

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**NOVEMBER 12, 1996**

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.

**NOTICE**

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

**No. 96-0874-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**TRI CITY NATIONAL BANK,**

**Plaintiff-Respondent,**

**v.**

**SALVATORE J. PALMISANO,**

**Defendant-Appellant,**

**THOMAS N. ALLEGRETTI and  
MONEY COMPANY OF WISCONSIN, LTD.,  
d/b/a MONEY MORTGAGE COMPANY,**

**Defendants.**

APPEAL from an order of the circuit court for Milwaukee County:  
WILLIAM J. HAESE, Judge. *Reversed and cause remanded with directions.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Salvatore J. Palmisano appeals from an order denying his motion for relief from judgment under §§ 806.07(1)(c) and (h), STATS. The trial court denied the motion, concluding that it lacked jurisdiction to consider the matter because an appeal was already pending in the case. Because the circuit court's order conflicts with § 808.075, STATS., a statute codifying the circuit court's jurisdiction to hear requests for relief under § 806.07 during the pendency of an appeal, we reverse the circuit court's order.

This controversy began when Palmisano co-signed a promissory note with the Gritz Brothers Partnership, the primary maker on the note, in favor of Tri City National Bank (Tri City) in the amount of \$702,322.10. Tri City sued Palmisano, claiming that the Gritz Brothers Partnership had defaulted on the note. Tri City moved for summary judgment. The trial court granted the motion and entered judgment in favor of Tri City. Palmisano filed a motion for relief from judgment. The trial court denied the motion and Palmisano appealed.<sup>1</sup> Palmisano then filed a second motion for relief from judgment, alleging that he had discovered evidence that the judgment was procured by Tri City's fraud.

Following a hearing on the motion, the trial court announced that it lacked jurisdiction to consider the motion because of the pending appeal. The court went on to express its position that, if it had jurisdiction to consider the motion, it would deny the motion for the reasons expressed by the predecessor judge's denial of the first motion for relief.<sup>2</sup> Despite the trial court's expansive oral discussion of the merits of the motion, the written order denying Palmisano's motion was limited to the trial court's determination that it lacked jurisdiction over the motion.

Palmisano's main contention on appeal is that the trial court's order denying his motion under § 806.07, STATS., was erroneous in light of § 808.075, STATS. A motion for relief from a judgment is committed to the wide discretion of the trial court. *Price v. Hart*, 166 Wis.2d 182, 195, 480 N.W.2d 249, 254 (Ct. App. 1991). "If a judge bases the exercise of his discretion upon an error

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<sup>1</sup> *Tri City Nat'l Bank v. Thomas N. Allegretti, et al.*, No. 95-2384.

<sup>2</sup> Palmisano's first motion for relief from judgment was heard and decided by the Honorable John DiMotto. The second motion was heard and decided by the Honorable William J. Haese.

of law, his conduct is beyond the limits of discretion." *State v. Hutnik*, 39 Wis.2d 754, 763, 159 N.W.2d 733, 737 (1968).

Section 808.075(1), STATS., provides that "[i]n any case, whether or not an appeal is pending, the circuit court may act under ... s[. 806.07 ...." This language is clear and unambiguous. The statute specifically identifies matters brought under § 806.07, STATS., as amenable to disposition before the circuit court irrespective of the pendency of an appeal. We conclude, therefore, that the circuit court made an error of law when it concluded that it lacked the jurisdiction necessary to adjudicate Palmisano's motion for relief from judgment because an appeal was pending in the case. It follows, therefore, that the trial court's order must be reversed and the matter remanded for the trial court's consideration of the motion.

*By the Court.*—Order reversed and cause remanded with directions.

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