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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0525**

In Re: Purported Financing Statements in the District Court of Ramsey County,
Minnesota, Against Willis R. Juhl and Helen E. Juhl

**Filed February 3, 2009
Reversed
Larkin, Judge**

Ramsey County District Court
File No. 62-CV-07-426

Willis R. Juhl, Helen E. Juhl, 24509 390th Street N.E., Middle River, MN 56737 (pro se appellants)

Lori Swanson, Attorney General, John S. Garry, Assistant Attorney General, 445 Minnesota Street, Suite 1100, St. Paul, MN 55101-2128 (for respondent)

Considered and decided by Larkin, Presiding Judge; Hudson, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

LARKIN, Judge

Appellants challenge the district court's order directing the Minnesota Secretary of State to remove certain purported financing statements so the statements are not reflected in or obtained as a result of any search conducted of the records of the Minnesota

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

Secretary of State. The district court granted the order under the provisions of Minn. Stat. § 545.05 (2006). Because Minn. Stat. § 545.05 applies only to liens and secured transactions covered by Article 9 of the Uniform Commercial Code (UCC) and because the judgment liens at issue here do not fall within the scope of Article 9, relief is not available under section 545.05. Accordingly, we reverse.

FACTS

Respondents Alan Maxson, Karen Locken, Jim Wyatt and Nathan Bergh moved in district court for a determination of the effectiveness of purported financing statements in which they are named as judgment debtors. Respondents' request for relief was based on Minn. Stat. § 545.05, which provides an expedited process to review and determine the effectiveness of financing statements. The specific documents at issue, Filing Nos. 200611866936 and 200611867054 (subject documents), refer to judgment liens for an unpaid judgment issued by the Federal Tribal Circuit Court of the Pembina Nation Little Shell Band in favor of appellants, Willis R. Juhl and Helen E. Juhl, and against Alan Maxson and Karen Locken.¹ The subject documents were filed under the Uniform Commercial Code, Secured Transactions in the office of the Minnesota Secretary of State.

Respondents served their motion papers on appellants Willis R. Juhl and Helen E. Juhl by certified mail as required by statute. Minn. Stat. § 545.05, subd. 3(a). Appellants

¹ The Pembina tribal court judgment names only two of the four respondents, identifying Alan Maxson and Karen Locken in the caption "as agents acting in concert with the Commissioner of Revenue of the Minnesota Department of Revenue." By contrast, the subject documents name each of the four respondents as judgment debtors.

did not respond to the motion or request a hearing within the required 20-day period. *Id.*, subds. 7, 10(b). The district court did not take testimony from any party or provide notice of the district court's review. Rather, the district court determined that it could make a decision based solely on its review of the documentation as provided in Minn. Stat. § 545.05, subd. 10(b). The district court found that the subject documents were filed without the authorization of the named debtors and that the subject documents were therefore ineffective financing statements. The district court ordered the Minnesota Secretary of State to remove the subject documents so the documents are not reflected in or obtained as the result of any search conducted of the records of the Minnesota Secretary of State. This appeal follows.

D E C I S I O N

Minnesota Statute section 545.05 provides an expedited process to review and determine the effectiveness of financing statements. The statute provides that “a financing statement or other record is fraudulent or otherwise improper if it is filed without the authorization of the obligor, person named as debtor, or owner of collateral.” Minn. Stat. § 545.05, subd. 1(a). A person named as a debtor, who has reason to believe that a financing statement or other record is fraudulent or otherwise improper, may move for judicial review of the effectiveness of the financing statement or record. *Id.*, subd. 2. Section 545.05 contains its own procedures for service and filing, and requirements regarding the text of the motion, the motion-acknowledgment form, and the response form. *Id.*, subds. 3, 4, 5, 7. If the identified secured party or person listed as filing the challenged document does not request a hearing on the motion within 20 days of certified

mailing of the motion, “the court’s finding may be made solely on a review of the documentation attached to the motion and without hearing any testimonial evidence.” *Id.*, subd. 10(b).

We have held that Minn. Stat. § 545.05 applies only to security interests or liens covered by Article 9 of the UCC. *In re Purported Fin. Statement in Dist. Court of Ramsey County*, 745 N.W.2d 878, 880-81 (Minn. App. 2008). “By its express terms, section 545.05 is limited to Article 9 secured transactions and liens.” *Id.* at 881. As we explained:

The plain meaning of the language describing section 545.05’s scope is further confirmed by the implausibility of a contrary reading. Under the statute, a lien is fraudulent or improper if it is filed without the obligor’s authorization or consent. Minn. Stat. § 545.05, subd. 1. Unless a very expansive definition of “authorization” is used, all involuntary liens or liens that arise as a matter of law would be fraudulent or improper under the statute and would effectively be eliminated.

Id.

We recognize that neither party addressed the application of *In re Purported Fin. Statement in Dist. Court of Ramsey County* to the facts of this case. We have an obligation, however, to decide cases consistently with existing law, even if the parties did not correctly address the issue. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (“it is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be diluted by counsel’s oversights, lack of research, failure to specify issues or to cite relevant authorities” (quotation omitted));

Greenbush State Bank v. Stephens, 463 N.W.2d 303, 306 n.1 (Minn. App. 1990) (applying *Hannuksela* in a civil case), *review denied* (Minn. Feb. 4, 1991).

Because we have previously held that section 545.05 applies only to liens or security interests covered by Article 9 of the UCC, respondents are not entitled to relief under section 545.05 unless the underlying judgment liens are covered by Article 9. Whether the judgment liens at issue are covered by Article 9 of the UCC raises an issue of statutory interpretation, which we review *de novo*. See *Olmanson v. LeSueur County*, 693 N.W.2d 876, 879 (Minn. 2005) (providing that “construction of a statute is a question of law”). Minn. Stat. § 336.9-109 (2006) affirmatively lists the liens and security interests that fall within the scope of Article 9 as follows:

- (1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) an agricultural lien;
- (3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;
- (4) a consignment;
- (5) a security interest arising under section 336.2-401, 336.2-505, 336.2-711(3), or 336.2A-508(5), as provided in section 336.9-110; and
- (6) a security interest arising under section 336.4-210 or 336.5-118.

Minn. Stat. § 336.9-109(a). The judgment liens at issue here do not fall within any of these categories. Specifically, the challenged judgment liens are not the result of a transaction that created a security interest in personal property or fixtures by contract. *Id.* The judgment liens are not agricultural liens. *Id.* The judgment liens do not arise from a “sale of accounts, chattel paper, payment intangibles, or promissory notes.” *Id.* The judgment liens do not arise from a consignment. *Id.* The judgment liens are not “security

interest[s] arising under section 336.2-401, 336.2-505, 336.2-711(3), or 336.2A-508(5), as provided in section 336.9-110.” *Id.*² Lastly, the judgment liens are not “security interest[s] arising under section 336.4-210 or 336.5-118.” *Id.*³ Thus, the liens arising from the Pembina tribal court judgment do not fall within the scope of Article 9, and respondents are not entitled to expedited review or relief under section 545.05.

Because relief is not available under section 545.05, we reverse the district court’s order on this ground and do not reach appellants’ other claims. We note that our decision is limited to the narrow issue of whether relief is available under section 545.05, given the nature of the liens at issue. We make no decision regarding the validity of appellants’ judgment liens. If respondents wish to challenge the validity of the liens, they must do so through some procedure other than the section 545.05 expedited-review process.

Reversed.

Dated: _____

The Honorable Michelle A. Larkin
Minnesota Court of Appeals

² Minn. Stat. § 336.2-401 (2006) addresses the passing of title from seller to buyer and reservation for security. Minn. Stat. § 336.2-505 (2006) addresses a seller’s shipment under reservation. Minn. Stat. § 336.2-711(3) (2006) addresses a buyer’s security interest in rejected goods. Minn. Stat. § 336.2A-508(5) (2006) addresses a lessee’s security interest in rightfully rejected goods. “[A]s provided in section 336.9-110” refers to security interests arising under article 2 or 2a of the UCC. Minn. Stat. § 336.9-110 (2006).

³ Minn. Stat. § 336.4-210 (2006) addresses the security interests of collecting banks in items, accompanying documents and proceeds. Minn. Stat. § 336.5-118(a) (2006) states that “[a]n issuer or nominated person has a security interest in a document presented under a letter of credit.”