

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

OCTOBER 29, 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. 96-1364-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

POWER BUILDING & DESIGN, INC.,

Plaintiff-Appellant,

v.

JACK WALTERS & SONS CORP.,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Brown County:
VIVI L. DILWEG, Judge. *Appeal dismissed.*

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

PER CURIAM. Power Building & Design, Inc., appeals a judgment affirming an arbitration award against Jack Walters & Sons Corp. Power argues that the trial court erroneously denied its request for a temporary injunction before the matter was arbitrated, and because the arbitrators awarded Walters \$15,996 in attorney fees as the prevailing party in circuit court, and denied attorney fees to Power, it is prejudiced by the denial of the temporary injunction.

Power's challenge is not designed to overturn the circuit court judgment but to attack the arbitration decision to award Walters attorney fees incurred defending Power's attempt to obtain a temporary injunction. Because the arbitrators awarded Power damages and ordered that the dealership be reinstated, its request for a temporary injunction has been rendered moot. Because the issue of attorney fees is not properly before us, we dismiss the appeal.

Power filed this action alleging that Walters unlawfully terminated its dealership agreement and requested a temporary injunction to enforce the dealership agreement. The circuit court denied Power's request and granted Walters' request for a stay pending arbitration. The circuit court found: "One of the requirements is that [a preliminary injunction] would promote arbitration, and on that requirement I find that the plaintiff has failed to meet its burden of proof." The circuit court found that if that were not the case, there were grounds for a preliminary injunction. Nonetheless, because there had been no movement toward arbitration and because a preliminary injunction would further delay arbitration, it denied Power's request. The court held that Power was required to go through the arbitration process before seeking an injunction from the court.

The arbitration panel awarded Power a permanent injunction and ordered Walters to reinstate the dealership agreement, based on Walters' violations of Wisconsin's Fair Dealership Law. It awarded Power \$4,000 damages and \$21,435.92 actual attorney fees. In addition, the panel found that Power

breached the terms of Paragraph 6 of the Authorized Dealer Agreement between the parties, dated April 27, 1992, by commencing suit in the Circuit Court for Brown County, Wisconsin, Case No. 95 CV 774, seeking redress of grievances under the Dealership Agreement in question, as opposed to filing a Claim for Arbitration in accordance with the Construction Industry Arbitration Rules of the AMERICAN ARBITRATION ASSOCIATION then in effect.

As a result, the panel awarded Walters reasonable and actual attorney fees of \$15,996 in accordance with paragraph 6 of the parties' dealer agreement.

Power argues that the circuit court did not have the authority to deny its motion for a temporary injunction solely to promote arbitration when the court found that all the necessary elements for the injunction have been met. However, Power's attack is not designed to challenge an issue that has a practical effect on any existing controversy. See *Milwaukee Prof. Firefighters v. Milwaukee*, 78 Wis.2d 1, 10, 253 N.W.2d 481, 486 (1977). Instead, Power attempts to attack the arbitration award of attorney fees. Therefore, ch. 788, STATS., controls. Power, however, has not moved pursuant to ch. 788 to modify or correct the arbitration award, which resolved the attorney fees issue by concluding that Power breached the agreement by failing to initially arbitrate the grievance.

Because the arbitration award granted a permanent injunction and reinstated the dealership, the relief Power requested pending arbitration has no practical effect on any existing controversy and is therefore moot. See *Milwaukee Prof. Firefighters*, 78 Wis.2d at 10, 253 N.W.2d at 486. Generally, we do not address moot issues. We recognize that exceptions to the general rule exist, such as where the issues are of great public importance or the precise situation arises so frequently that a definitive decision is essential to guide trial courts. *Id.* Here, no circumstances present themselves that warrant deviation from the general rule that moot issues will not be determined.

By the Court. – Appeal dismissed.

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