

Case No. A09-1822

STATE OF MINNESOTA

IN COURT OF APPEALS

T.E.S. Construction, Inc
Plaintiff/Respondent,

vs

Stephen J. Chicilo,
Defendant/Appellant

RESPONDENT'S BRIEF AND APPENDIX

JAMES WHELPLEY & ASSOCIATES,
CHARTERED
Attorneys For Appellant
By James C. Whelpley
Attorney I.D. 11649X
2151 North Hamline Avenue
Suite 202
Roseville, MN 55113
Telephone: (651) 639-0313

MEYER LAW OFFICE
Attorney For Respondent
By Glen F. Meyer
Attorney No. 230480
3656 Hamlin Av. SE
Rockford, MN 55373
Telephone: (763) 477-5687

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

- I. IS THERE A BASIS IN THE RECORD FOR A FINDING THAT APPELLANT MISAPPLIED PAYMENTS TO HIM FOR AN IMPROVEMENT MADE BY RESPONDENT?

TRIAL COURT HELD: That the Appellant, in his position as a shareholder, director, and/or agent of his two corporations, Chicilo Homes, Inc. and SP Framing, Inc. violated Minn. Stat. §514.02 by taking possession of the payment proceeds received for the construction projects completed by the Respondent and then failing to pay the Respondent for those projects.

- II. DOES MINNESOTA STATUTES, §514.02 APPLY TO PAYMENTS MADE TO THE OWNER OF REAL ESTATE?

TRIAL COURT HELD: Trial court did not need to make this specific determination because the Appellant, in his position as a shareholder, director, and sole employee of SP Framing, Inc., violated Minnesota Statute §514.02 by fraudulently arranging for payment proceeds to be paid to SP Framing, Inc., and SP Framing, Inc. was not the owner of the real estate at issue.

- III. DOES MINNESOTA STATUTES, §514.02 APPLY TO MORTGAGE PROCEEDS RECEIVED BY APPELLANT?

TRIAL COURT HELD: Trial court did not need to make this specific determination because the Appellant, in his position as a shareholder, director, and sole employee of SP Framing, Inc., violated Minnesota Statute §514.02 by fraudulently arranging for payment proceeds to be paid to SP Framing, Inc., and SP Framing, Inc. was not the mortgage holder on the real estate at issue.

- IV. IS THERE ADEQUATE SUPPORT IN THE RECORD FOR AWARD MADE TO RESPONDENT?

TRIAL COURT HELD: Trial court ordered judgment in the amount of \$67,080.50 (including attorney fees and costs).

STATEMENT OF FACTS

The Respondent was hired as a framing contractor by the Appellant's corporation, Chicilo Homes, Inc., to provide the rough framing for five residential home during the period 2004 to 2007. Respondent completed the projects and submitted respective invoices for each project completed. The Appellant would then submit a pay order request to the appropriate construction lender requesting payment for the completed framing work. However, instead of listing the Respondent as the framing subcontractor, Appellant would fill out the pay order in the name of SP Framing, Inc., another corporation owned by the Appellant, and for which the Appellant served as president and was the sole shareholder, officer, director and employee.

Included within the pay order requests made by the Appellant on behalf of SP Framing, Inc., would be a mechanic's lien waiver executed in the name of SP Framing, Inc., which apparently was intended to convince the construction lender that the amount being requested was full and final payment for the framing work done in connection with the project. The construction lender would then issue a check to SP Framing, Inc., which was then deposited by the Appellant in an account held by SP Framing, Inc.. After receiving such payments for the framing work, the Appellant refused to pay the Respondent.

Respondent subsequently brought suit against the Appellant alleging Appellant violated the provisions of Minn. Stat. §514.02, which generally requires that a person who receives proceeds for the benefit of those who contributed to an improvement of real estate, must hold those proceeds in trust, and if he fails to do so, is guilty of "theft of the proceeds." Minn. Stat. §514.02 attaches personal liability to an officer of a corporation which commits a violation of the statute.

The trial court found that the Appellant had contracted with the Respondent to provide framing services for the following homes:

<u>Address</u>	<u>Amount Due Respondent</u>
15784 Falcon Circle, Hugo	\$12,460.00
15860 Farnham Av. N., Hugo	\$12,460.00
15830 Farnham Av. N., Hugo	\$13,110.00
2479 Grey Eagle Circle, Woodbury	\$14,980.00
612 McKnight, St. Paul	<u>\$ 4,353.00</u>
	\$57,363.00

Findings of Fact, Conclusions of Law and Order for Judgment, Respondent's Appendix, p. A1, Findings No. 3.

Further, the trial court found that after completion of the above construction projects, the Appellant, on behalf of Chicilo Homes, Inc., forwarded similar pay order requests and mechanics lien waivers to its' various construction lenders for payment of the work completed by the Respondent. *Id.* p. A2, Findings No. 4. However, the trial court found that the pay order requests and mechanics lien waivers submitted by the Appellant were fraudulent because they were in the name of SP Framing, Inc., instead of the Respondent. *Id.* p. A2, Findings No. 5. The trial court found that as with Chicilo Homes, Inc., the Appellant was the sole officer, shareholder, director and employee of SP Framing, Inc., and the two companies shared the same office. *Id.* p. A2, Findings No. 4. When the Appellant received payment from its' various construction lenders for the work provided by the Respondent, the payment funds were deposited into a bank account in the name of SP Framing, Inc. *Id.* p. A2, Findings No. 5.

The trial court concluded that the Appellant, in his position as a shareholder, officer, director, and/or agent of his two corporations, Chicilo Homes, Inc. and SP Framing, Inc., violated Minn. Stat. §514.02 by taking possession of the payment proceeds received for the framing construction on the five projects completed by the Respondent, and then failing to pay Respondent for the labor, skill and equipment provided on said projects. Findings of Fact, Conclusions of Law and Order for Judgment, Respondent's Appendix, p. A3, Conclusions No. 1. Further, the trial court concluded that the actions of Appellant in failing to forward the payment proceeds to the Respondent for the construction services provided constituted "theft of the proceeds" as defined in Minn.

Stat. §514.02, Sub. 1(b), and that the Respondent is an “injured person” as defined in Minn. Stat. §514.02, Sub. 1a, and thus is entitled to bring a civil action to recover damages, together with costs, disbursements, and reasonable attorneys’ fees as determined by the Court.. Findings of Fact, Conclusions of Law and Order for Judgment, Respondent’s Appendix, p. A3, Conclusions Nos. 2 and 3.

The trial court ordered judgment to be entered in favor of the Respondent and against the Appellant in the amount of \$57,363.00, which was later amended to include attorneys’ fees in the amount of \$9,237.50 and costs in the amount of \$480.00, for a total judgment of \$67,080.50. The Appellant then filed his Notice of Appeal, appealing from the trial court’s Order For Judgment.

ARGUMENT

I. Standard of Review. There are no material facts in dispute in this case. The issues raised by the Appellant concern statutory interpretation which this court reviews de novo. Siemens Bldg. Technology, Inc. v. Peak Mechanical, Inc., 684 N.W.2d 914, (Minn.App. 2004), citing Brookfield Trade Center, Inc. v. County of Ramsey, 584 N.W.2d 390, 393 (Minn. 1998).

II. The District Court Properly Found That The Appellant Misapplied Payments Made to Him For Work Completed By the Respondent.

Appellant’s first argument is that the district court erred in finding a violation of Minn. Stat. §514.02 because “*there is no finding by the Court that any “payment” was taken and misapplied by Appellant.*” Appellant’s Brief, page 12, ¶2. The Appellant argues that the funds paid to his companies were “*loan proceeds borrowed by the Appellant.*” Appellant’s Brief, page 13, ¶1.

This argument is not supported by the evidence produced at the trial. The trial court found that after completion of the various framing projects, the Appellant, on behalf of his two companies Chicilo Homes, Inc. and SP Framing, Inc., “submitted pay order requests to various construction lenders.” Findings of Fact, Conclusions of Law and Order for Judgment, Respondent’s Appendix, p. A2, Findings No. 4. The key phrase here is “pay order request” not “loan advance or draw” as the Appellant would have the Court believe. The pay order requests included fraudulent mechanics lien waivers and invoices in the name of SP Framing, Inc., one of the Appellant’s companies. Id., p. A2, Findings No. 5.

The Appellant produced no evidence at trial that SP Framing, Inc. had anything to do with the framing work completed on the various projects. Neither did the Appellant produce any evidence at trial that it was SP Framing, Inc. that had borrowed money from the construction lenders. If the Appellant’s argument is to be believed, that the payments obtained from the construction lenders who maintained construction loans with Chicilo Homes, Inc. were merely loan proceeds, then there would have been no reason for the Appellant to use its shell company, SP Framing, Inc., in order to obtain the payments.

What the Appellant fails to acknowledge, is that the only way he could obtain construction loan proceeds from his construction lenders was to make the construction lenders mistakenly believe that they were making real payments for real improvements completed at the respective construction projects. Thus, the Appellant needed to use a bogus framing company, SP Framing, Inc., and the Appellant needed to include mechanics lien waivers showing that the work being paid for was framing. Without these two components, the construction lenders would not have advanced the payment

funds to the Appellant. The funds sent by the construction lenders were in fact “payments” for work completed, and not simply loan proceeds. When the Appellant took control of these payments via SP Framing, Inc., he was bound by Minn. Stat. §514.02 to hold the funds “*in trust ... for the benefit of those persons who furnished the labor, skill, material, or machinery contributing to the improvement.*” Minn. Stat. §514.02, Subd. 1. The Appellant failed to do so and thus the trial court correctly applied Minn. Stat. §514.02 in making its findings and conclusions.

The Appellant makes a secondary argument that the district court unfairly deprived the Appellant of certain rights he should have received during the trial because the mechanic’s lien statute makes reference to a criminal statute. In other words, the Appellant is asking this Court to find that the mechanic’s lien statute, Minn. Stat. §514.02, requires a district court to conduct a type of criminal trial in order to find a civil violation. The Appellant argues that “[*l*]ike any criminal matter, the presumption of innocence would apply as well as the requirement establish that the essential elements of a crime must be decided by the fact finder and by proof beyond a reasonable doubt.” *Appellant’s Brief*, page 13, ¶2. In support of this argument, the Appellant cites *State v. Ouellette*, 740 N.W.2d 355 (Minn.App.,2007), citing *State v. Bluhm*, 457 N.W.2d 256, (Minn.App.1990), citing *State v. Carlson*, 268 N.W.2d 553 (Minn.1978).

The *Ouellette* case deals with an appeal of a DWI conviction and does not mention Minn. Stat. §514.02. The Appellant’s argument might have some merit if the State of Minnesota elected to seek a criminal conviction of the Appellant for the actions taken in this case. However, Minn. Stat. §514.02 provides for civil relief to injured persons, and it is a civil action that was brought against the Appellant by the Respondent.

No authority is cited, and none exists, for the proposition that a civil action under Minn. Stat. §514.02 requires the defendant be given the same rights reserved to him under a criminal proceeding. In fact, the statute sets forth its own standard on which to determine violations in the context of a civil action as follows:

If a person fails to use the proceeds of a payment made to that person for the improvement, for the payment for labor, skill, material, and machinery contributed to the improvement, knowing that the cost of the labor performed, or skill, material, or machinery furnished remains unpaid, and who has not furnished the person making such payment either a valid lien waiver under section 514.07, or a payment bond in the basic amount of the contract price for the improvement, conditioned for the prompt payment to any person entitled thereto for the performance of labor or the furnishing of skill, material, or machinery for the improvement, shall be guilty of theft of the proceeds of the payment and is punishable under section 609.52. For an improvement to residential real estate made by a person licensed, or who should be licensed, under section 326B.805, a shareholder, officer, director, or agent of a corporation who is responsible for the theft shall be guilty of theft of the proceeds. Minn. Stat. §514.02 Subd. 1b, (emphasis added).

During the civil case, the district court found that the Appellant arranged to obtain payment from the construction lenders for the work performed by the Respondent. Findings of Fact, Conclusions of Law and Order for Judgment, Respondent's Appendix, p. A2, Findings No. 4. The fact that the Appellant sent out pay order requests to the lenders shortly after receiving invoices from the Respondent tends to show that the Appellant had knowledge that the Respondent did the work and needed to be paid. *Id.*, p. A2, Findings No. 6. Moreover, the Appellant expressly violated the above statutory language by submitting invalid lien waivers to its lenders. *Id.*, p. A2, Findings No. 5. The Appellant was an officer and director of both Chicilo Homes, Inc. and SP Framing, Inc.. *Id.*, p. A1-2, Findings Nos. 2 and 4. Thus, in the context of this civil action, the district court properly applied Minn. Stat. §514.02 in connection with its findings and conclusions.

It should also be mentioned that Minn. Stat. §514.02 provides its own relief to address the unfairness argument now being offered by the Appellant. Subdivisions 2 and 3 of Minn. Stat. §514.02 provide for written notice and an opportunity for someone in the Appellant's position to address alleged violations of the statute. Minn. Stat. §514.02, Subd. 2 provides for notice to be given as follows:

Subd. 2. Notice of nonpayment.

Notice of nonpayment of the cost of labor, skill, material, and machinery contributing to the improvement of the real estate to the person paid for such improvement may be given by the person who made payment for such improvement, or by any person furnishing the labor, skill, material, or machinery contributing to the improvement and who has not been paid for the contribution. Notice may be given in any reasonable manner. Notice shall be in writing and in any terms that identify the real estate improved and the nonpayment complained of.

Minn. Stat. §514.02, Subd. 3 then provides someone accused of violating the mechanics lien statute with a reasonable opportunity to address the issue as follows: .

Subd. 3. Proof of knowledge of nonpayment.

Proof that such person failed to pay for labor performed, or skill, material, or machinery furnished within 15 days after receiving notice that the cost of such labor performed, or skill, material, or machinery furnished remains unpaid will be sufficient to sustain a finding that the proceeds of such payment were used for a purpose other than the payment for labor, skill, material, and machinery for such improvement, knowing that the costs of labor performed, or skill, material, or machinery furnished remains unpaid, unless the person;

(1) Establishes that all proceeds received from the person making such payment have been applied to the cost of labor, skill, material, or machinery furnished for the improvement; or

(2) Within 15 days after receiving notice shall give a bond or make a deposit with the court administrator of district court, in an amount and form approved by a judge of district court, to hold harmless the owner or person having the improvement made from any claim for payment of anyone furnishing labor, skill, material, or machinery for such improvement.

In this case, the Respondent provided the Appellant with written notice that his actions were in possible violation of Minn. Stat. §514.02. *Trial Exhibit #31*, Respondent's Appendix, p. A5. The Appellant ignored the Respondent's written notice

and chose not to avail himself of the protections offered under Minn. Stat. §514.02 Subds. 3(1) or 3(2). For that reason, the Court should reject the Appellant's "unfairness" argument and find that district court properly applied Minn. Stat. §514.02 in connection with its findings and conclusions.

III. The District Court Properly Found That Minn. Stat. §514.02 Applies To The Owner of Real Estate.

The Appellant argues that Minn. Stat. §514.02 should not apply in this case because he was not "*a person contributing to an improvement of real estate within the meaning of section §514.01.*" *Appellant's Brief*, page 14, ¶1. In support of this argument, the Appellant cites a number of cases, the common theme apparently being that the intent of Minn. Stat. §514.02 does not afford protection to a subcontractor who has not received payment proceeds fraudulently invoiced and collected by a third party company having nothing to do with the work performed by that subcontractor. Leaving aside the preposterous ramifications of this argument, the Appellant's cases are distinguishable from the case now before the Court.

The Appellant first cites the *Nelson v. Nelson* case, which involved a contract vendee who attempted to file a mechanics lien against property that had been returned to the contract vendor through cancellation of the contract. *Nelson v. Nelson*, 415 N.W.2d 694 (Minn.App. 1987). The court held that a reasonable interpretation of section §514.01 precludes the filing of a mechanics' lien by an owner upon his own property. *Id.* The *Nelson* case is distinguishable because here the Respondent was acting as a subcontractor who provided the framing services on multiple properties to the owner of the properties, Chicilo Homes, Inc.. Unlike *Nelson*, we do not have a contract for deed vendee/vendor

relationship and we do not have an owner of the property attempting to file a lien against his own property.

The Appellant next cites MacArthur Company v. Crea, 31 B.R. 239, (Bky. Dist. Minn. 1983). In MacArthur, the bankruptcy court held that a material supplier to a contractor couldn't use Minn. Stat. §514.02 as a basis for the supplier's claim that the contractor's debt to the supplier should be held nondischargeable. Id. The MacArthur court seemed to place a certain amount of weight on the fact that the contractor and supplier transacted business on an open account basis. Id. Thus, there was some question as to the supplier's ability to correctly identify the materials purchased with the corresponding payments received by the contractor. Id.

This case is also distinguishable from the case now before the Court because here, we have a subcontractor (the Respondent), in direct contract with the owner/general contractor of the property, Chicilo Homes, Inc.. The Respondent submitted invoices on the respective framing projects and the Appellant, through his shell framing company, SP Framing, Inc., obtained payment for the work completed by the Respondent through the use of false invoices and fraudulent lien waivers. Unlike the MacArther case, in this case there is no question that that the payments received by the Appellant were for specific properties and specific improvements completed and invoiced by the Respondent.

The Appellant next cites a couple of criminal cases, State of Minnesota v. Reps, 223 N.W.2d 780 (Minn. 1974), and State v. Bren., 704 N.W.2d 170 (Minn.App. 2005). It is unclear how the Bren and Reps cases help the Appellant's argument. The case before the Court is a civil action and not a criminal matter. Therefore, any analysis set

forth by the Court in Bren and Reps does not necessarily apply to the civil action now before the Court. For example, in the Bren case, Bren was charged with multiple criminal counts of unlawful failure to use proceeds paid for improvements under Minn. Stat. §514.02. Bren moved to dismiss the counts related to unlawful failure to use proceeds paid for improvements under Minn. Stat. §514.02, arguing that Minn. Stat. §514.02 is unconstitutional because it allows imprisonment of debtors without a showing of fraud. The district court granted Bren's motion, but upon appeal by the State, the Minnesota Court of Appeals reversed the district court finding that Minn. Stat. §514.02 did not violate the constitutional prohibition against imprisonment for debt.

The following language in Bren was highlighted by the Appellant:

"The statute punishes a contractor's misapplication of payments received from the homeowner, as opposed to punishing the failure to pay a debt owed to subcontractors."

Presumably, the Appellant is arguing that Minn. Stat. §514.02 only applies to a contractor's misapplication of payments received from a homeowner, not to the misapplication of payments received by an owner from a construction lender, even if those payments were obtained via fraudulent invoices and lien waivers. This argument fails because the entity receiving payment, (SP Framing, Inc.) was not the owner of the property. Chicilo Homes, Inc., was the owner of the property, and SP Framing, Inc., was merely a shell company which the Appellant used in order to fool its' lenders into making payments for the framing work.

Finally, the Appellant cites the case of U.S. Fidelity v. Excel Bank, (Unpublished, No. A04-726 Dec. 21, 2004). This case involved a surety, U.S. Fidelity, bringing suit against Excel Bank, asserting that the funds set off by Excel Bank from a contractor's

account were trust funds to which U.S. Fidelity was entitled to under Minn. Stat. §514.02. The district court held that the funds were subject to a statutory trust that prevented the bank from exercising its right of set off. The Minnesota Court of Appeals reversed, holding that the bank's setoff was money received in the ordinary course of business by a third party.

It is again unclear what relevance the Court's decision in Excel Bank has to the case now before the Court. This case does not concern a surety or third party receiving payment in the ordinary course. Presumably, the Appellant is arguing that the payments received by the Appellant's framing company, SP Framing, Inc., were payments received by a third party in the ordinary course. However, the Appellant submitted no evidence at trial which showed that SP Framing, Inc. was anything other than a shell company. The district court found that the Appellant was the sole officer, director, and employee of SP Framing, Inc.. Findings of Fact, Conclusions of Law and Order for Judgment, Respondent's Appendix, p. A2, Findings No. 4. It was the Appellant who submitted the fraudulent documents necessary to obtain payment from the construction lenders. Findings of Fact, Conclusions of Law and Order for Judgment, Respondent's Appendix, p. A2, Findings No. 5. As such, the Appellant is the "the person who committed the theft" under Minn. Stat. §514.02 Subd. 1a. To argue that the Appellant deserves the same protection as the third party bank in the Excel Bank case is unreasonable and should be rejected by the Court.

Overall, the cases cited by the Appellant are an attempt to give a nonsensical meaning to Minn. Stat. §514.02. The Appellant urges the Court to find that Minn. Stat. §514.02 is somehow not applicable in this case because the language of the statute is

confusing or contradictory. In contrast, the Respondent urges the Court to use its' own common sense approach to interpreting Minn. Stat. §514.02 as stated in *State v. Boyce*, as follows:

"[t]he language of paragraph (b)...unambiguously prohibits a person who receives a payment for the improvement to real property from using the proceeds of the payment for any purpose other than paying any outstanding amount owed for labor, skill, material, or machinery that was contributed to the improvement if the person knows that there is any amount outstanding. The emphasized language informs a person of ordinary intelligence that if the person knows that the labor, skill, material, or machinery that were contributed to an improvement have not been paid for when the person receives payment for the improvement, the person must use the proceeds for the payment of these items. State v. Boyce, (Unpublished, No. A06-2050, (pg 3) Oct. 30, 2007).

When the common sense *Boyce* standard is applied to this case the result is a straight forward conclusion consistent with the trial court's decision. The Appellant is a person of ordinary intelligence. The Appellant arranged to obtain payment for the work performed by the Respondent. The Appellant failed to use those payment proceeds to satisfy the debt owed to the Respondent. The Appellant's failure to forward payment was made with full knowledge that the debts owed to the Respondent remained outstanding. Thus, the Appellant violated the language of Minn. Stat. §514.02 as correctly determined by the trial court. The Appellant's convoluted interpretation of the language in Minn. Stat. §514.02 should be rejected.

IV. The District Court Properly Found That Minn. Stat. §514.02 Applies To The Payment Proceeds Obtained by the Appellant.

Finally, the Appellant makes the argument that Minn. Stat. §514.02 can not apply to "mortgage proceeds" received the Appellant. *Appellant's Brief*, page 18, ¶2. The Appellant does not cite any authority for this argument, but rather seems to be making a

public policy appeal to the Court, inferring that the district court's decision may have unintended consequences related to the mortgage industry.

Specifically, the Appellant argues that “[t]he mortgage proceeds were received as part of a loan transaction secured by a project, not money paid to a contractor for an improvement.” *Appellant’s Brief*, page 19, ¶2. Further, the Appellant argues that “[i]t would be patently unreasonable to describe lump sum mortgage proceeds as a type of trust for the payment of subcontractors.” *Appellant’s Brief*, page 19, ¶2. Finally, the Appellant attempts to make the connection between this case and the unrelated scenario of a homeowner obtaining a home loan by arguing that “[t]o criminalize the use of a homeowner’s mortgage proceeds for purposes other than paying a contractor would extend the reach of this statute to countless situations it was never intended to cover.” *Appellant’s Brief*, page 20, ¶1.

However, as already argued above, this argument is seriously flawed in view of the actions taken by the Appellant in this case. First, the payments made in this case were not “lump sum” mortgage proceeds, but rather specific payments tied to specific work invoiced by the Respondent. As the trial court found, the Appellant, through its company SP Framing, Inc., “submitted pay order requests to various construction lenders.” *Findings of Fact, Conclusions of Law and Order for Judgment*, Respondent’s Appendix, p. A2, Findings No. 4. The pay order requests included fraudulent mechanics lien waivers and invoices in the name of SP Framing, Inc., one of the Appellant’s companies. *Id.* p. A2, Findings No. 5.

Secondly, the Appellant’s argument fails because the entity receiving payment, (SP Framing, Inc.) was not the mortgagor/owner of the property. Chicilo Homes, Inc.,

was the mortgagor/owner of the property. SP Framing, Inc., was merely a shell company which the Appellant used in order to trick its' lenders into making payments for the framing work completed by the Respondent. If the Appellant's argument were to be accepted, then there would have been no reason for the use of SP Framing, Inc. to obtain payment. The owner/mortgagor Chicilo Homes, Inc., could have merely billed its construction lender for work done by the Respondent and used the payment proceeds as it pleased. Again, the Appellant is simply unwilling to acknowledge that the only way he could obtain construction loan proceeds from his construction lenders was to make the construction lenders mistakenly believe that they were paying for real improvements made to the construction projects. Thus, this case is distinguishable from a typical homeowner's mortgage because homeowner's don't typically create fake entities and submit false and fraudulent documents in order to received a portion of their mortgage proceeds.

In fact, from a public policy standpoint, the potential harm of condoning the behavior of the Appellant in this case far outweighs any speculative harm to the home mortgage industry. The Appellant's modus operandi in this case was to form a dummy or shell corporation in order to obtain payment from his construction lenders for work completed by a subcontractor. The net effect of the Appellant's scheme was to effectively shift a portion of the risk on the construction projects to the Respondent and the construction lenders. If the homes sold, then the Respondent and the lenders would be paid at closing and no one would be the wiser. However, if the homes didn't sell and went into a mortgage foreclosure, as all the projects at issue here did, then the money at risk for the Appellant was effectively reduced by the amount of proceeds collected for

the work done by the Respondent. The end result was that the Respondent bore a portion of the financial loss suffered on the properties, while the Appellant simply walked away from the failed projects after pocketing the payment funds received for the work completed by the Respondent.

The Appellant asks the Court to construe Minn. Stat. §514.02 in such a manner that would rubber stamp this shifting of the risk of loss to unsuspecting subcontractors. However, the Minnesota Supreme Court has directed that in construing a statute, a court should presume that the legislature intends to favor a public interest as against a private interest. Wichelman v. Messner, 83 N.W.2d 800 (Minn.1957). An interpretation that is just and fair is favored as is one that promotes and effectuates justice. Dear v. Minneapolis Fire Dept Relief Assoc., 485 N.W.2d 145 (Minn. 1992); It is presumed that undesirable consequences are not intended. Id.

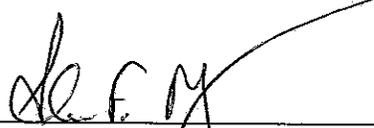
The basic goal of the mechanics lien statute has always been to encourage the prompt payment of work performed which contributes to the improvement of real property to the party that performs the work. It is in the public interest that general contractors promptly pay their subcontractors. It is not in the public interest for general contractors to use dummy corporations as a means to fool their construction lenders into making payment for work done by subcontractors. Rather than encourage this type of behavior, the Court should seek to discourage schemes of this sort and the litigation that inevitably follows.

Conclusion

For the reasons above stated, there is adequate support in the record for the award made to the Respondent. The trial court's order and judgment should be upheld and the Appellant's appeal should be denied.

Respectfully Submitted.

Dated: January 18, 2010

By: 

Glen F. Meyer, No. 230480
3656 Hamlin Av. Se.
Rockford, MN 55373
Telephone: (763) 477-5687
ATTORNEY FOR APPELLANT