

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 11, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**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.

**No. 00-0194-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**FIRST FARMERS & MERCHANTS NATIONAL BANK,**

**PLAINTIFF-RESPONDENT,**

**v.**

**DONALD J. GABRYSHAK, AND SHARON R. GABRYSHAK,**

**DEFENDANTS-APPELLANTS.**

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APPEAL<sup>1</sup> from a judgment of the circuit court for Waushara County: LEWIS R. MURACH, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Donald and Sharon Gabryshak appeal from a judgment granting First Farmers & Merchants National Bank possession of two vehicles, on a loan default. The Gabryshaks sought to preclude replevin with evidence that the bank violated provisions of the Wisconsin Consumer Act. The

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<sup>1</sup> This appeal is expedited under WIS. STAT. RULE 809.17 (1997-98).

trial court held that the bank did not violate the Act, and that it did not apply to the parties' loan transactions in any event. We affirm.

¶2 The Gabryshaks, then Minnesota residents, borrowed \$41,000.00 from the bank in three transactions. The loans were secured by the Gabryshaks' Ford and Plymouth vehicles. The bank commenced this action when the Gabryshaks failed to make any payments on the loans, and after they had become Wisconsin residents.

¶3 The Waushara County Sheriff's Department served the summons and complaint on March 13, 1999. Agents of the department also seized the two vehicles the same day, although the trial court did not sign an order authorizing their seizure until March 16.

¶4 Citing WIS. STAT. § 425.206 (1997-98),<sup>2</sup> of the Wisconsin Consumer Act, the Gabryshaks asserted that the seizure of the vehicles before the court authorized it was unlawful. The parties then negotiated a settlement whereby the bank returned the Ford vehicle and the Gabryshaks released all claims and demands against the bank under the Act. The agreement further provided that the Gabryshaks would either file a Chapter 7 or Chapter 13 bankruptcy action and provide a plan to make payments on the Ford. If they did not, the bank would continue with the replevin action.

¶5 During the bankruptcy proceeding the Gabryshaks disavowed any liability to the bank based on the bank's alleged violation of the Wisconsin Consumer Act. The bankruptcy court abstained from ruling on the issue, lifted the

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<sup>2</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

stay of other proceedings, and the parties stipulated to resume the replevin proceeding, to litigate whether violations of the Wisconsin Consumer Act precluded replevin.

¶6 The matter proceeded to trial and the court heard evidence on the circumstances surrounding the unlawful repossession of the vehicles and the subsequent negotiated settlement. The trial court concluded that neither the bank nor its attorney played any part in the sheriff department's decision to seize the vehicles, and that the Gabryshaks signed the agreement releasing their claims in circumstances that were not unconscionable. Additionally, the trial court concluded that the Wisconsin Consumer Act did not apply to the parties' transactions. Because the Gabryshaks admitted their default and offered no other defenses, the court granted replevin.

¶7 The evidence supported the trial court's finding that the bank did not cause the unlawful repossession of the vehicles. Counsel for the bank testified that he delivered a summons and complaint, and proof of bonding, to the sheriff's department. He did not provide any other documents, nor any written or oral instructions to seize the vehicle. The court accepted this testimony, and noted that there was no evidence to refute it. There was also no evidence of any other communication between the sheriff's department and any agent of the bank. Under these circumstances, the evidence established that the bank did not violate the Wisconsin Consumer Act, because the sheriff bore full responsibility for the premature repossession.

¶8 The court properly held that the temporary settlement was not unconscionable. A consumer is entitled to remedies if the creditor acts unconscionably in any aspect of the transaction. *See* WIS. STAT. § 425.107(1).

Here, the Gabryshaks contend that the agreement was unconscionable because the bank obtained their release of claims without providing any consideration for that release. That contention is without merit. The bank returned one of the vehicles despite having a court order granting them possession of both. Relinquishing that lawful possession is adequate consideration, under any reasonable view.

¶9 Our decision, affirming the trial court's finding that the bank did not violate any provisions of the Wisconsin Consumer Act, makes it unnecessary to determine whether the Act applied on the present facts.

*By the Court.*—Judgment affirmed.

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

