

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 96-3236

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**RICHARD GOHLKE AND L&L ENTERPRISES OF WAUPACA,
INC.,**

PLAINTIFFS-APPELLANTS,

V.

**MICHAEL H. LAURITZEN AND LAURITZEN, INC., D/B/A
PEOPLES GAS COMPANY,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Waupaca County:
PHILIP M. KIRK, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Richard Gohlke appeals from a judgment awarding L&L Enterprises of Waupaca, Inc., \$30,000 as damages for a breach of

fiduciary duty.¹ The issues are whether the damage award is sufficient, and whether Gohlke is entitled to equitable relief for his claim of unjust enrichment. We affirm.

Gohlke and Michael Lauritzen were each fifty percent shareholders of L&L Enterprises. Gohlke brought this action against Lauritzen and his company claiming, among other things, that Lauritzen had breached his fiduciary duty to L&L Enterprises by entering into contracts and leases with Lauritzen, Inc. on behalf of L&L Enterprises.² The circuit court found that Lauritzen had breached his fiduciary duty to L&L Enterprises but that the contracts and leases entered into by Lauritzen had been fair and reasonable. The circuit court awarded L&L Enterprises \$30,000 in damages for Lauritzen's breach of fiduciary duty, but did not award any damages to Gohlke individually. On appeal, it is argued that the award of \$30,000 was not sufficient.³

In reviewing damage awards, the appellate court will not substitute its judgment for that of the fact finder, but rather will determine whether the award is within reasonable limits. *Cords v. Anderson*, 80 Wis.2d 525, 552-53, 259

¹ The appeal initially was brought by Gohlke and L&L Enterprises. While the appeal was pending, we received a letter from appellants' attorney asking that the caption be changed to name only Gohlke as an appellant. By order dated November 27, 1996, we ordered counsel to indicate if L&L Enterprises was continuing as an appellant or to file a voluntary notice of dismissal. Counsel did not respond. By order dated December 23, 1996, we stated that the caption would continue to include L&L Enterprises. L&L Enterprises, however, did not file a brief.

² Both L&L Enterprises and Lauritzen, Inc., were engaged in the business of selling propane.

³ Lauritzen argues that Gohlke does not have standing as a shareholder to bring this appeal on his own once the company withdraws from the appeal. Lauritzen did not cite to any authority in support of this argument and therefore the issue was inadequately briefed. For that reason and because we affirm the judgment of the circuit court, we do not reach this issue. See *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992).

N.W.2d 672, 685 (1977). Gohlke argues that the \$30,000 awarded for breach of fiduciary duty is not enough. He specifically refers to the leases and contracts entered into by Lauritzen as evidence that the amount should be greater. Lauritzen does not challenge the award. The circuit court found, however, that with the possible exception of the lease of computer equipment from Lauritzen to L&L Enterprises, these contracts and leases were fair and reasonable. There is nothing in the record to justify an award greater than this amount. Therefore, we affirm.

Gohlke also argues that the trial court erred by not awarding equitable relief for unjust enrichment. In order to establish a claim for unjust enrichment, the plaintiff must prove that he or she conferred a benefit on the defendant, that the defendant appreciated or knew of the benefit, and that the defendant accepted or retained the benefit under circumstances making its retention inequitable. *Quinnell's Septic & Well Serv., Inc. v. Dehmlow*, 152 Wis.2d 313, 316, 448 N.W.2d 16, 18 (Ct. App. 1989). We accept the trial court's factual findings unless they are clearly erroneous. *Id.* at 316, 448 N.W.2d at 17.

Since the trial court properly found that the contracts and leases were fair and reasonable, Gohlke would not be able to establish that Lauritzen was unjustly enriched.⁴ Therefore, we affirm the circuit court's decision not to award equitable relief on the basis of unjust enrichment.

By the Court.—Judgment affirmed.

⁴ The lease of computer equipment which the circuit court indicated may have been unreasonable was taken into consideration in calculating the \$30,000 in damages awarded to L&L Enterprises.

This opinion will not be published. See RULE 809.23(1)(b)5.,
STATS.

