

Wisconsin Consumer Act Remains a Dangerous Trap for Unwary Lenders Following a Recent Appellate Ruling

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When the Wisconsin Legislature adopted the self-help motor vehicle repossession law, many speculated that the Wisconsin Consumer Act had lost its bite. However, a recent Wisconsin Court of Appeals ruling illustrates the Wisconsin Consumer Act and its harsh penalties still present a formidable trap for the unwary lender.

On August 14, 2012, the Wisconsin Court of Appeals affirmed a trial court's award of nearly \$10,000 in damages against a lender for violating the Wisconsin Consumer Act during its self-help repossession of a motor vehicle. *Credit Acceptance Corporation v. Chao Kong, et al.*, 2012 WI App __ (Aug. 14, 2012) (publication recommended). In this case, Wisconsin resident borrowers had executed a retail installment contract in Minnesota for the purchase of a vehicle. After making several payments, the borrowers missed a payment due on August 22, 2008. When the borrowers missed a second consecutive payment, Credit Acceptance (assignee of the original lender) mailed a Notice of Right to Cure Default to the borrowers on September 24, 2008. Credit Acceptance then utilized self-help repossession to recover the vehicle. It subsequently filed a lawsuit in Wisconsin to obtain a deficiency judgment for the balance that remained on the loan.

Instead of entering a deficiency judgment, the Circuit Court found that Credit Acceptance had violated the Wisconsin Consumer Act by prematurely issuing its Notice of Right to Cure Default and then proceeding to repossess the vehicle. Under the Wisconsin

Consumer Act, an installment loan is not in default until “an amount greater than one full payment remains unpaid for more than ten days.” § 425.103(2)(a), Wis. Stats. Credit Acceptance had not waited ten days following the missed second payment before it sent the default notice. The Court invoked the Wisconsin Consumer Act’s strict penalty provisions and awarded the borrowers their down payment for the vehicle, past payments made on the installment loan, the monetary value of the vehicle, and statutory damages, totaling nearly \$10,000.

The Wisconsin Court of Appeals upheld the Circuit Court’s ruling and only slightly modified the damages award. Its amendment removed the statutory damages award of \$1,000.00, because the trial court’s written order did not specify that Credit Acceptance had violated a specific provision of the Wisconsin Consumer Act’s debt collection practice statute.

Credit Acceptance argued that the Wisconsin Consumer Act did not apply to the transaction because the loan was executed in Minnesota and contained a choice of law provision requiring interpretation of the contract under Minnesota law. However, the Court of Appeals ruled that Credit Acceptance had subjected itself to the Wisconsin Consumer Act when it chose to seek a deficiency judgment in Wisconsin. See § 421.201(5), Wis. Stats. The Court of Appeals further explained that “as long as some portion of the WCA [Wisconsin Consumer Act] is applicable, no choice of law provisions are effective.” 2012 WI App __, ¶ 15.

In the end, Credit Acceptance not only did not obtain a deficiency judgment for the money that was still owed on the loan, but it had a damages award entered against it for an amount significantly over and above what had been made in payments on the loan. For lenders, this decision underscores that, if a lender wishes to seek a deficiency judgment following a motor vehicle repossession, it should strictly adhere to all of the

provisions and strictures of the Wisconsin Consumer Act. This advice holds true even if the motor vehicle installment contract was not executed in this state or contains a choice of law provision requiring interpretation under the laws of a different state.

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