COURT OF APPEALS
DECISION
DATED AND FILED

March 25, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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* § 808.10 and RULE 809.62, STATS.

No. 98-1428

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

PATRICK DEMAURO,

PLAINTIFF-APPELLANT,

V.

PETER R. SZUKIS AND PATRICIA A. SZUKIS,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Waushara County: LEWIS MURACH, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

PER CURIAM. Patrick DeMauro appeals from a judgment dismissing his mortgage foreclosure complaint against Peter R. Szukis and Patricia A. Szukis. DeMauro claims the trial court erred in concluding that the parties had earlier made a three-way oral agreement with a bank that had the effect of settling the Szukises' obligation to DeMauro. We reject the argument and affirm.

Based on evidence adduced at trial, the trial court concluded that the Szukises' debt to DeMauro was extinguished by an agreement that arose from other litigation involving what was then known as Union State Bank. The bank held a mortgage on property owned by the Szukises, including some of the same property on which DeMauro held a mortgage. The bank filed a foreclosure action against the Szukises which also named DeMauro as a junior lienholder. DeMauro filed an answer which raised an issue about the priority of the bank's mortgage.

According to the trial court's findings, DeMauro and Peter Szukis met with two representatives of the bank and reached an agreement to resolve the case. As part of that agreement, DeMauro agreed to accept certain pieces of equipment from Szukis in exchange for withdrawing his answer in the bank's foreclosure action and releasing his mortgage on the Szukis property. The court described this as a three-way agreement, and, to establish consideration, its decision discussed the ways in which each party gave up and received something in this agreement. We need not detail the full scope of the agreement here. However, it is clear from the court's discussion that it did not find that each party had a mutual exchange of consideration with each of the other parties; rather, this was a group of "interlocking agreements" in which each party, at a minimum, gave consideration to one party and received it from another.

DeMauro argues that the agreement is not a bar to his foreclosure action because Szukis did not give consideration to him. However, DeMauro does not argue that there cannot exist a three-way agreement in which parties give consideration to one party but receive it from another. Such an agreement does not appear impossible: "It matters not from whom the consideration moves or to whom it goes. If it is bargained for and given in exchange for the promise, the promise is not gratuitous." RESTATEMENT (SECOND) OF CONTRACTS § 71 cmt. e

(1981). Therefore, we conclude that even if it is true that DeMauro received no consideration directly from Szukis, the agreement can still be binding. DeMauro does not dispute the trial court's finding that each of the three parties, including himself and Szukis, gave and received consideration in some form. Therefore, we affirm the trial court's finding of an agreement.

DeMauro also argues that the trial court erred by not granting his summary judgment motion before trial. Summary judgment methodology is well-established and need not be repeated here. *See, e.g.,* ***Grams v. Boss***, 97 Wis.2d 332, 338-39, 294 N.W.2d 473, 476-77 (1980). We reject the argument. The affidavits opposing the motion created a triable issue of material fact, at least as to the defense that eventually prevailed at trial.

By the Court.—Judgment affirmed.

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