COURT OF APPEALS DECISION DATED AND FILED

February 28, 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. 2011AP433

Cir. Ct. No. 2007CV1441

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

KELLEY SUPPLY, INC.,

PLAINTIFF-RESPONDENT,

V.

CHR. HANSEN, INC.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County: VINCENT K. HOWARD, Judge. *Affirmed*.

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

¶1 HOOVER, P.J. Chr. Hansen, Inc., appeals a judgment granting an injunction and litigation costs after a bench trial. The circuit court concluded Hansen violated the Wisconsin Fair Dealership Law (WFDL), WIS. STAT. ch. 135,

by improperly terminating Kelley Supply, Inc.'s dealership.[1] Hansen first argues the circuit court erroneously determined Kelley was a dealer under the WFDL. Hansen next contends the circuit court erroneously failed to dismiss claims on summary judgment because Hansen never terminated its relationship with Kelley. Finally, Hansen argues that, because it complied with the temporary injunction, the court erred by ordering a permanent injunction and payment of attorney fees Kelley incurred after the temporary injunction issued. We reject Hansen's arguments and affirm.[2]

BACKGROUND

¶2 Kelley is a Wisconsin corporation located in Colby. It supplies cleaning, safety, chemical, and packaging products to a variety of businesses. It also distributes food ingredients to the dairy and food industry. The business began in the 1950s. Bernard Alberts purchased Kelley in July 1981, and has been its corporate president ever since. Of interest here, Kelley supplies cheese producers with coagulants, cultures, colorings and other ingredients necessary to make cheese. It distributes to cheese manufacturers throughout North America, but particularly in Wisconsin and the Midwest.

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[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] Kelley shall not recover its WIS. STAT. RULE 809.25 costs incurred for printing and assembling its unnecessarily lengthy supplemental appendix. Kelley's appendix contains many of the same items as Hansen's appendix. In fact, 102 of the appendix's 190 pages are not supplemental, but duplicate.

¶3 Hansen is a foreign corporation with its United States offices in Milwaukee. Hansen develops natural ingredient solutions for the food, pharmaceutical, nutritional, and agricultural industries.

¶4 As part of his purchase of Kelley in 1981, Alberts made two visits to Hansen's Milwaukee office to inquire whether his new company would be appointed distributor for Hansen and be allowed to continue selling Hansen products. Hansen agreed, and Kelley has been a Hansen distributor ever since. Additionally, Hansen agreed to teach Alberts the art of cheese making and how to sell Hansen's product, and to supply the technical support for the product. By July 1987, Hansen's national sales manager wanted "to discuss ... how we could grow the business together ... selling [Hansen] product."

¶5 In 1989, Pfizer invented Chy-Max, a fermentation produced chymosin (FPC) type of coagulant for turning milk into cheese. FPCs are the coagulant of choice for most cheese makers because they provide higher yields and a better product. Kelley became a Chy-Max distributor for Pfizer in 1991. In 1996, Pfizer sold its Chy-Max product line to Hansen, and Hansen requested that Kelley continue to distribute the product. Hansen's president traveled to Colby to meet with Alberts and requested assistance converting Pfizer's Chy-Max customers to Hansen.

¶6 Hansen and Kelley ultimately entered into two written agreements, a letter of understanding dated January 9, 2003, and a product purchase agreement dated April 3, 2006. The letter of understanding indicated it was for an initial period of thirty to ninety days, after which "a more complete and detailed agreement may or may not be issued." The purchase agreement ran from February 15, 2006 through December 31, 2007. The circuit court observed that

the letter of understanding "is, in fact, the more complete and detailed agreement between the parties." Further, the court found that "[w]hile the purchase agreement contained an integration clause, in their actual practices they continued to operate in many significant respects as if the more detailed [letter of] understanding still governed their relationship."

¶7 On November 15, 2007, Hansen representatives traveled to Colby and informed Kelley that Hansen would not renew the purchase agreement beyond December 31, 2007. The oral notice was not accompanied by any indications of cause or deficiencies, or provision for cure. In response to Kelley's objections to nonrenewal, Hansen offered to extend the relationship to February 28, 2008 and make a cash payment. Kelley declined the offer and commenced the present action on December 13, 2007, resulting in a temporary restraining order. The order prohibited Hansen from "terminating, cancelling, failing to renew, or substantially changing the competitive circumstances" of the relationship.

¶8 On January 7, 2008, Hansen stipulated that the temporary restraining order would remain in effect as a temporary injunction until otherwise ordered by the circuit court. Hansen obtained a partial summary judgment, dismissing Kelley's claim for monetary damages. Following a four-day bench trial, the court issued a nineteen-page Findings of Facts and Conclusions of Law and a thirty-three page Decision Following Trial. It also issued a decision regarding costs and attorney fees. The court later entered a judgment granting a seven-year injunction and costs and attorney fees to Kelley. Hansen now appeals.

DISCUSSION

Whether Kelley was a "dealer" under the WFDL

¶9 The circuit court determined that WIS. STAT. § 135.04 of the WFDL required Hansen to give Kelley written notice of a termination of the dealership at least ninety days prior to the action, state the reasons for Hansen's decision, and provide Kelley sixty days to remedy any claimed deficiency. That section operates in tandem with WIS. STAT. § 135.03, which provides that the grantor of a dealership may not "terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor."

¶10 Hansen argues, however, that Kelley was not a dealer for purposes of the WFDL.[3] A dealership exists when there is: (1) a contract or agreement, either expressed or implied, whether oral or written; (2) which grants the right to sell or distribute goods or services, or grants the right to use a trade name, logo, advertising or other commercial symbol; and (3) a community of interest in the business of offering, selling or distributing goods or services. WIS. STAT. § 135.02(3)(a); ***Central Corp. v. Research Prods. Corp.***, 2004 WI 76, ¶29, 272 Wis. 2d 561, 681 N.W.2d 178. Here, Hansen disputes the third element, that the companies shared a community of interest.

¶11 The WFDL defines community of interest as "a continuing financial interest between the grantor and grantee in either the operation of the dealership business or the marketing of such goods or services." WIS. STAT. § 135.02(1).

[3] Dealer "means a person who is a grantee of a dealership …." WIS. STAT. § 135.02(2).

The supreme court established two "guideposts" to assist courts in determining whether a community of interest exists in a given case. *See* ***Ziegler Co. v. Rexnord, Inc.***, 139 Wis. 2d 593, 604-05, 407 N.W.2d 873 (1987). The first guidepost is a continuing financial interest, and the second is interdependence, which the court defined as "the degree to which the dealer and grantor cooperate, coordinate their activities and share common goals in their business relationship." ***Id.*** at 604-05.

¶12 When considered in light of the WFDL's purpose to protect dealers from unfair practices of powerful grantors, ***Ziegler*** explains that "continuing financial interest" and "interdependence" "require a person to 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 (thus giving the grantor inherently superior bargaining power)." ***Id.*** at 605. This requirement is satisfied if the grantor's adverse action "would have a significant economic impact," ***id.***, on the dealer, and is "intended to weed out the typical vendor-vendee relationship[,]" ***Central Corp.***, 272 Wis. 2d 561, ¶32.

¶13 To determine whether a community of interest exists, the business relationship must be examined in its totality, as evidenced by the conduct of the parties and the terms of their agreement. ***Ziegler***, 139 Wis. 2d at 605-06. ***Ziegler*** provided the following nonexclusive list of ten factors that "shall" be examined when considering the two guideposts:

> how 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; [and]
>
> 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 (formatting modified).

¶14 Hansen premises its argument with the assertion that " '[d]ealers' have been defined to be limited to that group of distributors who are so dependent on the product of a particular supplier, that such supplier figuratively has the dealer 'over a barrel' based upon that dependence." Hansen is wrong. A dealership is identified as set forth in the preceding paragraphs, Hansen's reliance on conflicting, nonprecedential federal cases notwithstanding. *See* ***Water Quality Store, LLC v. Dynasty Spas, Inc.***, 2010 WI App 112, ¶¶17-18, 328 Wis. 2d 717, 789 N.W.2d 595 (rejecting Seventh Circuit case law as irreconcilable with Wisconsin supreme court's application of the community of interest standard).

¶15 Hansen then asserts, without citation to legal authority:

> Under ***Ziegler*** and its progeny, the two key facts as to "community of interest" are (1) what percentage of the putative dealer's business is made up of the supplier's products; and (2) what brand specific investments does the putative dealer have in the supplier's products. These two facts tend to be determinative because they go to whether the supplier has the putative dealer "over a barrel."

Wisconsin courts have never applied or adopted the strict "over a barrel" analysis. *See* ***id.***, ¶21 and n.4. Nor have they focused exclusively or primarily on one or two factors.

¶16 We turn next to Hansen's four specific challenges to the circuit court's conclusion that Hansen and Kelley shared a community of interest. We note at the outset, however, that the community of interest determination is sometimes treated as a question of fact and sometimes treated as a question of law. We return to this issue later.

¶17 Hansen first argues Kelley's sales of Hansen products were insufficient as a matter of law to establish a dealership because they constituted only ten percent of Hansen's total sales. Hansen's argument is supported by numerous federal court citations, but no Wisconsin cases. This is state court; we apply the community of interest standard in accord with Wisconsin precedent. Wisconsin courts reject the argument—apparently accepted by federal courts—that a community of interest can be disproven as a matter of law based solely on a consideration of the percentage of sales. *See* ***id.***, ¶¶19-20 (citing ***Central Corp.***, 272 Wis. 2d 561, ¶¶7, 9, 25, 27 (remanding for trial because eight to nine percent share of sales and profits did not prove absence of community of interest)).

¶18 Indeed, ***Ziegler*** explicitly held, "A court must not restrict its inquiry to any one facet of the business relationship, but rather must examine a wide variety of facets, individually and in their totality ...." ***Ziegler***, 139 Wis. 2d at 605-06. There, the court rejected the same argument Hansen makes here, even though the distributor's products there constituted only a one to eight percent share of total sales. ***Id.*** at 597, 602. The court stated:

> Community of interest ... cannot be reduced to a mathematical equation.
>
> A test for community of interest based exclusively on a fixed percentage of ... business revenues improperly truncates the court's inquiry into the relationship between the parties, focuses the court's attention on one aspect of the business relationship to the exclusion of all others, and narrows the coverage of the statute in a manner that ill-suits a statutory definition of dealership designed to include a variety of relationships which are not all structured in the same manner. … [W]e disavow such an interpretation.
>
> [W]e ... conclude[] that a test for community [of] interest based exclusively on a fixed percentage of ... business revenues is inappropriate[.]

Id. at 603.

¶19 Further, Hansen not only ignores the relevant law, it disregards the facts. The circuit court's decision indicates Hansen's products averaged fourteen percent of Kelley's overall sales in the four-year period leading up to Hansen's termination notice—not ten percent.[4]

¶20 Second, Hansen argues the court erred when it accepted Kelley's lead-in theory. According to Hansen, Kelley contended that although Hansen's

[4] Hansen's products accounted for 10.3% of Kelley's *profits* during the same four-year period, but Hansen's argument refers only to sales, not profits.

products were a relatively small percentage of its total sales, Kelley's access to those products was a lead-in with customers that resulted in other sales. Thus, if Kelley no longer offered Hansen products, Kelley would lose sales of other products as well. Hansen then argues:

> But this supposed connection between access to [Hansen] products and other sales was premised on the "fact" that 88% of [Kelley's] customers used a coagulant of the type sold by [Hansen]. From this, the [c]ourt concluded that [Kelley] was at risk for up to 88% of its overall business. But this "fact" lacks any evidentiary basis and the conclusion is fallacious.

¶21 It is Hansen's argument that is fallacious. First, none of the portions of the court's decision Hansen cites even address the lead-in theory. Next, the court never concluded that eighty-eight percent of Kelley's customers used FPC coagulants, or that Kelley was at risk of losing eighty-eight percent of its overall business. Rather, the court concluded:

> Although [Hansen] accounts for only 15% of overall revenue, *it accounts for 39% of all customers* and 69% of all cheese customers. The loss of [Hansen] products would result in the potential loss of those 39% of customers. It would also *result in the loss of 36% of cheese revenues* and 69% of cheese customers.

(Emphasis added.) As to Hansen's coagulant specifically, the court observed that approximately seventy to seventy-three percent of Hansen product sales were attributed to the Chy-Max FPC coagulant.

¶22 The court did cite an eighty-eight percent figure, but that was the share of North American cheese makers who use FPC coagulants. Kelley's primary competitor is the exclusive distributor of the only other FPC coagulant available in North America. The court thus observed that if Kelley was unable to sell an FPC type of coagulant, Kelley's cheese customer market would likely be

reduced to the remaining twelve percent. However, the court's decision recognizes that Kelley's cheese customer sales constituted only forty-one percent of Kelley's overall sales in the four years preceding the nonrenewal notice. Thus, the decision indicates Kelley risked losing eighty-eight percent of those customers accounting for forty-one percent of total sales—a far cry from Hansen's "fact" that the court found Kelly "was at risk for up to 88% of its overall business."

¶23 Hansen also seeks to undermine witness testimony by contrasting the statements of two Kelley witnesses regarding the eighty-eight percent figure. One witness, however, addressed a percentage of cheese customers, while the other addressed dairy customers. All cheese is dairy; all dairy is not cheese.[5] Kelley's apples to oranges—or apples to fruit—comparison is thus not helpful.

¶24 Hansen also cites several federal cases, which we may disregard as nonprecedential. In any event, those cases purport to address the lead-in theory, and Hansen fails to identify any portion of the circuit court's decision actually accepting or applying that theory.

¶25 Finally, still under its lead-in argument, Hansen argues Kelley is not a dealer because it sells multiple companies' products. Hansen relies on a case suggesting that a dealership exists only where the "entire business is built around and relies on the sale, servicing or representation of one grantor's products, such as gasoline service stations and fast food franchises …." *See* ***Foerster, Inc. v. Atlas Metal Parts Co.***, 105 Wis. 2d 17, 27, 313 N.W.2d 60 (1981). While we appreciate a citation to a Wisconsin state court case, ***Foerster*** is not good law. It

[5] One of Kelley's witnesses explained that dairy customers also included milk pasteurizing plants, butter plants, and ice cream manufacturers—none of which need a coagulant.

was overruled by ***Ziegler***, which explicitly rejected ***Foerster***'s rigid dealership analysis in favor of the multi-faceted guidepost analysis we set forth above. *See* ***Ziegler***, 139 Wis. 2d at 601-03.

¶26 We turn now to Hansen's third challenge to the circuit court's determination that the parties share a community of interest. Hansen argues there was no dealership, as a matter of law, because Kelley made no Hansen brand-specific investment in its business. Again, Hansen relies solely on federal cases. Again, we disregard those nonprecedential cases. Regardless, we must reject Hansen's assertion that the circuit court "did not find any facts showing" investments by Kelley specific to its Hansen business.

¶27 To the contrary, the court found Kelley "made some significant capital investments as a distributor of [Hansen] products." For example, the court noted Kelley expanded its warehouse facility from 6,500 square feet to 27,000 square feet, in part due to its sale of Hansen products. It also found that after Kelley was required to purchase 100 percent of its cultures from Hansen, Kelley installed commercial freezer facilities to maintain the cultures at a temperature of minus 40°F. The court also noted Kelley's investment in a computer system used to track all of the paper work and certifications required by Hansen. Additionally, the court cited Kelley's "contribution toward the goodwill of [Hansen's] products over their 26 year relationship." Further, the court cited Kelley's substantial inventory of Hansen products. The court concluded, "All of these investments were substantial and reasonably related to fulfill the needs of the distributorship and hence an important consideration of whether there is [a] continuing financial relationship and in assessing the economic impact of any termination or nonrenewal." Thus, the record fails to support Hansen's argument.

¶28 In Hansen's fourth and final challenge to the circuit court's community of interest determination, it argues the court erred by considering evidence from an irrelevant time period. Specifically, Hansen argues it was erroneous to rely on facts from 2006 and earlier, as opposed to more recent facts from 2007 forward. Again, Hansen relies solely on federal cases. Again, we disregard those nonprecedential cases.

¶29 Even on the merits, however, Hansen's argument falls flat. Hansen asserts the court should have focused on whether a dealership existed at the time of trial, in March 2010. But, even Hansen's primary federal case focused on whether a community of interest existed on the date the notice of termination of the business relationship was given. Here, the notice was given in November 2007. Moreover, it would be impossible to apply the multifaceted ***Ziegler*** analysis without considering the historical facts of the parties' business relationship. Indeed, one of the ten enumerated factors is how long the parties have dealt with each other. Hansen's argument really boils down to a matter of weight, not admissibility, of the evidence.

¶30 Further, Hansen fails to identify where in the record it ever objected to consideration of facts existing prior to the time of trial. *See* ***State v. Huebner***, 2000 WI 59, ¶¶10-12, 235 Wis. 2d 486, 611 N.W.2d 727 ("It is a fundamental principle of appellate review that issues must be preserved at the circuit court."); ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (appellant has burden to establish, "by reference to the court record, that the issue was raised before the circuit court"); ***Tam v. Luk***, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990) (we may disregard arguments not supported by record citations). In fact, it appears Hansen argued just the opposite. At trial, Hansen asserted, "The

real question is whether or not [Kelley] was a dealer for [Hansen] in November of 2007 when the verbal notice of nonrenewal was given."

¶31 Finally, the parties dispute the standard of review. Hansen contends we must review as a question of law whether a community of interest existed. "When the underlying facts are undisputed, whether a community of interest exists is a question of law that we decide independent of the circuit court." ***Moe v. Benelli U.S.A. Corp.***, 2007 WI App 254, ¶8, 306 Wis. 2d 812, 743 N.W.2d 691. On the other hand:

> Where there are genuine issues of material fact or reasonable alternative inferences drawn from undisputed material facts, the determination of whether there is a community of interest is one which will be made by the trier of fact based on an examination of all of the facets of the business relationship.

Central Corp., 272 Wis. 2d 561, ¶2. Given these statements of law, it is unclear whether, on appeal, the community of interest inquiry should be reviewed as a question of law or an issue of fact. *See* ***Water Quality***, 328 Wis. 2d 717, ¶25 n.5.

¶32 We need not resolve the standard of review question here. First, all four of Hansen's individual arguments are specious, lacking a substantial basis in fact or law. Second, despite Hansen's assertion to the contrary, its arguments include factual challenges, thus implicating the deferential standard of review. Third, even if we applied a de novo standard of review, Hansen's argument is undeveloped because it fails to address each of the ten facets that must be examined and applied in totality. The circuit court, meanwhile, addressed each of the factors in detail and explained its rationale for determining that the guideposts were satisfied and that terminating the business relationship would have a significant economic impact on Kelley. *See* ***Ziegler***, 139 Wis. 2d at 605-06. We

will not independently develop an argument for Hansen. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (We will not decide issues that are not, or inadequately, briefed.).

Whether the court should have dismissed Kelley's claims on summary judgment

¶33 Hansen argues the court should have dismissed counts one and two of the complaint, which asserted an attempted termination and an unlawful failure to renew, respectively, each based on Hansen's oral notice. Hansen again bases its argument on a federal case—inserting a quotation out of context, no less. In any event, Hansen appears to argue there is no violation of the WFDL when there is an improper notice given. Rather, Hansen asserts a violation occurs only if the termination is actually effected.

¶34 Hansen cites no case stating that a violation of the WFDL's notice provision is not a violation of the WFDL. As the circuit court observed, rejecting the same argument, "The violation of the WFDL is not in attempting to terminate the business relationship but rather doing so without good cause under WIS. STAT. § 135.03 and in failing to give the required [notice] in violation of WIS. STAT. § 135.04; which is what [Kelley] alleges here." We agree with Kelley that "[t]his is a ridiculous argument." It merits no further discussion.

Whether the circuit court erred by allowing remedies after a temporary injunction

¶35 After being sued, Hansen agreed to a temporary injunction and formally withdrew its verbal notice of nonrenewal. Thus, because it complied with the court's orders, Hansen asserts there is no conduct to enjoin. Further, relying solely on federal cases, Hansen argues the court erred by not following the traditional injunction analysis and determining whether there was irreparable

injury or a threat of future harm. Hansen concedes, however, that it has always disputed that the WFDL applied to its relationship with Kelley.

¶36 The WFDL expressly provides for injunctions as a discretionary option for relief, and the circuit court gave its reasons for doing so. WISCONSIN STAT. § 135.06 provides that in addition to damages and litigation costs, "the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal or substantial change of competitive circumstances." Given Hansen's unyielding position that it was not bound by the WFDL, the court properly acted within its discretion by ordering an injunction pursuant to § 135.06.

¶37 Hansen next argues it was improper to award attorney fees incurred for any work performed after it stipulated to the temporary injunction. WISCONSIN STAT. § 135.06 states, "If any grantor violates this chapter, a dealer may ... [recover] the actual costs of the action, including reasonable actual attorney fees[.]" Despite the statute's broad language, allowing recovery of costs of "the action," Hansen contends the court's award was erroneous under ***Lindevig v. Dairy Equipment Co.***, 150 Wis. 2d 731, 442 N.W.2d 504 (Ct. App. 1989).

¶38 In ***Lindevig***, the plaintiff obtained a temporary injunction, but we concluded it failed in its proof of monetary damages at trial. ***Id.*** at 735, 740-41. We held that the plaintiff was not entitled to attorney fees related to its unsuccessful claims. ***Id.*** at 742. Thus, the plaintiff was allowed only the attorney fees incurred relative to the temporary injunction. ***Id.*** However, unlike here, the plaintiff in ***Lindevig*** did not obtain a permanent injunction.

¶39 In ***Lindevig***, we stated, "We conclude that since the statute gave plaintiffs a right to injunctive relief, it also allows plaintiffs their fees incurred in procuring it." ***Id.*** at 742 n.5. ***Lindevig*** therefore undermines, rather than supports,

Hansen's argument. Kelley successfully obtained permanent injunctive relief, and is entitled to its costs and attorney fees in doing so.

¶40 Moreover, we agree with the circuit court that Kelley is entitled to attorney fees because Kelley also prevailed in obtaining a declaration that its business relationship with Hansen constituted a dealership under the WFDL. As the circuit court aptly explained, a contrary conclusion would impermissibly place "the full economic cost of determining whether a dealership existed solely upon the alleged dealer while the putative grantor could use its superior economic power to crush the alleged dealer's attempt." We further agree with the court that:

> Such an interpretation would render the WFDL unable to accomplish its stated purpose, to protect dealers against unfair treatment due to the grantor's superior economic power. Therefore, to deprive a prevailing dealer of reasonable attorney fees necessary to prove that it is a dealer protected under the WFDL would violate public policy. Accordingly, since [Kelley] is the prevailing party on the issue of whether a dealership exists, it is entitled to its reasonable attorney fees in the litigation of that issue.

¶41 Costs limited. *Supra*, n.2.[6]

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

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[6] At the conclusion of its 10,625 word brief—just shy of the word limit, Kelley suggests we may wish to consider summary affirmance pursuant to WIS. STAT. RULE 809.21. "And isn't it ironic, don't you think?" ALANIS MORISSETTE, *Ironic*, *on* JAGGED LITTLE PILL (1995).

Perhaps Kelley should have instead sought application of WIS. STAT. RULE 809.25(3), FRIVOLOUS APPEALS. Indeed, we strongly suggest Hansen's counsel review their obligations under SCR 20, RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS.