

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 10, 2009

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. 2009AP1409

Cir. Ct. No. 2008SC20899

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

TERRA NOVA, INC.,

PLAINTIFF-APPELLANT,

V.

INTERPERSONAL INSTITUTE, INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed.*

¶1 FINE, J. Terra Nova, Inc., appeals a small-claims judgment entered after a trial *de novo* in circuit court awarding Interpersonal Institute, Inc., \$4,995 on its counterclaim. The only issue on appeal is whether there was evidence to

support the circuit court’s award of damages to Interpersonal Institute.¹ We affirm.

¶2 Interpersonal Institute hired Terra Nova to give it a system to record Interpersonal Institute’s Interpersonal Growth Groups, which one of the participants testified were “experiential learning” sessions. The circuit court agreed with the assessment of Interpersonal Institute’s executive director that she was unable to use the Terra Nova system it purchased. Terra Nova argues on appeal, however, that there is no evidence from which the circuit court could have concluded that Interpersonal Institute spent anything or had any ascertainable consequential damages as a result, and points to the following direct-examination testimony on the counterclaim by a person whom Interpersonal Institute asked to look into the problems caused by Terra Nova:

Q If I had paid you for all of the work you’ve done for me, what might that have cost me?

A Probably -- Well, I put in about 50 to 60 hours on this and my -- I don’t do independent consulting anymore, but the usual bill rate for that is about \$100 an hour; so between five and \$6,000.

Although Terra Nova is correct that *what could have been* charged or paid is not evidence of recoverable damages, *see Dehnart v. Waukesha Brewing Co.*, 21 Wis. 2d 583, 595, 124 N.W.2d 664, 670 (1963) (“The fundamental basis for an award of damages for breach of contract is just compensation for losses necessarily flowing from the breach.”), a party to a contract is entitled to receive the benefit of its bargain, namely “the difference between the value of the property

¹ The circuit court dismissed Terra Nova’s small-claims complaint against Interpersonal Institute, but Terra Nova does not appeal from that ruling.

as it was when purchased and what it would have been had it been as represented,” *Polley v. Boehck Equipment Co.*, 273 Wis. 432, 437, 78 N.W.2d 737, 739 (1956). The circuit court found that the system “didn’t work and that [Terra Nova] should have known at the beginning [the system] would not work.” Terra Nova has not argued in its appellate submissions that this finding is “clearly erroneous,” *see* WIS. STAT. RULE 805.17(2) (circuit court’s findings of fact must be upheld on appeal unless “clearly erroneous”); indeed, as we have seen, it has not appealed the circuit court’s dismissal of its claim against Interpersonal Institute.

¶3 The contract price for the system Terra Nova undertook to provide was \$45,000.07. The circuit court could not award more than \$5,000 on Interpersonal Institute’s counterclaim. *See* WIS. STAT. § 799.01(1)(d). Based on its finding that Interpersonal Institute paid for a system that did not work, its award of \$4,995 was reasonable. *See Anderson v. Tri-State Home Imp. Co.*, 268 Wis. 455, 464a, 67 N.W.2d 853, 859 (1955) (“[U]nder the ‘benefit of bargain’ rule of damages, the price paid by the purchaser is relevant evidence on the issue of the value of the property if it had been as represented.”), *rehearing denied*, 268 Wis. at 464a–464b, 68 N.W.2d 705–706.

By the Court.—Judgment affirmed.

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

