

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 8, 2001

Cornelia G. Clark
Clerk of Court of Appeals

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No. 00-1138

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

96-CV-1749

WILLIAM A. PANGMAN AND MARY P. SCHMITT,

**PLAINTIFFS-RESPONDENTS-CROSS-
APPELLANTS,**

v.

**RICHARD WILLIAM KING AND LAW OFFICES OF RICHARD
WM. KING, JR.,**

**DEFENDANTS-APPELLANTS-CROSS-
RESPONDENTS,**

**GARTEN BRAU HOLDINGS COMPANY, INC., CAPITAL
BREWERY COMPANY, INC., AND WISCONSIN LAWYERS
MUTUAL INSURANCE COMPANY,**

DEFENDANTS.

96-CV-2141

MARY PANGMAN SCHMITT AND THOMAS D. PANGMAN,

PLAINTIFFS,

CARL DUROCHER AND WILLIAM PANGMAN,

INVOLUNTARY-PLAINTIFFS,

v.

**RICHARD WILLIAM KING, GARTEN BRAU HOLDINGS
COMPANY, INC., AND XYZ INSURANCE COMPANY,**

DEFENDANTS.

APPEAL and CROSS-APPEALS from judgments of the circuit court for Dane County: ROBERT A. DeCHAMBEAU, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 DEININGER, J. Richard King appeals judgments entered in favor of Mary Schmitt and William Pangman on their claims against King for conversion and misrepresentation. King’s complaints are that the damages awarded by the jury were improper because the jury miscalculated the proper measure of damages and duplicated certain damages, and that Pangman and Schmitt were not entitled to recover on a conversion theory because they did not have an “immediate possessory interest” in the shares of stock at issue. King also requests a new trial on the basis of two alleged errors committed by the trial court in its evidentiary rulings. Pangman and Schmitt cross-appeal, claiming the trial

court should have granted additional, equitable relief in the form of a constructive trust. We affirm the judgment as entered by the trial court.

BACKGROUND

¶2 This litigation involves a series of transactions relating to shares in a closely held corporation, Garten Brau Holding Company, Inc. (GBH). At the conclusion of a multi-day jury trial, the jury was asked to complete a twenty-eight-page special verdict form consisting of sixty-four questions. The jury's responses to those questions resulted in a judgment in favor of Schmitt in the amount of \$113,672, and in favor of Pangman in the amount of \$62,000.

¶3 The seeds of the litigation were sown in 1993 when Pangman was experiencing domestic and financial difficulties which adversely impacted his ability to practice law and oversee his law firm. King, a friend and law school classmate of Pangman's, who is also a practicing attorney, assisted Pangman by lending money and providing services to Pangman's law firm. In February of that year, Pangman executed documents drafted by King which encompassed a promissory note from Pangman, individually, to King for some \$101,000, together with a security agreement pledging Pangman's 564 shares of GBH to King as security.

¶4 Schmitt, who is Pangman's sister, also provided financial assistance to Pangman during this timeframe, and Pangman gave her a security interest in the stock, subject to King's first-priority interest. In August 1993, at a time when Pangman's circumstances had deteriorated further,¹ King drafted and Pangman

¹ Pangman was incarcerated at that time for contempt relating to court orders in his divorce.

signed a bill of sale, transferring the GBH shares to King. Pangman claimed at trial that this transaction was based on multiple considerations, not the least of which was King's promise to orchestrate and participate in a purchase of Pangman's law firm. According to Pangman, the \$101,000 promissory note was in part to be applied to King's purchase of equity in the law firm, and the GBH stock was to be used by King as collateral to obtain additional funds needed to keep the firm in business.

¶5 Pangman and Schmitt also claimed that King acknowledged Schmitt's "residual" interest in the pledged GBH shares, and that he had agreed to turn them over to Schmitt once arrangements were in place to repay him the amount he advanced to Pangman's firm. The amount Pangman actually owed King, however, was a matter of some dispute, with Pangman claiming it to be less than the \$101,000 face value of the note, over half of which represented uncompensated services King had rendered to Pangman's firm.

¶6 Following the August 1993 transfer of Pangman's stock to King, the relationship between Pangman and King deteriorated. King did not purchase Pangman's law firm, and he ultimately kept the GBH shares as a payment against the amount owed him for his past contributions to Pangman's firm, which, in King's view, exceeded the value of the GBH stock he had acquired from Pangman. Also, in 1995 or 1996, King purportedly acted on behalf of himself, Schmitt, and Pangman, to acquire additional shares of GBH from the estate of a deceased stockholder. Ultimately, however, King and another investor acquired the deceased stockholder's shares, and Pangman and Schmitt were, in their view, wrongfully deprived of the opportunity to acquire additional stock in the company.

¶7 Schmitt and Pangman then commenced this litigation, seeking to obtain money damages and equitable relief against King on a number of theories, including conversion, misrepresentation, promissory estoppel, professional negligence, and others. At the heart of their claims is the following theory: King wrongfully took advantage of his relationship with Pangman and Schmitt to acquire Pangman's 564 shares of GBH, which, in their view, were worth considerably more than any debt that Pangman or his law firm owed to King. Schmitt and Pangman further claim that King breached various duties owed to them in his handling of the acquisition of GBH shares from the estate of the deceased stockholder, thereby unjustly enriching himself at the expense of the plaintiffs.

¶8 A key fact in dispute in this litigation is the value of the GBH shares during the relevant time period 1993 through 1996.² King maintained that Pangman's shares were worth no more than \$62,000, which is the amount he maintained should be credited against Pangman's note in exchange for the stock Pangman transferred to him in August 1993. King based this value, in part, on valuations of the stock made for purposes of Pangman's divorce. Evidence was also presented that the Pangman stock was worth about \$138,500, based on a 1996 valuation for purposes of separate litigation regarding "dissenter's rights" in a corporate reorganization. (See footnote 2.) Schmitt and Pangman, meanwhile, contended that the disputed shares were worth from \$400,000 to over \$1 million,

² At some point after the transactions described above, the corporation underwent a reorganization and GBH shares were converted to shares of Capital Brewery stock. The values of the GBH stock presented at trial were thus based on corresponding values of Capital Brewery stock. The parties seem to agree that Pangman's 564 shares of GBH equated to approximately 433,000 shares of Capital Brewery stock.

based on prices obtained by King in several sales of stock to third parties following his acquisition of the Pangman shares.

¶9 Based on directions contained in the lengthy special verdict form, the jury was not required to answer all sixty-four questions. For present purposes, it is sufficient to note that the jury found that some, but not all, of the elements of several of Schmitt's causes of action had been proven. Jurors did agree, however, that King had converted Schmitt's interest in Pangman's GBH stock, and in response to the related damages question, jurors responded as follows:

QUESTION 20: ...

What sum of money will fairly and reasonably compensate Mary Pangman Schmitt for her loss?

ANSWER: \$ 113,672

Below this answer, the following handwritten notation appears on the verdict form:

433,000 shares @ .32/s 8/93 + 6 1/2 yr. Int. @ 8%

228,672

— 115,000 owed R King

¶10 The jury also found that Pangman had established the necessary elements for two of his claims. The jury determined that King materially misrepresented "the purpose for which he was requesting William A. Pangman to sign a bill of sale and irrevocable stock power in August of 1993." In response to the corresponding damages question, "[w]hat sum of money will fairly and reasonably compensate William A. Pangman for his losses?", the jury answered: "\$ 62,000." As with the question on Schmitt's damages, this answer is followed by a handwritten notation:

Value of debt R King said was
satisfied through Bill of Sale
Transaction for GBH stock

Jurors also agreed that King had converted Pangman's interest in the GBH stock, but they awarded zero damages. A handwritten note following this answer stated: "Would duplicate damages made elsewhere in this verdict."

¶11 In post-verdict motions, King sought to have the answers to both damages questions changed or set aside; he challenged the sufficiency of the evidence and legal basis to support the conversion verdict in favor of Schmitt and the misrepresentation verdict in favor of Pangman; and he sought various other relief, including a new trial. Schmitt and Pangman opposed King's motions and requested the court to grant additional, equitable relief in the form of imposing a constructive trust on the stock obtained by King in the several transactions complained of in their suit. The trial court denied all post-verdict motions and entered judgments on the verdict in favor of Schmitt and Pangman for the amounts awarded by the jury, plus allowable costs. King appeals those judgments, and Schmitt and Pangman cross-appeal the denial of their request for a constructive trust.

ANALYSIS

I.

¶12 We first address King's claims of error regarding the jury's answers awarding Schmitt \$113,672 on her conversion claim, and Pangman \$62,000 on his misrepresentation claim. Relying on the handwritten notations following the dollar amounts, he claims the jury erred as a matter of law in its award to Schmitt by (1) adding interest to the gross stock value before offsetting the amount of the

debt to King, and (2) employing an excessive interest rate and compounding it. He claims the trial court should have changed the amount awarded to Schmitt to \$31,217, which results from applying 5% simple interest to the net “residual value” of Pangman’s 564 shares of GBH after offsetting the note to King (\$138,560 – \$115,000 = \$23,560). And, because the jury’s damage award to Pangman was based on the “value of debt R King said was satisfied” by the stock transfer, this \$62,000, in King’s view, duplicates damages awarded to Schmitt. King claims that Pangman’s damages could be no more than \$23,560, being the “residual value” of the stock Pangman transferred. According to King, however, even that amount could not stand because the jury awarded these same damages to Schmitt, and Pangman should receive nothing.

¶13 King’s challenges to the damage awards rest on two premises: (1) that a court may correct obvious “mathematical errors” in a jury’s verdict, and (2) that the handwritten notations below the dollar amounts on the verdict are a part of the jury’s verdict. Although King relies heavily on cases from other jurisdictions, there is support in Wisconsin law for a court’s authority to correct a jury’s damage award where the inputs to the award are found elsewhere in the verdict, or are undisputed at trial, and thus, “the total amount of damages [i]s simply a matter of mathematical calculation.” *Webster Mfg. Co. v. Montreal River Lumber Co.*, 159 Wis. 456, 459, 150 N.W. 409 (1915). Here, however, jurors were not asked in the verdict form to determine the value of the Pangman stock, or the amount of the Pangman-to-King debt, and both amounts were disputed at trial.

¶14 In instructing the jury, the court gave the “Damages: General” standard instruction, WIS JI—CIVIL 1700, and a more specific instruction relating

to damages for conversion. *See* WIS JI—CIVIL 2201. Specifically, the court told jurors:

If Richard King wrongfully took or converted William Pangman’s or Mary Pangman Schmitt’s property, then you should award to ... Pangman or ... Schmitt, as damages, the value of the property at the time of the wrongful taking with interest to the time of trial.

If, however, Richard King wrongfully took ... Pangman’s or ... Schmitt’s property and later sold it ... Pangman or ... Schmitt may recover, as damages, the amount for which the property was sold or the value at the time of the wrongful taking, whichever is greater.

Significantly, jurors were *not* instructed regarding whether or how to offset the value of any indebtedness owed to King, or regarding the rate or method by which interest should be computed “to the time of trial.” It further appears that no specific instructions were given relating to how jurors were to determine damages on the misrepresentation claims.³ We have reviewed the transcript of the instructions conference, and we have not found that King objected to the instruction given on conversion damages, nor did he request alternative or additional instructions relating to damages for conversion or misrepresentation.

¶15 The verdict form asked jurors to determine only “[w]hat sum of money will fairly and reasonably compensate” Schmitt and Pangman for their losses. The jury responded to these questions by inserting amounts on the blank lines adjacent to the dollar signs beneath each damages question. We conclude that the jury’s verdict consists of only the two dollar amounts that the jury was

³ The only other instructions relating to damages dealt with damages for breach of contract, mitigation, and the loss of future profits. With respect to contract damages, jurors were told that “[a] party who is injured should, as far as it is possible to do by monetary award, be placed in the position in which he or she would have been had the contract been performed.”

asked to determine. The handwritten notations which follow the dollar amounts are neither a part of the verdict, nor may they be considered by a court in assessing the sufficiency of the evidence to support the amounts awarded. The additional notations are essentially “extrinsic” evidence of the jurors’ (or perhaps one of the juror’s) mental processes.⁴

¶16 Wisconsin courts have consistently applied the “very ancient, and often reiterated” rule “that the statements of the jurors will not be received to ... impeach their verdict.” *Olson v. Williams*, 270 Wis. 57, 70, 70 N.W.2d 10 (1955) (quoting *Butteris v. Mifflin & Linden M. Co.*, 133 Wis. 343, 348, 113 N.W. 642 (1907)). An exception exists when the inquiry is “whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror.” WIS. STAT. § 906.06(2) (1999-2000).⁵ For example, when it appears that a verdict may have resulted from “any form of prejudice based on race, religion, gender or national origin,” a court should consider statements of jurors regarding whether and under what circumstances bias or prejudice was communicated to jurors during their deliberations. *After Hour Welding v. Laneil Mgmt. Co.*, 108 Wis. 2d 734, 739, 324 N.W.2d 686 (1982). Even where extraneous, prejudicial information is alleged to have been given to jurors, however, “[t]he judge must

⁴ King emphasizes that when the court read the verdict following the jury’s return, it read the notations “as part of the jury’s verdict.” We find the fact to be of little significance, however. The court’s reading of a notation on a verdict form that is not directly responsive to a question on the verdict, does not transform the notation into a “part of the verdict” any more than the court’s failure to read a verdict answer would operate to remove it from the verdict.

⁵ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

exercise great care to prevent questions concerning the thought processes of the juror or jurors.” *Id.* at 743.

¶17 Here, the handwritten notations on the verdict form convey no suggestion that the jury was subjected to extraneous prejudicial information or improper influences. Rather, the notations deal exclusively with the jurors’ “mental processes” in arriving at dollar amounts in response to the damages questions on the verdict, and a court may not consider them. *See Id.* at 739; WIS. STAT. § 906.06(2). We agree with Schmitt that, even though the notations in question were placed on the verdict form, instead of on some other paper retrieved from the jury room, the notations are inadmissible as evidence of any “understandings, or misunderstandings,” by jurors during their deliberations. *State v. Thomas*, 161 Wis. 2d 616, 627, 468 N.W.2d 729 (Ct. App. 1991) (concluding that notations on court’s instructions sent to and retrieved from jury room were not competent evidence to impeach a verdict on grounds of jury confusion).

¶18 We next consider whether there was any credible evidence to support the dollar amounts the jury awarded as damages to Schmitt and Pangman. *Weiss v. United Fire & Cas. Co.*, 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995). Our duty is to search the record to find precisely such evidence, accepting all reasonable inferences drawn by the jury. *Heideman v. American Family Ins. Group*, 163 Wis. 2d 847, 863-64, 473 N.W.2d 14 (Ct. App. 1991). And, if we find credible evidence to support the verdict, the fact that it may arguably be “contradicted and the contradictory evidence be stronger and more convincing, nevertheless the verdict ... must stand.” *Weiss*, 197 Wis. at 389-90 (citation omitted).

¶19 The jury awarded Schmitt \$113,672 as compensation for her loss due to King's conversion of her interest in the Pangman GBH stock. There was evidence before the jury that would have permitted it to value the stock at anywhere from \$60,000 to well over \$400,000. Thus, even if the jury were to have credited the full amount King claimed Pangman owed him on the note, some \$100,000 to \$115,000, the jury could have found the "residual value" of Schmitt's interest in the stock to be \$113,672, or more. By the same token, the jury could have concluded that even after Schmitt's interest in the stock was satisfied, some additional value remained that would have inured to Pangman's benefit, and the \$62,000 awarded to him is supportable on the evidence before the jury.⁶ That is, contrary to King's contentions, there was credible evidence which, if believed by the jury, would have allowed it to determine that the stock which King acquired from Pangman and retained for himself was worth at least \$175,000 more than any indebtedness Pangman owed to King.

¶20 We thus conclude that King's challenges to the damage verdicts fail. King also contends that Pangman "lacked standing" to bring any claims regarding the transfer of his stock to King. King notes that Pangman testified he had assigned his interest in the stock to Schmitt, and King argues that the jury's notations show that all of the "residual value" of the Pangman stock was awarded to Schmitt on her conversion claim. Thus, King claims that even if he misrepresented his intentions to Pangman at the time of the stock transfer, Pangman could not have suffered *any* loss on account of the stock transferred.

⁶ The court instructed the jury that it must "be careful not to include or duplicate in any answer amounts included in any other answer made by you or by the court." We presume that a jury follows all instructions that it receives. *State v. Truax*, 151 Wis. 2d 354, 362, 444 N.W.2d 432 (Ct. App. 1989).

¶21 As we have noted, however, there was evidence before the jury which would have allowed it to conclude that Pangman's stock was worth significantly more than King claimed, such that both Schmitt and Pangman suffered losses from King's wrongful acts in obtaining and retaining the shares.⁷ Moreover, we note that in affirming the verdicts, the trial court suggested the jury might have awarded misrepresentation damages to Pangman based on his losses stemming from King's failure to go forward with the purchase of the law firm, that is, that the jury awarded Pangman the portion of the note representing what King would have paid Pangman for the law firm. In either event, like King's other challenges to the damage verdicts, his "standing" argument rests on information gleaned from the notations on the verdict form, which, as we have discussed, are not before us.

II.

¶22 King next claims that the jury's determination that he converted Schmitt's and Pangman's interests in the GBH stock cannot stand because neither had "an immediate possessory interest" in the shares when King obtained them. King maintains that, because he had the first priority lien against the stock pursuant to Pangman's note and security agreement, he was legally entitled to hold the stock until Pangman's indebtedness to him was satisfied, which did not occur

⁷ King asserts in response to the cross-appeals that the amounts Schmitt advanced to Pangman or his law firm were not proven at trial, and he suggests that Pangman's assignment of the stock to Schmitt served to remove the value of the GBH stock from Pangman's net worth for purposes of his divorce proceedings. King cannot have it both ways, however. That is, we will not hear King to claim that Pangman had no interest in the stock and cannot therefore receive compensation for its loss, while at the same time implying that equitable relief was properly denied the plaintiffs in part because they attempted to conceal Pangman's true interest in the stock.

at any time prior to trial. King adds that Pangman is further prevented from asserting a possessory interest in the stock because of the bill of sale Pangman executed in King's favor, and by virtue of Pangman's assignment of any residual interest in the stock to Schmitt.

¶23 We reject King's contentions for two reasons. First, the question of who, under the agreements and understandings between the parties, was entitled to have possession of Pangman's stock once King made known his intention not to pursue the purchase of the law firm, was very much in dispute at trial. King admits as much in his opening brief: "In fact, one of the issues that the jury was implicitly expected to resolve was a determination of who was entitled to possession of the GBH stock." Second, it is not correct to say that a party who holds a secondary or future interest in personal property may not bring an action for conversion when that interest is harmed.

With the disappearance of the forms of action, it is normally of little consequence, except as a matter of pleading in a few jurisdictions, whether this action is now to be called one for conversion or merely for damage to the future interest, since in either case the amount recovered is the full value of the interest of which the plaintiff has been deprived.

RESTATEMENT (SECOND) OF TORTS § 243 cmt. b (1965).

¶24 Finally, King cites two errors by the trial court which he claims entitle him to a new trial. He claims the court improperly prevented him from cross-examining Schmitt regarding allegations in her pleadings which she allegedly contradicted while testifying at trial. We agree with Schmitt, however, that the court's ruling did not prevent King from exploring the inconsistency, only that the pleading not be referred to as a prior statement of Schmitt's. The court told King's counsel:

You can ask the witness whether she acknowledges the—that statement which was put in a jurisdictional document by her attorney or whether she disagrees with what her attorney said.... I don't think it should be attributed to the witness as a statement of hers.

Not only do we conclude that the court did not erroneously exercise its discretion in ruling as it did, but we would be hard pressed to conclude that a “substantial right” of King’s was affected by requiring his counsel to rephrase a question to clarify the nature of Schmitt’s allegedly inconsistent prior “statement.” *See* WIS. STAT. §§ 901.03(1) and 906.11(1).

¶25 King also claims the trial court erred in excluding “evidence of accrued interest on Pangman’s debt to King.” He argues that, because he was not allowed to present this evidence, the jury was “likely influenced” to conclude that it could not add interest to the offsetting indebtedness, as he claims the jury did with respect to the value of the transferred stock.⁸ The court’s specific ruling, however, was simply that a certain exhibit would not be admitted. The exhibit reflected a computation of interest accruing at 15% on the \$101,000 note from February 1993, through the time of trial. The court noted that there was no dispute that King had sold the stock he acquired from Pangman, and thus concluded King had “been compensated ... a number of years ago” for the indebtedness reflected in the note. The court thus determined that the exhibit was not relevant to any issue the jury would be asked to decide.

¶26 In the colloquy which ensued, King acknowledged that he would not be pursuing his counterclaim, in which he had sought to collect from Pangman the

⁸ As we have discussed, there is no admissible evidence in the record regarding how the jury arrived at its damages verdicts.

balance of what King claimed was owed to him. Schmitt asserted that the jury could take into account the amount of Pangman's indebtedness to King when answering the damage questions on the verdict form, which had already been formulated at the time of the ruling in question. King's counsel agreed, responding as follows: "I don't have a problem with that. I accept that, that we'll both argue whatever their damages are, the bottom line should be offset by the amount owed to Mr. King." Thus, although King still maintained that the exhibit showing interest on the note through the time of trial should have been admitted, he conceded that he could argue his entitlement to an offset in the damages determinations without having the disputed exhibit in evidence. We conclude that King was therefore not prejudiced by the court's ruling precluding him from introducing the exhibit in question, and King is not entitled to a new trial as a result of it.

III.

¶27 We now take up Schmitt's and Pangman's cross-appeals. Both claim that the trial court erred in denying their requests for the imposition of a constructive trust on all of the stock King had acquired as a result of the transactions complained of. Schmitt also argues for other equitable remedies that would force King to "disgorge" his allegedly ill-begotten gains from selling the stock in question.

¶28 Schmitt first contends that the trial court committed an error of law when it concluded in a pretrial ruling that Pangman, but not Schmitt, could seek a constructive trust on the transferred shares because only Pangman had "conferred a benefit" on King by transferring the shares to him. Schmitt acknowledges, however, that post-verdict, she joined in Pangman's request for a constructive trust

based on evidence that Pangman had assigned his interest in the transferred shares to her.⁹ We do not read the trial court's denial of a constructive trust to rest on any belief on the court's part that Schmitt could not, as a matter of law, obtain such relief. Rather, the court treated the post-verdict constructive trust request as made by both plaintiffs, and it denied the request for reasons we describe below. In short, the trial court did not ultimately deny Schmitt equitable relief because it believed she "lacked standing" to obtain a trust on the shares, and there is no need for us to address the issue further.

¶29 The question before us is whether the trial court erroneously exercised its discretion in declining to impose a constructive trust, as both Schmitt and Pangman requested the court to do. We review the trial court's action deferentially, the question of granting or withholding equitable relief being a matter committed to the trial court's exercise of discretion. *Singer v. Jones*, 173 Wis. 2d 191, 194-95, 496 N.W.2d 156 (Ct. App. 1992). And, "even if a party meets the burden to establish that the elements exist for the equitable relief sought, a court of equity still retains the discretion to grant or deny relief." *Richards v. Land Star Group, Inc.*, 224 Wis. 2d 829, 848, 593 N.W.2d 103 (Ct. App. 1999). We will assume, without deciding, that the jury's responses on the special verdict form, or other findings the trial court made or could have made on the record

⁹ Schmitt explains in her reply brief: "Mary joined Bill Pangman's post-verdict motion seeking imposition of a constructive trust, and, as Mary noted in her initial brief ... Mary sought imposition of a constructive [trust] as assignee of Bill's interest in the 564 GBH shares King fraudulently acquired from Bill. Accordingly, the propriety of imposing a constructive trust on the 564 shares is not dependent upon whether or not Mary, as opposed to Bill, unjustly enriched Mr. King."

before it, would have permitted the court to grant equitable relief.¹⁰ What remains is for us to determine whether the court erred in failing to do so. We conclude that it did not.

¶30 The trial court reviewed the jury's answers to all of the verdict questions it was required to address, noting where the jurors had found against the plaintiffs on key elements of several of their claims.¹¹ The court was satisfied, as are we, that there was credible evidence before the jury to support the amounts it awarded to Schmitt and Pangman. It then concluded as follows:

[E]quity is generally a remedy which is used when there are no legal remedies. You [plaintiffs] have, simply put, you won on your legal remedies. You may not be satisfied with what you have won, but you have won on your legal

¹⁰ We noted in *Singer v. Jones*, 173 Wis. 2d 191, 196, 496 N.W.2d 156 (Ct. App. 1992), that a constructive trust may be employed “to prevent unjust enrichment.” The property upon which the trust is imposed must “have been obtained by means of actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong, or by any form of unconscionable conduct.” *Id.* Schmitt and Pangman maintain that the jury's verdict and other evidence in the record show that King's acquisition of Pangman's and Schmitt's interests in the transferred stock, as well as his acquisition of the additional shares from the deceased stockholder's estate, were wrongful on several of the enumerated grounds.

¹¹ For example, jurors found that Schmitt and King did *not* “have an attorney-client relationship for the purpose of protecting her interest in William Pangman's GBH stock,” and that King did not promise her in August 1993, that he would do so. And, while jurors found that King acted as Schmitt's attorney for the purpose of negotiating for her to purchase shares from the estate of the deceased stockholder, it found that Schmitt was not harmed by any actions King took against her interests. Similarly, jurors found that although King misrepresented to Schmitt and Pangman that he would represent their interests in negotiating the stock purchases, they also concluded that neither Schmitt nor Pangman justifiably relied on those representations.

Pangman notes that there is law to the effect that reasonable or justifiable reliance “is not an essential element of constructive trust when grounded upon a confidential relationship, if there existed actual reliance by the promisee upon the promise made by the promisor.” *Dombrowski v. Tomasino*, 27 Wis. 2d 378, 387-88, 134 N.W.2d 420 (1965). Again, however, we are assuming for purposes of this appeal that there were sufficient findings or facts before the court which would have permitted it to impose a constructive trust had it deemed such relief appropriate.

remedies. Why should the court invoke its equity jurisdiction then and for what purpose? ... I rely on what juries tell me. Juries—the jury told me what they believe, those 12 people, to be the facts in this case, which substantially I agree with. I think ... Mr. King’s conduct was at best reprehensible as to his friends and associates, but, you know, I don’t impose constructive trusts on everything where friends have a falling out and one, for want of a better term, screws the other.

....

...The wrong here [regarding the estate shares] assumes that Mr. Pangman and Ms. Pangman-Schmitt would be further ahead if not for the conduct of Mr. King.... I can’t disregard the testimony of ... I believe it was [the estate representative] is there is no way in hell I was going to sell that stock to Bill Pangman, so although, you know, being very critical of Mr. King, ... what he did was wrong, but the ... effect of it was nothing as to these plaintiffs because [the representative] wasn’t going to sell the stock to them anyway.

....

...[F]or the reasons that I’ve stated the court does not believe that this is the proper case for it to exercise its equity jurisdiction, and, accordingly, for the reasons I’ve stated on the record, the court will not impose the equitable remedy of a constructive trust in favor of either plaintiff.

¶31 Schmitt argues that we should set aside the court’s discretionary denial of equitable relief because the court did so under an erroneous view of the law. According to Schmitt, the trial court believed that because Schmitt and Pangman had obtained some money damages on their legal claims, it could not grant additional, equitable relief. Schmitt asserts that this was error because, if a plaintiff’s recovery of legal damages is “inadequate to do complete justice,” a court may order equitable remedies. See *Bergman v. Bernsdorf*, 271 Wis. 401, 407, 73 N.W.2d 595 (1955) (“The existence of a remedy at law does not deprive equity of jurisdiction unless such remedy is clear, adequate and complete.”).

¶32 We disagree with Schmitt that the trial court believed that it could not grant equitable remedies because of the jury's damage awards. Rather, the trial court's post-verdict ruling, taken as a whole, indicates that the court considered the amounts awarded by the jury to be an adequate remedy for the plaintiffs. The court implicitly concluded that the additional relief requested was not warranted on the record before it. If the trial court had maintained the view Schmitt ascribes to it, the court could have simply cited the damage verdicts as absolutely precluding equitable relief. Instead, however, the court reviewed the jury's findings, stated its own impressions regarding the import of certain evidence and testimony, and explained why it *would not* impose a trust, as opposed to stating that it *could not* do so. We conclude that the court applied the proper legal standards to the facts before it, and through a process of reasoning, reached a result which a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶33 Schmitt also cites *Topzant v. Koshe*, 242 Wis. 585, 9 N.W.2d 136 (1943), and the RESTATEMENT OF RESTITUTION for the proposition that she can elect to "forego" the jury's conversion damages, and instead require King to "disgorge any proceeds or other benefit derived from the sale of the converted property." Schmitt does not assert, however, that she made this request or argument in the trial court. Schmitt filed no post-verdict motion of her own but merely joined in Pangman's request for a constructive trust. We have reviewed the transcript of the post-verdict hearing, and we are unable to locate any place where Schmitt raised or attempted to raise her alleged right to elect an alternative remedy of restitution in lieu of the damages awarded by the jury. Accordingly, the trial court never had an opportunity to consider this possibility, and thus we will not address it. See *State v. Rogers*, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct.

App. 1995) (“We will not ... blindsides trial courts with reversals based on theories which did not originate in their forum.”).

¶34 Finally, Pangman makes several arguments based on the possibility that we might modify the damages verdicts or order a new trial. He claims that, in either of those events, the trial court would be required to reconsider its denial of a constructive trust, and if there were to be a new trial on damages, the trial court should include a verdict question and instructions on punitive damages. Given that we have sustained the judgments entered on the jury’s verdict, we need not address these alternative arguments.

CONCLUSION

¶35 For the reasons discussed above, we affirm the appealed judgments.

By the Court.—Judgments affirmed.

Not recommended for publication in the official reports.

