

NO. A07-1327

State of Minnesota
In Court of Appeals

Harold Bjorklund as Trustee of the Harold E. Bjorklund
Revocable Trust U/A January 14, 2004,
Respondent,

vs.

Bjorklund Trucking, Inc.,
Appellant.

REPLY BRIEF OF APPELLANT

BEST & FLANAGAN, LLP
Timothy A. Sullivan (#107165)
Brigid M. Goss (#387697)
225 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402
(612) 339-7121

FORSBERG LAW OFFICE, P.A.
Eric W. Forsberg (#30995)
222 South Ninth Street, Suite 2960
Minneapolis, Minnesota 55402
(612) 215-3302

Attorneys for Respondent

FOLEY & MANSFIELD, P.L.L.P.
Michael Haag (#39007)
Thomas W. Pahl (#243012)
Hillary Parsons (#347103)
Kelly J. Shannon (#312952)
250 Marquette Avenue, Suite 1200
Minneapolis, Minnesota 55401
(612) 338-8788

Attorneys for Appellant

INTRODUCTION

When Harold commenced the Scott County eviction action, BTI's response included a number of affirmative defenses and a counterclaim setting forth BTI's claims to title of the Shakopee Terminal. Following a line of cases recognizing that district courts in eviction actions are able to adjudicate disputes beyond the simple right of present possession, the district court allowed BTI to present evidence in support of its affirmative defenses. At the end of the trial, however, the district court changed course and refused to give jury instructions (and a corresponding special verdict form) that in any way reflected BTI's affirmative claims of ownership to the Shakopee Terminal. As a result, instead of dealing with BTI's title claims, the district court ultimately submitted the case in accordance with the eviction statute, which focused solely on the present possession.

The resulting jury verdict, which awarded Harold present possession of the Shakopee Terminal, in no way resolved BTI's claims of ownership. Although the jury was not given an opportunity to consider BTI's affirmative claims or defenses in the Scott County eviction matter, Harold now claims that the eviction verdict bars BTI from ever submitting its ownership claims to a jury. BTI is entitled to one full and fair litigation on the issue of ownership of the Scott County property, and respectfully requests that this Court reverse the jury verdict and remand the matter to the district court with instructions to stay the eviction action pending resolution of the shareholder litigation in Wright County. In the alternative, BTI

respectfully requests that this Court limit the res judicata and collateral estoppel effect of the jury verdict to the question of current possession of the Shakopee Terminal.

DISCUSSION

I. THE DISTRICT COURT ERRED WHEN IT REFUSED TO GIVE JURY INSTRUCTIONS AND SPECIAL VERDICT FORM CONSISTENT WITH BOTH BTI'S AFFIRMATIVE CLAIMS OF OWNERSHIP AND THE EVIDENCE

The district court did not allow BTI a full and fair opportunity to be heard on the issue of ownership in the Scott County eviction action. Rather, the district court allowed BTI to present evidence concerning its affirmative defenses with respect to BTI's claim to title of the property, but then refused to give jury instructions encompassing these defenses.

There are two lines of cases addressing these affirmative defenses / counterclaims in unlawful detainer actions. One line of cases stands for the proposition that eviction proceedings are limited in scope to the determination of the right to present possession of property. *See AMRESKO Residential Mortgage Company v. Stange*, 631 N.W.2d 444, 445 (Minn. App. 2001); *see also William Weisman Holding Co. v. Miller*, 152 Minn. 330, 332, 188 N.W. 732, 733 (1922) (stating that in an unlawful-detainer action, "the defendant cannot interpose an equitable defense, nor any defense in the nature of a counter claim.").

In *AMRESKO*, a mortgagee brought eviction proceedings against mortgagors, who then counterclaimed and asserted affirmative defenses relating to

the underlying mortgage foreclosure. 631 N.W.2d at 444. The district court dismissed these affirmative defenses, finding that the claims exceeded the scope of the summary eviction proceedings. *Id.* at 445. Noting that appellants could raise their counterclaims in separate district court proceedings, the Court of Appeals affirmed the dismissal of the counterclaims and affirmative defenses. *Id.* at 445-46. The Court limited the decision to the facts of the case, noting that “there is no evident reason to interfere with the summary nature of eviction proceedings.” *Id.* at 446.

The other line of cases authorizes the district court to resolve counterclaims and defenses regarding title and ownership within eviction actions. In *AMRESCO* this Court also pointed out that:

the scope of [eviction] proceedings originated with the limited jurisdiction of municipal courts that once heard unlawful detainer proceedings but were not empowered to determine issues related to title. When 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. In fact, the Minnesota Supreme Court has suggested in dicta that, even though these proceedings are usually summary in nature, a counterclaim involving title should have been heard in an eviction proceeding to avoid the problems that later arose in a separate title action.

Id. at 445 (citations omitted). *See also Lilyerd v. Carlson*, 499 N.W.2d 803, 812 (Minn. 1993) (stating “[w]hile an unlawful detainer action is *generally* summary in nature, determines only present possessory rights, and *usually* does not bar subsequent actions involving title or equitable rights of the parties, the counterclaim here could have been tried to a jury.”) (emphasis added). “Therefore,

any current limitation on the scope of eviction proceedings is a function of the summary nature of the proceeding, *not* a limit on the ability of the court to hear and determine the action.” *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 357 (Minn. App. 2006) (emphasis in original). This line of cases leaves the option of hearing counterclaims and defenses regarding title and ownership in eviction actions to the discretion of the district court.

In neither instance is an unlawful detainer defendant’s right to assert ownership/title claims extinguished. In the first line, those issues are left to separate proceedings. *See William Weisman Holding Co.*, 152 Minn. at 332, 188 N.W. at 733. In the second line, the title/ownership claims are considered and resolved within the eviction action. *See Lilyerd*, 499 N.W.2d at 812. When the court in this case allowed BTI’s affirmative pleadings and supporting evidence, it was following the second line of cases. Although BTI was initially allowed to *present* evidence in support of its affirmative defenses, at the end of trial in this matter, the district court altogether changed course and instructed the jury only as to the statutory elements of eviction under Minn. Stat. § 504B (2006).

Neither line of cases discussed above nor the eviction statute authorizes the district court to allow evidence of counterclaims and affirmative defenses without then giving a jury the corresponding opportunity to rule on these defenses at the close of trial. The consequences and legal error become all the more evident not from the four corners of the verdict, i.e., possession only, but in Harold’s newest

contention that the verdict in Scott County precludes BTI from having ever having an opportunity to fully and fairly litigate its claims of ownership.

If the district court intended to resolve the ownership questions, then it was likewise obligated to adequately instruct the jury and to submit a consistent special verdict form. If this Court chooses to follow the proposition that a district court is *not* limited in its ability to hear and determine issues of ownership in an eviction action, then BTI respectfully requests that this Court reverse the jury verdict because BTI was *not* given a full and fair opportunity to litigate its claims to title of the property. If, on the other hand, this Court rules consistent with the line of cases restricting the scope of district court in eviction proceedings to the statutory elements defined in Minn. Stat. § 504B, then BTI respectfully requests that this Court limit the res judicata and collateral estoppel effect of the jury verdict to the question of current possession of the Shakopee Terminal.

II. THE JURY'S VERDICT DID NOT DETERMINE OWNERSHIP OR TITLE OF THE PROPERTY BECAUSE THE DISTRICT COURT DID NOT ALLOW FULL LITIGATION ON THE ISSUE OF OWNERSHIP.

The significance of the district court's limitation of issues is demonstrated by Harold's new and current argument that the Scott County eviction verdict was decisive not only on the issue of possession, but acts as a determination on the merits of BTI's claim to ownership. Harold thus concludes that because BTI was allowed to present evidence as to its affirmative defenses, and because there was a jury verdict in respect to present possession of the Shakopee Terminal, this general

verdict also establishes title to the property because the determination that Harold was entitled to possession was predicated on a finding that he owned the property. Harold's appellate brief erroneously asserts that because BTI was allowed to present evidence of affirmative defenses, therefore the district court allowed the jury to consider the *merits* of these claims. Although Harold argues several times that the jury instructions and special verdict form at trial encompassed BTI's affirmative defenses, the record clearly shows otherwise.

Having presented evidence that Harold agreed to convey title to the Shakopee Terminal after BTI paid him \$64,000 a year until he began to draw on his company-provided pension (believed to be in 1998), BTI requested an instruction regarding the doctrine of promissory estoppel; the district court refused the instruction. Next, having presented evidence of an oral contract between Harold and BTI that he would convey the terminal property, BTI requested an instruction that it was entitled to specific performance through enforcement of that oral contract; the district court refused the instruction. Likewise, having presented evidence that Harold misrepresented his intent with respect to eventual conveyance of the property, and that he intended BTI to continue to make yearly payments and BTI reasonably relied on Harold's misrepresentations, BTI requested a jury instruction based on the theory of equitable estoppel; the district court again refused the instruction. Finally, having presented evidence that it had paid more than \$422,000 to Harold for the terminal properties (far more than their worth or value), and that Harold still refused to convey title, BTI requested an

instruction that Harold has been unjustly enriched and BTI was entitled to damages; the district court once again refused the instruction. (A.A. 274-287). At the close of trial, Harold also moved for a directed verdict on the matter, arguing against BTI's affirmative claims and the court denied the motion. (T. 428-432; 436)

Harold argues that “[b]y its verdict, the jury also determined that BTI did not own the land and did not occupy the land as ‘rightful’ owner.” (Respondent’s Brief, p. 22). Again, Harold grossly mischaracterizes the jury’s verdict.¹ The special verdict simply reads as follows: “Do you, the Jury in the above-entitled action, find that the facts alleged in the complaint are true, and that the plaintiff shall recover *possession* of the premises and that the defendant shall vacate the premises immediately?” (A.A. 292) (emphasis added). Harold’s argument that the verdict was decisive of ownership defies credulity because the verdict form only invited the jury to answer the following two questions: (1) are the facts in the complaint true; and (2) is Harold entitled to possession of the property? At no time was the jury allowed to determine BTI’s claims of promissory estoppel, oral contract / specific performance, equitable estoppel, or unjust enrichment.

BTI is not requesting that it receive a second chance in another county to undo the jury verdict in Scott County; BTI is merely seeking one real chance to

¹ BTI also submitted a special verdict form, consistent with the evidence and the jury instructions, that would allow a jury to decide the ownership issue on the merits. The district court instead submitted the special verdict form found at Minn. Stat. § 504B.355, which was limited to possession of the property only and did not allow the jury to make a determination on BTI’s claims of ownership.

have jury instructions and a special verdict form consistent with its affirmative defenses and claims against Harold and to be able to fully and fairly litigate these issues in the Wright County shareholder litigation. Harold should not be allowed to unfairly capitalize on the unique posture of the case before this Court to preclude BTI from raising equitable defenses that by law, it is still entitled to have tried to a jury.

CONCLUSION

The Scott County verdict only determined that Harold was entitled to current possession of the Shakopee Terminal. However, by attempting to capitalize on the summary nature of eviction proceedings, while at the same time expanding the scope of the actual jury verdict, Harold grossly distorts the procedural and historical posture of the case. Although BTI was allowed to present evidence of its affirmative defenses at trial, the form of the jury instructions and corresponding special verdict form effectively prevented BTI from having a full and fair opportunity to litigate its ownership claims. BTI respectfully requests that this Court reverse the jury verdict and remand the matter to the district court with instructions to stay the eviction action pending resolution of the shareholder litigation in Wright County. In the alternative, BTI respectfully requests that this Court limit the res judicata and collateral estoppel effect of the jury verdict to the question of current possession of the Shakopee Terminal.

Respectfully Submitted,

Dated: 11/26/07

FOLEY & MANSFIELD, P.L.L.P.

By: 

Michael W. Haag (#38007

Thomas W. Pahl (#243012)

Hillary B. Parsons (#0347103)

Kelly J. Shannon (#0312952)

250 Marquette Avenue

Suite 1200

Minneapolis, MN 55401

(612) 338-8788

**ATTORNEYS FOR APPELLANT
BJORKLUND TRUCKING INC.**

CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the Minn. R. Civ. App. P. 132.01, subd 3, for a brief produced using the following font:

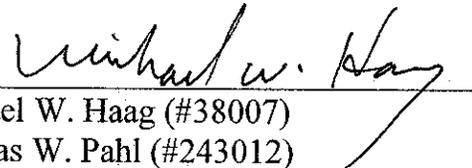
Proportional Times New Roman font, 13-point.

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Dated: 11/26/07

FOLEY & MANSFIELD, P.L.L.P.

By:



Michael W. Haag (#38007)
Thomas W. Pahl (#243012)
Hillary B. Parsons (#0347103)
Kelly J. Shannon (#0312952)
250 Marquette Avenue
Suite 1200
Minneapolis, MN 55401
(612) 338-8788

**ATTORNEYS FOR APPELLANT
BJORKLUND TRUCKING INC.**