COURT OF APPEALS
DECISION
DATED AND FILED

August 9, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2011AP162 **Cir. Ct. No. 2010SC16633**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

EDUCATORS CREDIT UNION,

PLAINTIFF-RESPONDENT,

V.

BRANDON L. GUYTON,

DEFENDANT-APPELLANT,

TOYOTA MOTOR CREDIT CORPORATION,

DEFENDANT.

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

¶1 BRENNAN, J.[1] Brandon L. Guyton[2] appeals, *pro se*, from a small claims replevin judgment granted in favor of Educators Credit Union for repossession of a 2002 Lexus automobile. Guyton argues on appeal that Educators failed to properly notify him that the Lexus was security for the Visa credit card on which he defaulted. We affirm.

BACKGROUND

¶2 The facts here are undisputed. Guyton financed the purchase of a 2002 Lexus by entering into an "Open-End Credit Plan" (some capitalization omitted) with Educators on May 13, 2005. The Plan consisted of a cover page entitled "Advance Receipt" (some capitalization omitted) and nine additional pages setting forth the Plan's terms. The cover page states: "Property given as security for this loan or for any other loan will secure all amounts I owe the credit union now and in the future." Page two of the Plan, which bears Guyton's signature, states: "**Cross-collateralization:** I understand and acknowledge that any and all collateral given in connection with any advances shall secure all amounts I owe the credit union now and in the future." Page six of the Plan states, in bold letters: "**Cross-collateralization: Property given as security under this Plan or for any other loan I have with the credit union will secure all amounts I owe the credit union now and in the future.**" (Some capitalization omitted.)

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] Lynnda Guyton and Toyota Motor Credit Corporation were also named defendants in the replevin complaint. Lynnda was dismissed as a defendant before trial. Only Brandon Guyton appeals.

¶3 On October 10, 2007, while the Open-End Credit Plan was still in effect, Guyton applied to Educators for a VISA platinum credit card. Section ten of the "Educators Credit Union VISA/Mastercard Cardholder Agreement" (some capitalization omitted) states, in bold letters: "**If you have other loans or credit extensions from Issuer, or take out other loans or credit extensions with Issuer in the future, collateral securing those loans or credit extensions will also secure your obligations under this Agreement.**"

¶4 Guyton became delinquent on the VISA credit card, but not on the Open-End Credit Plan. Educators sent Guyton a "Notice of Right to Cure Default" (some capitalization omitted) on April 8, 2010. Guyton's mother Lynnda Guyton then went to Educators with a check to cure the default but refused to pay it to Educators unless Educators released the Lexus as security for the VISA credit card. Educators refused and Guyton never cured the deficiency.

¶5 Educators filed a small claims replevin action on June 1, 2010. Guyton, *pro se*, demanded a trial and a court trial was held on January 18, 2011. Daniel Sadowski, a collections specialist for Educators testified, as did Lynnda and Brandon Guyton. At the trial's conclusion, the trial court granted Educators a replevin judgment and costs. Guyton appealed and petitioned the trial court for a stay pending appeal, which the trial court denied.

DISCUSSION

¶6 Guyton argues that he was not properly informed that the Lexus was security for the Visa credit card because: (1) the Open-End Credit Plan did not say so; and (2) the VISA Cardholder Agreement never mentioned the Lexus by name, which Guyton claims it was required to do under the federal Truth in Lending Act, and its implementing regulations.

¶7 Guyton does not challenge any of the trial court's factual findings. Both agreements, the Open-End Credit Plan and the VISA Cardholder Agreement, were admitted into the record without any objection. Both parties rely on those exhibits in this appeal. Guyton concedes that he was in default on the VISA credit card and received the Notice of Right to Cure Default but did not cure the default.

¶8 Resolution of this appeal depends on our interpretation of the Open-End Credit Plan and the VISA Cardholder Agreement. The interpretation of a contract is a question of law we review *de novo*. *See* ***Dairyland Greyhound Park, Inc. v. Doyle***, 2006 WI 107, ¶16, 295 Wis. 2d 1, 719 N.W.2d 408.

¶9 Guyton's first argument—that the Open-End Credit Plan did not clearly state that any future loans from Educators would be secured by the Lexus—is rebutted by the plain language of the Plan. The Plan clearly states in three places that the collateral for the Plan would secure any future loans from Educators. First, the cover page states: "Property given as security for this loan or for any other loan will secure all amounts I owe the credit union now and in the future." Then, page two of the Plan, which bears Guyton's signature, states: "**Cross-collateralization:** I understand and acknowledge that any and all collateral given in connection with any advances shall secure all amounts I owe the credit union now and in the future." Finally, page six of the Plan states again, this time in bold letters: "**Cross-collateralization: Property given as security under this Plan or for any other loan I have with the credit union will secure all amounts I owe the credit union now and in the future.**" (Some capitalization omitted.)

¶10 There is no ambiguity in the language of any of the three sections. In three places, the Open-End Credit Plan informed Guyton that the collateral for

the 2005 car loan, which he admits he knew was the Lexus, would secure any future loans from Educators. Guyton does not claim confusion about the meaning of any of the Plan's words. The Plan's language is plain and simple and clearly informed Guyton that the Plan's collateral, to wit, the Lexus, would secure "all amounts" owed to Educators "now and in the future."

¶11 Guyton's second argument is two pronged. He argues that: (1) the VISA Cardholder Agreement did not clearly state on its face that the Lexus was collateral for the VISA credit card; and (2) the VISA Cardholder Agreement violated one of the regulations enforcing the federal Truth in Lending Act, by not specifically describing the "item and type" of security for the credit card. Guyton is incorrect on both points.

¶12 First, section ten of the VISA Cardholder Agreement clearly states that security for a previous loan or open-end credit plan with Educators will be used as security for the VISA credit card. Section ten states, in bold letters: "**If you have other loans or credit extensions from Issuer, or take out other loans or credit extensions with Issuer in the future, collateral securing those loans or credit extensions will also secure your obligations under this Agreement.**" None of the language used in section ten is difficult or ambiguous. Guyton does not challenge the meaning of any of the words used. He admits he knew he had the Open-End Credit Plan with Educators that was secured by the Lexus. No reasonable person would have failed to understand that the Lexus secured the VISA credit card.

¶13 As to the second prong of his argument regarding the VISA Cardholder Agreement, Guyton bases this argument on section ten's reference to "Reg. Z § 226.6(c)," otherwise known as 12 C.F.R. § 226.6(c) (2007), one of the

regulations enforcing the federal Truth in Lending Act at the time Guyton entered into the VISA Cardholder Agreement. Based on section ten's description of the regulation, Guyton argues that Educators failed to comply with the federal regulation because it failed to describe the "item or type" of security.[3]

¶14 Section ten of the VISA Cardholder Agreement references the regulation as follows:

> **Security for This Account.** [Note: Under Reg. Z § 226.6(c), open-end creditors must disclose in the initial disclosure statement any "security interests" they have or will acquire: i.e., the fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.]

(Brackets in section ten.) Because the parties assume that the VISA Cardholder Agreement accurately represents 12 C.F.R. § 226.6(c) (2007), we do as well. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995) (we will not develop the parties' arguments for them). The plain language of the regulation, as represented in section ten, merely requires Educators to disclose its security interests. Here, Educators clearly informed Guyton that if he had another loan or credit extension with Educators, which Guyton admits he did, then Educators was going to use that collateral to secure his VISA credit card.

¶15 Contrary to Guyton's argument, the regulation, as set forth in section ten of the VISA Cardholder Agreement, does not require a description of the

[3] Guyton does not develop his federal regulation argument. He relies solely on the statement of the regulation that was provided in the VISA Cardholder Agreement and cites to neither the regulation itself nor any corresponding case law. Educators does likewise.

collateral. Guyton's "item and type" argument fails because it is not a requirement, but is an example of a method of describing the collateral. We note that the reference to "item and type" is made as part of an example ("i.e.") and is the second clause option within the example. What is clearly intended by the regulation is that the creditor let the borrower know that any collateral the borrower put up for any other loan with the creditor is going to be security for this loan or credit extension. Educators did that. We conclude that Guyton incorrectly reads the regulation, as set forth in section ten of the VISA Cardholder Agreement, and that Educators complied with the requirement that it disclose its security interest.

¶16 For the foregoing reasons, we affirm the small claims court.

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