

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 2011

A. John Voelker
Acting 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. 2011AP323

Cir. Ct. No. 2008CV213

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CURTISS N. LEIN, D/B/A ACCEPTANCE MORTGAGE COMPANY,

PLAINTIFF-APPELLANT,

V.

DAVID MASTERJOHN,

DEFENDANT-RESPONDENT,

NICHOLAS D. MASTERJOHN AND RENEE A. MASTERJOHN,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Sawyer County:
ROBERT E. EATON, Judge. *Reversed and cause remanded for further proceedings.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Curtiss Lein, d/b/a Acceptance Mortgage Co., appeals a judgment awarding him monetary relief in this mortgage assignment dispute. Lein claims the circuit court incorrectly calculated the date from which interest was to accrue; incorrectly awarded prejudgment interest at a five percent rate instead of at the note rate of fifteen percent; erred by not requiring the judgment to accrue interest at the note rate between January 12, 2011 and January 25, 2011; and incorrectly disallowed amounts advanced by Lein for payment of delinquent property taxes.

¶2 The respondent, David Masterjohn, has either failed to respond to the alleged errors, or responded by raising defenses rejected by the circuit court at trial. Masterjohn asserts he owes far less than the amount determined by the court. He contends that his duty to pay Lein was not triggered because Lein failed to adequately assign the note and mortgages. These arguments are not properly before us because Masterjohn has not filed a cross-appeal seeking review of the judgment. *See* WIS. STAT. RULE 809.10(2)(b)¹ (“A respondent who seeks a modification of the judgment ... shall file a notice of cross-appeal ...”); *see also Kasten v. Doral Dental USA, LLC*, 2007 WI 76, ¶74, 301 Wis. 2d 598, 733 N.W.2d 300.

¶3 It is a well-established rule that an appellant’s arguments not refuted by the respondent are deemed conceded. *See Shadley v. Lloyds of London*, 2009 WI App 165, ¶26, 322 Wis. 2d 189, 766 N.W.2d 838; *Hoffman v. Economy Preferred Ins. Co.*, 2000 WI App 22, ¶9, 232 Wis. 2d 53, 606 N.W.2d 590;

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Schlieper v. DNR, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994); *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). Because Masterjohn has failed to properly respond to Lein’s arguments, we deem him to have conceded those arguments.

¶4 We therefore remand this matter to the circuit court to modify the judgment in accordance with the following:

1. Lein is entitled to recover accrued interest on the principal amount of \$31,331.23 between September 10, 2004 and December 16, 2009;
2. Interest awarded from December 16, 2009 is to be based on the note rate of fifteen percent; and
3. Lein is entitled to recover the amounts advanced for payment of delinquent property taxes, plus interest.

By the Court.—Judgment reversed and cause remanded for further proceedings.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

