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NO. A05-2083
STATE OF MINNESOTA
IN COURT OF APPEALS

Real Estate Equity Strategies, LLC,

Respondent,
v.
Michael E. Jones and Edith A. Jones,

Appellants

COMBINED BRIEF OF *AMICI CURIAE* MID-MINNESOTA LEGAL ASSISTANCE & THE STATE OF MINNESOTA

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STATEMENT OF INTEREST

Since 1913, Mid-Minnesota Legal Assistance ("MMLA") has advocated for, and provided civil-matter legal services to, low-income Minnesotans. MMLA has seen an alarming increase in the number of families facing summary eviction proceedings under alleged leases despite the fact these families had owned and continuously possessed their homes before the lease was made. Many of these so-called "tenants" were actually homeowners victimized by "foreclosure-rescue" schemes known as "equity-stripping." Through these fraudulent schemes, homeowners lose the protections of Minnesota's foreclosure laws—including redemption rights—and suffer irreparable harm including homelessness and complete loss of what is often their greatest asset, their home equity.

The State of Minnesota, by its Attorney General, joins in this brief with MMLA and in the public interest.[1] The Attorney General may appear in court whenever the interests of the State so require and is charged with enforcing Minnesota's consumer-protection laws including, but not limited to Minn. Stat. Ch. 325N, Minnesota's new anti-equity-stripping law. *See* Minn. Stat. §§8.01, 8.31, subd. 1 (2004). The Attorney General has prosecuted several fraudulent foreclosure-rescue scammers since 2003 and continues to investigate foreclosure-rescue schemes. The Attorney General's Office also has informally mediated or attempted to mediate many situations involving former homeowners who, after agreeing to a foreclosure-reconveyance transaction meant to save

[1] MMLA, its counsel, and the State wholly prepared and paid for this brief. *See* Minn.R.Civ.App.P. 129.03.

their homes, are instead on the verge of losing of their homes to alleged equity-strippers where Chapter 325N and other laws may have been violated.

Amici curiae submit this brief to ensure that the Court is fully aware of the statutes and policies that must inform this Court's decision, including statutes and policies not at issue in *AMRESCO Residential Mortgage Corp. v. Stange*, 631 N.W.2d 444 (Minn. App. 2001) and *Fraser v. Fraser*, 642 N.W.2d 34 (Minn. App. 2002).

INTRODUCTION

Amici agree that the district court's judgment must be reversed. First, *amici* explain the equity-stripping problem. Second, *amici* contend that this Court's guidance on this issue is essential based on the Legislature's recent response and the current confusion in the district courts. Third, *amici* maintain that district courts do not have subject-matter jurisdiction to proceed with a statutory eviction action under an alleged lease when the defendant, who owned and possessed the home before the lease's making, alleges that the eviction plaintiff does not or should not hold title to the home. This result gives full effect to all applicable statutes and policy, protects the rights of both eviction-action plaintiffs and defendants, and is consistent with the Legislature's recent response to the equity-stripping problem.

THE EQUITY-STRIPPING PROBLEM

Rising home values over recent years have increased Minnesotans' home equity. Consequently, many low- or fixed-income homeowners find themselves "house rich" but "cash poor." With few liquid assets, a job loss, medical bills, or divorce can quickly send these homeowners into foreclosure. "Equity stripping" is a term that describes

"foreclosure-rescue" schemes that attempt to circumvent the foreclosure laws and ultimately remove homeowners from their homes and deprive them of their accumulated equity. Once properties are advertised as set for foreclosure, homeowners are inundated with solicitations from people offering to help "save" their homes. These solicitations often come from realtors, brokers, attorneys, and others who hold themselves out as "foreclosure experts." These "experts" typically lead homeowners to believe the proposal is for refinancing and not a sale of their home.

Unlike these licensed professionals, homeowners are usually unsophisticated in real-estate matters. In many cases, they may not know they are conveying their homes until well after the fact. In others, they may be told that someone will buy their home for the mortgaged amount, allow them to stay in it for one or two years, and then reconvey it to them through a contract-for-deed or lease with option to repurchase. Such reconveyances typically involve hefty fees charged to the homeowner of tens of thousands of dollars. With few options available, many homeowners sign documents that purport to convey title, for little or no payment, relying solely on the promised reconveyance.

These arrangements, however, are frequently designed by the "experts" to fail. The new payments are typically set much higher than those of the previous mortgage in default. When the homeowner almost inevitably falls behind, the equity stripper purportedly terminates the lease or contract-for-deed, leading to an eviction action. Defying their previous representations to the homeowner, the predators often represent in eviction actions that the transaction was a straightforward sale, versus a financing

arrangement as the homeowner understood, asserting that cancellation of the contract-for-deed or lease is not subject to Minnesota's foreclosure-law protections.[2]

Although we cannot know the exact number of homeowners harmed by these scams, by all indications their numbers are growing.[3] Predictably, the schemes disproportionately affect low- and fixed-income Minnesotans, both in number of people and degree of harm suffered. Such individuals are disproportionately likely to obtain high-cost subprime or predatory loans, which enter foreclosure at rates exponentially

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[2] Minnesota law prohibits circumvention of foreclosure-law protections when homeowners who wish to borrow money convey their property by deed to a purchaser/creditor, who then either reconveys the property back to the owner/borrower under a contract-for-deed or, as in this case, leases the property back to the owner/borrower. *See Albright v. Henry*, 174 N.W.2d 106 (Minn. 1970); *Stipe v. Jefferson*, 257 N.W. 99 (Minn. 1934); *Jeddeloh v. Altman*, 247 N.W. 512 (Minn. 1933); *Sanderson v. Engel*, 234 N.W. 450 (Minn. 1931); *Minnesota Building & Loan Ass'n v. Klauss*, 234 N.W. 872 (Minn. 1931); *Lundeen v. Nyborg*, 201 N.W. 623 (Minn. 1925); *Holien v. Slee*, 139 N.W. 493 (Minn. 1913); *see generally* Minn. Stat. Ch. 580 (providing foreclosure protections such as six-month reinstatement and redemption periods). When the purchaser/creditor attempts to cancel the contract or lease and evict the homeowner, Minnesota courts have repeatedly found that the purpose of the original conveyance and subsequent contract or lease is to create a security interest for a loan to the original owner. *McLean v. Northern Lights Mortgage Co.*, No. 04-1140, at 9-10 (D. Minn. April 14, 2004) (*Amici* App., pp. 9-10) (preliminarily enjoining eviction when contract-for-deed transaction presented as loan); (*Brantley v. Grant Holding, LLC,* No. 03-6098, at 13-17 (D. Minn. December 23, 2003)) (*Amici* App., pp. 26-30) (granting preliminary injunction granted where contract-for-deed likely unconscionable); *Albright*, 174 N.W.2d at 111; *Sanderson*, 234 N.W. at 451.

[3] In mid-2001, fewer than 4 of 1,000 mortgaged homes were in foreclosure, increasing to 5.3 of 1,000 by mid-2002, with five times as many at least 30 days late with a mortgage payment. Eric Wieffering, *Economy imperils suburban homes*, *Star Tribune*, Dec. 29, 2002, at A1. (*Amici* App., pp. 33-36.) The State estimates that about a quarter of foreclosed homes are lost to equity-strippers. DREAMS FORECLOSED: THE RAMPANT THEFT OF AMERICANS' HOMES THROUGH EQUITY-STRIPPING FORECLOSURE "RESCUE" SCAMS, National Consumer Law Center (June 2005), at 30 (*Amici* App., p. 65.) [hereinafter, DREAMS FORECLOSED].

higher than prime loans available to other borrowers.[4] When high-cost loans enter foreclosure and borrowers fall prey to these schemes, affected families lose not only their home equity, but also the roofs over their heads.

Amici have consistently found that most, if not all, homeowners who fall victim to these scams are highly distressed, emotionally and financially, increasing their vulnerability to these scams. As the National Consumer Law Center stated regarding the recent national wave of foreclosure-rescue schemes, "[h]omeowners facing foreclosure are by definition short of money and vulnerable."[5] In addition to being in foreclosure, the homeowners face the stress of the event that caused the default, such as poor health or a job-loss. During the best of times, residential real-estate transactions are complicated, involving dense documents that can confuse even highly educated consumers. Unsophisticated consumers are even less likely to understand the foreclosure process or foreclosure-rescue documents, often presented at the last minute before foreclosure, making them especially vulnerable prey for the "experts."[6]

As one Minnesota federal court has described,

> a desperate, ill informed and poorly represented owner, led to believe she is on the brink of homelessness, cannot be said to have freely entered into an agreement that was entirely one-sided, offered her no reasonable hope of successful performance and at the same time deprived her of her equitable and statutory rights of redemption.

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[4] DREAMS FORECLOSED at 7 (*Amici* App., p. 42).
[5] *Id.*
[6] *See id.* at 7-10; (*Amici* App., pp. 42-45).

Brantley v. Grant Holding, LLC, No. 03-6098, at 17 (D. Minn. December 23, 2003) (*Amici* App., p. 30). Finally, as another noted, "The threat of eviction and the realistic prospect of homelessness constitute a threat of irreparable injury" and "[t]he public interest does not favor sophisticated real-estate businesses to profit from fraud on unsophisticated and desperate home owners and then leave those homeowners homeless." *McLean v. Northern Lights Mortgage Co.*, No. 04-1140, at 6-7 (D. Minn. April 14, 2004) (*Amici* App., p. 67).

THE LEGISLATURE'S RESPONSE & DISTRICT COURT CONFUSION

In 2004, to stop equity-stripping practices and provide remedies to victimized homeowners, the Legislature passed Minn. Stat. Chapter 325N regulating "foreclosure consultants" (solicitors), "foreclosure purchasers," and "foreclosure reconveyances" (the entire foreclosure-rescue transaction). The Legislature recognized homeowners in foreclosure are vulnerable and need protection from foreclosure-rescue scams. Thus, Chapter 325N prohibits many practices that are typical of such fraudulent schemes, including, but not limited to: failing to disclose in writing material terms before having the homeowner sign conveyance documents and failing to verify the homeowner's reasonable ability to pay for the reconveyance (as the Joneses alleged happened here);[7] failing to hold a formal closing; representing that the purchaser is helping to "save the house"; and/or failing either to reconvey title or, if the homeowner is evicted or relinquishes possession, to pay the former homeowner 82% of the home's fair-market-

[7] Appellant's App., pp. 14-16.

value. Minn. Stat. §§325N.11-12; 325N.17(a)(1)-(2), (b)(1)-(2), (d)(3) (2004). These regulations are designed to protect homeowners from being tricked into conveying title and their redemption rights while providing incentives for foreclosure purchasers to structure deals to end in reconveyances, not evictions.

The last step of the typical equity-stripping scheme is eviction, because after eviction, the equity stripper can sell the home for fair-market-value and pocket the evicted owner's equity. A successful eviction may preclude owners/tenants from being able to obtain the full remedies provided by the Legislature. Even if the victim later succeeds in an action against the equity stripper (an outcome requiring heroic measures by victims, who have to pursue complex litigation while displaced from their homes), a home already sold to a bona fide purchaser cannot be recovered, leaving the victim with only an incomplete remedy, money damages. *Shaughnessy v. Eidsmo*, 23 N.W.2d 362, 368 (Minn. 1946); *see Strangis v. Metropolitan Bank*, 385 N.W.2d 47, 48 (Minn. App. 1986) ("Real property is unique, which money damages may not adequately compensate.").[8]

Amici have seen an increasing number of equity-stripping victims improperly facing summary-eviction actions under Minn. Stat. Ch. 504B. MMLA has represented equity-stripping victims in housing court in Hennepin and Ramsey Counties, with widely mixed results. Some advocates reach a negotiated solution to both the eviction and

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[8] *See also* DREAMS FORECLOSED at 45 (Amici App., p. 80) (noting this harm with foreclosure-rescue schemes).

equity-stripping issues.[9] Some courts will dismiss the action for failure to state a claim for which relief can be granted (*see, e.g., Bailey v. Johnson*, No. C8-04-2704 (Wright Cty. Dist. Ct. Sept. 15, 2004) (Order and Memo) (*Amici* App., pp. 103-105); or enter a stay to allow time for a temporary injunction in pendent title litigation. *See, e.g., Dunshee Invs., Inc. v. Husnick*, No. C7-05-11144 (Ramsey Cty. Dist. Ct. Nov. 28, 2005) (*Amici* App., p. 106). But others reach the same decision as the district court below, proceeding with the summary-eviction action without considering proper denials of the eviction-action plaintiff's title.

Equity-stripping victims facing eviction and their advocates cannot predict with any certainty what will happen in district courts because results are too varied. Further, the uncertainty of these outcomes chills homeowners' ability to defend against eviction while pursuing another case. Because evictions are summary proceedings, owners/tenants cannot wait until the last minute to find other housing because they could be forced to move almost immediately. Moreover, if they lose the eviction case but ultimately prevail in the lawsuit, an eviction may still haunt their credit records for many years.

Thus, uniformity in the disposition of eviction proceedings is needed. Moreover, as set forth below, *amici* maintain that the current statutory framework already provides

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[9] However, a negotiated solution can lead to undesirable results. A mediator or advocate with little experience or preparation time, and no discovery, may not understand that an equitable mortgage might exist and instead negotiate a settlement that purportedly waives all claims between the parties while only addressing the "eviction" issues, leaving the victim without title recourse.

such uniformity: pursuant to the eviction statutes, district courts simply do not have subject-matter jurisdiction to consider an eviction action when an eviction defendant who owned the home before the lease was made denies plaintiff's title. In such cases, the action should be dismissed without prejudice. In addition to being mandated by statute, this result preserves the consumer protections intended for Minnesota homeowners through the mortgage-foreclosure process and Chapter 325N.

ARGUMENT

I. DISTRICT COURTS LACK SUBJECT-MATTER JURISDICTION TO PROCEED WITH A CH. 504B "EVICTION ACTION" WHEN OWNERS/TENANTS PERMISSIBLY CHALLENGE PURPORTED LANDLORDS' TITLES.

"Numerous precedents establish the limited nature and scope of an eviction proceeding, which is summary in nature." *AMRESCO*, 631 N.W.2d at 445. Moreover, the law has long recognized the "well settled general rule...that a tenant while in possession cannot deny his landlord's title." *Davidson v. Minnesota Loan & Trust Co.*, 197 N.W. 833, 839 (Minn. 1924). Thus, Minnesota courts have routinely held that a summary possessory proceeding "merely determines the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties. It is not a bar to an action involving title." *Dahlberg v. Young*, 42 N.W.2d 570, 576 (Minn. 1950).

There is, however, a significant exception to this rule of tenant estoppel, codified in Minn. Stat. §504B.121—estoppel "does not apply to a tenant who, prior to entering into the lease, possessed the property under a claim of title that was adverse and hostile to that of the landlord." Minn. Stat. §504B.121 (2004). The core of the problem presented

by the case on appeal, which will arise in cases involving foreclosure reconveyances and/or alleged equitable mortgages in the future, is this:

> What is the effect of an owner/tenant's denial of a putative landlord's title, permissible under Minn. Stat. §504B.121, in response to an eviction complaint brought under Minn. Stat. §504B.321?

The court below, relying on this Court's *AMRESCO* opinion, concluded "I can't, and won't, look at the whole package," thus refusing to consider Appellants' denial of Respondent's title and choosing to proceed with the summary-eviction action. Trans., p. 7, lns. 8-9. The court made the wrong choice. The court was correct that a statutory eviction action cannot decide title, but that does not mean that the court should have proceeded with the §504B.321 action. Instead, the district court should have recognized that it did not have subject-matter jurisdiction to proceed with the eviction action and dismissed Respondent's complaint without prejudice.

A. Once a Tenant Permissibly Denies a Landlord's Title, the Necessary Foundation for a Summary Possessory Proceeding No Longer Exists.

The limited nature and scope of summary possessory actions as now set forth in §§504B.281–504B.371 has long been recognized in Minnesota. *Compare Steele v. Bond*, 9 N.W. 772, 774 (Minn. 1881) ("[P]roceedings under chapter 84 of the General Statutes of 1878 are summary and special in their nature, and are governed by the provisions of that chapter, except as otherwise provided by law.") *with AMRESCO*, 631 N.W.2d at 445. Inherent in the nature of a summary action to regain possession, such as unlawful detainer or eviction, is that solely possession, and not title, is at issue. *E.g., Keller v. Henvit*, 18 N.W.2d 544, 547 (Minn. 1945). Thus, the purpose of such actions is *not* to

provide a quick and inexpensive way for a landlord to *gain* possession from the tenant and clear title for the first time. Rather, a summary proceeding for possession is created by statute and limited in scope to allow for a landlord's *recovering* possession while preventing the tenant, *and* the landlord, from acquiring through the lease any undue advantage in a title determination.

The limited scope of these statutory actions is founded on estoppel of the tenant to deny title, and the fundamental question relevant to this estoppel is the nature of the tenant's entry. If the tenant enters the property under color of a lease, the tenant is estopped from denying the landlord's title in a summary possessory action:

> The familiar rule by which a tenant is estopped to deny his landlord's title is a rule of public policy, resting upon the idea that it would be bad faith to permit a tenant to repudiate a title, by acknowledging and acting *under which, he originally obtained*, and has been permitted to hold, *possession* of the premises.

Cole v. Maxfield, 13 Minn. 235, 1868 WL 1888, *5 (1868) (emphasis added) (*Amici* App., p.110); *e.g., Smith v. Harvenko*, 200 N.W. 90, 90 (Minn. 1924); *Steele*, 9 N.W. at 775. In other words, summary possessory proceedings are founded on the doctrine that "[p]ossession originating in a tenancy is presumably permissive, not hostile." *Beitz v. Buendinger*, 174 N.W. 440, 441 (Minn. 1919). But this presumption, and estoppel of the tenant from challenging this presumption, does not apply if the tenant was already in possession when the lease was made. 1899 Minn. Laws ch. 13; *Mosloski v. Gamble*, 253 N.W. 378, 382 (Minn. 1934); *Sage v. Rudnick*, 69 N.W. 1096, 1097 (Minn. 1897) (recognizing estoppel to deny title not applicable "inasmuch as the defendant was already in possession"); *see Hanson v. Sommers*, 117 N.W. 842, 843 (Minn. 1908) ("The

estoppel of the tenant to deny the title of the landlord...is based upon equitable considerations. When those considerations fail, the estoppel itself fails.").

Likewise, a landlord cannot use a summary possessory proceeding to establish title. "Where the landlord seeks to recover the possession he can do so under the lease; but if he goes further and claims the premises in fee, the tenant is not estopped from denying any right claimed by the plaintiff further than that of possession." *Merchants' & Farmers' State Bank v. Olson*, 250 N.W.366, 369 (Minn. 1933) (quotation omitted). To estop a owner/tenant from challenging title when a putative landlord seeks title provides a landlord with "an advantage which he would not be entitled to." *Id.* (quotation omitted).

The question that follows is what happens if the tenant's possession did not originate with the lease and the tenant challenges the landlord's title in response to a statutory summary eviction action? The Minnesota Supreme Court answered this question as follows: when a tenant did not enter under a lease and challenges the landlord's title in response to a statutory possessory action, the court cannot proceed with the summary action under the statute.

In *Steele v. Bond*, the plaintiff brought a statutory unlawful-detainer action, alleging that the lease had expired. 9 N.W. at 772. The defendants' answer admitted "the making of the lease; but denies entry under it," and asserted that the whole of the transaction created an equitable mortgage versus a landlord-tenant relationship. *Id.* at 773-74. The court recognized that the existence of an equitable mortgage has significant consequences:

> The lease, therefore, though it may operate as an extension of the debt, *cannot be allowed to operate as a basis for a summary foreclosure.* When it was made the defendants were in the position of mortgagors in possession, and they continued in possession after its execution the same as before, and instead of paying rent to the plaintiff for the use of the premises which they were not otherwise entitled to enjoy, they were to make payment under the name of rents, really to be applied in liquidation of their own indebtedness. *These facts control the legal operation of the lease, so as to prevent the plaintiff founding any rights upon it in derogation of the defendants' right to the equity of redemption.*

Id. at 774 (emphasis added).

The landlord argued that such a defense challenging the landlord's title could not be considered in the statutory summary proceeding. The court agreed. But instead of granting the landlord possession and forcing the tenant to bring a separate action, the court held that when a tenant permissibly raises this defense, the statutory action can no longer be applied as a matter of subject-matter jurisdiction.

> 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 the default in the payment of rent..., *must be construed... to apply only to the conventional relation of landlord and tenant.*
>
> ...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, and unlawfully withholds possession after a default in the performance of its terms *upon which he has entered....*

Id. at 774-75 (emphasis added). Thus, going forward with the statutory action would be improper when the "answer sets up matters which control the legal effect of the lease on which the complaint is founded, and show, if true, that the relation of landlord and tenant was not created by it and does not exist between the parties." *Id.*

The landlord also "urged that the tenant is estopped from disputing the landlord's title until he has first surrendered up the possession; but that does not apply to a case like this." *Id.* at 775. The court held that "[t]he estoppel does not arise from the lease, but from the relation established by it, and you cannot make use of the lease to estop the parties from denying the relation, and then make use of the relation to estop them from attacking the lease." *Id.* In short, the supreme court ruled that the summary statutory action cannot be used "as a substitute for the action of ejectment, nor to afford means of enforcing agreements to surrender possession of real estate," when it is alleged the landlord-tenant relationship "does not exist or has not existed." *Id.*

B. The Sole Consistent Reading of Applicable Statutes and Precedent Dictates that District Courts Cannot Decide §504B.321 Complaints When Owners/Tenants Deny Title as Permitted by §504B.121.

The *Steele* decision is supported by subsequent precedent and, most significantly, today's statutory framework removes a district court's subject-matter jurisdiction to proceed with an eviction action when the tenant permissibly challenges the landlord's title. When enacting statutes, "the Legislature is presumed to have known and had in mind all existing laws relating to the subject-matter, and to have enacted them in light of such knowledge; and they must be construed so as to harmonize with each other and give full effect to all so far as this may reasonably be done." *No Power Line, Inc. v. Minnesota Envtl. Quality Council,* 262 N.W.2d 312, 323 n.30 (Minn. 1977) (quotation omitted); *see, e.g., PEER, Inc. v. Minnesota Envtl. Quality Council*, 266 N.W.2d 858, 866 (Minn. 1978) (recognizing "the general policy of statutory construction...of harmonizing statutes dealing with the same subject matter").

Here, this Court must harmonize and give full effect to both eviction actions as defined in §§504B.281–.371 and the tenant's right to deny title under §504B.121. An "eviction action" is a statutorily-created proceeding, limited in scope, and by definition a "summary court proceeding" to "recover possession." Minn. Stat. §504B.001, subd. 4 (2004); *see generally* Minn. Stat. §§504B.281–.371 (2004). The facts to be alleged in an eviction complaint are statutorily mandated by §504B.321. The tenant's permissible defenses to such an action, besides denying the facts alleged by the landlord, are also defined by statute. *See* Minn. Stat. §504B.285. The "summary" nature of the action is enforced by both strict time requirements and the rule that a landlord is entitled to judgment if the required facts alleged in the complaint are true. Minn. Stat. §§504B.321, 504B.341, 504B.355; *see, e.g., Mac-Du Props. v. LaBresh*, 392 N.W.2d 315, 317 (Minn. App. 1986).

The supreme court and this Court have consistently recognized the limited scope of such proceedings as defined by statute, be it the former unlawful-detainer action or the current eviction action. "The right given by the statute is for possession only. *Its provisions are not designed to try title* or to serve as a substitute for ejectment. . . . Such matters, including counterclaims, *cannot be litigated in such action*." *Keller*, 18 N.W.2d at 547 (emphasis added); *see, e.g., AMRESCO*, 631 N.W.2d at 445-46. Indeed, this Court recently indicated, as a matter of policy when considering an eviction action on a contract-for-deed, that to the extent an eviction defendant "has the ability to litigate her equitable mortgage and other claims and defenses in alternate proceedings, it would be inappropriate for her to seek to do so in the eviction action." *Fraser*, 642 N.W.2d. at 40-

41; *see AMRESCO*, 631 N.W.2d at 445-46 (same, considering eviction action after completed mortgage foreclosure).

The eviction statutes, however, must be construed in a manner that harmonizes and gives full effect to the eviction-action statutes *and* other statutes on the same subject matter. *See No Power Line*, 262 N.W.2d at 323 n.30. The subject matter of an eviction action is to "recover possession." Minn. Stat. §504B.001, subd. 4. Section 504B.121, codifying the principle that a tenant is estopped from denying a landlord's title except as discussed in Part A above, covers the same subject matter as follows:

> A tenant in possession of real property under a lawful lease may not deny the landlord's title in an action brought by a landlord *to recover possession* of the property. This prohibition *does not apply* to a tenant who, prior to entering into the lease, possessed the property under a claim of title that was adverse or hostile to that of the landlord.

Minn. Stat. §504B.121 (2004) (emphasis added).[10]

This provision is precisely applicable in the case on appeal. Respondent brought an eviction action to recover possession on the grounds of an alleged lease; before making the lease Appellants possessed the property under a claim of title inherently hostile to that of the Respondent because Appellants owned the property, and Appellants sought to deny title on the grounds (1) that the whole of the transaction created an equitable mortgage, versus a landlord-tenant relationship, and (2) rescission under

[10] While in *Sage v. Halversen*, 75 N.W. 229 (1898), the supreme court ruled a tenant is estopped from denying landlord's title whether or not the tenant was in possession before the lease, the Legislature promptly overruled this holding in 1899 by passing the predecessor statute to §504B.121, 1899 Minn. Laws ch. 13.

Chapter 325N and other statutes. Appellant's App., p. 3 (Answer, ¶1); *id.*, ¶ 4 (incorporating Complaint, Appellants' App., pp. 15, 18, 19-20); *see* Minn. Stat. §325N.06(a), 325N.18, subd. 1. (authorizing equitable relief). *See also* Minn. Stat. §8.31, subd. 3(a) (authorizing equitable relief for consumer protection violations).

Thus, this Court now is faced with the task of harmonizing, and giving full effect, to the eviction-action statutes and §504B.121. Significantly, in both *AMRESCO* and *Fraser* this Court was not presented with an eviction action based on a lease, and where the tenant had possession prior to the lease. *AMRESCO*, 631 N.W.2d at 445-46 (action after completed mortgage foreclosure); *Fraser*, 642 N.W.2d. at 40-41 (action on purchase contract-for-deed). Thus, in those cases, this Court was not required to give full effect to §504B.121. This Court must do so here, however, and can consider four options.

First, this Court theoretically could hold that, in response to a putative landlord's eviction-action complaint under §504B.321, an owner/tenant who owned and possessed the property before making an alleged lease cannot deny title by asserting there existed an equitable mortgage or seeking rescission through Chapter 325N (or other laws). But this clearly would not give "full effect" to §504B.121—the statute specifically allows certain tenants to deny title in response to an action by a landlord under a lease "to recover possession," and the Legislature defined an eviction action as an action to "recover possession." §504B.121; §504B.001, subd. 4.; *see No Power Line*, 262 N.W.2d at 323 n.30 (Legislature presumed to enact statutes knowing existing laws on same subject-matter). Moreover, because the tenants to whom §504B.321 applies did not enter the property under color of the lease, the "foundation-fact upon which the jurisdiction rests"

for summary possessory proceedings is wholly lacking. *Steele*, 9 N.W. at 774-75. This option would impermissibly grant putative landlords advantages to which they are not entitled: it would grant "landlords" possession *for the first time*, and then force the evicted owners/tenants, who had continuous possession of the property, to bring a later, separate action. *See Olson*, 250 N.W. at 369. The statutes and equities do not require or even support this option.

Second, this Court theoretically could hold that a §504B.121 tenant must assert, and a district court must resolve, the owner/tenant's denial of title within the confines of the statutory eviction action. But this option would not give full effect to the intended summary nature set forth by §§504B.281–.371 and would require this Court to overrule over a century of precedent specifically holding that such statutorily defined actions merely determine possessory rights and do not adjudicate the parties' ultimate legal or equitable rights of ownership. *E.g., Dahlberg*, 42 N.W.2d at 576. Further, as with the first option, the foundation-fact justifying the application of a summary possessory proceeding—the tenant's entry under color of a lease—is wholly lacking. *See Steele*, 9 N.W. at 774-75.

Moreover, this option would not give full effect to §504B.121 given the summary nature of such statutory proceedings. As recognized by the supreme court, "[i]ts provisions are not designed to try title." *Keller*, 18 N.W.2d at 547. For example, the question of whether a lease is actually a part of an equitable-mortgage transaction is an intensive factual exercise requiring an analysis of (1) the intent of the parties in light of "all of the circumstances," (2) the disparity between the value of the property and the

price paid, (3) the nature of the solicitation that gave rise to the transaction, (4) attempts to sell the property in the open market, (5) whether the parties negotiated a sales price for the property, and (6) whether the tenant was in continuous occupancy. *E.g., Brown v. Grant Holding, LLC, et al.,* 394 F. Supp. 2d 1090, 1097-99 (D. Minn. 2005). Given that a eviction-action plaintiff can demand a trial within six days of the initial appearance when the action is upon a written lease, and that a § 504B.121 tenant's denial of title through equitable mortgage or improper foreclosure reconveyances will likely be based on such a writing, an owner/tenant would be placed in an untenable position in attempting to locate counsel and develop the entirety of her case within 20 days. *See* Minn. Stat. §§504B.321 (appearance no later than 14 days after service of summons), 504B.341 (right to demand trial no more than 6 days after appearance). The summary-eviction action is not designed to replace actions subject to the normal rules of civil procedure, such as ejectment, and to force an owner/tenant to assert her denial of title within the confines of a statutory eviction action is to force a square peg into a round hole. *See, e.g., Keller*, 18 N.W.2d at 547.

Finally, to hold that owners/tenants must assert their denials of title in response to an eviction action would have severe consequences without precedent. Because current precedent mandates that eviction actions do not adjudicate title, the resulting judgment and writ of restitution is not a bar to a later action involving title. *E.g., Dahlberg*, 42 N.W.2d at 576. But if this Court were to hold that a §504B.121 tenant must assert and resolve her denial of title within an eviction action, landlords could later assert that the summary proceeding has *res judicata* effect. *See Brown*, 394 F. Supp. 2d at 1099-1100.

This option would contravene the purpose of summary possessory actions by allowing a landlord to gain an advantage through the lease in a title determination, is entirely contrary to all precedent on the scope of such statutory proceedings, and, most importantly, is simply not authorized by the text of §§504B.281–.371 itself.

For the third option, this Court could attempt to apply *Fraser* (ignoring here that §504B.121 was not applicable there): the eviction action must go forward even if an owner/tenant denies title as permitted under §504B.121, so long as the owner/tenant can bring a later action. Yet this option must fail for the same reasons either the first or second option fails. On the one hand, if owners/tenants can bring later actions, forcing them to defend the summary action without denying title as provided under §504B.121 suffers from the failings of the first option. Moreover, this will force owners/tenants to endure the irreparable harm discussed above—eviction and potential loss of their homes to bona fide purchasers. On the other hand, if the owner/tenant cannot bring a later action, forcing owners/tenants to deny title within the confines of the summary-eviction action suffers from all of the failings of the second option. In short, applying *Fraser* to §504B.121 tenants fails to give full effect both to the eviction-action statutes and §504B.121, results in irreparable harm to owners/tenants not required under the law or to protect fully the interests of putative landlords, and is contrary to the equities. *See McLean*, at 7 (*Amici* App., p. 7) ("public interest does not favor sophisticated real-estate

businesses to profit from fraud on unsophisticated and desperate home owners and then leave those homeowners homeless").[11]

The fourth and final option presents the sole result which gives full effect to the eviction-action statutes and §504B.121 while being consistent with the equities presented in such a case. Specifically, this Court should hold that a district court lacks subject-matter jurisdiction to proceed with the eviction and therefore the §504B.321 complaint must be dismissed without prejudice.

"Jurisdiction refers to the court's power to hear and decide the dispute." *State v. Eibensteiner*, 690 N.W.2d 140, 149 (Minn.App. 2004). "'Jurisdiction of the subject-matter' means, not only authority to hear and determine a particular class of actions, but authority to hear and determine the particular questions the court assumes to decide." *Sache v. Gillette*, 112 N.W. 386, 387 (Minn. 1907). A district court might have "jurisdiction of the parties and of the subject matter in the general sense that it ha[s] the authority to hear and determine the class of cases to which the instant one belongs. But that is not enough; it is necessary that the court should have [] authority also to decide the particular question" presented. *Duenow v. Lindeman*, 27 N.W.2d 421, 425 (Minn. 1947).

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[11] Because the case on appeal presents eviction based on a lease, versus the contract-for-deed in *Fraser,* this Court need not reconsider its *Fraser* decision here. However, *amici* do not believe *Fraser* should apply to contract-for-deeds where the owner/tenant previously owned and possessed the property given the fact that (1) the foundation-fact for summary actions, an owner/tenant's entry under the contract-for-deed, is not present; and (2) as recognized by *Steele*, whether an equitable mortgage arose from such a conveyance is not properly considered in a summary statutory actions. 9 N.W. at 773-75.

As explained above, Minnesota appellate courts have consistently held that courts considering statutory eviction actions cannot decide title questions—in other words, they do not have subject-matter jurisdiction under §§504B.281–.371 to hear and determine this particular question. *See id.; Sache*, 112 N.W. at 387. But at the same time, §504B.121 permits owners/tenants who owned and possessed their homes before the lease was made to deny title in response to a possessory proceeding. To resolve this apparent conflict, this Court should hold that a district court does not have subject-matter jurisdiction to proceed with an eviction action when the tenant permissibly challenges the landlord's title under §504B.121 and, therefore, the action must be dismissed without prejudice. *See, e.g., Garde v. One Ford Explorer*, 662 N.W.2d 165, 166 (Minn. App. 2003) (dismissal required when district court is without subject-matter jurisdiction under statute). Unlike the other options, this result gives full effect to all relevant statutes as much as possible—the right of the tenant to deny title under §504B.121 is preserved while this Court does not for the first time hold that title can be resolved in a summary eviction action. Moreover, this holding does not adversely effect the rights of purported landlords because (1) the foundation-fact justifying allowing a landlord to proceed with a *summary* proceeding—the presumption that a tenant's entry under color of a lease is permissive—is wholly lacking in such cases; and (2) a dismissal for lack of subject-matter jurisdiction is not an adjudication on the merits. *See Martinez v. Richardson*, 472 F.2d 1121, 1126 n.3 (10th Cir. 1973). After dismissal, either party can bring an action to determine title, having gained no undue advantage under the lease, without subjecting owners/tenants to irreparable harm or the threat of *res judicata* from a summary

proceeding, without harming the rights of putative landlords, and consistent with the policies reflected in the applicable statutes, precedent, and equitable concerns.

II. DISMISSAL GIVES FULL EFFECT TO CH. 325N AND LEGISLATIVE INTENT.

Dismissal also gives effect to the legislative intent behind Chapter 325N. By definition, §504B.121 applies to eviction actions on foreclosure-reconveyance transactions if the putative landlord brings the action on an alleged lease. *See* Minn. Stat. §325N.01(c). To ignore §504B.121 and allow putative landlords to use Chapter 504B summary actions to intimidate or evict owners/tenants, before their denials of title can be litigated, directly contravenes key purposes of Chapter 325N—to preserve homeownership and protect homeowners from predatory and fraudulent practices. Indeed, such an outcome would give the stamp of approval on using courts as an instrument to defraud homeowners of their homes and their legal and equitable rights.

The main thrust of Chapter 325N is to protect homeowners in foreclosure from predatory practices that virtually guarantee they will lose their homes, and to provide incentives so that foreclosure-rescue programs in fact "rescue" homes from foreclosure. Thus, Chapter 325N furthers Minnesota's public policy of preserving homeownership. *Fletcher v. Scott*, 277 N.W. 270, 271 (Minn. 1938) (recognizing "public policy of the state to preserve to the owner a home and place of habitation" (quotation omitted)).

As discussed above, a main component of foreclosure-rescue scams is eviction or ousting the owner/tenant through the threat of eviction. Eviction is the final step before the home can be sold with clear title and for full-market-value. In the cases prosecuted by the State, many victims reported being repeatedly threatened with eviction as a means

to intimidate and extract unreasonable payments. *See, e.g., Amicus* App., pp. 121-123, 129-132 (Complaint, *State v. Grant Holding, LLC,* ¶¶ 26-32, 51, 55-56, 62). The State further found that many victims were either evicted or left their homes under threat of eviction—even in cases where the defendants claimed title through forged documents and other blatantly false pretences. *See, e.g., Amicus* App. pp. 145-146, 148-150 (Complaint, *State v. Home Funding Corp.,* ¶¶25-28, 36-40.) In these situations, summary-eviction actions are a devastating weapon in the scammer's arsenal because homeowners may be left homeless, and the home can be sold to a bona fide third-party purchaser, depriving the homeowner of the opportunity to obtain meaningful relief.

Chapter 325N does not forbid the eventual eviction of former homeowners. Indeed, it contemplates that a foreclosure reconveyance complying with Chapter 325N may end in eviction. *See* Minn. Stat. §325N.17(b)(2). In such cases, the Legislature deemed that foreclosure purchasers could retain 18% of the home's fair-market-value. *Id.* But if a party has purported to obtain title through illegal tactics such as those prohibited by Chapter 325N, that party has no right to any of the home's equity, much less to the home itself through summary eviction. *See, e.g., River Run v. Kappedahl,* No. C2-03-10463, slip op. at 2 (Anoka Cty. Dist. Ct. July 12, 2004) (*Amicus* App., p. 194); *Hruby v. Larsen,* 2005 WL 1540130, at *1-4 (D. Minn., June 30, 2005) (*Amici* App., pp. 236-239); *McLean,* at 9-10 (*Amici* App., pp.9-10); *see also* Minn. Stat. §325N.18, subd. 3 and Minn. Stat. §8.31, subd. 3(a) (providing that all remedies are available, including equitable relief).

A Chapter 325N violator or equitable mortgagee should not be permitted to summarily evict an owner/tenant before a court determines if the putative landlord legally has title to the property, as happened in the Joneses' case. Allowing such a summary eviction is contrary both to the proper application of Minn. Stat. §504B.121 and the Legislature's purpose in enacting Chapter 325N. Such a result permits exactly the type of conduct prohibited by Chapter 325N: owners/tenants must either pay monthly payments they cannot afford--and that the foreclosure purchaser knew or had reason to know they could not afford--or lose their home to someone whom they allege illegally obtained title to it. This impermissibly allows summary-eviction proceedings to be used as a tool to further fraudulent foreclosure-rescue schemes, a result neither necessary under nor consistent with the law.

CONCLUSION

The eviction-action statutes and §504B.121, when properly construed together, require that where an owner/tenant permissibly denies the putative landlord's title, the district court lacks subject-matter jurisdiction to decide the matter. Therefore, the action should be dismissed without prejudice. On these grounds, the *amici* respectfully request that this Court reverse the lower court's decision.

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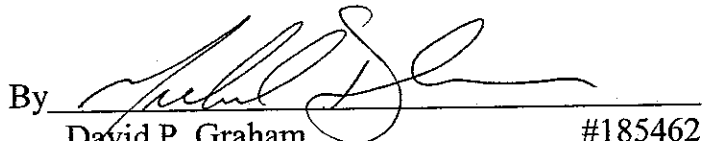

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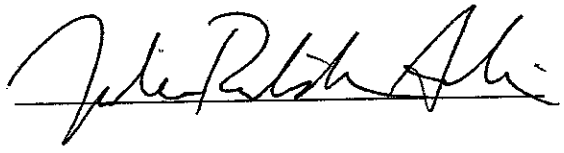
CERTIFICATE OF COMPLIANCE

WITH MINN. R. APP. P 132.01, Subd. 3

The undersigned certifies that the Brief submitted herein contains 6,942 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 2002, the word processing system used to prepare this Brief.



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