

NO. A10-167

State of Minnesota
In Court of Appeals

Skyline Village Park Association,

Appellant,

vs.

Skyline Village L.P., Skyline Village LLC,
and Capital First Realty, Inc.

Respondents.

APPELLANT'S BRIEF, ADDENDUM AND APPENDIX

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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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STATEMENT OF THE ISSUES

- 1) **Does the requirement for reasonableness set out in Minn. Stat. § 327C.02 Subd. 2 apply to increases in manufactured home park lot rent?**

The District Court held that any requirement for reasonableness set out in § 327C.02 Subd. 2 does not apply to increases in manufactured home park lot rent. Apposite authority: Minn. Stat. 327C.02 Subd. 2.

- 2) **If there is a requirement for reasonableness with respect to increases in manufactured home park lot rent, how should a court determine if the rent increase is reasonable: a) is determination of whether a manufactured home park lot rent increase is reasonable limited to a comparison of market-comparable rents or rent increases; and b) may determination of whether a manufactured home park lot rent increase is reasonable include consideration of the factors set out in Minn. Stat § 327C.01, Subdivision 8?**

The District Court held, in the alternative, a) that any requirement for reasonableness with respect to manufactured home park lot rent is limited to a comparison of market-comparable rents or rent increases; and b) determination of whether a manufactured home park lot rent increase is reasonable may not include consideration of the factors set out in Minn. Stat § 327C.01, Subdivision 8. Apposite authority: Minn. Stats. §§ 327C.01 Subd. 8; 327C.02 § Subd. 2; 327C.05 Subd. 1.; *Arcadia Development Corp. v. City of Bloomington*, 552 N.W.2d 281 (Minn. App. 1996).

- 3) **May determination of whether a manufactured home park lot rent increase is enforceable include consideration of whether it is substantial pursuant to Minn. Stat § 327C.01, Subdivision 11?**

The District Court held that determination of whether a manufactured home park lot rent increase is enforceable may not include consideration of whether it is substantial pursuant to Minn. Stat § 327C.01, Subdivision 11. Apposite authority: Minn. Stat. §§ 327C.01 Subd. 11, 327C.02 Subd. 2.

4) Does the prohibition set out in Minn. Stat § 327C.05 Subdivision 1 against a manufactured home park owner's course of conduct which is unreasonable in light of the criteria set forth in Section 327C.01, Subd. 8, apply to increases in lot rent?

The District Court held that the prohibition set out in Minn. Stat § 327C.05 Subdivision 1 against a manufactured home park owner's course of conduct which is unreasonable in light of the criteria set forth in Section 327C.01, Subd. 8, does not apply to increases in lot rent.

Apposite authority: Minn. Stat. §§ 327C.05 Subd. 1; 327C.01, Subd. 8.

STATEMENT OF THE CASE AND FACTS

The Appellant, the residents' association at the Skyline Village manufactured home park, appeals the declaratory judgment and final judgment in Dakota County District Court, Judge Robert F. Carolan presiding. Appellant brought this lawsuit challenging, as unenforceable under Minn. Stat. Chapter 327C, a 2008 increase in lot rents at the manufactured home park owned by Respondents. Complaint, Appendix ("App."), 2-1 to 2-14. The lawsuit is authorized by Minn. Stat. §§ 327C.15 and 8.31 Subds. 1 and 3a. Motions by the Appellant for a temporary restraining order and by the Respondents for summary judgment were denied by District Court Judges Tim D. Wermager and Robert R. King, Jr. respectively. Order denying TRO, Addendum ("Add.") 1-1 to 1-6; Order denying summary judgment, Add. 1-7 to 1-9. In their motion for summary judgment, the Respondents did not argue that there is no statutory requirement that rent increases be reasonable, but instead challenged Appellant's standing. Memorandum in Support of Motions for Summary Judgment and to Dismiss, Supplemental Record ("Supp.R.") 1 to 6.

Respondents refused to respond to a number of discovery requests aimed at whether a series of rent increases were reasonable, were justified by the factors set out in Section 327C.01 Subd. 8, or were substantial pursuant to the factors set out

in Section 327C.02 Subd. 2(a) and (b). Plaintiff's Memorandum in Support of its Motion to Compel Discovery; Affidavit of Justin Bell in Support of Plaintiff's Motion to Compel Discover, Ex. 1. The defendant argued that the only consideration in determining the enforceability of a rent increase was its reasonableness in light of market conditions. Affidavit of John Cann in Support of Plaintiff's Motion to Compel Discovery ("Cann Aff.") ¶ 3, Supp.R. 7. It was not until Appellant brought a motion to compel discovery that the Respondents argued that there was no requirement that rent increases be reasonable. *Id.*; Defendants' Response to Plaintiff's Motion to Compel Discovery.

At the hearing on Appellant's motion to compel discovery, the parties recognized that the dispute was based on legal issues which were also central to the issue of liability. The parties then, at the suggestion of and with the approval of the District Court, brought cross-motions for declaratory summary judgment to resolve those issues, based on a stipulation laying out a few basic facts about the case, memoranda supported by affidavits submitted pursuant to a motion to compel discovery which had been brought by the Appellant which addressed the legal issues as to liability, Supplemental Memoranda, and proposed orders which mirrored each other in resolving each of the issues in the moving party's favor. Plaintiff's Motion, App. 2-11 to 2-12; Stipulation, App. 2-13 to 2-14; Defendants'

Motion, App. 2-15 to 2-16. The requests for declaratory judgment, construing Chapter 327C, were authorized by Minn. Stat. §§ 555.01, 555.02, 555.05 and 555.06. On August 19, 2009, Judge Carolan issued an order for declaratory judgment in favor of the Respondents. Add. 1-10 to 1-11. The order adopted the Respondents' position without discussion. *Id.*

The declaratory judgment motions had not addressed a second, unrelated issue in the case and so the declaratory judgment was not final and appealable. The parties subsequently stipulated that this additional issue had been rendered moot by legislative action and the Appellant received notice from the court that final judgment was entered October 27, 2009. Order for Judgment and Judgment, Add. 1-12. After filing an appeal, the Appellant learned that the district court had not complied with all of the technical requirements for entering a judgment. The district court corrected this error and entered a final judgment on January 19, 2010. *Id.* Appellants then dismissed the first appeal as premature and brought the current appeal.

The parties stipulated to the following relevant facts pursuant to their cross motions for summary declaratory judgment. The Appellant is an organization comprised of certain residents of Skyline Village, a manufactured home park owned by the Respondents. The parties have standing to seek the relief requested

in the summary judgment motions. The Respondents imposed rent increases of \$21/month effective March 1, 2005, \$22/month effective March 1, 2006, \$25/month effective March 1, 2007 and \$20/month effective March 1 2008. Stipulation, App. 2-13 to 2-14.

ARGUMENT

I. Standard of Review

As this case involves summary judgment based on an application of a statute to stipulated facts, review is de novo. *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855, 856 (Minn. 1998).

II. Summary of Argument

Appellant's lawsuit, in relevant part, challenges the Respondents' rent increase to the residents of the Skyline Village manufactured home park, effective March 1, 2008, as unreasonable, and therefore invalid, under Minn. Stat. § 327C.02. That statute sets out a general rule for residents of manufactured home parks: once a resident has entered into a rental agreement with a park owner, a change in the landlord-tenant relationship may be enforced against that resident only if the change is both reasonable and not a substantial change. The statute

provides an exception to this general principle in the case of one particular kind of change, rent increases:

A rule adopted or amended after the resident initially enters into a rental agreement may be enforced against that resident only if the new or amended rule is reasonable and is not a substantial modification of the original agreement.... A reasonable rent increase made in compliance with section 327C.06 is not a substantial modification of the rental agreement and is not considered to be a rule for purposes of section 327C.01, subdivision 8.

Minn. Stat. § 327C.02 Subd. 2.

Thus the exception for rent increases eliminates only the general requirement of Section 327C.02 that changes affecting the original rental agreement not be substantial; on its face the exception to the “not substantial” requirement applies only to rent increases that are reasonable.¹ The district court nevertheless held that the statute’s requirement of “reasonableness” does not apply to rent increases. Order, Add. 1-10. The argument below demonstrates that the plain language of § 327C.02 Subd. 2 and of § 327C.05 Subd. 1, as well as legislative history and precedent all demonstrate that the district court’s conclusion was erroneous.

¹ Section 327C.02 also provides that a reasonable rent increase is not a “rule,” but only for purposes of Section 327C.01, Subd.8. Section 327C.01 Subd. 8 sets out factors that generally determine whether a park rule is reasonable. Thus Section 327C.02 provides that these factors are not exclusive determinants of whether a rent increase is reasonable. See discussion in part IV below.

The argument below also demonstrates that the Court erred in declaring, in the alternative, that any determination of rent reasonableness is limited to a comparison of market rents and may not include consideration of the factors set out in the definition of “reasonable rules” in § 327C.01 Subd. 8. Order, Add. 1-10. Finally, the Court also erred in concluding that consideration of whether a rent increase is enforceable may not include consideration of whether it is substantial. *Id.*

III. Manufactured home park rent increases must be reasonable.

Minnesota has, for decades, regulated the renting of manufactured home park lots through Chapter 327C “to protect park residents.” *Arcadia Development Corp., v. City of Bloomington*, 552 N.W.2d 281, 286 (Minn. App. 1996). The Legislature intended Chapter 327C “to curb ‘major abuses of power’ by park owners” by “balancing the positions of park owners and residents.” *Renish v. Hometown America, L.L.C.*, 2006 Minn. App. Unpub. LEXIS 994, 3, 2 (Minn. App. 2006), App. 1-21, 1-20.

The rationale for this special protection of park residents, and for the basic principle constraining changes in a resident’s agreement with the owner, is that residents are typically low to moderate income persons who have made a substantial investment in their homes which is at risk because they only rent the

space on which the homes are placed. *Arcadia Development Corp*, 552 N.W.2d at 284 n.2. Once on site, the homes are costly and difficult to move, putting park owners into a “superior bargaining position” to the residents. *Id.*, at 284, n.2, 287; *See also, Flamingo Terrace Mobile Home Park v. Scott*, 317 N.W.2d 697, 699 (Minn. 1982)(Minnesota legislation is to protect tenants of mobile home parks, whose homes are generally actually permanent, not mobile, from having to move). Absent legislative protections, residents have little choice but to accede to park owners’ demands. As Senator Merriam, in a 1982 memorandum laying out the legislative background of Chapter 327C, stated:

Once installed in a park, manufactured homes are rarely relocated. Relocation costs are substantial, and in many areas of the state no vacancies exist in parks.

The owner of a manufactured home therefore has an unusual legal status. He or she is a private home owner – often with a 15-year mortgage – who pays ground rent. A new manufactured home can cost \$30,000, but its use and enjoyment depend on its owner’s ability to continue to rent someone else’s land.

The manufactured home park owner also has an unusual status. Not simply a private land owner or an ordinary landlord, the park owner has come to resemble a private government...a park owner is like an unelected mayor of a bedroom community...

The legislature first recognized the special nature of manufactured home parks in 1973 and created a special law to govern landlord-tenant relations in those parks. In 1979, the legislature heard lengthy

testimony which documented major abuses of power occurring through this form of private government...

Merriam Memorandum, pgs. 1-2, Cann Affidavit, Ex. 2, Supp. R. 12-13.² The 1982 legislation, which produced much of the current version of Chapter 327C, corrected major problems in the earlier legislation, including the definition of the use of the term “reasonable.” Merriam Memorandum, pg. 3, Cann Affidavit, Ex. 2, Supp. R. 14; Minn. Stat. § 327C.01 Subd. 8.

There are a number of additional provisions related to the constraints on owner-imposed changes set out in Section 327C.02 Subd. 2. Section 327C.01 Subd. 10. defines a “rule” as any rental agreement provision or other regulation or policy. A “substantial modification” of a rule is any change which involves a significant new expense for a resident. Minn. Stat. § 327C.01 Subd. 11.

The general principle of Section 327C.02 Subd. 2 responds to the central concern of the legislature – the unusual vulnerability of a manufactured home owner once he or she has committed to lease a lot in a specific park. The statute provides generally that the deal initially made with the park owner, upon which the homeowner relied in making a commitment to the park, can be altered only if the alteration is both reasonable, and not substantial. The legislature certainly

² Such bill summaries have been accepted as evidence of legislative intent. *See, Hazelden Foundation v. Meleen*, 435 N.W.2d 53,55 (Minn. 1989); *Miller v. Auto-Owners Insurance Co.*, 358 N.W.2d 477, 481 n.1 (Minn.App. 1984).

recognized that factors such as increasing operating costs and the need to incur additional debt in order to finance park improvement or a park purchase would necessitate rent increases that could be reasonable but substantial under the definition of Section 327C.01 Subd 11 and so provided an exception to the general limitation on changes in the original agreement. The plain language of the statute permits rent increases that are substantial but limits that exception to a rent increase which is “reasonable.”

The statute further, and completely independent from Section 327C.02 Subd. 2, provides that:

No park owner may engage in a course of conduct which is unreasonable in light of the criteria set forth in section 327C.01, Subdivision 8.

§ 327C.05, Subd. 1. These criteria for reasonableness of park owner policies include:

(a)...designed to promote the convenience, safety, or welfare of the residents, promote the good appearance and facilitate the efficient operation of the park, protect and preserve the park premises, or make a fair distribution of services and facilities;

Section 327C.01 Subd. 8. The imposition of a series of rent increases like that at issue here is certainly a “course of conduct” which is required to meet the “reasonableness” standards of Section 327C.01, Subd. 8.

Thus the plain language of Section 327C.02 Subd. 2 requires, consistent with the legislative intent behind Chapter 327C, that only rent increases which are reasonable are enforceable changes to the original agreement between resident homeowner and park owner. Further, the plain language of Section 327C.05 Subd. 1 provides that a course of action involving rent increases must be reasonable.

Minn. Stats. §§ 327C.01, .02 and .05 are remedial legislation and entitled to liberal construction to promote, not to frustrate, its objectives. *Miller v. Color Tyme, Inc.* 518 N.W. 2d 544, 548 (Minn. 1994). The position adopted by the district court would render the key phrase in Section 327C.02 regarding a “reasonable rent increase” a meaningless nullity. The district court refused to give any meaning to that phrase and instead wrote it out of the statute by judicial fiat. Such a position is contrary to Minnesota’s statutory rules of construction which presume a legislative intention that the entire statute is to be given effect and that no part should be deemed superfluous, void, or insignificant. Minn. Stat. § 645.17(2); *Amaral v. Saint Cloud Hospital*, 598 N.W.2d 379, 382 (Minn. 1999).

This court and others have interpreted the statute as requiring that manufactured home park rent increases be reasonable. In the unpublished opinion in *Schaff v. Hometown America, L.L.C.*, Add. 1-13 to 1-18, the Appellants challenged a proposed rent increase, and appealed the district court’s holding that

an owner's decision to stop billing for metered water usage and instead raise the rents by \$36/month was not unreasonable or a substantial modification. Add. 1-15. The Court of Appeals held that \$29 of the increase offset the previous charge for water metering and that the remaining rent increase of \$7 was not unreasonable. *Id.*, Add. 1-17.

The District Court in Le Sueur County also enjoined a proposed manufactured home park rent increase based, in part, on its finding that the Appellant had demonstrated the likelihood that it would prevail on its claim that the rent increase was unreasonable. *Shady Acres Resident Association v. Winjum*, LeSueur County District Court 2003, Add. 1-23 to 1-24.

Finally, prior to the declaratory judgment two district court judges hearing prior motions in this case made rulings based in part on the premise that the statute requires rent increases to be reasonable. Judge Wermager issued an order dated February 26, 2008, denying Appellant's motion for a TRO, in part because Appellant had not at that time brought sufficient evidence that they would prevail in their claim that the rent was unreasonable under the statute. The Court noted that:

The standard set forth in Minn. Stat. §327C.02 is that a 'reasonable rent increase made in compliance with §327C.06 is not a substantial modification of the rental agreement...'

Order, Add. 1-5. Judge Wermager went on to note that "the statute does not eliminate the possibility of rent increases but instead provides that the increases must be reasonable." *Id.*, at 1-6. The Court added that "denial of this temporary injunction does not prohibit Appellants from arguing that the proposed rent increase is unreasonable." *Id.*

Later, Judge King denied Respondents' motion for summary judgment on January 20, 2009, holding that "the Court concludes that there is a genuine issue of material fact regarding the reasonability of the rent increase" and adding that the "reasonable" standard set out in Section 327C.02 is a "fact-intensive" inquiry. Add. 1-8. At the time of the declaratory judgment order, this was the law of the case, and while an issue can be reopened on subsequent decisions by the same Court, "as a rule, courts should be loathe to do so in the absence of extraordinary circumstances." *Kornberg v. Kornberg*, 525 N.W.2d 14, 18 (Minn.App. 1995). Judge Carolan nevertheless entered a judgment reversing the law of the case, and ignoring the plain language of the statute, without providing any justification.

IV. The determination of whether a manufactured home park lot rent is reasonable need not be limited to consideration of market-comparable rents.

The Respondents, in their first summary judgment motion and initially in their resistance to Appellant's discovery requests, did not argue that rent increases need not be reasonable in order to be enforceable. Defendants' Motion, App. 2-19 to 2-10; Defendants' Memorandum, Supp. R. 1-6; Cann Aff., ¶ 3, Supp. R. 7. Instead, Respondents argued that the only relevant consideration was comparable market rents. Cann Aff., ¶ 3, Supp. R. 7. It was on this basis that they refused to respond to discovery requests related to the factors identified in Minnesota Statutes Sections 327C.01 Subd. 8 and 327C.02 Subd. 2. *Id.*; Memorandum in Support of Plaintiff's Motion to Compel Discovery.

To resolve the resulting issues and to thereby provide focus to any necessary subsequent proceedings, the parties agreed to bring cross-motions for declaratory judgment on the issues to which parts II, IV and V respond. Motions and Stipulation, App. 2-11 to 2-16. These are all issues that will need to be resolved to determine whether the Respondents are liable to the Appellants, assuming the Court of Appeals reverses the District Court's holding that rent increases need not be reasonable.

Section 327C.01, Subd. 8 provides a definition of "reasonable" in the context of manufactured home park rules and this definition is specifically

incorporated in the requirement in Section 327C.05 that any course of action by an owner be reasonable. What is not mentioned anywhere in the statute as relevant to the issue of rent reasonableness is market conditions and the existence of a market which would accept the increased rents. The plain language of the statute thus provides no support for the district court's declaration that determinations of reasonableness are limited to market considerations.

Further, the legislative purpose in adopting the statute demonstrates why "reasonable" doesn't simply mean "reasonable in the market." The rationale for the legislation is that, once a manufactured home owner moves into a park, the owner is trapped because it is so expensive to move. *Arcadia Development Corp*, 552 N.W.2d at 284 n.2. They are no longer participants in a rental market-place in the way apartment renters are – relatively free to move to a better deal when the owner's rent demands become excessive. It would be inconsistent with the legislative purpose of protecting tenants in this situation to permit an owner to get away with charging whatever rents it is possible to extract in the absence of real market constraints.

Even without the guidance provided by Section 327C.01 Subd. 8 and Section 327C.05 Subd. 1, an ordinary reading of the term "reasonable rent" in the context of this remedial legislation, drafted to protect resident homeowners against

the superior bargaining power of park owners, would require that “reasonableness” be evaluated from the perspective of the resident as well as that of the park owner. See, *Arcadia Development Corp.*, 552 N.W.2d at 284 (Minn. App. 1996)(purpose to protect residents given owners’ superior bargaining position); *Renish v. Hometown America, L.L.C.*, 2006 Minn. App. Unpub. LEXIS 994, 2, 4 (Minn. App. 2006), Add. 1-20, 1-21 (purpose is to prevent owner abuses by balancing positions of owners and residents). The object of statutory construction is to give effect to the intent of the Legislature. *Miller v. Colortyme, Inc.* 518 N.W. 2d 544, 548 (Minn. 1994). To interpret “reasonable” rent increases as whatever the market will bear is to ignore the Legislative intent underlying the statute.

V. Determination of whether a manufactured home park lot rent increase is reasonable may include consideration of the factors set out in Minn. Stat. § 327C.01, Subdivision 8

Regardless of whether the Legislature intended the criteria set out in Minn. Stat. § 327C.01, Subd. 8 to be the sole, or necessary, criteria under which the reasonableness of a rent increase is to be evaluated pursuant to Section 327C.02, it could hardly be the case that the Legislature intended that none of the criteria in Subd. 8 be relevant to the reasonableness of a rent increase. This is the case for at least four reasons. First, Subd. 8 does provide a definition of “reasonableness,” the only such definition provided in Chapter 327C. It is perfectly natural in analyzing

whether a rent increase is reasonable, in light of the remedial nature of the statute and the Legislature's intent, to ask whether the rent increase is necessary to promote park safety, appearance, or efficient operation and thus welfare of the residents, or whether it simply promotes the park owner's financial interests.

Renish v. Hometown America, L.L.C., 2006 Minn. App. Unpub. LEXIS 994, 2, 4 (Minn. App. 2006), Add. 1-20, 1-21 (purpose is to balance positions of owners and residents).

Second, the language of Section 327C.02 clearly implies that an unreasonable rent increase is a "rule" and may be a substantial modification of the original rental agreement and is thus subject to Subd. 8.

Third, Section 327C.05 unambiguously requires application of the criteria in Subd. 8 to any course of action by an owner. Whether or not a single rent increase is a "course of action" covered by this Section, the series of rent increases at issue here surely is such a "course of action."

Finally, the criteria of reasonableness set out in Subd. 8 are consistent with the purposes of the Act. A rent increase which addresses the criteria set out in Subd. 8 advances the interests of both the park owner and the residents as well as protecting residents from the owners superior bargaining power; a rent increase which simply increases the owner's profits at the residents' expense because the

market permits it, does not. Thus the criteria in Subd. 8 are inherently relevant to the question of whether a rent increase is reasonable, as required by Section 327C.02, Subd. 2.

VI. Determination of whether a manufactured home park lot rent increase is enforceable may include consideration of whether it is substantial pursuant to Minn. Stat. § 327C.01, Subdivision 11

As demonstrated above, Section 327C.02 requires that changes in the landlord tenant relationship be reasonable and not substantial in order to be enforceable by the owner. Rent increases which are “reasonable” are an exception and are not considered “substantial” changes to the original agreement between the owner and tenant. Thus, if a rent increase is not reasonable, there is no longer an exception to the principle that a change must not be substantial. If the exception does not apply, then whether the change is substantial is relevant to whether it is enforceable. Section 327C.02 Subd. 2 specifically directs that courts may consider two factors in determining whether a change is substantial and thus enforceable: whether there are changed circumstances necessitating the change and whether there are offsetting benefits to the residents. Therefore Section 327C.02 Subd. 2 clearly permits an inquiry into these two questions in determining whether a rent increase is enforceable.

In addition, these two factors are clearly consistent with the purposes of Chapter 327C. They are intuitively related to the question of whether a rent increase is reasonable. For instance, if the rent increase is necessary to pay for increased operating expenses, or for additional or new financing, that would be evidence of reasonableness. If on the other hand the increase did nothing but increase the owner's profits, a fact finder could conclude that fact weighed against its reasonableness. Similarly, a fact finder might be more likely to find reasonable an increase which helped pay for new amenities benefitting the park residents; and less likely to find reasonable one which was not necessitated by changed conditions and had no benefit for residents. It simply makes no sense to assert that the Legislature intended that such questions be excluded from consideration of whether a rent increase is reasonable pursuant to the requirement of Section 327C.02.

VII. A course of manufactured home park increases in lot rent is prohibited if unreasonable in light of the criteria set forth in Section 327C.01, Subd. 8

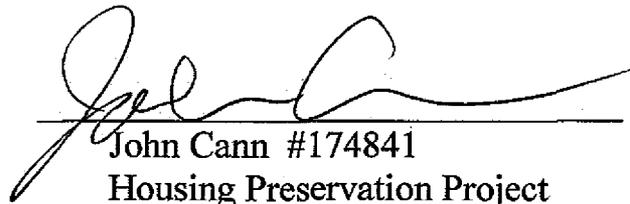
Section 327C.05 Subd. 1 is unambiguous: "No park owner may engage in a course of conduct which is unreasonable in light of the criteria set forth in Section 327C.01, Subdivision 8." The pattern of rent increases imposed by the owner and set out in the parties' stipulation is surely a "course of conduct" and thus must be

evaluated for reasonableness in light of the criteria set out in Section 327C.01, Subd. 8. *See*, Minn. Stat. § 645.08(1), requiring that “course of conduct” be construed consistent with the common meaning of the term.

CONCLUSION

For the reasons set out above, the Appellant requests that the Court reverse the District Court’s declaratory judgment decision and remand for further proceedings consistent with this decision.

Dated: February 25, 2010



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