

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JANUARY 30, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1202

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

SHIELDS RUBBER CORPORATION,

Plaintiff-Appellant,

v.

POPP CEMENT TILE PRODUCTS, INC.,

Defendant-Respondent.

APPEAL from an order of the circuit court for Outagamie County:
DEE R. DYER, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Shields Rubber Corporation appeals a trial court order that denied its request for prejudgment interest. Shields Rubber made the request by motion to revise a preceding trial court order. The preceding order awarded Shields Rubber a sales credit with Popp Cement Tile Products, Inc. The trial court, acting as a court of equity, awarded the sales credit for defective goods Shields Rubber had purchased from and then returned to Popp Cement.

The trial court had denied Shields Rubber a cash refund on the ground that the parties had no agreement for a cash refund in the event of defective goods.

On appeal, Shields Rubber makes two arguments: (1) the trial court should have awarded it its money back under the Uniform Commercial Code once the trial court ruled that Popp Cement had sold defective goods; and (2) the trial court should have awarded prejudgment interest for a liquidated claim. In response, Popp Cement argues that Shields Rubber's failure to appeal the trial court's first order bars it from challenging the trial court's sales credit award. We reject Shields Rubber's arguments and therefore affirm the trial court's second order. We do not review the trial court's first order.

First, we cannot review the merits of the trial court's first order awarding Shields Rubber a sales credit rather than a cash refund. Shields Rubber's notice of appeal did not indicate that it was appealing the trial court's first order. Its notice of appeal mentioned only the second order denying its motion for revision of the trial court's first order. RULE 809.10(1)(a), STATS., requires notices of appeal to identify the judgment or order appealed. Shields Rubber may not obtain review of the trial court's first order by appealing the second order. *Ver Hagen v. Gibbons*, 55 Wis.2d 21, 24-26, 197 N.W.2d 752, 754-55 (1972).

Second, even if we did review the trial court's first order, we would not grant Shields Rubber relief. Shields Rubber did not raise its UCC arguments in the trial court, either before the trial court's first order or in its motion for revision of the first order. It has therefore failed to preserve these arguments for appellate review. *See Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). Moreover, the trial court awarded relief and granted specific performance of the parties' contract under principles of equity, effectively granting Shields Rubber equitable restitution to restore the status quo in the form of a sales credit with Popp Cement. We see no evidence that the trial court inappropriately exercised its equitable powers.

Last, Shields Rubber had no right to prejudgment interest. Trial courts have authority to award prejudgment interest on liquidated claims. *Estreen v. Bluhm*, 79 Wis.2d 142, 158-59, 255 N.W.2d 473, 482 (1977). Liquidated claims generally mean money judgments. Interest compensates payees for the

lack of use of the money. *Id.* at 156, 255 N.W.2d at 481. Trial courts have no duty, however, to grant such interest when they award equitable relief. *Id.* In that instance, trial courts award interest depending on the equities of the case. *Id.* This inquiry requires evaluation and comparison of both parties' conduct.

Here, once the trial court denied Shields Rubber a cash refund, it could reasonably limit Shields Rubber's recovery to a straight sales credit, without compensating prejudgment interest, on the basis of the dispute's competing equities. The trial court reasoned that Shields Rubber could have exercised the remedy the trial court eventually granted from the very beginning and that Shields Rubber had not diligently exercised its rights. In the trial court's view, Shields Rubber's inaction warranted denial of prejudgment interest. This rationale represented a reasonable analysis of the competing equities, and we have no basis to overrule it. In sum, the trial court had a reasonable basis to deny Shields Rubber's motion for revision seeking prejudgment interest.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.