

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 21, 2013**

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. 2011AP2645**

**Cir. Ct. No. 2007CV14137**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**TRI CITY NATIONAL BANK,**

**PLAINTIFF-RESPONDENT,**

**v.**

**TROY D. EASLEY,**

**DEFENDANT-APPELLANT,**

**THELMA I. EASLEY, THE TROY D. EASLEY #1 LIMITED  
PARTNERSHIP, THE TROY D. EASLEY #2 LIMITED PARTNERSHIP,  
THE TROY D. EASLEY #5 LIMITED PARTNERSHIP, TOTAL COMFORT  
OF WISCONSIN, INC., CITY OF MILWAUKEE AND NED'S PIZZA  
PERFECTA, INC.,**

**DEFENDANTS.**

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APPEAL from an order of the circuit court for Milwaukee County:  
MAXINE A. WHITE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Troy D. Easley appeals the circuit court order confirming a sheriff's sale of two properties. Easley argues that the circuit court erroneously exercised its discretion in failing to hear his equitable arguments during the confirmation hearing. We disagree and affirm.

### ***Background***

¶2 Ned's Pizza Perfecta, Inc. issued a note, secured by mortgages on Easley's home and his business property, to Tri City National Bank. Ned's defaulted on the note, and in November of 2007, Tri City commenced a foreclosure action, naming Easley and others as defendants. In its complaint, Tri City alleged that Easley executed a personal guaranty, which made him responsible for the amounts owed to Tri City. The defendants filed an answer asserting, as an affirmative defense, that the action was inequitable.

¶3 The circuit court granted Tri City's motion for summary judgment in February 2009 and entered a judgment of foreclosure. No appeal followed.

¶4 Three days prior to the confirmation hearing in September of 2011,<sup>1</sup> Easley, then acting *pro se*, filed a complaint against Tri City alleging predatory lending practices, a breach of Tri City's fiduciary duty, misrepresentation, and a breach of the duty of good faith and fair dealing. As part of his lawsuit, Easley sought a temporary restraining order that would prevent the foreclosure action, or any subsequent eviction, from occurring.

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<sup>1</sup> Substantial delays between the judgment of foreclosure and the confirmation hearing were caused by several bankruptcies involving Easley and his various partnerships.

¶5 In addition to filing the separate lawsuit, Easley appeared at the confirmation hearing with an offer to purchase and requested that the circuit court adjourn the confirmation hearing to afford him time to present the offer to Tri City. The circuit court denied Easley’s request for additional time, did not entertain his equitable arguments, and confirmed the sheriff’s sale. Easley now appeals.

### *Discussion*

¶6 “Wisconsin statutes provide for a foreclosure action that has two steps: The judgment of foreclosure and sale, and the proceedings after the judgment.” *Shuput v. Lauer*, 109 Wis. 2d 164, 171, 325 N.W.2d 321 (1982). “The order confirming the sale, though a part of the foreclosure action, is distinct from the judgment of foreclosure and sale.” *Id.* To put it succinctly: “[T]he judgment of foreclosure and sale determines the rights of the parties and disposes of the entire matter in litigation ... [while] confirmation proceedings are more logically characterized as an execution of judgment.” *Id.* at 172. As such, “the judgment of foreclosure and sale is a final judgment appealable as a matter of right,” and “the order confirming the sale is a final order appealable of right.” *Id.* An appeal from the latter order “enables the appellant to challenge the proceedings subsequent to the judgment of foreclosure and sale, not the judgment itself.” *Id.*

¶7 Whether to confirm a foreclosure sale is a discretionary decision left to the circuit court. See *Baumgarten v. Bubolz*, 104 Wis. 2d 210, 218, 311 N.W.2d 230 (Ct. App. 1981). It is well known that “we generally look for reasons to sustain discretionary determinations.” *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610 (citation and one set of quotation marks omitted).

¶8 Easley argues that the circuit court erroneously exercised its discretion in failing to hear his equitable arguments during the confirmation hearing. In his briefs, Easley makes vague references to Tri City’s “unclean hands,” noting “improprieties in both how Tri City made and maintained the loan.”

¶9 Although Easley asserts that the inequities relate to actions occurring after the judgment of foreclosure, we are not convinced. Instead, we agree with Tri City that this appears to be an attempt by Easley to blame the circuit court for his own failure to litigate his alleged equitable defenses in the context of the judgment of foreclosure. As Tri City points out, Easley chose not to raise any equitable defenses in response to its motion for summary judgment.<sup>2</sup> The time for appealing the judgment of foreclosure has long since expired. *See* WIS. STAT. § 808.04 (2011-12).<sup>3</sup>

¶10 During the confirmation hearing, the circuit court explained to Easley that the question before it was whether there was fair value for the properties. *See* WIS. STAT. § 846.165(2) (requiring courts to find “fair value” before confirming a sale in cases where the mortgaged premises sell for less than the amount due and to become due on the mortgage debt and costs of sale). The circuit court continued:

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<sup>2</sup> Instead, in their response to Tri City’s motion for summary judgment, the defendants argued: (1) one of the properties being foreclosed on was homestead property requiring a twelve-month redemption period; (2) Tri City had to first sell the commercial property being foreclosed on and then sell the homestead property; and (3) the defendants were entitled to a withholding of judgment or a stay on the execution of judgment against the business property involved until the redemption period had run.

<sup>3</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

This is a 2007 civil lawsuit. You were sued in 2007. They [i.e., Tri City] followed all of the rules.... The issues you raise have nothing to do with the legal issue before the court.... [T]he issues before this court are very lean and very clear. The default [on the note] was already determined. The only reason the confirmation wasn't held was because of bankruptcy.

The circuit court later reiterated that none of the issues Easley was raising would defeat Tri City's right to confirm the sale. We see no error in the circuit court's exercise of discretion.

¶11 In reaching this conclusion, we acknowledge Easley's argument that foreclosure proceedings are equitable up to and through the time the sale is confirmed. *See Family Sav. & Loan Ass'n v. Barkwood Landscaping Co.*, 93 Wis. 2d 190, 202, 286 N.W.2d 581 (1980). Based on the equitable nature of such actions, Easley seemingly concludes he has an absolute right to obtain whatever relief he requests. He writes: "The court, in its failure to allow Mr. Easley to plead his claims, did not allow him to obtain the equitable relief which he rightfully may request." He offers no legal authority to support his claimed entitlement to relief. *See Lechner v. Scharrer*, 145 Wis. 2d 667, 676, 429 N.W.2d 491 (Ct. App. 1988) ("This court need not consider arguments unsupported by citations to authority."). Moreover, as noted above, Easley had an opportunity to

plead his claims—namely, in response to Tri City’s motion for summary judgment—and he failed to do so.<sup>4</sup>

¶12 Easley also claims that the circuit court and Tri City violated his absolute right to redeem until the sale was confirmed. Easley supports this argument by stating that there was “an unorthodoxy in the redemption negotiations” and that “[t]he court should have, in its discretion, investigated these problems with the negotiations to see if Mr. Easley’s allegations had merit, and if his right to redeem was interfered with by Tri City.” Again, Easley seems to believe that that he is entitled to relief based on his vague assertions and that the circuit court is required to investigate. He is wrong in both regards. Furthermore, as Tri City identifies, there is no indication in the record that Easley informed the court of his purported ability to redeem the property. Instead, he simply asked for time to negotiate.

¶13 The circuit court—noting that the case had been pending for approximately four years—properly exercised its discretion when it denied Easley’s request for additional time to present an offer to purchase to Tri City.

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<sup>4</sup> Additionally, we note that on the same date it confirmed the sheriff’s sale, the circuit court consolidated Milwaukee County Case No. 2011CV15157 (Easley’s lawsuit) with Milwaukee County Case No. 2007CV14137 (Tri City’s lawsuit). Consolidated Court Automation Program (CCAP) records related to Easley’s subsequently filed lawsuit reveal that his case was removed from the circuit court’s calendar “at this time” due to the present appeal. (Uppercasing omitted.) *See* Milwaukee Cnty. Case No. 2011CV15157. Regarding his subsequent lawsuit, Easley writes: “In an attempt to have his equitable arguments heard at the confirmation hearing, Mr. Easley filed a complaint with the circuit court, containing allegations of [Tri City]’s improper behavior.” Neither party discusses what, if any, implication this decision will have on Milwaukee County Case No. 2011CV15157.

*By the Court.*—Order affirmed.

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

