

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 18, 2007

David R. Schanker
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. 2007AP595-FT

Cir. Ct. No. 2005CV1883

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**DONALD P. CHARTIER AND TJC, INC., D/B/A TANK REMOVAL
SPECIALIST, INC.,**

PLAINTIFFS-APPELLANTS,

v.

**NEIL R. MCKLOSKEY AND WESTPORT INSURANCE CORP., A FOREIGN
CORPORATION DOING BUSINESS IN WISCONSIN,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Brown County:
MICHAEL T. JUDGE, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIUM. Donald Chartier (Donald) appeals a summary judgment granted in favor of Neil McKloskey and Westport Insurance Corp.

(collectively, McKloskey).¹ Donald contends the circuit court erred when concluding he lacked standing to bring an action against McKloskey. We affirm the judgment.

¶2 Donald and his ex-wife, Tamra Chartier (Tamra), each own fifty percent of the shares of TJC, Inc. (TJC). Attorney Neil McKloskey was hired to collect a debt owed to TJC. After filing a lawsuit on TJC's behalf, McKloskey obtained a judgment for TJC in the amount of \$283,426.78.

¶3 McKloskey successfully collected the judgment, and Tamra, who is the president of TJC, directed how the funds should be disbursed. After payments were made to various individuals and entities, some of whom appear to be creditors, Tamra instructed McKloskey to pay the remaining funds to herself. Nothing was paid into a corporate bank account or to Donald.

¶4 Donald then commenced this action against McKloskey, asserting legal malpractice and breach of contract. McKloskey filed a motion for summary judgment, which the circuit court granted, concluding that Donald, as a shareholder, did not have standing to assert a malpractice claim against McKloskey.

¶5 Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08. We review grants of summary judgment de novo, applying the

¹ This appeal has been expedited pursuant to WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

same methodology as the circuit court. *Park Bancorporation, Inc. v. Sletteland*, 182 Wis. 2d 131, 140, 513 N.W.2d 609 (Ct. App. 1994).

¶6 The parties generally agree on the applicable law. They cite *United States v. Stonehill*, 83 F.3d 1156 (9th Cir. 1996), and *Federal Deposit Ins. Corp. v. Shrader & York*, 777 F. Supp. 533 (S.D. Texas 1991), for the general rule that a corporate shareholder may not individually sue a third party for injuries sustained by the corporation and is instead limited to asserting a derivative claim against the officers or directors of the corporation. Donald relies on an exception to this general rule, which is when a shareholder has suffered an injury separate and distinct from that suffered by other shareholders or the corporation as an entity. *See Gaff v. FDIC*, 814 F.2d 311 (6th Cir. 1987).

¶7 We agree with the circuit court's conclusion that, based on the allegations and averments in the record, the money collected by McKloskey belonged to TJC, not Donald personally, and Donald's interest in that money was derivative of his interest in TJC. Donald has not supported his contention that he suffered a separate and distinct injury from that of TJC or its other shareholders. Donald fails to distinguish between Tamra's status as president of TJC and as a shareholder. Assuming Donald's assertion that TJC never received the money is true, neither he nor Tamra received any benefit from the money in their capacity as shareholders. As such, his injury as a shareholder would not be separate or distinct from TJC's or its other shareholders'.

¶8 Thus, while the corporation may have a claim against Tamra and McKloskey, Donald's recourse is only against TJC's officers or directors—in this case, Tamra. *See Stonehill*, 83 F.3d 1156; *Shrader & York*, 777 F. Supp. 533.

Therefore, the circuit court was correct to conclude that Donald, as a shareholder, may not individually bring an action against McKloskey.²

¶19 In an alternative argument, Donald asserts that he may assert a malpractice claim as a third-party beneficiary of McKloskey's attorney-client relationship with TJC. We do not address this argument. Donald's brief does not cite any Wisconsin law on this issue, and he generally does not develop his argument. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (we need not consider undeveloped arguments). Further, in his reply brief, he seemingly abandons this argument, instead arguing that he was actually in a direct attorney-client relationship with McKloskey. *See Northwest Wholesale Lumber, Inc. v. Anderson*, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502 (Ct. App. 1995) (we do not address arguments raised for first time in a reply brief).

By the Court.—Judgment affirmed.

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

² Donald also named TJC as a plaintiff in his lawsuit. However, the circuit court concluded that Donald was not authorized to bring suit on TJC's behalf. Donald does not challenge this conclusion on appeal.

