

NO. A05-2083

State of Minnesota
In Court of Appeals

Michael E. Jones and Edith A. Jones,
Appellants,

vs.

Real Estate Equity Strategies, LLC,
Respondent.

APPELLANTS' BRIEF

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LEGAL ISSUES

- I. Did the district court err in denying Appellants' motion to dismiss or stay the eviction proceedings where Appellants had filed an action for rescission under Minn. Stat. Chap. 325N?

The district court denied Appellants' motions notwithstanding that Appellants commenced a suit against to rescind the foreclosure re-conveyance transaction pursuant to the newly enacted Minn. Stat. Chap. §325N.

Apposite Statutes: Minn. Stat. §§325N.01(c)(1)-(c)(2)(2004); Minn. Stat. §325N.18 (2004); Minn. Stat. §§325N.10-.18 (2004).

Apposite Cases: *See In re Real Estate Salesperson's License of Grant*, 2005 Minn. App. LEXIS 196 (Minn. Ct. App. Feb. 22, 2005).

Apposite Legislative History: H.R. Journal 2004, Reg. Sess. No. 75 (March 17, 2004); MN H.R.B. Summ., 2004 H.F. 2095;

- II. Did the district court err in finding the existence of a conventional landlord-tenant relationship between Appellants and Respondent where the lease was part of a foreclosure re-conveyance transaction?

The district court held that Appellants and Respondent were in a traditional landlord-tenant relationship.

Apposite Statutes: Minn. Stat. §§325N.10-.18 (2004); Minn. Stat. §504B.121 (2005).

Apposite Cases: *Beecher v. Spain*, 167 N.W. 793 (Minn. 1918); *Steele v. Bond*, 9 N.W. 772 (Minn. 1881).

- III. Did the district court err in its denial of Appellants' motion to dismiss where the correct cause of action to determine possession in a foreclosure re-conveyance action is one in ejectment.

Apposite cases: *Willis v. Eastern Trust and Banking Co.*, 169 U.S. 295, 309-310 (1898); *Berg v. Wiley*, 226 N.W.2d 904 (Minn. 1975); *Steele v. Bond*, 9 N.W. 772 (Minn. 1881).

STATEMENT OF THE CASE

Respondents sought and wrongfully obtained possession of Appellants' homestead by narrowly defining the relationship of Appellants and Respondent as that of tenant and landlord, respectively, in an eviction action under Minn. Stat. Chap. 504B, commenced in Washington County District Court, the Honorable Elizabeth H. Martin, presiding at the trial on October 10, 2005. Appellants answered the eviction complaint disputing that the parties were in a landlord-tenant relationship, alleging, *inter alia*, that the lease relied upon by Respondent was but one of a multitude of agreements comprising a foreclosure re-conveyance transaction intended to strip Appellants from the equity in their home. Appellants moved the court to either stay or dismiss the eviction action to permit the issue of title and possession to be litigated in a pending lawsuit commenced in Washington County District Court by Appellants against Respondent, and its related entities brought, under the newly enacted Minn. Stat. Chap. 325N. Chapter 325N was recently passed by the Minnesota legislature as part of the State's consumer protection laws, to protect and prevent homeowners in foreclosure, like Appellants, from falling prey to the predatory business scheme commonly referred to as "equity stripping."

On October 10, 2005, the court denied Appellants' motions and entered judgment in favor of Respondent. This appeal follows.

FACTS

Respondent Real Estate Equity Strategies (“REES”) engages in the business practice known as “equity stripping.”¹ REES represents to homeowners facing foreclosure that it will be able to save the home. The foreclosure re-conveyance transaction includes a Purchase Agreement under which the homeowner transfers title to REES combined with a putative lease arrangement, with a representation that within approximately 60 days after closing, the foreclosed homeowner and REES will enter into a contract for deed that allegedly permits the homeowner to reacquire the property at an

¹ The Minnesota Court of Appeals has recently defined “equity stripping” as:

as a practice where a company or individual: (i) targets homeowners with substantial equity in homes that are in foreclosure; (ii) satisfies the underlying mortgage in default; (iii) takes title to the property; and (iv) enters into a lease of the property back to the homeowner with an option to repurchase the property under terms so burdensome as to assure the homeowner's default and eviction.

See In re Real Estate Salesperson's License of Grant, 2005 Minn. App. LEXIS 196, *3 (Minn. Ct. App. Feb. 22, 2005). A copy of this unpublished decision may be found at App. at pp. 99-109.

inflated price.² *Trans.* at p. 18, lns. 15-25 to p. 20, ln. 1. Consistent with its established business practices, REES and its related entity, REES-MAX, LLC entered into a foreclosure re-conveyance transaction with Appellants. *Trans.* at p. 20, lns. 18-19.

In Spring of 2005, Appellants' mortgage on the property located at 7451 27th Street Circle North, Oakdale, Minnesota ("Property") was in default and in foreclosure. *Trans.* at p. 25, lns. 1-4. On or about May 9, 2005, Respondent and/or its related entity, REES-MAX entered into a foreclosure re-conveyance transaction with Appellants, which included, a Purchase Agreement, Contract for Deed Proposal and Residential Real Estate

² Foreclosure re-conveyance transaction is defined as:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

Minn. Stat. §§325N.01(c)(1)-(c)(2).

Lease, among others documents with Appellants.³ *Trans.* at p. 17, lns. 12-20, *Tr. Exs.* 1, 3. *See also* App. at pp. 3-33; *Defendants' Answer and Motions to Dismiss and Expunge*, Exs. A, C, D (hereinafter "*Answer*"). The Purchase Agreement set forth a purchase price of \$268,000.00. *Tr. Ex.* 3.

The foreclosure re-conveyance transaction closed on June 2, 2005 at the offices of Title One in Roseville, Minnesota. *Trans.* at p. 14, lns. 8-16. At closing, REES-MAX purchased the property and REES received \$52,004.34 in "fees". App. at pp. 95-96; *Complaint, United States District Court for the District of Minnesota*, Ex. E ("*Federal Complaint*"). The Proposed Contract for Deed set forth a principal amount of \$275,000.00 with a 9.00% interest rate. App. at pp. 95-96; *Answer*, Ex. C. The Lease set forth a monthly payment of \$2005.00. *Tr. Ex.* 1.

At closing, REES represented to Appellants Michael E. Jones that the monthly amount in the Lease was incorrect and would be lowered once the final numbers were figured out. *Trans.* at p. 14, ln. 17 to p. 15, lns. 3. Prior to July 1, 2005, Mr. Jones called REES to inquire about the final number of the monthly payments to be made prior to the

³ REES acts as agent for the purchaser of the Property, REES-MAX, LLC. *Trans.* at p. 10, lns. 3-17. The transactional documents in and of themselves are flush with fraud and represent the use of multiple entities by the equity strippers to keep the foreclosed homeowner in a state of confusion. In this case, REES-MAX, LLC is the purchaser of the property, but is REES identified as the landlord on the lease. *See Tr. Ex.* 3. Up until the day of closing, Appellants were without knowledge of the identity of the purchaser, as the Purchase Agreement fails to identify any purchaser. *Tr. Ex.* 3. Also notable is the fact that the contract for deed proposal set forth REES, the non-owner of the property, as the vendor. App. at 29. Even assuming that a set of the transactional documents bearing signatures by REES and REES-MAX exist, Appellants will not be able to successfully regain title to the Property by way of a contract for deed with REES as the vendor. *Trans.* at 17, lns. 5-7; *Tr. Exs.* 1 and 2; App. at 29.

entry of the contract for deed. *Trans.* at p. 15, lns. 5-15. Notwithstanding that Respondent knew Appellants' prior monthly mortgage payment to Wells Fargo was approximately \$1,700, and that Respondent assured Appellants that the monthly payment would be less than \$2,005.00, Respondent forwarded to Appellants a Payment Fact Sheet setting forth a total monthly payment due on the first of each month of \$2,455.00. *Tr. Ex.* 2.

On or about September 2, 2005, Respondent filed an Eviction Action Complaint under Minn. Stat. §504B.321 with the Washington County District Court, court file no. 00-05-5749. App. at pp. 1-2. On September 19, 2005, the date of the first appearance in the eviction action, Appellants filed with the Washington County District Court a Complaint naming Respondent, REES-MAX, and their owner Chadwick Banken as defendants, court file no. 82-C5-05-55956. ("Rescission Action"). App. at pp. 7-33. In the Rescission Action, Appellants sought remedies, *inter alia*, under the newly enacted Minn. Stat. §325N, Consumer Fraud Act, and federal Truth in Lending Act, 15 U.S.C. §1601, *et seq.*

At the September 19, 2005 hearing, the trial in Respondent's eviction proceeding was continued to October 10, 2005 based on Appellants' Answer and motion to dismiss. On October 10, 2005, after the taking of testimony, whereby Appellants presented evidence that the lease at issue was part of a foreclosure re-conveyance transaction, rather than a lease in a tradition legal relationship, the district court denied Appellants' motion

to stay or dismiss the eviction proceedings until resolution of the Rescission Action, stating in pertinent part:

The whole notion of equity stripping is certainly a new notion for me, and whatever the statutes allow about that, I still look at this case as being a housing court or unlawful detainer action. It is conceivable that, through a separate lawsuit, the Lease that's in evidence here might be deemed rescinded, or invalid . . . And on that basis I am ruling that Plaintiff has proved entitlement; that is, that there is a Lease, and I'm making a finding that the rent is \$2,005.00.

Trans. at p. 36, ln. 25 to p. 37, lns. 1-12. In its Findings of Fact, Conclusions of Law, Order and Judgment, the district court stayed the issuance of a writ of recovery until "October 12, 2005, at noon on condition that \$8,020.00 is paid to plaintiff at the counsel's law office in certified funds and that \$2,005.00 is paid each month thereafter on or by the first of the month until the other action for rescission between the parties is resolved." App. at p. 65; *Findings of Fact, Conclusions of Law, Order and Judgment*, dated October 10, 2005.

After the district court issued its oral and written Findings of Fact, Conclusion of Law, Order and Judgment, Appellants notified the district court of their intent to appeal pursuant to Minn. Stat. §504B.371. *Trans.* at p. 38, lns. 18-20. On October 11, 2005, Appellants voluntarily dismissed their Rescission Action in Washington County District Court and filed suit in the United States District Court for the District of Minnesota, asserting both state claims, as well as federal claims under the Federal Truth In Lending Act. App. at pp. 67-98; *Notice of Dismissal Without Prejudice, Federal Complaint*. On October 13, 2005, the district court stayed the issuance of the writ of recovery to permit

Appellants to perfect their appeal and ordered Appellants to post a bond in the amount of \$26,820.00, pursuant to Minn. Stat. §504B.371, Subd. 3. App. at pp. 66; *Order for Stay and Appeal Bond*, dated October 13, 2005. Based on Appellants' inability to post the bond, the district court issued the writ of recovery and Respondent is now in possession of the Property.

ARGUMENT

I. THE DISTRICT COURT ERRED AS A MATTER OF LAW BY DENYING APPELLANTS' MOTION TO STAY OR DISMISS THE EVICTION ACTION WHERE APPELLANTS BROUGHT A LAWSUIT FOR RESCISSION CHALLENGING TITLE UNDER MINN. STAT. 325N

The district court erred in its failure to interpret and apply the statutory intent of Minn. Stat. Chap. 325N in the eviction action under Minn. Stat. Chap. 504B and to make decisions consistent with both chapters of the Minnesota Statutes. The construction and reconciliation of statutes is a question of law and fully reviewable by an appellate court. *Hibbing Educ. Ass'n v. Public Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn. Ct. App. 1985).

In recognition of the prevalence of business schemes designed to prey on homeowners with substantial equity in their homes that are in foreclosure and strip the homeowners from the equity in their house, the Minnesota House of Representatives introduced H.F. 2095. In the original bill, the House of Representatives set for the intent and purpose of the Foreclosure Purchaser Act, to-wit:

Sec. 11. [325N.11] [INTENT AND PURPOSE.]

(a) The legislature finds and declares that homeowners whose residences are in foreclosure have been subjected to fraud, deception, and unfair dealing by people selling foreclosure reconveyance transactions. The recent rapid escalation of home values, particularly in the metropolitan areas, has resulted in a significant increase in home equities which are usually the greatest financial asset held by the homeowners of this state. During the foreclosure process, homeowners in financial distress are vulnerable to unfair practices by people who induce homeowners who possess equity in their homes to sell their homes for less than fair market value through the use of schemes that involve oral and written misrepresentations, deceit, and other unreasonable commercial practices.

(b) The legislature declares that it is the express policy of the state to preserve and guard the precious asset of home equity, as well as the social and economic value of homeownership.

(c) The legislature further finds that foreclosure purchasers have a significant impact upon the economy and well-being of this state and its local communities, and the provisions of sections 325N.11 to 325N.19 are necessary to promote the public welfare.

(d) The intent and purposes of sections 325N.11 to 325N.19 are to provide each homeowner with information necessary to make an informed and intelligent decision regarding the sale of his or her home to a foreclosure purchaser; to require that the sales agreement be expressed in writing; to safeguard the public against deceit and financial hardship; to insure, foster, and encourage fair dealing in the sale and purchase of homes in foreclosure; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to afford homeowners a reasonable and meaningful opportunity to rescind sales to foreclosure purchasers; and to preserve and protect home equities for the homeowners of this state.

(e) Sections 325N.11 to 325N.19 must be liberally construed to effectuate this intent and to achieve these purposes.

*See H.R. Journal 2004, Reg. Sess. No. 75 (March 17, 2004).*⁴

⁴ This language contained in the bill as originally proposed is not part of the Foreclosure Purchaser Act passed and effective August 1, 2004.

On March 24, 2005, the House Research provided the Minnesota legislature with an overview of Minn. Stat. Chap. 325N, to-wit:

This bill deals with a recently growing practice known as "equity stripping." This involves situations in which a home is in mortgage foreclosure and the owner has substantial equity in the home. The owner ends up believing that the owner can save the home through a transaction in which the owner deeds the property to someone who offered to redeem the home from foreclosure (pay off the foreclosed mortgage) and to then let the (former) owner stay there in a rental or contract for deed arrangement in which the former owner would eventually regain title. Sometimes the former owner cannot keep up the rent or contract for deed payments and defaults, thus losing all rights to the home, including the former owner's equity. This bill regulates "foreclosure consultants" (sections 1 to 9) and "foreclosure purchasers" (sections 11 to 20). Enforcement is through private causes of action and by the attorney general.

MN H.R.B. Summ., 2004 H.F. 2095. The Minnesota legislature passed the Foreclosure Purchaser Act, Minn. Stat. §325N.10-18 by the House of Representatives on May 15, 2005 by a 129 yea to 1 nay vote. H.R. Journal 2004, Reg. Sess. No.110 (May 15, 2004). The remedies for violations of the Foreclosure Purchaser Act, includes a private right of action under Minn. Stat. §8.31, compensatory damages, exemplary damages of not less than one-and-one-half times the foreclosed homeowner's actual damages, rescission, and criminal penalties. Minn. Stat. §325N.18 (2004).⁵

⁵ Under Minn. Stat. §325N.18, subd. 1 (2004) any violation is deemed to be in the public interest, thereby permitting private attorney fees under Minn. Stat. §8.31. Moreover, Minn. Stat. §325N, subd. 3, states that the statutory remedies are cumulative and do not restrict any rights or remedies available to the foreclosed homeowner as provided by law, i.e. rescission. And finally, the foreclosure purchaser may be subjected to criminal prosecution and upon conviction, fined not more than \$50,000.00 or imprisoned not more than one year, or both.

The intent, purpose and remedies permitted to a foreclosed homeowner⁶ are significantly undermined when a foreclosure purchaser⁷ uses the summary nature of an eviction action as a sword to remove the foreclosed homeowner from the home. Once the foreclosed homeowner is dispossessed of their home, the foreclosure purchaser is in control of the property and may either re-let the property, or worse, sell the property to a good faith purchaser. The effect of a conveyance of the property from the foreclosure purchaser to a good faith purchaser, by statute, prohibits the foreclosed homeowner from affecting the rights of the good faith purchaser in the property. Minn. Stat. §325N.18, subd. 3. This statutory prohibition effectively limits the remedies the foreclosed homeowner may seek under Minn. Stat. Chap. 325N against the foreclosure purchaser, since the foreclosed homeowner may no longer seek rescission of the foreclosure reconveyance transaction. Thus, the foreclosure purchaser has succeeded in stripping the equity from the foreclosed homeowners and has further stripped the foreclosed homeowner's right to re-acquire title and possession of their home, likely their most

⁶ Foreclosed homeowner means an owner of residential real property, including a condominium, that is the primary residence of the owner and whose mortgage on the real property is or was in foreclosure. Minn. Stat. §325N.10, subd. 2 (2004).

⁷ Foreclosure purchaser means a person that has acted as the acquirer in more than one foreclosure reconveyance during any 24-month period. Foreclosure purchaser also includes a person that has acted in joint venture or joint enterprise with one or more acquirers in more than one foreclosure reconveyance during any 24-month period. A federal or state chartered bank, savings bank, thrift, or credit union is not a foreclosure purchaser. Minn. Stat. §325N.10, subd. 4 (2004).

cherished asset, once they have been summarily repossessed under a 504B eviction action.

The district court, after the taking of testimony, and in face of its recognition that the underlying transaction may well be rescinded in the parallel pending Rescission Action, denied Appellants' motions and erred by allowing Respondent to utilize the summary nature of Minn. Stat. Chap. 504B to thwart Appellants' rights under Minn. Stat. Chap. 325N. The district court's failure to reconcile and give effect to the legislative intent of Minn. Stat. Chap. 325N constitutes reversible error. Appellants assert that the relief sought in their motion to dismiss or stay the eviction action provides the requisite balance between Chapter 504B and Chapter 325N of the Minnesota Statutes.

The district court erred as a matter of law by denying Appellants' motions to dismiss or stay the eviction action so as to permit Appellants to seek the protection recently afforded to them by the newly enacted Minn. Stat. Chap. 325N and rescind the transaction and seek other remedies through the Rescission Action. The district court's error permitted Respondent to engage in the exact type of conduct prohibited by Minn. Stat. Chap. 325N, namely requiring Appellants to pay a monthly payment that Respondent knew Appellants could not afford, or lose possession of their home to REES an entity that obtained title through fraud and trickery. The district court, in light of its limited jurisdiction in 504B actions, was not without options to deal effectively with the interaction between Chapters 504B and Chapter 325N of the Minnesota Statutes once Appellant established by trial evidence that the matter before the eviction court was a

foreclosure re-conveyance transaction. Pursuant to Appellants motions, the district court had two legally viable solutions to deal with the claims and defenses asserted by the parties in the eviction action, as well as the Rescission Action. Specifically, the Appellants requested that the district court: (1) stay the eviction action pending resolution of the Rescission Action; or (2) dismiss the eviction action and require Respondent to assert an action for ejectment as a counterclaim in the Rescission action. These motions were erroneously denied by the district court.

II. THE DISTRICT COURT ERRED IN DENYING APPELLANTS' MOTION WHERE IT HAD BEEN ESTABLISHED THAT A PURE LANDLORD-TENANT RELATIONSHIP BETWEEN THE PARTIES DID NOT EXIST AS THE LEASE AT ISSUE WAS PART OF A FORECLOSURE RE-CONVEYANCE ACTION.

An unlawful detainer proceeding provides a summary action to quickly ascertain the possessory rights to property. *Lilyard v. Carlson*, 499 N.W.2d 803, 812 (Minn. 1993). The action "merely determines the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties." *Gallagher v. Moffet*, 46 N.W.2d 792, 793 (Minn. 1951). Thus, the truth of the facts alleged in the complaint is the only issue in an unlawful detainer proceeding. *Mac-Du Properties v. LaBresh*, 392 N.W.2d 315, 317 (Minn. Ct. App. 1986).

However, under Minn. Stat. §504B.121, there is an exception that permits the tenant to challenge the landlord's title in the eviction action where the tenant possessed the property under a claim of title prior to entering into the lease with the landlord. Minn. Stat. §504B.121 (1999). The district court erred in the interpretation and application of

the statutory exception of Minn. Stat. §504B.121 and as such, on appeal the reviewing court engages in a de novo review. *See Hibbing Educ. Ass'n*, 369 N.W.2d at 529.

At trial, testimony established that the parties were not engaged in a traditional landlord-tenant relationship, but that the parties were involved in a foreclosure re-conveyance transaction under Minn. Stat. Chap. 325N. Through the testimony of Chadwick Banken, the owner of Respondent, it was admitted that Respondent is engaged in the business of foreclosure re-conveyance transactions and that such a transaction existed between Appellants and Respondent. *Trans.* at pp. 18-20. Moreover, Respondent was aware that Appellants had commenced a lawsuit to rescind the foreclosure re-conveyance transaction. *Trans.* at p. 21, lns. 10-14. Based on the exception to Minn. Stat. §504B.121, and the evidence received at trial regarding the true legal relationship of the parties, the district court erred, in its determination that a pure landlord-tenant relationship existed and that Respondent was entitled to possession.

A Plaintiff is not entitled to the statutory remedy of an unlawful detainer action unless there exists the conventional relationship of landlord and tenant. *See Beecher v. Spain*, 167 N.W. 793, 794 (Minn. 1918). *See also Steele v. Bond*, 9 N.W. 772 (Minn. 1881). In determining whether the relationship of landlord-tenant exists, the form of or what the parties have called the instrument creating the relationship is not controlling. *See Beecher*, 167 N.W. at 794. The contract must be construed as a whole in the light of the circumstances that existed at the time. *See id.*

In the instant action, the district court, erred in determining that a conventional landlord-tenant relationship when the alleged lease is part of a foreclosure re-conveyance transaction that Appellants have sought rescission of in a separate action. Clearly, the lease at issue is not a lease in the true sense, but is employed by Respondent, to assure that Appellants fail to complete the foreclosure re-conveyance transaction, thereby theoretically completing the equity stripping scheme because Appellants have lost title, possession and the right to re-acquire title through a contract for deed. This case presents the quintessential case of equity stripping. Respondent used a lease arrangement with monthly payments significantly in excess of the monthly mortgage payment that was in foreclosure. In short, the foreclosure re-conveyance transaction is devised to fail during the putative lease period, in order to leverage the foreclosed homeowner out of the property under a summary 504B action.

Respondent in this case, was fully aware that Appellants' mortgage with Wells Fargo was in the approximate \$1,700.00 range. Notwithstanding, the lease indicated a payment of \$2,005.00, and when questioned, Respondent represented that the payment would be lower once the numbers from the closing were complete. Appellants closed on the foreclosure re-conveyance transaction only to receive a notice of a lease payment of \$2,455.00 per month for the two month period prior to the contract for deed option. *Tr. Ex. 2*. The lease at issue in the eviction action does not establish a conventional landlord-tenant relationship, but rather is simply a means for the REES to reach its end goal—to strip the foreclosed homeowner of the equity.

III. THE DISTRICT COURT ERRED BY DENYING APPELLANTS' MOTION WHERE THE CORRECT CAUSE OF ACTION TO DETERMINE POSSESSION IN A FORECLOSURE RE-CONVEYANCE TRANSACTION IS ONE IN EJECTMENT.

The Minnesota legislature has promulgated extensive legislation regulating foreclosure re-conveyance transactions, such as the one that is central to both the eviction action and Rescission Action. The district court erred in application of Minnesota law when it denied Appellants' motion and permitted Respondent to utilize the summary nature of Chapter 504B and undermine the protections afforded to Appellants by Chapter 325N. The remedy of unlawful detainer was not intended or understood to supersede the common law remedy of ejectment. *See Berg v. Wiley*, 226 N.W.2d 904, 906 (Minn. 1975). In 1881, the Minnesota Supreme Court stated:

The act concerning forcible entries and unlawful detainers, so far as it affords a remedy for landlords against tenants who unlawfully detain the premises after a default in the payment of the rent, or the expiration of the term, must be construed, as similar acts have always been construed by the courts of other states, to apply only to the conventional relation of landlord and tenant. It was not intended as a substitute for the action of ejectment, nor to afford means of enforcing agreements to surrender possession of real estate, where that relation does not exist or has not existed. The foundation-fact upon which the jurisdiction rests is that the tenant is in possession of the land in consequence and by virtue of that relation. . .

Steele, 9 N.W. at 774-75. *See also Willis v. Eastern Trust and Banking Co.*, 169 U.S. 295, 309-310 (1898) (quoting *Steele*, 9 N.W. at 774-75).

In eviction actions premised on a lease that is part of a foreclosure re-conveyance transaction as defined by Minn. Stat. Chap. 325N, the establishment of a true landlord-tenant relationship is absent. The common law action of ejectment is the proper

mechanism to determine possession when Appellants established at trial that (i) the lease relied upon was part of a foreclosure re-conveyance transaction; (ii) Appellants were immediately in title to the Property prior to Respondent; (iii) Appellants were seeking rescission of the transaction through a Rescission Action. The district erred in denying Appellants' motion to dismiss in order for the issue of possession and title to be determined in the Rescission Action.

Appellants assert that only in eviction actions where the defendant is able to establish the above criteria at the eviction trial, may a judge dismiss or stay the eviction action to permit the issue of possession to be determined by way of an action in ejectment. The prerequisite of establishing these criteria at the eviction trial sufficiently narrows and curtails the proverbial slippery slope where eviction actions will be dismissed whenever a defendant attacks title at the eviction action, but provides a foreclosed homeowner with the full protections afforded under Minn. Stat. Chap. 325N. Only when a defendant in an eviction action makes a showing at trial that (i) the lease at issue is part of a foreclosure re-conveyance action as defined by Minn. Stat. §325N.01(c)(1)-(c)(2); (ii) the foreclosed homeowner was in title to the foreclosed property immediately prior to the foreclosure purchaser; and (iii) defendants in the eviction have a parallel proceeding seeking relief under Minn. Stat. Chap. 325N, should the issue of possession be litigated in the Rescission Action.

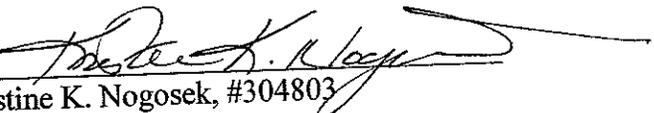
CONCLUSION

Based on the foregoing, the Appellants respectfully request that the Minnesota Court of Appeals reverse the decision of the Washington County District Court denying Appellants' motion to dismiss the eviction action, and permit the parties to litigate title and possession in the Rescission Action by way of a counterclaim interposed by Respondent for the common law of ejectment. In the alternative, Appellants respectfully request that the Minnesota Court of Appeals reverse the Washington County District Court and order the eviction action stayed pending the resolution and determination of ownership in the Rescission Action.

Respectfully submitted,

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