

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

AUGUST 27, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0431-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JERRY'S SEPTIC & EXCAVATING, INC.,

Plaintiff,

G & B MASONRY,

Appellant,

v.

**THORNAPPLE LLC, d/b/a
ALL PHASE CONSTRUCTION, INC.,
ALL PHASE DEVELOPMENT, INC.,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Oneida County:
MARK MANGERSON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. G & B Masonry, a partnership, appeals a trial court order that refused to confirm a sheriff's sale of real estate and instead

dismissed the proceedings.¹ The judgment creditor's complaint sought foreclosure of the construction lien it had on the judgment debtor's real estate, and the judgment creditor succeeded in obtaining a default judgment. The judgment, however, granted only a money judgment and made no mention of the construction lien's foreclosure. Nonetheless, the judgment creditor sought to enforce its judgment against the real estate and eventually obtained a sheriff's sale. G & B Masonry was the only bidder at the sale and immediately tendered \$2,000 partial payment to the trial court clerk.

After the sale but before confirmation, the judgment creditor assigned its judgment to an owner of the judgment debtor, in exchange for the owner's payment of amounts owed the creditor under the judgment. On this basis of this transaction, the trial court refused to confirm the sheriff's sale and instead dismissed the proceedings. The trial court ruled that the case had become moot once the judgment creditor assigned its judgment to an owner of the judgment debtor, despite the fact that G & B Masonry had already tendered payment for its bid at the sheriff's sale. In the trial court's view, it had the power to deny confirmation of the sale, regardless of the fact that G & B Masonry's bid and tender predated the judgment's assignment.

On appeal, G & B Masonry argues that the sheriff's predated assignment of the judgment took precedence over the assignment; this gave G & B Masonry a superior interest in the real estate and compelled confirmation of its otherwise financially sufficient bid. In support of this position, G & B Masonry claims that judgment debtors have no redemption rights in construction lien foreclosure proceedings. In response, the judgment debtor argues that the proceedings were not construction lien foreclosure proceedings, but judgment execution proceedings, in which judgment debtors enjoy redemption rights. We reject G & B Masonry's arguments and affirm the trial court's order.

We conclude that G & B Masonry had no legal basis to compel confirmation of the sale. At the outset, we need not decide whether the judicial sale arose in a construction lien foreclosure proceeding or a standard judgment execution proceeding. We also need not decide whether the judgment had

¹ This is an expedited appeal under RULE 809.17, STATS.

defects that should have invalidated the judicial sale. Even if we accept *arguendo* G & B Masonry's position that the proceedings qualified as a valid construction lien foreclosure sale, we conclude that G & B Masonry had no vested interest that would have required the trial court to confirm the sale. The construction lien statutes do not expressly cover this situation. See ch. 779, STATS. In such circumstances, we apply the pertinent principles of common law or equity jurisdiction. See *Buchner v. Gether Trust*, 241 Wis. 148, 153-54, 5 N.W.2d 806, 809 (1942).

Under longstanding principles of equity jurisdiction, successful bidders at judicial sales acquire no fixed or vested rights in the property. Rather, courts supervising judicial sales have considerable freedom to deny confirmation on equitable grounds in justice to the parties. See *Camden v. Mayhew*, 129 U.S. 73, 82 (1889); *Blossom v. Railroad Company*, 70 U.S. 196, 207 (1865); *In re Lustron Corp.*, 184 F.2d 798, 801 (7th Cir. 1950); *The East Hampton*, 48 F.2d 542, 544 (2d Cir. 1931); *Tennessee v. Quintard*, 80 F. 829, 835 (6th Cir. 1897); *Mayhew v. West Virginia Oil & Oil Land Co.*, 24 F. 205, 215 (C.C.D. W.Va. 1885); see also *Anthony Grignano Co. v. Gooch*, 259 Wis. 138, 141, 47 N.W.2d 895, 897 (1951). Here, several factors provided the trial court an equitable basis to reject G & B Masonry's motion for confirmation and to dismiss the proceedings.

This lawsuit was processed in a confused fashion. The pleadings prayed for a foreclosure judgment, but the trial court signed a money judgment. Thereafter, the judgment creditor took steps to obtain a sheriff's foreclosure sale. The sheriff conducted the sale and accepted G & B Masonry's bid. After the sale, the trial court held a confirmation hearing. The judgment creditor then stated its intent to try to settle the matter with the debtor, and the trial court adjourned the confirmation hearing, without protest from G & B Masonry, which failed to insist that the trial court move ahead and confirm its bid at the sheriff's sale. After the hearing, the judgment creditor settled the dispute with the judgment debtor and assigned the money judgment to one of the judgment debtor's shareholders. These facts permitted the trial court to weigh the equities in the judgment debtor's favor and to reject G & B Masonry's bid.

By the Court—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.