

CASE NO. A07-0210

State of Minnesota
In Court of Appeals

DEUTSCHE BANK NATIONAL TRUST COMPANY,
As Trustee of AMERIQUEST MORTGAGE SECURITIES, INC.
ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2003-13,
Appellant,

vs.

DEBORAH K. PETERSEN AND GUY L. PETERSEN, Husband and Wife,
and MERCHANTS BONDING COMPANY,
Respondents.

APPELLANT'S REPLY BRIEF

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Asset Backed Pass-Through
Certificates, Series 2003-13*

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LEGAL ISSUES

- I. SHOULD THE DOCUMENT PURPORTED BY MERCHANTS BONDING COMPANY TO BE AN "AGREEMENT OF INDEMNITY" BE STRICKEN AND GIVEN NO CONSIDERATION?

Trial court held: The purported "Agreement of Indemnity" was not submitted to the District Court until after the summary judgment hearing on October 9, 2006. The District Court did not address or otherwise give any consideration to that document in its Order and Memorandum.

Argonaut Ins. Co. v. Cooper, 261 N.W.2d at 744-745

Benning v. Hessler, 144 Minn. 403, 175 N.W. 682 (1920)

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Meagher v. Kavli, 251 Minn. 477, 88 N.W.2d 871-878 (1958)

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32A CJS **Evidence** §819

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Rule 56.03, Minn. Rules of Civil Procedure

Rule 56.05, Minn. Rules of Civil Procedure

Rule 115.03, General Rules of Practice

- A. DID MERCHANTS SUBMIT THE DOCUMENT AFTER THE OCTOBER 9, 2006, DISTRICT COURT SUMMARY JUDGMENT HEARING?
- B. DOES ANY FOUNDATION EXIST FOR THE ADMISSION OF THE DOCUMENT IN QUESTION?
- C. DID MERCHANTS ESTABLISH THAT THE DOCUMENT IT PRESENTED HAS RELEVANCE TO THIS CASE?
- D. WOULD ANY ALLEGED WAIVER MADE BY THE PETERSENS BE APPLICABLE TO DEUTSCHE BANK?
- E. WOULD THE DOCUMENT PRESENTED BY MERCHANTS BE ENFORCEABLE AGAINST EITHER THE PETERSENS OR THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION?
- II. DOES PLAINTIFF/APPELLANT DEUTSCHE BANK HAVE STANDING TO RAISE THE HOMESTEAD EXEMPTION ISSUE IN ESTABLISHING THAT THE DEFENDANT/RESPONDENT MERCHANTS BONDING COMPANY

HAS NO JUDGMENT LIEN, OR THAT THE PLAINTIFF/APPELLANT'S MORTGAGE HAS PRIORITY OVER ANY CLAIMED JUDGMENT LIEN?

Trial court held: The trial court held that the Appellant Deutsche Bank did not have standing to raise the homestead exemption issue in establishing that the Respondent Merchants Bonding Company has no judgment lien, or that the Appellant's mortgage has priority over any claimed judgment lien.

Artz, et al. v. Olson, et al. Crt. File No. 01-005159
Bank of Kansas v. Davison, 253 Kan. 780, 861 Pac. 2d 806, 808 (1993)
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59 CJS Mortgages §272 p. 316

III. SHOULD JUDGMENT BE ENTERED IN FAVOR OF DEUTSCHE BANK ESTABLISHING THAT MERCHANTS BONDING COMPANY HAS NO RIGHT, TITLE, OR INTEREST IN THE SUBJECT PROPERTY, OR IN THE ALTERNATIVE, ESTABLISHING THAT DEUTSCHE BANK'S MORTGAGE HAS PRIORITY OVER ANY CLAIMED JUDGMENT LIEN IN FAVOR OF MERCHANTS BONDING COMPANY?

Trial court held: The trial court ruled that the Respondent Merchants Bonding Company's judgment was a judgment lien against the Petersen homestead and that it took priority over the Appellant Deutsche Bank's mortgage.

Baumann v. Chaska Building Center, Inc., 621 N.W.2d 795 (Minn. App. 2001)
Kipp v. Sweno, 629 N.W.2d, 468 (Minn. App. 2001)
Minn. Stat. §510.02
Minn. Stat. §510.05

ARGUMENT

I. THE DOCUMENT PURPORTED BY MERCHANTS BONDING COMPANY TO BE AN "AGREEMENT OF INDEMNITY" SHOULD BE STRICKEN AND GIVEN NO CONSIDERATION.

On pages 16-18 of the Respondent Merchant Bonding Company's (hereinafter "Merchants") brief, there is reference to a purported "Agreement of Indemnity". The document which is purported to be the "Agreement of Indemnity" is attached as pages R4-R10 of the Appendix to Merchants' brief. The Appellant Deutsche Bank strongly objects to Merchants inclusion of and reference to a document that was not submitted to the District Court until **after** the October 9, 2006, summary judgment hearing that took place in regard to this case. Furthermore, the document was not accompanied by an affidavit, and it was otherwise not admissible for numerous reasons. A letter dated October 16, 2006, objecting to the document was submitted to the District Court on behalf of Deutsche Bank. The District Court appropriately did not give any consideration to the document in its Order and Memorandum. Deutsche Bank requests that the document be stricken from the Appendix to Merchants' brief, and/or that it be given no consideration in regard to the present appeal based on the following reasons:

A. MERCHANTS DID NOT SUBMIT THE DOCUMENT UNTIL AFTER THE OCTOBER 9, 2006, DISTRICT COURT SUMMARY JUDGMENT HEARING.

Merchants sent the alleged "Agreement of Indemnity" to the District Court with a letter from Merchants' attorney dated October 12, 2006. That was three days **after** the October 9, 2006, summary judgment hearing took place. Under Rule 115.03 of the

General Rules of Practice, all evidence in support of a summary judgment motion must be submitted no later than twenty-eight days prior to the hearing on the motion. Even if the submission was to have been considered in response to Deutsche Bank's motion, the General Rules of Practice would require that the submission be made no later than nine days prior to the hearing. Therefore, Merchants submission of the document was clearly untimely, and for that reason alone should be given no consideration.

The only excuse the attorney for Merchants offered in regard to its untimely and inappropriate submission was the frivolous claim that the submission was "newly discovered evidence". However, in the October 12, 2006, letter, Merchants' attorney offered absolutely no factual basis for such a conclusion. The document in question purports to have been signed in September, 2000. If the document had been in the possession of Merchants since that time, it could certainly not be considered "newly discovered". If the document was not in the possession of Merchants until after the October 9, 2006, hearing, it raises serious questions about the legitimacy of the document and where it came from.

Merchants' attorney offered no explanation concerning those issues in the October 12, 2006, letter. Furthermore, the allegations of Merchants' attorney were not under oath and were not based on personal knowledge. The factually unsubstantiated and hearsay allegations of an attorney that are not made under oath are not admissible in regard to a summary judgment motion under Rule 56.03 and 56.05 under the Minnesota Rules of Civil Procedure. Without properly submitted evidence establishing the basis for a conclusion that the document constitutes "newly discovered evidence" that could not

have been discovered earlier through due diligence, there is no basis for giving any consideration to the document which was submitted after the October 9, 2006, District Court summary judgment hearing. See Brown v. Bertrand, 254 Minn. 175, 94 N.W.2d 543, 550-551 (1959) (new trial not allowed based on allegedly newly discovered evidence because due diligence was not exercised in the discovery and disclosure of the evidence).

B. NO FOUNDATION EXISTS FOR THE ADMISSION OF THE DOCUMENT IN QUESTION.

Under Rule 56.05 of the Minnesota Rules of Civil Procedure, only admissible evidence can be considered in regard to summary judgment motions. The basic requisite for the admissibility of any evidence is that it be competent and relevant. 20 Dunnell's Minn. Digest **Evidence** §2.00. Evidence is competent if it is supported by an adequate foundation. 20 Dunnell's Minn. Digest **Evidence** §1.02e.

In regard to a document, the foundation for its admissibility must be based on "...preliminary proof of the genuineness, authenticity, or identity of the document, of the execution of the document, and of the verity or correctness of the document". 32A CJS **Evidence** §819. In regard to summary judgment motions, Rule 56.03 of the Minnesota Rules of Civil Procedure requires that the foundation for the admission of a document be established through an affidavit. Rule 56.05 of the Minnesota Rules of Civil Procedure further requires that the affidavit be based on personal knowledge.

Merchants did not even make a good faith attempt to comply with requirements of foundation in regard to the document in question. There was no presentation of any affidavit, or even a letter from someone with personal knowledge, establishing either the

authenticity or background of the document or the purported signatures contained therein. The October 12, 2006, letter from Merchants' attorney contained nothing more than a generalized, vague, hearsay allegation about the document. Merchants clearly failed to provide even the most minimal foundation for the admissibility of the document in question. It therefore should be given no consideration.

**C. MERCHANTS HAS NOT ESTABLISHED THAT THE DOCUMENT
IT PRESENTED HAS ANY RELEVANCE TO THIS CASE.**

In addition to the absence of foundation for the admissibility of the document in question, there is no factual basis for concluding that the document in question has any relevance to this case. Merchants' attorney has not even attempted to show any relationship between the docketed judgment that is the subject of this action, and the alleged "Agreement of Indemnity". No allegation, admissible or otherwise, has been made that any alleged rights arising under the alleged contract would apply to the judgment in this case. That judgment is identified only as a monetary amount in the docketing statement submitted by Merchants in support of its motion for summary judgment. Simply identifying an isolated provision from an alleged seven page contract offers no basis for concluding that the isolated provision was meant to apply to the judgment which is the subject of this case, or any alleged statutory lien that would arise from that judgment.

In fact, if the alleged contract provision allegedly waiving homestead rights is read in the context of the entire alleged agreement, it is clear that the claimed waiver of homestead rights applies to liens which could allegedly arise under the alleged contract. No evidence exists to relate any alleged lien rights arising from the alleged contract to the

totally separate monetary judgment that is the subject of this action. To the contrary, Merchants' claim in this case was based entirely on the judgment lien statute, not on any allegedly contractual lien rights. Accordingly, even if Merchants had provided proper foundation for the document in question, no basis would exist for concluding that the document has any relevance to this case.

D. ANY ALLEGED WAIVER MADE BY THE PETERSENS WOULD NOT BE APPLICABLE TO DEUTSCHE BANK BECAUSE IT HAD NO NOTICE OF THE ALLEGED WAIVER.

Yet another reason for striking the document submitted by Merchants, is that no notice of any claimed rights arising from the alleged contract against the subject property was recorded. Merchants' claims at the District Court level were based entirely on the recording of a monetary judgment, which it argued was the basis for the creation of a statutory judgment lien. However, as stated previously, the docketed monetary judgment in Anoka County has nothing to do with any alleged rights arising from the document which Merchants alleges is a contract between the Petersens and Merchants. The docketed judgment does not in any way state, reflect, or otherwise indicate anything other than the fact there was a personal monetary judgment entered against the Petersens in Hennepin County District Court. Even if the newly submitted document created some type of rights as between Merchants and the Petersens regarding the subject property (which it does not), those alleged rights would not affect Deutsche Bank because there was never any recorded notice of such alleged rights. Without a recording of the document in question, Deutsche Bank's recorded mortgage would have priority over any

alleged rights arising from that document. Minn. Stat. § 507.34 (mandating that recorded interests of bona fide purchasers have priority over all unrecorded interests).

E. THE DOCUMENT PRESENTED BY MERCHANTS WOULD NOT BE ENFORCEABLE AGAINST EITHER THE PETERSENS OR THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION.

As stated, there is no foundation for the admission of the document presented by Merchants. Furthermore, the document has no relevance to this case. Also, the document would not be applicable against Deutsche Bank even if it were admissible.

Yet another reason for rejecting the document presented by Merchants is that the alleged waiver of homestead rights would not be enforceable against either the Petersens or the property which is the subject of this action. There are no facts in the record indicating that the Petersens were ever served or otherwise notified by Merchants of the untimely claims made by Merchants in regard to the document. Under such circumstances, basic due process would require that no consideration be given to Merchants untimely claims about an alleged waiver of the homestead exemption which would adversely affect the Petersens' rights.

More importantly, the claimed contract provision in question is much too vague and indefinite on its face to constitute a waiver of homestead rights. The court stated in Meagher v. Kavli, 251 Minn. 477, 88 N.W.2d 871-878 (1958), in regard to waiver that:

The commonly accepted definition of waiver is that it constitutes a voluntary relinquishment of a known right whose essential elements are both intent and knowledge, actual or constructive.

The document containing the alleged waiver was executed in September, 2000. That was nine months prior to the June, 2001, conveyance of the subject property to

Deborah Petersen. (See Affs. Guy and Deborah Petersen, attached as Ex. 1 to the Aff. Gary Bodelson, which appear as A.9, A.11, and A.15 of the Appendix in Deutsche Bank's original brief.) It is simply not possible to conclude that an intentional relinquishment of a known right could exist in regard to a property right that did not exist at the time of the claimed relinquishment. Also, there is absolutely no identification or description in the document in question of the real estate in regard to which the intentional relinquishment of a known right was supposed to apply. As a matter of law, no waiver of a homestead right could possibly exist under such circumstances.

This position is in accordance with the ruling in Argonaut Ins. Co. v. Cooper, 261 N.W.2d 743 (Minn. 1978), which is a case cited in Merchants' own brief. In that case, a waiver of homestead rights was included in an indemnity agreement that was based on a written disclosure of assets that specifically identified the real estate that was to be the subject of the waiver. The court relied upon this specific written identification of the property which was the subject of the waiver as a basis for its ruling upholding the validity of the waiver. 261 N.W.2d at 745.

In this case, unlike Argonaut Ins. Co. v. Cooper, there is absolutely no reference to the property which is the subject of this action in the document presented by Merchants. There is only a generalized reference to "any property" of the Petersens. Similar generalized language about the "real or personal property" of the debtor was found to be insufficient to constitute a waiver of homestead rights in Benning v. Hessler, 144 Minn. 403, 175 N.W. 682 (1920). The court in Benning v. Hessler ruled that no waiver existed in that case because the claimed waiver did not specify or describe the property that was

to be the subject of the waiver. 175 N.W. at 683. The court in Argonaut Ins. Co. distinguished the ruling in Benning v. Hessler based on the specific written references to the property subject to the waiver in the Argonaut Ins. Co. v. Cooper case. Argonaut Ins. Co. v. Cooper, 261 N.W.2d at 744-745.

In accordance with the rulings in both Argonaut Ins. Co. v. Cooper and Benning v. Hessler, no enforceable waiver would exist in the document presented by Merchants even if the document were otherwise admissible. The claimed waiver does not identify or describe any specific property, and the Petersens did not even own the property which is the subject of this action at the time of the alleged waiver. Under such circumstances, no enforceable waiver could possibly exist.

It should also be mentioned that the contract of indemnity that existed in Argonaut Ins. Co. v. Cooper, was the subject of all the claims, rulings, and judgments in that case. That is clearly distinguishable from the subject matter of this case, which is entirely based on a docketed monetary judgment that has nothing to do with the document now presented by Merchants, or any provisions contained therein.

The District Court correctly gave no consideration to the document presented in an untimely fashion by Merchants. It is requested that the Court of Appeals also give the document no consideration.

II. PLAINTIFF/APPELLANT DEUTSCHE BANK HAS STANDING TO RAISE THE HOMESTEAD EXEMPTION ISSUE IN ESTABLISHING THAT THE DEFENDANT/RESPONDENT MERCHANTS BONDING COMPANY HAS NO JUDGMENT LIEN, OR THAT THE PLAINTIFF/APPELLANT'S MORTGAGE HAS PRIORITY OVER ANY CLAIMED JUDGMENT LIEN.

Merchants denies that any Minnesota law was cited in Deutsche Bank's original brief concerning its standing to make claims based on the homestead exemption. Contrary to Merchants' assertions, Deutsche Bank's original brief first cited general Minnesota law establishing that standing exists whenever a party has a personal stake in the outcome of a controversy. Envall v. Independent Sch. Dist. No. 704, 399 N.W.2d 593, 596 (Minn. App. 1987); Cochrane v. Tudor Oaks Condominium Project, 529 N.W.2d 429, 433 (Minn. App. 1995). Minn. Stat. §510.07, providing that judgment debtors may convey homestead property, without subjecting it "...to any judgment or debt from which it was exempt in the owners' hands", was also cited. Minn. Stat. §507.01, which defines "conveyance" as "every instrument in writing whereby any interest in real estate is created, alienated, **mortgaged**, or assigned" (emphasis added), was also cited. These statutes clearly establish that a mortgagee, as a grantee of a "conveyance" of an interest in homestead property, has a right to make a claim based on the homestead exemption.

The decision in Baldwin v. O'Laughlin, 11 N.W. 77 (Minn. 1888) which interpreted a predecessor statute to Minn. Stat. §510.07, was also cited. The court Baldwin v. O'Laughlin established that the homestead exemption was not a personal

right, and could be enforced by a grantee of a conveyance of the property.¹ See also Sisco v. Paulson, 45 N.W.2d 385, 387 (Minn. 1950). The court in Baldwin v. O'Laughlin specifically stated:

The plaintiff's position, that the homestead right is a personal right, which can only be asserted by the person whose homestead right it is, is utterly inconsistent with the decisions of this court before cited. If the owner of a homestead cannot sell and convey so that his grantee can avail himself of the fact that it was a homestead, against the grantor's creditors, what possible meaning can be attributed to the statute where it says that "the owner of a homestead, under the laws of this state, * * * may sell and convey the same, and such * * * sale and conveyance shall not render such homestead liable or subject to forced sale on execution or other process hereafter issued on any judgment or decree of any court of this state, or of the district court of the United States for the state of Minnesota, against such owner. Nor shall any judgment, or decree of any such court, be a lien on such homestead for any purpose whatsoever?"

(emphasis added; Baldwin v. O'Laughlin, 11 N.W. at 79)

Merchants' refusal to address or acknowledge the Minnesota law cited throughout pages 4-8 of Deutsche Bank's original brief, clearly reflects that Merchants cannot make an argument which would refute that cited law. Also, the only comment that Merchants could make in regard to the ruling in Bank of Kansas v. Davison, 253 Kan. 780, 861 Pac. 2nd 806, 808 (1993) (specifically establishing that a mortgagee has the right to raise the homestead exemption against an alleged judgment creditor), is that the ruling is not directly binding in this state. Such a weak argument would be unpersuasive even if the Kansas case was the only law cited by Deutsche Bank. However, the Minnesota law

¹ On Page 8 of Deutsche Bank's original brief, there is also reference made to Judge Oleisky's decision in the Hennepin County District Court Case entitled Artz, et al. v. Olson, et al. Cr. File No. 01-005159 (attached as A.56-65 in the Appendix of Deutsche Bank's original brief.) Judge Oleisky ruled, based on the above-cited statutes and caselaw, that a grantee of a mortgagee which had foreclosed upon mortgaged homestead property could claim the homestead exemption. (A.65)

cited in Deutsche Bank's brief clearly establishes that the Kansas case is not the only law supporting Deutsche Bank's arguments. In fact, the right of a mortgagee to raise any issue which could defeat a competing creditor's claim to the mortgaged property is so well established that it is encyclopedic law. See 59 CJS **Mortgages** §272, p. 316. Clearly, Deutsche Bank, as a mortgagee, has the right to raise the homestead exemption in order to defeat or subordinate the interest of a judgment creditor.

III. JUDGMENT SHOULD BE ENTERED IN FAVOR OF DEUTSCHE BANK ESTABLISHING THAT MERCHANTS BONDING COMPANY HAS NO RIGHT, TITLE, OR INTEREST IN THE SUBJECT PROPERTY, OR IN THE ALTERNATIVE, ESTABLISHING THAT DEUTSCHE BANK'S MORTGAGE HAS PRIORITY OVER ANY CLAIMED JUDGMENT LIEN IN FAVOR OF MERCHANTS BONDING COMPANY.

Merchants' argument that it has a judgment lien is focused on the judgment lien statute and the law concerning priority of recordings. Such arguments ignore the fact that the property in question is subject to the homestead exemption. Merchants tries to explain away the Minnesota Supreme Court law cited on Page 10 of Deutsche Bank's original brief, which has definitively established for over a century that judgments do not attach as liens on homestead property. Merchants argues that the 1993 amendment to Minn. Stat. §510.02 limiting the homestead exemption to \$200,000.00, somehow eliminated all prior rulings establishing that judgments do not attach as liens to homestead property. Merchants offers no rationale for its argument. Contrary to the irrational and specious claim of Merchants, the 1993 amendment to Minn. Stat. §510.02 does nothing other than limit the Supreme Court rulings cited by Deutsche Bank to the same extent that the homestead exemption is limited to \$200,000.00. Based on the \$200,000.00 limitation to the homestead exemption, the previously cited Supreme Court

rulings would now establish that judgments cannot attach as liens to the extent of the \$200,000.00 homestead limitation. Merchants' argument that the \$200,000.00 limitation totally eliminates the effect of the previously cited Supreme Court rulings is simply absurd.

Merchants also cites the ruling from Kipp v. Sweno, 629 N.W.2d, 468, 474 (Minn. App. 2001), in which the court stated that a judgment becomes a lien against all of the judgment debtors' real property. However, the court in Kipp v. Sweno did acknowledge that a judgment lien would only be enforceable to the extent it exceeded the homestead exemption, based on the first \$200,000.00 of equity in the property. 629 N.W.2d at 473-475. More importantly, the previously cited numerous Supreme Court rulings existing for over a century would certainly be the controlling precedent establishing that judgments do not attach as liens on homestead property to the extent of the \$200,000.00 limitation.

Merchants also disagrees with the fact that the ruling in Kipp v. Sweno establishes that judgment creditors have no rights that can be enforced in regard to homestead property unless the value of the property is sufficient to pay for all mortgages and the first \$200,000.00 of equity constituting the homestead exemption. However, Merchants denials and conclusions are unsupported by the specific language stated by the court in Kipp v. Sweno. The court in that case clearly ruled that judgment creditors:

...do have the right under Minnesota law to levy on any and all parts of the equity in a debtors' homestead after valid mortgages and the homestead exemption have been honored.
(emphasis added; 629 N.W.2d at 473)

The court in Kipp v. Sweno also specifically stated that:

Should the fair value of all the property the debtor claims as his homestead exceed the value of the existing mortgages plus the \$200,000.00 homestead exemption, the District Court has the power and the jurisdiction to order a foreclosure sale, and appellants have an immediate right to share in the surplus proceeds up to the amount of their judgment lien.
(emphasis added; 629 N.W.2d at 475)

Merchants does not even try to address or explain away the specific language stated in Kipp v. Sweno. It simply makes self-servicing and unsupported conclusions about the rulings in Kipp v. Sweno which are contrary to the plain meaning of those rulings. The above-cited rulings establish that Deutsche Bank's mortgage would have priority over any claimed judgment lien, even if evidence had been submitted establishing that the value of the property exceeded the amount of Deutsche Bank's mortgage and the first \$200,000.00 of equity.

Merchants also seeks to limit the ruling in Baumann v. Chaska Building Center, Inc., 621 N.W.2d 795 (Minn. App. 2001), in which it was first definitively established that the \$200,000.00 homestead exemption is determined on the basis of a homeowner's equity existing in excess of the amount of any mortgages. Merchants ignores the only rational interpretation that can be given to Baumann v. Chaska Building Center, Inc., which is that the \$200,000.00 homestead exemption is based on the value of all mortgages plus the first \$200,000.00 of equity. The ruling in Baumann also obviously reflects that judgments would not exist as liens on homestead property to the extent of the value of all mortgages and the first \$200,000.00 of equity. The ruling also reflects that a

judgment lien on any value in excess of the homestead exemption would be subordinate to the mortgages which are accounted for as part of the homestead exemption.

Merchants also ignores Minn. Stat. §510.05, which specifically excludes mortgages from the homestead exemption. This exclusion for mortgages clearly establishes that mortgages, which are not subject to the homestead exemption, have a priority status over any judgments, which are subject to the homestead exemption, and can exist as liens only to the extent the homestead exemption is exceeded.

Merchants also ignores the effect of the District Court ruling. As the District Court ruling now stands, Merchants has a judgment lien on all the value of the subject property. This is directly contrary to the rulings in the Baumann and Kipp cases. It is also directly contrary to the homestead exemption statute and over a century of Supreme Court rulings. It also eliminates the preferential position that mortgagees maintain over judgment creditors based on a mortgagee's statutory exclusion from the homestead exemption under Minn. Stat. §510.05. It also violates the public policy on which the homestead exemption is based. In fact, on May 23, 2007, Merchants conducted a purported execution sale in regard to its claimed judgment lien against the entire homestead property. The District Court ruling which made such an execution sale possible is unprecedented and contrary to all law in this state relating to homestead exemptions. It is extremely important that the District Court ruling be reversed.

Also, even if the Petersens were allowed to keep the first \$200,000.00 obtained from a sale of the property, as suggested by Merchants at the District Court level, the result would still be contrary to Minnesota law and in violation of public policy. If the

Petersens were allowed to keep the first \$200,000.00 of property value, the rulings in Baumann and Kipp would be violated. More importantly, as stated in Deutsche Bank's original brief, the mortgagees would lose their exclusion from the homestead exemption. The result would be that mortgage loans would never be secured to the extent of the first \$200,000.00 of property value. This in turn would eliminate the possibility of any mortgage loans ever being issued to any buyers of homestead property. This would virtually eliminate homeownership in Minnesota and would have a disastrous effect on the economy. It cannot be emphasized too strongly that the District Court ruling should be reversed and summary judgment should be entered in favor of Deutsche Bank declaring that Merchants has no right, title, or interest in the subject property, or in the alternative, declaring that Deutsche Bank's mortgage has priority over any claimed judgment lien.

It is also respectfully requested that the Anoka County District Court be ordered to vacate and set aside any purported execution sale or other proceeding conducted by Merchants in enforcement of its alleged judgment lien.

CONCLUSION

Based on the foregoing arguments, it is respectfully requested that the Anoka County District Court decision be reversed and that summary judgment be entered in favor of Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc., Asset Backed Pass-Through Certificates, Series 2003-13, declaring that Merchants Bonding Company has no right, title, or interest in the subject property, or, in

the alternative, declaring that Deutsche Bank's mortgage has priority over any claimed judgment lien in favor of Merchants Bonding Company.

It is also respectfully requested that the Anoka County District Court be ordered to vacate and set aside any purported execution sale or other proceeding conducted by Merchants Bonding Company in enforcement of its alleged judgment lien.

Dated

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