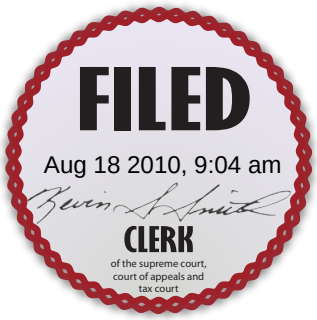

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IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY C. PLATT and SONIA E. PLATT,	)	
Appellants-Defendants,	)	
vs.	)	No. 49A05-1002-PL-148
WACHOVIA DEALER SERVICES, INC.,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Timothy Oakes, Judge
Cause No. 49D13-0905-PL-020903

August 18, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Timothy and Sonia Platt (hereinafter "the Platts") appeal pro se the trial court's dismissal of their complaint against Wachovia Dealer Services, Inc., Wachovia Corp., and Wells Fargo & Co. ("collectively Wachovia"). Citing Indiana Code section 26-2-9-5, the Platts argue that the trial court should have modified their credit agreement with Wachovia. Concluding that the Platts' complaint does not state a claim upon which relief may be granted, we affirm.

Facts and Procedural History

On June 30, 2008, the Platts entered into a Retail Installment Contract and Security Agreement related to the purchase of a 2004 Pontiac Sunfire from Approval Auto Credit, Inc. The contract was then assigned to Wachovia Dealer Services, Inc.[1] Under the contract, the Platts were required to make monthly payments of $238.42 and Wachovia obtained a security interest in the vehicle. The contract also provided that the Platts could "prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full." Appellee's App. p. 9. The Platts did not make monthly payments as required under the contract, but did allegedly make weekly payments on their account.

On May 4, 2009, the Platts filed pro se a complaint against Wachovia in Marion Superior Court. The Platts alleged that Wachovia had engaged in abusive business practices by making harassing telephone calls, failing to make qualified account managers available to the Platts, and attempting to repossess the vehicle purchased under the contract. The Platts requested that the trial court modify their credit agreement with Wachovia to "reduce monthly payments by approximately $25.00 so loan repayment falls

[1] Wachovia Corporation was purchased by Wells Fargo & Co. in 2008.

within the reduced budget that [the Platts] currently find themselves working with." Appellant's App. p. 5. The Platts also requested that the court remove past due charges from their account and "recapitalize any past due amount that may exist." Id.

In its Answer, Wachovia alleged that the Platts had failed to state a claim upon which relief could be granted. Wachovia then filed a motion for judgment on the pleadings and a motion for summary judgment. The trial court held a hearing on all pending motions on December 10, 2009.

On January 4, 2010, the trial court issued an order dismissing the Platts' complaint without prejudice. Specifically, the order provides:

> The Court was initially inclined to deny all pending motions. Defendant's Motion for Judgment on the Pleadings, Defendant's Motion for Summary Judgment, Plaintiff's Motion for Summary Judgment, if there was one, and Plaintiff's Motion for Default Judgment. However, after hearing arguments from both sides, the Court need not reach a decision on those motions. The Court finds that the Plaintiffs fail to state a legal claim upon which relief may be granted pursuant to Indiana Trial Rule 12(B)(6).
>
> Plaintiff's argument may be summed up by the following: we are not in a position to pay per the original terms of our loan. We have been making payments, albeit not to terms. We want the Court to stop the Defendants' collection practices that we deem abusive and modify the agreement unilaterally. This Court does not believe any legal justification exists for such requests. In a worse case scenario, a Court might infer that Plaintiffs are merely trying to stall or prolong the inevitable: the repossession of their car. The Court does NOT make that finding; however, we do find that Plaintiffs have failed to state a legal claim upon which relief may be granted.

Appellant's App. pp. 18-19. The Platts now appeal pro se.

Discussion and Decision

The trial court dismissed the Platts' complaint after concluding that they failed to state a claim upon which relief may be granted pursuant to Trial Rule 12(B)(6). A civil

action may be dismissed under Trial Rule 12(B)(6) for "failure to state a claim upon which relief can be granted." Such a motion tests the legal sufficiency of the claim, not the facts supporting it. Charter One Mortgage Corp. v. Condra, 865 N.E.2d 602, 604 (Ind. 2007). Review of a trial court's grant or denial of a motion based on Trial Rule 12(B)(6) is de novo. Babe's Showclub, Jaba, Inc., v. Lair, 918 N.E.2d 308, 310 (Ind. 2009). We view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the nonmovant's favor. Id. A complaint may not be dismissed for failure to state a claim upon which relief can be granted unless it is clear on the face of the complaint that the complaining party is not entitled to relief. Id.

The Platts argue that the trial court erred when it failed to recognize that Indiana Code sections 26-2-9-4 and 5 allow debtors to assert claims for equitable relief against creditors. Section 26-2-9-4 provides:

> (a) A debtor may assert:
> (1) a claim for legal or equitable relief; or
> (2) a defense in a claim;
> arising from a credit agreement only if the credit agreement at issue satisfies the requirements set forth in subsection (b).
>
> (b) A debtor may assert a claim or defense under subsection (a) only if the credit agreement at issue:
> (1) is in writing;
> (2) sets forth all material terms and conditions of the credit agreement, including the loan amount, rate of interest, duration, and security; and
> (3) is signed by the creditor and the debtor.

Section 26-2-9-5 provides:

> A debtor may bring an action upon an agreement with a creditor to enter into a new credit agreement, amend or modify a prior credit agreement, forbear from exercising rights under a prior credit agreement, or grant an extension under a prior credit agreement only if the agreement:

(1) is in writing;
(2) sets forth all the material terms and conditions of the agreement; and
(3) is signed by the creditor and the debtor.

The Platts misconstrue section 26-2-9-5 to argue that under that statute, the trial court was allowed to unilaterally modify their written credit agreement with Wachovia. To the contrary, section 26-2-9-5 is a statute of frauds that simply provides that a credit agreement may be amended or modified only via a written agreement containing all material terms and conditions that is signed by the creditor and the debtor. Moreover, it is well settled that a "court, even in equity, cannot make a new contract for the parties, or add new terms thereto." Ballew v. Town of Clarksville, 683 N.E.2d 636, 640 (Ind. Ct. App. 1997), trans. denied (citing Puetz v. Cozmas, 237 Ind. 500, 507, 147 N.E.2d 227, 231 (1958) ("The court cannot re-write and then enforce contracts which, to the knowledge of the court, the parties themselves did not enter into.")).

For these reasons, we conclude that the trial court did not err when it dismissed the Platts' complaint pursuant to Trial Rule 12(B)(6) for failure to state a claim upon which relief may be granted.

Affirmed.

RILEY, J., and BRADFORD, J., concur.