
NO. A11-1521

State of Minnesota
 In Supreme Court

Amos Graves,

Respondent,

vs.

Michael Wayman, et al., REA Group, Inc., C&M Real Estate Services
 Group, Inc. and Trademark Properties Group, LLC,

Defendants,

and

First Minnesota Bank,

Appellant.

APPELLANT FIRST MINNESOTA BANK'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED

I. Whether the Court of Appeals erred in concluding Appellant has no interest in the Property.

The issue of First Minnesota Bank's bona fide mortgagee status was extensively addressed at trial. (*See generally* Trial Tr.) The District Court concluded that First Minnesota Bank was a bona fide purchaser and held title to the Property, free and clear of the interests of any other party. (*See* A18; A42-A43.) Amos Graves appealed.

The Court of Appeals reversed the District Court and concluded that First Minnesota Bank was not a bona fide purchaser and held no interest in the Property whatsoever. *See Graves v. Wayman, et al.*, 816 N.W.2d 655, 670 (Minn. Ct. App. 2012), *review granted* (Minn. Sept. 18, 2012). The Court of Appeals reached this conclusion despite the fact that Graves never owned the property free of a mortgage and the property would not have been saved from a prior foreclosure, but for First Minnesota Bank's financing. The Court of Appeals also concluded that First Minnesota Bank should have inquired of Graves regarding his purported interest in the Property, despite the fact that any interest Graves held in the Property expired before First Minnesota Bank took its mortgage. The Court further concluded that Minnesota Statutes section 325N.17(f)(3) did not protect First Minnesota Bank's interest in the Property.

First Minnesota Bank petitioned for review of the Court of Appeals' decision, which this Court granted on September 18, 2012.

Most apposite cases and statutes:

- Stella v. Wells Fargo*, No. A11-1827, 2012 WL 3553123 (Minn. Ct. App. Aug. 20, 2012)
- Daml v. Meyers*, No. 07-4384, 2010 WL 7326389, *3 (D. Minn. Dec. 22, 2010)
- Stone v. Jetmar Props., LLC*, 733 N.W.2d 480, 488 (Minn. Ct. App. 2007)
- Miller v. Hennen*, 438 N.W.2d 366, 369 (Minn. 1989)
- Minn. Stat. § 325N.17(f)(3) (2007).
- Minn. Stat. § 325N.18 (2007).

STATEMENT OF THE CASE

In 2007, Wells Fargo foreclosed its mortgage on the St. Paul home (the "Property") of Amos Graves ("Graves") due to his financial default. A Sheriff's Sale was conducted on March 13, 2007. Graves' six-month redemption period expired on September 13, 2007. During the redemption period, Graves did not complete any loan applications to redeem the mortgage.

On August 15, 2007, Graves and his late wife met with Michael Wayman ("Wayman") at the Property. Wayman owned C&M Real Estate Services, Inc. ("C&M") and REA Group, Inc ("REA").¹ During the meeting, Graves signed a Quit Claim Deed and Purchase Agreement (the "Transaction"). Graves testified at trial that he cancelled the Transaction with Wayman the next day. However, Graves made approximately twenty monthly rent payments to Wayman pursuant to a Rent Back Agreement or Residential Lease that were ostensibly components of the Transaction, but which Graves testified he had either never signed or had cancelled.

C&M subsequently procured a loan from First Minnesota Bank ("FMB") to redeem the Property. FMB made the loan to C&M after Graves' redemption period expired. At the time the loan was granted, the only documents provided to FMB were a Quit Claim Deed and Purchase Agreement. The loan was secured by a mortgage on the Property granted to FMB by C&M. C&M subsequently defaulted on its loan and FMB

¹ C&M and REA are collectively referred to as "Wayman Entities." Where both Wayman and the Wayman Entities are discussed together, they are referred to as "Wayman Defendants."

foreclosed. FMB was granted a decree of foreclosure and was judicially declared the owner of the Property.

Graves then commenced the litigation underlying this appeal, claiming that he was entitled to a vendor's lien on the Property for unpaid sales proceeds resulting from the Transaction. FMB asserted that it was a bona fide purchaser and that Graves held no interest in the Property. The District Court, Judge Lindman presiding, initially held that FMB was not a bona fide purchaser, and awarded Graves a judgment against Wayman and the Wayman Entities. The findings signed by the District Court were essentially identical to the proposed findings submitted by Graves. All defendants brought motions for amended findings, arguing the findings were clearly erroneous.

The District Court granted FMB's motion, holding that FMB was a bona fide mortgagee. However, the Amended Order awarded Graves title to the Property, subject to FMB's mortgage. Because the District Court had previously awarded title to the Property to FMB in its foreclosure action, FMB brought a motion for clarification of the resulting ambiguity. At this time, Graves brought a motion for amended findings or a new trial, which FMB argued was improper under the Minnesota Rules of Civil Procedure. The District Court denied Graves' motion, granted FMB's motion, and declared that FMB, as a bona fide purchaser, owned the Property. Graves appealed.

On appeal, Graves sought title to the Property, asserting he cancelled the Transaction, despite the fact that his theory of recovery at trial was premised upon his sale of the Property. Graves also appealed the District Court's conclusion that FMB was a bona fide mortgagee. FMB argued it was a bona fide purchaser and its interest in the

Property was protected under the Minnesota Home Owners Equity Protection Act ("MHOEPA").

The Court of Appeals issued its decision on July 9, 2012.² The Court of Appeals held that FMB was not a bona fide mortgagee, concluding that FMB had both actual and implied notice of Graves' purported rights in the Property. The Court of Appeals reached this conclusion despite the fact that FMB proved its bona fide purchaser defense at trial and despite the fact that FMB did not have actual notice of facts that would have triggered a duty to inquire of Graves.

The Court of Appeals also concluded that FMB had implied notice of Wayman's violations of MHOEPA, despite the fact that, at the time it took its mortgage in the Property, FMB did not know that the transaction between Graves and Wayman may have been a foreclosure reconveyance. Finally, the Court of Appeals held that, even if FMB had been a bona fide purchaser, it held no interest in the Property because Graves cancelled the Transaction. The Court of Appeals reached this conclusion without addressing the protections provided to a bona fide purchaser where the foreclosure purchaser transfers or purports to transfer an interest in property in violation of MHOEPA. The Court of Appeals' decision failed to address the effect of numerous key issues, including the prior foreclosure by Wells Fargo, the prior foreclosure by FMB, the fact that Graves' interest in the Property had expired at the time FMB took its mortgage,

² See *Graves v. Wayman, et al.*, 816 N.W.2d 655 (Minn. Ct. App. 2012), *rev. granted* (Minn. Sept. 18, 2012).

and the fact that Graves had not claimed an interest in the Property other than a vender's lien.

Moreover, the Court of Appeals awarded Graves free and clear title to the Property, despite the fact that he never owned it free and clear, and did not redeem it following the Wells Fargo foreclosure. The Court of Appeals' decision is not supported by the facts or the law and should be reversed. Having been unjustly deprived of both the Property and \$145,000, the majority of which was used to pay off the Wells Fargo foreclosure, FMB petitioned this Honorable Court for review of the Court of Appeals' decision.

STATEMENT OF THE FACTS

I. The Property

Graves purchased the Property, located at [REDACTED], Saint Paul, Minnesota, with his late wife in 1999. (A23; Trial Tr., pp. 27-28.)³ To finance Graves' purchase of the Property, he received a loan from Norwest Mortgage, for which he granted a mortgage on the Property. (A23; Trial Tr., pp. 29, 31-33.) The mortgage was subsequently assigned to Wells Fargo. (A23; Trial Tr., pp. 34-35.)

On March 13, 2007, as a result of Graves' financial default, Wells Fargo foreclosed its mortgage and purchased the Property at a Sheriff's Sale. (A23; Trial Tr.,

³ Citations of "A__" refer to Appellant's separately-bound Addendum and citations of "APP__" refer to Appellant's separately-bound Appendix.

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).

pp. 35, 36.) Graves' redemption period expired on September 13, 2007. (A23; Trial Tr., pp. 36, 80.)

Graves testified that between March 13 and August 15, 2007, he did not speak with anyone at Wells Fargo about the foreclosure. (Trial Tr., p. 82.) Although Graves visited various organizations to inquire about foreclosure relief, no one returned his calls and he never filled out a loan application during his redemption period. (Trial Tr., pp. 37-38, 82-83.) Graves never had funds to redeem the Property. (Trial Tr., pp. 83-84.)

II. The Transaction

On August 15, 2007, Wayman met with the Graveses at the Property. (A24; Trial Tr., pp. 45-46.) Both prior to and during that meeting, Wayman and Graves' wife discussed the Transaction while Graves was not present. (Trial Tr., p. 103.) Graves only attended a portion of the August 15, 2007, meeting during which he and his wife entered into the Transaction. (Trial Tr., pp. 103.)

According to Graves, the Transaction involved the Graveses transferring their interest in the Property to the Wayman Entities, who would redeem the Property from foreclosure and give the Graveses an opportunity to repurchase the Property at a later date. (See Trial Tr. pp. 85-91.) The Transaction included a Quit Claim Deed (APP93), Purchase Agreement (APP94), Residential Lease (APP95-96), Rent Back Agreement (APP97), and Cancellation of Contract Notice (APP98). (See A25; Trial Tr., pp. 46-48.)⁴

⁴ Graves testified at his deposition that Wayman read the Residential Lease to Graves at the meeting; however, at trial, Graves disavowed this testimony. (Trial Tr. 89-90.)

Graves signed the Purchase Agreement and Quit Claim Deed, (Trial Tr., pp. 46-48), but testified he did not sign the Rent Back Agreement or Residential Lease. (Trial Tr., p. 48-49, 126-128.)⁵ On September 5, 2007, with eight days remaining during Graves' redemption period, Wayman recorded the Quit Claim Deed, legally transferring the Property to the Wayman Entities. (A28; APP99.)

III. FMB's Loan To C&M To Redeem The Property

On September 7, 2007, with 6 days remaining in Graves' redemption period, Wayman sent an e-mail to Bryan Guse, a former FMB loan officer,⁶ regarding financing to redeem the Property. (See APP100.)⁷ Prior to the Transaction, Wayman and the Wayman Entities had a banking relationship with FMB, whereby they obtained financing pursuant to a master loan agreement to operate Wayman's business of redeeming Sheriff certificates. (Trial Tr., p. 142.)

On September 11, 2007, REA granted a \$100.00 mortgage on the Property to C&M, which enabled C&M to redeem the Property as a junior creditor. (A28.) See also Minn. Stat. § 580.24 (2007). That same day, C&M filed a Notice of Intention to Redeem.

⁵ As with numerous other aspects of his testimony, Graves' testimony regarding whether he signed the Rent Back Agreement and the Residential Lease is inconsistent between his deposition and the trial. (See Trial Tr., pp. 90, 127-28.)

⁶ Mr. Blair testified that Mr. Guse was a former employee of FMB and that he did not know Mr. Guse's current whereabouts. (See Trial Tr., p. 143.)

⁷ Amended Finding 29 indicates the date as August 21, 2007. (A35, ¶ 29.) This is most likely a typographical error.

(A28.) On September 13, 2007, the last day of Graves' redemption period, Wayman faxed the Quit Claim Deed and Purchase Agreement to FMB. (A28.) The Quit Claim Deed and the Purchase Agreement were the only documents FMB received pertaining to the Transaction until *after* C&M defaulted on its loan from FMB. (Trial Tr., p. 178.)

On September 17, 2007, four days *after* Graves' redemption period expired, FMB granted a loan to C&M in the amount of \$145,000. (A29.) That same day, C&M redeemed the Property from the Wells Fargo foreclosure as a junior creditor. (APP104-105.) FMB's loan to C&M was memorialized by standard bank loan documents and was secured by a mortgage on the Property. (A29; Trial Tr., p. 137.) The HUD-1 Settlement Statement, prepared by ATA Title, indicates that \$110,105.34 was to be paid to the Ramsey County Sheriff and \$30,577.11 was to be paid to Graves. (APP124.)⁸ FMB's loan was closed through a title company. (Trial Tr., p. 149.) At trial, Charles Blair, executive vice president at FMB, testified he was not familiar with ATA Title. (Trial Tr., p. 160.)

IV. FMB's Foreclosure Litigation

C&M subsequently defaulted on its obligations to FMB. (Trial Tr., p. 165.) Consequently, FMB sued C&M and Wayman in the matter captioned *First Minnesota Bank v. Michael Wayman et al.*, Ramsey County Court File No. 62-CV-08-10362 (the "Foreclosure Matter"). (See A31; APP79-83.) The Foreclosure Matter was presided over

⁸ The Court of Appeals' statement that the closing was done at FMB is also erroneous. See *Graves*, 816 N.W.2d at 660. The loan was closed through a title company. (See Trial Tr. 149.)

by Judge Lindman. (*See* APP79.) In the Foreclosure Matter, FMB sought various relief, including a decree of foreclosure on the Property. (*See generally* APP79-83.) In its Order dated May 20, 2009, the District Court partially granted FMB's motion for summary judgment and held:

(e) All Defendants and all others who may claim an interest in the Properties are forever barred and foreclosed from any equity of redemption, equity of lien or interest in the Property, except the right to redeem from the foreclosure sale(s) as provided by statute.

(APP81.) The District Court's Order Confirming Sheriff's Sale was filed September 29, 2009, and the foreclosure on FMB's mortgage became fully effective. (*See* APP87-92.) Graves did not appear or intervene in the Foreclosure Action despite the Ramsey County Sheriff serving notice of the Sheriff's Sale upon the occupant of the Property on June 17, 2009.⁹ (*See* APP75.)

V. The District Court Awarded FMB Title To The Property As A Bona Fide Mortgagee.

A. Graves' litigation.

Graves commenced the litigation underlying this appeal in May 2009 and subsequently filed an Amended Complaint. (*See generally* APP1-34.) Judge Lindman

⁹ The Certificate of Service indicates service was completed upon "Mos Mosgreves." This most likely refers to Amos Graves, as Graves testified that he occupied the Property from 1999 until at least the end of trial (*see* Trial Tr., p. 27), and the Certificate of Service states that service was completed upon the "sole occupant". (*See* APP75.)

also presided over this litigation.¹⁰ Graves' Amended Complaint alleged multiple counts and sought both an equitable mortgage and vendor's lien. (*See generally* APP1-34.) As to FMB, Graves alleged he was entitled to own the Property free and clear of FMB's mortgage, despite the fact that his redemption period under the Wells Fargo foreclosure had expired and the Property would not have been redeemed from the Wells Fargo foreclosure but for FMB's financing. (*See generally* APP1-34.)

Judge Lindman issued a pretrial order requiring Graves to select which theory of liability he intended to pursue at trial. (Pretrial Order, dated June 14, 2010; *see also* Trial Tr., p. 8-10.) Graves selected a sale theory and asserted at trial that, because the Property was sold, he was entitled to unpaid sales proceeds and a vendor's lien to secure those proceeds. (*See* Trial Tr., p. 8-10; APP63-64.)

B. At trial, Graves gave inconsistent and admittedly false testimony regarding the Transaction.

The trial in this matter was conducted on October 6, 2010. (Trial Tr., p. 1.) During the course of trial, Judge Lindman necessarily addressed issues of credibility, including Graves twice admitting that he had lied in prior sworn testimony regarding the Transaction. (*See e.g.*, Trial Tr., pp. 90-91, 127-28.)

¹⁰ In the present case, Judge Lindman took judicial notice of key documents from the Foreclosure Matter, including the Certificate of Service and Order Confirming Sheriff's Sale. (Trial Tr. 132.) *See In re Welfare of Clausen*, 289 N.W.2d 153, 157 (Minn. 1980) ("The function of judicial notice is to expedite litigation by eliminating the cost or delay of proving readily verifiable facts (citation omitted). Judicial notice of records from the court in which a judge sits would appear to greatly serve this function and satisfy the requirement of [Minnesota Rule of Evidence] 201(b)(2).").

Graves proceeded at trial under a sale theory, seeking a vendor's lien to secure unpaid proceeds from the sale of the Property. (*See* Trial Tr., p. 8-10; APP63-64.) Notwithstanding his selected theory, Graves testified that he cancelled the Transaction, although the trial record demonstrates that he may have cancelled only the Rent Back Agreement. (*See* Trial Tr., pp. 55-56, 105.) In the following exchange, Trial Exhibit 21 refers to the Rent Back Agreement, and Trial Exhibit 22 refers to the Cancellation of Contract Notice:

The Court: I'm sorry counsel, maybe I missed something along the way. I don't understand, this is a cancellation of contract notice for what contract?

Mr. Steinert: This is just – says cancellation of contract notice, exactly the effect of this cancellation will be more or less under the 325N cancellation rules whether it's sufficient but it's a form that was provided.

The Court: But what I'm saying from the testimony so far and the exhibit itself, I'm not sure what the exhibit is intended to cancel.

Mr. Pierce: I can speak to it if you would like. If you look at Exhibit 21, the top right hand side has a fax number of Page 17. Exhibit 22 top right is Page 18. It's my understanding Exhibit 22 relates to 21.

The Court: I see, that that is what I didn't understand. You may proceed.

(Trial Tr., pp. 55-56.) Graves did not dispute the clarification of what he had cancelled.

(*See generally* Trial Tr., pp. 55-56.)

Despite his purported cancellation, Graves continued to occupy the Property after his redemption period expired and made monthly payments to Wayman from September 2007 to May 2009. (Trial Tr., pp. 73-74, 76, 78.) These payments were for \$1,302.00, the monthly rent amount listed in both the Rent Back Agreement (APP97) and Residential Lease (APP95-96), both of which ostensibly contain signatures of Graves and

his late wife, although Graves testified neither he nor his wife had signed them. (Trial Tr., pp. 48-49, 73-74, 78, 127-28.) Graves stated that he made these payments because he desired to comply with his understanding of the Transaction. (Trial Tr., p. 78.) Graves stopped making payments in June 2009 and proceeded to live at the Property, rent and mortgage free, at least through the end of trial. (*See* Trial Tr. 27, 76.)

C. At trial, FMB presented testimony establishing its status as a bona fide mortgagee.

At trial, Blair testified regarding FMB's bona fide purchaser defense. (Trial Tr., p. 131.) Blair has worked in the banking industry for forty-four years. (Trial Tr., p. 138.) As an executive vice president of FMB, Blair is generally familiar with loans conducted through the bank, its loan policies and procedures, and the loan at issue in this matter. (Trial Tr., p. 133.) In the normal course of business, FMB keeps all correspondence related to each loan it makes. (Trial Tr., p. 156.) The only correspondence FMB had pertaining to the Property at the time it made its loan to C&M were an e-mail from Wayman to Bryan Guse and a fax from Wayman transmitting the Purchase Agreement and Quit Claim Deed. (Trial Tr., pp. 155-158.) At the time of the loan, the Quit Claim Deed and Purchase Agreement were the *only* documents FMB had regarding the Transaction and FMB had no information indicating that Graves may have retained an interest in the Property. (Trial Tr., pp. 137-138, 178-79.) The other documents involved in the Transaction were not given to FMB until at least six months after Graves' redemption period for the Wells Fargo foreclosure had expired, when C&M defaulted on its obligations to FMB. (Trial Tr., p. 178.)

Blair testified on each element of the bona fide purchaser defense. (*See* Trial Tr. 138-39.) There is no dispute that FMB did not issue a loan to purchase the Property and did not take its interest in the Property until September 17, 2007. There is likewise no dispute that \$110,105.34 of the loan proceeds from FMB to C&M was used to redeem the Property *after* Graves' redemption period had expired, but during the additional seven-day period available only to junior creditors. (Trial Tr., p. 176.) *See also Graves*, 816 N.W.2d at 664. Blair further testified that FMB did not make the loan to C&M to take advantage of Graves, as there would be no reason for FMB to “put itself in that position.” (Trial Tr., pp. 138-39.)

As to the issue of notice, Blair testified that FMB made the loan to C&M without knowledge of any interest Graves may have alleged in the Property. (Trial Tr., p. 139, 179.) Blair testified that Wayman provided the Rent Back Agreement to FMB only *after* C&M had defaulted on its loan to FMB. (Trial Tr., p. 178.) There was nothing in the trial exhibits or the loan file that indicated FMB should have been aware of any interest Graves purportedly retained in the Property at the time FMB took its mortgage in the Property. (*See* Trial Tr., p. 179.)

Blair further testified that FMB reviews documents prior to loan closing, but also relies upon title opinions from title companies. (Trial Tr., p. 143-144.) Blair testified that FMB relies upon title companies in order to verify that borrowers have clear title to property prior to lending money. (Trial Tr., p. 164.) In this matter, FMB procured a title policy on the Property, a preliminary portion of which was introduced in evidence. (*See*

APP121-123.) Schedule B, Section II "Exceptions," of the title policy contains the following relevant exception:

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction. . . . Subject to the interest of Carol A. Saunders and Amos Graves in the insured property.

(APP123) This exception was initialed on the preliminary title policy. (*See* Trial Tr., pp. 146, 180; APP123.) Regarding these initials, Blair testified that the initials indicated each exception "had been addressed at the time of the closing of the loan" by the title company. (Trial Tr., p. 146.) Blair testified:

Q: I believe your testimony was sir, when we were dealing with the title insurance or title opinion, the initials on the side indicated all of those issues had been taken care of?

A: That is what that means.

Q: At the time of closing, any issues relating to Amos Graves was resolved by the closing company?

A: That's correct.

Q: Again, nothing to put you on notice that you should call them and say hey do you have an interest?

A: That's correct.

Q: As far as you know, it was all extinguished, no interest whatsoever.

A: That's correct.

(Trial Tr., p. 180.)

D. District Court Orders

The District Court issued Findings of Fact, Conclusions of Law, and Order for Judgment on January 18, 2011 ("First Order"). (A45-70.) Following the District Court's

First Order, all defendants filed motions for amended findings. (*See* APP65-66.)¹¹ Graves submitted responsive briefs, and was present at the motion hearing. The District Court granted FMB's motion and issued Amended Findings of Fact, Conclusions of Law, and Order for Judgment on April 27, 2011 (the "Amended Order"). (*See* A21-43.)

In its Amended Order, the District Court found that Graves cancelled the Transaction on August 16, 2007. (*See* A27.) However, as noted previously (*supra* at pp. 10-12), it is not clear what part of the Transaction Graves purportedly cancelled. The District court further concluded FMB was a bona fide mortgagee and held: "On this record, this Court finds nothing that should disqualify FMB from its status as a bona fide mortgagee." (A42-43.) Additionally, the court found that, even if FMB had inquired regarding Graves' interests:

... they would only have been made aware of the limited extent of Graves' interest in the property. A title search would have shown that a previous foreclosure had occurred, the redemption period had expired, the property had been redeemed, and that Graves continued to occupy the premises pursuant to a Rent Back Agreement. Under the circumstances of this case, FMB's status would not have been affected by those disclosures.

(A42-43.)

The trial court addressed Graves' admission to lying during his deposition by noting:

At trial Defendants sought to impeach Plaintiff for false testimony both in his pretrial deposition and again at trial. This Court was present during the

¹¹ FMB believed there were other Findings that were clearly erroneous, but only moved to amend those Findings that related to itself.

trial testimony. During his trial testimony, the Plaintiff became frustrated and visibly upset with the tone of the cross-examination and the accusations made against him. While Plaintiff admitted testifying falsely on some matters, the court, who must weigh the evidence provided at a court trial, is satisfied that not all of his testimony should be disregarded. . . .

(A24-25, n.2.)

In its Amended Order, the trial court awarded Graves title to the Property, subject to FMB's interest as a bona fide mortgagee. (A43.) However, in the Foreclosure Matter, of which the District Court took judicial notice, FMB had previously been awarded title to the Property. (See APP79-83.) Thus, the trial court's Amended Order created a situation where two unrelated parties held title. (See A43; APP79-83.) Based upon this inconsistency, FMB brought a Motion to Clarify Findings or Correct Clerical Mistakes. (See A67-68.) Contemporaneous with FMB's motion, Graves brought a Motion for Amendment of Findings of Fact, Conclusions of Law or Order for Judgment or, in the Alternative, a New Trial, seeking to amend the District Court's Amended Order. (APP69-70.) In this motion, Graves raised the issues of conclusive evidence and improper bona fide purchaser standard. (See APP69-70.) FMB opposed Graves' motion, as it was improper under the Minnesota Rules of Civil Procedure, which do not permit a second motion to amend. The trial court denied Graves' motion. (See A20.)

On June 14, 2011, the District Court issued its final Order, which provided:

Based upon all the files, records and proceedings herein, this Court finds:

- 1) That the subject property was purchased from foreclosure by First Minnesota Bank, a bona fide purchaser and highest bidder. The redemption period having expired, First Minnesota Bank is the owner of the premises free and clear of any encumbrances of the parties.

ACCORDINGLY, IT IS HEREBY ORDERED:

- 1) That First Minnesota Bank owns the subject property free and clear of encumbrances of other parties.

(See A18.)

Graves appealed.

VI. The Court Of Appeals Reversed The District Court And Awarded Graves Title To The Property, Free And Clear Of All Mortgages.

As discussed more thoroughly throughout this brief, the Court of Appeals reversed the District Court and held that FMB was not a bona fide purchaser. The Court of Appeals erroneously concluded that FMB failed to prove it lacked actual or implied notice of Graves' purported cancellation of the Transaction. *See Graves*, 816 N.W.2d at 667. This determination was primarily based upon the fact that FMB did not call Brian Guse to testify regarding his knowledge of the Transaction. *See id.* at 666-67. The Court of Appeals further concluded that Minnesota Statutes section 325N.17(f)(3) did not protect FMB's interest in the Property after improperly concluding that FMB had implied notice of Wayman's MHOEPA violations. *See id.* at 668-69. Finally, the Court of Appeals, without addressing the additional protections provided by section 325N.17(f)(3), declared that, even if FMB was a bona fide purchaser, it had no interest in the Property. *See id.* at 669. The Court of Appeals' decision granted Graves free and clear title to the Property, despite the fact that he had never owned the Property free and clear and failed to redeem it under the Wells Fargo foreclosure. *See id.* FMB petitioned

for and was granted review of the Court of Appeals' decision. (See Sept. 18, 2010 Order.)

STANDARD OF REVIEW

– A district court's conclusions of law are reviewed *de novo*. See *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989). A district court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses." Minn. R. Civ. P. 52.01 (2011). When reviewing mixed questions of law and fact, an appellate court corrects erroneous applications of law, but must accord the district court discretion in its ultimate conclusions, thus the court reviews such conclusions under an abuse of discretion standard. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. Ct. App 2002). A District Court's correct decision will not be reversed because it was based on the wrong reasoning. See *State v. Wolkoff*, 250 Minn. 504, 509, 85 N.W.2d 401, 405 n.10 (Minn. 1957).

ARGUMENT

FMB petitioned this Honorable Court for review of the Court of Appeals' inequitable decision, which awarded Graves free and clear ownership of the Property. As an initial matter, Graves never owned the Property free and clear; he still owed more than \$100,000 to Wells Fargo on his original mortgage when Wells Fargo foreclosed. Additionally, Graves' lost all interest in the Property, even if he had cancelled the Transaction, because his redemption period expired before FMB ever took an interest in the Property. Graves never filled out a single application for financing during the

redemption period for the Wells Fargo foreclosure and never possessed the ability to redeem the Property. But for FMB's mortgage loan to C&M, the Property would not have been redeemed and Graves would not have been able to live in the property from September 14, 2007 until at least the end of trial in October 2010, including fifteen months during which he lived completely rent and payment free at FMB's expense. Thus, even though FMB paid Wells Fargo \$110,105.34—money which Graves indisputably owed to Wells Fargo—the Court of Appeals gave Graves a free house, owing neither Wells Fargo nor FMB.

In addition to this inequitable result, the Court of Appeals' holdings regarding FMB's status as a bona fide purchaser are also erroneous. FMB established its status as a bona fide purchaser at trial and the District Court's determination on this issue is entitled to deference. FMB had no notice of Graves' purported rights in the Property and did not have sufficient notice of facts that triggered a duty to inquire of Graves. Moreover, FMB did not have a duty to inquire regarding possible violations of MHOEPA because, at the time FMB took its mortgage in the Property, it did not know the Transaction was a foreclosure reconveyance. Finally, contrary to the Court of Appeal's conclusion, FMB's interest in the Property is protected under MHOEPA, which provides greater protections to a bona fide purchaser than the common law or the Recording Act.

I. THE COURT OF APPEALS' DECISION IGNORED THE EQUITIES BETWEEN THE PARTIES AND IMPROPERLY FAVORED GRAVES.

A. The Court of Appeals Improperly Gave Graves A Free House At FMB's Expense, Despite The Fact That Graves Never Owned The House.

Lawyer and economist Faustino Ballvé wrote:

The aim of justice is, as the Romans used to say, to give each his due, and in order for each to be given what is his, *it is necessary that it already belong to him*; to "give", in this sense, means to protect the right of possession . . . Only when each man thereby gets what belongs to him, and someone wants to take it away from him, does a question of justice arise.

Faustino Ballvé, *Essentials of Economics: A Brief Survey of Principles and Policies* (Arthur Goddard trans., Princeton 1963) (emphasis added). The Court of Appeals' decision disregarded fundamental notions of justice by giving Graves ownership of the Property, at the expense of FMB, despite the fact Graves never owned the Property free and clear.

It is an inescapable fact, to which the Court of Appeals apparently assigned little importance, that this matter began with Graves' financial default on a loan from Wells Fargo, which foreclosed its mortgage on the Property. Graves' redemption period following that foreclosure expired before FMB took any interest in the Property. Indeed, Graves had no interest in the Property at the time FMB granted its loan to C&M. If, as the Court of Appeals declared, Graves' cancellation of the Purchase Agreement precluded any subsequent rights in the property through Wayman, the logical conclusion of the court's reasoning is that title should not revert to Graves because his redemption period expired and he did not redeem.

Graves no longer held any interest whatsoever in the Property and admittedly never had the ability to redeem it. The Property was already lost to Graves and it would not have been redeemed during C&M's extended redemption period, but for FMB's financing. It is, therefore, an incredibly unjust result that the Court of Appeals granted Graves free and clear title at the direct expense of FMB when he never owned the Property to begin with.

The District Court's grant of title to FMB was proper in light of the fact that it was FMB's funds that redeemed the Property from the prior foreclosure. Accordingly, the Court of Appeals' decision should be reversed and the District Court's holding that FMB is a bona fide purchaser reinstated.

B. The Court of Appeals Improperly Considered The Effects Of Graves' Purported Cancellation, But Refused To Consider Whether Graves' Actually Cancelled The Transaction.

The Court of Appeals first dispensed with FMB's argument that, on appeal, Graves disavowed his theory of the case at trial—that he was entitled to sale proceeds and a vendor's lien to secure them—and argued that he was instead entitled to the property because he cancelled the Transaction. *See Graves*, 816 N.W.2d at 662-63. This theory on appeal contradicted the basis of the District Court's award to Graves at trial. The Court of Appeals recognized that it "generally only considers issues that were presented to and considered by the district court," but it went on to conclude that "justice requires our consideration of Graves's cancellation of the [Transaction] and the legal effect of that cancellation on FMB's interest." *Id.* at 663.

The Court of Appeals' concern for justice was absent, however, when FMB questioned the validity of Graves' purported cancellation. *See id.* at 669. The Court of Appeals reasoned that the District Court declared the Transaction void and FMB had not filed a notice of appeal challenging that conclusion. *Id.* It is inequitable that the Court of Appeals gave Graves appellate consideration of an issue that circumvented the District Court's order and Graves' own trial theory, because justice so required, but then refused to address the factual accuracy of that basis. Moreover, the very fact that Graves continued to seek alternative theories of recovery even on appeal—*i.e.*, that he both sold the Property and was entitled to proceeds secured by a vendors lien and that he cancelled the Transaction and was entitled to the Property—is an implicit acknowledgment that there remained an issue as to whether the Transaction was cancelled. In essence, Graves sought to circumvent his theory at trial in order to obtain a better result after he was unsatisfied with the results of that theory at the District Court.

The Court of Appeals' reasoning on this issue fails to recognize that applying Graves' purported cancellation was not simply a matter of justice requiring consideration of a fact. Rather, it constitutes a disavowal of the entire premise upon which the parties went to trial. That this was the underling framework of the trial is demonstrated both by Graves' selected theory of recovery (*see* Trial Tr., p. 8-10; APP63-64) and by the fact that the District Court's award to Graves against Wayman was for *unpaid sale proceeds* and related exemplary damages. (*See* A40.) Graves elected to pursue a theory that he had sold the Property. FMB should not be required to have appealed an issue that was not a trial theory and that did not affect the District Court's judgment in favor of FMB.

Moreover, Graves should not be permitted to now reverse his chosen theory to seek a different remedy, simply because he disliked the result.

The Court of Appeals failed to consider that Graves was awarded a judgment against the Wayman Entities for the unpaid sale proceeds *and* clear title to the Property, while FMB is left with the uncompensated loss of \$145,000. Even setting aside the Court of Appeals' treatment of these issues, however, as discussed in further detail below, FMB's interest in the property is protected under the plain language of Minn. Stat. § 325N.17(f)(3).

II. THE COURT OF APPEALS IMPROPERLY APPLIED A HEIGHTENED STANDARD OF PROOF TO ITS REVIEW OF THE DISTRICT COURT'S FACTUAL DETERMINATION THAT FIRST MINNESOTA WAS A BONA FIDE PURCHASER.

In its decision, the Court of Appeals appears to have applied an inappropriately heightened burden of proof to its review of the facts in this case. The Court of Appeals concluded that FMB was not a bona fide purchaser, *see Graves*, 816 N.W.2d at 667, and was not entitled to the protections of section 325N.17(f)(3), *see id.* at 668-69, after improperly concluding that FMB failed to meet its burden of proof when it did not call Guse to testify. *See id.* at 665-669. These conclusions ignore the evidence FMB presented at trial and fail to give due deference to the District Court's determination on factual issues.

A. The Preponderance Of The Evidence Standard Does Not Require That Evidence Be Unequivocal Or Remove All Reasonable Doubt.

Because it seeks the protection of bona fide purchaser status, FMB must prove its status by a preponderance of the evidence. *See MidCountry Bank v. Krueger*, 782

N.W.2d 238, 244 (Minn. 2010); *Miller v. Hennen*, 438 N.W.2d 366, 369 (Minn. 1989). As with proving bona fide purchaser status, FMB must establish it took its mortgage in the Property without notice of Wayman's violations of MHOEPA.¹² See Minn. Stat. § 325N.17(f)(3). Again, the burden of proof is a preponderance of the evidence. See *State v. Alpine Air Products, Inc.*, 500 N.W.2d 788, 790 (Minn. 1993) ("When the legislature says nothing about the standard of proof to be used, this is regarded as a signal that the legislature intended the preponderance of the evidence standard."); accord *C.O. v. Doe*, 757 N.W.2d 343, 353 (Minn. 2008).

Under this burden of proof, "[i]t is not required that the evidence be unequivocal or remove all reasonable doubt." See *Carpenter v. Nelson*, 257 Minn. 424, 427, 101 N.W.2d 918, 921 (Minn. 1960). Rather, it requires only that the fact be more probable than not. See *In re Source Code Evidentiary Hearings in Implied Consent Matters*, 816 N.W.2d 525, 538-39 (Minn. 2012) ("The preponderance of the evidence standard requires that to establish a fact, 'it must be more probable that the fact exists than that the contrary exists.'") (quoting *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004)).

"Whether one is a good-faith purchaser is a factual determination that will be sustained unless the reviewing court has a firm and definite impression that a mistake has

¹² Although this issue has not been previously addressed by Minnesota courts, FMB does not dispute, for purposes of this appeal, the Court of Appeals' conclusion that, "as with bona fide-purchaser status, a third party has the burden of proving that it received its interest in a property without notice of a violation of the MHOEPA." *Graves*, 816 N.W.2d at 667-68 (citing *MidCountry Bank*, 782 N.W.2d at 244).

been made." *Stone v. Jetmar Props., LLC*, 733 N.W.2d 480, 488 (Minn. Ct. App. 2007) (citing *Miller*, 438 N.W.2d at 369).

B. The Court Of Appeals Improperly Concluded That FMB Failed To Present Evidence Of Guse's Lack Of Knowledge.

The Court of Appeals decision hinged, in part, upon the fact that FMB did not call Guse to testify regarding whether FMB had actual or implied notice of Graves' purported interest in the Property. *See, e.g., Graves*, 816 N.W.2d at 665-666 ("By failing to present evidence about Guse's knowledge or lack thereof, [FMB] failed to meet its burden of proving that it was without actual notice of the rights or interests of persons in possession of the residential real property and that it was without actual notice of a violation of the MHOEPA."). The Court of Appeals reasoning was essentially that Guse was an agent of FMB, so his knowledge was imputed to FMB, and, because FMB failed to call him to testify, his knowledge of Graves' purported interest and Wayman's MHOEPA violations would be presumed. *See generally id.* However, the Court of Appeals' conclusions as to Guse are based upon an inaccurate determination that FMB "fail[ed] to present evidence about Guse's knowledge or lack thereof[.]" This determination ignores the evidence FMB presented.

On this issue, the Court of Appeals' statement, that "[n]o record evidence reveals the extent of Guse's knowledge on or before September 17," does not comport with the record. The evidence presented by FMB indicates that the Wayman's email to Guse on September 7 was the first that FMB learned of the Property. FMB demonstrated that, on September 13, 2007, Wayman faxed the Purchase Agreement and the Quit Claim Deed to

FMB. These communications were in FMB's loan file. Blair testified that these were the only communications in FMB's loan file between Wayman and Guse related to the Property and that, until C&M defaulted on its loan, the only documents FMB had relating to the Transaction were the Purchase Agreement and Quit Claim Deed. At trial, Blair further testified that it is the practice of FMB to maintain copies of all correspondence in its loan files. A determination that Guse had actual knowledge of additional facts not contained in FMB's file would require the conclusion that Guse received additional correspondence and disposed it or failed to record it in the file, in direct contravention of FMB's policies.

Focusing on Guse's absence overlooks the logic of the situation: it strains credulity to suggest that Wayman, who was FMB's contact with the Transaction, would have undertaken to defraud Graves, but nevertheless informed Guse that he had violated MHOEPA and that Graves cancelled the Transaction. The Court of Appeals' decision can only be supported if, contrary to the evidence presented by FMB, one believes Wayman informed Guse of the Cancellation and Guse either disposed of the documentation or failed to record the communication in contravention of bank policy and allowed the loan to close, again in contravention of Blair's testimony that the bank verifies borrowers have clear title to property prior to lending money. Furthermore, the inference that Guse possessed such knowledge and nevertheless put FMB into a

position to take advantage of Graves directly contradicts Blair's testimony that there is no reason for the bank to put itself into such a position.¹³

The law requires a party claiming protection as a bona fide purchaser to prove its status only by a preponderance of the evidence, *see MidCountry Bank*, 782 N.W.2d at 244, it does not require the evidence to be unequivocal or to remove all reasonable doubt. *See Carpenter*, 257 Minn. at 427, 101 N.W.2d at 921 (discussing preponderance of the evidence standard). FMB met this burden at trial by presenting everything in its file and by demonstrating that nothing available to it at the time of the loan indicated that FMB had actual knowledge of Graves' purported rights in the Property or of Wayman's MHOEPA violations. The Court of Appeals' apparent insistence that FMB disprove every possible theory of imputable knowledge, no matter how unlikely, placed an inappropriately heightened burden upon FMB. Because the Court of Appeals' "firm and definite impression that the district court made a mistake" was based upon this apparently improperly heightened standard, its decision should be reversed. *See Johnson v. City of Minneapolis*, 667 N.W.2d 109, 115 (Minn. 2003) ("Having concluded that the court of appeals applied an improper standard, we generally would either proceed to apply the correct standard or remand to the court of appeals for application of the proper standard.").

¹³ The Court of Appeals also failed to acknowledge the fact that Blair testified he was unaware of Guse's whereabouts.

The District Court, which was required to weigh the credibility of the evidence before it, judged that FMB had met its burden: "On this record, this Court finds nothing that should disqualify FMB from its status as a bona fide mortgagee." (A43.) Unlike the District Court, the Court of Appeals was not in a position to make credibility judgments based upon the record, which is why the law requires heightened deference to the District Court's factual determinations regarding whether a party was a bona fide purchaser. *See Stone*, 733 N.W.2d at 488 (citing *Miller*, 438 N.W.2d at 369.) Accordingly, FMB respectfully requests that this Honorable Court reverse the Court of Appeals' determination that FMB failed to present evidence of Guse's lack of knowledge. In the absence of the knowledge imputed from Guse to FMB by the Court of Appeals, there is no basis for finding that FMB had actual or implied knowledge of Graves' purported interest or Wayman's MHOEPA violations. Consequently, the District Court's judgment that FMB was a bona fide purchaser, entitled to unencumbered ownership of the Property, should be reinstated.

III. FIRST MINNESOTA IS A BONA FIDE PURCHASER.

The Court of Appeals improperly concluded that FMB was not a bona fide purchaser of the Property. *See Graves*, 816 N.W.2d at 667. This conclusion was based upon the improper determination that FMB had actual notice, *see id.* at 666, and implied notice, *see id.* at 667, of Graves' purported interest in the Property at the time FMB took its mortgage interest in the Property. However, FMB did not have actual notice of Graves' purported rights. Moreover, FMB did not have knowledge of facts that would have triggered a duty of inquiry and, therefore, is not chargeable with implied notice of

Graves' purported rights. Consequently, FMB was a bona fide purchaser and its interest in the Property should be reinstated.

The District Court properly concluded that FMB was a bona fide purchaser and properly determined that FMB owned the Property. (A18.) A District Court's determination that a party is a bona fide purchaser is a factual determination that will be sustained unless the reviewing court has a firm and definite impression that a mistake has been made. *Stone*, 733 N.W.2d at 488 (citing *Miller*, 438 N.W.2d 366, 369 (Minn. 1989)). This is a particularly appropriate standard in light of the factual and credibility-related issues the District Court faced in this lawsuit. Accordingly, the District Court's determination that FMB was a bona fide purchaser and owned the Property should be reinstated.

A. Bona Fide Purchaser Legal Standard.

The Minnesota Recording Act protects a bona fide purchaser from unrecorded conveyances of real estate. *See* Minn. Stat. § 507.34. Although the Recording Act does not protect a bona fide purchaser against a voided transfer, *see Stone*, 733 N.W.2d at 488, as discussed in further detail in Section IV, Minnesota law provides additional protections to a bona fide purchaser in a foreclosure reconveyance transaction where the foreclosure purchaser violated MHOEPA, but the bona fide purchaser was unaware of those violations. *See* Minn. Stat. §§ 325N.17(f)(3), 325N.18 (2007).

A bona fide purchaser is one who provides valuable consideration for property without actual, constructive, or implied notice of others' inconsistent outstanding rights. *Miller*, 438 N.W.2d at 369 (citing *Anderson v. Graham Invest. Co.*, 263 N.W.2d 382, 384

(Minn. 1978)). The elements of a bona fide purchaser are: (1) the payment of valuable consideration; (2) good faith, without purpose to take unfair advantage of third persons; and (3) absence of notice, actual or constructive, of others' outstanding rights. *Goette v. Howe*, 232 Minn. 168, 173, 44 N.W.2d 734, 738 (Minn. 1950); *Bergstrom v. Johnson*, 111 Minn. 247, 250, 126 N.W. 899, 900 (Minn. 1910).

The Court of Appeals correctly noted that there is no dispute that FMB paid valuable consideration for its mortgage to secure the financing used to redeem the Property. *See Graves*, 816 N.W.2d at 664. It is likewise undisputed that FMB did not make the loan to C&M to take advantage of Graves. (*See Trial Tr.*, p. 138, 139.) Thus, the only issues for consideration are whether FMB had actual or implied knowledge of Graves' purported interest in the Property.

B. FMB Did Not Have Actual Notice Of Graves' Purported Interest In The Property.

The Court of Appeals' conclusion that FMB had actual knowledge of Graves' purported rights in the Property is not supported by the record. It defies logic to suggest that FMB would have moved forward with the loan to C&M to redeem the Property if it had possessed actual knowledge of Graves' purported rights. At trial, Blair gave uncontroverted testimony that FMB's loan was not made to take advantage of Graves, as there would be "no reason for First Minnesota Bank to put itself in that position." (*Trial Tr.*, p. 138-39.) The record is entirely devoid of any support for the notion that Brian Guse or FMB had actual knowledge of Graves' purported interest. Moreover, and even more irrationally, it is simply legally inexplicable how Grave's purported interest should

or could have affected FMB's interest. It is uncontroverted in this case that FMB did not make a loan or extend loan proceeds until more than six months after the Sheriff's Sale from the Wells Fargo foreclosure, and four days after any interest Graves held in the Property had expired.

Actual knowledge means *actual knowledge* of the "inconsistent outstanding rights" of another party. *Washington Mut. Bank, F.A. v. Elfelt*, 756 N.W.2d 501, 506 (Minn. Ct. App. 2008) (quoting *Miller*, 438 N.W.2d at 369). "Actual knowledge is generally given directly to, or received personally by, a party." *Id.* at 507. As discussed in Section II above, the Court of Appeals erroneously attributed actual knowledge of Graves' purported interest to FMB because it did not call Guse to testify. Contrary to the uncontroverted evidence presented by FMB, the Court of Appeals assumed Guse had knowledge, then attributed that assumed knowledge to FMB. This is the only basis upon which the Court of Appeals concluded that FMB had actual knowledge of Graves' purported interest in the Property.

FMB met its burden of establishing that it had no actual knowledge of Graves' purported interest in the Property by a preponderance of the evidence. There is absolutely nothing in the record to suggest that FMB had actual knowledge and FMB is not required to present unequivocal evidence or to remove all reasonable doubt. *See Carpenter*, 257 Minn. at 427, 101 N.W.2d at 921 (discussing preponderance of the evidence standard). Rather, it is required only to establish it is more likely than not that FMB did not have actual knowledge. Notwithstanding the Court of Appeals' conclusion to the contrary, FMB met this burden at trial, and the District Court agreed. Because the

District Court, which was in the best position to weigh the evidence, determined that FMB was a bona fide purchaser and the District Court's determination is entitled to deference, it should be reinstated. Accordingly, FMB respectfully requests that this Honorable Court reverse the Court of Appeals' erroneous determination that FMB had actual knowledge of Graves' purported interest and reinstate the District Court's judgment that FMB was a bona fide purchaser, entitled to unencumbered ownership of the Property.

C. FMB Did Not Have Implied Notice Of Graves' Purported Interest In The Property.

Implied notice refers to facts one can learn by reasonable inquiry and arises from actual notice of the circumstances. *See Elfelt*, 756 N.W.2d at 508 n.5. "Implied notice charges a person with notice of everything that he could have learned by inquiry *where there is sufficient actual notice to put him on guard* and excite attention." *Id.* (emphasis added). The Court of Appeals cited numerous cases for this proposition, but never addressed the key issue of whether FMB had *sufficient actual notice to put it on guard* and trigger a duty to inquire, which FMB did not. Rather, the Court of Appeals appears to have assumed that FMB knew Graves' lived at the Property and his possession alone was sufficient to trigger a duty to inquire, irrespective of whether FMB knew of his possession.

Moreover, the Court of Appeals did not address the fact that, even if FMB had known Graves continued to occupy the property, his possession was entirely consistent with his rights under the Purchase Agreement, which expressly allowed him to remain in

possession until October 1, 2007. This was Graves' limited possessory right under the Purchase Agreement even if there had been no Rent Back Agreement or Residential Lease, which is important because, until C&M defaulted, FMB had no knowledge of the alleged Rent Back Agreement or Residential Lease between the Wayman Entities and Graves.

The Court of Appeals found similar facts unimportant in another case, decided after *Graves*, considering bona fide purchaser status and protections under MHOEPA. See *Stella v. Wells Fargo*, No. A11-1827, 2012 WL 3553123 (Minn. Ct. App. Aug. 20, 2012). In *Stella*, a seller's continued occupancy of the property "would not have put [the bank], as a mere mortgage lender, on notice to inquire further. . . . [The seller's] possession of the property would raise no red flags because a seller would ordinarily remain in possession of the property up to and often after the date of closing." *Id.* at *7. Here, Graves' continued occupancy of the Property was similarly not a red flag, it was consistent with his rights. The Purchase Agreement, one of only two documents in FMB's possession at the time of the loan, expressly provided that Graves had the right to occupy the Property until October 1, 2007. (See APP94.)

Even absent these compelling facts, the Court of Appeals ignored the required precondition that the purchaser have actual knowledge of facts sufficient to trigger the duty to inquire and merely concluded FMB had such a duty. "Implied notice has been found where one has *actual knowledge of facts* which would put one on further inquiry." *Miller*, 438 N.W.2d at 369-370 (citing *Anderson*, 263 N.W.2d at 384-85) (emphasis added).

For example, *if* a subsequent purchaser was aware that someone other than the vendor was living on the land, the purchaser would have a duty to inquire concerning the rights of the inhabitant of the property and would be charged with notice of all facts which such an inquiry would have disclosed.

Id. (citing *Murphy v. Anderson*, 150 N.W. 387, 389 (Minn. 1914)) (emphasis added).

This Court further explained:

One is not a bona fide purchaser . . . *if* he had knowledge of facts which ought to have put him on an inquiry that would have led to a knowledge of such conveyance.

Miller, 438 N.W.2d at 369-370 (citing *Henschke v. Christian et al.*, 228 Minn. 142, 36 N.W.2d 547, 550 (Minn. 1949)) (emphasis added).

The record does not support the conclusion that FMB had actual knowledge of facts sufficient to trigger a duty to inquire. No relevant fact in the record supports the conclusion that FMB had knowledge, *at the time it took its mortgage*, that would have triggered an obligation to inquire.

This Court's language in *Miller* was deliberate: "*if* a subsequent purchaser was aware . . . *if* he had knowledge of facts. . . ." *See id.* (emphasis added). To have implied notice, the purchaser must actually know someone with inconsistent rights occupied the property. A survey of applicable caselaw demonstrates this point. *See, e.g., Clafflin v. Commercial State Bank of Two Harbors*, 487 N.W.2d 242, 245-48 (Minn. Ct. App. 1992) (one has the duty to inquire concerning the rights of the inhabitant, "[i]f one is aware that someone other than the vendor is living on the land"); *Konantz v. Stein*, 283 Minn. 33, 42, 167 N.W.2d 1, 8 (Minn. 1969) ("*once [purchaser] became aware that the land in dispute was in the actual possession of a person other than the prospective vendor, it became her*

duty to ascertain the nature and extent of the possessor's rights[.]”); *Teal v. Scandinavian-Am. Bank*, 114 Minn. 435, 441, 131 N.W. 486, 488 (Minn. 1911) (“Defendant was *expressly informed* before the mortgages were executed *that plaintiff was so in possession*, yet made not inquiry concerning his rights, relying wholly upon statements made by Johnson.”). These cases do not charge a purchaser with implied notice based solely on the fact that a third party was in possession of the property; rather, they require actual notice that someone is living on the property at issue before inquiry is required. In that very important way, these cases are distinguishable from this situation.

In this case, the evidence shows that, unlike the banks in *Clafin* and *Teal*, and every other relevant case dealing with this issue, FMB was never informed and never knew about Graves' possession of the Property. (See Trial Tr., pp. 137, 172, 179-180.) Moreover, even if FMB had known that Graves continued to live at the property, the Purchase Agreement gave him the right to do so for a short time after closing, which the Court of Appeals has recognized does not create a duty to inquire. See *Stella*, 2012 WL 3553123 at *7.

In reaching its conclusion, the Court of Appeals also relied upon the commitment date of the title opinion, March 31, 2007, to conclude that FMB had not discharged its duty to inquire. See *Graves*, 816 N.W.2d at 667. The Court of Appeals' conclusion that the title insurance commitment “was almost six months old at the time of the loan closing” is unsupported. See *id.* The commitment date, while unexplained in the record and not an issue before the District Court, is most likely a typographical error, as the record demonstrates that neither the Wayman Entities nor FMB had any involvement

with the Property prior to mid-August 2007. Even Graves testified that he had not met Wayman until well after March 2007. (See Trial Tr. p. 92.) The inference that FMB ordered a title opinion months before it was approached by Wayman regarding this Property is not reasonable and does not constitute valid justification for depriving FMB of bona fide purchaser status, in light of the record.

The burden this decision would apparently place upon all lenders is to personally visit every property before taking a mortgage on it, to verify whether someone lived there and ask whether there are any claimed interests beyond those identified in the Purchase Agreement and the public record. This is a heavier burden than that created by prior caselaw, which requires inquiry only when there is "sufficient actual notice to put [a bank] on guard and excite attention. See *Elfelt*, 756 N.W.2d at 508 n.5; see also *Stella*, 2012 WL 3553123 at * 7 (recognizing that a seller's possession of property raises no red flags because a seller ordinarily remains in possession of the property up to and often after the date of closing).¹⁴

FMB simply had no information that put it on notice to inquire further regarding any possible rights in the Property by anyone, including Graves. (Trial Tr., p. 179-80). In fact, at the time FMB loaned money to redeem the Property, the documents in FMB's

¹⁴ Properly construing the trigger of a duty to inquire is especially important here, because the Court of Appeals also imposed a duty to inquire upon FMB with respect to discovering violations of section 325N.10-17. See *Graves*, 816 N.W.2d 668-69. As discussed in Section IV, *infra*, the plain language of the statute does not contemplate placing any additional duty of inquiry upon an otherwise bona fide purchaser or mortgagee.

file did not include any information about any reconveyance. (Trial Tr. pp. 138, 176-79.) No testimony or other evidence in the record contradicts the fact that FMB was unaware Graves lived on the Property with anything other than a temporary right of possession pursuant to the Purchase Agreement. (*See generally* Trial Tr.)

The uncontroverted evidence at trial established that FMB was a bona fide mortgagee when it took its mortgage in the Property. Contrary to the Court of Appeals' holding, FMB did not have actual or implied notice of Graves' purported interest in the Property. The District Court properly concluded that it would be improper to allow Graves to hold a superior position in the Property and thereby receive the windfall of having FMB pay for the redemption from Wells Fargo's foreclosure. Accordingly, FMB respectfully requests that this Honorable Court reverse the decision of the Court of Appeals and hold that FMB was a bona fide mortgagee of the Property.

IV. SECTION 325N.17(f)(3) PROTECTS FIRST MINNESOTA'S INTEREST, IRRESPECTIVE OF GRAVES' PURPORTED CANCELLATION.

In addition to the protections provided by the Minnesota Recording Act, Minn. Stat. § 507.34 (2007) (the "Recording Act"), Minnesota law also protects bona fide purchasers, from claims brought by the former owners of property in foreclosure reconveyance transactions. *See* Minn. Stat. § 325N.17(f)(3) (2007). Section 325N.17(f)(3) provides that, ". . . no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and without notice of a violation of sections 325N.10 to 325N.18. . . ." *Id.* Because FMB was a bona fide mortgagee, as discussed above, section 325N.17(f)(3) applies to FMB, which did not

have notice of Wayman's violations of sections 325N.10 to 325N.18. Moreover, section 325N.17(f)(3), by its plain language, protects FMB's interest in the Property as against Graves' purported cancellation and Wayman's MHOEPA violations.

A. FMB Did Not Have Notice Of Wayman's Violations of Sections 325N.10 – 325N.18.

According to the plain language of section 325N.17(f)(3), the "grant of any interest or encumbrance" to a bona-fide purchaser is not "defeated or affected" unless the bona-fide purchaser had "notice of a violation of sections 325N.10 to 325N.18." The Court of Appeals held that FMB was not entitled to this protection, however, because it had *implied notice* of the Wayman Defendants' violations of MHOEPA. *See Graves*, 816 N.W.2d at 669. The court's determination on this issue was erroneous because it applied an incorrect standard to determine that FMB had an affirmative duty to inquire regarding possible MHOEPA violations.

The Court of Appeals' decision fails to recognize that, although FMB knew C&M was in the business of redeeming foreclosed properties, it did not know that the Transaction involved a foreclosure *reconveyance*. Section 325N.17(f)(3) expressly provides that knowledge a transaction involved a residential property in foreclosure, by itself, does not constitute notice of MHOEPA violations and does not trigger any additional duty to inquire. Because the court conflated the purchase of a foreclosed property with a foreclosure *reconveyance* transaction, it improperly attributed FMB with implied knowledge of violations when FMB never had a duty to inquire. FMB lacked

actual knowledge and had no duty to inquire regarding possible MHOEPA violations. Consequently, its interest in the Property is protected by section 325N.17(f)(3).

1. The court applied an improper standard when it found that FMB had a duty to inquire as to whether there were violations of MHOEPA.

The standard applied by the Court of Appeals on this issue imposes a greater burden upon bona fide purchasers than contemplated by the statute. The Court of Appeals held that FMB "had *implied notice* of violations of the MHOEPA" because it knew C&M bought foreclosed properties, but failed to inquire into possible violations. *Graves*, 816 N.W.2d at 669 (emphasis added). The plain text of the statute, however, rebuts the Court of Appeals' imposition of a duty upon FMB in this case:

... no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and **without notice of a violation of sections 325N.10 to 325N.18**, and **knowledge on the part of any such person or entity that the property was "residential real property in foreclosure" does not constitute notice of a violation of sections 325N.10 to 325N.18**. This section does not abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure. . . .

Minn. Stat. § 325N.17(f)(3) (emphasis added). As an initial matter, the plain language of this section imposes no affirmative duty of inquiry upon a grantee of an interest or encumbrance. *See Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999) ("When the language of a statute is plain and unambiguous, that plain language must be followed."); *Homart Dev. Co. v. County of Hennepin*, 538 N.W.2d 907, 911 (Minn. 1995) ("When the words of a statute are unambiguous, we must give effect to their plain meaning."); *see also* Minn. Stat. §§ 645.08 (unambiguous words are to be given their

ordinary meaning) and 645.16 (laws are to be construed to give meaning to all provisions, where possible). The Court of Appeals recognized this principle in *Stella*, when it addressed similar facts, but held that "[t]he plain language of section 325N.17(f)(3) indicates that the statute does not automatically require a 'duty of inquiry.' Rather, the statute states that the section 'does not abrogate any duty of inquiry. . . ." *Stella*, 2012 WL 3553123 at *6.

Nevertheless, in this matter, the Court of Appeals concluded that FMB "had implied notice of violations of MHOEPA" *Graves*, 816 N.W.2d at 669. The court reached this conclusion after declaring that, "[u]nder the circumstances of this case, [FMB] had a duty of further inquiry and failed to fulfill that duty, knowing that its customer C&M, was in the business of purchasing properties out of foreclosure." *Graves*, 816 N.W.2d at 668 (emphasis added). The court imposed a duty of inquiry upon FMB because FMB knew the Transaction involved a residential property in foreclosure, despite the plain and unambiguous language of 325N.17(f)(3), which states this does not create a duty to inquire. The court then noted that a purchaser is chargeable with facts a reasonable inquiry would have disclosed, citing *Stone* for the principle that a purchaser "fail[s] to make adequate inquiries about the property' when the circumstances of the

underlying transaction were unusual." *Id.* (citing *Stone*, 733 N.W.2d at 489) (emphasis added).¹⁵

The only "unusual circumstance" the Court of Appeals identified in this matter was that FMB knew C&M "was in the business of purchasing properties out of foreclosure." *See id.* This is not an unusual circumstance. Based upon the Court of Appeals' decision, every lender would have a duty of further inquiry any time it lends money to purchase a foreclosed property. However, this would contradict the plain text of the statute, which specifically states that "knowledge . . . the property was 'residential real property in foreclosure' does not constitute notice of a [MHOEPA] violation" and therefore is not alone enough to abrogate bona fide purchaser protections. *See* Minn. Stat. § 325N.17(f)(3). Consequently, the duty imposed by the Court of Appeals' decision is unsupported by the statute.

To the extent that the Court of Appeals' charging FMB with implied knowledge of Wayman's MHOEPA violations may have been based upon FMB's failure to inquire of Graves, as discussed above, FMB had no duty to inquire because it did not have notice of sufficient facts to trigger a duty to inquire of Graves.

¹⁵ *Stone* addressed the rights of a good-faith purchaser in a series of commercial real estate transactions involving standard mortgages. *See Stone*, 733 N.W. 2d at 483-84. There, a quit claim transaction was void because the entity to which the property was deeded did not legally exist at the time of the purported conveyance. *See id.* That factual scenario is inapposite to the instant matter and does not speak as to how the Purchase Agreement and Quit Claim Deed alone could have put FMB on notice that something was unusual.

Because the Court of Appeals applied an improper standard to FMB, its determination that FMB had implied knowledge of Wayman's MHOEPA violations is erroneous. FMB had no duty of further inquiry with respect to MHOEPA violations and lacked actual knowledge of such violations. Consequently, its interest in the Property is protected by section 325B.17(f)(3) and the decision of the District Court should be reinstated.

2. The court failed to distinguish between knowing that the Property was in foreclosure and knowing that the Transaction was a foreclosure reconveyance.

The Court of Appeals further erred by including facts not supported by the record in its analysis. Specifically, the court failed to distinguish between the fact that FMB knew C&M was in the business of purchasing foreclosed properties and the incorrect assertion that FMB knew the "[T]ransaction involved a foreclosure *reconveyance*." *See Graves*, 816 N.W.2d at 668 (citing the District Court's First Order). As discussed above, the plain language of the statute indicates that knowledge the property was in foreclosure alone has no affect on FMB's rights. Nevertheless, the Court of Appeals' decision faulted FMB for not inquiring into potential MHOEPA violations despite the fact that FMB only knew C&M was purchasing a foreclosed property and was not aware at the time of the loan that the Transaction was a foreclosure reconveyance.

As an initial matter, the court's reliance upon the District Court's First Order raises the question of whether such reliance is appropriate where the District Court itself found it necessary to amend the First Order and remove this finding from its Amended Order. The Court of Appeals attempted to deal with this issue, when it stated that "[a]lthough the

court left out this finding in its amended order of April 27, 2011, the finding is supported by substantial evidence in the record." However, the record is entirely void of any support for the proposition that FMB knew, at the time it took its mortgage, that the Transaction involved a foreclosure reconveyance.

MHOEPA defines the term "foreclosure reconveyance" as:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; *and*

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or other real property, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

Minn. Stat. § 325N.10, subd. 3 (2007) (emphasis added).

FMB knew C&M was in the business of redeeming properties from foreclosure but did not know the Transaction involved a promise of a subsequent conveyance or a lease back to Graves. The record is clear that the only information FMB had at the time it took its mortgage was Wayman's email requesting the loan and faxed copy of the Purchase Agreement and Quit Claim Deed. (Trial Tr., p. 178.) Indeed, Graves testified he did not sign the Rent Back Agreement or the Residential Lease. (See Trial Tr. 118-19.) FMB did not learn of the Rent Back agreement or Wayman's alleged promise to resell the property to Graves until after C&M had defaulted on its obligation to FMB. (Trial Tr., p. 178.)

The Court of Appeals' decision highlights the number of MHOEPA violations that FMB might have learned of if it had inquired of Graves, but ignores that FMB did not know the Transaction was a foreclosure *reconveyance*. *See Graves*, 816 N.W.2d at 668-69. Indeed, every one of Wayman's violations, for which the Court of Appeals charged FMB with implied knowledge, required or presupposed a foreclosure reconveyance. *See, e.g.*, Minn.Stat. §§ 325N.11 (requiring that every foreclosure reconveyance contract be fully completed and signed and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure), 325N.12 (requiring certain foreclosure reconveyance contract terms, including, but not limited to, a notice of cancellation, and that the contract “contain the entire agreement of the parties”), 325N.13 (providing a mandatory period during which a foreclosed homeowner has the right to cancel any contract with a foreclosure purchaser, which is defined as the acquiring party in a foreclosure reconveyance transaction, 325N.14 (requiring that notice of cancellation contain conspicuous statement with certain language in size equal to at least 14-point boldface type and in capital letters, if typed, and that the language must be contained in contract “in immediate proximity to the space reserved for the foreclosed homeowner's signature”), 325N.17 (listing various prohibited practices by a foreclosure purchaser).

It is important for this Court to consider only those things FMB knew at the time it loaned C&M the funds to redeem the Property in order to determine whether FMB had notice of those violations or should have inquired about them. The record shows the only information FMB knew was that C&M purchased foreclosed properties and it entered

into a purchase agreement with Graves for the Property. FMB had no further knowledge regarding the Transaction. The Court of Appeals did not address how or why FMB could have or should have been on alert for possible MHOEPA violations in the Transaction when the information provided to it at the time did not even indicate that MHOEPA was implicated. Furthermore, by the time FMB learned the Transaction involved a foreclosure reconveyance, Graves' interest in the Property had long been lost, his redemption period having expired.

These issues demonstrate why the District Court's holding on such a factually-based issue is so important and is entitled to deference. After weighing all of this and reconsidering the evidence, the District Court finally determined that FMB was a bona fide purchaser whose interest in the Property was protected above all others. (*See* A43; A18.)

Any argument that FMB had actual knowledge is likewise unsupported by the record. The court drew a negative inference from the fact that FMB did not call Guse to testify. However, as noted above, this negative inference was improper given the evidence presented by FMB. Moreover, as noted previously, it strains credulity to suggest that Wayman would have informed Guse of his numerous MHOEPA violations and that Guse would have ignored them and proceeded with the loan. The inference that Guse had knowledge of these violations, yet put FMB into a position take advantage of Graves, directly contradicts Blair's testimony that there is no reason for the bank to put itself into such a position. More importantly, that implication is wholly unsupported by the record. Finally, to the extent that the Court of Appeals' imposition of a duty to

inquire may have been based upon its prior determination that Graves' possession alone triggered a duty to inquire, that basis also fails for the reasons discussed above.

The record before this Court establishes that FMB was, and is, a bona fide purchaser. It was the sole source of funds from which the Property was redeemed from the Wells Fargo foreclosure. It took its mortgage without actual or implied knowledge of any purported outstanding rights held by Graves, and it had no notice of Wayman's MHOEPA violations. Accordingly, FMB is entitled to the protections afforded under section 325N.17(f)(3). For these reasons, FMB respectfully requests that this Court reverse the Court of Appeals and reinstate the District Court's proper conclusion that FMB is a bona fide purchaser whose interest in the Property is free from any claims by the other parties to this action.

B. Section 325N.17(f)(3) Protect FMB's Interest In The Property.

The final issue before this Court is the extent to which Minn. Stat. § 325N.17(f)(3) protects FMB's interest in the Property. The Court of Appeals held that FMB holds no interest in the Property, even if it is a bona fide purchaser, because Graves cancelled the Transaction. *See Graves*, 816 N.W.2d at 669. In support of its holding, the court cited *Hanson v. Woolston*, 701 N.W.2d 257, 267 (Minn. Ct. App. 2005), and *Stone*, 733 N.W.2d at 488. However, both of these cases are distinguishable on the basis that they address bona fide purchaser protections under the common law and the Recording Act. *See generally id.* The protections at issue here arise under Minnesota Statutes section 325N.17(f)(3), which creates a greater protection for the good faith purchaser who, in this case, enabled the Property to be redeemed from a prior foreclosure.

Notably absent from the Court of Appeals' analysis on this issue is any discussion of the specific protections afforded to a bona fide purchaser under MHOEPA. *See Graves*, 816 N.W.2d 669. Although the Court of Appeals cited caselaw regarding the bona fide purchaser defense under the common law and the Recording Act, it did not mention section 325N.17(f)(3) and only referred to MHOEPA when it noted that FMB was required to know the law, despite the fact that it never knew the Transaction conceivably involved a foreclosure reconveyance until after it was completed. *Id.*

FMB's interest in the Property is specifically protected by section 325N.17(f)(3), which provides:

A foreclosure purchaser shall not:

* * *

- (f) do any of the following until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed:

* * *

- (3) transfer or *encumber or purport to transfer or encumber* any interest in the residence in foreclosure to any third party, *provided no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value* and without notice of a violation of sections 325N.10 to 325N.18, and knowledge on the part of any such person or entity that the property was "residential real property in foreclosure" does not constitute notice of a violation of sections 325N.10 to 325N.18. This section does not abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure. . . .

Minn. Stat. § 325N.17(f)(3).

The Court of Appeals' decision renders the language of this section regarding bona fide purchasers meaningless, as it would provide no additional protections to a bona fide purchaser beyond those already available under the common law or the Recording Act. Proper statutory construction requires that, wherever possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant. *See Owens v. Federated Mut. Implement & Hardware Ins.*, 328 N.W.2d 162, 164 (Minn. 1983). Proper standards for statutory interpretation have been regularly recognized by this Court:

"The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn.Stat. § 645.16 (1998). When the language of a statute is plain and unambiguous, that plain language must be followed. *See id.* A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation. *Tuma v. Commissioner of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986). When interpreting a statute, we may not disregard the letter of the law under the pretext of pursuing the spirit of the law. *See Minn.Stat. § 645.16.*

Under basic canons of statutory construction, we are to construe words and phrases according to rules of grammar and according to their most natural and obvious usage unless it would be inconsistent with the manifest intent of the legislature. *See Minn.Stat. § 645.08(1)* (1998); *Homart Dev. Co. v. County of Hennepin*, 538 N.W.2d 907, 911 (Minn.1995). "Every law shall be construed, if possible, to give effect to all its provisions." Minn.Stat. § 645.16. Whenever it is possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant. *See Owens v. Federated Mut. Implement & Hardware Ins.*, 328 N.W.2d 162, 164 (Minn.1983). We presume that the legislature intended to favor a public interest over a private interest. *See Minn.Stat. § 645.17(5)* (1998).

Amaral, 598 N.W.2d at 384; *see also Patino v. One 2007 Chevrolet*, --- N.W.2d ----, 2012 WL 4372074, *4 (Minn. 2012) (citing *Amaral*, reaffirming standards).

Section 325N.17(f)(3) contains several key phrases to which the Court of Appeals gave no meaning. Specifically, that section provides protection to bona fide purchasers

from the very acts that a foreclosure purchaser is prohibited from doing, including that the foreclosure purchaser shall not "transfer or encumber or *purport to transfer or encumber* any interest in the residence in foreclosure to any third party. . ." Minn. Stat. § 325N.17(f)(3) (emphasis added). The very next line, however, protects the innocent third party: "provided no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value . . ." *Id.* (emphasis added). If this section provides no further protection to an innocent third party lender than the common law or the Recording Act, there would be no reason for the legislature to include it. Moreover, unless the protections were meant to extend even to purported transfers, there would be no reason to specifically identify the practice in that section.

That section 325N.17(f)(3) provides additional protections beyond those available elsewhere is further demonstrated in section 325N.18. That section provides, in relevant part, that "[n]o action under this section shall affect the rights in the foreclosed property held by a good faith purchaser for value under sections 507.34 [the Recording Act], 508.48, 508A.48, or other applicable law." Minn. Stat. § 325N.18, subd. 3 (2007). If section 325N.17(f)(3) was not intended to provide more protection than those available under the Recording Act, then the language of 325N.18 subd. 3 would render it completely superfluous.

Although this Court is not bound by a decision of the U.S. District Court, that court's decision in the matter of *Daml v. Meyers*, No. 07-4384, 2010 WL 7326389, *3 (D. Minn. Dec. 22, 2010), is helpful and is one of only three cases to address application of 325N.17 (including this case). In *Daml*, the plaintiffs conveyed their property by deed to

a foreclosure purchaser who, in order to finance the purchase of the property, granted a mortgage on the property to a third party financing company. *See Daml*, 2010 WL 7326389 at *1. The financing company subsequently assigned the mortgage to another mortgage company that later foreclosed on the property, after the foreclosure purchaser defaulted on the loan. *Id.* The foreclosed homeowners later sued, alleging that the foreclosure reconveyance transaction was an equitable mortgage and their deed to the foreclosure purchaser was meant only as security for a loan, not as transfer of title. *Id.* This allegation, if true, would have deprived the foreclosure purchaser of the interest it purportedly conveyed to the initial mortgagee. Notwithstanding this alleged lack of a conveyable interest, however, the *Daml* court recognized that a bona fide purchaser would be protected by section 325N.17 from such a defect and properly framed the dispositive issue as simply a question of whether or not the mortgagee was a bona fide purchaser. *Id.* at *3. If the mortgagee was a bona fide purchaser, it had a protected interest in the property regardless of the original owner's allegations. *See id.*

Similarly, the Court of Appeals' recent decision in *Stella*, though inconsistent with its holding in *Graves*, also supports the conclusion that section 325N.17 protects against a purported transfer by a foreclosure purchaser, despite the fact that the initial transfer was voided or rescinded. *See Stella*, 2012 WL 3553123 at *2. In *Stella*, the foreclosed homeowner exercised her right under MHOEPA to rescind the transaction that gave the foreclosure purchaser title to the property. *Id.* Although the court addressed only the question of whether the mortgagee was a bona fide purchaser, the holding necessarily recognizes that the mortgagee was protected against the rescission, which otherwise

would have meant there was no title for the foreclosure purchaser to convey to the mortgagee. *See generally id.*

As in *Daml* and *Stella*, the sole question before this Court should be whether or not FMB is a bona fide mortgagee. If so, the plain language of section 325N.17(f)(3) protects it against Wayman's MHOEPA violations, including his failure to give proper effect to Graves' cancellation under section 325N.13. Consequently, because FMB established that it is a bona fide purchaser and did not have notice of Wayman's MHOEPA violations at the time it took its mortgage, its interest in the Property should be protected. FMB therefore respectfully requests that this Court reverse the Court of Appeals decision and reinstate the judgment of the District Court.

V. CONCLUSION

Protecting bona fide purchasers in the context of a foreclosure reconveyance makes equitable sense. But for the funding provided by FMB, the Property was lost to Graves because his redemption period had expired. Graves did not have the ability to redeem the property and did not attempt to do so even after he claims to have cancelled the Transaction. Graves did not redeem the Property.

Although the bulk of MHOEPA was undoubtedly intended to protect foreclosed homeowners like Graves, it cannot have been intended to operate in a way that would allow him to receive a free home, which he had never owned outright in the first instance, at the expense of FMB. Here, FMB was a bona fide purchaser because it did not have actual notice of Graves' purported interest in the Property and did not have actual knowledge of facts that triggered a duty to inquire. Moreover, FMB did not have

knowledge of Wayman's MHOEPA violations and was not under a duty to inquire into possible violations because, at the time, FMB did not know the Transaction implicated MHOEPA. Because FMB was a bona fide purchaser, its interest in the Property is protected, even against Graves' purported cancellation.

For these reasons, FMB respectfully requests that this Honorable Court reverse the decision of the Court of Appeals and reinstate the District Court's holding that FMB owns the Property free of any other party's asserted claims.

Respectfully submitted this 18th day of October, 2012.

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CERTIFICATION OF BRIEF LENGTH

I, Peter L. Crema, Jr., hereby certify that Graves First Minnesota Bank's Brief conforms to the requirements of Minnesota Rule of Appellate Procedure 132.01, subd. 3(a)(1). This brief was prepared using Microsoft Word 2002. This brief complies with the typeface requirements of Rule 132.01 and it contains 13,976 words.

Respectfully submitted this 18th day of October, 2012.

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