

Case No. A05-2018

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*State of Minnesota*  
***Supreme Court***

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

*Appellant/Petitioner,*

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.*

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**APPELLANT MAVCO, INC.'S, REPLY BRIEF**

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## TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities .....	ii
Argument .....	1
Conclusion .....	5

**TABLE OF AUTHORITIES**

<u>STATUTES</u>	<u>Page</u>
Minn. Stat. § 507.01.....	3
Minn. Stat. § 507.34.....	3
Minn. Stat. § 514.11.....	5
Minn. Stat. § 514.12.....	1, 3, 5
Minn. Stat. § 645.16.....	1
Minn. Stat. § 645.17.....	1, 2
Minn. Stat. § 645.26.....	2
Volume 47 of Am. Jur. 2d, Judgments, § 588 .....	4, 5

## ARGUMENT

“No person shall be bound by any judgment in such action unless made a party thereto within a year.”

This portion of Minn. Stat. § 514.12, subd. 3, is repeated incessantly in Respondent’s brief, and incessantly repeated in isolation. Nowhere is the language of subd. 3 that immediately follows that phrase mentioned, much less explained or distinguished, in regard to the issue at hand. The following language of subd. 3, of course, reads as follows:

and, as to a bona fide purchaser, mortgagee or encumbrancer without notice, the absence from the record of a notice of lis pendens of an action after the expiration of the year in which the lien could be so asserted shall be conclusive evidence that the lien may no longer be enforced.

Contrary to Respondent’s argument, the one year limitation is not absolute or unqualified. In reading the subdivision as a whole, it is obvious that it deals with two classes of persons. The first class is those with protectable interest in the property at the time the lien action is commenced. The second class just as clearly involves those persons who acquire an interest in the property subsequent to the commencement of the lien action. It is clearly those with prior interest who must be named parties within a year, the rights of those who acquire an interest subsequent are controlled by the notice of lis pendens. Indeed, if subsequent encumbrancers also had to be named parties, as argued by the Respondent, then there wouldn’t be any need at all for a notice of lis pendens to be recorded. Under the Respondent’s argument, it would have no effect at all.

To look at isolated provisions of statutes with blinders on is not only unproductive to rational interpretation, it violates specific rules of statutory construction. Minn. Stat. § 645.16 states, “Every law shall be construed, if possible, to give effect to all its provisions.” In turn, Minn. Stat. § 645.17 provides:

In ascertaining the intention of the legislature, the courts may be guided by the following presumptions:

- (1) The legislature does not intend a result that is absurd, impossible of execution, or unreasonable;
- (2) The legislature intends the entire statute to be effective and certain.

Finally, Minn. Stat. § 645.26 mandates that different laws apparently in conflict are to be construed, if possible, so that the effect may be given to both. In regard to a particular statute, if clauses are irreconcilable, then rules of construction require that the clause last in order of position prevails.

These rules of construction not only preclude looking at the one year limitation in isolation, but they also mandate consideration of other applicable statutes. It is frankly unreasonable, if not absurd, to argue, as the Respondent has, that any person who subsequently acquires an interest in property after the commencement of a lien foreclosure action still must be named a party. The Respondent argues that this is true no matter when the person acquires a subsequent interest, whether that is still within the year, or after the year passes. Indeed by the Respondent's logic, the interest could even be acquired after the foreclosure is completed; and, even then, the lien would have no effect because that person was not named in the action within one year.

Clearly the statute, when read as a whole, contemplates a different treatment for those who acquire an interest subsequent to the commencement of the action. Acceptance of the Respondent's argument is not only unreasonable, but it would make difficult, if not impossible, the execution of the lien statute. The difficulties created by this interpretation have been well set forth in the amicus brief as well as in the dissent in the Court of Appeals' decision. To effectively execute the foreclosure provisions of the mechanic's lien statute, parties must have

the ability to determine at a specific point in time who in fact are necessary parties. Those parties should be those with a recorded interest at the time the action is commenced.

The Respondent in its brief not only ignores the complete language of Minn. Stat. § 514.12, subd. 3, but also ignores the clear impact that Minn. Stat. § 507.34 has on this question. Minn. Stat. § 507.34 specifically states that a conveyance not recorded is void as against any subsequent purchaser whose conveyance is first duly recorded. Under the definitions of purchaser and conveyance contained in Minn. Stat. § 507.01, it is clear that the Appellant is a purchaser whose conveyance was recorded prior to the Respondent's interest. Under the definitions in Minn. Stat. § 507.01, conveyance specifically includes every instrument in writing . . . "by which the title to real estate may be affected in law or equity." That definition not only includes the lien statement, but is broad enough to include the notice of lis pendens as well. In turn, Minn. Stat. § 507.01 defines purchaser as every person to whom an interest in real estate is conveyed. In this case, the mechanic's lien statement was recorded in February of 2004, months before the Respondent issued its mortgage. Months before the mortgage was recorded, the Appellant recorded its notice of lis pendens. Under the express language of Minn. Stat. § 507.34 any interest the Respondent Wells Fargo had in the Eggink property at that time was void as against the interests of the Appellant. Because it was void as against the Appellant's lien, there simply was no recognizable interest in the real estate that the Respondent had at that time. A holder of a void interest certainly cannot be considered a necessary party to the lien action who has available to it the protection of the one year limitation.

Importantly all of the case law cited by the Respondent that speaks of the one year limitation being jurisdictional deals with parties who did have a recorded interest in the property at the time the foreclosure action was commenced. Wells Fargo did not. Since its interest was

void it simply did not exist at that time. When it did record its interest in July of 2004, its recorded interest, as a matter of law, was acquired subsequent to the Appellant's lien which had been perfected and was in the process of being foreclosed. The importance of this fact is critical to the resolution of this matter. Case law previously cited by the Appellant interpreting the effect of a notice of lis pendens on someone who acquires an interest in property after the recording of the notice of lis pendens has consistently held that that person takes subject to the results of the action reflected in the notice of lis pendens. That indeed is the purpose of the notice of lis pendens.

It is in this context that the case law interpreting the effect of the notice of lis pendens and the doctrine of privity come together and lead to the same conclusion. The Respondent in its brief denies that it is in privity with the Egginks. This notwithstanding the fact that the validity of the Respondent's mortgage is solely dependent on the Egginks' title. Just as clearly, its mortgage represents an interest in property. While it may not be co-extensive with fee simple title, it represents a recognized lien on the owner's title, and of course is a document that must be recorded to be effective as against subsequent good faith purchasers. Contrary to the Respondent's argument privity, in regard to persons who hold a successive interest in real estate, is not dependent on whether those interests are identical. Rather, the application of the doctrine of privity is dependent on whether or not the person's interest, in that same real estate, as against a third person, was acquired prior to the commencement of an action that affects that real estate. If it did, privity does not exist. If acquired subsequent, however, privity does exist and that party should be bound by the results of the action against a party from whom it acquires that interest. Volume 47 of Am. Jur. 2d, Judgments, § 588 puts it this way:

There is privity within the meaning of the doctrine of res judicata where there is an identity of interest and privity in the estate, so that a judgment is binding as to a subsequent grantee, transferee, lienor, or lessor of the property.

In relation to the Appellant, there is no question that Wells Fargo is a subsequent lienor or mortgagee. It issued its mortgage after the mechanic's lien statement was of record and, as such, its mortgage was subject to that lien. It failed to record its mortgage prior to the notice of lis pendens being recorded making any interest it had in the property void as against the Appellant's interest. While it may have acquired an interest at the time it recorded its mortgage, it was an interest that was acquired subsequent to the commencement of the Appellant's action, at least insofar as the Appellant's rights to the property were concerned. At that point, Wells Fargo clearly had the ability under the lien statute to intervene if it felt it necessary to protect its interest or not as it saw fit. Either way, however, it should be bound by the result of the action against the Egginks.

There is no way under Minn. Stat. § 514.12, subd. 3 that Wells Fargo can claim it was a bona fide subsequent purchaser or mortgagee. It in fact had clear notice of the lien through the recording of the lien statement, and notice that the lien was being foreclosed because of the recorded notice of lis pendens. The record at that point did not show an absence of a notice of lis pendens for one year. It in fact showed the existence of a notice of lis pendens. Because its interest appears of record subsequent to the recorded notice of lis pendens, it should be bound by the result of the action.

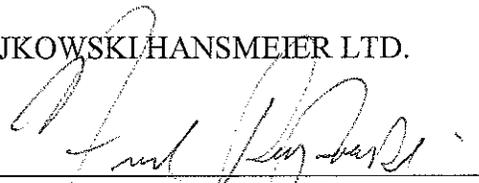
This conclusion does give affect to the recording act as well as the entire provision of Minn. Stat. § 514.12, subd 3. It is consistent with the language of Minn. Stat. § 514.11 describing the parties to a lien action, consistent with the notice of lis pendens statute and the manner in which it has been interpreted by this court, and most importantly consistent with a

reasonable interpretation of the entire statutory scheme as a whole. While this may well involve cobbling together statutes to come up with a result, the rules of statutory construction do require that. Cobblers can and do make good shoes. As the saying goes, if a shoe fits, wear it. In this case, establishing a bright line rule that it is only those with a recorded interest at the time a lien action is commenced who are necessary parties to which the one year limitation applies, is a shoe that fits.

Dated this 29th day of January, 2007.

Respectively submitted,

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