 263 at 68.)

Platkowski has over 40 years of dealings with Van Den Heuvel. Platkowski first met Van Den Heuvel in 1975. (R. 263 at 154.) He did business with him over the years, and even

purchased shares in a company run by Van Den Heuvel, Partners Concepts Development, Inc. ("PCDI"). (R. 263 at 60.) Not only did Platkowski own stock in PCDI, one of many companies Van Den Heuvel owned and managed, Platkowski also provided $951,000 in cash to Van Den Heuvel to allow Van Den Heuvel to close on a transaction for one of his companies. (R. 263 at 159.) Part of Platkowski's interest in Van Den Heuvel's success with future projects was the likelihood that Platkowski's company, Pine Ridge Engineering, Inc., would receive a contract for engineering services from Van Den Heuvel amounting to as much as $3 million in fees. (R. 263 at 76, 159-160.) At one point in time, both Platkowski's son and daughter worked for Custom Paper Products, Inc., a company that Platkowski recommended that Van Den Heuvel start. (R. 263 at 154-155.)

Van Den Heuvel's companies had a spotty, at best, history of paying Platkowski for his work as an engineering consultant. (R. 263 at 65.) Not only was Platkowski an owner of the shares of PCDI, he was also a creditor of Van Den Heuvel given his outstanding invoices for services rendered and his extension of $951,000 in cash to Van Den Heuvel. (R. 263 at 159.) As a result,

Platkowski wanted Van Den Heuvel to be successful, so Platkowski could be repaid. (R. 263 at 166.)

Through his dealings with Van Den Heuvel, Platkowski obtained title to the Machines, which are napkin folding machines used in the paper converting industry. (R. 263 at 75-78.) Platkowski found himself owner of these machines as a result of his financial assistance to Van Den Heuvel, which took the form of Platkowski taking out a significant loan to cover the debt of one of Van Den Heuvel's companies, Tissue Technology, LLC. (Id.)

Prior to meeting Van Den Heuvel and Platkowski in 2010, Bedford had no experience whatsoever in the paper industry. (R. 264 at 109.) Through discussions with Van Den Heuvel, Bedford became interested in a business proposal advanced by Van Den Heuvel which entailed recycling. (R. 264 at 112.) Bedford, at that time a resident of Illinois, made various visits to the Green Bay area to meet with Van Den Heuvel and also Platkowski. (R. 264 at 114.)

Platkowski and Stonehill Converting, LLC ("Stonehill") entered into an Equipment Lease Agreement (the "Stonehill Lease") in 2009 through which Stonehill was granted the right to lease Platkowski's Machines. (R. 263 at 91-92; R. 192.) The lease provided that, should the Machines be sold prior to December 31, 2010,

Stonehill's right to lease the Machines would end. (R. 192; R. 263 at 182-184.) The Stonehill Lease required that for Platkowski to exercise this termination option through a sale, he would have to provide evidence that the Machines had "in fact been sold and the total purchase price has been paid to [Platkowski] in full." (R. 142 at 1). If the option to terminate the Stonehill Lease were not exercised with a sale of the Machines with the total purchase price paid by December 31, 2010, Stonehill could lease the Machines through June 30, 2015. Stonehill never paid Platkowski anything for its use of the Machines, making the arrangement unprofitable for Platkowski. (R. 263 at 98.)

By the summer of 2010, Platkowski and Van Den Heuvel were corresponding concerning a potential sale of the Machines by Platkowski to Nature's Choice Tissue, LLC ("Nature's Choice"), an entity affiliated with Van Den Heuvel. (R. 263 at 175-176; R. 112, App. 116.) By correspondence dated August 25, 2010, Platkowski anticipated that Nature's Choice would pay him $3.2 million for the Machines. (R. 263 at 175-176; R. 113, App. 120.) By October 12, 2010, Van Den Heuvel and Platkowski were discussing a different Van Den Heuvel entity purchasing the Machines, Tissue Depot, LLC ("Tissue Depot"). In a letter dated that day, October 12, 2010,

Van Den Heuvel outlined to Platkowski the purchase of the Machines to Tissue Depot. (R. 114, App. 121.) The transaction Van Den Heuvel outlined involved paying off Platkowski's loan he took out to assist Tissue Technology (the transaction through which he obtained the Machines in the first place), as well as the provision of a $700,000 promissory note from "Tissue Depot/Mr. Bedford" to Platkowski. (Id.) Platkowski would then pay back $500,000 to Tissue Depot and Bedford, purportedly as a loan. (Id.) Platkowski was to use the remaining $200,000 to remove liens on the Machines by Van Den Heuvel's creditors. (Id.)

Bedford did not draft the Equipment Purchase Agreement. (R. 264 at 119, App. 147.) Bedford recalled that Platkowski and Van Den Heuvel emphasized to him the urgency of Platkowski selling the Machines given the unprofitable lease he had with Stonehill. (R. 264 at 119-120, App. 147-148.) Bedford testified that Platkowski and Van Den Heuvel wanted him to sign the document in an effort to convince Stonehill that there had been a sale of the equipment, because Stonehill knew that Van Den Heuvel was not creditworthy and could not purchase the equipment. (Id.)

Bedford signed the Equipment Purchase Agreement on December 9, 2010. (R. 264 at 120, App. 148.) He did not read the

document before he signed it. (Id.) When asked why he did not read the contract, Bedford testified:

> 'Cause it was presented to me that -- it was presented to me that they were trying to help Dan get out of his lease that was a bad lease and they wanted to do some kind of tolling with him in the future, and I didn't know what tolling was. You're not gonna pay for anything, don't worry about it, just -- we need you for credibility for Stonehill to believe that this is a valid transaction.

(R. 264 at 121, App. 149.) Bedford testified that on more than one occasion both Platkowski and Van Den Heuvel told him he would never have to pay anything pursuant to the Equipment Purchase Agreement. (Id.) Thus, Bedford did not think he would ever be asked to make any of the payments called for in the Equipment Purchase Agreement. (R. 264 at 126-127.)

This is why, according to Bedford, he never once negotiated anything with Platkowski concerning the document, including the $3.2 million purchase price. (R. 264 at 121-122, App. 149-150.) Because Bedford did not think his signature on the document was to memorialize a valid contract to purchase the Machines, he never once had the Machines appraised, never had them insured, and never claimed them as depreciable assets on his income taxes. (R. 264 at 122, App. 150.) In fact, Bedford did not even know what

a Bretting Machine was. (R. 264 at 123.) He only knew that they "made napkins." (R. 264 at 128.)

On December 9, 2010, Platkowski wrote Stonehill to notify it of the purported sale of the Machines and that the lease Platkowski had with Stonehill would be terminated. (R. 125, App. 122; R. 263 at 114-115.) Stonehill immediately objected to the purported sale on December 10, 2010, and noted that there was no evidence that the purchase was "paid in full" as required in the lease. (R. 180, App. 123; R. 117, App. 125.) Platkowski wrote Bedford and Van Den Heuvel to note this and that Stonehill wanted to see a check proving that Platkowski had been paid. (R. 117, App. 125.) Platkowski wrote:

> Stonehill is taking the stand [sic] that notice cannot be given until the equipment is "paid in full" ….. They want to see a check to prove that I have been paid.

(R. 117, App. 125.)

Stonehill responded in writing to Platkowski's notice on December 14, 2010. (R. 126, App. 126.) Stonehill stated: "The purported termination does not comply with the terms of the lease as amended and therefore the lease remains in full force and effect." (Id.)

On December 28, 2010, Platkowski sent Bedford an e-mail, and expressed concern "about our late date in the year to comply with the cancelling of the Stonehill Converting Lease." (R. 123, App. 128.) Platkowski also wrote Van Den Heuvel on December 28, 2010 to report that the bank could not generate a cashier's check unless the full amount was in the bank. (R. 175, App. 137.)

That Platkowski told Bedford he would never have to pay anything is evident in Platkowski's design, which involved Bedford directing Baylake Bank to issue a cashier's check to Platkowski for $3.2 million, a check Platkowski would copy to show to Stonehill, but then cash the check for Bedford's account. (R. 119, App. 127.) On December 29, 2010, Platkowski wrote:

Howard, I understand that the following can take place today to complete the transaction of the Purchase of the Bretting Napkin lines:

1. Howard wires to BayLake Bank $1.7 mm
2. Howard and Dan sign the Purchase Agreement for the Equipment
3. Dan receives a Cashier's Check from BayLake Bank for $3.2 mm.
4. Dan copies check, cashes check to BayLake Bank for your account.
5. Dan receives $200,000 for removal of the liens on the Brettings
6. Dan sends Stonehill Converting a copy of the check and a letter that the Brettings are paid in full.

Is this how you understand the transaction?
Dan

(R. 119, App. 127.) The following day, Platkowski wrote Van Den Heuvel and Bedford and noted: "We have two days left to purchase

the Brettings without a deal with Stonehill Converting." (R. 181, App. 138.)

Although Platkowski had contemplated receiving a cashier's Check from Baylake Bank in the amount of $3.2 million, which he intended to copy and cash for Bedford's account, the cashier's check he did obtain was for $700,000. On December 31, 2010, Platkowski obtained a cashier's check from Baylake Bank in the amount of $700,000, purportedly from Bedford as an initial payment for the Machines. (R. 263 at 190; R. 124.) That morning, Plakowski wrote Bedford's attorney and outlined his plan to go to Baylake Bank to receive a cashier's check for $700,000, which Platkowski would copy and give to Stonehill. (R. 130, App. 139.) Platkowski queried whether he should write Stonehill "stating again that the Brettings have been sold for $700,000 cash and taking over my loan for $2,500,000?" (Id.) In another e-mail with Bedford's attorney later that morning, Platkowski provided a draft letter to Stonehill indicating the $700,000 payment. (R. 134, App. 144.) Mindful of the fact his lease with Stonehill required that the Machines be paid for in full before termination of the lease, Platkowski stated, "I could argue that this is the full purchase price if I had to." (Id.)

Bedford testified that he never had an account at Baylake Bank, so he believed that Van Den Heuvel arranged for a short-term loan from the bank to permit the issuance of the cashier's check. (R. 264 at 128.) Bedford also testified that the $700,000 paid to Platkowski was not drawn from any account of his. (R. 264 at 127-128.)

On December 31, 2010, the last day that Platkowski had to sell the Machines to terminate his agreement with Stonehill, Platkowski sent a letter to Stonehill stating that the Machines had been sold to Bedford "for fair market value." (R. 132, App. 140.) Stonehill responded eight minutes later to Platkowski and indicated that "Our position remains that you have not complied with the terms of the lease, as amended, and therefore the Bettings lease, as amended, remains in full force and effect." (R. 182, App. 141.)

On January 20, 2011, there was an electronic transfer of $700,000 from Platkowski back to Baylake Bank with a notation that the transfer was for the benefit of Bedford. (R. 124.)

ARGUMENT

The putative contract Platkowski seeks to enforce was a sham transaction undertaken in an attempt to convince Stonehill that Platkowski sold the Machines. Rather than intending to enter into

an agreement to sell the Machines, Platkowski merely sought to free himself of an unprofitable lease with Stonehill. By roping Bedford into their scheme, Platkowski and Van Den Heuvel, two long-time business partners, sought to kill two birds with one stone: (1) escape an unprofitable lease with Stonehill and (2) put the Machines to a more profitable use in one of Van Den Heuvel's companies. Now Bedford, someone who—in retrospect foolishly—wanted to help Van Den Heuvel and Platkowski, has become collateral damage in their plan.

The Court should reverse the trial court and stop Platkowski from benefitting from his own misdeeds for two reasons. First, the Equipment Purchase Agreement was part of a scheme to defraud Stonehill and is, therefore, void as against public policy. Second, the trial court failed to make findings and conclusions about Platkowski's unclean hands, which should bar relief.

I. The Trial Court Erred by Enforcing the Equipment Purchase Agreement Because the Agreement was Part of a Scheme to Defraud Stonehill.

Platkowski used the purchase agreement with Bedford in an attempt to make Stonehill believe that Platkowski sold the Machines to Platkowski, hoping to terminate Stonehill's

unprofitable lease. Because the purchase agreement was a part of a plan to defraud Stonehill, it was void as against public policy.

A. Platkowski intended to defraud Stonehill.

Fraud is a tort comprising actions or inactions intended to deceive another. The definition of fraud is "[a] knowing misrepresentation of the truth or concealment of a material fact made to induce another to act to his or her detriment." *Fraud*, Black's Law Dictionary 670 (7th ed. 1999); *see Putnam v. Time Warner Cable*, 2002 WI 108, ¶ 27, 255 Wis. 2d 447, 649 N.W.2d 626 (defining fraud and citing Black's Law Dictionary 670 (7th ed.1999)). Similarly, the elements of a fraud cause of action are "(1) false representation; (2) intent to defraud; (3) reliance upon the false representation; and (4) damages." *Mackenzie v. Miller Brewing Co.*, 2001 WI 23, ¶ 18, 241 Wis. 2d 700, 716, 623 N.W.2d 739, 745.

Through his dealings with Van Den Heuvel, Platkowski found himself losing money. He had lent Van Den Heuvel and his companies significant sums of money. He had even borrowed money to support another Van Den Heuvel Company, in exchange for which he received title to the Machines. By 2009, he was continuing to lose money. The Machines were under a lease to Stonehill, under which Stonehill could use the machines rent-free

for two years. At the same time, Platkowski continued to service the debt he incurred to support Van Den Heuvel's company. His only way to sell the Machines was to show proof that he had sold them *and* that the purchase price was paid in full. (R. 263 at 94-96, 185.)

In a December 29, 2010 email to Bedford, Platkowski outlined the plan to defraud Stonehill. Bedford would wire money to Baylake Bank. Bedford and Platkowski would then sign the purchase agreement (even though Bedford already signed on December 9, 2010), send a copy of a check for $3.2 million and the purchase agreement to Stonehill. Finally, Platkowski would deposit $3 million back into a Baylake account for Bedford's benefit, keeping $200,000 for himself to pay off security interests filed against the Machines. Although the $3.2 million never materialized, Platkowski still tried to release himself from the lease by obtaining a check for only $700,000 under the theory that the $700,000 was only an initial payment on the full purchase price.

Those facts show that Platkowski intended the Equipment Purchase Agreement to be a means to defraud Stonehill. He made a false representation of fact that he had sold the Machines to Bedford, thereby giving him the right to terminate the Stonehill

Lease. Further, Platkowski intended to defraud Stonehill. He knew that Bedford had not paid the purchase price in full, yet he represented to Stonehill that he had the right to terminate the lease.

B. Because Platkowski intended to defraud Stonehill, the agreement was void as against public policy.

Contracts to defraud third parties violate public policy and, therefore, are void. If a contract violates public policy, it is void. *Abbot v. Marker*, 2006 WI App 174, ¶¶ 11, 12, 295 Wis. 2d 636, 722 N.W.2d 162. Promises to induce the commission of a tort, like fraud, contravene public policy. Restatement (Second) Contracts, § 192; *see Signapori v. Jagaria*, 84 N.E. 3d 369, 376-77, 416 Ill. Dec. 387 (Ill. Ct. App. 2017) ("'[A] bargain necessarily involving a breach of a previous contract with another party or tending to induce such wrongful non-performance' is illegal.") (citing 7 Richard A. Lord, *Williston on Contracts* § 16:44, (4th ed. 2010)).

"An agreement which contemplates or necessarily involves the defrauding or victimizing of third persons as its ultimate result is void as against public policy." *Shea v. Grafe*, 88 Wis. 2d 538, 544, 274 N.W.2d 670 (1979) (citation and internal quotation marks omitted); *see also Twentieth Century Co. v. Quilling*, 130 Wis. 318, 110 N.W. 174, 176 (1907) ("Any contract which contemplates or

necessarily involves the defrauding or victimizing of third persons as its ultimate result" is contrary to public policy and void).

In *Shea*, the Wisconsin Supreme Court refused to enforce an agreement between a motor home buyer and a motor home seller where an inflated down payment and purchase price was included in the contract in order to induce a lender to finance the transaction. "Insofar as the inflated contract figures were designed to induce the lending institution to finance the transaction, the contract contemplated misleading the institution and therefore is tainted with illegality." 88 Wis. 2d at 544. Thus, the Supreme Court left the parties where they were given the illegality of the agreement.

If a contract is void, "courts will leave the parties where they find them." *Hiltpold v. T-Shirts Plus, Inc.*, 98 Wis.2d 711, 717, 298 N.W.2d 217, 220 (Ct. App. 1980). Parties to a void contract may not ratify it. *Greenlee v. Rainbow Auction/Realty Co., Inc.*, 218 Wis.2d 745, 758, 582 N.W.2d 93, 97 (Ct. App. 1998).

The trial court erred in enforcing the Equipment Purchase Agreement because the agreement contravened public policy by entailing fraud against Stonehill. Platkowski deceived Stonehill. He engaged in an elaborate shell game in an attempt to make it

seem like Bedford had paid the purchase price in full. Instead of refusing to enforce the agreement and leaving Platkowski and Bedford where the court found them, the trial court erred by enforcing the agreement.

The trial court's decision was contrary to the clear weight of the evidence. Platkowski emailed Bedford outlining the scheme. He received a $700,000 check from Baylake Bank, which he tried to pass off as an initial payment and then paid back to Baylake Bank. Then, he represented to Stonehill that the lease's termination provision had been fulfilled, even though Platkowski knew it had not. Given these facts and Platkowski's incentive to escape an unprofitable lease, the trial court erred in enforcing the Equipment Purchase Agreement with Bedford.

The trial court also erred by concluding that Bedford ratified the Equipment Purchase Agreement. As a matter of law, "the doctrine of ratification does not apply to a contract which is void at its inception." *Greenlee*, 218 Wis.2d at 758. Platkowski was involved in an agreement that involved defrauding a third party, Stonehill. As a result, it was void as contrary to public policy, and Bedford could not have ratified it.

II. The Trial Court Erred by Enforcing the Equipment Purchase Agreement Because it Failed to Consider Platkowski's Unclean Hands.

Just as the trial court erred by enforcing a void agreement, the trial court erred by not denying enforcement under the doctrine of unclean hands. Under that doctrine, a court may deny a plaintiff relief if the plaintiff seeks "'relief from the consequences of *his own* unlawful act.'" *Timm v. Portage County Drainage Dist.*, 145 Wis.2d 743, 752-53, 429 N.W.2d 512, 516-17 (Ct. App. 1988) (quoting *Clemens v. Clemens and wife*, 28 Wis. 637, 655 (1871) (emphasis in original).

In this case, Platkowski is seeking relief from the consequences of his scheme to trick Stonehill into believing that Bedford had purchased the Machines and paid the full purchase price. Platkowski's conduct falls within the ambit of the unclean hands doctrine. He wanted to terminate the unprofitable lease. To do so, he outlined and attempted to execute a plan to make it appear as if he had sold the Machines and been paid in full. Yet, he knew that Bedford had not paid the purchase price in full, as Stonehill's lease required. The Court should not allow Platkowski to enforce a contract that he intended to use as a means of defrauding Stonehill.

The Court should reverse the trial court. When a trial court fails to make findings of fact, an appellate court may review the record *de novo* and reverse the trial court. *State v. Williams*, 104 Wis.2d 15, 22, 310 N.W.2d 601, 605 (1981) (citing *Walber v. Walber*, 40 Wis.2d 313, 319, 161 N.W.2d 898 (1968)). The trial court made no factual findings about Platkowski's unclean hands despite clear evidence that he tried to wrongfully terminate the Stonehill lease. The evidence reflecting Platkowski's unclean hands is in the record, but the trial court neglected to address the issue. After reviewing the evidence, this Court should reverse the trial court's judgment because of Platkowski's unclean hands.

CONCLUSION

This Court should not allow Platkowski to benefit from his own misdeeds. He tried to deceive Stonehill by using the purchase agreement with Bedford to terminate Stonehill's lease. He enlisted Bedford—an individual with no background in the paper industry—to help him by signing a contract to purchase two Bretting Machines (machines large enough to fill a building) for $3.2 million to make it seem as if Platkowksi had a right to terminate the lease. This case did not involve a *bona fide* contract to sell; in involved a sham agreement.

Platkowski's representations to Stonehill were false and meant to defraud Stonehill. As a result, the agreement with Bedford was void because it violated public policy. The trial court was incorrect in concluding that the purchase agreement was not part of a scam because the trial court's conclusions contradict the clear weight of the evidence. Platkowski outlined his intentions to deceive Stonehill in an email. Then he attempted to carry out his intentions. That email and the transactions at Baylake Bank show Platkowski's fraudulent intent. The trial court also erred in concluding that Bedford ratified the contract, because void contracts cannot be ratified.

Finally, just as the court erred in by enforcing a void contract, it erred by ignoring Platkowski's unclean hands. It failed to make any factual findings as to whether Platkowski's unclean hands should be a basis to deny relief. Because the trial court failed to consider that issue, this Court should review the facts and reverse the trial court because of Platkowski's misdeeds. Accordingly, it should direct the trial court to enter judgment in favor of Bedford.

Dated this 17th day of May, 2019.

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RULE 809.19(8)(D) CERTIFICATION

I hereby certify that this brief and accompanying appendix conform to the rule contained in s. 809.19(8)(b) for a brief and appendix produced with a proportional serif font. The length of those portions of this brief referred to in s. 809.19(1)(d), (e), and (f) is 4,056 words.

By: s/ Jonathan T. Smies
Jonathan T. Smies

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this Certificate has been served with the paper copies of this brief filed with the Court and served on all opposing parties.

s/ Jonathan T. Smies
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CERTIFICATION OF THIRD-PARTY COMMERCIAL DELIVERY

I certify that on May 17, 2019 this brief was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within three (3) calendar days.

I further certify that the brief was correctly addressed.

Dated this 17th day of May, 2019.

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