

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 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. 2008AP449

Cir. Ct. No. 2007SC3951

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

TOM WINKLER AND JILL WINKLER,

PLAINTIFFS-RESPONDENTS,

V.

SPAMAN WHOLESALE, INC.,

DEFENDANT-APPELLANT,

CRAIG HUEFFNER,

DEFENDANT.

APPEAL from an order of the circuit court for Waukesha County:
PAUL F. REILLY, Judge. *Affirmed.*

¶1 NEUBAUER, J.¹ Spaman Wholesale, Inc., appeals from the circuit court's denial of its WIS. STAT. § 806.07 motion to reopen a default judgment entered in small claims court in favor of Tom and Jill Winkler. The small claims court entered the default judgment against Spaman in the amount of the statutory limit, \$5000, although the Winklers' small claims complaint requested an award of \$8000. Spaman contends that the circuit court erred in denying its request to reopen and vacate the judgment because the small claims court lacked competency to address the Winklers' demand for \$8000. We reject Spaman's argument and affirm the order.

¶2 The facts underlying the issue on appeal are brief and undisputed. On July 19, 2007, the Winklers filed a small claims summons and complaint demanding judgment in the amount of \$8000. In the statement of facts, the Winklers alleged that they had purchased a hot tub from Spaman for \$10,000. The sales agreement indicated that they would receive \$8000 cash back on the purchase. However, the voucher company that was supposed to return the \$8000 had gone bankrupt. When the Winklers contacted Spaman, Spaman's attorney responded with a letter stating that Spaman was not responsible. The Winklers then began this action in small claims court. The Winklers' complaint states: "Our sales agreement ... states \$8,000 [cash back] in 36 months, and we want the \$8,000." In the space for "Plaintiff's Demand" on the small claims summons and complaint form, the Winklers have checked "Money" and specified again "\$8,000.00."

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶3 Spaman filed a response to the Winkler’s complaint on July 31, 2007, alleging in relevant part, “The plaintiffs’ complaint exceeds the jurisdictional limits of small claims, and therefore must be dismissed as a matter of law.” However, Spaman failed to appear at a pretrial hearing on October 2, 2007, and a default judgment was entered against it in the amount of \$5000.

¶4 On October 5, 2007, Spaman filed a WIS. STAT. § 806.07 motion to reopen the judgment on the grounds that it had no record of receiving notice of the hearing, its motion to dismiss was still pending, and the Winklers had failed to amend their complaint to comply with the jurisdictional requirements of small claims court.² On October 23, the commissioner denied Spaman’s motion and entered a notice of judgment.

¶5 Spaman then filed a demand for trial on all issues before a circuit court judge. The circuit court scheduled the matter for a motion hearing at which it considered and denied Spaman’s motion to vacate the default judgment. With respect to the jurisdictional issue, the circuit court stated: “That’s denied outright. It’s been clear for a long time it’s limited solely to five thousand dollars. You can

² Spaman relied on WIS. STAT. § 806.07(1)(a) and (h) which provide:

Relief from judgment or order. (1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

....

(h) Any other reasons justifying relief from the operation of the judgment.

start your action, but you are limited by the jurisdictional limit of five thousand dollars.”³ Spaman appeals.

¶6 Spaman raises two issues on appeal. First, whether the small claims court lacks competency to hear matters in which the amount claimed exceeds \$5000; and second, whether the circuit court erred in failing to consider the applicable law prior to denying its motion to reopen.

¶7 A court is competent when it has the power to exercise subject matter jurisdiction. *Sheboygan County DSS v. Joshua S.*, 2005 WI 84, ¶16, 282 Wis. 2d 150, 698 N.W.2d 631. While the constitution confers subject matter jurisdiction on the courts, a court’s power to exercise that jurisdiction may be limited by statute. *Id.* (citing WIS. CONST. art. VII, § 8; WIS. STAT. § 801.04). A court acts without competence when it acts beyond statutory limits on its power. *Id.*

¶8 WISCONSIN STAT. § 799.01(1)(d)1. provides that the small claims procedure is the exclusive procedure to be used in circuit court “where the amount claimed is \$5,000 or less” if the proceedings are “[f]or money judgments only.” Based on this statute, Spaman argues that the small claims court lacked competency to hear the Winklers’ claim for \$8000. In support, Spaman cites to *Bank of Spring Valley v. Wolske*, 144 Wis. 2d 762, 765, 424 N.W.2d 744 (Ct. App. 1988) (citing *Mueller v. Brunn*, 105 Wis. 2d 171, 177, 313 N.W.2d 790 (1982)), in which we held that “where a court has power to deal with an action, but

³ The circuit court additionally rejected Spaman’s contention that it had not received notice and thus its failure to appear was “excusable neglect” under WIS. STAT. § 806.07(1)(a). Spaman does not renew this argument on appeal.

for no more than a designated amount, the court lacks competency for excess sums.” However, *Bank of Spring Valley* does not provide backing for Spaman’s argument. Rather, it follows the circuit court’s ruling that an individual may file for an amount that exceeds the \$5000 limit but the court will not have competency to address any excess amounts.

¶9 This view of the small claims court competency is clearly stated in *Bryhan v. Pink*, 2006 WI App 111, 294 Wis. 2d 347, 718 N.W.2d 112. There, Pink argued that “under WIS. STAT. § 799.01(1) a small claims court exceeds its jurisdiction if it ‘entertains claimed damages in excess of \$5,000’ even if the final award is \$5,000 or less.” *Bryhan*, 294 Wis. 2d 347, ¶15. While acknowledging that “[s]mall claims procedure is available to plaintiffs for whom the ‘amount claimed is \$5,000 or less,’” we nevertheless rejected Pink’s argument. *Id.*, ¶16. We concluded that “[a] plaintiff may elect to sue in small claims court to save time and expense even when actual damages exceed \$5,000. The small claims award limitation is a limit on recovery, not a bar that denies the court jurisdiction over cases in which the plaintiff’s actual damages exceed \$5,000.” *Id.* Because the small claims court limited the Winklers’ recovery to \$5000 despite their claim for \$8000, it did not entertain amounts in excess of the statutory limit. We therefore affirm the circuit court’s ruling.

¶10 Spaman additionally argues that the circuit court erroneously exercised its discretion when it denied its WIS. STAT. § 806.07 motion to reopen based on lack of competency without addressing the applicable law. We agree that the circuit court’s decision on this issue was not fully developed. However, as our discussion on the merits demonstrates, Spaman was not entitled to § 806.07 relief on lack of competency grounds. The circuit court did not base its decision

on an error of law. We therefore affirm the circuit court order denying Spaman's motion to reopen.⁴

By the Court.—Order affirmed.

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

⁴ We acknowledge Spaman's argument that, by failing to respond to its legal arguments on appeal, the Winklers have conceded the issues on appeal. See *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) (matter not refuted is deemed admitted). We agree that the Winklers' brief is woefully inadequate; however, we nevertheless choose to address the issue on the merits. See *Wirth v. Ehly*, 93 Wis. 2d 433, 444, 287 N.W.2d 140 (1980) (Waiver is a rule of judicial administration, not one of an appellate court's authority to address an issue.).

