

NO. A05-2083

State of Minnesota
In Court of Appeals

Real Estate Equity Strategies, LLC,

Respondent,

vs.

Michael E. Jones and Edith A. Jones,

Appellants.

RESPONDENT REAL ESTATE EQUITY STRATEGIES, LLC'S
BRIEF AND APPENIDX

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TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIESiii

LEGAL ISSUESv

STATEMENT OF THE CASEvi

INTRODUCTION 1

STATEMENT OF FACT 1

 I. THE JONESES’ BREACH OF THEIR LEASE AGREEMENT.....2

 II. MISCELLANEOUS FACTS NOT GERMANE TO THIS
 APPEAL.....5

ARGUMENT.....6

 I. STANDARD OF REVIEW.....7

 II. APPELLANTS’ ACTIONS HAVE RENDERED THIS APPEAL
 MOOT.....7

 III. THE DISTRICT COURT’S FINDINGS WERE NOT CLEARLY
 ERRONEOUS.....8

 IV. APPELLANTS’ ATTEMPTED CREATION OF RIGHTS AND
 PROCEDURES WHICH DO NOT EXIST, OR WERE NOT
 EXERCISED, DO NOT AFFORD THEM THE RELIEF THEY
 SEEK.....9

 A. Appellants’ resort to Legislative history of a statute clear on its
 face is an improper attempt to obtain relief not found in the
 statute......9

 B. Appellants’ failed to exercise procedures in existence to stay
 the proceedings. Because these procedures are in place, there is
 no need to create a new procedure which in effect would
 abolish eviction actions in the future...... 12

V. *AMICI'S* ARGUMENTS, THOUGHTFUL THOUGH THEY ARE, DO NOT APPLY TO THIS DISPUTE. FURTHERMORE, THE LOGICAL EXTENSION OF *AMICI'S* ARGUMENTS IS A COMPLETE EROSION OF LONGSTANDING MINNESOTA LAW.....14

A. A tenant can challenge title in an eviction action, provided the tenant satisfies necessary factual prerequisites. Accordingly, the application of Section 504B.121 does not present a question of subject matter jurisdiction, but rather presents a question of applicability to the facts at hand.....14

B. Appellants' failed to preserve the issue for appellate review. Regardless, the record demonstrates they are not entitled to the protections of the statute.....17

C. Public policy and longstanding Minnesota law require the rejection of *amici's* proposed resolution to this issue.....25

CONCLUSION.....30

TABLE OF AUTHORITIES

Cases

<u>Amaral v. The Saint Cloud Hospital</u> , 598 N.W.2d 379 (Minn. 1999)	11
<u>AMRESKO Res. Mtg. Corp v Stange</u> , 631 N.W.2d 444 (Minn. Ct. App. 2001).....	15, 25, 27, 28, 29
<u>Fraser v. Fraser</u> , 642 N.W.2d 34 (Minn. Ct. App. 2002).....	13, 28, 29, 30
<u>Gallagher v. Moffet</u> , 233 Minn. 330, 46 N.W.2d 792 (1951)	7
<u>Ganje v. Schuler</u> , 659 N.W.2d 261 (Minn. Ct. App. 2003).....	18
<u>Ittel v. Pietig</u> , 705 N.W.2d 203, 2005 Minn. App. LEXIS 776 (Minn. Ct. App. 2005)	11
<u>Johnson v. American Casualty Co.</u> , 177 Minn. 103, 224 N.W. 700 (1929).....	13
<u>Lanthier v. Michaelson</u> , 394 N.W.2d 245 (Minn. Ct. App. 1986)	8
<u>Lundeen v. Nyborg</u> , 161 Minn. 391, 201 N.W. 623 (1925).....	13
<u>Mac-Du Properties v. LaBresh</u> , 392 N.W.2d 315 (Minn. Ct. App. 1986), rev. denied (Minn. Oct. 29, 1986).....	7
<u>Phillips v. Neighborhood Hous. Trust v. Brown</u> , 564 N.W.2d. 573 (Minn. Ct. App. 1997), rev. denied (Minn. Sept. 18, 1997)	7
<u>Rainbow Terrace, Inc. v. Hutchens</u> , 557 N.W.2d. 618 (Minn. Ct. App. 1997).....	3
<u>Ripley v. Fraser</u> , 132 Minn. 311, 156 N.W. 350 (1916).....	18
<u>State v. Eibenstiner</u> , 690 N.W.2d 140 (Minn. Ct. App. 2004)	15
<u>State v. The Hanna Mining Co.</u> , 256 Minn. 59, 121 N.W.2d 356 (1963) ..	15, 19, 20
<u>Steele v. Bond</u> , 28 Minn. 267, 9 N.W. 772 (1881).....	27, 28
<u>Thiele v Stich</u> , 425 N.W.2d. 580 (Minn. 1988).....	3, 9, 19
<u>Trebesch v. Trebesch</u> , 130 Minn. 368, 153 N.W. 754 (1915).....	16, 17, 20
<u>William Weisman Holding Co. v. Miller</u> , 152 Minn. 330, 188 N.W. 732 (1922).....	25

Statutes

Laws 1899, ch. 13	16
Minn. Stat. 325N.....	passim
Minn. Stat. §325N.13.....	21
Minn. Stat. §325N.17.....	12
Minn. Stat. §504.03 (1986).....	16, 17
Minn. Stat. §504A.221 (1998).....	16
Minn. Stat. §504B.001	4, 23
Minn. Stat §504B.121	passim
Minn. Stat. §504B.321	8, 16, 19, 23
Minn. Stat. §557.02.....	13
Minn. Stat. §559.01.....	17, 21
Minn. Stat. §645.16.....	10-11

Rules

Minn. R. Civ. App. P. 128.021, 6
Minn. R. Civ. P. 653, 7, 13

LEGAL ISSUES

- I. Are the issues raised in appellants' and *amici's* briefs properly before this Court in that they were not raised at the district court level?

Apposite authority: Thiele v. Stich, 425 N.W.2d 580 (Minn. 1980).

- II. Is a landlord entitled to a Writ of Recovery when there is a written lease agreement and the tenant admits the failure to make rental payments?

The district court held in the affirmative.

Apposite authority: Minn. Stat. §504B.321.

- III. Is Minn. Stat. §504B.121's application to an eviction proceeding a question of subject matter jurisdiction or a question of whether the tenant qualifies under the statute to raise a title question in the eviction proceeding?

The district court was not presented with the question.

Apposite authority: Minn. Stat. §504B.121; Fraser v. Fraser, 642 N.W.2d 34 (Minn. Ct. App. 2002); AMRESCO Res. Mtg. Copr. v. Stange, 631 N.W.2d 444 (Minn. Ct. App. 2001); Trebesch v. Trebesch, 130 Minn. 368, 153 N.W. 754 (1915).

- IV. Did appellants prove during the eviction proceeding they were entitled to the protections afforded them by Minn. Stat. §504B.121.

The district court was not presented with the question.

Apposite authority: Minn. Stat. §504B.121.

STATEMENT OF THE CASE

Respondent brought an action against appellants seeking the recovery of property which was subject to a written lease agreement. Appellants admitted they defaulted on their obligations pursuant to the lease agreement. Instead of challenging whether there was a default, appellants answered and moved to dismiss the eviction action complaint.

The matter proceeded to trial before the Honorable Elizabeth Martin, Washington County District Court Judge, on October 10, 2005. Appellants did not prove any of the allegations to which they claimed entitled them to a stay of the proceeding. Contemporaneous with their Answer in the eviction proceeding, appellants also filed a complaint in Washington County District Court. However, they did not seek a stay of the eviction proceeding in this action.

After receiving testimony, Judge Martin determined the existence of a valid lease agreement. By virtue of appellants' admission of default, respondent was granted a Writ of Recovery. The Writ was stayed provided certain conditions were met so as to allow appellants to perfect their appeal. Appellants failed to satisfy these conditions, and the Writ of Recovery issued.

This appeal followed.

INTRODUCTION

Respondent Real Estate Equity Strategies, LLC respectfully submits its appellate brief. Appellants are attempting to turn what on the face of the documents and the actual testimony received at trial was a relatively simple eviction proceeding. True, this case presents the added element of the Joneses owning the home prior to their selling and then leasing it from Real Estate Equity Strategies. Yet, this fact alone does not raise this case to the level of great injustice as claimed by appellants. The facts from the eviction proceeding demonstrate the correctness of the district court's order. Apparently recognizing this, appellants attempt to deflect from the facts by casting aspersions, by misconstruing the law and engaging in unwarranted and unnecessary legal analysis. After setting aside the mirrors and blowing away the smoke the facts and the law demonstrate Real Estate Equity Strategies was entitled to a Writ of Recovery.

STATEMENT OF FACT

This appeal involves two separate set of facts, one primary and one secondary, at best.¹ The primary set of facts are those surrounding the lease

¹ The claim appellants are deflecting from the real issues by casting aspersions is demonstrated by their failure to abide by Minn. R. Civ. App. P. 128.02. Appellants have a duty to present the facts "fairly with complete candor and as concisely as possible" with references to the record. Minn. R. Civ. App. P. 128.02, subd.1(a). Instead appellants claim as fact, without any reference to the record, Real Estate Equity Strategies "engages in the business practice known as 'equity stripping'". Appellants' Br. at p. 3. Such unsupported and pejorative comments will not be dignified with a response.

agreement and its breach as determined by the district court and admitted to by Michael Jones. The secondary, and largely irrelevant set of facts, are those surrounding the Washington County District Court action and then the federal court action. Each will be separately discussed.

I. THE JONESES' BREACH OF THEIR LEASE AGREEMENT.

At one time the Joneses owned property at 7451 27th Street Circle North in Oakdale, Minnesota ("the Property"). See e.g. Appellants' App. at p. 23. Due to the inability to make mortgage payments, the mortgage appellants had with Wells Fargo went into default. Tr. at p. 25. Faced with the prospect of being removed from their home through the foreclosure process with Wells Fargo, appellants decided to enter into a transaction whereby they sold their home, but were allowed to remain in the home, and then lease the Property from Real Estate Equity Strategies. Tr. at pp. 17-20.

Appellants sold the Property and entered into a lease agreement with Real Estate Equity Strategies. Ex. 1. The lease was executed on May 9, 2005. Id. However, appellants failed to make a single payment pursuant to the lease. Tr. at pp. 27-28. Despite vague references to the contrary in their brief,² appellants failed to make payments because "[t]here was some difficulties in the family, and at the time my job wasn't secure." Tr. at p. 25, ll. 20-21.

² See Appellants' Br. at p. 12 (claiming Real Estate Equity Strategies knew appellants could not make the required monthly payment and then obtained title through fraud and trickery). Again, these claims are made without any reference to the record.

Due to the lack of payment, on September 2, 2005 Real Estate Equity Strategies executed an Eviction Action Complaint. Appellants' App. at p. 2. The initial court appearance was scheduled for September 19, 2005. In response, appellants filed an Answer and Motion to Dismiss and Expunge. Id. at p. 3. Attached to the Answer was a copy of a complaint filed in the Washington County District Court. Id. at p. 7. However, what is not in the record are any Affidavits supporting the allegations in the Answer or the District Court Complaint.

It is important to clearly set forth the issues raised in the Motion to Dismiss. Even though this is an appeal from an eviction proceeding, issues not raised at the district court level cannot be considered at the appellate level. Rainbow Terrace, Inc. v. Hutchens, 557 N.W.2d. 618, 621 (Minn. Ct. App. 1997), citing Thiele v Stich, 425 N.W.2d. 580, 583 (Minn. 1988). The stated reasons in the Motion to Dismiss were: Real Estate Equity Strategies had no legal interest in the Property; and the court lacked subject matter jurisdiction. Appellants' App. at pp. 4-5.

The parties returned to court on October 10, 2005. Tr. at p. 2. Yet, in the twenty-one days that elapsed between the initial court appearance and the actual trial, appellants did not seek relief pursuant to Minn. R. Civ. P. 65 to enjoin the eviction proceeding. Tr. at p. 4, 6. Instead, appellants decided to put all of their eggs in the basket of their Motion to Dismiss. Tr. at pp. 5-7. In addition, appellants disputed the validity of the lease. Id. at p. 8. Prior to taking testimony, the district court denied the request to stay the entire proceedings and proceeded with testimony. Id.

The first witness called at the hearing was Chadwick Banken. Id. at p. 9. He testified the owner of the property was R.E.E.S. Max. Id. at p. 10. He is also the chief manager of Real Estate Equity Strategies who is the agent for the owner. Id. By statutory definition, an agent of the landlord is the landlord as well. Minn. Stat. §504B.001, subd. 7. Thus, Real Estate Equity Strategies was properly named as the plaintiff in the unlawful detainer proceeding.

The next issue taken up was the lease agreement. The lease was received into evidence. Ex.1; Tr. at p. 13. During cross-examination, Mr. Banken was asked concerning the rental amount on the lease, but no questions were posed addressing its validity. See Tr. at pp. 16-17. In fact, appellants' counsel inquired concerning the "actual Lease Agreement," without reference to its claimed invalidity. Id. at p. 20, l. 17.

Appellants' counsel did not even inquire of her own client concerning the validity of the lease. Rather, she inquired as to why no payments were made on the lease and what discussions were had concerning the lease amount. Id. at p. 25. Most telling is counsel's closing argument. "The facts here are really not all in dispute. The Joneses have not made any lease payments under the Lease Agreement." Tr. at pp. 28-29, ll. 25-2.

The last issue in the Motion to Dismiss was subject matter jurisdiction. Although the grounds were not clearly set forth, it is believed this claim relates to the existence of the complaint filed in Washington County District Court. See

Appellants' App. at p.5. Yet, no effort was made to prove any of the substantive allegations of this complaint. See Tr. at pp. 14-21, 24-27.³

The district court determined appellants failed to demonstrate the lease was invalid. Tr. at p. 37. Thus, due to the existence of a valid lease and the failure to make rental payments Real Estate Equity Strategies was entitled to the premises. Id. The Findings of Fact, Conclusions of Law and Order for Judgment granted a Writ of Recovery to Real Estate Equity Strategies but stayed the Writ until October 12, 2005 provided appellants made certain payments. Appellants' App. at p. 65.

In a subsequent Order, the district court stayed the Writ to allow appellants time to perfect their appeal. Id. at p. 66. The stay was conditioned on the posting of an appeal bond. Id. However, appellants failed to post the bond and in fact moved out of the Property resulting in a Writ of Recovery. Resp. App. at p. 1. This appeal followed.

II. MISCELLANEOUS FACTS NOT GERMANE TO THIS APPEAL.

Appellants hinge their success in this appeal not on facts, but on allegations. Allegations are just that – allegations. None of which were litigated below let alone proven. Merely by way of example, appellants claim the documents are “flush with fraud” without informing the Court no such finding has

³ Regardless, appellants later withdrew the Washington County District Court Complaint. Appellants' App. at p. 67.

ever been made in any court. Appellants Br. at p. 5 n.3. More disturbing, and perhaps telling, is the placement of these allegations in their statement of the facts.

These allegations, and the reference and characterization of documents, has as their genesis a complaint filed in the United States District Court for the District of Minnesota. Appellants Br. at p.5. What appellants fail to disclose is the fact a Motion to Dismiss the Complaint is now pending.⁴ No litigation has been conducted to determine the truth of any of the Federal Complaint's allegations. The Rules of Civil Appellate procedure require appellants to set forth the facts with candor. Minn. R. Civ. App. P. 128.02, subd. 1(c). Allegations are not facts, as such appellants' discussion of what they hope to prove in subsequent litigation is not germane to what was actually proven at the district court level: there was a valid lease; appellants failed to make timely lease payments; and therefore, respondent was entitled to a writ of recovery.

ARGUMENT

Appellants attempt to make this matter more complex than it is. In fact, based on their own conduct the appeal should be dismissed as moot. Regardless, the district court properly found the existence of a lease, and based on appellants' admission of a breach of the lease, a Writ of Recovery was the proper remedy. Appellants further seek a new procedure which is already in existence, they just failed to exercise the procedure. Had appellants truly felt the need to stay the

⁴ The documents related to the Motion to Dismiss are public records and can be viewed by logging in to the ECF/PACER system at www.mnd.uscourts.gov/cmecf/index.htm. The civil file number is 05-CV-2384.

eviction proceedings they merely needed to look to Civil Procedure Rule 65, not a futile attempt to create a remedy by comparing two separate statutes which do not allow the relief they seek. The district court's order should be affirmed.

I. STANDARD OF REVIEW.

An unlawful detainer proceeding "merely determines the right to present possession" of the premises. Gallagher v. Moffet, 233 Minn. 330, 333, 46 N.W.2d 792, 793 (1951). The only issue in an unlawful detainer proceeding is whether the facts alleged in the complaint are true. Mac-Du Properties v. LaBresh, 392 N.W.2d 315, 317 (Minn. Ct. App. 1986), rev. denied (Minn. Oct. 29, 1986). On review, the district court's findings of fact will be reversed only if they are clearly erroneous. Phillips v. Neighborhood Hous. Trust v. Brown, 564 N.W.2d. 573, 574 (Minn. Ct. App. 1997), rev. denied (Minn. Sept. 18, 1997). Appellants failed to meet their burden and thus the district court should be affirmed.

II. APPELLANTS' ACTIONS HAVE RENDERED THIS APPEAL MOOT.

As an initial matter it must be determined whether there is a justiciable controversy requiring resolution by this Court. Appellants did not make any payments into court to stay the Writ. Although an order requiring an appeal bond was issued, the bond was not posted. The Property was vacated by the appellants. The Writ of Recovery was issued entitling Real Estate Equity Strategies to possession of the Property. Thus, because an unlawful detainer proceeding's sole purpose is to determine the right of possession to the property, appellants own conduct has eliminated the need to determine present possessory rights.

Accordingly, there is no justiciable controversy and the appeal should be dismissed as moot, Lanthier v. Michaelson, 394 N.W.2d 245, 246 (Minn. Ct. App. 1986)(appeal from unlawful detainer proceeding dismissed as moot because appellant did not make payments into court and did not post supersedeas bond pursuant to court order).

III. THE DISTRICT COURT'S FINDINGS WERE NOT CLEARLY ERRONEOUS.

Appellants do not challenge the district court's finding as it relates to the matters which were litigated before the district court. See Appellants' Br. at pp. 8-17. On the contrary, appellants' counsel admitted there was a lease and appellants failed to make any payments pursuant to the lease. Tr. at pp. 28-29. However, in order to avoid the possibility of an argument being raised in a reply brief which was not previously briefed, a short summary is in order.

There is a valid lease between the parties. Ex. 1. Michael Jones testified he failed to make the payments required by the lease. Tr. at p. 25. The lease provides the failure to make payments constitutes a default. Ex. 1. Thus Real Estate Equity Strategies was entitled to bring an action seeking restitution of the property. Minn. Stat. §504B.321. Having proven all the allegations in the Eviction Complaint, the district court did not clearly err in finding for Real Estate Equity Strategies. The district court should be affirmed.

IV. APPELLANTS' ATTEMPTED CREATION OF RIGHTS AND PROCEDURES WHICH DO NOT EXIST, OR WERE NOT EXERCISED, DO NOT AFFORD THEM THE RELIEF THEY SEEK.

Appellants attempt to create rights which do not exist. Not only do they not exist, but the path taken by appellants to arrive at their destination is one they are not legally permitted to take. Legislative history is not needed given the clarity of the various statutes claimed to be at issue. Issues were raised for the first time on appeal; notwithstanding this, the legal analysis provided does not comport with the actual law in Minnesota. Regardless, appellants fail to succinctly state the relief they seek; or, in the alternative, the suggested relief is so contrary to law it should be rejected as a matter of course.

A. Appellants' resort to Legislative history of a statute clear on its face is an improper attempt to obtain relief not found in the statute.

Given the disjointed nature of appellants' argument of why the district court erred in not granting a stay or dismissing the eviction action it is difficult to frame a point-by-point response. See Appellants' Br. at pp. 8-13. As an initial note it is important to set forth those issues which are properly before the Court. For if the issue was not litigated below, it is improper to raise the issue for the first time on appeal. Thiele, 425 N.W.2d at 583

In this section of their brief appellants appear to raise the following issues: the district court failed to interpret statutory intent; the district court failed to stay the unlawful detainer proceeding; and the district court erred in not granting appellants' motion for dismissal and requiring Real Estate Equity Strategies, Inc.

to bring an action in ejectment. However, in their Answer and Motion to Dismiss the issue of statutory intent was not raised. Appellants' App. at pp. 3-5. In fact, in their Motion to Dismiss Chapter 325N is not even referenced. Id. at pp. 4-5. Nor was it argued at the unlawful detainer trial. Tr. at pp. 5-7, 28- 30. This issue is not properly before this Court.

As to appellants' claim they brought a motion whereby Real Estate Equity Strategies, Inc. was required to proceed by ejectment, no such motion is contained in the record. The word ejectment is not contained in their motion or in the transcript. The first time it was mentioned is in their brief. This issue is not properly before the court.

Regardless of the failure to preserve these issues, appellants' legal analysis is fatally flawed. Notably absent from their brief is any discussion as to how the district court erred. Instead, appellants' argument is premised on a conclusion, they were somehow entitled to a stay, then they attempt to support the conclusion with arguments raised for the first time on appeal. To do so, they rely on legislative history. However, they failed to engage in any analysis of statutory construction demonstrating the resort to legislative history is necessary. As will be shown, there is no need to resort to legislative history.

Appellants' discussion on the legislative history of Chapter 325N, while edifying, is of no aid to the Court. "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat.

§645.16. No language in Chapter 325N applies to a request to stay eviction proceedings.⁵ Accordingly, it plays no part in the analysis as to whether the district court properly ruled on the Motion to Dismiss.

Furthermore, appellants failed to identify the ambiguity present in Chapter 325N requiring the aid of statutory construction. “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” Amaral v. The Saint Cloud Hospital, 598 N.W.2d 379, 384 (Minn. 1999) (citation omitted). Appellants did not identify any portion of Chapter 325N, let alone Chapter 504B, that is ambiguous. Thus, “judicial construction is neither necessary nor proper.” Ittel v. Pietig, 705 N.W.2d 203, ___, 2005 Minn. App. LEXIS 776, *6 (Minn. Ct. App. 2005) (citation omitted).

Appellants’ use of statutory interpretation is based, in part, on an unsupported factual assertion. They claim they “established by trial evidence that the matter before the eviction court was a foreclosure re-conveyance transaction.” Appellants’ Br. at pp. 12-13. No citation to the record is provided supporting this contention.⁶ Mr. Jones offered no testimony regarding the transaction whereby

⁵ *Amici* recognize Chapter 325N permits the eviction of a party even if the transaction is properly classified as a reconveyance transaction. *Amici* Br. at p. 24. What *amici* does not discuss, perhaps because Chapter 325N is silent on the issue, is what if any effect Chapter 325N has on the actual eviction proceeding. Given the fact Chapter 325N is silent on the actual eviction proceeding, the only logical conclusion is Chapter 325N has no bearing whatsoever on the procedure and the law as it relates to eviction actions.

⁶ Whether the transaction is or is not a re-conveyance transaction has yet to be decided. However, to the extent appellants’ argument is conditioned on this “fact” the record does not support the statement made by appellants.

appellants sold the Property. See Tr. at pp. 24-27. Mr. Banken did testify concerning a purchase agreement, but no other specifics of the transaction were elicited. Tr. at pp. 17-18.

The district court properly ruled the matter before it and properly found in favor of Real Estate Equity Strategies, Inc.

B. Appellants' failed to exercise procedures in existence to stay the proceedings. Because these procedures are in place, there is no need to create a new procedure which in effect would abolish eviction actions in the future.

Appellants claim the district court erred by not staying the action so that they could seek the protections of Chapter 325N. Appellants' Br. at p. 12. Yet, Chapter 325N does not address or provide appellants a stay of an eviction action merely because they desire a stay. However, there is a procedure by which appellants could have obtained a stay, they just failed to utilize it.

Chapter 325N does not allow a party claiming to be covered by the statute the ability to stay an eviction action merely due to the claim the party is covered by the statute. On the contrary, the statute recognizes the possibility a party claiming to be covered by the statute can be evicted from the property. After eviction, a party covered by Chapter 325N is entitled to receive a percentage of the fair market value of the property as well as an accounting. Minn. Stat. §325N.17, subd. (b)(2).

The statute does not provide for a stay of an eviction action because the procedure to stay an eviction action is already in place. As appellants frequently

note, they commenced an action in Washington County District Court raising various allegations concerning the sale of the Property. Had they desired, they could have sought relief pursuant to Minn. R. Civ. P. 65 and obtained an injunction prohibiting the eviction action from continuing. See Johnson v. American Casualty Co., 177 Minn. 103, 224 N.W. 700 (1929); Lundeen v. Nyborg, 161 Minn. 391, 201 N.W. 623 (1925)⁷. However, appellants made the decision not to seek a temporary restraining order, as was their choice. Yet, this choice to neglect to exercise a remedy available to them does not lead to the conclusion they are entitled to fashion the same remedy, without making the required showing by Rule 65, merely because it is something they desire.

As will be more fully discussed in responding to *amici's* arguments, the position set forth by appellants and *amici* would result in a drastic change in eviction actions in Minnesota. True, there was a district court action whereby appellants raised numerous claims including claims brought pursuant to Chapter 325N. Yet, "to the extent [appellants had] the ability to litigate [their] equitable mortgage and other claims and defenses in alternate civil proceedings, it would be inappropriate for [them] to seek to do so in the eviction action; only if the eviction action presents the only forum for litigating these claims would it be appropriate for the district court to entertain them in that action." Fraser v. Fraser, 642 N.W.2d 34, 40-41 (Minn. Ct. App. 2002). Appellants had a means at their

⁷ Likewise, *amici's* concern the property at issue could be sold to a "bona fide purchaser[]" is easily rectified by the tenant filing a notice of lis pendens. See *Amici Br.* at p. 20; Minn. Stat. §557.02.

disposal to stay the eviction action. They declined to exercise it. Thus, the district court was correct in declining to grant a stay because the eviction action was not the only forum to address appellants' claims – their claims were raised in the alternate civil proceeding.

V. *AMICI'S ARGUMENTS, THOUGHTFUL THOUGH THEY ARE, DO NOT APPLY TO THIS DISPUTE. FURTHERMORE, THE LOGICAL EXTENSION OF AMICI'S ARGUMENTS IS A COMPLETE EROSION OF LONGSTANDING MINNESOTA LAW.*

Amici present a well thought discussion supporting their desire to have the district court reversed. See *Amici* Br. at pp. 9-22. Yet, there are numerous flaws in their analysis. First, Minn. Stat. §504B.121 and its applicability is not a question of subject matter jurisdiction. The statute properly construed does not prohibit the challenge of title in an eviction proceeding, in fact it encourages a challenge under specific defined circumstances. Second, the issue of the applicability of Section 504B.121 was not raised below, and regardless, appellants own allegations demonstrate it is inapplicable. Lastly, the arguments presented do not warrant changing what has long been the law in Minnesota.

- A. A tenant can challenge title in an eviction action, provided the tenant satisfies necessary factual prerequisites. Accordingly, the application of Section 504B.121 does not present a question of subject matter jurisdiction, but rather presents a question of applicability to the facts at hand.

Amici claim the import of Minn. Stat. §504B.121 is a challenge to the district court's subject matter jurisdiction. *Amici* Br. at p. 10. However, the argument is premised on a flawed reading of the statute. The statute does not

eliminate a challenge to title in an eviction action, it encourages it provided certain conditions are met. Thus, the question is not one of whether the district court has subject matter jurisdiction, but whether the facts are such that appellants fall within the protections afforded by Minn. Stat. §504B.121.

A court's subject matter jurisdiction is the power to hear and decide a dispute. State v. Eibenstiner, 690 N.W.2d 140, 149 (Minn. Ct. App. 2004). With respect to eviction proceedings, “[n]umerous precedents establish the limited nature and scope of an eviction proceeding, which is summary in nature.” AMRESKO Res. Mtg. Corp v Stange, 631 N.W.2d 444, 445 (Minn. Ct. App. 2001). That is, “the general rule is that so long as a tenant remains in possession of the demised premises he is precluded from denying the validity of the title under which he entered and agreed to hold.” State v. The Hanna Mining Co., 256 Minn. 59, 62, 121 N.W.2d 356, 358 (1963) (citations omitted) (emphasis supplied). Section 504B.121 is the exception to the general rule.

To properly analyze Section 504B.121 to determine its applicability it is important to view the entire section. It provides:

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

Minn. Stat. §504B.121 (emphasis supplied).⁸ An eviction action is one for “recovery of possession” of the property. Minn. Stat. §504B.321, subd. 1(a). Thus, the exception to the general rule is a tenant can challenge title so long as “prior to entering the lease, [the tenant] possessed the property under a claim of title that was adverse or hostile to that of the landlord.” Minn. Stat. §504B.121. On this point, appellants and respondent agree. “[U]nder 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.” Appellants’ Br. at p. 13 (emphasis supplied).⁹ Accordingly, the question is not one of subject matter jurisdiction because the district court can hear a claim of competing titles under the statute in an eviction proceeding. Trebesch v. Trebesch, 130 Minn. 368, 372, 153 N.W. 754, 756 (1915).

Herman Trebesch entered into a written lease agreement with his father’s guardian for a parcel of real estate. Id. at 370, 153 N.W. at 755. In discussing the dichotomy between there being a written lease agreement as well as a claim of title, the supreme court stated:

Under the rules of the common law this conduct in attorning to the guardian of his father’s estate as a tenant, would have operated as an estoppel,

⁸ This statutory protection afforded to a tenant is not new. It has been in existence in substantially the same form since 1899. See Minn. Stat. §504A.221 (1998); Minn. Stat. §504.03 (1986); Laws 1899, ch. 13.

⁹ It is assumed appellants’ failure to note there must be a hostile or adverse claim of title to satisfy Section 504B.121 was just an oversight and not a deliberate misreading of the statute.

precluding him from thereafter denying the title of his father or of asserting title in himself as against his father....This rule has been changed by statute in this state. G.S. 1913, §6808,¹⁰ provides that the estoppel of a tenant “shall not apply to any lessee who, at and prior to the lease, is in possession of the premises under a claim of title adverse or hostile to that of the lessor.” This is such a case. Under the statute the conduct of defendant in taking this lease did not estop him from asserting title in himself.

Id. at 372, 153 N.W. at 756.

As shown above, *amici's* claim “statutory eviction actions cannot decide title questions” is an erroneous construction of the law. See Amici Br. at p. 22. There is no conflict. The district court is not divested of subject matter jurisdiction merely because a tenant claims there is a title issue. Rather, the question properly presented is whether appellants qualify, let alone invoked, the protections afforded them by Section 504B.121. The answer to both is they did not.

B. Appellants' failed to preserve the issue for appellate review. Regardless, the record demonstrates they are not entitled to the protections of the statute.

In order for a tenant to question title in an eviction proceeding they must demonstrate that prior to signing the lease agreement they owned the “property under a claim of title that was adverse or hostile to that of the landlord.” Minn. Stat. §504B.121. Neither adverse nor hostile is defined in the statute. Yet, the terms are not foreign in Minnesota real estate law. An adverse claim is one where there are competing claims based on a recognizable interest or lien to a piece of property. Minn. Stat. §559.01. Hostility is where there is “intent to claim and

¹⁰ This statute was the predecessor to Minn. Stat. §504.03 (1986).

hold the land as against the true owner and against the whole world....” Ripley v. Fraser, 132 Minn. 311, 313, 156 N.W. 350, 351 (1916) (citation omitted); see also Ganje v. Schuler, 659 N.W.2d 261, 268 (Minn. Ct. App. 2003) (hostility is where one takes possession of the land as if he were the owner). Appellants do not satisfy the statutory requirements allowing them to challenge title.

Appellants did not raise this issue below and are precluded from raising it now. True, appellants claimed they rescinded the transaction, even though no court has determined their entitlement to rescission. Yet, the alleged rescission occurred after executing the lease. Appellants’ App. at p. 7. Furthermore, rather than stating a competing claim to title appellants agree “the owner and landlord of the premises is REES-MAX, LLC.” Id.; Tr. at p.10. Appellants “transferred title by warranty deed to REES-Max, LLC.” Appellants’ App. at p.4.

Appellants executed a purchase agreement whereby they sold the property to REES-Max, LLC. Id. at pp. 12-13. Their claimed rescission occurred on September 19, 2005 – the date of the Washington County Complaint. Id. at pp. 18-19.¹¹ No other title objection and no proof whatsoever is contained in the record. For Minn. Stat §504B.121 to apply the competing title claim must exist “prior to entering into the lease....” Id. The lease was entered into on May 9,

¹¹ Technically speaking the claimed rescission did not occur until October 11, 2005, the signing of the federal complaint, due to the withdrawal and dismissal of the Washington County action. Id. at 16. If respondent is successful in its motion to dismiss the federal action, there would be no alleged rescission. Regardless, the analysis is the same no matter the date of the claimed rescission because it occurred after May 9, 2005, the date of the lease.

2005. Ex.1. Not claiming a title issue prior to May 9, 2005 at the district court level, appellants and *amici* are precluded from raising one now. Thiele, 425 N.W.2d at 583.¹²

Amici's argument is predicated on the applicability of Section 504B.121. See Amici Br. at p.9. If it is not, but instead is based on any title issue, the logical extension of their argument is in any eviction proceeding a tenant can simply raise a claim of title, whether true or not, and the landlord would be prevented from proceeding due to a lack of subject matter jurisdiction. Such a result would overturn what has long been the law in Minnesota. See The Hanna Mining Co., 265 Minn. at 62, 121 N.W.2d at 358. Since Section 504B.121 does allow a challenge to title within an eviction proceeding the analysis must be focused on the statute's applicability to the facts before the Court.

Amici make a statement which poses an interesting question, for which they do not provide an answer. They seek a holding "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" *Amici Br.* at p. 22 (emphasis supplied). What constitutes a permissible challenge? In the event

¹² *Amici* make a valiant effort attempting to preserve the issue for appellate review in stating the district court answered a question related to Minn. Stat. §504B.321. *Amici Br.* at p. 10. Yet, as stated earlier the statute is not mentioned in appellants' Answer and Motion to Dismiss. Appellant's App. at pp. 2-5. Nor is it mentioned anywhere in the transcript. Lastly, appellants are not denying respondent's title to the Property. See Amici Br. at p. 10. Title, according to appellants, is vested in REES-Max, LLC. Appellants' App. at p.3. There are not competing claims to title. Rather, appellants desire to undo a transaction by which they freely transferred title.

the Court declines to adopt respondent's reading of Section 504B.121, does the mere fact a tenant who appears in district court on an eviction matter and mentions a claim pursuant to Section 504B.121 divest the district court of jurisdiction? If so, eviction proceedings in all reality will cease to exist. If, however, a permissible challenge is one in which there are facts in which to justify the assertion of Section 504B.121, then at the very least, the tenant must be charged with the obligation of coming forth with those facts, not by way of claim, but by way of proof. Otherwise, again, a tenant merely needs to set forth in an answer language satisfying the requirements of Section 504B.121 to avoid a summary proceeding. Section 504B.121 requires more; there needs to be a showing at the district court level of its applicability to the case at bar. To their credit, appellants seem to agree the tenant must make this required showing in order to be entitled to the protection of Section 504B.121. Appellants' Br. at p. 17. However, the difference lies in the fact Section 504B.121, and pursuant to Trebesch, the claim is to be raised within the eviction proceeding. In this case, the record demonstrates Section 504B.121 does not apply.

To challenge title in an eviction proceeding the competing title claims must exist "prior to entering the lease...." Minn. Stat. §504B.121. The lease was entered on May 9, 2005. Ex. 1. Prior to May 9 there was no adverse or hostile claim of ownership to the Property. In fact, by signing the lease appellants "agreed that [REES] is in fact the owner of the property"The Hanna Mining Co., 265 Minn. at 62, 121 N.W.2d at 359. As described earlier, appellants do not

contend actual ownership, just whether they have the right to rescind the transaction.¹³

Even assuming there is an issue of title prior to May 9, 2005, there is no adverse or hostile issue. There is no claim appellants have title to the Property by virtue of adverse possession; no claim they have an interest in the Property prior to May 9, 2005 by virtue of a lien; no claim there is an unrecorded conveyance; no complaint brought pursuant to Minn. Stat. §559.01; no Torrens proceeding has been instituted. On the contrary, as appellants claim they “transferred title by warranty deed” to the Property. Appellants’ App. at p. 4. Appellants clearly do not possess facts by which they can avail themselves of the protections of Section 504B.121.

The import of this as it relates to *amici’s* position is one of two possible outcomes: their position is rendered moot because Section 504B.121 does not apply to the facts before the Court; or, their argument and desired outcome is broader in scope the result of which would in effect eliminate the entire eviction statute. If the former, then at the very least there must be some sort of showing Section 504B.121 applies, other than the mere claim it does. If the latter, the

¹³ The existence of appellants’ claim of rescission is not as strong as they would like the Court to believe. Based on the facts in the record appellants attempted rescission is suspect based on its timing. The purchase agreement was executed on May 9, 2005. Ex. 3. The attempted rescission, which was first asserted on September 19, 2005 in the Washington County complaint, was untimely. Minn. Stat. §325N.13.

possibility exists eviction actions as currently understood would no longer exist in Minnesota.

Amici's position is predicated on the applicability of Section 504B.121.

For example, they claim "this Court must harmonize and give full effect to eviction actions as defined in §§504B.281-.371 and the tenant's right to deny title under §504B.121." *Amici Br.* at p. 15.

However, as described above Section 504B.281-.371 and Section 504B.121 are fully in tune with one another. Provided the tenant meets the factual prerequisites of Section 504B.121, the tenant can challenge title in an eviction proceeding. The question in this matter then becomes whether appellants satisfy the factual prerequisites. Neither appellants nor *amici* provided an in depth discussion of whether they did; instead it was assumed Section 504B.121 applied.¹⁴ Given the fact appellants do not qualify for the protections afforded tenants by virtue of Section 504B.121, *amici's* argument is moot: Section

¹⁴ *Amici* do argue a hostile title question is present due to a claim of an equitable mortgage. *Amici Br.* at p. 16. Yet, this begs more questions than it provides answers or guidance. This claim, to the extent it exists, accrued at the time of the transaction and does not relate to a claim prior to the entering of the lease as required by Section 504B.121. If there is an equitable mortgage, then there was no sale of the property, and certainly not a sale covered by Chapter 325N. Of course there is nothing improper when pleading in the alternative. Yet, both grounds for a challenge of title cannot be present: the rescinding of the transaction pursuant to Chapter 325N; and an equitable mortgage. Additionally, if *amici's* position is adopted, it opens a Pandora's box. As will be discussed in more detail shortly, if all that is necessary to divest a district court from jurisdiction to hear an eviction matter is a claim of an equitable mortgage, then each and every tenant served with an eviction summons can merely make the claim, and the landlord will not be able to avail itself of the procedures set forth in the eviction statute.

504B.121 encourages rather than prohibits a tenant from challenging title in an eviction proceeding and therefore subject matter jurisdiction is not an issue; and appellants not only failed to raise the issue of Section 504B.121 below, the facts contained in the record demonstrate they are not entitled to its protections. If, however, *amici's* position is not predicated on the existence and applicability of Section 504B.121 they are asking the Court to eliminate an entire body of Minnesota law.

An eviction action is summary in nature, on that there is no disagreement. The first appearance on an eviction proceeding must be had within 14 days of the complaint. Minn. Stat. §504B.321. What appellants and *amici* seek, though not explicitly but by implication, is a total evisceration of the statutory scheme. For if all it takes to remove an action from within the jurisdiction of the eviction court is to make a claim to title, no matter what the claim is based upon, then each and every tenant who fails to make payment on their lease is well advised to appear at the eviction hearing and state they claim title to the premises. Then, should the position advanced by *amici* be adopted, the district court must dismiss the action “without prejudice.” *Amici Br.* at p. 21. Then what? Obviously the landlord must bring a claim in district court, apparently for ejectment because there no longer would be a cause of action for eviction or at the least not one summary in nature. See Minn. Stat. §504B.001, subd. 4. This is the option *amici* urge this Court to adopt. *Amici Br.* at p. 21. While adequately addressing tenant’s concerns, providing them unfettered opportunities to avoid summary eviction procedures,

this option does not “protect the rights of ... eviction action plaintiffs” as claimed. *Amici Br.* at p. 2.

An ejectment action would take much longer to litigate providing another incentive for a tenant to continue not paying rent. An issue conveniently absent from *amici's* discussion: how do you address the rights of the landlord to receive payment for individuals living in the landlord's property? Many landlords have mortgages on the properties they rent to tenants. *Amici* do not address how in the context of a district court rather than eviction action the landlord is protected from a financial perspective. In fact, it is apparently of no concern. The protection afforded to landlords is “a dismissal for lack of subject-matter jurisdiction is not an adjudication on the merits.” *Amici Br.* at p. 22. With all due respect, the prevailing issue for landlords who bring an eviction proceeding is not a concern over principles of *res judicata*. Rather, the concern is the lack of payment of rent by the tenant. As the district court noted, at the least, the “minimal[] equitable position to take” is to require the tenant to bring the amount due on the lease up to date. *Tr.* at p. 7, l. 21.

The result set forth by *amici* does not require the tenants to pay anything as and for security. Instead, the onus is on the landlord to bring a district court action in ejectment. Rather than providing a time and cost efficient manner to resolve landlord-tenant disputes, the proposal urged by *amici* only serves to delay the rightful possession of property to the landlord at great financial harm to the landlord.

Amici may suggest the landlord can seek temporary relief in the district court action. Such an argument, if presented and adopted, would clearly change Minnesota law. For this remedy is one the tenant is required to obtain: the seeking of temporary relief. “Appellants can raise their counterclaims and equitable defenses directly in that separate, district court proceeding, where they can also seek to enjoin the prosecution of the eviction action.” AMRESCO, 631 N.W.2d at 445-446, citing William Weisman Holding Co. v. Miller, 152 Minn. 330, 332, 188 N.W. 732, 733 (1922). Clearly by enacting Chapter 504B the Legislature intended for there to be eviction actions. The position urged by *amici* has the distinct potential of eliminating these actions in their present form. Clearly public policy, even when viewed through the lens of Chapter 325N, prohibits such a result in this case.

C. Public policy and longstanding Minnesota law require the rejection of *amici*'s proposed resolution to this issue.

A few initial comments are necessary at the outset concerning the various statements made concerning those engaged in the same business as Real Estate Equity Strategies in this case. Particularly given the broad brush used seemingly casts Real Estate Equity Strategies in a light not supported by the record, but is akin to guilt by association. Regardless of the extent of the “equity stripping” problem, there is not one piece of evidence contained in the record to suggest, infer or support Real Estate Equity Strategies is somehow a part of the problem.

It would seem, particularly when reading appellants' brief, instead of regulating foreclosure reconveyance transactions the legislature should have prohibited their existence in every form. Apparently, homeowners who are subject to their mortgage being foreclosed would be much better off if no one could present any sort of transaction whereby the homeowner could retain possession of their home after the end of the redemption period following the foreclosure of their mortgage. This way they would not be subject to an "equity stripping scheme" or the "devastating weapon in the scammer's arsenal" which is discussed here: eviction. Appellants' Br. at p. 15; *Amici* Br. at p. 24. True, they would lose their home through the foreclosure process, but again not subject to a scheme.

Those who are subject to foreclosure could of course sell their home to a third-party. *Amici* Br. at p. 24. However, this is more a version of what *amici* would like to see rather than anything resembling reality. Appellants are prime examples of this.

Many homeowners in a foreclosure situation tend to put off addressing their own financial condition and thus are not prepared to sell their home right away. This may be caused in part due to "the stress of the event that caused default" as well as the fact the item at issue is their home. *Amici* Br. at p. 5. Instead, they try to wait for a miraculous change in their financial condition allowing them to wrest them from the severe financial difficulty they find themselves. Yet, when no such

relief arrives, there is not nearly enough time to go through the process of listing and selling a home prior to the end of the six month redemption period.

Appellants in this case had their home go into foreclosure in the fall of 2004. Appellants' App. at p. 7. It was not until the following May that they entered into the transaction with Real Estate Equity Strategies. Ex. 1. Rather than sell their home to a third-party, they decided to enter into a transaction whereby they were allowed to remain in the home. Unfortunately, they failed to live up to their obligations, both to their mortgage company and Real Estate Equity Strategies. Thus, the district court was entirely within its authority to issue a Writ of Recovery.

Amici place great emphasis on Steele v. Bond, 28 Minn. 267, 9 N.W. 772 (1881). See Amici Br. at pp. 12-14. However, factually and legally Steele does not apply to the matter before this Court. As an initial matter, Steele was predicated on the fact justices of the peace, who heard unlawful detainer matters, did not have "the power or jurisdiction to try a case where affirmative relief is sought by the answer" Steele, 28 Minn. at 273, 9 N.W. at 774. Yet, "[w]hen municipal courts were abolished, this court surmised that district courts having jurisdiction in equity would be able to hear defenses and counterclaims in an eviction proceeding." AMRESO, 631 N.W.2d at 445 (citation omitted). Thus, the foundation upon which Steele relies is not present in this matter.

Whereas in Steele the tenant sought equitable relief in the form of a title declaration, no such relief was sought in this matter. Rather than seeking a title

determination grounded on a claim of equity, appellants agreed “the owner and landlord of the premises is REES-Max, LLC.” Appellants’ App. at p. 3. No counterclaim is present in the Answer. Id.

Even so, the nature of the defense in Steele was the claim “when the lease was made, and that they did not agree to pay anything for the use of the premises, but that the sums nominally to be paid as rent were to be applied in payment of a previous indebtedness to the lessor, or to reduce a lien held by him on the premises” Steele, 28 Minn. at 274, 9 N.W. at 776 (emphasis supplied). In this case, there is no previous indebtedness to Real Estate Equity Strategies and Real Estate Equity Strategies does not have a lien on the property, but rather is the fee owner by virtue of a warranty deed executed by appellants. Factually, Steele has no application to this case.

Rather, this case is more properly analyzed under the principles set forth in AMRESKO and Fraser. Regardless of whether AMRESKO or Fraser involved a written lease, both involved an eviction proceeding. AMRESKO, 631 N.W.2d at 444; Fraser, 642 N.W.2d at 36. Nothing in either opinion limits the holdings to cases involving only contract for deeds or claims of an equitable mortgage. They apply to all eviction actions. AMRESKO, as is this case here, involved a situation where the subject of the eviction action had possession of the premises prior to AMRESKO’s right to obtain relief pursuant to the eviction statute. AMRESKO, 631 N.W.2d at 44 (Stanges defaulted on their mortgage, and after the expiration of the redemption period, AMRESKO sought to evict them from the property).

Accordingly, the principles set forth in both apply to this case and there is no reason by which to overturn both of these decision, the result urged by *amici*.

Appellants can, and have, assert their equitable defenses and claims in a separate proceeding. “Thus, there is no evident reason to interfere with the summary nature of eviction proceedings. Using the alternate procedure instead of expanding the eviction proceeding accords with the appellate courts’ prior determinations that the district court should uphold the summary nature of eviction proceedings.” AMRESCO, 631 N.W.2d at 446. Not only do the appellants have an alternate procedure by which to raise their claims, as discussed earlier had they exercised the option, they could have sought the relief provided by Section 504B.121 directly in the eviction action. A statute not at issue in AMRESCO. They did not invoke the statute’s protections below, and in effect the position urged by *amici* is to eliminate a tenant from having to do so. In essence, the statutory protections set forth in Section 504B.121 would apply in any action, regardless of the actual facts, and the district court is divested of subject matter jurisdiction. Clearly this is not the law in Minnesota.

As noted in Fraser, AMRESCO strikes the necessary balance between the rights of landlords to utilize eviction proceedings and the right of tenants to bring actions seeking equitable relief and other claims. Fraser, 642 N.W.2d at 40. Furthermore, given the abolition of municipal courts and a district court’s power to hear equitable claims, the assertion a tenant cannot present their claims in an eviction action is not entirely correct. “[O]nly if the eviction action presents the

only forum for litigating these claims would it be appropriate for the district court to entertain them in that action.” Id. at 41. The question, therefore, is not whether a tenant has a claim, but rather whether the claim asserted by the tenant cannot be raised in a proceeding outside of the eviction action. Clearly, appellants in this case have a forum for the resolution of their claims. Accordingly, it is not proper to entertain them in the eviction action. Despite the fact appellants did not actually present these claims, or at least litigate them at the district court level, the district court properly determined the eviction action was properly before it and Real Estate Equity Strategies was entitled to a Writ of Recovery.

CONCLUSION

For the reasons stated herein, the district court should be affirmed in all respects. The new procedure urged by appellants and *amici* is not new, it already exists. Had appellants truly desired to challenge title, instead of actually attempting to rescind their free conveyance of title, they could have done so. Section 504B.121 provides the mechanism to do this. The Legislature provided this remedy, appellants just failed to exercise it. Accordingly, there is no need to create that which already exists.

Respectfully submitted,

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Dated: DECEMBER 28, 2005

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STATE OF MINNESOTA
IN COURT OF APPEALS

Real Estate Equity Strategies, LLC

Respondent,

vs.

CERTIFICATE OF BRIEF LENGTH

Michael E. Jones and Edith A. Jones,

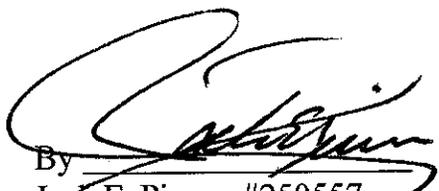
APPELLATE CASE NO. A05-2083

Appellants.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a proportional font. The length of this brief is 8,364 words. This brief was prepared using Microsoft Word 2003.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).