

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**JUNE 16, 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. 97-3039-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**WEBER LEICHT GOHR & ASSOCIATES,**

**PLAINTIFF-APPELLANT,**

**V.**

**BANK ONE, COLUMBUS, N.A., A FOREIGN  
CORPORATION,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
MICHAEL D. GUOLEE, Judge. *Affirmed.*

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

PER CURIAM. Weber Leicht Gohr & Associates (Weber) appeals from an order granting summary judgment to Bank One, Columbus, N.A., on Weber's claim of unjust enrichment and breach of fiduciary duty pursuant to § 403.307, STATS. We conclude that the record failed to establish that Bank One's

retention of a benefit was inequitable or that it had actual notice that checks issued by Weber were unauthorized. Accordingly, we affirm the trial court's order.

This controversy began when Weber's controller, Joelle Zuber, forged ten of Weber's corporate checks over a six-month period between March 29, 1996 and October 10, 1996 to pay her personal credit card account with Bank One. Seven of the checks were dated prior to August 1, 1996; three were dated after August 1, 1996. The forged checks totaled \$40,607.96. Bank One credited the checks against Zuber's credit card account. The checks were honored by Weber's bank, Liberty Bank. Weber then sued Bank One.

Weber moved the trial court for summary judgment, contending that Bank One was liable for all ten checks under a theory of unjust enrichment. Alternatively, Weber contended that Bank One was liable for the checks under a theory of breach of fiduciary duty pursuant to § 403.307, STATS. The trial court granted Bank One summary judgment pursuant to § 802.08(6), STATS.

## DISCUSSION

This court owes no deference to a circuit court's decision to grant summary judgment; rather, we independently apply the methodology set forth in § 802.08(2), STATS., to the record *de novo*. See ***Garcia v. Regent Ins. Co.***, 167 Wis.2d 287, 294, 418 N.W.2d 660, 663 (Ct. App. 1992). Summary judgment will be granted only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See *id.*

An action for unjust enrichment in Wisconsin is based upon proof of three elements: (1) that a benefit is conferred by the plaintiff upon the defendant; (2) that the defendant appreciates or acknowledges the benefit; and (3) that the

defendant's acceptance or retention of the benefit under the circumstances of the case is inequitable. See *Quinnell's Septic & Well Serv., Inc. v. Dehmlow*, 152 Wis.2d 313, 316, 448 N.W.2d 16, 18 (Ct. App. 1989). "[A]n action for recovery based upon unjust enrichment is grounded on the moral principle that one who has received a benefit has a duty to make restitution where retaining such a benefit would be unjust." *Management Computer Servs., Inc. v. Hawkins Ash, Baptie & Co.*, 206 Wis.2d 158, 188, 557 N.W.2d 67, 79 (1996) (citation omitted). However, a person receiving a benefit from another is liable to pay for that benefit only if "the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it. The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor[e] ...[.]" *Puttkammer v. Minth*, 83 Wis.2d 686, 690, 266 N.W.2d 361, 363 (1978) (citation omitted).

Here, the undisputed record established that Bank One receives millions of payments a month from its credit card customers, including many corporate checks for application to personal accounts. The record further established that there is no practical way for Bank One to determine whether a corporate check it receives for application to a personal account is unauthorized. In contrast to Bank One, Weber was in a far better position to avoid the loss because, as the employer, it was charged with the responsibility of choosing and supervising its employees and instituting those measures necessary to prevent fraud in the issuance of instruments in its name. We conclude that under these circumstances it was not inequitable for Weber rather than Bank One to be liable for the cost of Zuber's forgeries.

We turn now to Weber's alternative argument that Bank One was liable for the three checks written after August 1, 1996,<sup>1</sup> under a theory of notice of breach of fiduciary duty under § 403.307, STATS. This section applies only if the party dealing with the fiduciary "has knowledge of the fiduciary status of the fiduciary." U.C.C. Comment 1995, WIS. STAT. ANN. § 403.307 (West Supp. 1997). Section 401.201(23m), STATS., defines "knowledge of a fact" as "actual knowledge of it."

The undisputed record supports the single inference that Bank One had no actual knowledge that Zuber was not authorized to submit corporate checks to pay her credit card account. Accordingly, the factual record conclusively demonstrated that Weber was not entitled to recover against Bank One under § 403.307, STATS.

In light of our disposition of Weber's claims, we decline to address the additional and alternative legal theories advanced by the parties in support of their respective positions. *See Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983) (if decision on one point disposes of appeal, appellate court will not decide other issues raised).

*By the Court.*—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

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<sup>1</sup> Section 403.307, STATS., applies to transactions and events concerning negotiable instruments created on or after its effective date of August 1, 1996. *See* 1995 Wis. Act 449, § 100(1).



