

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 15, 2012

Diane M. Fremgen
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. 2011AP859

Cir. Ct. No. 2003CV3715

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

SWAN SALES CORPORATION,

PLAINTIFF-RESPONDENT,

v.

FREDERICK J. TILLMAN,

DEFENDANT-APPELLANT,

CITY OF MILWAUKEE,

DEFENDANT-RESPONDENT,

**DIANE T. SOMMERS, THOMAS HOLMAN, DAWN T. BRIMLEY,
F/K/A DAWN T. HOLMAN, WESLEY J. MOONEY, JR.,
MARY MOONEY AND TENA BREHMER,**

DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM W. BRASH, Judge. *Affirmed.*

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

¶1 PER CURIAM. Frederick J. Tillman appeals the circuit court's order denying his motion for relief from an order dated March 28, 2007. *See* WIS. STAT. § 806.07 (2009-10).¹ We conclude that Tillman's action is barred by judicial estoppel. Therefore, we affirm the order dismissing this case.

¶2 Swan Sales Corporation sought a judgment of foreclosure against Tillman. A foreclosure judgment was signed by the trial court judge on August 19, 2004. The parties dispute whether the judgment was filed in the office of the clerk of circuit court the same day. *See* WIS. STAT. § 806.06(1)(b). Several years later, Swan and Tillman jointly requested dismissal of the judgment based on a stipulation between them that would have allowed the property to be sold. The circuit court signed the dismissal order on March 28, 2007.

¶3 Tillman has now moved for relief from the order dismissing the case pursuant to WIS. STAT. § 806.07, arguing that the circuit court did not have authority to dismiss the case on March 28, 2007, because the judgment of foreclosure had already been entered. Tillman is apparently attempting to avoid paying for the costs of razing the building because the 2007 sale fell through, so he is responsible for the costs as owner of the building. The circuit court denied the motion, concluding that it had the authority to dismiss the case in 2007 because the foreclosure judgment was never entered and the judgment of foreclosure was never confirmed after expiration of the redemption period as required by WIS. STAT. § 846.30.

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

¶4 We need not address the merits of the parties' arguments because we conclude that Tillman's claim that the circuit court erred in dismissing the foreclosure case in 2007 is barred by the doctrine of judicial estoppel. The equitable doctrine of judicial estoppel "precludes a party from asserting a position in a legal proceeding and then subsequently asserting an inconsistent position." *State v. Petty*, 201 Wis. 2d 337, 347, 548 N.W.2d 817 (1996). The doctrine "is intended to protect against a litigant playing fast and loose with the courts by asserting inconsistent positions." *Id.* (citations and quotation marks omitted). Judicial estoppel may be invoked where: (1) a litigant takes a position clearly inconsistent with an earlier position; (2) the facts at issue are the same in both cases; and (3) the party to be estopped convinced the first court to adopt its position. *Id.* at 348. Here, Tillman contends that the 2007 order dismissing the case is void even though he affirmatively sought the dismissal order in the circuit court and stipulated to the dismissal. Because Tillman's current position is in direct contradiction with his position in 2007 when he actively sought the dismissal, his current claim is barred by judicial estoppel.

By the Court.—Order affirmed.

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

