

NO. A09-837

State of Minnesota
In Court of Appeals

National City Bank,

Appellant,

vs.

Judith M. Engler,

Respondent.

REPLY BRIEF OF APPELLANT

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INTRODUCTION

Appellant National City Bank asserts that it obtained a valid mortgage which encumbers property now owned by Respondent, Judith Engler. Minn. Stat. § 507.02 provides: “If the owner is married, no conveyance of the homestead. . . shall be valid without the signature of both spouses.” The disputed document in this matter is titled “Mortgage”. Appellant asserts that it obtained a valid conveyance of Respondent’s homestead interest in the property and thus satisfied the requirements of Minn. Stat. § 507.02.

The mortgage signed by Respondent¹ and the evidence offered at trial unambiguously show that it was Ms. Engler’s intention to convey a mortgage interest to Plaintiff. She initialed every page of the mortgage document; she signed the last page of the document. She was given a right to rescind the mortgage conveyance for three days following the closing; but testified that she elected not to cancel. She entered into the closing thinking that she was going to mortgage her interest in the property. She signed application forms as a co-borrower and the Mortgage itself defined her as a borrower. The overwhelming evidence in the case is that Respondent intended to and did give a mortgage to Appellant’s predecessor in interest, First Franklin.

With this as context, Appellant respectfully submits this Reply Brief in support of its Appeal from the District Court’s judgment

¹ Appellant is aware that Respondent disputes that she signed a mortgage, but the uncontradicted testimony at trial is that Respondent did sign a document titled “Mortgage”.

REPLY ARGUMENT

I. APPELLANT OBTAINED A VALID CONVEYANCE OF A PROPERTY INTEREST FROM RESPONDENT IN COMPLIANCE WITH MINN. STAT. § 507.02.

Respondent asserts that her signature at the end of the Mortgage does not evidence an intent to join the mortgage; but instead evidences an intent to waive her homestead rights in the property. This is a distinction without a difference. A mortgage is a conveyance of an estate as security for the payment of a debt and to become void upon the payment of it. *Spielman v. Albinson*, 236 N.W. 319 (Minn. 1931). A mortgage is given by the owner or the holder of the legal title of property, to secure (ordinarily) his contract to pay money. *Id.* A covenant therein to pay the debt is usual, but such is not an essential. *Id.* It is only necessary that there be a debt or a duty to be performed. *Id.* There are ordinarily two real requisites of a mortgage, a conveyance of an estate and security. *Id.*

A homestead interest is a specific estate in land that generally exempts the estate from seizure or sale under legal process. Minn. Stat. §. 510.01 defines the homestead:

The house owned and occupied by a debtor as the debtor's dwelling place, together with the land upon which it is situated to the amount of area and value hereinafter limited and defined, shall constitute the homestead of such debtor and the debtor's family, and be exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing, except such as are incurred for work or materials furnished in the construction, repair, or improvement of such homestead, or for services performed by laborers or servants and as is provided in section 550.175.

The Minnesota Constitution sets forth the general basis for the Homestead Estate. Article 1, § 12 provides in part that:

“... A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law. Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair or improvement of the same, and provided further, that such liability to seizure and sale shall also extend to all real property for any debt to any laborer or servant for labor or service performed.”

There is little doubt that the right to declare property a homestead estate is an important property interest. This right generally bars recovery against the home for debts owed by the owner of the home.

Minn. Stat. § 507.02 simply codifies the general rule that unless there is a specific waiver of the homestead estate by both parties, the homestead cannot be foreclosed to pay off debts. In this case the requirements of Minn. Stat. § 507.02 are met and a mortgage was created over the property allowing Plaintiff to foreclose the property.

The mortgage was created when Respondent waived her homestead interest in the property. First she conveyed a homestead right to Appellant, by waiving the protections of the homestead statutes and constitutional rights; and second there was security—in this case the home.

The conveyance made by Respondent was a simple conveyance of her homestead interest that conforms to the spirit of Minn. Stat. 507.02 and to the letter of the statute.

The whole point of a mortgage and the homestead waiver is to allow Appellant to foreclose in the event of a default which was met in this case.

II. THE CASES CITED BY RESPONDENT DO NOT SUPPORT HER CLAIM THAT THE MORTGAGE OBTAINED BY APPELLANT IS VOID PURSUANT TO MINN. STAT. § 507.02.

Respondent cites three cases for the proposition that she did not give a mortgage interest in the property to Appellant. First, Respondent cites *Dvorak v. Maring*, 285 N.W.2d 675 (Minn., 1979). *Dvorak* is a case where Harold Dvorak entered into a sales contract to purchase the Maring homestead. The only signatures on the purchase agreement were those of Mr. Dvorak and Mr. Maring. The seller Mr. Maring was married; his wife, however, did not sign the purchase agreement. She only endorsed the earnest money check. The court found, rightfully, that when there was no signature of Mrs. Maring anywhere on the purchase agreement, that it was void pursuant to Minn. Stat. 507.02.

The situation in the *Dvorak* case is readily distinguishable from the facts in the present case. Most important, Respondent actually initialed every page of the Mortgage. It is only the phrase added which she seizes upon to avoid the Mortgage. Second, Respondent wanted very much for the refinancing transaction to go through; many of her debts were paid off, including her prior Mortgage which she was liable on; tax liens, and credit card debts. The issue in this case is what is the effect of the phrase added to her signature, not whether she signed it at all. The *Dvorak* case as well as Minn. Stat. § 507.02 are inapplicable to the current case.

The second case cited by Defendant is the *Overman v. Minnwest Bank South*, 2008 WL 2574461, 1 (Minn. Ct. App., 2008)(unpublished). The problem in the *Overman* case stems from a conflict in the language of the mortgage which states that Mrs. Overman is mortgaging her interest in the property and secures all present and future indebtedness specifically including a \$185,000.00 note said to be maturing on March 30, 2020. Ms. Overman did not sign the Note. The Note actually signed by Mr. Overman matured on January 5, 2002, eighteen years earlier than the date specified in the mortgage. It was also noteworthy that the farm operating loan obligation from Mr. Overman to the plaintiff bank already existed and was merely renewed by the bank to obtain the mortgage. The Court held that the substantial discrepancy in terms between the note and the mortgage was so material that Rose Overman's signature could not reasonably be construed as granting a mortgage to secure the actual note. Here, there is no such discrepancy. Mrs. Engler was not asked to sign the Note and to become personally liable. The terms of the Note are consistent with the terms of the Mortgage.

Ms. Engler was fully aware of the note signed by her husband, the amount of the note and the date that the note matured. There is no claim by Ms. Engler that she was somehow misled regarding the terms of the note signed by her husband, the length of the note signed by her husband or the application of the proceeds of the note. In fact, the funds were being used to pay Ms. Engler's direct debts. The *Overman* case is inapplicable to the current set of facts.

The third case cited by Respondent is *Inglett v. Volkswagen Bank USA*

(Minn. Ct. App. 2009)(A08-1970, June 9, 2009)(unpublished) for the proposition that no mortgage on the homestead is valid unless it is signed by both spouses. In *Inglett*, Mrs. Inglett did not sign the Mortgage at all and because Mrs. Inglett did not sign the mortgage, it was rightfully declared void by the Court of Appeals. This set of facts is materially different from the facts present in the current case. Respondent attended the closing, initialed every page of the mortgage and signed the mortgage. The question in this case is not whether Respondent signed the document—she did—it is the effect of Respondent’s signature on the document.

Respondent’s claim that, as a matter of law, her signature cannot act as a conveyance of her homestead is not advanced by the cases cited by Respondent. The only sensible interpretation of the signature is that Respondent did convey her homestead to Appellant, creating a mortgage and that in the event of default under the note, Appellant could foreclose on the property and that Respondent could not invoke the property's status as her homestead to prohibit the foreclosure.

III. EQUITABLE ESTOPPEL RECLUDES RESPONDENT FROM RELYING ON MINN. STAT. § 507.02 TO AVOID A CONVEYANCE OF THE HOMESTEAD.

In a recently decided case from the United States Court of Appeals, *Karnitz v. Wells Fargo Bank, N.A.*, - F.3d ----, 2009 WL 2065797 (C.A.8 (Minn.),2009) asserted that equitable principals estopped a party from asserting that a mortgage was void pursuant to Minn. Stat. § 507.02 for lack of a spousal signature.

The Court stated:

Despite the plain and unequivocal language of the statute, the Minnesota Supreme Court has “recognized that, even though great importance is attached to the homestead right, under certain circumstances a party may be estopped from denying a sale of the homestead even if the statutory requirements are not met.” *Dvorak* at 678. The purpose behind the statute is to “ensur[e] a secure homestead for families,” *Wells Fargo Home Mortg., Inc. v. Newton*, 646 N.W.2d 888, 895 (Minn.Ct.App.2002) (quoting *Dvorak*, 285 N.W.2d at 677), and to protect against “the alienation of the homestead without the willing signature of both spouses,” *Dvorak*, 285 N.W.2d at 678. In certain circumstances when the purpose of the statute is not at risk, the Minnesota courts have applied estoppel to prevent a party from challenging the validity of a conveyance of a homestead. In its most recent discussion of the equitable estoppel doctrine in this specific context, the Minnesota Supreme Court stated, in addressing whether a nonsigning spouse should be estopped from asserting the protections of § 507.02 to void a conveyance by her spouse, that estoppel applies where (1) the nonsigning spouse consents to and has prior knowledge of the transaction, (2) the nonsigning spouse retains the benefits of the transaction, and (3) the party seeking to invoke estoppel has sufficiently changed its position to invoke the equities of estoppel. *See Dvorak*, 285 N.W.2d at 677-78 (discussing *Seitz v. Sitze*, 215 Minn. 452, 10 N.W.2d 426 (1943); *Fuller v. Johnson*, 139 Minn. 110, 165 N.W. 874 (1917)). All three factors must be present, cf. *Anderson v. First Nat'l Bank of Pine City*, 303 Minn. 408, 228 N.W.2d 257, 260 (Minn.1975) (estoppel not appropriate where husband did not learn that wife forged his signature until after the transaction was complete (such that the first factor was not met), even though he did retain the benefits of the mortgage), and the third factor is critical, *Dvorak*, 285 N.W.2d at 678 (“[D]etrimental reliance by the party seeking relief is critical to a finding of estoppel.”).

Applying the equitable estoppel factors articulated in *Dvorak*, it is undisputed that Tanya knew of and intended to mortgage the homestead to Wells Fargo prior to its execution; she retained the benefit of that mortgage by using the proceeds to pay off the construction loan (which she had signed and was obligated to repay) and to obtain a release of the construction loan's accompanying mortgage; and Wells Fargo significantly changed its position in reliance on the validity of its mortgage by lending over \$130,000 in exchange for a lien on the property. The Karnitzes do not dispute the existence of these facts. Further, they did not dispute the validity of the mortgage until four years after it was executed and they were facing foreclosure because they could not keep up with the obligations of the accompanying note. Under these facts, the Karnitzes should be estopped from now claiming that the mortgage is void in order to keep their home,

on which they both intended to grant Wells Fargo a valid mortgage, without paying for it. Strict compliance with the statute in these circumstances does not further the policy behind the statute; rather, it flaunts it by converting what the Legislature intended as a shield into a sword. . .

Karnitz at pgs. 4-5.

The facts in the current case are strikingly similar, first, Respondent knew of and intended to mortgage the homestead to First Franklin prior to its execution; in fact Respondent signed a document which specifically evidences her intent to give up her homestead rights in the property; Second, Respondent retained the benefit of the mortgage because the loan proceeds were used to pay off the previous mortgage on the home and the proceeds of the loan were used to pay off the State Tax liens of Respondent; and finally First Franklin changed its position in reliance of the validity of the mortgage by lending the Englers \$268,000.00. Equitable estoppel prevents Respondent from relying in Minn. Stat. § 507.02 to avoid a conveyance.

CONCLUSION

Based upon the foregoing arguments and authorities, Appellant respectfully requests that this Court reverse the decision of the district court, and remand for further proceedings.

Respectfully submitted this 3rd day of August, 2009.

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