

CASE NO. A06-1459

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State of Minnesota  
In Court of Appeals

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GANESH THONDIKULAM,

*Appellant,*

vs.

C &amp; M REAL ESTATE SERVICES, INC.,

*Respondent.*

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**BRIEF OF RESPONDENT**

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## STATEMENT OF LEGAL ISSUES

1. Was Omega's Attempted Redemption Invalid Due to Its Incontrovertible Failure to Docket Its Judgment and Become a Lien Creditor Before Filing Its Notice of Intent to Redeem?

The District Court found in the affirmative.

*Apposite Cases and Statutes:*

Maurin v. Cairnes, 74 N.W. 139, 71 Minn. 308 (1898)  
Bartleson v. Munson, 117 N.W. 512, 514 (Minn. 1908)  
Brady v. Gilman, 104 N.W. 897 (1905)  
Nussbaumer v. Fetrow, 556 N.W.2d 595, 598 (Minn.App. 1996)  
Minn.Stat. §580.24

2. Does Minnesota Law Deem Conciliation Court Judgments to Be Docketed at the Time they are filed with the District Court Administrator?

The District Court found in the negative.

*Apposite Cases and Statutes:*

Minn.Stat. 548.09, subd. 3

3. Is the District Court's decision supported by public policy?

The District Court did not address this issue.

*Apposite Cases and Statutes:*

Steenberg Contr. Co. v. Rohr, 207 N.W. 2d 722, 723 (1973)  
Minn.Stat. § 548.09

4. Did C & M Lack Standing to Object to Omega's Redemption?

The District Court found in the negative.

*Apposite Cases and Statutes:*

Remole v. Jonathan Dev. Corp., 277 N.W.2d 362, 363 (Minn. 1979)  
Brady v. Gilman, 104 N.W. 897 (1905)  
Sieve v. Rosar, 613N.W. 2d 789, 793. (Minn. App. 2000)

5. Did Omega Substantially Comply With Minnesota's Redemption Statutes?

The District Court found in the negative.

*Apposite Cases and Statutes:*

Brady v. Gilman, 104 N.W. 897 (1905)  
Nussbaumer v. Fetrow, 556 N.W.2d 595, 596 (Minn.App. 1996)  
Minn.Stat. 548.09, subd. 1  
Sieve v. Rosar, 613 N.W.2d 789, 793 (Minn.App. 2000)  
Minn.Stat. § 580.24  
Graybow-Daniels v. Pinotti, 255 N.W.2d 405, 407 (Minn. 1977)  
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### **STATEMENT OF THE CASE**

The present appeal arises out of an ejectment action, Anoka County District Court No. C4-05-10663, brought by Respondent C & M Real Estate Services, Inc. ("C & M") against Appellant Ganesh Thondikulam ("Thondikulam") to recover certain property known as 9034 Lexington Ave., Lexington, Minnesota and legally described as

Lot 11, Block 1, Lexington Center, Anoka County, Minnesota (the "Property").

C & M brought a motion for summary judgment, which was heard by The Honorable Sean C. Gibbs on December 16, 2005. On March 20, 2006, Judge Gibbs issued an Order partially granting C & M's motion in which he, as a matter of law, found that C & M was the rightful owner of the Property and entitled to possession. Accordingly, he ordered Thondikulam or anyone claiming possession

under him to vacate the Property. Then, on March 30, 2006, Thonkidulam moved the Trial Court to stay the execution of its Order pending a yet to be filed appeal. The motion to stay was granted, but required Thondikulam to post a \$15,000.00 bond. Thondikulam posted this bond on April 3, 2006.

On May 10, 2006, Thondikulam filed an appeal on the March 20, 2006 Summary Judgment Order. However, since the March 20, 2006 Order was a non-appealable Order and no judgment had yet been entered by the Court Administrator, this Court dismissed Thondikulam's appeal. Then, on June 19, 2006 the Trial Court executed a *nunc pro tunc* Order directing entry of judgment based upon the March 31, 2006 Amended Order.

On August 3, 2006, Thondikulam filed an appeal from the Judgment entered on June 19, 2006. On September 1, 2006 he served and filed his brief and appendix. C & M then moved this Court to dismiss Thondikulam's appeal or to strike portions of his brief due to his failure to adhere to certain rules of Civil Appellate Procedure. C & M also filed a motion to extend the time to file its responsive brief. C & M's Motion for an Extension was granted by an Order of this Court filed October 2, 2006. Subsequently, this Court by Order filed December 4, 2006, denied C & M's Motion to Strike or Dismiss but ordered Thondikulam to serve and file a supplemental appendix to its brief no later than December 13, 2006.

### **STATEMENT OF THE FACTS**

On May 27, 2004, the Anoka County Sheriff struck off and sold on foreclosure for the sum of \$102,682.85 the Property, which had been owned by

Daniel Landon ("Landon"). Appellant's Appendix ("A.A.") at 11. US Bank National Association ND ("US Bank") was the purchaser. Id. Landon had six (6) months to redeem the subject property from US Bank; thus, his last day to redeem was November 29, 2004. On November 17, 2004, C & M Real Estate Services Inc. purchased an assignment of the sheriff's sale certificate from US Bank. A.A. at 13.

Landon did not redeem from the sheriff's sale on or before November 29, 2004 nor did any lien creditor legally entitled to redeem subsequently redeem. Landon remained in possession, holding over after his legal right to possession had expired. A.A. at 2.

On November 29, 2004, at 10:20 a.m., Omega filed with the Anoka County Recorder its Notice of Intent to Redeem. A.A. at 14. Omega sought to redeem by virtue of a conciliation court judgment assigned to it on October 29, 2004 from Sheri Welch ("Welch"). A.A. at 37. On November 10, 2004, Omega filed such assignment of judgment with the Anoka County Conciliation Court. Id. On November 29, 2006, the same day it filed its Notice of Intent to Redeem, Omega filed a copy of the conciliation court Transcription of Judgment, the Assignment of Judgment from Welch, and its Affidavit of Identification of Judgment Debtor. A.A. at 36 to 38. Omega's judgment was docketed at 11:37 am that day - more than an hour after Omega filed its Notice of Intent to Redeem. A.A. at 16. There is no evidence in the record indicating that Omega attempted to verify that its judgment was docketed prior to filing its Notice of Intent to Redeem.

On December 3, 2004 Omega, claiming a legal right to redeem as a lien

creditor under the judgment docketed at 11:37 am on November 29, 2004, attempted to redeem from C & M by tendering certain funds to the Anoka County Sheriff. A.A. at 2; A.A. at 17. The Anoka County Sheriff issued a Certificate of Redemption to Omega's President, Daniel Butterfield, and forwarded the funds tendered along with a copy of the Certificate of Redemption to C & M. Id.

After inspecting the Certificate of Redemption issued to Omega and reviewing the records maintained by the Anoka County Recorder and the Anoka County District Court, C & M determined that at the time Omega filed its Notice of Intent to Redeem at 10:20 a.m. on November 29, 2004, Omega did not hold a lien on the Property. A.A. at 2 to 3. C & M therefore rejected the funds Omega had tendered to the Anoka County Sheriff; on December 9, 2004 C & M returned the check to the Sheriff along with a letter setting forth the basis for its objection to Omega's attempted redemption. A.A. at 3; A.A. at 20. And on December 11, 2004, C & M delivered a second letter to the Anoka County Sheriff, further clarifying its objection to Omega's attempted redemption. A.A. at 3; A.A. at 21 to 22. No one brought a suit to redeem or other action against C & M challenging the rejection of tender.

On December 13, 2004, C & M commenced an eviction action in Anoka County District Court - Case No. C1-04-11730 - to obtain a writ of restitution. A.A. at 3; A.A. at 23. On December 20, 2004, the Court issued a writ of restitution in favor of C & M, which subsequently took peaceful possession of the subject property. Id. Then, on January 5, 2005 Omega conveyed by Warranty Deed the Property to Thondikulam, a real estate investor who intended to use the

Property for investment purposes. A.A. at 39. Thondikulam, or others acting on his behalf, had forcefully entered the Property and taken possession thereof without permission from C & M and without obtaining a Writ from the Court. A.A. at 5.

On October 12, 2005, C & M commenced the instant ejectment action by Verified Complaint to try title and the right of possession and for damages against Thondikulam for unlawfully breaking into and taking possession and wrongfully withholding possession of the Property from C & M. Appellant's Supplemental Appendix ("S.A.") at 1.

#### **STANDARD OF REVIEW**

An appellate court will consider two questions on appeal from summary judgment: (1) whether there are any genuine issues of material fact and (2) whether the lower court erred in its application of the law. Winkler v. Magnuson, 539 N.W.2d 821, 825 (Minn.App. 1995) (citing State by Cooper v. French, 460 N.W.2d 2, 4 (Minn.1990)). Such courts must view the evidence in the light most favorable to the party against whom the trial court granted summary judgment. Winkler, 539 N.W.2d at 825; (citing Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn.1993)). Additionally, Minnesota's appellate courts will affirm summary judgment if it can be sustained on any grounds. Myers Through Myers v. Price, 463 N.W.2d 773, 775 (Minn.App. 1990).

## ARGUMENT

### **I. THONDIKULAM'S FACTUAL ALLEGATIONS ARE UNSUPPORTED BY THE RECORD.**

Before addressing the merits of his legal argument, Thondikulam sets forth his version of the relevant facts: that Omega on November 10, 2006 submitted all documents necessary to place a valid lien on the Property, and that the apparent delay in filing such documents was due to the fault of the court administrator rather than Omega.

It is notable that the source of these alleged facts is not testimony from anyone with first-hand knowledge of the events at issue, but rather consists of three exhibits attached to the affidavit submitted by Thondikulam's counsel: (1) a copy of the Transcription of Judgment from the conciliation court; (2) the Assignment of Judgment to Omega; and (3) an Affidavit of Judgment Debtor. And although Thondikulam cites these exhibits in support of his assertion that the necessary documents were submitted to the District Court Administrator on November 10, 2004, each of the foregoing three documents were actually stamped by the District Court Administrator as filed on "November 29, 2004." Thondikulam presented no evidence to the Trial Court from a first-hand source that these three documents were filed with the District Court Administrator at any time prior to November 29, 2004. Simply put, Thondikulam is, without any factual support, seeking to shift from himself to Court Administration the blame for his filing a Notice of Intent to Redeem prior to his obtaining a judgment lien on the Property.

Furthermore a cursory review of the Notice of Intent to Redeem which was filed by Omega with the County Recorder's Office clearly indicates that even Omega did not believe that its Conciliation Court Judgment had not been docketed before November 29, 2006. Omega's Notice of Intent to Redeem states that the Conciliation Court Judgment was "docketed on November 29, 2004, Court File No. S403-2283." A.A. at 14. As such, Thondikulam's unsupported factual allegations are controverted by Omega, the party with first-hand knowledge of the facts regarding when it filed its Conciliation Court judgment with the District court. What is clear, however, is that Omega recorded its Notice of Intent to Redeem at 10:29 am on November 29, 2004 and that its Judgment was not docketed at that time. But it was actually docketed at 11:37 am that day. The documents speak for themselves: Omega filed its Notice of Intent to Redeem before it was a lien creditor.

**II. THE TRIAL COURT WAS CORRECT IN ITS DETERMINATION THAT C & M IS ENTITLED TO POSSESSION OF THE PROPERTY.**

**A. Omega's Attempted Redemption Was Invalid, As It Did Not Conform With Minnesota's Redemption Laws.**

Minnesota Statute 580.24 provides lien creditors with the legal right to redeem from a sheriff's sale of real property in the event the mortgagor does not redeem within the six or twelve month period set forth under Minn.Stat. §580.23. A lien creditor's right to redeem is a strict legal right, to be exercised, if at all, in accordance with the terms the applicable statute, unless waived or extended by the party whose interests are to be affected. Bartleson v. Munson, 117 N.W. 512, 514

(Minn. 1908).

Pursuant to Minn.Stat. 580.24, a creditor must first hold a valid lien and then file a Notice of Intent to Redeem before it is legally entitled to redeem. Only then is such creditor legally entitled to redeem in accordance with the priority of its lien. Id. Minnesota law has long recognized that a creditor must hold a lien prior to or at the time of filing a Notice of Intent to Redeem under Minn.Stat. 580.24. See Brady v. Gilman, 104 N.W. 897 (1905) (citing Maurin v. Cairnes, 74 N.W. 139, 71 Minn. 308 (1898)).

This rule regarding who may file and when a Notice of Intent to Redeem may be filed has been strictly applied by the Minnesota Courts. For instance, this strict rule of enforcement was applied by the Minnesota Supreme Court in Brady, a case the Trial Court explained was “applicable and factually similar to the instant matter.” S.A. at 101.

Brady stands for the proposition that a notice of intent to redeem and a subsequent attempted redemption is void where the creditor attempting to redeem filed its Notice of Intent to Redeem just a few hours prior to his judgment being docketed. In Brady, the plaintiff obtained a Confession of Judgment relating to certain property in foreclosure. Id. at 897. He then delivered such Judgment to the clerk of the district court at approximately 12:20 p.m. and requested that it be docketed. Id. And although the clerk agreed to docket the plaintiff’s Judgment, it was not docketed until approximately 5:00 p.m. that day. Id. At 1:00 p.m. – four hours before his Judgment was docketed - the plaintiff filed his Notice of Intent to Redeem; sometime thereafter, he sought to redeem the subject property as a

judgment creditor, completed all necessary steps to redeem, and was even given a Certificate of Redemption. Id. The plaintiff had fully complied with all steps required for a valid redemption, except that he filed his Notice of Intent to Redeem four hours prior to the time at which his Judgment was docketed. Id. Accordingly, the Court explained that the plaintiff's attempted redemption was invalid, as "a Notice of Intention to Redeem, filed by an intended redemptioner before he is in fact a lien creditor, is void..." Id.

More recently, the Minnesota Court of Appeals in Nussbaumer v. Fetrow observed that the docketing of a judgment is what affords an unsecured creditor a lien on the real property of the judgment debtor. 556 N.W.2d 595, 598 (Minn.App. 1996).

Omega failed to follow to steps to properly redeem as set forth and explained by the foregoing statutory and case law. Here, the record reflects that Omega filed a Notice of Intent to Redeem at 10:20 a.m. on November 29, 2004, nearly an hour before the time at which it became a Judgment Debtor; accordingly, Omega did not hold a lien against the subject property at the time it filed its Notice of Intent to Redeem. A.A. at 14; A.A. at 16. As such, since Omega was not a lien creditor at 10:20 a.m. when it filed it its Notice of Intent to Redeem with the Anoka County Recorder, it was therefore, under Brady, not a party entitled to redeem the Property at the time of its attempted redemption from C & M.

**B. Minnesota Law Recognizes That Judgments Are Not Deemed Docketed Merely Upon Submission to a Court Administrator.**

The District Court in its March 20, 2006 Order explained that Minn.Stat.

548.09, subd. 3 addresses situations in which a court administrator fails to docket a judgment in a timely manner. Appellant's Supplemental Appendix ("S.A.") at 120. This subdivision provides that

If the court administrator violates [548.09], neither the judgment nor the docketing is invalid, but the court administrator shall be liable to a person damaged by the violation in the sum of \$5.

As set forth in the foregoing statute, the court administrator is under a duty to docket every judgment requiring the payment of money, upon the filing of an affidavit as provided in Subdivision 2 of such statute. By including a subdivision specifically recognizing situations in which a party may be damaged by a court administrator's failure to follow its statutory duties, the Legislature acknowledges that the court administrator must first comply with its duty to docket a judgment before such a judgment is deemed "docketed." Stated differently, docketing requires action by the court administrator.

Thondikulam focuses on the amount of damages provided for in 548.09 in claiming that Subdivision 3 is not intended to compensate creditors for lost liens as a result of a court administrator's violations of such statute. See Appellant's Brief at 11 and 12. This allegation misses the greater principle illustrated by the inclusion of this penalty provision: namely, that the court administrator must act as provided for under 548.09 before a judgment is considered docketed. The mere act of submitting paperwork for filing is not the "docketing" of the judgment.

**C. The District Court's Decision is Supported by Public Policy.**

As a general principle, this Court will not consider issues raised for the first time on appeal. See Steenberg Constr. Co. v. Rohr, 207 N.W.2d 722, 723 (1973). At the Trial Court, Thondikulam failed to raise its present contention that “[p]ublic policy supports the finding that Omega was a judgment lienholder prior to the filing of the Notice of Intent to Redeem.” See A.A. at 12 and 13. Accordingly, this Court should not consider this issue on appeal.

Thondikulam claims that since Omega filed "the paperwork required by 548.09" on November 10, 2004, it should, as a matter of public policy, automatically by November 29, 2004 be a judgment creditor entitled to redeem. Id. There are several problems with his analysis. First, as discussed previously, the record is devoid of any first-hand evidence that *any* of the necessary documents under 548.09 were filed prior to November 29, 2004. Consequently, Thondikulam's assertion that "there was an unexplained nineteen day delay in processing the docketing of [his] judgment by the Anoka County Court Administrator which...was completely outside Omega's control" is entirely without support. See Appellant's Brief at 12.

Thondikulam claims that the Trial Court's ruling would engender undue uncertainty and risk for creditors by forcing them to rely on Court Administration to docket judgments during the period in which they may file a Notice of Intent to Redeem. See Appellant's Brief at 12 and 13. Nowhere, however, does

Thondikulam contend that he or his predecessor in interest made an effort to assure that the judgment was docketed before he filed his Notice of Intent to Redeem; rather than ascribing blame to Court Administrator, Thondikulam should recognize his predecessor's own lack of diligence in failing to ascertain whether his judgment had been docketed prior to filing his Notice of Intent to Redeem.

Contrary to Thondikulam's efforts to pass blame to Court Administration, public policy instead militates in favor of placing responsibility on judgment creditors to confirm that all necessary docketing has been completed. Under the policy Thondikulam propounds, creditors following statutory redemption rules may suffer harm by relying on the date a Court Administrator docketed a judgment.

Public policy favors protecting parties including creditors, lenders, buyers, junior lien claimants, title examiners, and attorneys, who each rely on the dates judgments are docketed by Court Administration rather than creditors who carelessly proceed without first confirming that a judgment has been docketed. If judgments are deemed docketed on dates of submission rather than on the date of docketing (which is certain), the result will be a needless increase in litigation to determine real estate lien priorities.

**D. The Trial Court Correctly Determined That C & M Was Not Barred By Lack of Standing to Object to Omega's Redemption.**

Thondikulam relies on Remole v. Jonathan Dev. Corp. in claiming that C & M did not have standing to challenge Omega's attempted redemption. 277 N.W.2d 362, 363 (Minn. 1979). See Appellant's Brief at 12 and 13. The District Court

correctly found that such reliance on Remole is misplaced, however, as it is predicated on the assumption that Omega was a junior lien creditor at the time it filed its Notice of Intent to Redeem. S.A. at 120 and 121. However, as discussed at length above and as the Trial Court correctly observed, Omega *was not* a junior lien creditor entitled to redeem when it filed its Notice of Intent to Redeem, and therefore the present situation is distinguishable on its facts from Remole.

The Brady Court addressed a factual scenario strikingly similar the present case. Brady involved a case in which the Plaintiff filed its notice of intent to redeem hours before the docketing of its judgment. 194 N.W. at 897. The Plaintiff, like Thondikulam's predecessor in interest, sought to redeem from the Defendant, who was the holder of a certificate of redemption. Id. And like Thondikulam, the Plaintiff asserted that the Defendant did not have standing to challenge the redemption, since such Defendant was only entitled to the amount paid by him to redeem from the mortgage foreclosure sale and the amount of his own lien, with interest. Id. at 898. The Brady Court disagreed, however, finding that the Defendant therein "was subrogated to the rights of the purchaser at the foreclosure sale, and thereby obtained the right to acquire absolute title to the premises, unless redeemed within the time allowed by law by one *having the legal right to do so.*" (Emphasis added) Id.

As such, C & M does not dispute that Remole stands for the proposition that a successful bidder from a sheriff's sale lacks standing to challenge a judgment lienholder's late filing of its Notice of Intent Redeem. However, as the

Brady Court and the District Court concluded, the holder of a sheriff's certificate has standing to object where a party files a Notice of Intent to Redeem *prior to* the time at which such party becomes a judgment creditor entitled of redeem. Id.; S.A. at 120 and 121. Consequently, C & M had standing to object to Omega's attempted redemption where Omega filed its Notice of Intent to Redeem before it was a judgment creditor entitled to redeem.

**E. The Trial Court Correctly Found That Omega Did Not Substantially Comply With Minnesota's Redemption Statutes, As It Was Not a Junior Lien Creditor at the Time That It Attempted to Redeem From C & M.**

Thondikluam claims that the Trial Court erred in finding that Omega did not substantially comply with Minnesota's redemption statutes. A.A. at 15 to 18. Yet again, Thondikulam's position is premised on the incorrect notion that Omega was a junior lien creditor at the time it filed its Notice of Intent to Redeem. Moreover, C & M is not in the same position as the holder of a sheriff's certificate; C & M purchased the sheriff's certificate on November 17, 2004, seven days after the purported docketing of Omega's judgment. Thus, the absence of a showing of prejudice present in Remole is not applicable here.

Thondikulam also understates the significance of docketing a judgment in claiming that a creditor, in order to properly redeem, only need *file* the documents necessary to create a lien prior to the expiration of the mortgagor's redemption period. See Appellant's Brief at 16. Such position is contrary to established Minnesota law. As the Trial Court explained, Minn.Stat. 580.24(a) specifically

states that “the most senior creditor *having a legal or equitable lien*...may redeem.” (Emphasis added in Trial Court’s Order) S.A. at 104. And moreover, this Court in Nussbaumer observed that a judgment becomes a lien on real property “at the time of docketing.” 556 N.W.2d at 596 (citing Minn.Stat. 548.09, subd. 1; Lowe v. Reierson, 276 N.W. 224, 225 (1937)).

The Trial Court in its Order explained that, although this Court in Sieve v. Rosar determined that “[s]ubstantial compliance with the redemption requirements is all that is necessary to effect a valid redemption,” Sieve is distinguishable on its facts from the present case. 613 N.W.2d 789, 793 (Minn.App. 2000); S.A. at 103. The Trial Court observed that, in Sieve, this Court was dealing with redemption law as applied to junior lien creditors, whereas in the present case, Omega did not have a valid lien and was not a lien creditor. S.A. at 103. Finally, the Trial Court noted that the Minnesota Supreme Court has determined that “the redemption requirements of Minn.Stat. § 580.24 must be strictly adhered to.” S.A. at 103 (citing Graybow-Daniels v. Pinotti, 255 N.W.2d 405, 407 (Minn. 1977)). Accordingly, the Trial Court correctly concluded that Omega did not substantially comply with Minnesota's redemption statutes. S.A. at 103 and 104.

### CONCLUSION

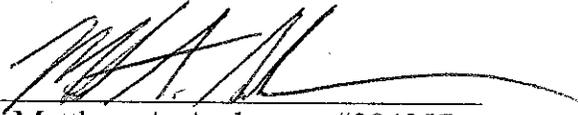
The Trial Court was correct in its determination that C & M was entitled to possession and ownership of the Property. First, under Minn. Stat. §548.09, a judgment is docketed when the Court Administrator docketed it, not when a judgment creditor presents paperwork for docketing. Second, Thondikulam's

assertion that Omega filed "all necessary documents" on November 10, 2004 is entirely unsupported by the record. Nowhere does Thondikulam cite a source with first-hand knowledge of such alleged filing. Moreover, since Omega, Thondikulam's predecessor in interest, failed to file its Notice of Intent to Redeem after becoming a lien creditor, any attempted redemption under such notice is void. Public policy militates in favor of promoting consistency and predictability in real estate transactions by acknowledging that judgments are dated the date identified by the court administrator, and not an unascertainable date of submission of paperwork for docketing. Finally, the Trial Court correctly found that, since Omega was not a judgment creditor at the time it filed its Notice of Intent to Redeem, it did not substantially comply with Minnesota's redemption statutes.

Dated this 19<sup>th</sup> day of December, 2006.

Respectfully submitted,

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