

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

October 23, 1997

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.

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

No. 96-1219

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**TERRY DONSKEY, GARY CHRISTOPHERSON, AND
TIMOTHY KAST, D/B/A INDEPENDENT BUILDERS,**

PLAINTIFFS-RESPONDENTS,

V.

STEVE RICKERT AND DEANNA RICKERT,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Monroe County:
STEVEN L. ABBOTT, Judge. *Reversed and cause remanded with directions.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Steve and Deanna Rickert appeal from a judgment awarding money damages to Terry Donskey, Gary Christopherson and Timothy Kast (collectively Independent Builders). The judgment also dismisses the Rickerts' counterclaim. The parties' dispute concerned remodeling work

Independent Builders did to the Rickerts' home. The jury found in the Rickerts' favor and awarded them \$12,500 in damages. The trial court vacated that award, however, and instead awarded \$14,356 in damages to Independent Builders. Because we conclude that credible evidence supported the jury's verdict, we reverse and remand for entry of judgment on the jury verdict.

Donskey, on behalf of Independent Builders, proposed to build an addition to the Rickerts' home, identified as a twenty foot by twenty-six foot addition to include a new kitchen, flooring, electrical, excavating, plumbing, heating, building permits and "sheet rock existing." The written and signed proposal set forth a total price of \$48,200 broken down into itemized components including concrete, building materials, labor, excavation, electrical, fixtures, carpeting, plumbing, heating, permits and sheet rock labor. The proposal also included a clause stating "all materials guaranteed to be as specified. All work to be completed in a workman-like manner according to standard practices. Any alteration or deviation from above specifications involving costs will be executed upon written orders and will become an extra charge over and above the estimate."

The Rickerts did not sign the proposal but testified that they orally agreed to it. Independent Builders subsequently commenced remodeling. The completed project eventually costs the Rickerts at least \$65,000, including \$30,000 paid to Independent Builders, and the rest paid directly to suppliers and various subcontractors, despite the fact that the Rickerts eventually scaled down the project to save money.

Independent Builders sued for \$14,725, under an unjust enrichment theory, alleging that they performed work for the Rickerts valued at \$44,725, but

were paid only \$30,000. The Rickerts counterclaimed for the expenses they incurred over and above the \$48,200 that they alleged was the contract price.

At trial both sides agreed that the project costs substantially overran the original \$48,200 figure. The Rickerts presented evidence and arguments to persuade the jury that the proposal was an enforceable contract obligating Independent Builders to perform all the remodeling work that was eventually done within the contract price of \$48,200. Under their theory, the sums they paid directly to suppliers and subcontractors were actually Independent Builders' responsibility under the contract, thus reducing dollar for dollar the amount they owed Independent Builders.

Independent Builders, on the other hand, presented testimony that the proposal was merely that, and that there was no meeting of the minds to convert it into a contract. Instead, under Independent Builders' view, it was to be paid on a labor and materials basis for what it contributed, and the Rickerts' payments to others were solely their responsibility. Independent Builders also contended that some of the extra costs resulted from upgrades to the original plans or extra, unanticipated work, and that Steve Rickert shared general contractor duties with Donskey.

The jury answered "yes" to the verdict question whether the parties agreed to remodel the Rickerts' property for \$48,200. The jury also found that Independent Builders breached the contract and that the Rickerts' damages were \$12,500. Because those findings resolved the case, the jury did not answer the questions submitted on Independent Builders' unjust enrichment claim.

On motions after verdict, the court concluded that credible evidence supported the finding of a contract between the parties. However, the court also

concluded that the Rickerts failed to prove a breach of that contract, or damages, but that Independent Builders did, in fact, prove a breach and damages in the amount claimed. Judgment was entered accordingly, resulting in this appeal.

Section 805.14(1), STATS., provides that a motion challenging the sufficiency of the evidence supporting a verdict shall be granted only if there is no credible evidence supporting that verdict. Consequently, we will reverse a judgment setting aside any verdict that is supported by credible evidence. *Leatherman v. Garza*, 39 Wis.2d 378, 386, 159 N.W.2d 18, 23 (1968).

Credible evidence supports the jury's finding of a contract between the parties. Independent Builders' proposal provided a precise, itemized price of \$48,200. The proposal further advised that work and materials were guaranteed, and that any alteration or deviation involving extra costs would be executed only upon written orders. The Rickerts testified that they orally agreed to that contract, and the jury's decision to believe that testimony is subject to limited review. *D'Huyvetter v. A.O. Smith Harvestore*, 164 Wis.2d 306, 320, 475 N.W.2d 587, 592 (Ct. App. 1991). Evidence of offer, acceptance and consideration was therefore sufficient to find a contract.

Independent Builders contend that the proposal whether accepted or not, was too vague and uncertain to provide an enforceable meeting of the minds. Independent Builders points out that the proposal contains no mention of significant elements such as time of performance, payment terms, a floor plan of the new addition, nor the specific types of materials to be used. However, Wisconsin follows the general rule that a contract is not invalid for uncertainty "if the deficiency can be supplied consistent with reasonableness in the interest of preserving the contract which parties thought they made. A contract is certain

which may be made certain from the surrounding circumstances.” *Lien v. Pitts*, 46 Wis.2d 35, 44, 174 N.W.2d 462, 467 (1970). Here, the Rickerts testified to circumstances that included extensive discussions with Donskey concerning the remodeling specifications, viewings of their City of Sparta house, and viewing of another house previously remodeled in the desired manner. A jury could have reasonably inferred that any uncertainty in the written contract was remedied by these additional circumstances that caused all parties to understand precisely what the project entailed.

The jury heard sufficient evidence to find damages and to calculate the damages at \$12,500. Donskey promised a \$48,200 remodeling project. The Rickerts produced evidence and testimony that the project ultimately cost them over \$65,000, including payments for sheet rock, fixtures, carpeting, electrical supplies, insulation, plumbing and heating. Donskey contested virtually all of the extra \$17,000 in costs. As a matter of weight and credibility, the jury could have credited the Rickerts with \$12,500 of their extra payments, while finding that the remaining \$4,500 to \$5,000 claimed went for materials and labor beyond the scope of the contract. Although it is unclear how the jury arrived at the precise figure of \$12,500, such inquiry is unnecessary. We are limited to determining whether the award fell within reasonable limits, and the evidence of total expenditures demonstrates that it did. *See Frayer v. Lovell*, 190 Wis.2d 794, 813, 529 N.W.2d 236, 244 (Ct. App. 1995).

Our decision makes it unnecessary to address the trial court’s award of damages to Independent Builders once it set aside the verdict. On remand, the trial court shall enter judgment on the jury’s verdict.

By the Court.—Judgment reversed and cause remanded with directions.

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

