

STATE OF MINNESOTA  
IN COURT OF APPEALS  
Case No. A08-0941

---

NANCY R. SITEK,  
Appellant,  
vs.

Michael Striker, Defendant, and  
Mortgage Electronic Registration Systems,  
Inc., Intervenor,  
Respondent.

---

APPELLANT'S REPLY BRIEF

---

MACK & DABY  
John E. Mack  
Atty. Reg. No. 65973  
26 Main Street  
P.O. Box 302  
New London MN 56273  
(320) 354-2045  
ATTORNEYS FOR RESPONDENT

MORRISON, FENSKE & SUND  
Eric Nasstrom  
Atty.Reg.No. 278257  
5125 County Road 101  
Minnetonka MN 55345  
(952)975-0050  
ATTORNEYS FOR RESPONDENT  
ATTORNEYS FOR APPELLANTS

There are serious omissions in Respondent's reply brief, and these omissions are in important ways misleading. For example, MERS states on page of its principal brief:

Although she [appellant] commenced this action within sixty days after being served with Notice of Cancellation, she never obtained a court order enjoining the cancellation, nor did she provide adequate security pending resolution of her claims that the Contract for Deed was breached. The trial court entertained her defenses at trial. Correctly, it rejected them.

(Respondent's Brief, p. 5)

This is wrong or misleading in any number of ways. First, with respect to the claim that Ms. Sitek did not obtain a court order enjoining the cancellation. Of course she did not - the Striker estate was in bankruptcy and Ms. Sitek was barred by federal law from seeking to enjoin the cancellation. 1 U.S.C. § 362 states, in relevant part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a state, applicable to all entities, of -

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title....

As a strictly legal matter, Ms. Sitek's lawsuit was already barred by federal statute, although she did not know that when she filed with the Court in Hennepin County. And as a practical

matter, there is no way she could have obtained relief from the automatic stay and obtained a temporary injunction from the District Court in Hennepin County before the expiration of the contract for deed cancellation expiration date, November 5<sup>th</sup>, 2005. So the statement "she never obtained a court order enjoining the cancellation" is extremely misleading: it was legally impossible for her to do so.

The statement "[n]or did she provide adequate security pending resolution of her claims" is also wrong. Ms. Sitek did not have to do so, and neither Striker nor MERS nor the trustee in bankruptcy made any request that she do so. Either the cancellation of contract for deed was effective November 5<sup>th</sup>, 2005, or it was effectively voided by the filing of the bankruptcy action, as Ms. Sitek argues. If it was voided, there is no point in going any further - Ms. Sitek had no duty to obtain a court order staying the cancellation action, and she had no duty to provide security for staying a "dead" cancellation proceeding. If it was not voided, there would have been no time - and no legal right - for her either to enjoin the action or to provide security. In any event, her lawsuit was void under 11 U.S.C. § 362, if anyone had happened to notice the relative dates of the bankruptcy filing (14 October, 2005) and Ms. Sitek's Hennepin County suit against Striker (1 November 2005). By the time Ms. Sitek's lawsuit could legally have been pursued in a

Minnesota State Court - i.e. on the date the trustee abandoned her interest in Striker's property on March 9<sup>th</sup>, 2006 - the cancellation action either had long since been completed or it had long since been voided by operation of law. In either case, it would have been impossible for Ms. Sitek to either enjoin the action or provide security: either there was no action to enjoin and securitize the cancellation, because the action was already void, or the cancellation action could neither have been enjoined nor securitized, because it had already long since been accomplished.

The next claim made by respondent is that "The trial court entertained her defenses at trial." No, it did not - it could not have. The defenses Ms. Sitek brought against Mr. Striker's attempted cancellation action were never considered by the Court, and they could not have been: again, the action was either complete or void long before the trial, and the defenses Ms. Sitek tried to raise by her November 1, 2005, lawsuit had long since been rendered moot. Of course, if Respondent means that it considered the defenses Ms. Sitek raised to MERS' action - the most important of which is that the cancellation action was voided by the bankruptcy filing - the District Court did consider those defenses. It rejected it - erroneously - but it certainly entertained them.

Consider the next statement made by Respondent:

The filing [Striker's bankruptcy filing] in no way caused her failure to respond properly to the cancellation of the Contract for Deed. Ultimately, the Trustee abandoned any interest the bankruptcy estate had in the property. Contrary to Appellant's claims, that act occasioned no violation of bankruptcy law.

(Respondent's Brief, p. 5)

This passage is wrong on two counts. The phrase "respond properly" is tricky - what does it mean in this context? In the absence of a bankruptcy filing, Ms. Sitek had only two relevant responses to the cancellation action: either she could have paid off the alleged defaults, or she could have enjoined the cancellation action. But in the presence of the bankruptcy filing, both of these responses were rendered illegal.

First, Ms. Sitek could not have corrected the claimed deficiencies in the contract. The contract for deed provides that payments to correct any deficiency be made to Mr. Chait, Mr. Striker's attorney. But after October 14<sup>th</sup>, any such payments would have been illegal. 11 U.S.C. § 541(a)(1) states:

The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

Except as provided in subsections (b) and (c)(2) of this section, all legal and equitable interest of the debtor in property as of the commencement of the case.

So as of October 14<sup>th</sup>, 2005, Mr. Striker did not own the vendor's interest in the Sitek contract for deed - the Bankruptcy Estate, administered by the trustee in bankruptcy under 11 U.S.C.

§ 363, did. Since the right to receive payments and thus avoiding the cancellation was a right of the contract vendor's on October 13<sup>th</sup>, 2005, it became exclusively the right of the Bankruptcy Estate on October 14<sup>th</sup>, 2005. It would have been illegal for Ms. Sitek to have paid Mr. Striker or her attorney after October 14<sup>th</sup>, 2005.<sup>1</sup> Of course, she could have paid the trustee if the trustee had been aware of the cancellation action; but Mr. Striker, as noted previously, did not inform the bankruptcy court that he had commenced cancellation action. Rather, he simply lied. He noted on Schedule A of his bankruptcy petition:

Description	Interest	Spouse	Value	Mortgage
5812 Dale	Fee Simple	H	\$500,000	\$410,000

And he noted, on Schedule D:

Creditor	Date & Place of Claim	Amount	Unsecured Part
Entrust Mortgage	6/18/04 5812 Dale Avenue Edina, MN	\$410,000	\$0.00 <sup>2</sup>

First, Mr. Striker did not own a fee simple interest; MERS

---

<sup>1</sup>This is not an abstract worry. The Court of Appeals may take judicial notice of the acts of parallel courts, and Mr. Striker was indicted by the Federal District Court of Minnesota for fraud involving River Run and Associated Bank. See U.S. District Court File No. 08-266. Obviously, he has not been convicted, so it would not be appropriate to say anything more, except that Ms. Sitek's concerns were hardly frivolous.

<sup>2</sup>How can there be no unsecured portion if the value exclusive of the mortgage is \$500,000?

had foreclosed Mr. Striker's interest, therefore owning the fee simple interest; and Mr. Striker owned only a right of redemption. Second, he had commenced a cancellation action as vendor under that redemption interest, and he did not bother to inform the trustee about that. So the trustee had no way of knowing (a) that there was someone out there who owed the estate money and who might be a source of estate income; and (b) this source was about to either lose her rights in the property through cancellation or was the subject of an ineffective cancellation.

Suppose Striker had informed the bankruptcy court of the real nature of the Sitek property, of Ms. Sitek's existence, and of the cancellation action. Then the trustee would have had the option of either contacting Ms. Sitek and making a deal with her, or bringing a cancellation action of her own. Note also the importance of the failure of Mr. Striker to note Ms. Sitek's own interest in his bankruptcy filing. If Ms. Sitek had been listed as a contract vendee, she would have received notice of the filing, and would have had three weeks to either cut a deal with the trustee or attempt to refinance the property or obtain relief from the automatic stay and attempt to enjoin the cancellation. It still would have been difficult to do these things within a three-week time frame, but at least it would not have been impossible.

The Respondent goes on to claim that Ms. Sitek is contending that the trustee herself somehow broke the law:

Ultimately, the Trustee abandoned any interest the bankruptcy estate had in the Property. Contrary to Appellant's claims, that act occasioned no violation of bankruptcy law. And if it did, Appellant fails entirely to explain how or why the Trustee's conduct taints the trial court's findings of fact and conclusions of law.

(Respondent's Brief, p. 5)

And again:

Appellant claims the Trustee violated 11 U.S.C. § 365. Appellant's brief, at 16.

Ms. Sitek is not arguing that the trustee did anything wrong at all. Indeed, she made it clear that she believes that the trustee acted very properly, given Mr. Striker's sins of commission and omission on the bankruptcy petition. The abandonment of the Sitek property was a non-event. By the spring of 2006 when the trustee abandoned the estate's interest, either the Striker cancellation action was long since accomplished, or it was long since void. The trustee did not begin another cancellation action, and she took no action to take over the Striker cancellation action (she could not have done so before November 5<sup>th</sup>, the "drop dead" date, because she did not know about it).<sup>3</sup>

---

<sup>3</sup>Even an experienced lawyer like the trustee in bankruptcy, can think of everything; but one has to wonder why the trustee did not recommence the cancellation action or negotiate with Ms. Sitek. Either the trustee acquires a nice parcel of Edina land

It is possible that Respondent is on the cusp of making another, more interesting argument here, but it never explicitly makes it. This potential argument is that the bankruptcy filing **stayed** the running of the 60-day redemption period, but that upon some future act and date the clock started to run against Ms. Sitek again. Respondent argues that 11 U.S.C. § 365, which permits a trustee to accept or reject executory contracts, does not apply to this case. But Respondent must surely acknowledge that the trustee would have the inherent right to enforce or refuse to enforce a contract for deed cancellation action under the more general provisions of 11 U.S.C. § 363. Suppose Ms. Sitek had walked into the trustee's office on October 15<sup>th</sup>, 2005, with a cashier's check for the remaining balance on the contract for deed. Does the Respondent seriously contend that the trustee would not have had to give her a deed to the Edina property? Does the Respondent seriously doubt that the trustee would have given her one? If Respondent does, it goes even further than Appellant is willing to go, and is arguing that Striker's bankruptcy not only fatally hindered performance by Ms. Sitek, but made such performance legally impossible. Surely there is a legal mechanism by which the trustee can honor legal obligations

---

or obtains payment from Ms. Sitek for it. No bankruptcy court in the country would hold that the trustee had no vendor's interest in the property or that the cancellation had been successfully effectuated by Mr. Striker and that Mr. Striker, rather than the estate, somehow owned the Sitek property after October 14<sup>th</sup>.

of the debtor to the advantage of the estate.

It can be argued that the right and duty of the trustee to honor such obligations creates a stay on state actions which would prejudice those rights and obligations. 11 U.S.C. § 362(a)(3) states:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a state, applicable to all entities, of -

.....

(3) any act to obtain possession of property of the estate or property from the estate or to exercise control over property of the estate....

If the vendor's interest in the Edina property was "property of the estate" - and it was - then the cancellation of the vendee's interest in that property would appear to be "an act ... to exercise control over property of the estate...."

11 U.S.C. § 362 (c)(1) would ordinarily define the end of the stay period:

(c) Except as provided in subsections (d), (e), (f) and (h) of this section -

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate....

So Respondent might have argued that the running of the 60 day period was suspended on October 14<sup>th</sup>, 2005 and began running

again on April 3<sup>rd</sup>, 2006. MERS walks up to the precipice of this argument and then wanders off in another direction. Instead, MERS made the weak argument that Striker continued to "own" the right to cancel Ms. Sitek's contract for deed between October 14<sup>th</sup>, 2005 and November 5<sup>th</sup>, 2005:

The Trustee did not cancel the Contract for Deed. Striker initiated cancellation as a result of Appellant's breaches. All Striker or the Trustee had to do was await Appellant's compliance or lack thereof. ... The only conclusion that follows is that the Contract for deed remained undisturbed as a result of bankruptcy, albeit with Appellant having failed to preserve her interest.

This is either irrelevant or outright wrong. If Respondent is merely saying that the contract vendor became owner of the vendor's interest in the contract for deed after the trustee abandoned her interest in the property, Respondent is correct but misses the point. The question is not whether the contract for deed remained undisturbed - the question is whether it was validly cancelled, and if so, when. If Respondent is saying that the clock continued to tick on the cancellation action between October 14<sup>th</sup>, 2005 and November 5<sup>th</sup>, 2005, Respondent is simply wrong. The more important question should have been whether it started ticking again on April 3<sup>rd</sup>, 2006.

There are several reasons, actually and constructively, why it did not. First, Respondent cannot avail itself of this argument because it never made it either to the District Court or the Court of Appeals, and any potential claim or defense which is

not advanced at trial cannot avail the party who failed to advance it. Second if MERS had wanted to claim that the clock started ticking on Ms. Sitek's 60-day redemption period again when the trustee abandoned this property, it had a duty to inform Ms. Sitek. Because Striker had not listed her contract vendee interest on the bankruptcy petition, she received no notice of the abandonment and had no way to know that the cancellation action was revived. Third, Mr. Chait had long since filed the cancellation certificate, so the record available to Ms. Sitek would have indicated that whatever the success of the Striker cancellation action, it was not ongoing. Fourth, Ms. Sitek had no way of knowing that the vendor's interest now belonged to MERS, so she could not have paid the party holding that interest if she wanted to. So by the time the trustee abandoned the vendor's interest in the Edina property, the cancellation action had long since been extinguished by the *Miller v. Snedeker* rule. Finally, if MERS did intend to continue the cancellation action begun by Mr. Striker, it at least had a duty to notify Ms. Sitek that it was doing so, and it did not.

Let us examine in a broader framework the principal argument that MERS did make:

The Notice of Cancellation was served on September 6, 2005. A.5. Appellant had sixty days, or until November 5, 2005, to either cure the defect or obtain a temporary restraining order enjoining cancellation. Ex. 122. She did neither. Three years have passed since she first was served with the Notice of

Cancellation, yet she never has posted security, tendered monthly payment, or obtained a temporary restraining order consistent with Rule 65 of the Minnesota Rules of Civil Procedure. Accordingly, Appellant failed to preserve her rights in the Contract for Deed.

(Respondent's Brief, p. 8)

It is useful to break this argument down into its constituent parts.

Appellant had sixty days, or until November 5, 2005, to either cure the defect or obtain a temporary restraining order enjoining cancellation.

No she didn't. She had until October 13<sup>th</sup> to cure the defects or obtain a temporary injunction, because after October 14<sup>th</sup>, doing either became legally impossible. Since a cancellation action requires that a vendee be given a full 60 days to cure such defects or obtain a temporary injunction, the cancellation action failed.

"She did neither."

(a) She tried. It was not her fault that Mr. Striker, by filing bankruptcy, made any attempt to actually bring a motion to do so legally impossible. So (b) instead of saying "she did neither," the way her action or inaction should be characterized is "she was legally prevented from doing either."

Three years have passed since she first was served with the Notice of Cancellation, yet she never has posted security, tendered monthly payment, or obtained a temporary restraining order consistent with Rule 65 of the Minnesota Rules of Civil Procedure.

Why in the world didn't MERS simply serve another

cancellation of contract for deed after the trustee abandoned the estate's interest in the property? It could not have gone wrong. If the action was superfluous because the vendee's interest had already been cancelled as of November 5, 2008, it would only have been out its service-of-process fee. If her interest had not already been cancelled as of November, 2008, then after the abandonment by the trustee, MERS owned all legal title and the vendor's equitable interest as well, and either Ms. Sitek would have put up or shut up. In either event, MERS would have come out ahead - either it would have had its title or its money. So blaming Ms. Sitek for not making payments for three years is like blaming an investor for not investing in Fannie Mae. If she had made payments without an agreement, she would have been pouring money down a hole. And as to the question "Why didn't she negotiate with MERS?" the equally interesting question "Why didn't MERS negotiate with her" can be raised.

Moreover, why post security, tender monthly payment, or obtain a temporary restraining order if MERS is arguing that her contract for deed interest has already been cancelled? Again, she would be pouring money down a hole. And of course there was nothing to enjoin under Rule 65 by the spring of 2006; either she had already been cancelled in November, 2005 or there was no outstanding cancellation proceeding, and so nothing to enjoin.

Accordingly, Appellant failed to preserve her rights in the Contract for Deed.

What could she have done to preserve her rights? Make payment in (e.g.) December, 2005? By then, such payments either would have been pointless, because she would have lost her contract vendee rights, or they would have been unnecessary, because the attempted cancellation action would have been nugatory. Of course, if the contract for deed cancellation action were ineffective, she still would have owed her monthly payments. But nobody had agreed that the action was ineffective, so even making her monthly payments would have been pouring money down a hole, absent agreement from the vendor that she could make payments and the vendor would officially forget about the attempted cancellation.

Respondent goes on to argue:

Even if the statutory cancellation had failed, the contract for deed **would** still have been terminated judicially.

(Respondent's Brief, p. 8)

This is wrong by one word. What Respondent should have said is:

Even if the statutory cancellation had failed, the contract for deed **could** still have been terminated judicially.

Respondent goes on to say:

Appellant proclaims that because the statutory cancellation action failed it follows that the cancellation itself fails. Appellant's Brief, at 4. In so claiming, Appellant ignores the fact that the statutory language merely states a seller "May terminate the contract by serving a notice of

cancellation.

(Respondent's Brief, p. 8)

Appellant does not ignore this aspect of the statutory language. Rather, she relies upon it. There is absolutely no doubt that if MERS had attempted to terminate the contract by judicial cancellation action, the Court could have provided relief. The problem is, MERS did not do this. Rather, it has attempted all along to rely on the September, 2005 cancellation notice as effective. Why it did not either serve its own notice-of-cancellation or bring an action to judicially cancel the contract for deed passeth understanding. But the important point for purposes of Respondent's argument is that it did not do so.

Respondent comes close to admitting as much:

Assuming *arguendo* that the statutory cancellation action Striker initiated was rendered insufficient when he filed bankruptcy, the subsequent judicial action rendered moot and cured these insufficiencies. During the entire pendency of her action, Appellant remained in possession of the Property without posing security or making monthly payments. She thus fared better than she would have had she obtained an injunction pursuant to Minn. Stat. § 559.211. The Contract for Deed accordingly terminated, if not due to Appellant's failure to follow procedures necessary to stave off statutory cancellation, then following Respondent's judicial action.

(Respondent's Brief, p. 9)

But assuming *arguendo* that the statutory cancellation action Striker initiated was rendered null and void when he filed bankruptcy, the contract vendor needed to initiate a new action

to cancel the contract for deed. In the absence of abandonment by the vendee or resort to judicial proceedings by the vendor, the method of cancellation prescribed by statute is the exclusive method by which a vendor may terminate a contract for deed; *Flynn v. Sawyer*, 272 N.W.2d 904 (Minn. 1978). Ms. Sitek did not abandon the contract; she continued to live in the house, keep it up, and dare MERS to serve her with a cancellation notice. Moreover, the Respondent never argued an abandonment theory.

Furthermore, it is perfectly clear from MERS actions that it did not seek to cancel the contract for deed judicially; a judicial cancellation requires that the Court set the terms under which the vendee may prevent cancellation, and neither MERS nor the Court did that. And in any event, where the vendor has the right to seek judicial cancellation of a contract for deed, some positive act to manifest the intention to terminate the contract judicially is necessary. *Melco Investment Co. v. Gapp*, 105 N.W.2d 907 (Minn. 1960). There was not attempt in the District Court action against Ms. Sitek to terminate the contract - only to declare the contract terminated.

Then Respondent argues:

Appellant alleges that "as of November 5<sup>th</sup>, when she filed her suit against [Stiker], [Appellant] had no idea that Striker was in bankruptcy, or she would not have filed suit in the teeth of the automatic stay." *Id.* Yet November 5<sup>th</sup>, 2005, the 60<sup>th</sup> day after the Notice of Cancellation was served on September 6<sup>th</sup>, 2005, was the last date upon which she either could have cured the default or obtained a court order

staying cancellation. Ex. 122. Appellant filed this action on November 1, 2005 and had Striker served on or about November 3, 2005. A. 15. The threat of violating the bankruptcy stay protecting Striker could not logically have deterred her from taking action within sixty days if she did know of the bankruptcy filing during that sixty day period.

(Respondent' Brief, p. 10)

This does not compute. Is Respondent claiming that because Ms. Sitek filed a lawsuit in technical violation of bankruptcy law (because she did not know of the bankruptcy filing on November 1<sup>st</sup>, 2005) she would have consciously defied federal bankruptcy law by continuing the action once she learned of the bankruptcy filing? There is no indication that Ms. Sitek knew of the bankruptcy filing before November 1<sup>st</sup>, 2008, although by November 5<sup>th</sup>, after Striker had been served and had complained about it that she became aware of a possible bankruptcy filing.

MERS proceeds to argue that Ms. Sitek probably could not have cured the default even if she had been given the opportunity to do so. The answer to this is "Perhaps so. Then it should have her to the test." There is no doubt that Ms. Sitek was in financial difficulties, and it is entirely possible that she would not have been able to refinance. But MERS had to prove this, and the only way to prove it was to commence some sort of cancellation action of its own and wait the requisite period of time during which Ms. Sitek did not cure the default. It did not. In cancellation law, there is no such theory as "The law

assumes that what has to be done will not be done.”

Respondent then argues that Mr. Striker did not violate the automatic stay by filing the notice of cancellation with the Minnesota Registry of Titles. This is just wrong; perhaps Mr. Chait did not **knowingly** violate the law. Indeed, he probably did not; the consequences for a lawyer of knowingly ignoring an automatic stay can be severe. But to say that Striker or his agent had a right to file a notice of cancellation simply ignores the language of § 541 to the effect that all rights of the debtor become rights of the estate. The estate obtained the sole right to cancel the contract for deed between September 14<sup>th</sup>, 2005 and April 3<sup>rd</sup>, 2006 when the trustee abandoned the estate's rights in the Edina property. Hence, the estate, and not Striker, had the sole right to take any action to effectuate or ameliorate the cancellation. The recording of the notice of cancellation is an action which is intended to effectuate that cancellation. QED.

Sometimes, it appears to the undersigned as if the arguments of Appellant and Respondent are like ships that pass in the night. Respondent repeatedly claims that Appellant is arguing that the trustee made various legal errors; Appellant is arguing nothing of the kind. She is claiming that the trustee was misled by Striker. Respondent repeatedly claims that Striker, MERS, or the trustee had a perfect right to bring a cancellation action. Appellant has never disputed this; her point is that a right to

bring a cancellation is not equivalent to the bringing of a cancellation action, much less a proper bringing of the cancellation action. Perhaps equity assumes that what ought to have been done was done; but it does not assume that what **might** have been done was done. MERS could have brought a cancellation action, but it did not. The trustee could have brought a cancellation action, but she did not. Striker did bring a cancellation action but he voided his action by filing bankruptcy and not stating on his petition that he had begun cancellation.

What Respondent's brief should have carefully addressed is the *Miller* rule. In *Miller v. Snedeker*, 101 N.W.2d 213 (Minn. 1980), the Minnesota Supreme Court held that even though the vendor has sufficient grounds for rescission, if the vendor has committed some act which improperly prejudices the vendee in her ability to pay, the right to cancel is lost:

This court in *Mason v. Edward Thompson Co.*, 94 Minn. 472, 474, 103 N.W. 507, stated the rule as follows:

'\* \* \* the law is well settled that the right to rescind on the ground of failure of performance belongs to the party who is himself without fault. Even though he has sufficient grounds for rescission, if he has done some act which justifies the other party in refusing or delaying performance, or has failed to perform his own part of the contract, the right to rescind does not exist.'

(*Id.* at 225)

The central question in this appeal is whether the filing of a bankruptcy petition during the redemption period of a contract-

for-deed cancellation by notice without informing either the vendee or the trustee of that cancellation action is an "act which justifies the other party in refusing or delaying performance." Appellant has argued that where the act in question makes performance legally impossible, it justifies her in refusing or delaying performance. Although Respondent has made many collateral arguments with respect to the effect of Striker's actions and malfeasances in bankruptcy, as far as Appellant can tell, he has not addressed the *Miller* issue at all.

While Appellant will not claim that an issue which is not addressed in rebuttal is conceded, Respondent's approach does suggest that there is not much MERS can say in response to Ms. Striker's *Miller* claim. Since her *Miller* claim succeeds, MERS could only successfully cancel Ms. Sitek's contract for deed by bringing a new cancellation action. It did not.

If one wonders why there is a sub-prime mortgage crisis in this country, this case provides a clue. If MERS is going to weather this crisis, it needs to do things correctly. It did not. It loses, and it deserves to lose.

Dated: September 27<sup>th</sup>, 2008

MACK & DABY, P.A.



John E. Mack, #65973  
P.O. Box 302  
New London MN 56273  
(320) 354-2045  
ATTORNEYS FOR APPELLANT