

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JANUARY 23, 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(1), 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. 95-2074-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**HENRY L. AARON
and AARON TURPEAU,**

Plaintiffs-Respondents,

v.

DAIRY CITY CONCESSIONS, INC.,

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN E. McCORMICK, Judge. *Reversed.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Dairy City Concessions, Inc., appeals from a trial court order awarding Henry Aaron and Aaron Turpeau \$2183 in attorney's fees. The issue is whether the fees were properly awarded under § 180.1604(2), STATS. Pursuant to this court's order dated September 6, 1995, this case was submitted to the court on the expedited appeals calendar. See RULE 809.17,

STATS. We conclude that attorney's fees were not appropriately awarded under the statute. Accordingly, we reverse.

Aaron and Turpeau are shareholders in Dairy City Concessions, Inc. They initiated an injunction action in the trial court on May 3, 1994, seeking inspection of Dairy City's corporate records. At a hearing on May 26, the trial court was advised that Aaron and Turpeau had received the corporate records from Dairy City on May 4. The court continued the May 26 hearing to allow Aaron and Turpeau to confirm the completeness of the corporate records.

After a hearing on July 15, the trial court issued an order dismissing the injunction action. In its decision, the trial court noted that Dairy City had agreed to prepare minutes of all meetings held since incorporation – the minutes existed only in the form of brief notes – and to provide the minutes to Aaron and Turpeau on or before August 15, 1994. The court ordered Dairy City to prepare the minutes as agreed and the court also ordered the parties to prepare briefs on the issue of attorney's fees. After reviewing the briefs, the trial court awarded attorney's fees to Aaron and Turpeau pursuant to § 180.1604(2), STATS.

Section 180.1604, STATS., addresses court-ordered inspection of corporate records. The statute provides:

- (1) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any record ..., the shareholder ... may apply to the circuit court ... for an order to permit inspection and copying of the records demanded.
- (2) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs and expenses, including reasonable attorney fees ... incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

The trial court's order must be reversed. Attorney's fees may only be awarded under § 180.1604(2), STATS., "[i]f the court orders inspection and copying of the records demanded." There was no such order here. Dairy City provided all of the records that existed to Aaron and Turpeau before the court issued an order in this case. Although the trial court did confirm by order the parties' agreement that Dairy City would prepare and submit minutes of all the meetings held since incorporation, the court specifically stated in its decision awarding attorney's fees that Dairy City did not wrongfully withhold the minutes from Aaron and Turpeau because the minutes did not exist. The trial court nevertheless awarded Aaron and Turpeau attorney's fees because it concluded that Dairy City had not produced the documents it had in its possession within a reasonable time. This analysis misses the mark, however, because court-ordered inspection and copying of corporate records is a condition precedent to an attorney's fees award under § 180.1604(2). Because that condition had not been fulfilled, the trial court did not have authority under the statute to award attorney's fees. Accordingly, we reverse the trial court's order.

By the Court. – Order reversed.

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