

**Nos. A10-1762, A10-2113, and A10-2221**

State of Minnesota  
**In Supreme Court**

Weavewood, Inc.,

*Respondent,*

vs.

S & P Home Investments, LLC,

*Appellant,*

and

Palladium Holdings, LLC, et al.,

*Defendants,*

and

M. Jacqueline Stevenson,

*Respondent.*

**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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## LEGAL ISSUES

- I. Does the statute of limitations apply to actions for declaratory judgment?

The district court held in the affirmative by implication. The court of appeals reversed holding they do not.

Apposite Authority: *State ex rel. Smith v. Haveland*, 223 Minn. 89, 25 N.W.2d 474 (1946); *State v. \$6,276 in United States Currency*, 478 N.W.2d 333 (Minn. Ct. App. 1991); *Dehoff v. Attorney General*, 546 S.W.2d 361 (Tenn. 1978).

## STATEMENT OF THE CASE

This matter involves a parcel of real estate located in Hennepin County, Minnesota. Weavewood, Inc. (“Weavewood”) is the registered owner of the real estate. In 1998 it granted a mortgage to James Malcolm Williams. This mortgage was eventually assigned to S&P Home Investments, LLC. (“S&P”).

S&P foreclosed its mortgage and was the high bidder at a sheriff’s sale held on September 1, 2009. Shortly before the expiration of its redemption period, Weavewood commenced an action seeking damages for fraud, a claim of breach of contract, conversion, unjust enrichment, slander on title, and a claim to set aside the mortgage and foreclosure. Coupled with the Complaint was a motion seeking a temporary restraining order to extend Weavewood’s redemption period.

On February 26, 2010, the Honorable Tanya M. Bransford, District Court Judge for Hennepin County, issued a temporary restraining order. On August 24, 2010 Judge Bransford dissolved the temporary restraining order and denied a temporary injunction. The Order was amended on September 30, 2010.

On October 12, 2010 the district court granted S&P’s motion for summary judgment, denied Weavewood’s motion for summary judgment and denied Highland Bank’s, which held a second mortgage on the real estate, motion to intervene.

Weavewood appealed from the Orders dissolving the temporary restraining order and separately appealed from the Order granting S&P summary judgment, Highland in a separate appeal appealed from the denied of its motion to intervene. The court of appeals on January 6, 2011 ordered the three appeals consolidated.

The court of appeals in an opinion dated September 19, 2011 affirmed in part, reversed in part and remanded the matter to the district court. S&P sought review from this Court; Highland Bank filed a cross-petition; Weavewood sought conditional review.

On December 13, 2011 the Court granted S&P's petition on the issue of whether statutes of limitations apply to actions for declaratory judgment. The cross-petitions of Highland Bank and Weavewood were denied.

## STATEMENT OF FACT

The factual history in this matter is somewhat complex, and spans a great deal of time. What is not complex, however, are the necessary facts relating to the issue set forth by this Court: all of the events for which Weavewood asserted claims occurred long before the litigation giving rise to this appeal commenced. Thus, the claims are barred by the statute of limitations.

In an attempt to provide a clear recitation of the facts, this brief will focus on the mortgage which was eventually foreclosed and Weavewood's prior challenges to the mortgage's validity, S&P's acquisition of the mortgage and its foreclosure, followed by the proceedings below.

### I. WEAVEWOOD'S GRANTING OF A MORTGAGE.

This matter involves a parcel of real estate located in Hennepin County, Minnesota as shown on Certificate of Title Number 1017075 ("the Property"). APP. 26-27. In 1998 Weavewood was the owner of the Property. *Id.* Weavewood is in the business of making wood products for kitchen use and as is the case with most businesses used the services of an attorney. APP. 5, 108. The attorney was James Malcolm Williams ("Williams"). APP. 108.

In the summer of 1998 Weavewood was involved in a number of litigation matters and was unable to afford to pay its attorney. *Id.* Thus, on July 15, 1998 it entered into a retainer agreement with Williams in which it granted to Williams a mortgage on the Property. *Id.* A mortgage was executed on September 10, 1998 and filed for record with

the Hennepin County Registrar of Titles on September 21, 1998 (“the Mortgage”). APP. 29-30.

A little over one year later Williams passed away and his estate was submitted to probate. In this proceeding Weavewood made its first challenge to the validity of the Mortgage.

## II. WEAWEWOOD’S CHALLENGES TO THE MORTGAGE.

All of the claims Weavewood asserted in the litigation resulting in this appeal were previously brought. As early as 2001 Weavewood was aware of the facts it claims entitled it to a determination the mortgage is invalid. It asserted those claims on numerous occasions. Even though it did not obtain its desired relief, its attempt to invalidate the Mortgage concluded with the current litigation.

### A. *Weavewood’s challenge to the Mortgage in the probate proceeding.*

On April 13, 2000 Weavewood filed an Amended Written Statement of Claim in Williams’ probate proceeding. It sought a satisfaction of the Mortgage due to a failure of consideration. APP. 42-43. The co-special administrators of Williams’ estate, one of which was M. Jacqueline Stevenson, sought an order seeking an extension of time in which to disallow Weavewood’s claim. APP. 44-46. The Honorable Patricia L. Belois, Judge of the Hennepin County District Court, granted the Estate’s request. *Id.* Thereafter, the Estate disallowed Weavewood’s claim. APP. 47. Weavewood was advised its claim would be barred unless it filed a petition for allowance or commenced an action by July 2001. *Id.*

Rather than proceed in probate court, Weavewood corresponded with the Estate's attorney seeking a satisfaction of the Mortgage. APP. 92-93. In the event the Mortgage was not satisfied, legal action was threatened. *Id.*

In August of 2001 the Williams' Estate entered into an Amended Compromise Agreement. APP. 50-80. As it relates to the Mortgage, a fifty percent interest was assigned to Stevenson and the other fifty percent to Meta G. Williams. APP. 54. The Amended Compromise Agreement was approved by the court on September 24, 2001. APP. 81-84. This, however, was not the end but merely the beginning of litigation with respect to the Mortgage.

B. *Weavewood's 2001 lawsuit to declare the Mortgage invalid.*

On November 8, 2001 Weavewood's counsel executed a complaint naming Stevenson, individually and as the personal representative of Williams' Estate, defendants. APP. 187-196. The complaint asserted the Mortgage was void due to Stevenson's alleged fraudulent conduct and asserted causes of action for slander of title, breach of fiduciary duty and conversion. *Id.*

Stevenson answered and counter claimed. APP. 197-204. Nothing further happened in this matter and it apparently was dismissed. APP. 184. Again, the litigation did not stop. However, the Mortgage changed hands.

C. *The Mortgage is assigned.*

The Mortgage was assigned to Meta Williams and Stevenson pursuant to the Amended Compromise Agreement. APP. 31. At the time of the Assignment the amount

due and owing on the Mortgage was \$83,400. *Id.*<sup>1</sup> On March 13, 2009 the Mortgage was further assigned to Palladium Holdings, LLC. APP. 33-37. The amount then due and owing was \$152,184.00. APP. 35. The last assignment occurred on March 26, 2009 when it was assigned to S&P. APP. 38-41.

On May 15, 2009 S&P, through its attorney, recorded a Notice of Pendency and Power of Attorney to Foreclose the Mortgage. APP. 27. A sheriff's sale was scheduled to occur on August 5, 2009. APP. 131. The sheriff's sale was temporarily delayed by the first of two lawsuits filed in 2009.

D. *Weavewood's 2009 Petition.*

On July 31, 2009 Weavewood filed a Petition seeking an Order the Mortgage was either void or was satisfied. APP. 135-138. Its reasoning was Stevenson breached her fiduciary duties, and the Mortgage was invalid due to a lack of consideration. APP. 136. It also sought to enjoin S&P's foreclosure sale. APP. 141. Hennepin County District Court Judge Marilyn Rosenbaum temporarily enjoined the sale pending a hearing. *Id.* On August 19, 2009 Judge Rosenbaum denied a temporary injunction finding it "unlikely Weavewood will prevail on any underlying claim which would be barred by the applicable statute of limitations." APP. 142.

On September 1, 2009 the Property was struck off and sold by the Hennepin County Sheriff. APP. 28. S&P was the high bidder bidding the amount of \$160,957.76.

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<sup>1</sup> Weavewood made a claim there is nothing due and owing on the Mortgage. However, Weavewood itself submitted information in the probate proceeding indicating to the contrary. APP. 241.

*Id.* Weavewood had six months to redeem from the foreclosure sale. Minn. Stat. §580.23. Instead, it brought yet another lawsuit.

### III. WEAWEWOOD'S 2009 COMPLAINT AND THE DISTRICT COURT'S RESOLUTION.

With the expiration of its redemption period less than one week away, Weavewood filed an action eventually resulting in this appeal. Its Complaint asserts seven separate claims: fraud; breach of contract; conversion; unjust enrichment; slander on title; to set aside the mortgage because it was paid and satisfied; and to set aside the mortgage and foreclosure sale due to claimed irregularities in the notice of sale. APP. 2-20. It sought monetary relief, to set aside the Mortgage and sale, and declaring the Mortgage void. APP. 18-20.

Weavewood also sought to enjoin the running of the redemption period. On February 26, 2010 Judge Bransford granted Weavewood's request for a temporary restraining order and "extended [Weavewood's redemption period] until further Court order." ADD. 14.

The matter came back before Judge Bransford on May 24, 2010 on S&P's Motion to dissolve the temporary restraining order. ADD. 14. The district court issued its decision on August 24, 2010. *Id.* The district court determined all of Weavewood's claims were barred by the statute of limitations. ADD. 20-21. It then dissolved the temporary injunction. ADD. 26.

On August 3, 2010 the district court heard cross-motions for summary judgment. ADD. 27. It issued its decision on October 12, 2010, granting S&P's motion for

summary judgment and denying Weavewood's. ADD. 28. The district court analyzed all of Weavewood's particular claims finding that each was barred by the applicable statute of limitations. ADD. 34-40.

#### IV. THE INVOLVEMENT OF HIGHLAND BANK.

On March 24, 2006 Weavewood granted a mortgage to Highland Bank ("Highland"). APP. 146. Weavewood did not name Highland as a party to its action. However, due to its interest in the Property Highland monitored the lawsuit. Highland sought a stipulation to intervene in the Weavewood lawsuit. APP. 149.

Not receiving the stipulation, on October 8, 2010 Highland brought a motion to intervene. APP. 151. The district court closed the case based on its ruling on summary judgment thus effectively denying the motion. ADD. 53.

On November 10, 2010 Highland commenced a lawsuit seeking similar relief to its motion to intervene. APP. 53-54. On December 16, 2010 Judge Leslie Ann Alton denied Highland's motion and dismissed its complaint with prejudice. APP. 177.

#### V. THE COURT OF APPEALS' OPINION.

Weavewood appealed from the district court's orders dissolving the temporary restraining order and order on summary judgment; Highland appealed from the denial of its motion to intervene. ADD. 53-54. The court of appeals consolidated the three appeals and issued its opinion on September 19, 2011. ADD. 48-66.

On the issue before this Court, the court of appeals, relying on *State v. Joseph*, 622 N.W.2d 358, 362 (Minn. Ct. App. 2001), *rev'd on other grounds*, 636 N.W.2d 322, 326-327 (Minn. 2001), started its analysis with the statement there is no statute of limitations

for declaratory judgment actions and that statute of limitations apply to claims and not defenses. ADD. 57. It then analyzed Weavewood's Complaint, and while noting it did not set forth a claim pursuant to the Uniform Declaratory Judgment Act ("the Act"), and providing it a liberal construction, determined it sought both monetary relief and challenged the Mortgage's validity. ADD. 57-58. Thus, "[t]o the extent that Weavewood's complaint seeks declaratory relief, it is not barred by the statute of limitations." ADD. 58.

But the court of appeals was less than clear when it came to those causes of action it felt sought declaratory relief rather than monetary relief. It identified the claims of fraud, unjust enrichment, the claim pursuant to Section 580.28 and the claim pursuant to Section 582.25 as calling for declaratory relief. ADD. 57.

The lack of clarity comes from the court of appeals' determination if Weavewood seeks monetary relief on either its claim of fraud or unjust enrichment the claim is barred by the statute of limitations. ADD. 58-59.<sup>2</sup> Then, the court of appeals stated Section 580.28 "*does not* provide a method by which a mortgagor may challenge the validity of the mortgage or foreclosure sale. . . . Similarly, Minn. Stat. §582.25 *does not* provide an independent basis to challenge a mortgage or foreclosure sale." ADD. 60 (emphasis added). Thus, using the court of appeals' analysis read as a whole, Weavewood has the ability to challenge the mortgage on the grounds of fraud and unjust enrichment, but

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<sup>2</sup> All of the claims contained in the Complaint, to the extent they seek monetary relief, were barred by the statute of limitations. *Id.*

cannot seek monetary relief on those claims. As will be shown below, this is a distinction without a difference.

All parties sought review of the court of appeals' decision. This Court accepted S&P's petition on the sole issue of whether statute of limitations apply to actions for declaratory judgment. ADD. 67-68.

### ARGUMENT

The issue before the Court has far reaching implications. For if the court of appeals' opinion stands, it effectively eliminates filing a claim within the time period of a particular statute of limitations. Instead, a litigant would merely need to plead a complaint as a declaratory judgment action to avoid the defense the statute of limitations precludes the claim. Such a holding would mean at any time, so long as the prayer for relief was not in the form of monetary damages, a party could proceed on a cause of action so long as they ask the district court to determine the rights of the parties to the dispute.

By definition a declaratory judgment action is merely a vehicle allowing a litigant to invoke the district court's jurisdiction to hear a dispute. The Act allows a district court to declare the rights, status and legal relations of parties. The rights, status and legal relations must be determined by substantive law. If a party's rights cannot be enforced because they are barred by the statute of limitations, then an action seeking the declaration of those rights should rely on the substantive law and state the action cannot be maintained because the statute of limitations has expired. The court of appeals should

be reversed, the district court's determination Weavewood is precluded from maintaining its Complaint should be upheld because its claims are time-barred.

#### I. STANDARD OF REVIEW.

This appeal requires the interpretation of the Uniform Declaratory Judgment Act. Minn. Stat. §§555.01-.16. The construction of a statute presents a legal question and therefore is subject to de novo review. *Hibbing Educ. Ass'n v. Public Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985). In addition, "[t]he construction and applicability of statutes of limitations are questions of law that this court reviews de novo." *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998). To answer the question of whether statutes of limitations apply to a declaratory judgment action requires the analysis of the purpose behind the statute of limitations, the requirements for a court to have jurisdiction to hear a declaratory judgment action, the application of these principles to the matter before the Court and to the potential effect of affirming the court of appeals on claims that would otherwise be time-barred.

#### II. THE POLICY OF STATUTES OF LIMITATIONS.

"Statutes of limitations are based on the theory that it is reasonable to require that stale demands be asserted within a reasonable time after a cause of action has accrued." *Wichelman v. Messner*, 250 Minn. 88, 106, 83 N.W.2d 800, 811 (1957). It provides the defendant repose and the fair administration of justice. *Dalton v. Dow Chemical Co.*, 280 Minn. 47, 153, 158 N.W.2d 580, 584 n.2 (1968). "Statutes of limitations represent a legislative judgment that it is unjust to fail to put an adversary on notice to defend within a specified period of time." *H.D. v. White*, 483 N.W.2d 501, 503 (Minn. Ct. App. 1992)

citing *United States v. Kubrick*, 444 U.S. 111, 117 (1979). The limitation is to prevent fraud and so as not “to permit a party to delay a contest until it is probable that papers may be lost, facts forgotten or witnesses dead.” *Wichelman*, 250 Minn. at 106, 83 N.W.2d at 816-817 (quotation omitted).

The court of appeals, while recognizing Weavewood’s claim for monetary relief was time-barred, held those matters which are defenses are not subject to the statute of limitations. ADD. 57. This, however, merely begs the question of what constitutes a defense.

The court of appeals cited *State v. Joseph*, 622 N.W.2d 358, 362 (Minn. Ct. App. 2001) *rev’d on other grounds*, 636 N.W.2d 322, 326-327 (Minn. 2001) in support of its proposition. ADD. 57. *Joseph* defined a “defense [as] a response to a claim and logically [cannot] be asserted prior to a claim being made.” *Joseph*, 622 N.W.2d at 363. Weavewood’s claims here were obviously capable of being made prior to it instituting the 2009 litigation. It made its claims as early as 2001. “It is not the policy of the law to permit a party to postpone the operation of the statute [of limitations] indefinitely by failing to do an act within his power which is necessary to perfect his remedy.” *Weston v. Jones*, 160 Minn. 32, 36, 199 N.W. 431 (1924)(citations omitted).

Weavewood’s claims were just that – claims. It sought affirmative relief. The court of appeals holding results in the possibility a party can raise a claim *and* a defense in a complaint. It affirmed the dismissal of the claims seeking monetary relief on statutes of limitations grounds, but did not if the claim sought something other than monetary relief. The statute of limitations does not “bar a party from raising a *pure* defense.”

*Reynolds v. Reynolds*, 458 N.W.2d 103, 105 (Minn. 1990) (emphasis added). For example, a defense asserted in response to a claim for relief. Minn. R. Civ. P. 8.01, 8.02.

Likewise, it stands to reason and comports with the Rules of Civil Procedure a plaintiff asserts a claim and a defendant raises a defense. See *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 788 (Minn. 1989)(citation omitted)(a defense is something which will defeat a plaintiff's claim). "[A] 'pure defense' . . . [is where a party is] defending herself against a suit brought by" another party. *In re Estate of Jotham*, 722 N.W.2d 447, 457 (Minn. 2006)(citation omitted).

Here, Weavewood brought a claim "to set aside the Mortgage and the foreclosure and otherwise provide relief to [p]laintiff under Minnesota law. . . ." APP. 12-13. Thus, "[t]he question is whether the claim has been brought in a timely manner." *Joseph*, 622 N.W.2d at 363.<sup>3</sup>

Weavewood made a claim. A claim is not distinguished based on the relief it seeks – be it legal or equitable relief. *Minnesota Min. & Mfg. Co. v. Travelers Indem. Co.*, 457 N.W.2d 175, 179-180 (Minn. 1990). A claim is merely an assertion by a plaintiff seeking a form of relief, be it monetary relief or "[r]elief in the alternative . . . ." Minn. R. Civ. P. 8.01.

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<sup>3</sup> It is anticipated Weavewood will argue the claims contained in the Complaint are really a defense of recoupment. However, recoupment is not an action to set aside a mortgage. Rather, it is a defense, such as a violation of the Truth In Lending Act or Equal Credit Opportunity Act, to a lawsuit brought asserting a breach of contract, of which there admittedly has been a breach, and the defense a violation of the statute reduces the amount owed. *Household Finance Corp. v. Pugh*, 288 N.W.2d 701, 705 (Minn. 1980); *Norwest Bank Minnesota, N.A. v. Midwest Machinery Co.*, 481 N.W.2d 875, 879 (Minn. Ct. App. 1992) *rev. denied* (Minn. May 15, 1992).

The court of appeals correctly ruled all of Weavewood's claims were time-barred. It erred when it held Weavewood's claims for fraud and unjust enrichment were actually defenses to a non-existent action. The sole question remaining is the applicability of the statute of limitation to an action brought pursuant to the Uniform Declaratory Judgment Act.

III. THE RIGHTS OF THE PARTIES IN AN ACTION BROUGHT PURSUANT TO THE UNIFORM DECLARATORY JUDGMENT ACT ARE SUBJECT TO THE APPLICABLE STATUTES OF LIMITATIONS.

The Uniform Declaratory Judgment Act provides

Courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

Minn. Stat. § 555.01. The court of appeals, relying on *Joseph*, determined the statute of limitations does not apply to declaratory judgment actions. ADD. 57. This statement in and of itself stands to reason in that the Act provides a vehicle to determine the rights of parties by conferring upon district court's jurisdiction to determine a dispute. The granting of jurisdiction does not eliminate or alter the substantive body of law for which litigants seek a declaration of their rights. On the contrary, a declaratory judgment action requires a litigant to have a right adverse to another for court determination. A right barred by the statutes of limitations results in the determination a party is not entitled to declaratory relief.

A. *A declaratory judgment action requires a determination of the substantive rights of parties; such rights are subject to the statute of limitations.*

A district court is without power to render declaratory judgment unless there is a justiciable controversy. *St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 587 (Minn. 1977). This requires: a definite and concrete assertion of rights by parties who have adverse interests; there must be a genuine conflict; and the party must not seek an advisory opinion but rather be capable of relief by decree or judgment. *State ex rel. Smith v. Haveland*, 223 Minn. 89, 92, 25 N.W.2d 474, 477 (1946).

Jurisdiction pursuant to the Act “exists to declare the rights, status, and other legal relations of the parties if the complainant is possessed of a judicially protectable right....” *Minneapolis Federation of Men Teachers, Local 238 v. Board of Ed. of City of Minneapolis*, 238 Minn. 154, 157, 56 N.W.2d 203, 205 (1952). Certainly the statute of limitations plays a role in determining the legal relations of the parties. Declaratory judgment actions by definition always revolve around a body of substantive law not found within the express language of the Act. *See Haveland*, 223 Minn. at 91, 25 N.W.2d at 476 (declaratory judgment action to determine applicability of Minnesota Statute Sections 285.01-285.14); *Kennedy v. Carlson*, 544 N.W.2d 1, 3 (Minn. 1996) (declaratory judgment action regarding Minnesota Statute Section 611.27).

True, a “complainant need not necessarily possess a cause of action (as that term is ordinarily used) as a basis for obtaining declaratory relief” yet this does not mean the relief cannot be a dismissal of the complaint due to the running of the statute of limitations. *Haveland*, 223 Minn. at 92, 25 N.W.2d at 477. Indeed, the complainant

must still “prove his possession of a legal interest or right” that is adverse to the other party. *Id.*

The purpose of the Act “is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” Minn. Stat. § 555.12. The legal relations of parties are guided in part on affirmative defenses to a complaint seeking declaratory relief, including the statute of limitations.

B. *Prior decisions of the court of appeals have enforced affirmative defenses, including the statute of limitations, in denying relief pursuant to the Act.*

As detailed above, claims brought pursuant to the Act must involve a body of substantive law. It is the law from which parties derive their rights in which they seek a declaration from the trial court as to their relations. The court of appeals, prior to its decision here, determined the statute of limitations does apply to an action brought pursuant to the Act.

In January 1987 Raymond Whebbe was convicted of gambling related offenses. *State v. \$6,276 in United States Currency*, 478 N.W.2d 333, 334 (Minn. Ct. App. 1991) *rev. denied* (Minn. Jan. 30, 1992). In March 1990 the state brought a complaint against money that was seized prior to conviction “and a declaratory judgment that any claim by [Whebbe] to the money was illegally based.” *Id.* at 335. The answer to the complaint asserted a defense the statute of limitations precluded the action. *Id.*

The court of appeals commenced its analysis by determining the state was required to bring its action for forfeiture within two years. *Id.* Thus, “the state was barred from

proceeding in forfeiture” because the statute of limitations had run resulting in a dismissal of the declaratory judgment action. *Id.* at 337.

The same analysis applies here. Weavewood commenced an action in which it sought to invalidate a mortgage based on numerous claims. Each of these claims were barred due to the applicable statute of limitations. It matters not whether the claim is couched in terms of monetary or declaratory relief. All that matters is “whether the claim has been brought in a timely manner.” *Joseph*, 622 N.W.2d at 363. Just as the state was untimely in seeking a decree of forfeiture, so to was Weavewood untimely in seeking a declaration the mortgage is invalid.<sup>4</sup> The statute of limitations applies in a declaratory judgment action. *See Peterson v. Johnson*, 720 N.W.2d 833, 838 (Minn. Ct. App. 2006)

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<sup>4</sup> On the issue of timing, the district court erred in extending Weavewood’s redemption period. ADD. 2. Weavewood had six months in which to redeem. Minn. Stat. §580.23. The right to redeem is strict, and must be exercised in the time period set forth in the statute. *State ex rel. Anderson v. Kerr*, 51 Minn. 417, 421, 53 N.W. 719 (1892). The court of appeals agreed a district court cannot extend the redemption period. ADD. 62. But yet stated Weavewood *still* has the ability to redeem even as of today. ADD. 63 (Weavewood has four days left in its redemption period). It erred in so holding. One of the fundamental principles of real estate law is that transactions be predictable. *In re the Petition of Brainerd Nat’l Bank*, 383 N.W.2d 284, 289 n.7 (Minn. 1986). The extension of the redemption period for Weavewood violates this principle. As this Court previously held, tendering payment one day after the expiration of the redemption period is untimely. *In the Matter of the Petition of Nelson*, 495 N.W.2d 200, 202 (Minn. 1993). It was improper for the district court and the court of appeals to allow Weavewood a time period to redeem in excess of the express language of the statute. Weavewood had the ability to protect its redemptions rights pending the litigation by complying with Section 580.28. It chose not to do so. This matter would be resolved, and provide predictability to all who foreclose a mortgage, had the district court and court of appeals properly held that by failing to redeem pursuant to Section 580.23 and by failing to avail itself of the procedure set forth in Section 580.28 Weavewood’s time to redeem had expired and S & P is thus the fee owner of the property.

(an action to declare a deed an equitable mortgage must be commenced within the time period set forth in Section 541.03).

Defenses to claims brought pursuant to the Act have resulted in the dismissal of declaratory judgment actions. In *Vrieze v. New Century Homes, Inc*, 542 N.W.2d 62 (Minn. Ct. App. 1996) New Century brought a declaratory judgment action seeking an order directing the City of Plymouth to enforce its codes and ordinances. *Vrieze*, 542 N.W.2d at 64. The city brought a motion to dismiss based on statutory immunity. *Id.*<sup>5</sup> The court upheld the trial court's dismissal of the request for declaratory relief on immunity grounds. *Vrieze*, 542 N.W.2d at 66-67. Thus, a defense to liability in whatever form the defense takes is properly before a trial court for determination in a declaratory judgment action.

Although the court of appeals found each of Weavewood's claims were barred by the statute of limitations, or the statutory basis for the claim did not support an independent cause of action, it adopted Weavewood's contention that even if barred by the statute of limitations it could still seek relief pursuant to the Act. In other words, Weavewood and the court of appeals' "positions seems to be that they can demand declaratory judgment without asserting any underlying theory of recovery. But of course some recovery theory must underlie a declaratory judgment demand...." *Vrieze*, 542

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<sup>5</sup> S&P is mindful of the fact immunity is not an affirmative defense. *Sletten v. Ramsey County*, 675 N.W. 2d 291, 299 (Minn. 2004). However, the doctrine is applicable for the question before the Court. The reason being the application of either the defense the statute of limitations has run or immunity has the same effect: protection from judgment. A defense achieves this result through protection through liability and immunity though protection from the lawsuit itself. *Id.* at 299-300

N.W.2d at 67. Weavewood's Complaint asserts theories of recovery which are time-barred. They are not viable and the trial court had the authority to declare as such.

C. *Section 559.01 is analogous to the Act and requires the application of the statute of limitations.*

The Act is not limited to the subject matter of a controversy, but allows a court to declare the rights of the parties so long as there is a justiciable controversy. Minn. Stat. § 555.01. Section 559.01 is similar to the power granted to a trial court pursuant to the Act but is limited to actions involving real property.

Any person in possession of real property personally or through the person's tenant, or any other person having or claiming title to vacant or unoccupied real property, may bring an action against another who claims an estate or interest therein, or lien thereon, adverse to the person bringing the action, for the purpose of determining such adverse claim and the rights of the parties, respectively.

Minn. Stat. § 559.01.

Similar to Section 555.01, Section 559.01 provides a mechanism for individuals to invoke the power of the court to determine competing claims to a parcel of real estate. In fact, this matter falls more squarely in the ambit of Section 559.01 than it does 555.01. That is not to say a proceeding cannot be brought pursuant to the Act if the proceeding deals with real estate; rather it is a clear indication the principles behind both Sections share a common goal – a procedure to resolve disputes between parties.

One of the more typical claims brought pursuant to Section 559.01 is a claim for adverse possession. While Section 559.01 makes no reference to the statute of limitations, it is clear to be successful such a claim must be based on facts existing for a

fifteen year period of time. *Johnson v. Raddohl*, 226 Minn. 343, 345, 32 N.W.2d 860, 861 (1948); Minn. Stat. §541.02.

Both the Act and Section 559.01 deal with competing claims. Neither specifically reference a statute of limitations. By holding the statute of limitations has no applicability to claims brought pursuant to the Act the court of appeals' decisions results in a holding the legislature made a determination the statute of limitations applies for Section 559.01 and not the Act. Such a result is absurd. *See* Minn. Stat. § 645.17 (1) ("the legislature does not intend a result that is absurd...."). For if that was the case a litigant would be well advised, if there was an issue with the statute of limitations regarding their claim to real estate, to bring a claim pursuant to the Act rather than Section 559.01.

Rather, just as the statute of limitations plays a role in the analysis for claims brought pursuant to Section 559.01, so should it apply to claims brought pursuant to the Act. Our court of appeals has applied the statute of limitations to the substantive basis for a party's request for relief pursuant to the Act. Other states have done so as well.

D. *Other jurisdictions adopting the Act have applied the statute of limitations to a claim brought pursuant to their version of the Act.*

One of the Act's purposes is "to effectuate its general purpose to make uniform the law of those states which enact it..." Minn. Stat. § 555.15. Many jurisdictions have passed the Uniform Declaratory Judgment Act in one form or another. *See, e.g.*, 735 ILCS 5/2-701; Ia. R. Civ. P. 1.1101; N.D.C.C. 32-23-01; SDCL 21-24-1; T.C.S. §29-14-102; Wis. Stat. Ann. § 806.04. Other states, while not adopting the express language of

the Act, have statutes providing for a declaratory judgment action containing many of the same provisions of the Act. *See, e.g.* Conn. Gen. Stat. § 56-29 (“the Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed”).

The language of each state’s provision regarding declaratory judgment actions may differ, yet all do not provide for a particular statute of limitations to apply. This is because the particular statute of limitations to apply is not dependent on the declaratory judgment statute but rather on the nature of the underlying dispute. “[T]he rights and liabilities of the parties to the contract who seek declaratory relief do not derive from the statute that creates declaratory judgment actions. Rather, those rights and liabilities derive from the contract which creates them. For that reason, the declaratory judgment action that seeks construction of a contract should be subject to the statute of limitations for written contracts....” *Employers Ins. of Wausau v. Ehlco Liquidating Trust*, 723 N.E.2d 687, 701 (Ill. Ct. App. 1999); *see also Herbst v. Treinen*, 249 Iowa 695, 700-701, 88 N.W.2d 820, 823-824 (1958) (applying statute of limitations analysis to a declaratory judgment action); *Amerada Hess Corp. v. Conrad*, 410 N.W.2d 124, 135-136 (N.D. 1987) (applying statute of limitations to declaratory judgment action); *Homestake Mining Co. v. South Dakota Subsequent Injury Fund*, 644 N.W.2d 612, 616 (S.D. 2002); *Jones v. Secura Ins. Co.*, 249 Wis.2d 623, 631, 638 N.W.2d 575, 583 (2002) (analyzing statute of limitations to motion for declaratory judgment).

Most applicable to the question before the Court are the pronouncements of the Tennessee and Connecticut supreme courts.

Limitations statutes do not apply to declaratory judgment suits, as such, because a declaratory judgment action is a mere procedural device by which various types of substantive claims may be asserted. Accordingly, it is necessary to ascertain the nature of the substantive claims sought to be asserted in a declaratory judgment action in order to determine the appropriate statute of limitations. And, if a special statute of limitations applies to a special statutory proceeding, such as an election contest, it will be applied when a declaratory judgment action is employed to achieve the same result as the special proceeding.

*Dehoff v. Attorney General*, 564 S.W.2d 361, 363 (Tenn. 1978) (internal citation omitted). The obvious concern is a litigant, if faced with the realization a statute of limitations bars a claim denoted as such, i.e. a claim for breach of contract, will merely recharacterize the claim as one of declaratory relief to avoid the statute of limitations.

Such is the case here. All of Weavewood's claims, to the extent they seek monetary relief, are time-barred. Yet, the court of appeals in essence revived them by stating they could proceed so long as the relief sought was declaratory in nature. However, "[i]t necessarily follows that if a statute of limitations would have barred a claim asserted in an action for relief other than a declaratory judgment, then the same limitation period will bar the same claim asserted in a declaratory judgment action." *Wilson v. Kelley*, 224 Conn. 110, 116, 617 A. 2d 433, 436 (1992).

A declaratory judgment action "must rest on some cause of action that would be cognizable in a nondeclaratory suit." *Id.* at 116, 617 A.2d at 436. Not applying the statute of limitations to the underlying cause of action "would convert our declaratory judgment statute and rules into a convenient route for procuring an advisory opinion on

moot or abstract questions.” *Id.*; see also *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Assoc. of Minneapolis*, 271 N.W.2d 445, 447 (Minn. 1978) (quotation omitted) (declaratory judgment is not proper to obtain an advisory opinion).

Courts from other jurisdictions are clear not only that a declaratory judgment action is dependent on the nature of the claim, but also that the statute of limitations applies to the particular claim. Minnesota should be no different. In fact, prior to the court of appeals’ opinion here it was not different. The court of appeals in *Peterson* applied the statute of limitations to a lawsuit brought pursuant to the Act. *Peterson*, 720 N.W.2d at 837. The application of the statute of limitations should result in the reversal of the court of appeals and a reinstatement of the trial court’s rulings on summary judgment.

#### IV. APPLICATION OF THE STATUTE OF LIMITATIONS TO WEAVEWOOD’S CLAIMS AND PUBLIC POLICY CONSIDERATIONS.

Affirming the court of appeals would result in a dramatic change in Minnesota law. In effect for any action brought, so long as the action did not include a request for monetary relief but rather sought declaratory relief, the statute of limitations would not apply. The purpose behind the statute of limitations to provide a defendant repose from stale claims would no longer protect potential defendants from claims that would otherwise be time-barred. Rather, there would be no ability to provide a statute of limitation defense.

Merely by way of example, if a matter involved two parties to a contract calling for the performance on one party over an extended period of time, one of the parties

could obtain relief after the expiration of the statute of limitations. Consider the following, party A to the contract seven years after the contract is entered wants to be relieved of its obligations. At the time it entered the contract it was aware of misrepresentations made by party B, but nevertheless executed the contract and performed.

Now, wanting to be relieved of the contract's obligations, party A could bring a declaratory judgment action seeking to have the contract held voidable based on fraud in the inducement. See *In re Melgaard's Will*, 200 Minn. 493, 504, 274 N.W. 641, 647 (1937)(fraud renders a contract voidable). Party A, as did Weavewood, could claim it is merely putting forth a defense to any future obligations to the contract, and because a declaratory judgment was sought the statute of limitations does not apply.

The above scenario can occur in a variety of situations. The proper way to hold is to state there is no statute of limitations for *bringing* an action pursuant to the Act. However, whether the action is *viable* depends on the statute of limitations for the particular claim asserted. The Act is broad such that it encompasses a variety of legal theories for those seeking declaratory relief. Yet, just as the claim for relief need be based on a viable theory of law, so should the claim for relief be subject to the statute of limitations. It would truly be unique for a claim to be governed by the statute of limitations in every litigation, except for claims asserted based on the Act. The only difference between the two is nomenclature: each require the application of a substantive body of law, including the statute of limitations, to resolve the claim.

In effect, this is the exact holding of the court of appeals. It determined Weavewood could not seek relief if the relief sought was monetary, but could obtain relief based on the Act. This is a distinction without a difference. The statute of limitation is not dependent on the relief sought. Rather, it is dependent on the facts as applied to the particular statute of limitations for the claim to which a litigant seeks relief.

Here, the court of appeal correctly held all of Weavewood's claims were barred due to the running of the statute of limitations. It erred holding the statute of limitations did not apply to Weavewood's claims to the extent they are made pursuant to the Act. Thus, the court of appeals should be reversed, and the district court's ruling on summary judgment affirmed.

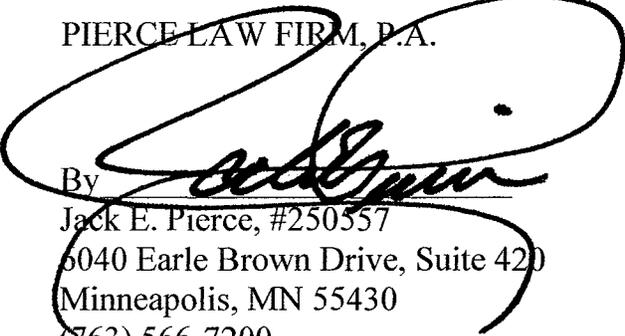
#### CONCLUSION

The statute of limitations applies to declaratory judgment actions. Not necessarily as to when it can be brought, but whether a claim is viable or not must depend on whether the claim is timely brought. To hold otherwise would result in defendants not being entitled to raise this affirmative defenses. The court of appeals should be reversed.

Respectfully submitted,

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