

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 8, 2002

Cornelia G. Clark
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. 01-2472-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00-SC-147

**IN COURT OF APPEALS
DISTRICT III**

CHRYSLER FINANCIAL COMPANY, LLC,

PLAINTIFF-RESPONDENT,

v.

SUZANNE M. FALTER,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Chippewa County:
THOMAS J. SAZAMA, Judge, and RICHARD STAFFORD, Reserve Judge.
Affirmed.

¶1 CANE, C.J.¹ Suzanne Falter appeals from the order of Judge Thomas Sazama denying her request for attorney fees under the Wisconsin

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) and is an expedited appeal under WIS. STAT. RULE 809.17. All statutory references are to the 1999-2000 version.

Consumer Act (WCA) and the order of Judge Richard Stafford denying her motion for reconsideration. The sole issue on appeal is whether Falter obtained a significant benefit entitling her to attorney fees when she successfully required Chrysler Financial Company to amend its small claims complaint for replevin. Because this court agrees with the circuit court that Falter had not obtained a significant benefit, the orders are affirmed.

Background

¶2 The underlying facts are undisputed. Chrysler Financial commenced a replevin action against Falter to recover possession of a 1994 Dodge Ram, as Falter was in default after making only one payment under the installment sales agreement she entered into with Chrysler Financial on July 12, 1999. The complaint alleged that she had not made the last five monthly payments beginning on September 26, 1999. Attached to the complaint was a copy of the sales agreement, notice to cure default and confirmation of security interest. In response, Falter filed a motion to dismiss and award attorney fees, contending that the clerk of court had not signed the complaint and that Chrysler Financial had not included the necessary computations related to her indebtedness.

¶3 Rather than dismissing the complaint, the court directed Chrysler Financial to amend its complaint after concluding that the complaint had “some technical difficulties.” The court also denied Falter’s request for attorney fees, but granted her motion for costs of \$50. Subsequently, the court also denied Falter’s motion for reconsideration where she again sought recovery of attorney fees under WIS. STAT. § 425.308, concluding that Falter had “not only failed to achieve any significant benefit from [her] motion, but failed in fact to achieve any benefit whatsoever.”

Analysis

¶4 The WCA "protect[s] customers against unfair, deceptive, false, misleading and unconscionable practices by merchants." WIS. STAT. § 421.102(2)(b). The remedies set forth in the WCA aim to guarantee compliance with its provisions. *See First Wisconsin Nat'l Bank v. Nicolaou*, 113 Wis. 2d 524, 533, 335 N.W.2d 390 (1983).

¶5 The parties agree that the WCA does not provide for an award of attorney fees for every procedural victory a consumer may gain. The consumer is entitled to attorney fees and costs only if the party prevails in an action. WISCONSIN STAT. § 425.308(1) provides:

Reasonable attorney fees. (1) If the customer prevails in an action arising from a consumer transaction, the customer shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on the customer's behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorney fees.

¶6 In *Footville State Bank v. Harvell*, 146 Wis. 2d 524, 539-40, 432 N.W.2d 122 (Ct. App. 1988), we concluded that WIS. STAT. § 425.308(1) allows the partially successful consumer to recover at least part of his or her attorney fees even though the consumer does not win on all issues. Importantly, we cautioned that this is not to say that a customer who proves only a minor violation may recover attorney fees. *See id.* at 539-40. Rather, a party has prevailed if he or she succeeds on any significant issue.

¶7 Later, in *Community Credit Plan, Inc. v. Johnson*, 221 Wis. 2d 766, 773-74, 586 N.W.2d 77 (Ct. App. 1998), *aff'd*, 228 Wis. 2d 30, 596 N.W.2d 799 (1999), we held that to be considered a prevailing party, the consumer must

satisfy a two-prong test: whether the creditor violated the WCA, and whether the consumer obtained a significant benefit in the litigation. Thus, even assuming the creditor violated the WCA, the customer must demonstrate that he or she prevailed on some significant issue in the litigation.

¶8 In *Community Credit*, the customers prevailed because they had achieved a dismissal of default judgments, which had been based on improper venue. Thus, the customers received a significant benefit by avoiding the negative effects that necessarily follow from a default judgment. *See id.* at 776-77.

¶9 In *Footville*, the customer prevailed in substantially reducing his preverdict interest liability. Because the customer substantially reduced his liability to the creditor, he gained a significant benefit in the litigation. However, it bears repeating that we cautioned in *Footville* that our holding was not to say that a customer who proves only a minor violation should recover attorney fees. *Id.* at 539.

¶10 Here, the circuit court concluded that Chrysler Financial's failure to show the balance due along with an accounting of how it arrived at that balance constituted minor violations of the WCA. Assuming without deciding that these deficiencies constitute violations of the WCA, this court affirms the circuit court's holding that requiring Chrysler Financial to amend the complaint was not a significant benefit to Falter.

¶11 The initial complaint clearly showed that Falter had made only one payment on the installment agreement and had missed the subsequent five payments causing the complaint to be issued. Whatever Falter gained by the amended complaint was insignificant because of any minor violation of the WCA in the initial complaint. Additionally, Falter did not succeed in dismissing

Chrysler Financial's complaint, did not succeed in reducing her liability and did not prevail with respect to any important issue in dispute, unlike the consumers in *Community Credit* and *Footville*. Her success in requiring Chrysler Financial to make minor amendments to its complaint was not a significant victory.

¶12 Because Falter failed to succeed on a significant issue in the litigation, this court affirms the orders denying Falter's request for attorney fees. *See Footville*, 146 Wis. 2d at 539-40. Therefore, without deciding whether there was violation of the WCA, this court agrees with the circuit court that Falter received no significant benefit—if any—from her motion to dismiss resulting in the court's order merely requiring Chrysler Financial to issue an amended complaint that was not significantly different from the initial complaint. The orders are therefore affirmed.

By the Court.—Orders affirmed.

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

