

NO. A07-800

---

State of Minnesota  
In Court of Appeals

---

Northern Realty Ventures, LLC,  
a Minnesota Limited Liability Corporation,

*Appellant-Plaintiff,*

v.

Minnesota Housing Finance Agency,  
a public body corporate and politic of the State of Minnesota,

*Respondent-Defendant.*

---

**REPLY BRIEF**

---

WESTRICK & McDOWALL-NIX, P.L.L.P.  
John G. Westrick (#206581)  
Kirk M. Anderson (#338175)  
450 Degree of Honor Building  
325 Cedar Street  
St. Paul, MN 55101  
(651) 292-9603

*Attorneys for Appellant*

MINNESOTA ATTORNEY GENERAL  
Lori Swanson (#254812)  
Thomas K. Overton (#83355)  
Darryl Hénchen (#320250)  
445 Minnesota St., Suite 900  
St. Paul, MN 55101  
(651) 296-0985

*Attorneys for Respondent*

**TABLE OF CONTENTS**

Table of Authorities ..... ii

Legal Issues on Appeal ..... iv

Argument

    I.     The District Court Erred as a Matter of Law in Denying Appellant’s Motion for Summary Judgment and Determining that Respondent is the Fee Owner of the Property ..... 1

    II.    The District Court did not err When it Determined that Appellant was Entitled to Redeem Without “Recording” the Judgment or the Assignment of Judgment ..... 5

Conclusion ..... 7

## TABLE OF AUTHORITIES

### Cases

<u>Benson v. Saffert-Gugisberg Cement Const. Co.</u> , 159 Minn. 54, 198 N.W.297 (1924) .....	5
<u>Graybow-Daniels Co. v. Pinotti</u> , 255 N.W.2d 405 (Minn. 1977) .....	1
<u>In re Petition of Nelson</u> , 495 N.W.2d 200 (Minn. 1993) .....	2, 5
<u>Kingery v. Kingery</u> , 185 Minn. 467, 241 N.W. 583 (1932) .....	4
<u>Krahmer v. Koch</u> , 216 Minn. 421, 13 N.W.2d 370 (1944) .....	1
<u>Moore v. Penney</u> , 141 Minn. 454, 170 N.W. 599 (1919) .....	1
<u>Nussbaumer v. Fetrow</u> , 556 N.W.2d 595 (Minn.Ct.App. 1996) .....	6, 7
<u>Peterson v. First Nat'l Bank</u> , 162 Minn. 369, 203 N.W. 53 (1925) .....	3, 4
<u>Schroeder v. Lahman</u> , 28 Minn. 75, 76, 9 N.W. 173, 174 (1881) .....	5
<u>Sieve v. Rosar</u> , 613 N.W.2d 789 (Minn.Ct.App. 2000) .....	1, 2
<u>Slezak v. Ousdigian</u> , 260 Minn. 303, 110 N.W.2d 1 (1961) .....	5
<u>State ex rel. Anderson v. Kerr</u> , 51 Minn. 417, 53 N.W. 719 (1892) .....	2, 5
<u>State v. King</u> , 297 N.W.2d 693 (Minn. 1977) .....	5
<u>United States Fire Ins. Co. v. Minn. State Zoological Bd.</u> , 307 N.W.2d 490 (Minn. 1981) .....	4

**Statutes and Rules**

Minn.Stat. § 8.01 . . . . . 5

Minn.Stat. § 548.09 . . . . . 6

Minn.Stat. § 580.24 . . . . . 6, 7

## LEGAL ISSUES ON APPEAL

- I. Whether Respondent's redemption satisfied the statutory requirements to redeem as a junior creditor?

The district court held: Respondent complied with the redemption requirements.

- II. Whether Appellant was entitled to redeem as a junior creditor?

The district court held: Appellant was entitled to redeem as a junior creditor.

## ARGUMENT

### I. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT AND DETERMINING THAT RESPONDENT IS THE FEE OWNER OF THE PROPERTY.

Respondent Minnesota Housing Finance Agency ("Respondent") argues that the district court was correct in entering summary judgment in its favor because (1) Respondent's redemption "substantially" complied with the redemption statutes; and (2) equity supports the issuance of a Certificate of Redemption to Respondent. [Respondent's Brief]. Nonsense.

#### A. "Substantial" compliance.

Respondent argues that even though its redemption was late, it substantially complied with the redemption statutes, thus it is entitled to the Property. [Respondent's Brief at p. 10-14].

First, our Supreme Court has consistently held that the statutory requirements for redemption must be "strictly" complied with. Graybow-Daniels Co. v. Pinotti, 255 N.W.2d 405, 407 (Minn. 1977); Krahmer v. Koch, 216 Minn. 421, 423, 13 N.W.2d 370, 371 (1944); Moore v. Penney, 141 Minn. 454, 456, 170 N.W. 599, 600 (1919).

While this Court has stated that some of the more formal provisions of the redemption statutes only require "substantial" compliance, "strict" compliance is still required for the essential elements of the statute. Sieve v. Rosar, 613 N.W.2d 789, 793 (Minn.Ct.App. 2000).

Late payments are not “substantial compliance.” In re Petition of Nelson, 495 N.W.2d 200, 202 (Minn. 1993). And, our Supreme Court has also held that district court’s lack discretion to extend the time to redeem. State ex rel. Anderson v. Kerr, 51 Minn. 417, 420, 53 N.W. 719, 719 (1892).<sup>1</sup>

The facts are not in dispute in this case. For whatever reason, Respondent attempted to redeem as the senior creditor when it was not. Respondent failed to tender the full amount of funds to redeem from Appellant until after its seven day window to redeem had run. Thus, although Respondent eventually tendered the full amount to redeem, it was three days too late. Thus, Respondent’s redemption was untimely.

Appellant Northern Realty Ventures, LLC (“Appellant”) cannot conceive of any requirement contained in Minn.Stat. § 580.24 which is more essential than to make a timely and full payment of the redemption funds. Nelson, 495 N.W.2d at 202; Sieve, 613 N.W.2d at 794. Since Respondent failed to do both, for whatever reason, it failed to comply, either strictly or substantially, with the redemption statutes and was not entitled to a Certificate of Redemption.

For these reasons, Appellant respectfully requests this Court to reverse the district court.

---

<sup>1</sup> As this Court has noted, “[t]he statutory requirements for redemption have not changed since 1874 and, thus, even the earliest decisions speak to the issues involved in the present case.” Sieve, 613 N.W.2d at 792.

B. Equitable Relief.

Next, Respondent argues that the district court should be affirmed because equity supports the decision. [Respondent's Brief at p. 14-17; Order at p. 9; App's Appdx. at A-11].

In support of its proposition, Respondent relies upon Peterson v. First Nat'l Bank, 162 Minn. 369, 203 N.W. 53 (1925). In Peterson, there was a mortgage worth approximately \$15,000 on a parcel of property worth \$21,000. The mortgagors missed an interest payment of \$722.40, and the Bank instituted foreclosure proceedings. Peterson, 162 Minn. at 370, 203 N.W. at 53. The foreclosing attorney did not accelerate the entire mortgage, but foreclosed only on the \$722.40. The mistaken attorney then bid only \$835.50 at the foreclosure sale on behalf of the Bank. Peterson, 162 Minn. at 371, 203 N.W. at 53.

Thus, because of the mistake of the attorney, the Bank was going to lose out on the entire balance due on the mortgage. The Appellant in that case attempted to take advantage of the situation, with full knowledge of the mistake, and redeem from the mistaken amount. Peterson, 162 Minn. at 373, 203 N.W. at 53. The Bank sought to have the foreclosure vacated and to reinstate the mortgage so they could start a new foreclosure. Peterson, 162 Minn. at 374, 203 N.W. at 53.

Our Supreme Court held that because equity supported the vacation of the Sheriff's sale and the reinstatement of the mortgage because it would give the Bank the

chance to foreclose again, and it would only deny an unconscionable advantage to the Appellant. Peterson, 162 Minn. at 378-79, 203 N.W. at 56. Peterson was a mortgage foreclosure case, not a redemption case like the one at bar. Thus, Peterson is inapplicable here.

Additionally, the district court held that “[e]quity required this resolution because it comports with the intent of the redemption statutes, there is no evidence that [Respondent] did anything to cause the Sheriff to refuse [Appellant’s] efforts to redeem, there is no evidence that [Appellant] could not have taken more immediate action in challenging the Sheriff’s initial determination, [Appellant] is not harmed and has received all money due it, and [Appellant] will not receive a windfall by the extinguishment of [Respondent’s] substantial mortgage against the property.” [Order at p. 9; App’s Appdx. at A-11].

If Respondent were seeking equity against the Sheriff, who made an error, perhaps Respondent’s argument would be more compelling. However, equity follows the law and equity will not grant relief where it would circumvent a statutory requirement. See United States Fire Ins. Co. v. Minn. State Zoological Bd., 307 N.W.2d 490, 497 (Minn. 1981) (no equitable relief when it would circumvent a statutory requirement); Kingery v. Kingery, 185 Minn. 467, 470, 241 N.W. 583, 584 (1932) (equity follows the law, and a court of equity will not disregard statutory law or grant relief prohibited therein).

Here, the district court did just that. Under the guise of equity it allowed a late

payment, which the law will not permit. Nelson, 495 N.W.2d at 202; State ex rel. Anderson, 51 Minn. at 420, 53 N.W. at 719.

And, perhaps more compelling, what did Appellant do that warranted equity being used as a sword against its interests? Appellant followed the law. The error complained of was not Appellant's, but the Sheriff's. And the Sheriff is not the agent for either Appellant or Respondent. Schroeder v. Lahman, 28 Minn. 75, 76, 9 N.W. 173, 174 (1881).

Instead, the equities between Appellant and Respondent are equal, and therefore the law should prevail. Benson v. Saffert-Gugisberg Cement Const. Co., 159 Minn. 54, 60, 198 N.W.297, 299 (1924) (where equities are equal, the law will prevail).

One last note: Every person is presumed to know that law. State v. King, 297 N.W.2d 693, 697 (Minn. 1977). How much stronger can that principle be than here where Respondent is a state agency represented by the Minnesota Attorney General, the chief legal officer of the State. Minn.Stat. § 8.01; Slezak v. Ousdigian, 260 Minn. 303, 308, 110 N.W.2d 1, 5 (1961).

For the reasons stated above, Appellant respectfully requests this Court reverse the district court.

**II. THE DISTRICT COURT DID NOT ERR WHEN IT DETERMINED THAT APPELLANT WAS ENTITLED TO REDEEM WITHOUT "RECORDING" THE JUDGMENT OR THE ASSIGNMENT OF JUDGMENT.**

Respondent argues that the district court erred because it held that Appellant was

entitled to redeem the Property, even though Appellant did not “record” the judgment or assignment of judgment with the Ramsey County Recorder’s Office. [Respondent’s Brief at p. 18-21]. Respondent is incorrect, and the district court should be affirmed on this issue.

Minn.Stat. § 580.24(a) states:

[N]o creditor is entitled to redeem unless, within the period allowed for redemption by the mortgagor, the creditor . . . (2) records in each office where notice is required all documents necessary to create the lien on the mortgaged premises and to evidence the creditor’s ownership of the lien . . .

(emphasis added).

In this case, the mortgaged property is “abstract” property. It is undisputed that the “judgment” and the “assignment of judgment” were docketed with the Ramsey County District Court before the six (6) month redemption period had expired. [Assignment of Judgment; App’s Appdx. at A-14].

Since this is “abstract” property, once the judgment was docketed with the district court, it became a lien against the Property. Minn.Stat. § 548.09; See Nussbaumer v. Fetrow, 556 N.W.2d 595, 598 (Minn.Ct.App. 1996). And, once the “assignment of judgment” was filed with the district court, Appellant’s ownership of the lien was evidenced as required by Minn.Stat. § 580.24(a)(2).

This is because the lien appears of record as a matter of law once it is docketed. Minn.Stat. § 548.09. Thus, there are no “documents necessary to create the lien” under

Minn.Stat. § 580.24(a), and therefore no such documents needed to be recorded.

Respondent argues that Appellant was required to “record” the judgment and assignment with the Ramsey County Recorder’s Office in order to create its lien and satisfy Minn.Stat. § 580.24(a)(2). As stated above, Respondent is incorrect. Minn.Stat. § 548.09; See Nussbaumer, 556 N.W.2d at 598. Thus, the district court was correct in determining that Appellant was entitled to redeem as a junior creditor. [Order at p. 7; App’s Appdx. at A-9].

For the reasons stated above, Appellant respectfully requests this Court affirm the district court’s decision on this issue.

#### CONCLUSION

For the reasons stated above, Appellant respectfully requests this Court reverse the district court’s award of summary judgment to Respondent, and grant summary judgment to Appellant.

Dated: June 4, 2007

**WESTRICK & MCDOWALL-NIX, PLLP**

  
John G. Westrick #206581  
Kirk M. Anderson #338175  
450 Degree of Honor Building  
325 Cedar Street  
St. Paul, MN 55101  
(651) 292-9603