

Case No. A05-2018

State of Minnesota
In Court of Appeals

Mavco, Inc., d/b/a Maverick Construction,

Appellant,

vs.

Rodney Eggink and Karla Eggink,
Wells Fargo Bank, N.A.,
Craig A. Moore and Nicole M. Moore,
and Great River Federal Credit Union,

Respondents.

APPELLANT'S REPLY BRIEF

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ARGUMENT

The basic issue in this case is whether or not the one year statute of limitations contained in Minn. Stat. § 514.12, subd. 3, is applicable to a mortgagee whose interest was not recorded at the time the lien foreclosure action was commenced and who provided its mortgage with notice of a validly perfected mechanic's lien.

Respondent Wells Fargo would have this Court read Minn. Stat. § 514.12, subd. 3, in isolation and thereby hold that the one year limitation is equally applicable to mortgagees who record their interest subsequent to the commencement of the lien action as it is to those whose interests appear of record at the time the action is commenced. In support of its position, the Respondent Wells Fargo cites numerous cases that do hold that the one year limitation is jurisdictional. However, all of those cases deal with encumbrances which were of record at the time the action was commenced. In turn, it is the Appellant's position that it is only those parties with an interest of record at the time the action is commenced who are necessary parties to the foreclosure action, and thus it is only those parties that can avail themselves of the protection of the one year limitation.

As previously argued, Minn. Stat. § 514.11 defines the necessary parties to a lien foreclosure action. The plaintiff is any lienholder who has filed a lien statement of record, and the defendants are the owner and all such other lienholders. The language "all such other" clearly implies those whose interests are recorded.

In turn, Minn. Stat. § 514.12, subd. 2, provides that after filing the Notice of Lis Pendens, no other action for the enforcement of any lien may be commenced and lienholders not named as defendants shall intervene. Minn. Stat. § 514.12, subd. 3, after saying that no person shall be bound by any judgment unless made a party thereto within the year, then goes on to deal with a

separate class of persons, those who are bona fide purchasers or mortgagees. In regard to that class of persons, the statute indicates that the absence of a Notice of Lis Pendens after the expiration of one year is conclusive evidence that the lien may no longer be enforced. Implied in that language is a recognition that if the mortgagee is not "bona fide", or if the Notice of Lis Pendens is of record within a year, the lien may be enforced. The reference to bona fide purchasers or mortgagees also makes applicable the provisions of the Minnesota Recording Act.

In this case, Respondent Wells Fargo is not a bona fide mortgagee. When it issued its mortgage, it did so with legal notice of a validly perfected lien which in fact had already attached to the Egginks' property. By the time Wells Fargo got around to recording its lien, it had legal notice that the action to foreclose on the Egginks' interest was pending. If a mortgagee who has issued its mortgage with notice of a validly perfected lien and who has not recorded its interest at the time the lien foreclosure action is commenced, has the benefit of the one year limitation, then the statute's language concerning bona fide mortgagees would be unnecessary and mere surplusage. Such a conclusion makes no sense under any rules of statutory construction. Clearly Minn. Stat. § 514.12 creates two classes of persons, one whose interests are known or appear of record by the time of the commencement of the action, and another class whose interests are recorded subsequent. As to those, they are protected from the enforcement of the lien only if they are "bona fide", that is without notice of the lien, and only if there is no Notice of Lis Pendens filed before the expiration of the year.

As indicated above, all of the cases cited by the Respondent Wells Fargo deal with entities that had a known or recorded interest prior to the commencement of the action. As such, they are distinguishable. Both the Respondent Wells Fargo and the trial court relied heavily on

the Supreme Court's holding in the case of Morrison County Lumber Co. v. Duclos, 163 N.W. 734 (Minn. 1917). In its brief, Respondent Wells Fargo claims that the Morrison County Lumber case is not distinguishable from these circumstances. In fact, it is. In that case, the revised mortgage was in fact recorded before the lien action was commenced. Notwithstanding the fact that its interest was recorded, the mortgagee was not named within the year. Clearly in that case, the mortgagee was a necessary party under Minn. Stat. § 514.11. As such, it did have the protection of the one year limitation. Here, Respondent Wells Fargo's interest was not recorded until two and a half months after the action was commenced.

The only case that is cited where the one year limitation was held to be applicable to a person whose interest was not of record prior to the commencement of the action is the case of Hokanson v. Gunderson, 56 N.W. 172 (Minn. 1893). While the Court in that case did hold that the Notice of Lis Pendens was not binding on a party with a subsequently acquired interest, it did specifically limit that non-applicability to situations where the party sought to be bound was not a party or claiming under a party to the litigation.

In this case the Respondent Wells Fargo is clearly claiming under the Egginks who were a party to the litigation. Since it issued the mortgage with notice of the lien on the Egginks' interest, Wells Fargo not only had notice of the prior interest under Minn. Stat. § 507.32, but its interest was void as against the prior recorded interest under Minn. Stat. § 507.34.

Contrary to Respondent Wells Fargo's argument, Minn. Stat. § 507.34 is not just applicable to bona fide purchasers. It also is specifically applicable to attachments levied on the property and any judgments lawfully obtained against any person in whose name the title to such land appears prior to the recording of the conveyance. In this case, the lien attached as of the time the Appellant provided the first item of material or labor on the Egginks' property. See

Minn. Stat. § 514.05. It was perfected by the filing of a lien statement prior to the time Respondent Wells Fargo provided its mortgage, and the foreclosure action was commenced before Respondent Wells Fargo had any interest of record. Thus in this case there is not only an attachment, but there is also the legal equivalent of a levy, namely the foreclosure action. When all of these statutes are construed together and applied to these circumstances, it is clear that Respondent Wells Fargo's interest was void as against the Appellant, and the passage of one year cannot and should not be allowed to change that. Because Respondent Wells Fargo's interest was void as against the lien when the action was commenced, it had no protectable legal interest. With the Notice of Lis Pendens being recorded, it had legal notice that the rights of the Egginks under whom Wells Fargo was claiming were being litigated. Wells Fargo should be bound by the results of that litigation whether it was a party or not.

In the alternative, if this Court does hold that the holder of a subsequently recorded interest must be named as a party within the year, then under these circumstances this Court should look at the equities in regard to the Appellant's motion to add Wells Fargo as a party and have that relate back. While the Court may have discretion in regard to this type of motion, the criteria that are set out in the Minnesota Rules of Civil Procedure do provide a check on that discretion. If the criteria for the filing of a supplemental complaint are met, and if the criteria for giving such an amendment or supplemental complaint relation back effect are met, the motion should be granted. Here for reasons previously stated, all of the criteria were met, and the motion should have been granted even if the one year statute was applicable.

Successful prosecution of a mechanic's claim should not be dependent on events occurring after the commencement of the action. To allow those with no protectable interest at the time the action is commenced the benefit of the one year limitation makes prosecution

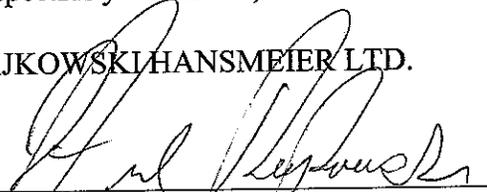
subject to the happenstance of knowledge gained during discovery, encourages subsequent transfer to defeat the lien and puts the burden on the lien claimant to repeatedly update evidence of recorded interests while the action proceeds. The burden in fact should be on those who acquire an interest subsequent to the perfection of the lien. If they want the benefit of the lien, they should comply with the law by recording their interests.

In conclusion, this Court should establish a bright line rule that the one year statute of limitations contained in Minn. Stat. § 514.12, subd. 3, is and can only be applicable to those parties who had a known or recorded interest at the time of the commencement of the action. Such a holding is consistent with the mechanic's lien statute as read as a whole, as well as with the provisions of the Recording Act. A holder of a subsequently recorded interest simply has no legal or equitable reason to insist on the protection of the one year limitation. Legally and equitably, the holder of a subsequently recorded interest who does not meet the requirements of a bona fide purchaser or encumbrancer should take its interest subject to liens which have been validly perfected. Such a holding would enforce the purpose of both the lien statute and the Recording Act.

Dated this 14th day of February, 2006.

Respectfully submitted,

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By 

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