

No. A 06-1459

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Ganesh Thondikulam,

Appellant,

vs.

C & M Real Estate Services, Inc.,

Respondent.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Respondent's argument that Appellant's allegation that all the documents necessary for docketing were submitted to Court Administration on November 10th, 2004 is "unsupported by the record" is improperly before this Court; respondent conceded this fact as undisputed at summary judgment and cannot now challenge it on appeal. All the paperwork necessary for docketing was filed on November 10th, 2004, that is the effective date of docketing and that docketing is valid. Furthermore, considerations of public policy support Appellant's interpretation of the docketing and redemption statutes and the effective date of docketing in this case. The uncertainty created when creditors cannot know how much time they must allow between their submission of papers to Court Administration and the stamping of those documents as docketed undermines creditors' ability to enforce their rights.

Appellant respectfully requests that this Court reverse the District Court's Order for Partial Summary Judgment and remand this matter for trial on the merits.

LEGAL ARGUMENT

I. Appellant's Factual Allegations with Regard to the November 10th, 2004 Filing of Documents with Court Administration were Accurate and Undisputed.

Respondent's argument that Appellant's factual allegations are "unsupported by the record" improperly relies on arguments it failed to make made at the trial court level. Legal theories not raised at the trial court level

cannot be raised for the first time on appeal. Thiele v. Stich, 425 N.W.2d 580, 582-83 (Minn. 1988); see also Stumne v. Village Sports & Gas, 309 Minn. 551, 553 (Minn. 1976). A case must be decided on appeal based on the theories upon which it was tried. State v. Adams, 251 Minn. 521, 548, 89 N.W.2d 661, 679 (1958).

In support of its contentions that: 1) Appellant has improperly represented facts to this Court, and 2) that the trial court's decision is supported by public policy considerations, Respondent now argues that there is insufficient evidence in the record and no testimony or other "first-hand knowledge" to support Appellant's claim that the Affidavit of Judgment Debtor, the Conciliation Court Judgment and the Assignment of Judgment were actually filed with or submitted to Court Administration on November 10th, 2004, notwithstanding the "filed" stamp dated November 29th, 2004. (Respondent's Brief at 7 & 12).

At the summary judgment hearing on this matter, Appellant made the same factual allegations and argument it is making here; namely that all the paperwork necessary to create the judgment lien was filed with Court Administration on November 10th, 2004. Respondent failed to dispute Appellant's allegations and argument at the summary judgment and cannot raise that issue for the first time on appeal now. Thiele v. Stich, 425 N.W.2d at 582-83.

Respondent's argument that there is no evidence in the record to support the November 10th, 2004 date of filing is disingenuous. There is no evidence in the record on appeal precisely because that fact was undisputed at the summary

judgment hearing. (See Supplemental Appendix at 94). The absence of a complete record is a key reason why parties are not permitted to change their legal theories on appeal. If Respondent wanted to challenge the veracity of the November 10th, 2004 filing of the paperwork, the time to do that was at the summary judgment stage. Respondent cannot concede a fact as undisputed, then turn around and challenge that same fact on appeal, claiming it has no support in the record¹.

Although the date stamps on the documents show a “filing” date of November 29th, 2004, the Affidavit of Judgment Debtor shows that it was signed by Mr. Butterfield on November 10th, 2004 and witnessed by someone from Court Administration. (AA 36, 37, & 38). And moreover, the facts stated in the trial court’s March 20th, 2006 Memorandum specifically state that the documents in question were filed on November 10th, 2004 and that neither party disputed the dates at which Omega filed these documents despite the fact they had the November 29th, 2004 date stamped thereon. (SA 94, n.2).

Respondent’s insinuation that Appellant has somehow attempted to “mislead” this Court by its argument that the documents were filed on November

¹ Receipts and copies of cancelled checks which establish that the documents were, in fact, submitted to Court Administration for filing on November 10th, 2004 were attached as Exhibits A and B to the Affidavit of Susan E. Sheely and were submitted in support of Appellant’s response to Respondent’s Motion to Dismiss this appeal. Again, those documents are not part of the record for this appeal because they were not included in the record in the summary judgment proceedings because the issue of the filing of the documents on November 10th, 2004 was undisputed at the trial court level.

10th, 2004 is improper. This challenge to Appellant's argument with regard to the November 10th, 2005 filing date is entirely new; Respondent did not raise this issue at the trial court and cannot properly raise it as an issue on appeal now.

II. The Docketing on November 10th, 2004 was Valid Under Minn. Stat. § 548.09, subd. 3.

As Respondent points out, Minn Stat. § 548.09, subd. 3 provides that Court Administration is obligated to docket every judgment requiring the payment of money "in a timely manner." Minn. Stat. § 548.09, subd. 1(2004); Respondent's Brief at 11. The statute expressly provides that in the event of a violation of the provisions of Minn. Stat. § 548.09, the judgment and the docketing are not invalidated. Minn. Stat. § 548.09, subd. 3(2004). In other words, court administration's untimely processing of paperwork necessary for docketing does not invalidate or undermine the docketing itself.

Despite Respondent's recent assertions to the contrary, at summary judgment it was undisputed that all the paperwork necessary for docketing was filed with Court Administration on November 10th, 2004. And, pursuant to Minn. Stat. § 548.01, subd. 1, "every judgment requiring the payment of money shall be entered by the court administrator when ordered by the court and will be docketed by the court administrator upon the filing of an affidavit [by the judgment creditor identifying the judgment debtor]." Minn. Stat. § 548.01, subd. 1(2004).

November 10th, 2004 is the effective date of docketing and that docketing was not invalidated by Court Administration's untimely processing of that paperwork in violation of Minn. Stat. § 548.09, subd. 1.

III. Public Policy Considerations Support the Finding that Omega was a Judgment Lien Holder Prior to the Filing of the Notice of Intent to Redeem.

Respondent misses the point with its argument that public policy considerations support the trial court's interpretation of the effective date of docketing because judgment creditors can simply "confirm that all necessary docketing has been completed" prior to the filing of a Notice of Intent to Redeem. (Respondent's Brief at 13).

If, as Respondent argues, docketing requires an affirmative act by Court Administration, then a judgment creditor is not protected by simply "confirming" that docketing has occurred in a timely manner because the judgment creditor still has no control over the timing of the docketing. (Respondent's Brief at 11-13). For example, in a situation in which the timeframe for docketing and filing the Notice of Intent to Redeem are extremely short but the backlog of paperwork for Court Administration is long, the judgment creditor in Respondent's scenario would still be helpless to do anything but "confirm" that his lien has been, or will be, extinguished because, through no fault of his own, the paperwork will not be completed in time.

The reality is that today the burdens on Court Administration have increased dramatically over what they were nearly 100 years ago when Brady v.

Gilman was decided. This is evidenced by the nearly three week delay that occurred in this case between the submission of all the necessary paperwork on November 10th, 2004 and it's actual stamping as "docketed" on November 29th, 2004. The uncertainty created when creditors cannot know how much "lead time" is required between the filing of papers and their stamping as docketed undermines creditors' ability to enforce their rights.

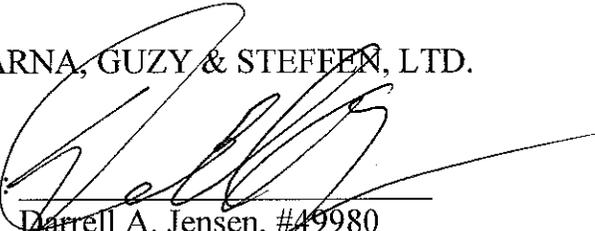
CONCLUSION

The Trial Court erred in it's analysis of the time upon which Omega's judgment lien arose; Omega was effectively a judgment lien creditor of the mortgagor at the time it filed its Affidavit of Judgment Debtor and Assignment of Judgment. As such, the redemption was valid, substantially complied with the applicable statutes and public policy considerations weigh strongly in favor of Appellant's interpretation of the applicable law.

Based on the arguments herein, it is respectfully requested that the Court of Appeals reverse the District Court's Order for Partial Summary Judgment and remand this matter for trial on the merits.

Dated: 1/2, 2007

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