

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 31, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP676

Cir. Ct. No. 2002CV140

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CJT & L, INC., A WISCONSIN CORPORATION,

PLAINTIFF-RESPONDENT,

V.

DARYL A. LARSON AND PETER A. D'AMICO,

**DEFENDANTS-THIRD-PARTY
PLAINTIFFS-APPELLANTS,**

V.

**JOSEPH JOZWIAK, INDIVIDUALLY, DOLLY TUCKER, INDIVIDUALLY, AND
ARTHUR CELLINI, INDIVIDUALLY,**

THIRD-PARTY DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Door County:

D. TODD EHLERS, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Daryl Larson and Peter D’Amico appeal a judgment, entered on a jury’s verdict, that awarded them damages of \$7,599.42 for CJT & L, Inc.’s breach of contract. They contend that the damages awarded by the jury were grossly inadequate and, therefore, the circuit court erred when it denied additur and a new trial. We disagree and affirm the judgment.

BACKGROUND

¶2 This case arises from a failed transaction for the purchase of the Tundra House, a restaurant and bar located in Jacksonport. From spring 1997 to summer 2002, Larson and D’Amico owned the Tundra House. Arthur Cellini, Joseph Jozwiak and Dolly Tucker formed CJT & L, Inc. and, on June 28, 2001, gave Larson and D’Amico \$30,000 to pay the Tundra House’s back payroll taxes. Cellini, Jozwiak and Tucker asserted at trial that the \$30,000 payment was a loan to Larson and D’Amico. Larson and D’Amico, on the other hand, contended it was a \$30,000 down payment for the purchase of the Tundra House.

¶3 Larson and D’Amico believed Cellini, Jozwiak and Tucker agreed to purchase the Tundra House for \$360,000. Cellini, Jozwiak and Tucker contended that negotiations had taken place but no formal agreement had been reached. CJT & L ultimately did not purchase the Tundra House, but operated it from July 1 through September 2, 2001.

¶4 In July 2002, Larson and D’Amico sold the Tundra House to different buyers for \$310,151.85. Larson and D’Amico incurred a number of expenses to complete the sale, which they contended they would not have had to pay if Cellini, Jozwiak and Tucker had not backed out of the original agreement.

These expenses included a septic upgrade and associated fees, fuel tank removal, real estate commission, interest, payment of a second mortgage, and appraisal fees.

¶5 On July 18, 2002, CJT & L commenced this suit to recover expenditures it made on the Tundra House's behalf while CJT & L was operating the business. Larson and D'Amico counterclaimed and impleaded Cellini, Jozwiak and Tucker individually, alleging they breached an oral contract to purchase the Tundra House.

¶6 On October 12, 2004, a two-day jury trial commenced. Larson and D'Amico claimed damages of \$118,817.62, which they detailed in Exhibit 13. The damages listed on Exhibit 13 included the difference between the agreed-to purchase price and the eventual sale price, the additional expenses, rent for the period that CJT & L operated the Tundra House, and the interest Larson and D'Amico paid to CJT & L for the \$30,000 loan.

¶7 The jury found there was a contract to purchase the Tundra House and the contract was breached by Cellini, Jozwiak and Tucker. It also found Larson and D'Amico suffered damages in the amount of \$7,599.42.

¶8 Larson and D'Amico moved for additur or a new trial pursuant to WIS. STAT. § 805.15(6), alleging the damage verdict was inadequate as a matter of law.¹ They contended that Exhibit 13 was uncontroverted evidence of their

¹ Larson and D'Amico initially moved for judgment notwithstanding the verdict pursuant to WIS. STAT. § 804.14. However, they orally amended their motion to a WIS. STAT. § 805.15(6) motion and briefed the issues in the trial court accordingly.

All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

damages and therefore the jury should have awarded \$118,817.62. The circuit court observed that “there were disputed issues in this case not only revolving around the existence of a contract and its breach but also as to the amount of damages and the amount which would reasonably compensate [Larson and D’Amico] as a result of that breach.” Therefore, the court declined to disturb the jury’s verdict and denied the motion.

STANDARD OF REVIEW

¶9 When reviewing a jury’s damage verdict, we affirm if there is any credible evidence, which under any reasonable view supports the jury’s finding, especially when that verdict has the circuit court’s approval. *Wisconsin Natural Gas Co. v. Ford, Bacon & Davis Constr. Corp.*, 96 Wis. 2d 314, 340, 291 N.W.2d 825 (1980). Where the circuit court “approves the damages verdict and provides an analysis of the evidence supporting the verdict, the verdict will be set aside only where there is an evident [erroneous exercise] of discretion.” *Badger Bearing, Inc. v. Drives & Bearings, Inc.*, 111 Wis. 2d 659, 670, 331 N.W.2d 847 (Ct. App. 1983).

A reviewing court will not reverse a circuit court’s discretionary determination if the record shows that discretion was in fact exercised and there exists a reasonable basis for the circuit court’s determination after resolving any direct conflicts in the testimony in favor of the prevailing party, even if the reviewing court would have reached a different conclusion than the circuit court.

Carlson & Erickson Bldrs., Inc. v. Lampert Yards, Inc., 190 Wis. 2d 650, 669, 529 N.W.2d 905 (1995).

DISCUSSION

¶10 Larson and D'Amico argue that the jury's verdict is not supported by the evidence and, therefore, the circuit court erroneously exercised its discretion when it denied additur or a new trial. They assert that their damages were not contested at trial and, thus, they were entitled to the damages listed in Exhibit 13 as a matter of law. In essence, Larson and D'Amico argue that because the jury found there was a contract and the contract was breached, the jury also had to find damages in the amount presented in Exhibit 13.

¶11 Larson and D'Amico devote much of their briefs to arguing evidence that supports damages in accordance with Exhibit 13. However, we review the record for evidence to support the jury's verdict, not for evidence to support a verdict that the jury could have reached but did not. *Morden v. Continental AG*, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. The jury's damage verdict equals two months of mortgage payments and real estate taxes for the Tundra House. Those amounts were included in a trial exhibit introduced by Larson and D'Amico.

¶12 Larson and D'Amico also rely heavily on their contention that their damages were uncontested at trial. However, while Cellini, Jozwiak and Tucker did not introduce evidence challenging the specific amounts of the claimed damages, they did challenge whether they agreed to pay or assume those amounts as part of the contract. For example, Cellini, Jozwiak and Tucker did not challenge that the installation of a new septic system at the Tundra House cost approximately \$31,000. However, they did challenge that they agreed to purchase the Tundra House without the septic upgrade being performed.

¶13 The circuit court analyzed the evidence as follows:

The jury was instructed that a person damaged as a result of a breach of contract should be fairly and reasonably compensated for their loss. In determining the amount of those damages, if any, the jury was to allow an amount that would reasonably compensate [Larson and D'Amico] for all losses that they determined were the natural and probable results of the breach.

The amount of those consequential damages were at issue during the trial of this case.

[Larson and D'Amico] made compelling and justifiable arguments in support of their case and the requested damages at Exhibit 13. The jury apparently determined though that the specific amounts requested for damages were not established by [Larson and D'Amico] to its satisfaction.

... [T]here were debatable and hotly contested issues regarding the oral contract between the parties which would significantly impact any damage award in this case.

The factual issues that I perceive might have influenced the jury's consideration of the damages issue include the following. What was the exact dollar amount of [Cellini, Jozwiak and Tucker's] proposed purchase? Had [Cellini, Jozwiak and Tucker] agreed that they would be responsible for the existing septic system upon the premises and its potential replacement? Was the seller or the buyer responsible for the removal of fuel tanks and an appraisal of the property?

... [T]here were disputed issues in this case not only revolving around the existence of a contract and its breach but also as to the amount of damages and the amount which would reasonably compensate [Larson and D'Amico] as a result of that breach.

¶14 Upon our review of the record, we cannot conclude the circuit court erroneously exercised its discretion when it approved the jury's verdict. The central issues of the two-day trial were whether Cellini, Jozwiak and Tucker agreed to purchase the Tundra House and, if so, what the terms of that agreement were. The jury's verdict reflects that it believed the evidence presented by Larson

and D'Amico that there was an oral contract to sell the Tundra House. However, it does not follow that the jury also accepted their evidence regarding the terms of the oral contract. The jury had to decide what damages flowed from the breach and what amount would fairly compensate them for their loss. The jury's verdict is supported by credible evidence.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

