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**DISTRICT II**

June 8, 2022

To:

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Clerk of Circuit Court  
Racine County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2021AP219

Tankia Thompson v. Exeter Finance Corporation  
(L.C. #2018CV712)

Before Gundrum, P.J., Grogan and Kornblum, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Tankia Thompson appeals from an order granting summary judgment to Exeter Finance Corporation. She contends that Exeter is vicariously liable for its agents' breach of peace in the attempted repossession of her car. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In May 2015, Thompson entered into a contact with Exeter to finance the purchase of a car. She fell behind on payments and defaulted on the contract.

Exeter sent Thompson a notice of default and right to cure in April 2017. It subsequently contracted with repossession agents to repossess Thompson's car.

On June 4, 2017, repossession agents attempted to repossess Thompson's car. Thompson's family members protested and told the agents to leave, as the family needed the car to take Thompson's pregnant daughter to the hospital.<sup>2</sup> The agents declined to leave and called law enforcement for assistance. Law enforcement came and noted that there was no court order for the car. Eventually, the agents left without it.

Thompson sued Exeter over its agents' actions in the attempted repossession of her car. She accused Exeter of violating WIS. STAT. § 425.206(2)(a), which codifies the rule in the Uniform Commercial Code prohibiting repossessions in breach of peace. *See* WIS. STAT. § 409.609(2)(b); *see also Hollibush v. Ford Motor Credit Co.*, 179 Wis. 2d 799, 806, 508 N.W.2d 449 (Ct. App. 1993) (concluding that "breach of the peace" in § 425.206(2)(a) has the same meaning as in the Uniform Commercial Code).

Exeter moved for summary judgment on Thompson's claim. After a hearing on the matter, the circuit court granted the motion. This appeal follows.

We review a grant of summary judgment de novo, using the same methodology as the circuit court. *Estate of Sheppard ex rel. McMorrow v. Schleis*, 2010 WI 32, ¶15, 324 Wis. 2d

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<sup>2</sup> Thompson was not physically present during the attempted repossession.

41, 782 N.W.2d 85. Summary judgment is proper if there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. *Id.*; WIS. STAT. § 802.08(2).

Here, we are satisfied that the circuit court properly granted summary judgment to Exeter. The statute that Thompson relies on provides, “[i]n taking possession of collateral or leased goods, no merchant may ... [c]ommit a breach of the peace.” WIS. STAT. § 425.206(2)(a). This plainly required Exeter’s agents to “tak[e] possession” of Thompson’s car. While Exeter’s agents *attempted* to take possession Thompson’s car, they never actually did so. Without actual possession, there can no liability under the statute for breaching the peace in the process of repossession. *See Hollibush*, 179 Wis. 2d at 805 (recognizing that under the statute, “a creditor may repossess collateral if it does not breach the peace in the process.”).<sup>3</sup>

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>3</sup> To the extent we have not addressed an argument raised by Thompson on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).