

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 27, 2012

Diane M. Fremgen
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. 2011AP1844

Cir. Ct. No. 2010SC38378

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

BRUCE LARSON,

PLAINTIFF-APPELLANT,

v.

NORTHWESTERN MUTUAL LIFE INS. CO.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
JANE V. CARROLL, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Bruce Larson, *pro se*, appeals a small claims judgment dismissing his breach of contract claims for failure to state a claim upon which relief can be granted. Larson argues that he was denied due process and that his case was improperly dismissed because the circuit court: (1) was

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2009-10).

impatient and prejudiced; (2) dismissed his case without intervention and without allowing him the opportunity to present evidence or argue relevant law; and (3) declined his plea for court intervention regarding Northwestern Mutual Life Insurance Company's (Northwestern Mutual) exclusive use of the U.S. Postal Service to send loan checks. Because Larson conceded that Northwestern Mutual did not breach its contract, and because the record does not indicate that Larson's due process rights were violated, we affirm the circuit court.

BACKGROUND

¶2 According to the complaint, Larson had a life insurance policy with Northwestern Mutual and was entitled to take loans against his policy. Larson requested a loan on his policy on September 13, 2010. In response to that request, Northwestern Mutual dated and mailed a check sixteen days later, on September 29, 2010. Larson requested a second loan on his policy on November 15, 2010. In response to the second request, Northwestern Mutual dated and mailed a check eight days later, on November 23, 2010. On December 15, 2010, Larson filed a complaint in small claims court, seeking \$5000 in damages,² on the grounds of “neglect, breach of contract, and unconscionable behavior” by Northwestern Mutual. The sixteen and eight-day time-spans between Larson's requests and the issuance of the checks, the complaint alleged,³ was unreasonable in light of Larson's previous experiences with Northwestern Mutual. Specifically, the complaint states that five previous policy loan requests resulted in checks being issued and mailed the following day. Larson alleged that the wait-time resulted in

² Specifically, Larson requested \$2500 in actual damages and \$2500 in punitive damages for irreparable damage “in the guise of anguish, frustration, loss of sleep, and embarrassment.”

³ Larson attached a summary of his allegations to the small claims complaint form, which we refer to as “the complaint.”

great financial and emotional difficulty and must have been the result of a policy change made without Larson's knowledge. Larson further complained that when attempting to contact Northwestern Mutual about the reasons for the "delay," he was not given answers. Lastly, Larson's complaint alleged that Northwestern Mutual's policy of relying exclusively on the U.S. Postal Service for delivering policy checks, rather than allowing policyholders to personally pick up the checks from the company, was unreasonable and resulted in an unreasonable delay in depositing the funds.

¶3 An evidentiary hearing was conducted on April 5, 2011 before a Small Claims Commissioner. Larson's case was dismissed the same day. After filing a demand for a new trial, another hearing was held in the circuit court. At that time, Larson conceded that his policy with Northwestern Mutual allows the company up to six months to issue a policy loan. Larson argued, however, that the clause granting the six months violated public policy and that Northwestern Mutual's failure to issue the policy loan as quickly as it had previously done resulted in a "great deal of distress."

¶4 After discussing all of the theories either expressly alleged or implied in Larson's complaint, the circuit court dismissed Larson's complaint, finding that he had not set forth a claim upon which relief could be granted. This appeal follows.

DISCUSSION

¶5 On appeal, Larson acknowledges that his complaint sounds in contract, but argues that his due process rights were violated for various reasons. Because Larson acknowledged that Northwestern Mutual did not breach its contract, and because Larson has not presented evidence indicating that his policy

with Northwestern Mutual has been changed without his knowledge (other than his allegation that previous loan requests were issued immediately), we agree with the circuit court that Larson has not stated a claim upon which relief can be granted. We also conclude that the record does not support Larson's contention that his due process rights were violated.

¶6 Whether a complaint states a claim is a question of law we review *de novo*. *Beloit Liquidating Trust v. Grade*, 2004 WI 39, ¶17, 270 Wis. 2d 356, 677 N.W.2d 298. A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint. *Torres v. Dean Health Plan, Inc.*, 2005 WI App 89, ¶6, 282 Wis. 2d 725, 698 N.W.2d 107. All facts pleaded and reasonable inferences that may be drawn therefrom are accepted as true for the purposes of testing the sufficiency. *Id.* Legal inferences and unreasonable inferences, however, need not be accepted as true. *Id.* “A complaint should not be dismissed as legally insufficient unless it appears certain that a plaintiff cannot recover under any circumstances.” *Beloit Liquidating*, 270 Wis. 2d 356, ¶17.

¶7 As stated, Larson's complaint is for breach of contract. We note first that Larson's policy with Northwestern Mutual does not appear on the record. However, at the hearing, Larson stated that waiting sixteen and eight days for the two loans in times of emergency was “beyond what is reasonable in today's society,” even though “they're well within the scope of the policy and I've been told within the scope allowed by the Wisconsin insurance commissioner.” Based on the parties' admissions, the circuit court found that the policy required Northwestern Mutual to issue policy loans within six months of the policyholder's request. Although we are sympathetic with Larson's apparent frustration, Northwestern Mutual issued the policy loans within the time-frame both parties concede was allowed by the contract. Therefore, there are no grounds for a breach

of contract claim in this appeal. Larson did not present any contractual claims upon which relief could be granted. The circuit court properly dismissed the complaint.

¶8 With regard to Larson’s due process claims, the record does not show that Larson was prejudiced by the circuit court’s actions. The record indicates that the circuit court was sensitive to Larson’s *pro se* status. The circuit court stated that it “considered several possible legal theories,” explained what those theories were, and explained why Larson’s complaint did not adequately state a claim under any of them.

¶9 Finally, we decline to address Larson’s unhappiness with Northwestern Mutual’s decision to use the U.S. Postal Service and what Larson claims is its policy against allowing policyholders to personally pick up loan checks. Nothing in the record establishes the scope or extent of Northwestern Mutual’s loan issuance procedures except conclusory statements by Larson. Because Larson has not included a copy of the insurance policy he purchased, we have no basis upon which to conclude that mailing the checks is in any way contrary to Larson’s contract with Northwestern Mutual.

CONCLUSION

¶10 For the foregoing reasons, we affirm.

By the Court.—Order affirmed.

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

