COURT OF APPEALS
DECISION
DATED AND FILED

October 10, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0018

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

ARCADIA FINANCIAL, LTD.,

PLAINTIFF-RESPONDENT,

v.

SUSANNAH Q. CAREY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Reversed.*

¶1 FINE, J. Susannah Q. Carey appeals *pro se* from a judgment giving to Arcadia Financial, Ltd., the right to replevy an automobile sold to Carey on credit by the company that assigned Carey's debt to Arcadia. We reverse.

¶2 The only issue on this appeal is whether the record supports the trial court's determination that Arcadia satisfied the prerequisites to the maintenance of a

replevin claim against Carey under WIS. STAT. ch. 425, which the parties agree governs this case. This requires us to interpret and apply the statutes that are material here. Our review is, therefore, *de novo*. *See* ***Truttschel v. Martin***, 208 Wis. 2d 361, 364–365, 560 N.W.2d 315, 317 (Ct. App. 1997).

¶3 WISCONSIN STAT. § 425.103(1) provides, as material here, that "no cause of action with respect to the obligation of a customer in a consumer credit transaction shall accrue in favor of a creditor except by reason of a default, as defined in sub. (2)." Thus, there must be a "default" before the creditor's cause of action against the debtor accrues. "Default" is defined by WIS. STAT. § 425.103(2), as material here: as having "outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates."

¶4 Under WIS. STAT. § 425.104(1), "[a] merchant who believes that a customer is in default may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure any such default (s. 425.105)." If a debtor alleged to be in default has a right to cure the default as provided in WIS. STAT. § 425.105, the "merchant may not ... commence any action except as provided in s. 425.205(6) ... unless the merchant believes the customer to be in default (s. 425.103), and then only upon the expiration of 15 days after a notice is given pursuant to s. 425.104." WIS. STAT. § 425.105(1). Thus, proper notice must be given; if it is not given, the fifteen days do not run. There is nothing in the record that indicates that Carey did not have the right to cure any default.

¶5 WISCONSIN STAT. § 425.205 governs the procedure that must be followed when a creditor seeks to replevy collateral. According to WIS. STAT. § 425.205(6), the giving of proper notice is a prerequisite to the maintenance of a

replevin action: "Action pursuant to this section may be commenced at any time after the customer is in default, but the return day of process may not be set prior to the expiration of the period for cure of the default by the customer (s. 425.105), if applicable."

¶6 A replevin complaint must, among other things, contain a "specification of the facts constituting the alleged default." WIS. STAT. § 425.109(1)(c), made applicable to replevin actions by WIS. STAT. § 425.205(3). Although Arcadia's complaint against Carey, which was dated November 8, 1999, and served upon Carey on November 15, 1999, satisfies the applicable statutes because it alleges that "two or more scheduled payments remain unpaid for more than ten days after their original or deferred due dates," the notice of right to cure default that was sent to Carey and that was attached as an exhibit to the complaint did not comply with the law. The notice is dated September 16, 1999 and sets out the following information about Carey's debt:

Date and Amount Due	08/06/1999	$319.79
Date and Amount Due	09/06/1999	$319.79
Date and Amount		$0.00
Late Charges		$20.00
Total Amount Due		$659.58

The notice thus only alleges that *one* full payment was outstanding for "more than 10 days" of the due date; that is, the "more than 10 days" period had not run on the September 6 due date by the September 16 date of the notice. WISCONSIN STAT. § 425.103, as we have seen however, defines "default" as "an amount *exceeding* one full payment which has remained unpaid for more than 10 days." (Emphasis added.) Thus, as of September 16, the notice referenced only one "default." Accordingly, the

notice was defective, and Arcadia, if it still seeks to replevy the collateral, must start again.[1]

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

[1] Arcadia apparently recognizes that its replevin process against Carey was flawed, because it seeks to have us either consider matters that are not of record or remand the matter to the trial court for the taking of additional evidence. First, we are limited to the record as it comes to us. *See* ***Jenkins v. Sabourin***, 104 Wis. 2d 309, 313–314, 311 N.W.2d 600, 603 (1981). Second, under the circumstances here, we do not believe that a remand is appropriate. Arcadia received judgment. It made the record as it believed the law required. Under the law, however, that judgment cannot stand. Arcadia has not shown us why it is entitled in this case to another bite of the apple. *See* ***Barakat v. Department of Health & Soc. Servs.***, 191 Wis. 2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (appellate court need not consider "amorphous and insufficiently developed" arguments).