

State of Minnesota
In Court of Appeals

In the Matter of the Petition of Beachside I Homeowners Association, a Minnesota non-profit corporation, For a New Certificate of Title After Foreclosure of Assessment Lien

APPELLANT BEACHSIDE I HOMEOWNERS ASSOCIATION'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 LEGAL ISSUE

Appellant Beachside I Homeowners Association (“Beachside”) commenced this action in the District Court as a Proceeding Subsequent to Initial Registration pursuant to Minnesota Statutes Chapter 508 after Beachside foreclosed on its association assessment lien on the subject real property and purchased the property at the Sherriff’s sale. Beachside appeals the District Court’s Order adopting the Report and Recommendation of the Examiner of Titles that granted summary judgment to Respondents Northern Realty Ventures, LLC and Palladium Holdings, LLC and denied Beachside’s motion for summary judgment. The District Court concluded that Respondents held an interest in the property based upon conveyances from Thomas Schafer, who the District Court ruled was an heir of Florence Schaffer, the previous owner of the subject property. Beachside argued that Thomas Schafer did not have an interest in the subject property at the time of these alleged conveyances because he has never been legally determined to be an heir of Florence Schafer and he therefore did not have any interest in the property to convey to Respondents. Therefore, the District Court should have granted Beachside’s motion for summary judgment, denied Respondents’ motion for summary judgment and ordered the issuance of a Certificate of Title for Beachside.

The legal issue in this appeal can be summarized as follows:

Whether the District Court erred in adopting the Examiner of Title’s Report and granting summary judgment to Respondents and denying Beachside’s motion for summary judgment because Respondents did not acquire any interest in the subject property by way of conveyances from Thomas Schaffer, who the District Court incorrectly ruled was an heir of Florence Schaffer, the previous owner of the Property.

This issue was raised in the trial court and preserved for appeal in Beachside’s arguments in favor of its motion for summary judgment and in its opposition to Respondents’ motion for summary judgment, as well as in Beachside’s arguments in opposition to Respondents’ motion to adopt the Report and Recommendation of the Examiner of Titles. *See generally*, APP 99-109, 155-160, 168-173, 175-183.

Most Apposite Authority:

Minn. Stat. § 524.3-108

Minn. Stat. § 525.31

Minn. Stat. § 508.70

Minn. Stat. § 272.45

STATEMENT OF THE CASE

Appellant/Petitioner Beachside I Homeowners Association (“Beachside”) appeals the Order of the Hennepin County District Court, Fourth Judicial District, the Honorable Susan M. Burke presiding, adopting the Examiner of Titles’ Report and Recommendation (“Examiner’s Report”), granting Respondents Northern Realty Ventures, LLC (“Northern Realty”) and Palladium Holdings, LLC’s (“Palladium”) motion for summary judgment, denying Beachside’s motion for summary judgment and awarding Palladium an interest in the subject property. (ADD 1-17.)¹

The District Court erred because Respondents’ claimed interest in the subject property is based entirely on conveyances by or through Thomas Schafer, an alleged heir of Florence Schaefer, who was the fee owner of the property prior to Beachside’s foreclosure of its lien on the property. However, under the undisputed facts here, the subject property was transferred to Beachside through foreclosure long before there was any judicial determination of the heirs of Florence Schaefer. Accordingly, the District Court’s (and the Examiner’s Report’s) conclusion that Thomas Schafer is an heir of Florence Schaefer is legally incorrect, which means that Thomas Schafer never acquired any interest in the property, and therefore Respondents obtained no interest in the property by or through the conveyances from Thomas Schafer. As a result, Respondents have no interest in the subject property, and the District Court should have granted

¹ References to “ADD ___” are to the pages in Appellant’s Addendum and references to “APP ___” are to the pages in Appellant’s Appendix.

Beachside's motion for summary judgment and denied Respondents' motion for summary judgment.

On July 28, 2009, Beachside filed its Petition in the District Court commencing Proceedings Subsequent to Initial Registration, pursuant to Minn. Stat. Chpt. 508, regarding Certificate of Title No. 761839 issued to Florence M. Schafer, for land legally described as Lot 49, Block 3, Beachside. (APP 1-6.) In its Petition, Beachside requested an order directing the Registrar of Titles to cancel Certificate of Title No. 761839 and to enter a new Certificate of Title in the name of Beachside for the subject property (APP 3.)

On October 15, 2009, Respondent Northern Realty Ventures, LLC ("Northern Realty") and Palladium Holdings, LLC ("Palladium") filed their Objection and Answer to the Petition. (APP 11-13.) Northern Realty and Palladium claimed that Palladium was now the owner of the subject property. (APP 11-13.) Thus, Palladium and Northern Realty requested an order directing the issuance of a new Certificate of Title in the name of Palladium. (APP 12.)

On December 30, 2009, the District Court issued an Order, pursuant to the stipulation of the parties, providing that the Examiner of Titles would hear and determine all issues of law and fact, make findings of fact and conclusions of law, and would report the same to the District Court according to the provisions of Minn. Stat. § 508.20. (APP 19-21.) The District Court's Order provided the Examiner of Titles' Report could be adopted or rejected by the District Court on the motion of any party. (APP 21.) On May 17, 2010, the District Court issued an Order directing that the parties' anticipated

cross-motions for summary judgment be heard by the Examiner of Titles. (APP 22.) Thereafter, on June 23, 2010, Beachside and Palladium served and filed their cross-motions for summary judgment. (APP 23-26.)

On July 21, 2010, the Examiner of Titles, Kimball Foster, heard the parties' cross-motions for summary judgment pursuant to the District Court's Orders. (ADD 10.) The Examiner of Titles then issued her Report and Recommendation dated September 21, 2010, in which the Examiner of Titles recommended that the District Court enter an order denying Beachside's motion for summary judgment and granting Respondents' motion for summary judgment. (ADD 10-17.) The Examiner of Titles based this recommendation on her legal conclusion that Thomas Schafer was an heir of Florence M. Schafer, the owner of the property prior to Beachside's foreclosure of the subject property. (ADD 13-17.) The Examiner of Titles agreed with Respondents' arguments that they acquired an interest in the Property through conveyances from Thomas Schafer, who the Examiner of Titles concluded acquired an interest in the subject property as a result of being an heir of Florence Schafer, even though Florence Schafer's estate was never probated and there was never a determination by the Probate Court as to the heirs of the estate of Florence Schafer. (ADD 13-17.)

On October 19, 2010, Palladium and Northern Realty moved the District Court for an order adopting the report of the Examiner of Titles. (APP 174.) Beachside opposed the motion, and it filed a memorandum of law in opposition to the motion on November 3, 2010. (APP 175-183.) Palladium submitted a reply memorandum in support of its motion on November 5, 2010. (APP 184-190.)

On November 9, 2010, the District Court, the Honorable Susan N. Burke presiding, heard Respondents' motion for an order adopting the report of the Examiner of Titles. (ADD 1.) In an Order dated December 13, 2010, the District Court adopted the Examiner of Titles' Report, and explained its reasoning in its Findings of Fact, Conclusions of Law and Order. (ADD 1-9.) In sum, the District Court ruled that Thomas Schafer had an interest in the Property as an heir of Florence Schafer, and therefore that Thomas Schafer's conveyances Respondents were valid, resulting in Respondents having an interest in the Property. (ADD 1-9.) Judgment was entered on December 14, 2010. (ADD 1; District Court Docket.) Beachside then timely appealed the District Court's Order and Judgment to this Court by filing its Notice of Appeal on February 2, 2011. (APP 191.)

STATEMENT OF FACTS

On May 28, 1991 the Hennepin County Registrar of Titles entered Certificate of Title No. 761839 to Florence M. Schafer for the property located at 5385 Beachside Drive, City of Minnetonka, legally described as Lot 49, Block 3, Beachside (the "Property"). (APP 1, 5, 11.)

Florence M. Schafer died intestate on December 9, 2001. (APP 2, 11, 17.) No probate administrations have ever commenced in Minnesota, or any other state, and no court order has issued determining her heirs or the subsequent ownership of the Property. (APP 2, 11.) Florence Schafer never married, and she did not have any children. (APP 17-18, 152-153.) Florence Schafer's parents predeceased her, as did Ms. Schafer's sister and two brothers. (APP 17-18, 152-153.) Ms. Schafer's only living relatives are

the children of her two brothers: Thomas Schafer, Michael Schafer, Richard Schafer, and Peggy, last name unknown. (APP 152-153.) At the time that Ms. Schafer died in 2001, her nephew Thomas Schafer was living at the Property. (APP 152.) After Ms. Schafer's death, Thomas Schafer continued to live at the Property. (APP 152.)

Beachside is a Minnesota non-profit corporation organized to govern the common interest community in which the Property is located. (APP 1, 11.) Beachside foreclosed its assessment lien against the Property via advertisement pursuant to Minn. Stat. Chapter 580 and Minn. Stat. §515B.3-116(h). (APP 1, 11.) The Sheriff's sale was conducted on January 7, 2009, with the mortgagor's period of redemption to expire six months from the date of sale, which was July 7, 2009. (APP 1, 11.) Beachside purchased the Property at the Sheriff's sale. (APP 1, 11; ADD 2.)

On or about June 1, 2009 (during the owner's six-month redemption period), a Quit Claim Deed was executed between Thomas Schafer, as grantor, and Northern Realty, as grantee. (APP 113; ADD 3.) At that time, Thomas Schafer and Northern Realty also entered into a transaction agreement stating that Thomas Schafer could live in the Property until September 1, 2009. (APP 94-97; ADD 2.) The transaction agreement also stated that Northern Realty would pay the real estate taxes for the Property. (APP 94-97; ADD 2.) Subsequently, Northern Realty failed to pay the real estate taxes for the Property. (APP 94-97; ADD 2.)

Thomas Schafer paid the unpaid real estate taxes for the Property on June 29, 2009, in the amount of \$2,438.03. (APP 95; ADD 2.) On June 30, 2009, a Lien for payment of real property taxes in favor of Thomas Schafer was filed with the Registrar of

Titles as Document No. 4657011. (APP 134-136.) On June 30, 2009, an Assignment of Lien was filed with the Registrar of Titles as Document No. 4657012, between Thomas Schafer as assignor and Palladium as assignee. (APP 137-138.) On June 30, 2009, a Notice of Intention to Redeem in favor of Palladium was filed with the Registrar of Titles as Document No. 4657013. (APP 137-138.)

On or about June 18, 2009, a claim of unregistered interest was filed with the Registrar of Titles as Document No. 4653046 in favor of Northern Realty. (APP 114-120.) On or about June 24, 2009, Beachside filed with the Registrar a demand for discharge of Northern Realty's claim, as Document No. 4659696. (APP 121-123.)

On or about June 15, 2009, Evans Contractors, Inc., a Minnesota corporation ("Evans Contractors") issued a bid for repairs to the Property. (APP 124.) On June 25, 2009, a Mechanic's Lien Statement in favor of Evans was filed with the Registrar of Titles as Document No. 4655058. (APP 125-128.) On June 29, 2009, a Notice of Intention to Redeem in favor of Evans was filed with the Registrar of Titles as Document No. 4656403. (APP 129-131.) On July 23, 2009, a Quit Claim Deed was filed with the Registrar of Titles as Document No. 4665584 between Evans as grantor and Palladium as grantee. (APP 132-133.)

SUMMARY OF ARGUMENT

The District Court should have granted Beachside's motion for summary judgment and denied Respondents' motion for summary judgment based on the undisputed facts in the record. Florence Schafer, the owner of the property prior to the foreclosure, is deceased, no probate administration was ever commenced in Minnesota or any other state, no court order was issued determining the ownership of the Property at any time before the foreclosure, and the time to do so has lapsed. Thus, no person or entity with a valid redemptive right redeemed from Beachside's foreclosure, and therefore Beachside is entitled to judgment as a matter of law as the owner of the Property.

Rather than granting Beachside summary judgment, the District Court (and the Examiner's Report) incorrectly concluded that Thomas Schafer is an heir of Florence Schaefer and mistakenly ruled that his conveyances to Respondents resulted in the valid transfer of interests in the Property to Respondents. Thomas Schafer did not have an assignable interest in the Property at the time he purported to convey his interests in the Property to Respondents. Therefore, Respondents never acquired an interest in the Property, and Beachside owns the Property based on its purchase at the Sheriff's Sale.

ARGUMENT

I. Standard of Review.

Beachside is appealing the District Court's Order adopting the Examiner of Titles' Report and Recommendation to grant summary judgment to Respondents and deny Beachside's motion for summary judgment. (ADD 1-17.) The District Court's Order therefore granted summary judgment to Respondents and denied Beachside's motion for

summary judgment. (ADD 1-17.) Thus, Beachside's appeal is from the entry of summary judgment.

“On appeal from summary judgment, [this Court] determine[s] whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law.” *Superior Construction Surfaces, Inc. v. Belton*, 749 N.W.2d 388, 390 (Minn. Ct. App. 2008). An appeal from summary judgment is reviewed to determine if there are genuine issues of material fact and if the District Court erred in applying the law. *STAR Centers, Inc. v. Faegre & Benson, LLP*, 664 N.W.2d 72, 76 (Minn. 2002). “A reviewing court must view evidence in the light most favorable to the party against whom summary judgment was granted.” *Vetter v. Security Continental Ins. Co.*, 567 N.W.2d 516, 520 (Minn. 1997).

When the material facts are not in dispute, as is the case here, this Court reviews the District Court's decision *de novo* to determine whether the District Court properly applied the law. *Art Goebel, Inc. v. Northern Suburban Agencies*, 567 N.W.2d 511, 515 (Minn. 1997). This is especially so in this appeal because when, as here, “all parties move for summary judgment, they tacitly agree that no genuine issue of material fact exists.” *Rechtzigel Trust v. Fid. Nat'l Title Ins. Co. of N.Y.*, 748 N.W.2d 312, 316 (Minn. Ct. App. 2008).

Further, to the extent the District Court's Order purports to contain findings of fact, “whether the findings of fact support a district court's conclusions of law and judgment is a question of law, which [this Court] review[s] *de novo*.” *In the Matter of*

Ganje, 659 N.W.2d 261, 266 (Minn. Ct. App. 2003) (quoting *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 108 (Minn. Ct. App. 2002)).

II. The District Court erred in ruling that Respondents had an interest in the Property through conveyances from Thomas Schafer because Thomas Schafer did not have an assignable interest in the Property at the time of the conveyances since no court had ever determined that he was an heir of Florence Schafer before Beachside acquired its interest in the Property.

The District Court erred when it ruled that Respondents held an interest in the Property based upon conveyances from Thomas Schafer because Thomas Schafer had never been legally determined to be an heir of Florence Schafer and therefore he did not have any assignable interest in the Property to convey to Respondents. Because Thomas Schafer did not have an assignable interest in the Property at the time of the purported conveyances to Respondents, Respondents never acquired an interest in the Property and Beachside should have been granted summary judgment.

A. All of Respondents' claims to any interest in the Property are wholly dependent on their incorrect contention that Thomas Schafer acquired an assignable interest in the Property at Florence Schafer's death even though her estate was never probated and even though no court had determined that Thomas Schafer was an heir of Florence Schafer

All of Respondents' claims to any interest in the Property are wholly dependent on their incorrect contention that Thomas Schafer acquired an assignable interest in the Property at Florence Schafer's death even though her estate was never probated and even though no court had determined that Thomas Schafer was an heir of Florence Schafer. In the District Court, Respondents made two alternative arguments as to how they allegedly redeemed from Beachside's assessment lien foreclosure: (1) Respondents argued that Palladium acquired a redemptive right from Thomas Schafer via an assignment of

Thomas Schafer's tax lien; and (2) Respondents argued that Evans Contractors redeemed via its mechanic's lien and then conveyed its interest to Palladium. Both of these arguments are necessarily based on the incorrect premise that ownership of the Property automatically vested in Thomas Schafer upon Florence Schafer's death in 2001.

Specifically, Respondents first argued that Thomas Schafer automatically owned the property upon Florence Schafer's death, and that Thomas Schafer then deeded the property to Northern Realty. Respondents argued that Thomas Schafer then entered into an agreement with Northern Realty, with Northern Realty as owner and Thomas Schafer as occupant, which permitted a tax lien to arise. For the reasons explained below, neither Thomas Schafer nor Northern Realty ever owned any interest in the property. Therefore, no tax lien arose, and Respondents did not acquire a redemptive interest in the Property via an assignment from Thomas Schafer.

Further, Respondents' claim to an interest in the Property based on the tax lien fails because Thomas Schafer never established a valid redemptive interest in the Property. Palladium, as assignee of Thomas Schafer, claimed a right to redeem based on payment of delinquent real estate taxes pursuant to Minn. Stat. §272.45. This statute states in relevant part as follows:

When any past due or delinquent tax on land is paid by any occupant, tenant, or person with an interest in the land other than a lien, or a person acting on that person's behalf, which, by agreement or otherwise, ought to have been paid by the owner, lessor, or other party in interest, such occupant, tenant, or person may recover by action the amount which such owner, lessor, or party in interest ought to have paid, with interest thereon at the rate of 12 percent per annum, or may retain the same from any rent due or accruing from the person to such owner or lessor for land on which such tax is so paid. A person making

a payment under this section may file with the county recorder or registrar of titles of the proper county a notice stating the amount and date of such payment, and stating the interest claimed in the land, with a description of the land against which the taxes were charged; and the same shall thereupon be a lien upon such land in favor of the person paying the same until the same is paid. The county recorder shall record such notice in the indices maintained by the county recorder. The registrar of titles shall record the notice on the certificate of title for the land. Upon the payment of any such lien, the person filing such notice shall satisfy the same of record.

Minn. Stat. §272.45. (emphasis added)

In the present case, Florence Schafer was the fee title owner of the Property. Florence Schafer has been deceased since 2001 and there has never been a probate of her estate. Thomas Schafer has been living in the Property, as essentially a squatter, with no lease or other legal interest in the Property. Thomas Schafer claims to have paid the property taxes related to the Property, but there is no agreement or other relationship between Florence M. Schafer and Thomas Schafer creating a personal obligation on the part of Thomas Schafer to pay the taxes.

Based on the foregoing, Thomas Schafer merely voluntarily paid the real property taxes related to the Property. One who voluntarily pays the taxes upon real property of another cannot recover of the owner the amount so paid, unless by some valid contract or agreement, to which the person making the payment is a party or which he has a right to enforce, the landowner has obligated himself to repay. *Weberling v. Bursell*, 180 Minn. 283, 230 N.W. 654 (1930). In the present case, there is no agreement to which Thomas Schafer is a party, or which Thomas Schafer has a right to enforce, which personally obligates Florence Schafer to re-pay the taxes that he paid. No valid tax lien accrued to

Thomas Schafer, because he had no claim against the owner for the taxes that he voluntarily paid.

Northern Realty claimed an interest in the Property via a Quit Claim Deed from Thomas Schafer. On June 18, 2009, Northern Realty filed with the Registrar a claim of unregistered interest based on the quit claim deed. (APP 114-120.) On June 24, 2009, and pursuant to Minn. Stat. §508.70, Beachside filed with the Registrar a demand for discharge of Northern Realty's claim. (APP 121-123.)

Minn. Stat. §508.70 provides in relevant part as follows:

Unless the claimant has petitioned the court as provided in subdivision 1 and filed with the registrar of titles a certified copy of the petition, the claim shall terminate and be of no effect 90 days after the filing of a demand for discharge with attached affidavit regarding mailing. The registrar of titles shall not carry forward to new certificates of title the memorial of any claim that has terminated or has been discharged pursuant to this subdivision.

Minn. Stat. §508.70, subd. 4.

Northern Realty failed to petition the Court and file with the Registrar a certified copy of any such petition within 90 days after Beachside's demand for discharge, or anytime thereafter. Therefore, any alleged interest that Northern Realty asserted in the Property was terminated and discharged. Regardless, whatever Northern Realty acquired from Thomas Schafer could have only been the interest that Thomas Schafer had in the Property at that time. As explained below, Thomas Schafer did not have any interest in the Property at that time beyond his mere occupancy, and therefore Northern Realty did not acquire any interest in the Property.

Respondents also argued that the mechanics' lien of Evans Contractors was valid

because the work done by Evans was done under the authority of Thomas Schafer and Northern Realty. Pursuant to Minn. Stat. § 514.01, a lien only arises for improvements made “under contract with the owner of such real estate or at the instance of any agent, trustee, contractor or subcontractor of such owner.” “Owner,” as used in the mechanic’s lien statute, does not require proof of absolute ownership, but may include any interest to which the court may order sold. *Dunham Associates, Inc. v. Group INV, Inc.*, 223 N.W.2d 376 (Minn. 1974). In the *Dunham* case, the court clarified that any interest to which the court can order sold will support a lien, and further that for the lien to be valid, the lien holder must show what interest the “owner” owned in the land in order that the interest could be ordered sold in order to satisfy the lien, if there was an interest. In the *Dunham* case, the “owners” that authorized the lien holder’s work had unrecorded contract rights in the land. The court determined that unrecorded contract rights could not be sold to satisfy the lien, and therefore the lien was invalid.

Here, Respondents argued that both Thomas Schafer and Northern Realty “owned” the Property under the mechanics’ lien statute, because Thomas Schafer automatically owned the property upon Florence Schafer’s death, and because Thomas Schafer then deeded the property to Northern Realty. For the reasons explained below, however, neither Thomas Schafer nor Northern Realty ever owned any interest in the Property. Therefore, Thomas Schafer and Northern Realty were not owners who could authorize improvements pursuant to Minn. Stat. § 514.011. Therefore, the mechanics lien and subsequent redemption was invalid.

Finally, the District Court recognized that all of the Respondents’ claims to any

interest in the Property were based entirely on their argument that “Thomas Shafer [sic] is an heir of Florence Shafter [sic] by operation of law, even though Florence Shafter’s [sic] estate was not probated. Therefore, [Respondents] argue that Thomas Shafter’s [sic] assignment to [Northern Realty], Thomas Shafter’s [sic] assignment to Palladium, and Evans’ assignment to Palladium were all valid.” (ADD 6.)

Thus, if ownership of the Property did not automatically vest in Thomas Schafer upon Florence Schafer’s death in 2001, then Respondents have no claim to any interest in the Property. Here, such ownership did not automatically vest in Thomas Schafer for the reasons explained below. Therefore, Respondents have no claim to any interest in the Property.

B. Thomas Schafer did not acquire an assignable interest in the Property at Florence Schafer’s death because her estate was never probated and because no court had determined that Thomas Schafer was an heir of Florence Schafer before Beachside acquired the Property

There is no factual dispute that before Beachside acquired its interest in the Property that Florence Schafer, the owner of the Property prior to foreclosure, was long deceased, that no probate administration had commenced in Minnesota or any other state, and that no court had determined the heirs of Florence Schafer. Thus, any interest that Florence Schafer’s heirs may have ultimately obtained through the probate process in the Property was lost due to Beachside’s foreclosure that occurred years after Florence Schafer’s death, but prior to any determination of her heirs. As a result, no person or entity with a valid redemptive right redeemed from Beachside’s foreclosure, and Beachside should have been granted judgment as a matter of law over.

In short, the heirs of Florence Shafer were never determined before the foreclosure, the Sheriff sale or the end of the redemption period. Further, because the Property was already transferred to Beachside through foreclosure, determination of the heirs of Florence Shafer, as it relates to the Property, was moot long before the present action was even commenced. The District Court should not be allowed to go back in time and distribute the Property to the heirs of Florence Schafer now, because the Property was already transferred to Beachside before Florence Schafer's heirs could legally be determined.

Distribution of Florence Schafer's assets, including the Property at issue in this case, is governed by the Uniform Probate Code as adopted by Minnesota. *See generally* Minn. Stat. Chpts. 524 & 525. Pursuant to Minnesota law, a probate proceeding was required to be commenced within three years of Florence Schafer's death to determine Florence Schafer's heirs and to distribute her property. Minnesota Statutes Section 524.3-108 provides as follows:

No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absentee, or disappeared or missing person, at any time within three years after the death of the absentee or disappeared or missing person is established; and (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for

appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or three years from the decedent's death. These limitations do not apply to proceedings to construe probated wills, determine heirs of an intestate, or proceedings to determine descent. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this chapter which relate to the date of death. Nothing herein contained prohibits the formal appointment of a special administrator at any time for the purposes of reducing assets to possession, administering the same under direction of the court, or making distribution of any residue to the heirs or distributees determined to be entitled thereto pursuant to a descent proceeding under section 525.31 or an exempt summary proceeding under section 524.3-1203, even though the three-year period above referred to has expired.

Minn. Stat. § 524.3-108.

There is no dispute that Florence Schafer died in 2001, and therefore more than three years had passed since her death before the instant proceedings commenced. Thomas Schafer or any other person in interest could have petitioned for a descent decree to determine Florence Schafer's heirs and convey title to the property out of Florence Schafer's name under Minnesota law. Minnesota Statutes Section 525.31 provides:

Whenever any person has been dead for more than three years and has left real or personal property, or any interest therein, and no will or authenticated copy of a will probated outside this state in accordance with the laws in force in the place where probated has been probated nor proceedings had in this state, any interested person or assignee or successor of an interested person may petition the court of the county of the decedent's residence or of the county wherein such real or personal property, or any part thereof, is situated to determine the descent of such property and to assign such property to the persons entitled thereto.

Minn. Stat. §525.31.

Based on the foregoing, the proper procedure when more than three years has passed after a decedent's death is for a party in interest to petition for a decree of descent and distribution. Nevertheless, Thomas Schafer did not petition for any such decree. The point is now moot, because ownership of the Property was transferred to Beachside via foreclosure before the instant case was commenced. Ownership of the property did not "automatically vest" in Thomas Schafer upon Florence Schafer's death.

Indeed, Respondents' own actions show that they were well aware during the redemption period that Thomas Schafer did not own an interest in the Property and that a probate proceeding was required to determine heirs and distribute the Property. On June 18, 2009, Northern Realty drafted and recorded a Claim of Unregistered Interest, stating:

The undersigned is unable to register the interest herein claimed [Quit Claim Deed from Thomas Schafer] as commencement of probate proceedings of the Estate of Florence Schafer has not yet been forthwith at the time of this instrument being executed.

(APP 115.)

The Claim of Unregistered Interest was signed and sworn by Joe Yurecko, who is the Chief Manager of both Northern Realty and Palladium. (APP 16.) Therefore, Respondents knew, during the redemption period, that a probate proceeding was required in order to determine the heirs of Florence Schafer and distribute the Property to any such heirs. The Respondents also knew that the Claim of Unregistered Interest was merely conditional until the completion of any such probate proceedings.

The District Court, the Title Examiner and Respondents relied on several court

decisions in support of the incorrect premise that title to the Property vested in the alleged heirs of Florence Schafer at the moment of her death. None of these decisions, however, addresses the issue here, which is the involuntary transfer of the decedent's property through foreclosure prior to a legal determination of the heirs of the decedent.

First, the District Court cited to *Lightbody v. Lammers*, 98 Minn. 203, 108 N.W. 846 (1906). The law in Minnesota in this area was, however, substantially different over 100 years ago. The *Lightbody* Court, in fact, based its decision on an 1894 version of the foreclosure statutes, which permitted heirs to redeem from foreclosures:

The mortgagor, *his heirs*, executors, administrators or assigns, whose real property is sold in conformity to the provisions of this act, may, within twelve months after such sale, redeem such property as hereinafter provided, by paying the sum of money for which the same was sold, together with interest on the same from time to time of such sale.

Section 6041 of the General Statutes, 1894 (emphasis added), cited at 98 Minn. at 204, 108 N.W. 847

This statute has been amended to reflect Minnesota's modern probate process and no longer permits redemption by heirs:

When lands have been sold in conformity with the preceding sections of this chapter, the mortgagor, *the mortgagor's personal representatives* or assigns, within six months after such sale, except as otherwise provided in subdivision 2 or section 582.032 or 582.32, may redeem such lands, as hereinafter provided, by paying the sum of money for which the same were sold, with interest from the time of sale at the rate provided to be paid on the mortgage debt as state in the certificate of sale and, in no rate be provided in the certificate of sale, at the rate of six percent per annum, together with any further sums which may be payable as provided in sections 582.03 and 582.031.

Minn. Stat. §582.23(a). (emphasis added). For these same reasons, the District Court's reliance upon *Willis v. Jelick*, 27 Minn. 18, 6 N.W. 373, 374 (1880), is also misplaced.

Next, the District Court cited *Bemboom v. National Sur. Corp.*, 225 Minn. 163, 31 N.W. 2d 1 (1947), for the premise that title to property vests immediately in heirs upon the decedent's death, and is subject only to administration. *Bemboom* has no relevance to the present case. In *Bemboom*, there already was a probate proceeding established, and the administrator of the estate allegedly committed waste to real property owned by the decedent. The plaintiffs, alleged devisees of the decedent, commenced the action to seek damages against the administrator for negligence in failing to properly administer the estate. The court denied damages for the plaintiffs because there was no evidence presented that the devisees were owners of the land or that the plaintiffs were actually the decedent's widow and devisees. See 31 N.W.2d at 3. In other words, there had been no determination by the probate court of the decedent's heirs or distribution of the property. The holding referenced by the District Court and the Examiner relates to a completely separate claim by the plaintiffs that does not relate to real estate. The plaintiffs acknowledge that the court had denied their claim to the real estate and then requested the right to make a claim against an item of personal property in the form of an administrator's bond. The court again denied the plaintiffs' request. The full passage from the case is: "In this state, title to real estate passes to the heir at law and the devisees upon the death of the owner, subject only to the right to possession of the administrator when appointed by the probate court for purposes of administration. The administrator's right is sole, not joint with the heirs." See 31 N.W.2d at 4. The reference in this passage to real estate passing to heirs is mere dicta, because the issue was not before the court. The true issue addressed by the *Bemboom* court was the administrator's right to possession of the real estate, because the issue before the court was

whether the administrator properly cared for the property and therefore whether damages could be extracted from an administrator's bond. *Bemboom* actually supports the Petitioner's case, because, as stated above, the plaintiffs' claim to the land was denied because they failed to establish evidence that they were the decedent's heirs. Thus, the District Court's reliance on *Bemboom* is misplaced.

The District Court also cited to *In Re Butler's Estate*, 205 Minn. 60,284 N.W. 889 (1939). Again, *Butler* fails to address the key issue in the present case, which is the transfer of property to the Association prior to a determination of Florence Schafer's heirs and distribution to those heirs. In *Butler*, a decedent died leaving assets in the form of stock shares. The decedent's wife and three children entered into an agreement regarding the division of the stock shares, prior to issuance of a decree of distribution. The court's holding, is a determination that the probate court's decree of distribution would not interfere with the agreement of division previously entered into by the wife and children. The essential differences between *Butler* and the present case is that in *Butler* there was never a dispute as to *who the decedent's heirs actually were*, and further, there was no issue of the property of the estate being conveyed by operation of law to a third party prior to the determination of heirs. See 205 Minn. at 64, 284 N.W. at 891 ("We have in this case no question involving rights or claims of creditors nor conflict among the heirs themselves.")

In the present case, there has been no determination of Florence Schafer's heirs, and there had been no determination of heirs at the time the Property was involuntarily transferred through foreclosure to Beachside. The *Butler* court stated that the decree of distribution "determines merely to whom, and upon what conditions, the property passes,

and does not recognize or affect transfers or conveyances of the property made by heirs or devisees . . . amongst the heirs.” 205 Minn. at 64, 284 N.W. at 891. *A fortiori*, any determination of heirs or decree of distribution that would be made by the District Court now should not affect a transfer or conveyance of the Property to Beachside that occurred by operation of law prior to such determination. Therefore, *Butler* actually supports Beachside’s position by confirming that conveyances of the property prior to determinations of heirs should be affirmed.

Lastly, the District Court’s reliance on *Justen v. Oxbrow*, 209 Minn. 327, 296 N.W. 169 (Minn. 1941), for the premise that the absence of probate proceedings does not bar a decedent’s heir from asserting his or her rights to an interest in real property is again misplaced. Like the *Bemboom* decision, *Justen* has no relevance to the present case because it does not address the issue of an involuntary transfer of a decedent’s property before any determination of the decedent’s heirs. Instead, the court in *Justen* focused on the terms of the written lease agreement and the “practical construction” of those terms through the parties’ actions. In short, the *Justen* court’s holding has little if anything to do with probate matters, and it has no application here.

In sum, the Property at issue here was transferred to Beachside through foreclosure long before there was any determination of Florence Schafer’s heirs. As such, Thomas Schafer had no interest to convey to Respondents, and Respondents obtained no interest to the Property through such conveyances. Accordingly, Beachside, not respondents, is entitled to summary judgment granting the Property to it.

CONCLUSION

For the reasons set forth above, Beachside respectfully requests that this Court reverse the Order and Judgment of the District Court and remand the case to the District Court for entry of summary judgment in favor of Beachside and for the issuance of a new certificate of title for the Property in the name of Beachside.

Respectfully submitted,

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Dated: March 4, 2011

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CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,556 words. This brief was prepared using Microsoft Word 2007.

Respectfully submitted,

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