

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 18, 2008

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. 2007AP2326

Cir. Ct. No. 2006CV260

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JEFFREY EBENSBERGER,

PLAINTIFF-APPELLANT,

v.

**SHARON HOFMEISTER, AS A CO-TRUSTEE OF THE EBENSBERGER
FAMILY TRUST, ALAN EBENSBERGER, AS A CO-TRUSTEE OF THE
EBENSBERGER FAMILY TRUST AND THE HENRY EBENSBERGER AND
ARLEEN EBENSBERGER FAMILY TRUST,**

DEFENDANTS-RESPONDENTS,

**HENRY EBENSBERGER AND ARLEEN EBENSBERGER, INDIVIDUALLY AND
AS PRINCIPAL BENEFICIARIES OF THE EBENSBERGER FAMILY TRUST,**

DEFENDANTS-THIRD-PARTY PLAINTIFFS,

v.

ROBERT L. LOBERG,

THIRD-PARTY DEFENDANT.

APPEAL from a judgment of the circuit court for Pierce County:
JOHN A. DAMON, Judge. *Reversed and cause remanded.*

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

¶1 PER CURIAM. Jeffrey Ebensperger appeals that portion of a summary judgment dismissing his unjust enrichment claim.¹ He contends there are genuine issues of material fact regarding whether a family trust was unjustly enriched by improvements he made to the land. Because we agree summary judgment was inappropriate, we reverse that portion of the judgment and remand for further proceedings on the unjust enrichment theory only.

¶2 Jeffrey's parents, Henry and Arleen, purchased a 160-acre farm in 1975. The property contains a house and several other buildings, along with pasture and planting fields. Jeffrey moved to the property in 1979 and resided there until around the time of this lawsuit. He paid approximately \$200 per month in rent for the house, and nothing to use the outbuildings or farmland.

¶3 In 1995, Henry became ill, and he and Arleen met with an attorney to discuss estate planning. Ultimately, in 1996, they executed transfers to put the farm property into a trust to protect it from liens in the event that large bills accrued from Henry's treatment. Jeffrey's siblings, Sharon Hofmeister and Alan Ebensperger, were named co-trustees. Henry and Arleen were named primary beneficiaries. Jeffrey, Sharon, Alan, and Arleen's two children from a previous marriage were all named secondary beneficiaries.

¹ Jeffrey had other claims against the defendants, which were also dismissed, but the only one he pursues on appeal is the unjust enrichment claim.

¶4 Jeffrey and Arleen indicated it had always been the parents' intent to sell the farm to Jeffrey for its assessed value. Jeffrey was concerned that if the farm was in the trust, he would not be able to purchase it. He and Arleen discussed his concerns with an attorney. Arleen understood that she and Henry had the final say on the disposition of trust assets. Alan indicated this was his understanding as well.

¶5 After the trust was created, Henry and Arleen tried, in late 2005, to sell the farm to Jeffrey for \$110,000 through a land contract. They learned for the first time that the co-trustees' approval was necessary. Although the land contract was presented to Alan and Sharon, they have refused to sell the property. An appraisal done in 2006 estimated the property value at \$455,000.

¶6 Throughout his residency on the farm, Jeffrey claims to have made multiple improvements to the property, including repairs to the buildings, improvements to the real estate itself, and remodeling of the house. He contends that he invested approximately \$100,000 in labor and materials in the buildings and another \$35,000 in the land, without considering compensation for his own time, and he estimates he increased the property value by \$100,000 to \$150,000.

¶7 Because Sharon and Alan refused to approve the sale, Jeffrey brought this action. He sought to enforce his parents' promise to sell the property. Alternatively, he claimed unjust enrichment and sought reimbursement for the improvements he made.

¶8 Sharon, Alan, and the Trust (collectively, the Trust) moved for summary judgment arguing, among other things, that the benefits conferred by any improvements that were done were substantially outweighed by the benefits

Jeffrey received. The circuit court granted summary judgment, concluding that based on the equities, there was no unjust enrichment. Jeffrey appeals.

¶9 We generally review summary judgments de novo, using the same methodology as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). Summary judgment procedure prohibits a court from deciding an issue of fact. *State Bank of La Crosse v. Elsen*, 128 Wis. 2d 508, 511, 383 N.W.2d 916 (Ct. App. 1986). “If a dispute concerning the material facts exists or the material presented is subject to conflicting factual interpretation or inference, summary judgment must be denied.” *Id.*

¶10 When summary judgment is based on consideration of an equitable right, however, we apply a two-step standard of review. See *Tri-State Mech., Inc. v. Northland College*, 2004 WI App 100, ¶13, 273 Wis. 2d 471, 681 N.W.2d 302; *Pietrowski v. Dufrane*, 2001 WI App 175, ¶5, 247 Wis. 2d 232, 634 N.W.2d 109. We review the legal issues de novo, but a decision to grant or deny equitable relief is reviewed for an erroneous exercise of discretion. *Pietrowski*, 247 Wis. 2d 232, ¶5.

¶11 There are three elements to a claim of unjust enrichment: “(1) a benefit conferred upon the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) the acceptance or retention by the defendant of the benefit under circumstances that makes its retention inequitable.” *Tri-State Mech.*, 273 Wis. 2d 471, ¶14. Ordinarily, application of the facts to this standard is a question of law. *Id.*, ¶13. However, we conclude the facts in this case are disputed. Summary judgment was therefore inappropriate and it would be improper for us to consider the legal questions at this time.

¶12 There is a dispute as to the benefit conferred by Jeffrey to the Trust. There is first a disagreement over the extent of his repairs and renovations to the property. While Jeffrey recites a litany of tasks performed, Alan asserted that much of this—spreading chemicals in the fields, for example, or remodeling following a fire—was merely maintenance, not improvements.

¶13 There is further discrepancy in the dollar amount attributable to any of Jeffrey's work. The farm appraised for slightly over \$100,000 in 1996, but it appraised for \$455,000 in 2006. Jeffrey contends he contributed approximately \$100,000 to \$150,000 in increased value through his work on the buildings. But the Trust asserts that \$320,000 of the 2006 value was attributable solely to the land's value. Further complicating the valuation of the benefit is the Trust's assertion that Jeffrey received a benefit as well, in the form of reduced rent for himself and some rental income for property Jeffrey was not using. Jeffrey, in turn, contends that tenants using the outbuildings or fields paid rent to Arleen and Henry, not him.

¶14 There is a dispute as to whether the Trust knew of an alleged benefit it was receiving. Jeffrey contends that Alan and Sharon accepted any improvements so long as Henry and Arleen approved of them. However, both Alan and Sharon assert that they were not generally informed of specific work until after it had occurred, and they contend Jeffrey made improvements solely for his benefit and comfort, not the Trust's benefit.

¶15 Finally, we would generally leave the weighing of the equities to the circuit court's exercise of discretion. However, the factual disputes here, particularly when it comes to dollar values, make it difficult to conduct such a balancing test.

¶16 It was inappropriate for the court to render summary judgment in the presence of disputed facts. Because the court made implicit fact findings and relied on those findings to deny equitable relief, the court erroneously exercised its discretion. The portion of the judgment denying relief on a theory of unjust enrichment is reversed and the cause is remanded for further proceedings on that theory only.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

