COURT OF APPEALS
DECISION
DATED AND FILED

April 1, 2003

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. 02-3023-FT **Cir. Ct. No. 02-SC-1399**

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

TOYOTA FINANCIAL SERVICES,

PLAINTIFF-RESPONDENT,

V.

JAMES VASEL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: LISA K. STARK, Judge. *Affirmed*.

¶1 CANE, C.J.[1] James Vasel appeals a summary judgment of replevin of his automobile to Toyota Financial Services and an order denying his motion to

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31. This also is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

dismiss Toyota's complaint. Vasel argues Toyota's complaint did not comply with the requirements of the Wisconsin Consumer Act because Toyota failed to attach a legible copy of the sales contract and also failed to specify the facts constituting default. We conclude Toyota's failure to attach a legible copy of the contract was a technical defect in the pleading that caused no prejudice to Vasel. In addition, we determine the complaint adequately specifies the facts constituting default. Therefore, we affirm the judgment and order.

BACKGROUND

¶2 On February 26, 2002, Vasel and Toyota executed a retail installment contract for the purchase of an automobile. Vasel financed $13,235.98 of the purchase price, payable in sixty $249.30 payments. Vasel did not make any payments, and Toyota sent him a notice of right to cure default on May 22. He did not cure, and Toyota filed its replevin action on July 1.

¶3 Toyota's complaint included in part the following:

> 3. Defendant defaulted by having outstanding an amount exceeding one full payment which has remained unpaid for more than ten (10) days after the scheduled or deferred due dates.
>
> 4. Plaintiff is entitled to a judgment for possession of the collateral but is not seeking to recover, in this action, the balance of the credit transaction which computed as of June 18, 2002 is as follows:

a. Amount Financed	$13,235.98	
b. Total of Payments (Precomputed Credit Transaction)	$	
c. Delinquency Charges	$	
d. Interest	$	
e. Other _______________	$ 199.77	
DEBIT SUBTOTAL		$13,434.98
f. Less Payments	$ - 0 –	
g. Less Rebate of Unearned Finance Charges in Precomputed Transaction	$	

h. Less Amount Received From Sale of Any Collateral $
i. Other______________________ $

CREDIT SUBTOTAL $ - 0 –

j. BALANCE DUE ON DEFENDANTS ACCOUNT $13,434.98

5. Defendant has the right to redeem any collateral as provided in s. 425.208(1) (intro.) and the actual or estimated dollar amount required for redemption is:

a. The total of all unpaid amounts, including any unpaid delinquency or deferral charges due at the time of tender, without acceleration; plus	$	747.90
b. Court costs, filing and service fees, and bond premium charges incurred by plaintiff; plus	$	81.00
c. Performance deposit	$	747.90
ESTIMATED DOLLAR AMOUNT REQUIRED FOR REDEMPTION	$	1,576.80

¶4 In addition, Toyota attached a copy of the sales contract to the complaint. The contract, initially printed on legal sized paper, was reduced to fit on eight-and-one-half-by-eleven-inch paper. As a result, much of the attached contract is illegible, although the parties, interest rate, finance charge, amount financed, sales price, monthly payment amount, and the parties' signatures can be partially read.

¶5 Toyota moved for summary judgment. Vasel moved to dismiss Toyota's complaint alleging, among other things, several violations of the WCA's pleading requirements. *See* WIS. STAT. § 425.109. He argued the complaint did not specify the facts constituting default under § 425.109(1)(c); failed to give the numbers necessary to compute the amount owed under § 425.109(1)(d); and failed

to include an accurate copy of the writings evidencing the transaction under § 425.109(1)(h).

¶6 The trial court rejected all of these claims. It concluded the statement of default in paragraph four of the complaint was sufficient and the necessary numbers were not an issue because Toyota was not seeking recovery of money, just the automobile. Finally, the court determined that although the contract was difficult to read, the purpose of WIS. STAT. § 425.109(1)(h) is to provide the debtor notice of the transaction at issue rather than to provide a legible copy. The court denied Vasel's motion and granted Toyota summary judgment. Vasel appeals.

DISCUSSION

¶7 Vasel challenges only the court's ruling that Toyota specified the facts of default and that the attached contract was adequate. He contends because of these deficiencies, Toyota's complaint fails to state a claim upon which relief can be granted. We conclude however that the proper analysis is whether the alleged errors create a defective pleading. To establish whether a pleading is fatally defective, this court uses a two-part test. ***American Family Mut. Ins. Co. v. Royal Ins. Co.***, 167 Wis. 2d 524, 533, 481 N.W.2d 629 (1992). First, we must ascertain whether there is, in fact, a defect in the pleading. ***Id.*** Second, we must determine if the defect is technical or fundamental in nature. ***Id.*** If the defect is technical, the court has jurisdiction only if the non-pleading party has not been prejudiced by the defect. ***Id.*** When a pleading that contains a defect comports with the purpose and nature of a statute, the defect is generally technical. ***Schaefer v. Riegelman***, 2002 WI 18, ¶29, 250 Wis. 2d 494, 639 N.W.2d 715. If the defect is fundamental, however, the court does not have jurisdiction over the

action, regardless whether prejudice exists. ***American Family***, 167 Wis. 2d at 534-35. These are all questions of law we review independently. ***Id.*** at 529. Further, the burden of proof is on the party that filed the pleading to prove that no defect exists or, if one does, that it is technical rather than fundamental. ***Id.***

¶8 We must interpret portions of WIS. STAT. § 425.109 to determine whether Toyota's complaint is defective. This is a question of law we review independently. ***State v. Isaac J.R.***, 220 Wis. 2d 251, 255-56, 582 N.W.2d 476 (Ct. App. 1998). The relevant sections of § 425.109 state:

> **(1)** A complaint by a creditor to enforce any cause of action arising from a consumer credit transaction shall include all of the following:
>
> ….
>
> (c) A specification of the facts constituting the alleged default by the customer.
>
> ….
>
> (h) An accurate copy of the writings, if any, evidencing the transaction, except that with respect to claims arising under open-end credit plans, a statement that the creditor will submit accurate copies of the writings evidencing the customer's obligation to the court and the customer upon receipt of the customer's written request therefor on or before the return date or the date on which the customer's answer is due.
>
> ….
>
> **(3)** A judgment may not be entered upon a complaint which fails to comply with this section.

¶9 We first address Vasel's claim that the attached copy of the contract does not meet WIS. STAT. § 425.109(1)(h)'s requirements. He contends the contract is illegible and therefore does not comply with the statute's requirement that an "accurate" copy of the contract be attached to the complaint. Toyota argues this does not constitute a defect because the plain language of § 425.109(1)(h) requires an accurate, not legible, copy and points to Vasel's

admission that “the parties agree that Toyota attached a copy of the contract” as proof that the attached contract is accurate.

¶10 Our task then is to determine whether, as Vasel puts it, an illegible but otherwise accurate copy of the contract complies with WIS. STAT. § 425.109(1)(h). We will assume without deciding, however, that the copy of the contract attached to Toyota’s complaint does not comply with the statute because any defect would be technical and non-prejudicial.

¶11 In reaching this conclusion, we must first look to the statute’s purpose to determine if the defect is technical or fundamental. Although there is no purpose given for WIS. STAT. § 425.109(1)(h) specifically, the overall purposes of the WCA are to (1) simplify, clarify and modernize the law governing consumer transactions; (2) protect customers against unfair, deceptive, false, misleading, and unconscionable practices by merchants; (3) permit and encourage the development of fair and economically sound consumer practices in consumer transactions; and (4) coordinate the regulation of consumer credit transactions with the policies of the federal consumer credit protection act. WIS. STAT. § 421.102.

¶12 The trial court concluded the purpose of WIS. STAT. § 425.109(1)(h) is to give the consumer notice of the transaction at issue. Toyota also makes this argument and in support relies on Wisconsin’s notice pleading requirements, with which it contends its complaint complies. Vasel, however, correctly points out that a complaint under the WCA is not valid merely because it complies with standard notice pleading requirements. *See* ***Household Fin. Corp. v. Kohl***, 173 Wis. 2d 798, 801, 496 N.W.2d 708 (Ct. App. 1993). Instead, the philosophy of the WCA is to give as much notice to consumers as is consistent with “a realistic credit economy.” ***Id.***

¶13 In ***Kohl***, we held a complaint that listed the amount owed on specific days throughout the financing term along with a per diem interest statement did not meet WIS. STAT. § 425.109(1)(d)'s requirement that the creditor provide the figures necessary to calculate the amount due. ***Id.*** We noted "consumers are not to be forced to conduct expensive and time-consuming discovery to learn how the creditor computed the amount due." ***Id.*** Similarly, Vasel argues he should not be forced to use discovery to obtain a legible copy of the contract.

¶14 The concern in ***Kohl***, however, does not apply to debtors obtaining copies of contracts governing consumer credit transactions because Vasel did not need to conduct discovery to obtain a copy of the contract; he had a right to demand one from Toyota. The WCA requires creditors to provide the consumer with a copy of the signed contract before any payment is due and also to give the consumer copies upon demand until one year after the end of the contract's term. WIS. STAT. §§ 422.302(3), 422.303(5). The required disclosures of WIS. STAT. § 425.109(1)(d), in contrast, would be within the exclusive knowledge of the creditor. The creditor relies on these numbers to make its argument that the debtor is in default. Because these figures might contain mistakes or otherwise be erroneous, requiring their disclosure allows the debtor to check these calculations. Normally, a party would have to go through pretrial discovery to obtain these figures. In an effort to protect consumers, the legislature has forced creditors to give these to debtors when filing a complaint. As indicated, a debtor does not have to face the same obstacles to obtain a copy of the writings underlying the transaction; he or she has an absolute right to obtain them at any time from the creditor.

¶15 Further, we conclude the defect does not violate any of the overall purposes of the WCA listed in WIS. STAT. § 421.102. There is nothing in the

record to suggest Toyota's failure to attach a legible copy of the contract was meant to mislead Vasel or otherwise act unconscionably. While it would undoubtedly be in the interest of both consumers and creditors for creditors to include fully legible copies of the contracts at issue, Toyota's failure to do so here, along with the absence of deceptiveness on its part, presents only a technical violation of the WCA pleading requirements.

¶16 Because we have determined the error is technical and not fundamental, we now examine whether the error caused Vasel any prejudice. We conclude it did not. A defect in the pleadings is not prejudicial if it does not affect a party's substantial rights. ***Canadian Pacific, Ltd. v. Omark-Prentice Hydraulics, Inc.***, 86 Wis. 2d 369, 372, 272 N.W.2d 407 (Ct. App. 1978); *see also* WIS. STAT. § 805.18 (the court shall, in every stage of an action, disregard any error or defect in the pleadings which shall not affect the substantial rights of the adverse party). The record does not suggest the replevin action's outcome would have been any different had Toyota attached a legible copy of the contract to its complaint. Further, Vasel admits he received a legible copy before the court proceedings. Toyota's failure to attach a legible copy of the contract did not affect Vasel's rights.

¶17 Finally, we reject Vasel's claim that Toyota's complaint fails to specify the facts constituting the default. He argues paragraph three's recitation of the statutory definition of default, *see* WIS. STAT. § 425.103(2)(a), is insufficient to satisfy § 425.109(1)(c). He contends the complaint fails to provide a "meaningful accounting" and does not specify the number or type of payments missed. Vasel, however, points to nothing that requires this amount of detail. Further, the remainder of the complaint contains a thorough accounting, as required by § 425.109(1)(d), and this reveals, among other things, the amount

owed and that Vasel had not made any payments on the automobile. The entirety of the complaint fully establishes the facts surrounding the default.

By the Court.—Judgment and order affirmed.

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