

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 23, 2003**

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. 02-1974  
STATE OF WISCONSIN**

**Cir. Ct. No. 01-CV-815**

**IN COURT OF APPEALS  
DISTRICT II**

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**CENTRAL CORPORATION,  
  
PLAINTIFF-APPELLANT,  
  
V.  
  
RESEARCH PRODUCTS CORPORATION,  
  
DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Winnebago County: WILLIAM H. CARVER, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Central Corporation appeals from a judgment dismissing its WIS. STAT. ch. 135 (2001-02)<sup>1</sup> Wisconsin Fair Dealership Law

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

(WFDL) claim against Research Products Corporation. Because the circuit court correctly determined on summary judgment that Central and Research Products did not have a ch. 135 dealership relationship, we affirm.

¶2 Research manufactures heating, ventilating and air conditioning equipment and sells its products to distributors such as Central. The distributors re-sell the products at wholesale to installing contractors. The contractors then sell the products to homeowners and commercial builders. Research uses its district managers to develop relationships with installing contractors. Research markets to installing contractors and does not contractually obligate its distributors (like Central) to market to contractors or to attempt to increase sales of Research's products.

¶3 Central has been distributing Research's products for over twenty years. Central sells many brands and some of those brands compete with Research's products. Central accepts returns of defective Research products for credit or replacement to the installing contractor. Central then receives a credit from Research for the returned products.

¶4 When Research gave notice that it was terminating its business relationship with Central, Central sued Research claiming that the parties had a WIS. STAT. ch. 135 dealership relationship. On summary judgment, the circuit court concluded that Central would not suffer substantial harm if Research terminated it as a distributor because Central and Research were not sufficiently interdependent as required by the WFDL. Research also did not require Central to perform in specific ways in the areas of marketing, advertising, inventory or sales floor space in order to sell Research's products. The average amount of Research products sold by Central over the last five years—8% of Central's gross revenues

and 5% of Central's gross profits—was not sufficient to demonstrate interdependence.

¶5 We review decisions on summary judgment by applying the same methodology as the circuit court. *M & I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.*, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 496-97. As a leading WFDL treatise notes, “In practice, the material facts [in WFDL cases] are almost always undisputed.” MICHAEL A. BOWEN & BRIAN E. BUTLER, *THE WISCONSIN FAIR DEALERSHIP LAW* § 4.4 at 4-7 (2d ed. 1995).

¶6 Under the WFDL, a dealership exists if a party has a contract to sell or distribute goods or services or to use a commercial symbol, and the parties have a community of interest in the business of selling or distributing goods or services. WIS. STAT. § 135.02(3)(a). A community of interest is a “significant economic relationship between the parties.” *Ziegler Co. v. Rexnord, Inc.*, 139 Wis. 2d 593, 601, 407 N.W.2d 873 (1987) (quoted source omitted). A community of interest consists of: (1) a continuing financial interest; and (2) interdependence, i.e., “the degree to which the dealer and grantor cooperate, coordinate their activities and share common goals in their business relationship.” *Id.* at 604-05. To show a community of interest, a party must “demonstrate a stake in the relationship large enough to make the grantor's power to terminate, cancel or not renew a threat to the economic health of the person ... [such that the end of the] business relationship would have a significant economic impact on the alleged dealer.” *Id.* at 605. In evaluating the parties' business relationship, the court must consider “a wide variety of facets” of the relationship, including:

[H]ow long the parties have dealt with each other; the extent and nature of the obligations imposed on the parties in the contract or agreement between them; what percentage of time or revenue the alleged dealer devotes to the alleged grantor's products or services; what percentage of the gross proceeds or profits of the alleged dealer derives from the alleged grantor's products or services; the extent and nature of the alleged grantor's grant of territory to the alleged dealer; the extent and nature of the alleged dealer's uses of the alleged grantor's proprietary marks (such as trademarks or logos); the extent and nature of the alleged dealer's financial investment in inventory, facilities, and good will of the alleged dealership; the personnel which the alleged dealer devotes to the alleged dealership; how much the alleged dealer spends on advertising or promotional expenditures for the alleged grantor's products or services; the extent and nature of any supplementary services provided by the alleged dealer to consumers of the alleged grantor's products or services.

*Id.* at 606.

¶7 Central argues that there are material facts in dispute which should have precluded summary judgment. We disagree. Our review of the summary judgment record confirms that there are no disputed material facts demonstrating a continuing financial interest and interdependence as required by the WFDL. What is in dispute between the parties is the application of the WFDL to the undisputed facts. The question before us is whether the undisputed facts are sufficient to constitute a dealership under the WFDL.

¶8 Central argues on appeal that it provided ample proof of a continuing financial interest in its relationship with Research and the requisite level of interdependence. On the question of interdependence, the focus is on whether the relationship was “more coordinated and interrelated than a typical vendor-vendee relationship.” *Id.* at 610. Here, the relationship was not sufficiently coordinated and interrelated to take it out of the realm of the typical vendor-vendee relationship.

¶9 Central argues that it is interdependent with Research because Research has many requirements of it in terms of sales, inventory, promotion, warranty work, and employee training. While Central has identified categories in which its activities benefit Research, Central has not demonstrated that Research required these activities at a level which would make Central a dealer. In deposition testimony, John Geurts, Central's president, testified that the only obligation Research placed on Central was that Central pay its Research account by the tenth of the month. Geurts specifically stated that Central was not obligated to perform per Research's direction in the areas of facilities, showroom, inventory levels, demonstration, minimum purchases, territory, repair and installation, use of logos, sales levels, marketing efforts, or dedicated employees or sales staff. Geurts testified that none of the warehouse area was specialized or unalterably dedicated to Research's products. Central does not use Research's logo on its uniforms or its trucks and only incidentally uses the logo on its flyers advertising specials.

¶10 The summary judgment record further reveals that Research does its own marketing and does not expect Central to market or advertise. While Central has cooperated in advertising, Central has not paid for that advertising. Central does not have an exclusive territory in which to sell Research's products, and Research has not limited Central's ability to sell competing products. Central has not made any specific investment in inventory or facilities to accommodate Research's products.<sup>2</sup> Research does not require Central or its employees to

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<sup>2</sup> Although Central maintains inventory and uses warehouse space for Research's products, it does so based on Central's own assessment of what it needs to sell Research's products.

undergo any training or provide sales reports. Central did not identify how much time or expense it devotes to the sale of Research's products and does not contend that any of its employees were dedicated to Research's product line. The summary judgment record reveals that Central and Research do not coordinate their activities or that Research expects Central to cooperate in specific ways. The Central-Research relationship is a typical vendor-vendee relationship, not an interdependent relationship for purposes of the WFDL.

¶11 A low percentage of revenue argues against the existence of a continuing financial interest. It is undisputed that on the average, Central derives 8% of its gross revenues and 5% of its gross profits from its relationship with Research. Where other facets of an interdependent business relationship are absent, a low percentage of revenue does not demonstrate a continuing financial interest for purposes of the WFDL. See *Kenosha Liquor Co. v. Heublein, Inc.*, 895 F.2d 418, 420 (7<sup>th</sup> Cir. 1990) (5.8% of sales "is still too small, when the firm has no assets dedicated to serving the brand in question"); cf. *Frieberg Farm Equip., Inc. v. Van Dale, Inc.*, 978 F.2d 395, 400 (7<sup>th</sup> Cir. 1992) (sales as low as 11% could suffice if the relationship exhibits other features of a community of interest).

¶12 We reject Central's claim that terminating its relationship with Research will have a significant and adverse impact on its financial health. We have already held that the average sales and profits associated with Research's products are not sufficient under the WFDL. Although Central speculates that the loss of Research's products will cause a loss of other business or increased competition with other distributors, Central did not substantiate these potential consequences.

¶13 Terminating the relationship will not adversely affect Research's financial health. Central's sales account for 6% of Research's sales in the area, and Research has several other distributors in the area who can sell to customers formerly purchasing from Central.

¶14 Central argues that it has substantial Research-related inventory, yet Central concedes that Research did not expressly require that it maintain a certain level of inventory. Rather, Central keeps a level of inventory it feels it needs to sell Research's products. Central conceded that this inventory could be sold if it is terminated as a distributor. Therefore, the inventory is not an unrecoverable investment by Central. We also reject Central's claims that its \$5000 inventory of spare parts demonstrates the importance of Research's products to Central's business and that Central's warehouse space is an investment made solely to accommodate Research.

¶15 Central argues that it has no other supplier for Research's Aprilaire products. While this may be true, we have already held that the percentage of sales and gross profits generated by the relationship with Research is not substantial.

¶16 The WFDL is designed to protect a dealer with a significant financial stake and interdependence with the grantor. *See Ziegler*, 139 Wis. 2d at 605. No reasonable person could conclude that Central demonstrated a community of interest with Research. This summary judgment record reveals that the parties were not interdependent as the WFDL requires, and Central did not have a continuing financial interest in its relationship with Research. Therefore, we affirm the circuit court's grant of summary judgment dismissing Central's WFDL claim against Research.

*By the Court.*—Judgment affirmed.

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



