

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 28, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

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**Appeal No. 2004AP1675**

**Cir. Ct. No. 1999CV9703**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**M&I MARSHALL & ILSLEY BANK,**

**PLAINTIFF,**

**v.**

**KAZIM INVESTMENTS, INC.,  
DAHYABHAI P. PRAJAPATI,  
SATINDER M. SHARMA AND RUNKA SHARMA,**

**DEFENDANTS-APPELLANTS,**

**RESNANT PROPERTIES,**

**RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
MEL FLANAGAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 CURLEY, J. Kazim Investments, Inc., Dahyabhai P. Prajapati, Satinder M. Sharma and Runka Sharma (“Kazim”), appeal from the order confirming the sheriff’s sale and conveying the foreclosed real property to Resnant Properties (“Resnant”). Kazim contends that: (1) the trial court erred because it failed to complete the confirmation hearing upon remand; (2) the trial court erred in confirming the sheriff’s sale without permitting M&I Marshall & Ilsley Bank (“M&I”) to withdraw, amend, or supplement the expert testimony and evidence; (3) Kazim did not waive an objection to either the form of accepted payment at the sheriff’s sale or the insufficiency of the notice announcing the sheriff’s sale; and (4) the trial court erred in confirming the sheriff’s sale without permitting Kazim to introduce evidence regarding “fair value” because Kazim never waived his objection to confirmation of the sheriff’s sale, and because the trial court did not have an adequate record to determine “fair value” and confirm the sheriff’s sale. The trial court did not err in confirming the sheriff’s sale because it properly concluded that Kazim previously waived objections to the confirmation of the sheriff’s sale, the form of payment and notice. Thus, the order confirming the sale is affirmed.

### **I. BACKGROUND.**

¶2 This case involves a property located at 2905 West Wisconsin Avenue in the City of Milwaukee. Situated on the property is a nine-story apartment building in poor condition that once functioned as a drug house and brothel. The property drew the attention of the City, and in 1999 the City brought a public nuisance action against its then-owners. At the time, Kazim held a \$695,000 mortgage on the property; M&I was the lender. Kazim defaulted on the mortgage, and in November 1999, M&I commenced an action against Kazim

seeking foreclosure of the property. On August 24, 2000, a Judgment of Foreclosure was entered.

¶3 Kazim and M&I began to negotiate a resolution that would avoid a sheriff's sale. With the City's approval, Kazim and M&I entered into a stipulation that gave Kazim eighteen months to improve the building. Unfortunately, at the end of the eighteen months, the building's condition was worse than before, and in the spring of 2002, the City ordered all tenants to be removed and that the building be closed down. The building has remained vacant ever since.

¶4 The property was put up for a sheriff's sale. The sheriff's sale was originally set to be held on August 26, 2002, but was ultimately held on September 9, 2002. Kazim was present at the sheriff's sale, but did not bid on the property. Resnant, the owner of the adjacent property, was the high bidder, at \$273,000. Resnant presented a personal check for payment, which the sheriff accepted.

¶5 A confirmation hearing was held on October 23, 2002, to determine whether the \$273,000 sum represented "fair value," as required by WIS. STAT. § 846.165 (2003-04).<sup>1</sup> At the hearing, M&I presented three witnesses who testified regarding the value of the property. One witness testified that it would cost \$800,000 to repair the property, another testified that the current value of the property was between \$155,000 and \$205,000, and a third estimated the value as \$271,000. Kazim objected to the confirmation of the sale, and presented an offer of proof, according to which \$273,000 was a "steal" and a "substantial detriment to those parties currently holding title." Kazim made clear that it would continue

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

to look for a new buyer. Before Kazim was given a chance to present evidence, the hearing was adjourned to November 1, 2002.

¶6 On November 1, 2002, Kazim and M&I explained that they had “in principle” reached an agreement which would allow Kazim to redeem the property and sell it to another purchaser who had made an offer in June of 2002. They requested a two-week adjournment to give them time to work out the deal, and also promised to pay an outstanding tax bill of \$13,700 before the end of the two weeks. Kazim assured the court that it would “waive any further proceedings” and “stipulate to the confirmation of the sheriff’s sale based on the bid”; however, whether this waiver was conditioned on paying the tax bill or completing the deal is in dispute on appeal. Resnant objected to the adjournment. No other evidence was presented. The court adjourned the hearing until November 19, 2002.

¶7 Kazim paid the \$13,700 tax bill by November 19, 2002. At the hearing, however, Kazim and M&I again asked the court for more time. They explained that they had reached a verbal agreement that would be put into writing that afternoon and finalized by the end of that week as a so-called “Plan of Redemption,” involving a complex series of agreements. Trying to convince the court to grant them the extra time, Kazim and M&I assured the court that by November 22, 2002, Kazim would obtain insurance for the property, pay \$30,000, and sign a note guaranteeing that at least \$75,000 would go toward improvements of the property. Kazim assured the court it would waive any objection to the confirmation of the sheriff’s sale and move to confirm it, but whether this waiver was conditioned upon meeting the three conditions or completing the Plan of Redemption is in dispute on appeal. Resnant objected to the Plan of Redemption and sought confirmation of the sale. The court gave Kazim and M&I until

November 22, 2002, and agreed to approve the sale if the agreement was completed by then.

¶8 On November 22, 2002, Kazim and M&I filed an agreement implementing the Plan of Redemption, and informed the court that the three conditions had been satisfied. The court entered an order setting aside the sheriff's sale and approving the Plan of Redemption, thus giving Kazim six months to close the sale and establishing May 23, 2003 as closing date. Resnant filed a motion for stay pending appeal, which the court denied. On February 10, 2003, Resnant filed a notice of appeal.

¶9 Kazim defaulted on the Plan of Redemption<sup>2</sup> before the closing date. The parties were back in court on June 3, 2003, with Kazim, once again, asking for more time. The court refused to grant another extension and ordered a second sheriff's sale, which took place on September 5, 2003. The high bid was \$355,000. Resnant, whose appeal was ongoing, did not bid on the property.

¶10 On December 23, 2003, this court issued a decision reversing and remanding the case to the trial court. *M & I Marshall & Ilsley Bank v. Kazim Inv., Inc.*, 2004 WI App 13, 269 Wis. 2d 479, 678 N.W.2d 322. We determined that “under WIS. STAT. § 846.13 (2001-02), the court had no authority to accept a ‘Plan of Redemption,’ rather than full payment for redemption, and that, in doing so, the court violated [Resnant’s] right to confirmation of its purchase of the property at the sheriff’s sale.” *Id.*, ¶1. We held that “WIS. STAT. § 846.13 provides ‘a “clear and valid” legislative command,’ removing a circuit court’s

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<sup>2</sup> Interestingly, Kazim’s brief fails to make any mention of this default.

discretion to alter the clear and unambiguous prerequisite of full payment for redemption before the sale.” *Id.*, ¶12 (citation omitted).

¶11 On March 2, 2004, Resnant filed a motion for an order confirming the original sheriff’s sale. M&I filed a response. On March 23, 2004, Kazim filed a motion objecting to confirmation, arguing that everyone operated under a mistaken belief regarding occupancy of the building and that this resulted in the property not being sold for a realistic value. Kazim also alleged, for the first time, that insufficient notice of the first sheriff’s sale had been given, with Kazim’s attorney claiming, incorrectly, that this had deprived Kazim from being present at the sale.

¶12 On March 24, 2004, a hearing was held to determine whether the confirmation could proceed or whether review was required to find out whether the sale was for fair value. The issue of whether Kazim had waived an objection to the confirmation was raised. The trial court recalled a waiver:

[I]t certainly is consistent with my memory that, first of all, M and I and [counsel for M&I] never objected. In fact, they presented witnesses in favor of the sale. And that [current counsel for Kazim], who was not representing Kazim Investment at the time, but that Kazim Investment had waived any right to continue with that hearing and present any evidence.

¶13 Acknowledging that Kazim had waived its objection, M&I tried to explain that the waiver was conditional: “what [Kazim] did at that point was waive their right to present evidence based upon the opportunity to work out this arrangement...” Similarly, Kazim asserted that “the waiver occurred only subsequent to the transaction that was being consummated between the bank and [the prospective purchaser].” Based on the assumption that the objection was not waived, M&I and Kazim asked the court for an opportunity to present evidence of

fair value. The court refused and concluded that the issue had been waived: “There’s no doubt in my mind that the record supports the fact they, not only once, but on several different occasions, indicated that they would not proceed in any way, shape, or form with their objection.”

¶14 Kazim raised the issue of notice and maintained that “where apparently there was a change in the date of auction, and we have alleged that, in fact, that change of date was not communicated in a timely manner to the defendant; hence, they were not even available to be at that action.” Resnant’s position was that the issue was waived because it had not been raised previously. The issue of value also resurfaced. Kazim emphasized the fact that the City had changed its position about what would be required for a new owner to take possession of the property. M&I moreover expressed doubt about the October 23, 2002, testimony of one of its witnesses regarding the property’s value. The court was concerned about whether it was within its discretion to consider the issues, and ultimately gave the parties a chance to brief the issue of why the court has the authority to continue a hearing. The court gave the parties until April 19, 2004, to submit their briefs.

¶15 On April 16, 2004, M&I filed a brief, arguing that when Kazim waived its right to object to the confirmation, “all the parties, including the Court, erroneously assumed that the defendant still had the right to redeem the property,” and that the waiver was thus made under a mistake of law. M&I also noted that the court must determine “fair value” even in uncontested cases.

¶16 On April 27, 2004, Resnant filed a response, arguing that the court should dismiss the calls for more hearings and confirm the sale. Resnant noted that M&I had failed to offer any legal authority for ignoring the waiver, and

maintained that there is ample evidence before the court from which to make a determination of fair value.

¶17 On May 3, 2004, fourteen days late, Kazim filed a brief arguing that a hearing date ought to be set because “the waiver was addressed to the redemption ... not the sheriff’s sale”; the proceedings do not show that Resnant’s offer “represents fair market value at the time of sale”; and there has not been a full confirmation hearing and due process mandates a determination of whether the sheriff’s sale constitutes fair market value at the time of the sale. Kazim reasserted the argument that the date of the sheriff’s sale was not adequately “published,” and presented a new argument, that the laws of a sheriff’s sale were violated when the sheriff accepted a personal check, even though the Milwaukee County Sheriff’s Sale directives require a certified check, cashier’s check or cash as payment.

¶18 On May 13, 2004, a final hearing was held. At the hearing, Kazim’s attorney admitted that, contrary to his previous statement that a lack of notice had made his client unable to attend the first sheriff’s sale, his client had indeed been present at the sale. He now explained that the lack of proper notice had instead prevented other bidders from attending. Kazim then raised the issue of the sheriff having accepted a personal check, but admitted that the issue had not been previously raised. Kazim also once again argued that the waiver was conditional.

¶19 The trial court addressed Kazim’s arguments regarding sufficiency of notice and form of payment, and concluded that these objections were waived because Kazim had failed to raise them in time. The trial court addressed “fair value,” and after finding that it had “a full record on the value of the property,” concluded that “fair value at the time of the sale was the value of which the



Resnant Properties did bid ... on the property.” The court was satisfied that “the sale should be confirmed at that price.” Referencing this court’s decision, the court also noted that Resnant’s “right to confirmation” meant it had “an obligation to confirm the sale.” *Kazim*, 269 Wis. 2d 479, ¶1. The trial court thus rejected all of Kazim’s arguments, and issued an order confirming the sale to Resnant. Kazim filed a motion to reconsider, which the trial court denied. Kazim now appeals the order confirming the sale.

## II. ANALYSIS.

¶20 Kazim contends that the trial court erred in confirming the sheriff’s sale. This court reviews the trial court’s confirmation of a sheriff’s sale under an erroneous exercise of discretion standard. *Gumz v. Chickering*, 19 Wis. 2d 625, 633, 121 N.W.2d 279 (1963). As we recently explained in *Bank of New York v. Mills*, 2004 WI App 60, 270 Wis. 2d 790, 678 N.W.2d 332, “[i]t is well settled that the decision to confirm a judicial sale following a foreclosure is vested in the broad discretion of the trial court,” and may be denied “if there is an apparent inadequacy in the price which was caused by mistake, misapprehension or inadvertence on the part of the interested parties or possible bidders.” *Id.*, ¶8. “Foreclosure proceedings are equitable in nature, and the circuit court has the equitable authority to exercise discretion throughout the proceedings.” *Id.* “This discretion extends even after confirmation of sale, if necessary, to provide that no injustice shall be done to any of the parties.” *Id.*

¶21 Prior to confirming a sheriff’s sale, the trial court has an obligation under WIS. STAT. § 846.165(2), to determine whether the property in question is sold for “fair value.” Section 846.165(2) provides:

In case the mortgaged premises sell for less than the amount due and to become due on the mortgage debt and costs of sale, there shall be no presumption that such premises sold for their fair value and no sale shall be confirmed and judgment for deficiency rendered, until the court is satisfied that the fair value of the premises sold has been credited on the mortgage debt, interest and costs.

¶22 In *Bank of New York*, we explained the standard to be used in determining what constitutes “fair value”:

“Fair value” of a property is not the same as “market value” but rather a value determined by the property’s sale value. The inquiry must be what an able and willing buyer will reasonably pay for the property for the use to which the property has been or reasonably may be put. “Fair value” does not mean that value which the property may probably have in the future under more favorable economic conditions or that value which it may have if the property be remodeled and put to other or more extensive uses which possibly may prove more profitable.

The language of Wis. Stat. § 846.165(2) that “no sale shall be confirmed and judgment for deficiency rendered until the court is satisfied that the fair value of the premises sold has been credited on the mortgage debt, interest and costs” has been interpreted by the supreme court to mean nothing more than “such reasonable value as does not shock the conscience of the court.”

*Bank of New York*, 270 Wis. 2d 790, ¶¶10-11 (citations omitted).

A. *Kazim Waived an Objection to the Confirmation of the Sheriff’s Sale*

¶23 Kazim presents three similar arguments that pertain to the “fair value” of the property, all of which allege that, following remand, the trial court

erred in confirming the sheriff's sale without allowing the introduction of evidence of fair value.<sup>3</sup>

¶24 Kazim's first argument alleges that, on remand, the trial court misinterpreted this court's decision in assuming that it was required to confirm the sale, and failed to apply the *Bank of New York* standard that gives it the "equitable authority to exercise discretion" to prevent injustice in determining that it was not necessary to continue the confirmation hearing. *Id.*, ¶8. Kazim claims that the injustice is "the difference between the amount of the balance on the mortgage and Resnant's bid," and that the trial court thus "erred in failing to complete the confirmation hearing" before confirming the sale.

¶25 Kazim's second argument alleges that there was a "mistake, misapprehension or inadvertence" on the part of M&I's experts as to the value of the property due to their reliance on the City's position regarding preconditions to occupancy, which led to an inadequate sale price, *see id.*, and that the trial court thus erred in confirming the sale without allowing M&I to withdraw, amend, or supplement the expert testimony and evidence.

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<sup>3</sup> With respect to the first two arguments, Kazim appears to suggest a standard of review other than erroneous exercise of discretion by asserting that this case presents "an error of law" due to "[t]he trial court's misunderstanding as to the directions on remand, and its authority to retain jurisdiction over the confirmation of the sheriff's sale even after the hearing ..." (citation omitted). Relying on *First Wis. Nat'l Bank of Oshkosh v. KSW Invs., Inc.*, 71 Wis. 2d 359, 364, 238 N.W.2d 123 (1976) (citation omitted), which held that "a discretionary order made by a trial court as a result of an erroneous view of the law may be reversed without establishing an abuse of discretion," Kazim asserts that here the trial court's decision "may be reversed without establishing an abuse of discretion." The trial court did not misunderstand this court's directions, and there was no "error of law." The proper standard of review remains erroneous exercise of discretion.

¶26 Kazim’s third argument maintains that the trial court erred in not permitting Kazim to introduce evidence of “fair value” because the objection to the confirmation of the sheriff’s sale was not waived, and because the trial court did not have an adequate record based upon which to make a determination of “fair value” in order to confirm the sheriff’s sale.

¶27 Underlying the above arguments is the assumption that Kazim did not waive an objection to the confirmation of the sheriff’s sale, expressed as part of Kazim’s third argument.<sup>4</sup> In other words, implicit in these arguments is that because the objection to the confirmation was not waived, Kazim can argue that the trial court erred in confirming the sheriff’s sale without permitting the introduction of evidence of “fair value.” The three arguments thus hinge on our determination of whether the objection was in fact waived. We therefore begin by addressing whether Kazim waived the objection to the confirmation of the sheriff’s sale.

¶28 Kazim maintains that after the October 23, 2002, confirmation hearing, the trial court twice adjourned the proceedings to allow Kazim and M&I to work out a Plan of Redemption: on November 1, 2002, Kazim agreed to waive their objection to the sale only if they did not pay an outstanding \$13,700 tax bill by the next hearing; and on November 19, 2002, Kazim agreed to waive the objection to the sale only if they failed to obtain insurance, sign a note and pay \$30,000 by November 22, 2002. Kazim insists that they specifically agreed to

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<sup>4</sup> The three arguments pertaining to “fair value” that Kazim puts forth are organized as first, second and fifth. The issue that in reality should have preceded arguments regarding the introduction of evidence of “fair value,” namely, whether Kazim waived its objection to the confirmation of the sheriff’s sale, is buried in Kazim’s fifth and last argument.

waive the objection only if the conditions precedent were not performed, and that because they were performed, there is no waiver. We disagree.

¶29 It is well settled that failure to make a timely objection constitutes a waiver. *Allen v. Allen*, 78 Wis. 2d 263, 270, 254 N.W.2d 244 (1977). This case involves a waiver not by a failure to object, but rather, an explicit, intentional statement not to object. It appears undisputed that on November 1, 2002, and November 19, 2002, Kazim promised to waive an objection to the confirmation of the sheriff's sale in order to convince the trial court to adjourn the hearing. What is disputed, however, is whether these promises were conditional.

¶30 The record indicates that the assurances by Kazim and M&I were why the trial court, on both November 1 and November 19, 2002, agreed to grant their requests for more time to work out a Plan of Redemption. Clearly, it was the Plan of Redemption, not merely the conditions, that the trial court expected Kazim to reach and complete – it would make little sense to view the conditions agreed to on November 1 and 19, 2002, in a vacuum, as though fulfilling them would avoid a waiver regardless of whether anything materialized from them. Following remand, the trial court, on multiple occasions, indicated that it was unpersuaded by the claim that Kazim's waiver would take effect only if the requirements established on November 1 and 19, 2002, were not met, and instead, believed the waiver would take effect if the Plan of Redemption did not work out. On March 24, 2004, the court made the following remarks:

I understand that there was a good reason why they waived it, but they waived it. There's no doubt in my mind that the record supports the fact they, not only once, but on several different occasions, indicated that they would not proceed in any way, shape, or form with their objection.

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[W]e can't reach into counsel's mind as [to] why he entered his waiver. But it certainly could be that he was also evaluating the strength of the evidence that he had to present contrary to what had been presented by the plaintiff.

It's not that there was only one thing on the table and that was the only consideration, and it wasn't even overtly the only consideration.

So it's not that simplistic. We're not back there. We are at the point where there is a waiver, there is testimony. The record is clear.

¶31 It is evident that at the hearings on November 1 and 19, 2002, Kazim relied exclusively on the Plan of Redemption, and made no attempts to present other evidence for the court to consider, in order to leave itself a way out in the event that the Plan of Redemption did not work out as planned. As is now clear, the Plan of Redemption did not work out as planned, but failed for two reasons: first, Kazim defaulted on its obligations under the plan, and second, and most importantly, more than six months later, this court concluded that the trial court lacked the authority to approve a plan which allowed for redemption for less than full payment.

¶32 Undoubtedly this court's decision effectively invalidated the Plan of Redemption. As the trial court noted: "I agree with counsel that the Court stated on the record on more than one occasion that this will be confirmed, if your agreement doesn't work, and your agreement didn't work, by virtue of the Court of Appeals. It's out of my hands." This was one of the risks Kazim took in agreeing to waive the right to object in exchange for adjournments to work out the Plan of Redemption.

¶33 We also note that even if we were to assume that meeting the conditions set on November 1 and 19, 2002 were enough to avoid the waiver,

Kazim still failed to live up to its promises by defaulting.<sup>5</sup> Thus, long before our decision, there was nothing left of the Plan of Redemption, and our decision did not undo a working Plan of Redemption.

¶34 Moreover, it is worth mentioning that the trial court seemed to go out of its way to accommodate Kazim and M&I's requests. On November 1, 2002, and again on November 19, 2002, over Resnant's objections, it granted Kazim and M&I more time to work out a deal. Following remand, the trial court gave the parties an additional opportunity to address the court in writing. Kazim's brief was filed fourteen days late, but the trial court, in yet another sign of leniency, apparently overlooked this fact before finally confirming the sale.

¶35 We are satisfied that the trial court did not erroneously exercise its discretion in concluding that Kazim waived its objection to the confirmation of the sheriff's sale.<sup>6</sup> See *Gumz*, 19 Wis. 2d at 633.

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<sup>5</sup> In its reply brief, Kazim attacks the mention of the failed Plan of Redemption, arguing that because this court invalidated the plan, the failure to redeem the property is immaterial for purposes of this appeal. We emphasize that it is not the failure to complete the Plan of Redemption that is the basis for our holding; rather, it is Kazim's waiver.

<sup>6</sup> While we are convinced that Kazim waived any objection to the confirmation of the sheriff's sale, including arguments regarding the adequacy of record to make a determination of "fair value," we note that the trial court had an ample record on which to base such a determination. Kazim claims that the trial court failed to inquire as to what an able and willing buyer would reasonably pay for the property, for the use to which the property has been or reasonably may be put, under *Bank of New York v. Mills*, 2004 WI App 60, ¶¶10, 18, 270 Wis. 2d 790, 678 N.W.2d 332. Kazim maintains that it was prepared to provide evidence to establish that the price was inadequate, and claims that other evidence, including M&I's request to withdraw or supplement the testimony of its experts following the change in position by the City, cast doubt on the evidence on which the court relied when it determined "fair value."

(continued)

¶36 Because the issue of whether Kazim waived the objection to the confirmation of the sheriff's sale must be resolved prior to addressing Kazim's other arguments regarding fair value, and because we conclude that the trial court

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Kazim is correct in observing that "fair value" is determined based on "what an able and willing buyer will reasonably pay for the property for the use to which the property has been or reasonably may be put," but ignores the next sentence: "'Fair value' does not mean that value which the property may probably have in the future under more favorable economic conditions or that value which it may have if the property be remodeled and put to other or more extensive uses which possibly may prove more profitable." *Id.*, ¶10. As the trial court correctly noted, "fair value" is based on what the buyer and seller know at the time. Thus, Kazim's references to the City's change in position regarding the improvements required in order for a buyer to take over the property are irrelevant because all such changes occurred after the sheriff's sale.

The trial court, on several occasions, expressed that it had an adequate record to determine "fair value." On March 24, 2004, it stated: "So at this point in time, I'm not persuaded that the Court has an incomplete record to proceed," and "[t]he court has heard value evidence, and the party who can present evidence contrary to that has waived it, and that is the position of the Court." The court hesitated and rather than proceeding to confirm the sale, in an additional sign of caution, gave the parties one more chance to brief the issues. Not until the May 13, 2004, hearing, after the parties had submitted their briefs – albeit fourteen days late in the case of Kazim – did the court, unconvinced by the arguments, confirm the sheriff's sale. The court made the following factual findings:

Now, these witnesses testified on behalf of the plaintiff at the hearing, and witnesses supported the sale price as fair value for the property; and I think that, based on what we have reviewed in the record, we have a full record on the value of the property.

It's the court's obligation to review the evidence, to be satisfied that the Court has sufficient evidence to determine fair value, and the court has reviewed that evidence; and it is sufficient.

It's far more evidence than I usually see in such cases, but it is very sufficient for the Court to meet that burden and find that fair value at the time of the sale was the value for which the Resnant properties did bid and—on the property—and that the sale should be confirmed at that price; and, based on all the facts and circumstances before me, and the entire record, the Court would agree that the Court, at this time, has a sufficient record, and, according to the court of appeals, and obligation to confirm the sale.



did not erroneously exercise its discretion in finding that Kazim had waived the objection to the confirmation of the sheriff's sale, we do not reach Kazim's arguments for why the trial court should have allowed further evidence of "fair value."

*B. Kazim Waived an Objection to the Form of Accepted Payment at the Sheriff's Sale*

¶37 Kazim also argues that it did not waive an objection to the form of accepted payment at the sheriff's sale. Kazim claims it sought to introduce evidence regarding the form of payment on October 23, 2002, but was not permitted to do so, and argues that "[b]ecause the trial court did not allow [Kazim] to introduce evidence regarding [its] objection to the form of payment accepted by the sheriff at the Sheriff's Sale, [Kazim] cannot therefore be held to have waived this objection." Kazim also explains that on November 1, and 19, 2002, objections were not raised because, in each instance, the trial court adjourned the matter for M&I and Kazim "to work out a plan of redemption," and that on March 24, 2004, an objection was not raised because the trial court's purpose was "to determine how it should proceed following remand," "not to allow the introduction of evidence regarding confirmation of the Sheriff's Sale."

¶38 Kazim also asserts that it was "prepared to testify that if [it] had known that the Sheriff would have accepted a personal check, rather than a certified check, [it] would have bid on the property at the Sheriff's Sale," and claims that its "mistake or misapprehension regarding the form of payment that would be accepted at the Sheriff's Sale prevented him from bidding on the property." See *Bank of New York*, 270 Wis. 2d 790, ¶8. We disagree.

¶39 The sheriff's sale occurred on September 9, 2002, yet the first time Kazim raised an objection to the form of payment was following the first hearing after remand in the belated brief on May 3, 2004. At the May 13, 2004 hearing, Kazim's counsel admitted, when asked by the court whether the issue had ever been raised previously, that it had not – “this issue, to my knowledge, was not raised, initially....” The trial court concluded that the issue had been waived: “This ... needs to be raised in a timely manner. It was never raised in a timely manner, and therefore the court is going to find that those objections to the Court taking action—further action—are denied.” Kazim's justifications for why a timely objection was not made are not convincing, and Kazim provides no authority to support his contention that the waiver should not apply in this case.

¶40 In addition, as the trial court noted, the Milwaukee County Sheriff's Sale Directives, requiring that payment not be in the form of a personal check, were merely “the technical rules of the sheriff's department, which are not established by statute.” The trial court properly declared the objection waived. *See Allen*, 78 Wis. 2d at 270.

¶41 Further, Kazim's assertion that had it been aware that the sheriff would accept a personal check, it too would have bid on the property, is without merit. As the trial court noted on March 24, 2004, this claim was also not timely raised: “And never, as they put forth that position, both in written form and orally and with witnesses, did they ever raise the fact that there could have been another bid by [Kazim]. Never.” In any event, nothing in the record suggests that Kazim was ready and willing to bid, and would have done so had it known that the sheriff would ultimately accept a personal check. Any such suggestion is mere self-serving speculation. Also worth noting is that what led to the sheriff's sale actually being conducted, despite the fact that Kazim and M&I had convinced the

City not to hold a sheriff's sale and entered into a stipulation, was that Kazim defaulted. Kazim does not explain how it could have bid on the property when its own default was the reason the City was forced to hold the sheriff's sale to begin with.

*C. Kazim Waived an Objection to the Insufficiency of the Notice Announcing the Sheriff's Sale*

¶42 Finally, Kazim contends that it did not waive an objection to the insufficiency of the notice announcing the sheriff's sale. On March 24, 2004, in finding that Kazim had waived the objection of insufficient notice, the trial court relied on *Anchor Sav. & Loan Ass'n v. Week*, 62 Wis. 2d 169, 213 N.W.2d 737 (1974). Kazim asserts that the trial court's reliance is "misplaced," and maintains that, unlike this case, in *Anchor*, where the court had ordered a second sale and required notice only to the parties and the highest bidder of the first sale, the objection was deemed waived because the defendant's attorney had been in court when the court ordered that limited notice be provided.

¶43 Kazim also claims that, despite its failure to raise it prior to March 24, 2004, the objection was not waived because it had no reason to raise it, since "the trial court had adjourned previous hearings for M&I Bank and [Kazim] to work out a plan of redemption." Kazim acknowledges that "admittedly [it] did not raise an objection to insufficiency of notice until the March 24, 2004 hearing," but justifies the tardiness by stating that "because the trial court did not allow [Kazim] to introduce any evidence regarding [Kazim's] objection to the confirmation of the Sheriff's Sale, [Kazim] cannot be held to have waived this objection." We again disagree.

¶44 The first time after the September 9, 2002, sheriff's sale that Kazim raised an objection arguing that notice of the sale was insufficient was in its March 23, 2004 motion, after this court remanded the case to the trial court. On March 24, 2004, the trial court observed that Kazim's objection to the insufficiency of notice had been waived because Kazim had failed to raise it: "That he wasn't able to bid because he wasn't present or didn't know about it or didn't receive notice, that never came up; and that was before [the new prospective purchaser] was even in the picture, at least to the Court's knowledge." Similarly, on May 13, 2004, in applying *Anchor*, the court again concluded that the argument had been waived:

There was no discussion of these objections or defects in the earlier proceedings, prior to this Court entering our order; and I think that this is right on point with the cases that [the supreme court has] decided in particular in regard to mortgage issues; and just looking at some cases that I reviewed this week, looking at *Anchor Savings & Loan Association*[, 62] Wis. 2d 169.

"On appeal the mortgagor asserted that the sale should be set aside because she was not given adequate notice" of the sale.

"The Court admitted that the notice given to the mortgagor did not comport with statutory requirements, but stated that: 'We find no objection of record to the provisions imposed by the Court, this despite the fact that counsel for the mortgagor asserts that he was present. The failure of the mortgagor to object upon the record constitutes a waiver.'"

And "because the claim was waived by failure to object to the notice provisions, the order confirming the sale was affirmed" by the Court and again by the court of appeals.

It's a very similar situation that we have here, and whether it's the notice provision or whether it's some violation of the technical rules of the sheriff's department, which are not established by statute, I think that the issues are the same. This ... needs to be raised in a timely manner. It was never raised in a timely manner, and

therefore the court is going to find that those objections to the Court taking action—further action—are denied.

¶45 We see nothing wrong with the trial court’s reasoning, and the manner in which the trial court applied *Anchor* to this situation. Kazim’s explanations for the failure to timely raise the objection do not have merit. The trial court properly declared the objection waived. *See Allen*, 78 Wis. 2d at 270.

¶46 For these reasons, we conclude that the trial court did not err in confirming the sheriff’s sale because it properly concluded that Kazim waived objections to the confirmation of the sheriff’s sale, the form of payment and notice. It is time the interference with Resnant’s “right to confirmation of its purchase of the property at the sheriff’s sale,” occurring more than three years ago, finally come to an end. *See Kazim*, 269 Wis. 2d 479, ¶1. Accordingly, we affirm the order of the trial court.

*By the Court.*—Order affirmed.

Not recommended for publication in the official reports.

