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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1133**

Asian Women United of Minnesota,
Respondent,

vs.

Vidhya Shanker, et al.,
Defendants and Third Party Plaintiffs,

vs.

Sinuon Leiendecker, third party defendant,
Appellant,

Tru Thao (Hang) Chanda Sour, et al.,
Third Party Defendants.

**Filed July 1, 2008
Reversed
Worke, Judge
Dissenting, Lansing, Judge**

Ramsey County District Court
File No. C3-03-13016

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Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

On appeal from an order reducing the amount of a judgment against respondent, appellant argues that the district court erred in finding that the judgment was partially satisfied up to the market value of two vehicles that appellant, the sole bidder, purchased at a sheriff's sale for less than fair market value. We agree and reverse.

FACTS

In August 2005, a judgment in the amount of \$25,094.47 was entered against respondent Asian Women United of Minnesota in favor of appellant Sinuon Leiendecker. In February 2006, in furtherance of appellant's efforts to collect on the judgment, the district court issued a writ of execution and a sheriff seized two vehicles from respondent. As required by statute, the sheriff posted notice that the vehicles would be offered for sale at an auction on March 6, 2006. Appellant was the only person who attended the sheriff's sale and purchased the vehicles for \$1 each.

In December 2006, as part of ongoing collection efforts, appellant subpoenaed respondent's executive director to obtain financial information. The executive director failed to comply with the subpoena. In February 2007, appellant moved to hold the executive director in civil contempt of court, to compel postjudgment discovery, and to award attorney fees for postjudgment proceedings. In March 2007, respondent moved the district court to declare the judgment "fully and totally satisfied," arguing that appellant was unjustly enriched by the purchase of the vehicles at the sheriff's sale for \$2.

The district court held a hearing and received affidavits and exhibits concerning the condition and value of each vehicle. The court declined to hold the executive director in contempt, granted appellant's motion to compel postjudgment discovery, and awarded appellant \$1,000 in attorney fees. The court also assigned values to the vehicles—\$10,715 and \$10,305—and reduced appellant's judgment by \$21,020 minus the costs appellant incurred for towing and sheriff's fees related to the purchase. Appellant challenges the district court's reduction of appellant's judgment against respondent in the amount of the value the court assigned to the vehicles.

DECISION

In Minnesota, sheriff's sales are governed by statute. *See* Minn. Stat. §§ 550.04 (setting forth a specific procedure for issuing writs of execution); .12 (taking property into custody); .20 (selling property at a public auction); .051 (2006) (deeming the writ of execution satisfied). The statutes do not expressly authorize courts to reduce a judgment on the basis of a creditor purchasing the debtor's property at a sheriff's sale for less than fair market value. Questions concerning the authority of district courts are legal issues subject to de novo review. *State v. Pflepsen*, 590 N.W.2d 759, 763 (Minn. 1999).

In its order, the district court did not identify a legal basis for assigning values to the vehicles appellant purchased at the sheriff's sale and for deeming appellant's judgment partially satisfied by approximately \$21,000. The record indicates that the court believed that the vehicles were worth more than \$2 and that the sale proceeds should have gone further to satisfy the judgment. Although we agree that appellant paid a nominal price for the vehicles, and there was no objection made at the time of sale or

for one full year after the execution sale, we conclude that the district court erred when it reduced the judgment against respondent by approximately \$21,000 based on the value it assigned to the vehicles.

The statutory scheme governing execution sales indicates that courts are to play a specific, limited role. The statutes authorize courts to require debtors to disclose information about their assets, to hold a debtor in contempt for failure to comply with a judgment, to issue a writ of execution, and to “enter the record of the satisfaction upon the judgment docket” when a judgment has been satisfied in whole or in part. Minn. Stat. §§ 550.011, .02, .04, .051, subd. 2 (2006). The statutes do not authorize district courts to evaluate whether a sale price is just and, in any case, do not authorize courts to determine the fair market value of property that was purchased at a public sale and to reduce the creditor’s judgment by an amount greatly exceeding the price actually paid at the sale.

Minnesota caselaw confirms that courts have limited authority to interfere with execution sales. *See Northland Pine Co. v. N. Insulating Co.*, 145 Minn. 395, 399, 177 N.W. 635, 637 (1920) (“It is the purpose of the law that judicial sales should be final.”). An execution sale may be set aside when “[t]he inadequacy [is] so great as to shock the conscience.” *Id.*, 177 N.W. at 636. However, when a sale is fairly conducted, it will not be set aside merely because the bid was for less than the property’s value. *Stearns v. Carlson*, 162 Minn. 469, 470, 203 N.W. 212, 212 (1925).

Respondent does not assert that the sheriff’s sale here was irregular or improperly conducted. Respondent also did not pursue any of the remedies provided for by law. It did not attend the sheriff’s sale to bid against appellant. And, to date, it has not filed a

motion to vacate or set aside the sale. Rather, respondent waited more than one year after the sheriff's sale to take any legal action, and it acted then only in response to appellant's motion to compel postjudgment discovery, in furtherance of continued collection efforts. Allowing the judgment debtor, by a responsive motion brought one full year later, to seek satisfaction of the judgment far in excess of the price paid at a public sheriff's sale, to which no timely objection was made, is clearly inconsistent with the statutory scheme governing postjudgment supplementary proceedings.

Respondent also argues that appellant acted inappropriately in the underlying litigation and that respondent is, therefore, entitled to relief from the sheriff's sale. But none of the caselaw related to setting aside a sheriff's sale authorizes that relief on the basis of conduct in the underlying litigation, wholly unrelated to the sale itself. *Cf. Northland Pine Co.*, 145 Minn. at 399, 177 N.W. at 636 (indicating that sale may be set aside if price paid is so inadequate that it shocks the conscience); *Lay v. Shaubhut*, 6 Minn. 273, 6 Gil. 182, 189-90 (1861) (setting aside execution sale when sheriff mistakenly advertised and sold wrong real property). Participation in a sheriff's sale is completely independent from the underlying action that gave rise to the judgment, and strangers to the action are entitled to participate. *See* Minn. Stat. § 550.18 (2006) (requiring sheriff to give public notice of sale). A party seeking relief from a judgment has other remedies, including appellate review and a motion to vacate under Minn. R. Civ. P. 60.02. Recognizing, as respondent urges, an independent basis for seeking relief from a sheriff's sale based on the judgment creditor's conduct in the underlying litigation would result in an unjust and unauthorized burden on our district courts. Respondent

cites no authority permitting the district court—long after the judgment has become final and the sale has been held—to evaluate the facts of the underlying litigation, determine whether a party is deserving of equitable relief, and assign values to assets accordingly. Moreover, the district court in this case did not indicate that it based the relief granted on any conduct by the judgment creditor in the underlying litigation.

Based on the facts of this case, we conclude that the district court acted beyond its limited authority under the execution-sale statutes when it reduced the judgment by \$21,020 minus certain costs.

Reversed.

LANSING, Judge (dissenting)

The district court, in an ongoing proceeding for the enforcement of a judgment for indemnification of attorneys' fees, exercised its equitable powers by crediting the judgment debtor for an undisputed deficiency in the sale price of two vans that were owned by the judgment debtor and seized and sold at a sheriff's sale at which the judgment creditor purchased them for the grossly inadequate price of \$1 each. On this record—where the grossly inadequate price shocks the conscience and the judgment creditor effectively waived any statutory right to a resale—the district court acted within its equitable powers to deem the judgment partially satisfied, and I would affirm.

First, the district court relied on a firmly established line of caselaw to provide equitable relief. “[I]t is quite uniformly the rule in this country, as in England, that while equity will not set aside a [judicial] sale for mere inadequacy of price, it will do so if the inadequacy [of price] is so great as to shock the conscience.” *Gelfert v. Nat'l City Bank of N.Y.*, 313 U.S. 221, 232, 61 S. Ct. 898, 902 (1941).

Minnesota has generally followed this uniform rule. The supreme court's early decisions recognized that in the exercise of “well-established equitable principles” a judicial sale may be set aside if “the inadequacy of the price bid is so great as to raise an inference of unfairness.” *Johnson v. Avery*, 60 Minn. 262, 264, 62 N.W. 283, 284 (1895); *see also Merchants' Bank of Lake City v. Moore*, 68 Minn. 468, 469, 71 N.W. 671, 671-72 (1897) (affirming district court's refusal to confirm sale on basis that “assets were sold at grossly inadequate prices”).

The supreme court expanded this doctrine in later cases to recognize that allegations of mere inadequacy of price are also a sufficient basis to set aside a judicial sale, but only if there are additional circumstances against its fairness such as chilled bidding. *Northland Pine Co. v. N. Insulating Co.*, 145 Minn. 395, 399, 177 N.W. 635, 636 (1920); *see also Stearns v. Carlson*, 162 Minn. 469, 470, 203 N.W. 212, 212 (1925) (holding that judicial sale will not be set aside merely because bid was less than property's value, when sale is fairly conducted and owner has right of redemption).

In more recent years, the supreme court has indicated that sheriff's sales should not be invalidated when a redemption period is available to protect the debtor. *See In re Nelson*, 495 N.W.2d 200, 202-03 (Minn. 1993) (holding that execution sale will not be set aside after expiration of redemption period when no irregularity in conduct of execution sale and when debtor had one-year period in which to redeem); *Guidarelli v. Lazaretti*, 305 Minn. 551, 553, 233 N.W.2d 890, 891 (1975) (holding that after expiration of redemption period, inadequacy of price without fraud or irregularity will not invalidate sale); *Kantack v. Kreuer*, 280 Minn. 232, 240, 158 N.W.2d 842, 848-49 (1968) (rejecting argument that price was grossly inadequate but suggesting that mortgagor's one-year right to redeem may require elements in addition to price inequity to invalidate sale). But it is undisputed that Asian Women United of Minnesota (Asian Women) did not have any redemption period on the sale of their vans during which they could reclaim their property by paying the judgment creditor, Sinuon Leiendecker, \$2 for their vans, which they valued at \$32,000.

The undisputed value of the two vans establish that the \$1 paid for each of them is so grossly inadequate that it shocks the conscience. As the district court trenchantly observed, the vans “are seemingly worth quite a bit more than a dollar.” Based on figures provided from the Kelley Blue Book and an evaluation of the condition of the vans, the district court valued the 2002 Nissan at \$10,715 and the 2002 Toyota Sienna at \$10,305. Leiendecker does not dispute the accuracy of this valuation.

Under well-established caselaw the disparity between the value of the vans and Leiendecker’s \$1 purchase price for each van amounts to a gross inadequacy of price that shocks the conscience and provides a basis for the district court to fashion equitable relief. In Minnesota, disparities of significantly lesser amounts have been held to shock the conscience. *See Merchants’ Bank*, 68 Minn. at 469, 71 N.W. at 671 (recognizing gross inadequacy that shocks conscience when real and personal assets exceeding \$100,000 were sold for aggregate sum of \$11,289); *Johnson*, 60 Minn. at 263, 62 N.W. at 283 (recognizing gross inadequacy that shocks conscience when property valued at \$8,000 sold for \$1,500); *In re Strawberry Commons Apartment Owners Ass’n*, 356 N.W.2d 401, 405 (Minn. App. 1984) (recognizing that sheriff’s sale purchase for five percent of condominium equity is grossly inadequate and shocks conscience). This determination of gross inadequacy is also consistent with decisions in other states. *See Burge v. Fid. Bond & Mortgage Co.*, 648 A.2d 414, 419 (Del. 1994) (describing Delaware standard that provides that courts must apply special scrutiny when property sold at sheriff’s sale fails to secure bid for at least fifty percent of fair market value, and, when fair market value of property is over twice sales price, price is considered grossly

inadequate, shocking conscience of court, and justifying setting aside sale); *World Sav. & Loan Ass'n v. Amerus Bank*, 740 N.E.2d 466, 474 (Ill. App. Ct. 2000) (referring to example of price inadequacy of one-sixth of property's appraised value as alarming disparity that shocks conscience and resulted in affirmation of district court's refusal to confirm sale); *Hurlock Food Processors v. Mercantile-Safe Deposit & Trust Co.*, 633 A.2d 438, 454 (Md. Ct. Spec. App. 1993) (referring to eleven percent ratio of sale price to fair market value and twenty-five percent ratio as inadequacy that "in and of itself" required that sheriff's sale not be ratified); *Pisano v. Tupper*, 591 N.Y.S.2d 888, 889 (N.Y. App. Div. 1992) (recognizing sale price of one-sixteenth of farm's value as shocking conscience of court and entitling defendant to recovery as matter of law). In summary, the caselaw demonstrates that the district court acted well within the bounds of its discretion when it set aside the sheriff's sale.

Second, Leiendecker waived any right to a new sheriff's sale. Although the ordinary remedy would involve vacating the previous sale and holding a new sale, Leiendecker's actions made this impractical. As a result, the same equitable powers that authorize a resale also authorize the district court to credit the value of the property against the debt. At the joint hearing on Leiendecker's motion on proceedings subsequent and Asian Women's countervailing motion seeking relief for the unjust enrichment and gross inadequacy of the sheriff's sale, the district court asked Leiendecker's attorney whether Leiendecker still had the vans or whether they had been sold. Leiendecker was at the hearing and told the district court that the vans were in the process of being sold. The district court indicated that they could proceed in that fashion

and “whatever amount is obtained” would then be “credited against this judgment,” less the time and expense of the sheriff’s sale and the sheriff’s fees. When Leiendecker’s attorney communicated that to Leiendecker, she said that she was not in the process of selling the vans and had “no intention” of selling them. At that point, the district court could properly conclude that Leiendecker had waived any right to a resale. Her evasive conduct threatened to needlessly extend the litigation. Although Leiendecker submitted an affidavit on the condition of the vans and indicated that she might give one of the vans to a family member or trade in the vans on the purchase of other vehicles, the affidavit provided no estimate or evidence of their value. The district court made its decision based on evidence submitted on the Blue Book values and the condition of the vans. That valuation is not disputed on appeal. On these facts, the district court properly exercised its discretion to credit the value of the vans against the judgment.

I fully agree with the majority’s position that sheriff’s sales serve important and vital purposes in our legal structure and that rights of all parties, particularly third parties, must be carefully guarded in these processes. Although the equitable power of a court to set aside a judicial sale has long existed, a quick survey of the caselaw confirms that Minnesota courts have appropriately exercised that equitable power only infrequently and sparingly. But it is the availability of the equitable relief that preserves the integrity of the process. I similarly recognize that in some circumstances, institutional or systemic considerations, which rest on equally significant principles, outweigh the simple task of justice. But that is not the circumstance in this case. No third party’s rights have been put at risk in these proceedings between Asian Women and Sinuon Leiendecker, the

organization's former director. The judgment which Leiendecker seeks to enforce is the judgment for funds to be used in indemnification for attorneys' fees in litigation over her unsuccessful attempt to unilaterally replace the board of directors after the board terminated her employment. *See Leiendecker v. Asian Women United of Minn.*, 731 N.W.2d 836 (Minn. App. 2007). The district court entered judgment for indemnification of attorneys' fees following a procedural default for Asian Women's failure to proceed on claims against Leiendecker after the organization's attorney, on Leiendecker's motion, was disqualified as counsel because he was a potential witness on Asian Women's claim for attorneys' fees and Leiendecker's claim for indemnification.

The district court that granted equitable relief for the grossly inadequate sales price was involved in the earlier stages of the proceedings and was familiar with the entire course of litigation. The district court followed the law and carefully and sparingly exercised the district court's inherent equitable powers. The decision should be affirmed.