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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A06-1650**

Ahmed Demmaj,  
Appellant,

vs.

Grace M. Elasky,  
Respondent.

**Filed January 15, 2008  
Affirmed  
Shumaker, Judge**

Ramsey County District Court  
File No. C1-04-3904

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Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and Worke, Judge.

**UNPUBLISHED OPINION**

**SHUMAKER**, Judge

Appellant contract-for-deed vendee contends that the district court erred in ordering the release to respondent vendor of sums deposited in connection with appellant's declaratory-judgment action challenging a cancellation of the contract.

Because the court had the authority to require a bond deposit and to determine the scope of its coverage, the court did not err in ordering the release of the deposit to cover items other than contract-for-deed arrearages. Accordingly, we affirm.

## FACTS

Midway Smorgasbord, Inc. sold a parcel of real estate to appellant Ahmed Demmaj on contract for deed and then assigned its vendor's interest to a trust, now represented by respondent Grace Elasky. The purchase price of the property was \$350,000, payable in the sum of \$50,000 approximately two weeks after the inception of the contract and monthly installments of \$2,500, with interest, thereafter. Demmaj admits that he fell into arrears on his payments during the last quarter of 2003.

Because Demmaj had not cured his defaults, on January 6, 2004, Elasky served him with a notice of cancellation of the contract for deed and told him that the contract would be cancelled as of March 7, 2004, unless he brought it current.

Demmaj did not cure the defaults, and Elasky brought an eviction action in the Ramsey County Housing Court. Demmaj responded by suing for declaratory judgment in which he sought the district court's determination that the purported cancellation of the contract for deed was null and void and that, upon his payment of the balance owing, he was entitled to a deed to the property. He also moved, in the eviction action, for a stay of that action pending the outcome of the declaratory-judgment action. *See Real Estate Equity Strategies, LLL v. Jones*, 720 N.W.2d 352, 359-60 (Minn. App. 2006) (noting that while an eviction court can stay the eviction proceeding, a district court in the related proceeding "would be ideally situated" to determine whether to enjoin the eviction

proceeding). The housing court granted the stay, allowing Demmaj to retain exclusive possession of the property.

Seven days after the housing court granted the stay of the eviction proceeding, Elasky moved the district court in the declaratory-judgment action for an order requiring Demmaj to post a bond, or to deposit cash with the court, “for the amount of arrears in the Contract for Deed payments as of the time of the Notice of Cancellation.” At a hearing on the motion, Demmaj’s attorney argued that, if there is a cancellation of a contract for deed, the vendor cannot also recoup the arrearages that caused the default underlying the cancellation. But he indicated that if a bond were going to be required, “it will be on a stipulation that, if the contract for deed is voided then that amount will be paid over to the vendor, but if it is not voided by the Court the amount will be given back to the vendee.” Elasky’s attorney noted that the arrearages as of the date of the purported cancellation were approximately \$29,000, a sum which Demmaj apparently disputed, and that Demmaj would have possession of the property “rent free” potentially for a year. He then argued that, if the court declared the cancellation void, Elasky would be entitled to the amount secured by a bond or a deposit. Although Demmaj disputed whether there were any arrearages owing, he agreed that he would either post a bond or make a cash deposit into court. The court then ordered Demmaj to deposit with the court \$20,000, but did not explicitly specify the purpose of the deposit. According to the record, he paid \$20,000 by check into court.

Subsequently, Elasky moved to increase the amount of the deposit to include projected arrearages, costs and disbursements, and the rental value of the property. The court denied the motion.

The district court later granted summary judgment to Elasky, ruling that Demmaj had defaulted on the contract for deed and had failed to cure the default, and, thus, the contract for deed was cancelled. Demmaj appealed from the summary judgment, and the district court set a supersedeas bond in the amount of \$300,000. Demmaj was unable to post the bond, and he vacated the premises. In January 2006, the court of appeals affirmed the summary judgment. *See Demmaj v. Elasky*, No. A04-2424, 2006 WL 163441 (Minn. App. Jan. 24, 2006), *review denied* (Minn. Mar. 28, 2006).

While the declaratory-judgment action was pending, Elasky entered into a purchase agreement with another party to sell the property. Closing was delayed pending the resolution of the case.

After the appellate decision, Elasky moved the district court for an order releasing the \$20,000 deposit to her as partial reimbursement for the costs and losses she incurred during the stay of the eviction. These included real estate tax payments, a property-insurance premium, and lost rental income. Demmaj made a cross-motion for the return of the deposit to him.

At a hearing on the motion, Elasky argued that the deposit covered, in part, the costs she incurred as a result of having been deprived of the possession and use of her property during the eviction stay. Demmaj, on the other hand, contended that, because it

had been finally determined that the contract for deed was cancelled, the cancellation was the proper remedy and Elasky could not also collect arrearages.

Ruling that the deposit was to cover damages that Elasky might suffer as a result of not being able to regain possession of her property and any damages she might incur in the declaratory-judgment action, the district court ordered the release of the \$20,000 deposit to Elasky. Demmaj appeals from that order.

### **D E C I S I O N**

Demmaj raises four issues on appeal. First, he contends that the district court erroneously equated the eviction stay with a temporary injunction under the contract-for-deed cancellation statute and thereby misapplied the law as to a bond requirement. Second, he argues that, under the election-of-remedies doctrine, once the court ruled that the contract for deed had been cancelled, it was improper to allow the deposit to be used to reimburse contract payments in default. Third, the district court awarded the deposit for expenses that the parties had not stipulated to. Fourth, Elasky was bound by her “pleadings” that the \$20,000 deposit was for arrearages and that the deposit would be returned to Demmaj if he failed to show that the contract for deed had not been cancelled.

#### *Bond Requirement*

Demmaj acknowledges that, under Minn. Stat. § 559.211 (2006), the district court may temporarily enjoin the cancellation of a contract for deed, and he does not dispute the court’s authority to require the vendee to post a bond as a condition of such injunctive relief. But he contends that the court cannot require a bond after the cancellation has occurred and that the district court here did exactly that. He claims that the cancellation

was effective in March 2004, and that the court ordered a deposit in May 2004. Although Demmaj fails to identify a standard of review for this issue, it appears that the appropriate standard is that of abuse of discretion. *See Eide v. Bierbaum*, 472 N.W.2d 193, 194 (Minn. App. 1991) (reviewing a district court's grant of injunctive relief under Minn. Stat. § 559.211 for an abuse of discretion).

Demmaj's contention that the district court erred in requiring a bond or deposit is based on two faulty premises. First, he applies the provisions of Minn. Stat. § 559.221, but he never invoked that statute in the district court, and the court never applied it. So, even though the stay of the eviction action had an effect similar to that of a section 559.211 injunction, the stay is not governed by that statute. His second faulty premise is that, when the court ordered the bond or deposit, the contract for deed had already been cancelled. Although the result of the declaratory-judgment action was the district court's ruling that the cancellation was effective as of March 7, 2004, that determination had not been made as of the date of the bond order. The whole point of Demmaj's declaratory-judgment action was to challenge the validity of the purported cancellation. He wanted the cancellation to be declared void and the court to order Elasky to convey the property to him. Thus, at the time of the bond order, the contract for deed was still arguably in effect, and had not been declared otherwise.

Because section 559.211 was not employed here, we consider the propriety of the bond or deposit under the law that was invoked and relied upon, namely, the Uniform Declaratory Judgments Act in Minn. Stat. §§ 555.01 to 555.16 (2006). The Act is remedial "and is to be liberally construed and administered." Minn. Stat. § 555.12. It

grants to the court the authority to “make such award of costs as may seem equitable and just.” Minn. Stat. § 555.10. The court has discretion to decide which costs are reasonable. *Green-Glo Turf Farms, Inc. v. State*, 347 N.W.2d 491, 495 (Minn. 1984). But the court does not have the discretion to refuse to award reasonable costs and disbursements to a prevailing party. *Jostens, Inc. v. Nat’l Computer Sys., Inc.*, 318 N.W.2d 691, 704 (Minn. 1982). If the court has the authority to award costs in a declaratory-judgment action and may not deny reasonable costs, it follows that it may require security for costs during the pendency of the action when it has been shown that costs likely will be incurred but might not be paid. Although the parties here focused specifically on arrearages at first, Elasky’s counsel broadened that focus to include real estate taxes when he filed an affidavit supporting his motion for a bond or deposit. The focus was broadened again when Elasky moved, on June 17, 2004, to increase the deposit amount. Although the court denied the motion, Elasky identified various items sought to be covered by the deposit, including the rental value of the property and “her costs and disbursements, which are estimated to be \$5,000.00.”

Demmaj never specifically objected to posting a bond but argued only that any such bond would have to be conditioned on the return of the funds to him if the court ultimately ruled that the contract for deed had been cancelled. Furthermore, at no time, until the issue of the release of the deposit arose after the declaratory-judgment ruling, did Demmaj ever challenge the bond order as being for improper costs or damages. As Elasky broadened the focus of the bond, Demmaj never contested her view respecting the scope of the bond.

We hold that the district court did not abuse its discretion in requiring a bond or deposit during the pendency of the declaratory-judgment action and the eviction stay. Although Demmaj would ultimately be correct that, if the cancellation were allowed any portion of the deposit for arrearages belonged to him, because of Elasky's election of remedies, the scope of the bond expanded, and the determination of whether it covered only arrearages remained an open question until the court's declaratory-judgment ruling.

*Election of Remedies*

At the hearing on Elasky's bond motion, the parties agreed that, if Demmaj prevailed—meaning that the contract for deed remained in effect—Elasky would be entitled to any money deposited to cover arrearages; and that, if Elasky prevailed, money deposited for arrearages would be returned to Demmaj. Demmaj now correctly argues that, if a contract-for-deed vendor chooses to cancel the contract upon the vendee's default in payments, “the vendor will be held to have elected a remedy and will thereafter be prevented from receiving double recovery by seeking damages for breach of contract.” *Rudnitski v. Seely*, 452 N.W.2d 664, 666 (Minn. 1990).

Because Elasky elected to cancel the contract for deed rather than to allow the contract to remain in effect and sue Demmaj for arrearages, Elasky is not entitled to any portion of the deposited \$20,000 that represents arrearages. Demmaj argues that the entire \$20,000 was for arrearages, but, as discussed above, the scope of the deposit coverage became broadened without objection. Thus, the mere fact that Elasky elected to cancel does not resolve the issue of to whom the deposit proceeds may properly be

released.

### *Stipulated Expenses*

Demmaj argues that the court awarded the deposit to Elasky for expenses the parties had not stipulated to. There was no formal stipulation, at least none that the court appears to have adopted and relied on. The parties did discuss how arrearages would be handled depending on the outcome of the declaratory-judgment action, and they were in agreement as to the disposition of arrearages.

But the court did not specify the precise purpose of the deposit or how the deposit might be distributed at the conclusion of the lawsuit. Nor did the court note any conditions of the bond or any controlling stipulation by the parties. Thus, the record does not support Demmaj's contention that the court violated the purportedly restricted nature of the deposit.

Much confusion, and perhaps further litigation, could have been avoided had the court, with the assistance of the attorneys, clearly indentified the specific authority for the deposit, the purpose of the deposit, any conditions upon which the deposit was based, the event or events that would trigger the release of the deposit, and the party who would ultimately be entitled to the deposit.

### *Entitlement to the Deposit*

Demmaj claims that Elasky is bound by her "pleadings" and, therefore, the deposit could be used only for arrearages. And since the contract-for-deed cancellation has been declared effective, Elasky is not entitled to arrearages.

“Pleadings” are defined in the rules of civil procedure to include complaint, answer, third-party complaint and answer, reply to counterclaim, and answer to cross-claim. Minn. R. Civ. P. 7.01. Nothing in any pleadings in the declaratory-judgment action refers to a bond or deposit.

Presumably Demmaj is referring to other court filings by Elasky, which he mischaracterizes as pleadings. Those various other court filings, consisting of Elasky’s motions and her attorney’s affidavits, show that it was her intent to broaden the scope of the bond or deposit. Demmaj not only had notice of that intent but he never objected to the scope of the bond or deposit, and he never opposed its broadening until the hearing on the issue of the release of the deposit.

Elasky demonstrated that costs and other losses incurred because of the declaratory judgment and the eviction stay, aside from arrearages, exceeded the \$20,000 deposit. Demmaj does not dispute those costs and losses but argues only that they are not what the deposit was to cover. Considering the broadened scope of the bond, it is apparent that the entire \$20,000 could properly apply to items beyond the arrearages. Thus, the district court did not err in releasing the entire deposit to Elasky.

**Affirmed.**