

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 7, 2003

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. 03-0023
STATE OF WISCONSIN**

Cir. Ct. No. 02-SC-008805

**IN COURT OF APPEALS
DISTRICT IV**

CITIFINANCIAL, INC.,

PLAINTIFF-RESPONDENT,

v.

SAMANTHA LEE CURTIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
MARYANN SUMI, Judge. *Affirmed.*

¶1 DEININGER, P.J.¹ Samantha Curtis appeals a small claims judgment in favor of plaintiff Citifinancial, Inc. Curtis contends the trial court erred in granting summary judgment because Citifinancial's complaint did not

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2001-02). All references to Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

comply with the requirement under WIS. STAT. § 425.109(1)(d) that it contain “the figures necessary for computation of the amount” due on the consumer credit transaction at issue. We conclude that the complaint complied with the statute and the trial court did not err in granting Citifinancial’s motion for summary judgment. We therefore affirm the appealed judgment.

BACKGROUND

¶2 Curtis borrowed \$4,874.24 from Citifinancial, Inc. She defaulted after making six payments on the consumer loan. When Curtis failed to respond to a notice of right to cure the default, Citifinancial filed a complaint in small claims court for the outstanding balance. The complaint alleged that “as of August 13, 2002 the balance due on the account of the defendants with the plaintiff was \$4,783.07,” and further that the “amount was computed by applying all payments made by defendant against the unpaid balance including interest and late charges and fees as provided for in the contract of the parties.”

¶3 The complaint attached and incorporated copies of the original loan contract, the notice of right to cure and a record of payments made. The loan contract disclosed the principal amount borrowed, the annual interest rate, the total finance charge, and a “total of payments” figure. The “total of payments figure” was the sum of the principal amount borrowed and the total finance charge, i.e., the total of the interest that would accrue and be paid if all specified monthly payments were made when due over the four-year term of the loan. The computer-generated record of payments noted the date and amount of each of Curtis’s six payments and the resulting “New Balance” after each payment. The amount shown as the loan balance remaining after Curtis’s last payment (\$7,190.00) reflected the “total of payments” disclosed in the loan contract less

Curtis's payments, as opposed to the actual amount of principal and accrued interest outstanding at that time.²

¶4 Curtis answered the complaint alleging that it should be dismissed because it failed to meet the pleading requirements of WIS. STAT. § 425.109(1)(d).³ Curtis contended the complaint did not include the "figures necessary" to compute the amount Citifinancial claimed to be due (\$4,783.07). Citifinancial moved for judgment on the pleadings and supplemented its motion with an affidavit from a manager averring that the figures necessary to compute the outstanding loan balance were provided in the complaint. The manager also explained and demonstrated in the affidavit how the outstanding loan balance could be calculated using only data from the complaint and its attachments.

¶5 Because Citifinancial submitted the affidavit, the trial court treated its motion as one for summary judgment. The court concluded that the complaint met the WIS. STAT. § 425.109(1)(d) pleading requirements, and it granted summary judgment to Citifinancial for \$5,000.⁴ The court entered judgment accordingly and Curtis appeals.

² Because the record of payments attached to the complaint was somewhat difficult to read and showed amounts only to the nearest dollar, Citifinancial submitted a more readable and precise version "as an Amendment to the Complaint."

³ WISCONSIN STAT. § 425.109(1)(d) provides, in relevant part, that a "complaint by a creditor to enforce any cause of action arising from a consumer credit transaction shall include ... [t]he actual or estimated amount of U.S. dollars or of a named foreign currency that the creditor alleges he or she is entitled to recover and the figures necessary for computation of the amount." Section 425.109(3) in turn provides that a "judgment may not be entered upon a complaint which fails to comply with this section."

⁴ The trial court concluded (see footnote 5) that it was beyond dispute that the amount due for principal and accrued interest as of the final hearing on Citifinancial's motion exceeded the \$5,000 small claims jurisdictional limitation. *See* WIS. STAT. § 799.01(1)(d).

ANALYSIS

¶6 We review a trial court’s grant of summary judgment de novo, applying the same methodology as the trial court. *See M&I First Nat’l Bank v. Episcopal Homes Mgmt., Inc.*, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See id.* at 496-97; WIS. STAT. § 802.08(2). We will reverse a decision granting summary judgment only if we determine that either (1) material facts are in dispute, or (2) the trial court incorrectly decided legal issues. *Coopman v. State Farm Fire & Cas. Co.*, 179 Wis. 2d 548, 555, 508 N.W.2d 610 (Ct. App. 1993). We conclude neither is the case here.

¶7 Curtis does not argue on appeal that any material facts are in dispute so as to preclude summary judgment.⁵ Thus, the only issue before us is whether the trial court correctly concluded that Citifinancial’s complaint included the “figures necessary for computation of the amount” due on Curtis’s loan, as WIS. STAT. § 425.109(1)(d) mandates. Curtis argues the complaint was deficient in this regard, while Citifinancial contends its complaint fully complied with the statutory requirement. Resolution of this dispute thus requires us to interpret and apply § 425.109(1)(d) to the allegations of and attachments to Citifinancial’s complaint. This is a question of law that we decide de novo. *See State v. Setagord*, 211 Wis. 2d 397, 405-06, 565 N.W.2d 506 (1997).

⁵ Curtis contended in the trial court that there was a factual dispute regarding the actual balance due because various calculations differed by several dollars. The trial court concluded that none of the “different ways” to calculate the balance due “are so widely diverse that they give a material issue of fact as to whether the amount of \$5,000 as we sit here in court today is due. There is no material issue of fact here.”

¶8 Curtis relies primarily on *Household Finance Corp. v. Kohl*, 173 Wis. 2d 798, 496 N.W.2d 708 (Ct. App. 1993), where we reversed an order for summary judgment because a creditor’s complaint did not include the “figures necessary for computation of the amount” due as required by WIS. STAT. § 425.109(1)(d). See *id.* at 802-03. The creditor’s complaint in *Kohl* included the amount of principal and interest claimed due, as well as a figure for the per diem interest accrual. *Id.* at 799. It did not, however, include a record of the payments the debtor had made. *Id.* at 802. We observed that the creditor “tacitly acknowledged” its complaint was insufficient by introducing at trial an exhibit that, unlike the complaint, included a listing of the payments made. *Id.*

¶9 Curtis argues that our holding in *Kohl* requires a lender of consumer credit to do more than simply attach copies of the note and payment record to its complaint in order to comply with WIS. STAT. § 425.109(1)(d). She also contends that, like the creditor in *Kohl*, Citifinancial tacitly admitted its complaint was insufficient by submitting calculations of the balance due by way of the manager’s affidavit. We disagree with both assertions.

¶10 The purpose of statutory interpretation is to determine the intent of the legislature. *Setagord*, 211 Wis. 2d at 406. If the language of a statute is plain and unambiguous, we need not look beyond that language to determine the legislature’s intent. *Id.* Section 425.109(1)(d) requires that a creditor’s complaint need include only “the figures necessary for computation of the amount” that “the creditor alleges he or she is entitled to recover.” The plain language of the statute does *not* require (or even suggest) that a creditor must provide a step-by-step computation of the balance due, or even instructions on how to perform the calculation.

¶11 As we have noted, Citifinancial’s complaint included the date of the loan, its original principal amount, the applicable interest rate, and the dates and amounts of the payments Curtis made. We agree with Citifinancial (and the trial court) that these are “the figures necessary to compute the amount” due on Curtis’s loan. Unlike the creditor in *Kohl* that supplemented its complaint with an exhibit at trial in order to supply missing information, Citifinancial’s affidavit merely showed how the figures provided in the complaint allow one to arrive at the current balance due on the loan. Thus, the affidavit was not a “tacit admission” of the complaint’s insufficiency, but a demonstration of its sufficiency.

¶12 Curtis, however, points to what she asserts are difficult calculations and to alleged inconsistencies in Citifinancial’s calculations as evidence that the complaint did not contain all of the information required under WIS. STAT. § 425.109(1)(d). Section 425.109(1)(d) does not require, however, that the figures in the complaint be easy to understand, or that any required computations be simple—the statute only requires the complaint to include the “necessary figures.”⁶ Similarly, the variations between the amount alleged to be due in the complaint and Citifinancial’s subsequent calculations do not indicate the complaint lacked the “figures necessary” to compute the amount due. The

⁶ Curtis claims the record of payments attached to the complaint is misleading because it indicates a “balance due” after her last payment that is far different from the amount demanded in the complaint. (See ¶3, above.) Although we conclude that Citifinancial’s complaint withstands challenge under WIS. STAT. § 425.109(1)(d), we do not wish to suggest that we find its complaint to be at all “user friendly.” In particular, the record of payments, both as originally attached to the complaint and as later “amended,” is particularly opaque, as were the computer-generated documents attached to the manager’s affidavit. Although all required information was included with the complaint, the parties, their attorneys and we judges should not have to work quite so hard to separate wheat from chaff. Citifinancial would be well-advised to develop more readable and comprehensible documents for purposes of meeting the statutory pleading requirements, or at least to edit the existing documents prior to use in litigation so as to delete extraneous figures such as the fictitious balance due that no longer applies after a loan is called.

differences apparently result from differing computation methods and rounding techniques, not from any deficiencies in the figures supplied with the complaint.⁷ As we have noted, however, there is no dispute that, as of the final hearing in the trial court, Curtis owed Citifinancial more than \$5,000. (See footnote 5.)

¶13 Finally, Curtis argues that to conclude Citifinancial’s complaint meets the requirements of WIS. STAT. § 425.109(1)(d) undermines the statute’s consumer protection purpose as explained in *Kohl*. See *Kohl*, 173 Wis. 2d at 800-01 (“Consumers are not to be forced to conduct expensive and time-consuming discovery to learn how the creditor computed the amount due.”). Curtis contends that Citifinancial’s decision to simply attach existing documents to its complaint made it extremely difficult for her (and her attorney) to locate “the necessary figures” and thus to verify how Citifinancial arrived at the amount it sought to recover in the complaint. We share Curtis’s displeasure with the lack of lucidity in Citifinancial’s complaint and attachments (see footnote 6), but the legislature has chosen to protect consumers in § 425.109(1)(d) by requiring nothing more of creditors than “that the complaint contain the figures necessary for the debtor to compute how the creditor arrived at the amount claimed to be due.” *Id.* at 801. As we have explained, Citifinancial’s complaint meets that requirement, and whether requirements which go beyond the plain language of the present statute are necessary in order to protect consumers is a question for the legislature, not us, to decide.

⁷ Citifinancial’s counsel explained to the trial court: “I guess we’ve used a half a dozen different methods of calculating the balance. We’ve come up with half a dozen different numbers. The court commissioner also calculated a different balance due. We all use different calculators and start out with different assumptions. But the reality is the numbers are all provided.”

CONCLUSION

¶14 For the reasons discussed above, we affirm the appealed judgment.⁸

By the Court.—Judgment affirmed.

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

⁸ Curtis also requests us to direct the trial court to award her attorney's fees and costs pursuant to WIS. STAT. § 425.308(1). Because Curtis has not prevailed, however, we cannot do so. See *id.*

