

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 31, 2012

A. John Voelker
Acting 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. 2010AP3123

Cir. Ct. No. 2009CV286

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

TRUCK EQUIPMENT, INC.,

PLAINTIFF-RESPONDENT,

V.

STOUGHTON TRAILERS, LLC,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
DONALD R. ZUIDMULDER, Judge. *Affirmed.*

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

¶1 PETERSON, J. Stoughton Trailers, LLC, appeals a judgment, entered on a jury verdict, awarding Truck Equipment, Inc. \$1,231,988. The jury found that Stoughton improperly terminated a dealership agreement with Truck Equipment, and it rejected Stoughton's defense that Stoughton's poor economic

circumstances provided good cause for the termination. On appeal, Stoughton argues the circuit court erred by admitting evidence of its parent company's financial health, which it contends was not relevant to the good cause analysis. However, we conclude that, by relying on a commingled income statement to demonstrate its losses, Stoughton opened the door to the admission of its parent company's financial information. We therefore affirm.

BACKGROUND

¶2 Stoughton's predecessor, Stoughton Trailers, Inc., was founded in 1961 by Donald Wahlin and began manufacturing over-the-road truck trailers in 1964. In about 1975, Wahlin entered into an oral agreement with Isidore Kwaterski, the founder of Truck Equipment. Under the agreement, Truck Equipment would purchase trailers from Stoughton and then sell them to the public.¹ Truck Equipment continued to sell Stoughton trailers under this agreement until 2008.

¶3 In 2002, Stoughton Trailers, Inc. was reorganized. A holding company, STI Holdings, Inc., was created and became the sole owner of several limited liability companies, each of which handled a different area of Stoughton's business. These new companies included Stoughton Trailers, LLC, which manufactured and sold trailers; Stoughton Parts Sales, LLC, which sold trailer

¹ The parties dispute whether, under this agreement, Truck Equipment had the exclusive right to sell Stoughton Trailers within its sales territory. However, that issue is not relevant to this appeal.

Furthermore, in the circuit court, Stoughton contended its relationship with Truck Equipment did not constitute a dealership agreement. On appeal, though, Stoughton does not contest that it had a dealership agreement with Truck Equipment.

parts; Stoughton Trailers Acceptance Company, LLC, which leased trailers; Western Acquisitions, the part-owner of a California-based leasing company; and D&D Development, LLC, a real estate holding company. Following the 2002 reorganization, Truck Equipment continued to purchase and resell Stoughton trailers, albeit from Stoughton Trailers, LLC, instead of Stoughton Trailers, Inc.

¶4 By a letter dated July 1, 2008, Stoughton terminated Truck Equipment's dealership. Truck Equipment then sued Stoughton, alleging the termination violated the Wisconsin Fair Dealership Law. *See* WIS. STAT. ch. 135.² Stoughton asserted, as an affirmative defense, that it had good cause to terminate Truck Equipment's dealership. Specifically, Stoughton contended it had sustained severe economic losses, which justified the termination. *See Ziegler Co. v. Rexnord, Inc.*, 147 Wis.2d 308, 314, 433 N.W.2d 8 (1988) (a grantor's unfavorable economic circumstances may constitute good cause for terminating a dealership agreement).

¶5 Truck Equipment then moved for leave to amend the complaint to add STI Holdings as a defendant. It also sought to discover STI Holdings' consolidated financial statements, contending this information was relevant to Stoughton's good cause defense and was necessary to evaluate whether Stoughton really was losing large amounts of money. The circuit court denied Truck Equipment's motion to amend and also granted a protective order preventing discovery of STI Holdings' financial statements.

² All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶6 Shortly before trial, Truck Equipment renewed its request to discover STI Holdings' financial statements. On the morning of the first day of trial, the court denied Truck Equipment's request. The court stated that, after reviewing the statements in camera, it could not find any evidence that the holding company's income was related to Stoughton's claimed financial distress.

¶7 The case proceeded to trial. In support of its good cause defense, Stoughton offered the testimony of Donald Wahlin, the founder of Stoughton Trailers, Inc., and the current chief executive officer of STI Holdings. Wahlin testified that, since 2001, Stoughton Trailers, LLC, had lost "a lot of money" and had even considered getting out of the trailer business. When asked to estimate how much money Stoughton had lost during that time, Wahlin replied, "Overall I think about \$28 million."

¶8 During its cross-examination of Wahlin, Truck Equipment introduced Exhibit 22, an income statement for Stoughton Trailers, LLC, for the years 2001 through 2009. Stoughton had prepared Exhibit 22 for use in the Truck Equipment lawsuit to demonstrate its operating performance. Wahlin admitted that the \$28 million loss estimate he gave on direct examination was taken from Exhibit 22.

¶9 The next morning, Truck Equipment filed a "Motion for Reconsideration on Discovery of STI Holdings, Inc.'s Financial Statements." Truck Equipment argued that discovery of these financial statements was necessary because Wahlin had relied on Exhibit 22 to support his testimony that Stoughton lost \$28 million between 2001 and 2009, but Exhibit 22 actually commingled the various Stoughton companies' finances by including "inter-company transactions" that "caused [Stoughton Trailers, LLC,] to be

over-burdened by approximately \$30 Million during the reported time-frame.” Truck Equipment also argued that, while Exhibit 22 purported to show Stoughton Trailers, LLC’s losses dating back to 2001, the LLC did not even exist as a separate legal entity until the end of 2002. Truck Equipment therefore contended it needed access to STI Holdings’ financial statements so that it could cross-examine Stoughton’s witnesses regarding the company’s true financial condition.

¶10 The court granted Truck Equipment’s motion, reasoning that Wahlin’s testimony had raised the issue of Stoughton’s losses, and Truck Equipment should therefore be able to question Stoughton’s witnesses about the holding company’s finances. The court explained that, if Stoughton wanted to take advantage of the good cause defense, it could not hide behind a corporate structure that disguised its true economic circumstances. Consequently, the court ruled that Truck Equipment could inquire into the holding company’s finances during trial and could also discover the holding company’s consolidated financial statements.

¶11 Kenneth Wahlin, the president of Stoughton Trailers, LLC, subsequently testified on Stoughton’s behalf. Wahlin testified that “the [trailer] industry is in dire straits, and [Stoughton is] too.” Relying on Exhibit 22, he stated that Stoughton had sustained losses in 2001, 2002, 2003, 2004, 2007, 2008, and 2009. He further testified Stoughton’s business had dropped seventy-nine to eighty percent from late 2006 through mid-2009. He asserted this decrease in business had caused Stoughton to terminate Truck Equipment’s dealership because Stoughton determined it could compete more effectively in its critical Wisconsin and Minnesota markets by selling trailers directly to its customers. According to Wahlin, the termination was part of a system-wide change that was necessary for Stoughton’s survival.

¶12 On cross-examination, Truck Equipment introduced Exhibit 32, which included STI Holdings' consolidated income statements from 2001 through 2009. Based on Exhibit 32, Wahlin conceded that, as a whole, STI Holdings and its subsidiaries had gained \$9.98 million in 2003, \$9.88 million in 2004, \$16.63 million in 2005, \$10.13 million in 2006, \$7.685 million in 2007, \$1.675 million in 2009, and \$2.467 million in 2009—a total of approximately \$58 million.

¶13 Truck Equipment also asked Wahlin about Exhibit 22—the document purporting to show that Stoughton Trailers, LLC, had lost \$28 million between 2001 and 2009. Wahlin conceded that Stoughton Trailers, LLC, had not even existed as a separate legal entity until the end of 2002. Thus, the \$28 million loss figure from Exhibit 22 included \$21 million in losses that occurred before Stoughton Trailers, LLC, was separated from the other Stoughton companies.

¶14 The jury ultimately returned a verdict in favor of Truck Equipment, concluding that a dealership agreement did exist between Stoughton and Truck Equipment and that Stoughton terminated the agreement without good cause. In a postverdict motion, Stoughton sought a new trial, arguing that the court erroneously exercised its discretion by permitting the jury to receive information about STI Holdings' finances. The court denied Stoughton's motion, holding the evidence was relevant to Stoughton's argument that Stoughton alone, isolated from STI Holdings' other subsidiaries, had lost millions of dollars in the decade preceding the termination. The court concluded the jury could consider that “but for this transformation in 2002 of splitting this thing off, if this was the same corporation that [Truck Equipment] got [its] dealership from, this total unit would have shown profits for each of the years that were being advanced in [the] case[.]”

DISCUSSION

¶15 On appeal, Stoughton renews its argument that the circuit court erroneously admitted evidence regarding STI Holdings' finances. "We review a circuit court's decision to admit or exclude evidence under an erroneous exercise of discretion standard." *Martindale v. Ripp*, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698. We will affirm the circuit court's exercise of discretion if it applied the correct law to the facts of record and, using a demonstrated rational process, reached a conclusion a reasonable judge could reach. *Id.* Furthermore, "[g]iven that the exercise of discretion is fundamental to the trial court's ability to fulfill its role in the legal system, 'we will search the record for reasons to sustain its exercise of discretion.'" *Roy v. St. Luke's Med. Ctr.*, 2007 WI App 218, ¶11, 305 Wis. 2d 658, 741 N.W.2d 256 (quoting *Olivarez v. Unitrin Prop. & Cas. Ins. Co.*, 2006 WI App 189, ¶17, 296 Wis. 2d 337, 723 N.W.2d 131).

¶16 As a threshold matter, Truck Equipment argues that Stoughton failed to object to the admission of STI Holdings' financial information during trial and, as a result, cannot raise the issue on appeal. See *State v. Delgado*, 2002 WI App 38, ¶12, 250 Wis. 2d 689, 641 N.W.2d 490 (specific, contemporaneous objection required to preserve error). After reviewing the record, we agree that Stoughton failed to make a specific, contemporaneous objection to the evidence. However, we reject Truck Equipment's contention that Stoughton forfeited its right to appeal the issue.

¶17 The purpose of the contemporaneous objection rule is to give "both parties and courts ... notice of the disputed issues as well as a fair opportunity to prepare and address them in a way that most efficiently uses judicial resources." *State v. Agnello*, 226 Wis. 2d 164, 173, 593 N.W.2d 427 (1999). Here, a

contemporaneous objection was unnecessary to serve this purpose, given the history of the disputed evidence. Stoughton had long opposed Truck Equipment's efforts to discover STI Holdings' financial information before trial, and had even obtained a favorable ruling on that issue on the first day of trial. Then, on the third day of trial, the court granted Truck Equipment's motion for reconsideration, holding that it would allow discovery of the financial statements and would permit Truck Equipment to explore STI Holdings' profits and losses. Both the court and the parties clearly had notice of the disputed issue and a fair opportunity to address it. Stoughton did not forfeit its right to appeal by failing to object when the evidence was subsequently admitted.

¶18 We therefore turn to the merits of Stoughton's argument that the court improperly admitted STI Holdings' financial information. Stoughton first contends this evidence was inadmissible because it was irrelevant to the issue of Stoughton's good cause defense. *See* WIS. STAT. § 904.02 (irrelevant evidence not admissible). On the particular facts of this case, we disagree.

¶19 Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." WIS. STAT. § 904.01. In other words, any fact that tends to prove a material issue is relevant. *Rogers v. State*, 93 Wis. 2d 682, 688, 287 N.W.2d 774 (1980).

¶20 The economic good cause defense Stoughton pursued at trial was first recognized in *Ziegler*, 147 Wis.2d 308.³ There, our supreme court considered whether, under the Wisconsin Fair Dealership Law, a grantor may alter the terms of a dealership agreement to accommodate its own economic problems, even if the dealer opposes the changes. *Id.* at 314. The court concluded that the legislature “could not have intended to impose an eternal and unqualified duty of self-sacrifice upon every grantor that enters into a distributor-dealership agreement.” *Id.* Accordingly, the court held that a grantor’s economic circumstances may constitute good cause to alter its method of doing business with its dealers, as long as the changes are “essential, reasonable, and nondiscriminatory.” *Id.*; see also *Morley-Murphy Co. v. Zenith Elec. Corp.*, 142 F.3d 373, 378 (7th Cir. 1998) (to establish economic good cause defense, grantor must show an objectively ascertainable need for change, a proportionate response to the need, and nondiscriminatory action).

¶21 Stoughton argues evidence is only relevant to the good cause analysis if it relates to the factors enumerated in *Ziegler*: the grantor’s economic problems, and whether the changes in the dealership agreement were essential, reasonable and nondiscriminatory. We agree. However, we conclude that, on the facts of this case, STI Holdings’ financial information was relevant to Stoughton Trailers, LLC’s economic problems.

³ The Wisconsin Fair Dealership Law prohibits a grantor from terminating or altering a dealership agreement without good cause, see WIS. STAT. § 135.03, but the statutory definition of good cause only includes: (1) failure by a dealer to comply substantially with essential and reasonable requirements imposed by the grantor; and (2) bad faith by the dealer in carrying out the dealership’s terms, see WIS. STAT. § 135.02(4)(a), (b). In *Ziegler Co. v. Rexnord, Inc.*, 147 Wis. 2d 308, 314, 433 N.W.2d 8 (1988), our supreme court recognized an additional, common law good cause defense based on the grantor’s unfavorable economic circumstances.

¶22 Specifically, we conclude that Stoughton opened the door to admission of STI Holdings' financial information by relying on Exhibit 22, a commingled income statement, to claim it had lost \$28 million between 2001 and 2009.⁴ Testimony at trial revealed several problems with Exhibit 22. First, although Exhibit 22 purports to show Stoughton Trailers, LLC's income from 2001 through 2009, Stoughton Trailers, LLC, did not even exist until the end of 2002. Before that, Stoughton's business ventures were consolidated within Stoughton Trailers, Inc., and the trailer manufacturing and sales business was not a separate legal entity. Removing the years 2001 and 2002 from Exhibit 22 adds about \$21 million in profit over the course of the time analyzed.

¶23 Exhibit 22 also includes a number of inter-company transactions and adjustments. For instance, for the year 2008, Exhibit 22 subtracted from Stoughton's income almost \$9 million that Stoughton received from a product warranty settlement with one of its parts suppliers. In 2008, Stoughton determined this amount was the difference between the remaining settlement proceeds and the amount Stoughton believed it would have to pay out on warranty claims. If the settlement money had been included in Stoughton's income for the year 2008, Stoughton would actually have made a profit during the years 2003 through 2009.

¶24 Stoughton also subtracted a number of yearly transactions between Stoughton Trailers, LLC, and Western Acquisitions, another STI Holdings

⁴ We acknowledge that Truck Equipment, not Stoughton, actually introduced Exhibit 22 at trial, during its cross-examination of Donald Wahlin. However, the introduction was prompted by Wahlin's testimony on direct examination that Stoughton had lost about \$28 million in the last ten years. On cross-examination, Wahlin conceded he was "getting" the \$28 million figure from Exhibit 22. Thus, although Truck Equipment actually introduced Exhibit 22 at trial, it did so because Wahlin had relied on Exhibit 22 as the basis for his testimony that Stoughton sustained \$28 million in losses.

subsidiary. Stoughton paid Western Acquisitions \$3.5 million in 2003, \$5.1 million in 2004, and \$7.3 million in 2005. Stoughton described these payments as royalty payments. However, STI Holdings' treasurer and chief financial officer could not explain why Stoughton owed Western Acquisitions royalties or what benefit Stoughton received from the arrangement. Instead, he stated that Stoughton's accountants had suggested "putting most of our investments into an account in Las Vegas in Nevada in this company called Western, and we were charging royalties back to the various divisions for that." He agreed that the funds had been "slid over" to Western Acquisitions with "mere accounting keystroke[s]" for tax planning purposes.

¶25 Thus, although Exhibit 22 purported to show only Stoughton Trailers, LLC's profits and losses, the exhibit actually commingled Stoughton Trailers' finances with those of other companies under STI Holdings' umbrella. By relying on Exhibit 22 to demonstrate Stoughton Trailers' losses, Stoughton therefore made STI Holdings' consolidated financial statements relevant to the issue of Stoughton's economic health and opened the door to the admission of the statements.

¶26 Stoughton argues that, by allowing the admission of financial evidence related to STI Holdings, which was not a party to the dealership agreement, the circuit court misapprehended the common law good cause defense. It cites *St. Joseph Equipment v. Massey-Ferguson, Inc.*, 546 F. Supp. 1245 (W.D. Wis. 1982), for the proposition that "the analysis of good cause must be so narrowly tailored that it is appropriate to only look to the contracting grantor and in most cases only look to the very product line or way of doing business at issue in the dealership agreement." However, *St. Joseph Equipment* says no such thing.

¶27 St. Joseph Equipment was a dealer of construction equipment manufactured by Massey-Ferguson. *Id.* at 1246. Massey-Ferguson, a subsidiary of M-F, Ltd., manufactured only one piece of construction equipment in the United States, and its other products were imported from Europe, where they were manufactured by other M-F, Ltd. subsidiaries. *Id.* In response to substantial annual losses on the sale of construction equipment in North America, Massey-Ferguson decided to pull out of the North American market entirely. *Id.* It therefore terminated its relationships with all of its North American dealers, including St. Joseph. *Id.* St. Joseph sued, alleging a violation of the Wisconsin Fair Dealership Law. *Id.*

¶28 The United States District Court for the Western District of Wisconsin, in a decision that pre-dated *Ziegler*, determined that the Fair Dealership Law did not prevent a grantor from “mak[ing] a non-discriminatory product withdrawal over a large geographic area[.]” *Id.* at 1248. Contrary to Stoughton’s contention, the court never addressed whether financial information about a grantor’s parent company is irrelevant to the good cause defense, and therefore inadmissible. The court simply stated that Massey-Ferguson was “a subsidiary of M-F, Ltd.” and then clarified that M-F, Ltd. was “not a party to this suit.” *Id.* at 1246. These passing observations were not germane to the court’s analysis. *St. Joseph Equipment* simply does not support Stoughton’s argument that the circuit court improperly admitted STI Holdings’ financial information.

¶29 Stoughton also contends that the circuit court misconstrued WIS. STAT. § 183.0304. However, that statute says nothing about the admissibility of evidence.⁵ Instead, it provides:

The debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company. Except as provided in ss. 183.0502 and 183.0608, a member or manager of a limited liability company is not personally liable for any debt, obligation or liability of the limited liability company, except that a member or manager may become personally liable by his or her acts or conduct other than as a member or manager.

WIS. STAT. § 183.0304(1). Stoughton does not explain how the circuit court's evidentiary ruling could have violated this statute. Moreover, Stoughton does not argue that the circuit court violated the statute by imposing liability on any member or manager for any of Stoughton's debts, obligations, or liabilities. In fact, the court denied Truck Equipment's motion to add STI Holdings, Stoughton's sole member, as a defendant.

¶30 In a similar argument, Stoughton repeatedly asserts that the circuit court improperly pierced the corporate veil, even though Truck Equipment never introduced any evidence to support doing so. Piercing the corporate veil is an equitable remedy, *see Consumer's Co-op of Walworth County v. Olsen*, 142 Wis. 2d 465, 472, 419 N.W.2d 211 (1988), that allows a court, under certain circumstances, to disregard the corporate entity and hold shareholders liable for the corporation's obligations, *see Capsavage v. Esser*, 224 Wis. 2d 404, 410-11,

⁵ Curiously, while Stoughton states that the circuit court misinterpreted WIS. STAT. § 183.0304, it neither quotes nor paraphrases that statute's language in its appellate brief.

591 N.W.2d 888 (Ct. App. 1999). Again, the court never imposed liability on STI Holdings for Stoughton’s conduct, and Stoughton does not explain how the court’s evidentiary ruling amounts to piercing the corporate veil.

¶31 Finally, Stoughton argues that, even if STI Holdings’ financial information was relevant to the good cause analysis, the court should nevertheless have excluded the evidence because it was unfairly prejudicial. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. WIS. STAT. § 904.03.

¶32 We do not agree that STI Holdings’ financial information was unfairly prejudicial. “Nearly all evidence operates to the prejudice of the party against whom it is offered.” *State v. Johnson*, 184 Wis. 2d 324, 340, 516 N.W.2d 463 (Ct. App. 1994). “In most instances, as the probative value of relevant evidence increases, so will the *fairness* of its prejudicial effect.” *Id.* The standard for unfair prejudice is not whether the evidence harms the opposing party’s case, but whether the evidence tends to influence the outcome of the case by improper means. *Id.* Here, STI Holdings’ financial information had a high probative value with respect to Stoughton’s good cause defense, and we do not agree with Stoughton’s contention that the evidence was likely to confuse and incite the jury. Consequently, the circuit court did not erroneously exercise its discretion by admitting the evidence.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

