



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

October 14, 2013

To:

Hon. Guy D. Dutcher
Circuit Court Judge
Waushara County Courthouse
209 S. Saint Marie St.
Wautoma, WI 54982

Melissa M. Zamzow
Clerk of Circuit Court
Waushara County Courthouse
PO Box 507, 209 S. Saint Marie St.
Wautoma, WI 54982

Mark Richard Cummisford
Jaime L. Bouvette
Cummisford, Acevedo & Associates, LLC
6508 S. 27th St., Ste. 6
Oak Creek, WI 53154-1093

Ann U. Smith
Joseph D. Brydges
Melissa Helen Burkland
Michael Best & Friedrich, LLP
P.O. Box 1806
Madison, WI 53701-1806

John D. Finerty Jr.
Michael Best & Friedrich LLP
100 E. Wisconsin Ave., #3300
Milwaukee, WI 53202-4108

Michael J. Ross
Apt. 307
1050 6th Street
Port Edwards, WI 54469

You are hereby notified that the Court has entered the following opinion and order:

2013AP204 JP Morgan Chase Bank, NA v. Michael J. Ross (L.C. # 2010CV61)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Michael Ross appeals an order that denied his motion for relief from a judgment of foreclosure and confirmed the sheriff's sale. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

WISCONSIN STAT. § 806.07 allows the circuit court to reopen an order or judgment based upon various grounds. We review a circuit court's discretionary decision whether to reopen a judgment under § 806.07 with great deference, and will uphold it so long as it was supported by a reasonable basis. *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610.

Here, although Ross does not specify the subsection of WIS. STAT. § 806.07 on which he relies, his primary claim for relief appears to be that the bank misrepresented its standing as the holder of the Ross's mortgage note, based upon an undocumented or possibly fraudulent conveyance. Such a claim could fall under § 806.07(1)(c), relating to fraud, or under § 806.07(1)(b), relating to newly-discovered evidence, depending upon when Ross obtained the information underlying his motion. The deadline for seeking relief from a judgment based upon either of those subsections is one year. WIS. STAT. §§ 806.07(2) and 805.16(4).

The circuit court explained that it was denying Ross's motion for relief from the judgment of foreclosure because Ross had waited two and one-half years after the judgment to file his motion and had provided no evidentiary affidavits or other discernible basis for relief. Since the two and one-half years Ross had waited to file his motion plainly exceeded the one-year deadline, the circuit court was well within its discretion to deny relief on the grounds that the motion was untimely, without addressing the merits of Ross's claim.

Since Ross has presented no claim of any reversible error relating to the confirmation sale itself, we have no basis to set it aside.²

IT IS ORDERED that the order denying relief from the foreclosure judgment and confirming the sale of the foreclosed property is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals

² Although Ross's motion for relief from the judgment was properly denied for the reasons set forth above, we identify certain anomalies in JP Morgan Chase Bank's arguments addressing the 2010 foreclosure judgment and whether the record established a prima facie case that the bank was entitled to judgment. First, the bank stated in its summary judgment materials that Ross admitted in his answer that the bank is the holder of the note. However, such an assertion is a legal conclusion unsupported by relevant assertions of fact. "Holder" is a legal term that means, in the context of this case, "[t]he person in possession of a [note] that is payable either to bearer or to an identified person that is the person in possession." WIS. STAT. § 401.201(2)(km)1. Nothing in the complaint, including the allegations that Ross admitted, alleges that the bank possessed the note. While the bank on appeal asserts that it possessed the note, we see nothing in the record that supports this statement. Second, there is nothing in the attorney affidavit that the bank submitted in support of its motion that provides the foundation for the default amounts that were presented to the circuit court.