

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 14, 2004

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. 03-0996
STATE OF WISCONSIN**

Cir. Ct. No. 02CV001699

**IN COURT OF APPEALS
DISTRICT II**

**SATELLITE COMMUNICATIONS Co.,
PLAINTIFF-APPELLANT,**

v.

**MOTOROLA, INC.,
DEFENDANT-RESPONDENT.**

APPEAL from an order of the circuit court for Waukesha County:
J. MAC DAVIS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Satellite Communications Company appeals from an order entered against it. Satellite argues on appeal that the circuit court erred when it determined that Satellite was not a dealer within the meaning of the

Wisconsin Fair Dealership Law, WIS. STAT. § 135.02(2) (2001-02),¹ and consequently, improperly granted summary judgment against it. Because we conclude that Satellite has not established that it was a dealer within the meaning of the law, we affirm.

¶2 In 1989, Satellite entered into an agreement with Motorola whereby it agreed to sell certain products from Motorola's line of two-way radios, known as Radius. In 2002, Motorola decided to cancel the Radius reseller agreement with Satellite because Satellite failed to meet sales' goals. Motorola gave Satellite sixty days to cure the problem. Satellite did not and Motorola terminated their agreement. In addition to selling radios, Satellite also does repair and service work, and receives income from leasing space on three antenna towers.

¶3 Satellite brought this action under the WFDL, asserting that Motorola could not terminate its agreement without "good cause." See WIS. STAT. § 135.03. Motorola moved for summary judgment on the grounds that Satellite was not a dealer within the meaning of the WFDL. The circuit court granted summary judgment finding that the relationship between Motorola and Satellite was that of a vendor-vendee, and not of a dealer-grantor. Satellite appeals.

¶4 Our review of the circuit court's grant of summary judgment is de novo, and we use the same methodology as the circuit court. *M&I First Nat'l Bank v. Episcopal Home Management, Inc.*, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). That methodology is well known, and we need not repeat it

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

here. 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.

¶5 Satellite argues to this court that the purpose of the WFDL is protect dealers against unfair treatment by grantors. The issue before this court, however, is not the purpose of the WFDL, but whether the law applies to the relationship between Satellite and Motorola. We agree with the circuit court that Satellite is not a dealer and that the agreement between Motorola and Satellite was not a dealership agreement within the meaning of that law.

¶6 In order to have a dealership, there must be a community of interest between the two parties. *See* WIS. STAT. § 135.02(3)(a). A community of interest means “a continuing financial interest between the grantor and the grantee in either the operation of the dealership or the marketing of such goods and services.” Section 135.02(1). There are two guideposts courts use to determine whether there is a community of interests between the grantor and the grantee: (1) continuing financial interest, that is a shared financial interest in the operation of the dealership, and (2) interdependence, that is the degree to which the dealer and grantor cooperate, coordinate their activities and share common goals in their business relationship. *Ziegler v. Rexnord, Inc.*, 139 Wis. 2d 593, 604-05, 407 N.W.2d 873 (1987). We must then examine various facets to determine if those guideposts have been established.

Facets which a court should examine to determine whether the grantor and grantee have a continuing financial interest in the business relationship and whether the business relationship is so interdependent that there is a community of interest include: 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; the extent and nature of any supplementary services provided by the alleged dealer to consumers of the alleged grantor's products or services. Each of the facets may relate to one or both of the guideposts and we do not intend this list to be all inclusive.

Ziegler, 139 Wis. 2d at 606.

¶7 We agree with the circuit court that Satellite fails on both the continuing financial interest and the interdependence prongs. In order to show a continuing financial interest, the party who alleges a dealership must show that it has substantial financial investment. See *Guderjohn v. Loewen-America, Inc.*, 179 Wis. 2d 201, 209-10, 507 N.W.2d 115 (Ct. App. 1993). “[A] substantial financial investment distinguishes a dealership from a typical vendor-vendee relationship. The typical vendee makes little or no investment except for inventory. If the relationship with its vendor is terminated, the vendee suffers only a loss of future profits unless its inventory is unsalable.” *Id.* at 210-211.

¶8 First, the record demonstrates that Satellite does not receive the largest source of its income from selling the Radius products. Satellite's main source of income is from leasing space on antenna towers and from repair and service work. This income will not be substantially affected by the termination of the agreement. Further, Satellite was not required to pay Motorola a franchise fee or make expenditures for facilities, equipment or training that will be lost as a

result of the termination of the agreement.² Satellite has not established a continuing financial interest.

¶9 Nor is Satellite able to establish the interdependence prong. Satellite asserts that it has developed goodwill for Motorola products. However, goodwill is only one facet bearing on whether interdependence exists. *See id.* at 211-12.

¶10 The court in *Guderjohn* held that a grantee was not able to establish interdependence when: (1) it did not have an exclusive dealership; (2) there was no agreement requiring it to use its best efforts to sell the grantor's products; (3) the parties were not required to cooperate in setting sales targets; (4) the grantee was not required to pay start-up, or other services for the grantor's products; (5) the grantee was not required to maintain a parts inventory; (6) there was no agreement requiring the grantee to provide a certain amount of personnel to sell or service the grantor's products; (7) the grantee was not required to provide reports to the grantor; (8) the grantee was not required to have periodic reviews of its performance by the grantor; and (9) the grantee did not make extensive use of the grantor's trademarks and logos. *Id.* Satellite was not able to establish these facets. We conclude that Satellite has not shown the interdependence prong. Since Satellite has not established either a continuing financial interest nor interdependence, it did not have a community of interest with Motorola.

² In its reply, Satellite asserts that its owner went to college to become an electrical engineer and that this was specialized training. It further states that his application to become a Radius dealer inquired into his education. This is not the type of specialized training referred to, however. Satellite's owner did not go to college to become a Radius dealer, presumably he went to become an electrical engineer.

¶11 Citing *Ziegler*, Satellite also argues that it was up to the trier of fact to determine whether these facets constituted a community of interests. *See Ziegler*, 139 Wis. 2d at 612. In that case, however, the court found that there were disputed issues of material fact, such as the duration of the agreement between the parties. *Id.* at 611. There are no such issues of disputed fact in this case. The determination of whether there is a community of interest, then, is a question of law. *See Guderjohn*, 179 Wis. 2d at 204. The circuit court properly granted summary judgment to Motorola. For the reasons stated, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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

