



STATE OF MINNESOTA
COURT OF APPEALS

Federal National Mortgage Association
RESPONDENT,

vs.

Case No. A10 – 1985

Peter Nedashkovskiy, et al.
APPELLANT.

BRIEF OF APPELLANT

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Exhibit 2. Record of Case Filing.

Exhibit 3. Quit Claim Deed.

Exhibit 4. Fax from attorney Amoun Sayaovong.

Exhibit 5. Transcript of eviction hearing.

Exhibit 6. Notice of Appeal. Findings of Fact & Conclusions of Law from
eviction court hearing.

Exhibit 7. Evictions Summons.

Exhibit 8. Appellants' summons & complaint

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).

CONCISE STATEMENT OF LEGAL ISSUE

ISSUE 1. Whether Appellants' first filed case has jurisdiction over the Respondent's eviction proceedings if Appellants do not name the Respondent.

Judge Daniel A. O'Fallon ruled that because the Appellants did not name Federal National Mortgage Association ("FNMA") in its original complaint (02-CV-10-7217), the Appellants did not have jurisdiction over the current eviction hearing. Judge O'Fallon granted Respondent's petition for an Order and Judgment of Eviction against the Appellants on November 1, 2010. A Writ of Recovery of Premises was issued on November 1, 2010.

CASES:

- Bjorkland v. Bjorklund Trucking, 753 N.W.2d 312, 318 (Minn. App., 2008), Page 4.

STATUTES:

- U.S. CONST. amend. XIV, § 1, Page 5.
- MINN. STAT.S § 484.01 Jurisdiction, Page 4.
- MINN. STAT.S § 484.81 Pleadings; Practice; Procedure, Page 4.
- MINN. R. CIV. P. 3.01, Page 5.
- MINN. R. CIV. P. 10.01, Page 5.

STATEMENT OF THE CASE AND FACTS

This case is fact driven and Appellants has not been able to find appropriate case law or statutes that is on point with the issue before the appellate court.

On August 24, 2010, Appellants filed a Summons and Complaint naming Wells Fargo, Mortgage Network and Discover Mortgage Corp as defendants in a dispute over the property named in this eviction summons, case number 02-CV-10-7217. Respondent filed their Eviction Summons on October 19, 2010.

Appellants cited at the eviction hearing, Bjorkland v. Bjorklund Trucking, 753 N.W.2d 312, 318 (Minn. App., 2008), “We now hold that when the counterclaims and defenses are necessary to a fair determination of the eviction action, it is an abuse of discretion not to grant a stay of the eviction proceedings when an alternate civil action that involves those counterclaims and defenses is pending.” Appellants argued that an eviction hearing, as a summary procedure, is unsuited for a hearing of the equitable and substantive claims of this matter. Therefore, Appellants moved the eviction court for a stay of the eviction hearing pending the decision of Appellants’ first filed case.

Respondent’s attorney argued that because the Federal National Mortgage Association (“FNMA”) was not named in the original suit, they are not a party to the original suit and hence Bjorkland does not apply to the eviction hearing.

APPELLANTS’ ARGUMENT

Jurisdiction of the courts is conferred by MINN. STAT.S § 484.01. The requirements of a summons and complaint is controlled by MINN. STAT.S § 484.81 which confers power to the Minnesota Rules of Civil Procedure to determine the exact pleading of a civil case. A civil action is commenced upon the service of the summons and complaint upon the defendant.

MINN. R. CIV. P. 3.01. Defendants must be named in the summons and complaint. MINN. R. CIV. P. 10.01. Jurisdiction of the court is conferred over a defendant upon the naming of the defendant and the proper service of the summons and complaint on the defendant.

Appellants appeal is based on the fact that Appellants had no notice of FNMA as a necessary party in its original complaint. Appellants' summons and complaint was filed August 24, 2010. (Exhibit 1) As stated above, Respondent filed their eviction summons and complaint on October 19, 2010. (Exhibit 2) Appellants would not have known to include FNMA as a defendant on its complaint.

In addition, FNMA was assigned title to the property, 89 117th Avenue NW Coon Rapids, MN 55448, by quit claim deed on August 27, 2010. (Exhibit 3) Even if Appellants had done a title search to reveal who had possessory title to the property before Appellants filed their complaint, Appellants would not have been able to know that FNMA was a proper party to its complaint.

The constitution requires that no citizen be deprived of property without due process of law. U.S. CONST. amend. XIV, § 1. Allowing the judgment against Appellants to stand would violate this fundamental principle of justice. Appellants could not have known that FNMA was a proper party to its lawsuit at the time that it filed its summons and complaint. At issue in Appellants' summons and complaint was the title to Appellants' property. Appellants was denied the right to his property by not knowing who was the proper party to sue.

Another adverse implication of allowing the judgment to stand is that it would encourage litigants to not be completely candid with each other. Appellants faxed to respondent's attorney, the summons and complaint on October 28, 2010. (Exhibit 4) Respondent was aware that FNMA was not named in the summons and complaint. At the eviction hearing, one of

Respondent's first arguments was that FNMA was not named in the summons and complaint. (Transcript of Federal Home Loan Mortgage v. Peter Nedashkovskiy at 2, Exhibit 5) Does the court want to encourage this type of "gotcha" litigation? A more principled approach would be for Respondent to discuss with Appellant, the implications of not having named FNMA in the summons and complaint, and the possible issues that are involved. This would serve the purpose of judicial economy by (1) attempting to resolve the issue before the hearing and (2) allowing both parties to properly brief the issue for the trial court. Instead, Appellant must appeal the matter in order to properly brief his arguments.

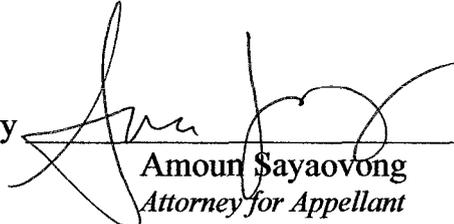
CONCLUSION

Based upon these facts and arguments, Judge O'fallon's decision is clearly erroneous. Appellants had no knowledge nor could they have known that FNMA was a proper party to their claims.

RELIEF REQUESTED

Appellants ask that the court reverse the decision of the trial court as clearly erroneous and issue an order for the trial court to stay the eviction pending the outcome in Appellant's first filed case.

Dated: December 10, 2010

By  _____
Amoun Sayaovong
Attorney for Appellant

Legal Solutions LLC
150 Eaton Street, Ste. 105
St Paul, MN 55107
TEL: 651 - 815 - 0015
FAX: 651 - 815 - 0515