

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 6, 2006

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. 2006AP142

Cir. Ct. No. 2005SC42862

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

NISSAN MOTOR ACCEPTANCE CORPORATION,

PLAINTIFF-RESPONDENT,

v.

DENNIS MAXBERRY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEAN W. DIMOTTO, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Dennis Maxberry appeals *pro se* from a judgment of replevin ordering that Maxberry's 2005 Nissan Sentra be repossessed by Nissan Motor Acceptance Corporation. Maxberry's brief is difficult to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

decipher. It appears that Maxberry is claiming that: (1) the underlying contract was invalid; (2) he did not have a fair day in court; and (3) Nissan is not entitled to a judgment of replevin. Because the record refutes each contention, this court affirms.

BACKGROUND

¶2 On January 26, 2005, Maxberry signed a loan agreement with Nissan regarding the purchase of a Nissan Sentra. Maxberry defaulted under the loan agreement. Nissan sent him a notice of default and right to cure, but Maxberry did not pay the total amount due by the cure date. As a result, Nissan initiated this action seeking a judgment of replevin.

¶3 Maxberry filed an answer and appeared in court for the hearing. The trial court granted judgment of replevin to Nissan. Maxberry now appeals.

DISCUSSION

A. Contract.

¶4 The record reflects that the loan agreement constituted a valid contract. All of the elements for a valid contract were present: there was an offer, acceptance and consideration. *See Madcap I, LLC v. McNamee*, 2005 WI App 173, ¶8, 284 Wis. 2d 774, 780, 702 N.W.2d 16. The Nissan dealer made an offer to loan funds to Maxberry so that he could purchase the vehicle. The terms and conditions of that loan are set forth in the simple interest retail installment contract, which Maxberry signed. Thus, Maxberry has failed to demonstrate any reason that this simple contract should not be enforced.

B. Day in Court.

¶5 Maxberry also appears to argue that he did not receive a fair day in court and that he was discriminated against. The record does not support his contention. The record reflects that personal service of the action was attempted, but not successful, and therefore Nissan published notice of the action in accordance with WIS. STAT. § 799.12(6), and mailed a copy of the summons and complaint to Maxberry.

¶6 Maxberry admits receiving the summons and complaint in the mail and filed a prompt answer to the complaint. He then appeared for a hearing in the circuit court on January 12, 2006. During the hearing, the court addressed Maxberry's "affirmative defenses," and explained that his claims were not valid responses to the simple contract. Maxberry admitted at the hearing that he defaulted on the loan and had not made payments on the car in six months. Based on a review of the record, this court rejects Maxberry's contention that he did not receive his day in court. Further, there is no evidence to support Maxberry's suggestion that he was discriminated against.

C. Judgment.

¶7 Finally, to the extent that Maxberry is arguing that Nissan was not entitled to a judgment of replevin, this court cannot agree. The record contains a valid contract, wherein Maxberry agreed to make monthly installment payments for the Nissan Sentra. He admitted that he defaulted on those payments. Judgment of replevin under the circumstances presented in the record was appropriate.

By the Court.—Judgment affirmed.

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

