

NO. A11-1539

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State of Minnesota  
**In Court of Appeals**

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George E. Effrem, et al.,

*Appellants,*

v.

Paul C. Effrem,

*Defendant,*

Saliterman & Siefferman, P.C., interested observer,

*Respondent.*

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**APPELLANTS' 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 ISSUES

I. Did the district court err by awarding the Saliterman firm its collection costs and attorneys' fees in connection with its summary proceeding under Minn. Stat. § 481.13, when the statute does not expressly provide for recovery of collection costs and attorneys' fees incurred in pursuing attorney liens?

*The district court ruled that the Saliterman firm was entitled to recover attorney fees and collection costs that it allegedly incurred in pursuing its attorney lien, notwithstanding that the district court had determined that the attorney-lien statute, Minn. Stat. § 481.13, did not authorize the award of such, and that the attorney lien was based on fee amounts that the district court determined were large part unreasonable.*

Apposite authority:

Minn. Stat. § 481.13 (2010);  
*In re L-tryptophan Cases*, 518 N.W.2d 616 (Minn. App. 1994) ;  
*Barr/Nelson v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983);  
*Am. Fam. Ins. Group v. Schroedl*, 616 N.W.2d 273 (Minn. 2000).

II. In the alternative, if the Saliterman firm's attorney's fees and costs incurred in pursuing the lien are recoverable under the attorney-lien statute, should the lien amount for collection costs be reduced because the Effrems substantially limited the Saliterman Firm's claimed lien, i.e., they successfully reduced the principal lien amount by half?

*The district court did not rule on this issue.*

Apposite authority:

*Bloomington Electric Company v. Freeman's, Inc.*, 394 N.W.2d 605 (Minn. App. 1986);  
*Asp v. O'Brien*, 277 N.W.2d 382 (Minn. 1979).

## STATEMENT OF THE CASE

This appeal arises out of the district court's award of an attorney's lien, which included attorney fees and collection costs allegedly incurred in recovering legal fees that the district court deemed a substantial portion of to be unreasonable.

In June 2008, Plaintiffs-Appellants Timothy Effrem and George Effrem ("the Effrems") retained Respondent Saliterman & Seifferman, P.C. ("the Saliterman Firm") to commence a civil lawsuit (against Defendant Paul Effrem, who is not a party to this appeal) to, among other things, obtain title in real property. The Effrems and the Saliterman Firm signed a Retainer Agreement, which set forth an hourly rate of \$275 — later changed to \$300 without notice to the Effrems — that the Saliterman Firm would charge the Effrems.

A dispute later arose between the Effrems and the Saliterman Firm over the excessive number of hours that the Saliterman Firm billed on the Effrems' matter, which consisted of little more than the Saliterman Firm drafting a complaint. As a result, in November 2008, the Effrems discharged the Saliterman Firm after paying close to \$20,000 for its legal services. The Effrems then retained the law firm of Meagher & Geer, PLLP (also appellate counsel) to represent them.

In December 2008, the Saliterman Firm commenced an attorney's-lien action, pursuant to Minn. Stat. § 481.13 (2008), against the proceeds that the Effrems obtained from the settlement of their lawsuit. The Saliterman firm did not sue under the retainer agreement. Months later, in May 2009, the Saliterman Firm submitted a final invoice to the Effrems in the amount of \$71,595.03 for legal fees and services. Because these fees

were excessive in light of the work performed, the Effrems refused to pay the invoice.

In February 2010, the Hennepin County District Court, the Honorable Susan N. Burke, presiding,<sup>1</sup> appointed a special master to review the Saliterman Firm's attorney's-  
lien action. Factoring in amounts that the Effrems previously paid to the Saliterman Firm, the amount in controversy was roughly \$71,000. In May 2010, after hearing testimony and reviewing the parties' documents and written submissions, the special master recommended that the district court award the Saliterman Firm a reduced attorney-fee amount of \$35,000.

In June 2010, the Saliterman Firm asked the district court to conduct a de novo review of the special master's recommendation. The Saliterman Firm claimed an attorney's lien of \$71,595.03, plus collection costs of \$9,655.20. After a hearing on the matter, the district court denied the Effrems' request that the district court adopt the special master's recommendation, choosing instead to reject it outright. In its September 7, 2010 order, the district court awarded the Saliterman Firm an attorney's lien, pursuant to Minn. Stat. § 481.13, in the amount of \$61,500 — an amount equal to what the Effrems received in their settlement with the defendant in their earlier quiet-title action. (ADD.65) (September 7, 2010 Order).

The district court later granted the Effrems permission to bring a motion for reconsideration. The Effrems based their motion on the fact that the district court had failed to engage in a reasonableness analysis of the factors under Minn. R. Prof. Conduct 1.5 to determine the value of the Saliterman Firm's attorney's lien. On reconsideration,

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<sup>1</sup> At all times, the Honorable Susan N. Burke presided over this matter.

the district court reduced the attorneys' lien that it previously awarded the Saliterman Firm from \$61,500 to \$46,227.73. (ADD.31 & 49) (April 1 & 12, 2011 Order). As determined by this Court, the April 1 & 12, 2011 order is not part of this appeal.<sup>2</sup>

Immediately thereafter, the Saliterman firm brought a motion under Minn. R. Gen. Pract. 119.01 seeking \$52,306.67 in attorney fees that it allegedly incurred from November 2009 through March 2011 in connection with its attorneys' lien action. Alternatively, the Saliterman Firm requested that the district court consider this amount as collection costs incurred in pursuing its attorney's lien, and thus add the \$52,306.67 amount to its \$46,227.73 attorney's lien previously awarded in the April 1 Order.

In an order dated June 24, 2011, the district court denied the Saliterman Firm's motion for attorney fees and collection costs pursuant to Rule 119. But it awarded the Saliterman Firm additional attorney fees and collection costs in the amount \$37,543.70, increasing the Saliterman Firm's attorneys' lien to a total of amount of \$83,771.43 (\$46,227.73 + \$37,543.70). The June 24, 2011 order was entered into judgment June 27, 2011. The Effrems now appeal from this June 27, 2011 judgment (and amended judgment entered July 13, 2011).<sup>3</sup> (A.54).

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<sup>2</sup> See this Court's October 11, 2011 Order at 4, ¶ 1.

<sup>3</sup> By order dated July 1, 2011 (judgment entered July 13, 2011), the district court amended paragraph 3 of the June 24, 2011 order to correct a clerical error. In the June 24 order, the amount of the Saliterman firm's attorney's lien was mistakenly calculated at \$86,597.24; the July 1 order corrected this to \$83,771.43. (See ADD.18 ¶ 3, ADD.1-2).

## STATEMENT OF THE FACTS

In 2008, Plaintiffs-Appellants Timothy Effrem and George Effrem (“the Effrems”) retained Respondent Saliterman & Seifferman, P.C. (“the Saliterman Firm”) to commence a civil action against Defendant Paul Effrem to, among other things, obtain title in real property. (A.1) (Retainer Agreement). The Effrems and the Saliterman Firm signed a Retainer Agreement, which set forth Richard Saliterman’s hourly rate of \$275 — later changed to \$300 without notice to the Effrems — that the Saliterman firm would charge the Effrems. (*Id.*) The Saliterman Firm proceeded to draft and serve a complaint that commenced the underlying action. However, during the three months that the Saliterman Firm represented the Effrems, the Saliterman Firm billed the Effrems over \$82,649.14, \$19,159.09 of which the Effrems paid. (ADD.65) (September 7, 2010 Order). The Effrems considered this amount to be unreasonable in light of the work performed, and then they severed their relationship with the Saliterman Firm and hired Meagher & Geer, PLLP to continue on with the litigation.

After the Effrems discharged the Saliterman Firm, the Saliterman firm filed a Notice of Attorney’s Lien dated December 16, 2008 (“Lien”) with the Minnesota Secretary of State and against the real property that was the subject of the underlying litigation. (A.2) (Notice of Attorneys’ Lien). The Lien stated that there was an outstanding balance of \$63,490.95 and attempted to attach it to the proceeds of any settlement reached in the underlying litigation, Defendant’s real property, and to assets of the Effrems’ parents’ trusts. (*Id.*) Later in September 2009, the underlying litigation resulted in a settlement between the Effrems and Defendant Paul Effrem, and this was

memorialized in a mediated settlement agreement. (A.11) (Mediated Settlement Agreement). The Settlement Agreement provided among other things that the Effrems would be entitled to a payment of \$61,500 from Defendant and the Effrems agreed to resolve the Lien that had been recorded against Defendant's real property. (*Id.*). The Settlement Agreement did not provide the Effrems with any interest in the real property that was the subject of the underlying litigation. (*Id.*).

Without regard to the fact the Effrems did not obtain any interest in Defendant's real property, the Saliterman Firm commenced the summary lien proceeding to establish the amount of its Lien and to determine the property to which it attached. (A.13) (Notice of Motion and Motion to Determine Statutory Attorneys' Lien of Saliterman & Seifferman, P.C.). In connection with the summary lien proceeding, the Effrems brought a motion to release the Lien from Defendant's real property. The district court granted the Effrems' motion and ordered that the Lien be released from Defendant's real property. (ADD.75) (February 23, 2010 Order). In lieu of determining the amount of the Lien at this initial hearing, however, the district court appointed Judge Myron Greenberg as special master to determine the amount of the Lien and to which remaining property it attached. (*Id.*). The Effrems and the Saliterman Firm briefed the issues to Special Master Greenberg. In addition, the special master heard sworn testimony from attorney Richard Saliterman. Subsequently, the special master issued a recommendation dated May 31, 2010, in which he reduced the Lien amount to \$35,000, inclusive of some attorneys' fees post-representation of the Effrems. (A.16) (Recommendation, dated May 31, 2010). The special master further found that the Lien did not attach to any trust property, but that the

Lien did attach to the \$61,500 settlement proceeds. (*Id.*).

After receiving Special Master Greenberg's Order, the Saliterman Firm wrote a letter to the district court challenging the special master's Order. (A.19) (Saliterman Letter, dated June 9, 2010). Even though the Saliterman Firm did not comply with the Minnesota Rules of Civil Procedure in appealing the special master's Order, the district court treated it as an appeal under the rules, and held a hearing to review the special master's Order de novo on August 4, 2010. (ADD.65). The district court issued an order dated September 7, 2010 in which it ruled that the Saliterman Firm was entitled to a lien in the amount of \$61,500. (*Id.*) Although the district court ordered that the Lien be released from Defendant's real property and further found that the Lien did not attach to any trust property, it failed to perform a reasonableness analysis of the Saliterman Firm's proffered attorney's fees in connection with determining the amount of the Lien. (*Id.*).

Furthermore, when the district court reviewed the special master's Order, it was not in possession of the materials that had been submitted to the special master. (A.42, Meagher & Geer letter, dated October 6, 2010). The Effrems requested that the district court reconsider its order in light of the fact that it had not received the special master's materials and in light of the fact it had not conducted a reasonableness analysis. (*Id.*) Because the district court failed to conduct the required reasonableness analysis and because it was without a full record, the district court granted the Effrems' request to bring a motion for reconsideration and the materials in the special master's possession

were submitted to the district court for review.<sup>4</sup>

On the motion to reconsider, the Effrems addressed not only the reasonableness standard to be applied in determining the amount of the Lien, but also that the Lien should not include collection costs and attorneys' fees incurred in the summary proceeding to establish the amount of the Lien. (ADD.49). On April 1, 2011, the district court issued a new order in which it engaged in the required reasonableness analysis and reduced the Lien amount to \$46,708.98, which included \$9,655.20 in collection costs, i.e. attorneys' fees the Saliterman firm incurred in pursuing its Lien.<sup>5</sup> (*Id.*)

Later that month, the Saliterman Firm brought a motion pursuant to Minnesota Rules of Practice Rule 119.01 seeking to include over \$50,000 in collection costs and attorneys' fees that it had incurred in the attorney's-lien proceedings — an amount the consisted entirely of costs and fees that the Saliterman firm incurred post representation of the Effrems and in connection with establishing the Lien amount. (A.45) (Notice of Motion and Motion for Attorneys' Fees and Costs). Alternatively, it argued that it was entitled to this amount as collection costs incurred in pursuing its attorney's lien. Even though the Retainer Agreement authorized recovery of attorneys' fees for breach of the Retainer Agreement, the Saliterman firm had not sued for breach of the Retainer

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<sup>4</sup> At the time the district court granted the Effrems permission to bring a motion to reconsider, the Effrems appealed the district court's September 7, 2010 Order to this Court. By ordered dated December 14, 2010, this Court remanded the matter back to the district court in order to allow it to correct its previous order.

<sup>5</sup> The April 1, 2011 Order (judgment entered April 5, 2011) is not part of this appeal, as determined by this Court on October 11, 2011. (*see* footnote 2, *supra*).

Agreement. The Effrems countered that these were not recoverable as part of the lien proceeding because Section 481.13, the statute under which the Saliterman Firm sued, did not expressly provide for recovery of such amounts.

The district court agreed with the Effrems, stating that “Section 481.13 does not authorize this Court to provide for the recovery of [such costs and] attorney’s fees. Therefore, the Court may not award Saliterman its attorney’s fees pursuant to its Rule 119.01 motion under Section 481.13.” (ADD.10) (June 24, 2011 Order). The district court also stated that “[w]hile the Court notes that the retainer agreement appears to provide for an award of attorney’s fees, the Court further notes that Saliterman has failed to request those fees in an action brought under the retainer agreement in this case.” (ADD.12). The district court further stated that “[b]ecause Saliterman does not bring a claim for breach of the retainer agreement against Plaintiffs in this case, the Court may not award Saliterman its attorney’s fees pursuant to its Rule 119.01 motion under the retainer agreement \* \* \* the Court denies Saliterman’s Rule 119.01 motion for attorney’s fees in this case.” (ADD.13). Nevertheless, the district court ruled that “the Court finds that Saliterman’s claimed attorney’s lien and collection costs are generally reasonable, and they should be properly included in Saliterman’s attorney’s lien.” (*Id.*). Therefore, the district court increased the Lien amount from \$46,708.98 to \$83,771.43, which included \$37,000 of collection costs and attorneys’ fees. (ADD.17). The Effrems appeal from the June 27, 2011 judgment entered on the June 24 order.<sup>6</sup>

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<sup>6</sup> The Effrems’ appeal includes the subsequent July 13, 2011 judgment entered on the July 1, 2011 amended order (*see* footnote 3, *supra*).

## ARGUMENT

### Standard of Review

Application of Minn. Stat. § 481.13, the attorney-lien statute, is a question of law, which this Court reviews de novo. *Boline v. Doty*, 345 N.W.2d 285, 288-90 (Minn. App. 1984) . And when considering whether the district court employed the proper method to calculate the amount of an attorney lien, this Court undertakes a de novo review. *In re L-tryptophan Cases*, 518 N.W.2d 616, 619 (Minn. App. 1994). Statutory construction is a matter of law reviewed de novo. *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 732 (Minn. 2005).

“When interpreting a statute, [this Court] first look[s] to see whether the statute’s language, on its face, is clear or ambiguous.” *Am. Fam. Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (citation omitted). “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Id.* (quotation omitted). “Basic canons of statutory construction instruct that [this Court] construe[s] words and phrases according to their plain and ordinary meaning. *Id.* “Fundamental principles of statutory construction require that courts give effect to the plain meaning of a statute when the language is clear.” *Martin ex rel. Hoff v. City of Rochester*, 642 N.W.2d 1, 11 (Minn. 2002). “If a statute, construed according to ordinary rules of grammar, is unambiguous, a court may engage in no further statutory construction and must apply its plain meaning.” *Freeman v. Swift*, 776 N.W.2d 485, 489 (Minn. App. 2009). To identify the plain meaning of a particular word used in a statute, it is appropriate to refer first to the common usage of the word. *Swanson v. Brewster*, 784

N.W.2d 264, 274 (Minn. 2010).

“A statute should be interpreted, whenever possible, to give effect to all of its provisions \* \* \* .” *Am. Fam. Ins. Group*, 616 N.W.2d at 277 (citation omitted). “[N]o word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *Id.* (quotation omitted). Appellate courts read and construe a statute as a whole. *Id.* Moreover, “courts should construe a statute to avoid absurd results and unjust consequences.” *Id.* at 278 (citation omitted). And when “construing a statute, [this Court’s] goal is to ascertain and effectuate the intention of the legislature. *Id.* at 278. In addition, “[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” Minn. Stat. § 645.16 (2010). “Canons of statutory construction militate against reading into the statutory text a provision not already there.” *Matter of Welfare of J.M.*, 574 N.W.2d 717, 723 (Minn. 1998). Indeed, this Court cannot add to a statute “what the legislature purposely omits or inadvertently overlooks.” *Ullom v. Indep. Sch. Dist. No. 112*, 515 N.W.2d 615, 617 (Minn. App. 1994) (citation and internal quotation omitted).

**I. The district court erred in awarding the Saliterman Firm its attorneys’ fees and collection costs in connection with pursuing its attorneys’-lien action, because the plain language of the attorney’s-lien statute, Minn. Stat. § 481.13 does not provide for such to be included in the calculation of the lien amount.**

Under Minnesota’s attorney-lien statute, Minn. Stat. § 481.13 (2010), an attorney may petition a district court to establish an attorney lien for compensation, determine the proper amount of the lien, and enter judgment accordingly. *N. States Power Co. v. Gas*

*Servs. Inc.*, 690 N.W.2d 362, 365-66 (Minn. App. 2004). Specifically, the attorney-lien statute provides for the following:

An attorney has a lien for *compensation* whether the agreement for compensation is expressed or implied (1) upon the cause of action from the time of the service of the summons in the action, or the commencement of the proceeding, and (2) upon the interest of the attorney's client in any money or property involved in or affected by any action or proceeding in which the attorney may have been employed, from the commencement of the action or proceeding, and, as against third parties, from the time of filing the notice of the lien claim, as provided in this section.

Minn. Stat. § 481.13, subd. 1(a) (emphasis added). Subdivision 1(c) specifies that the proceeding to establish and determine the amount of the lien will be conducted “summarily” upon application of the lien claimant. Minn. Stat. § 481.13, subd. 1(c) ; *In re L-tryptophan Cases*, 518 N.W.2d at 622.

Here, the district court expressly acknowledged that Minn. Stat. § 481.13 does not provide for recovery of attorney's fees incurred in the course of establishing an attorney's lien, yet it went on to include them in the Saliterman Firm's previously awarded attorney's lien.” (*Id.*). This ruling not only runs counter to the district court's own reasoning, it ignores the time-honored rule in Minnesota that attorneys' fees are not recoverable in litigation unless there is a specific contract or statute authorizing such recovery. *Barr/Nelson v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983). Here, the Saliterman firm elected the remedy under the statute, not the parties' contract. the Retainer Agreement authorized recovery of attorneys' fees for breach of the Retainer Agreement, but the Saliterman firm chose to sue under Minn. Stat. § 481.13. And a plain reading of Minn. Stat. § 481.13 shows that the statute is silent as to whether attorneys'

fees and collection costs incurred in enforcing the lien are properly includable in the attorneys' lien. *See* Minn. Stat. § 481.13, *generally*. The law is clear in Minnesota, however, that attorneys' fees and collection costs are only recoverable in actions under statutes if the statute *specifically and expressly* authorizes it. *See Barr/Nelson*, 336 N.W.2d at 53. While Minn. Stat. § 481.13 provides for a lien for "compensation," under the plain and ordinary meaning of that term, collection costs and interest are not compensation that the Saliterman Firm earned through its representation of the Effrems. *See Black's Law Dictionary* 301 (8th ed. 2004) (defining "compensation" as "remuneration and other benefits received in return for services rendered; esp. salary or wages"). And case law bolsters this plain meaning of "compensation," as used in the attorney-lien statute, stating that if a "client recovers money \* \* \* as a result of an attorney's *services*," the attorney has a lien on the recovery "as security for fees for the attorney's *services* owed by the client." *St. Cloud Nat'l Bank & Trust Co. v. Brutger*, 488 N.W.2d 852, 855 (Minn. App. 1992) (emphasis added), *review denied* (Minn. Nov. 17, 1992) .

Here, the only services that the Saliterman firm rendered on the Effrems' behalf are those services that the Saliterman Firm provided in connection with its representation of the Effrems from June 2008 through discharge in November of 2008. The Saliterman firm's billings after the discharge in November 2008 are not "compensation" to which the Saliterman firm is entitled to a lien under Section 481.13. And the rules of statutory construction prohibited the district court from expanding that plain and ordinary meaning to include fees and collection costs incurred in pursuing the lien; in other words,

improperly reading into the statute something that the legislature “purposely omit[ted] or inadvertently overlooked.” *Ullom*, 515 N.W.2d at 617. Because the statute lacks express language authorizing recovery of attorney’s fees and collection costs, the district court erred by including the Saliterman’s post-representation attorney’s fees and collection costs into the Lien.

Notwithstanding that the district court overlooked the plain meaning of the statute, the district court asserted in its preceding April 12, 2011 Order that it was “unable to locate any binding legal authority regarding this issue” (ADD.42), so it relied on two non-binding decisions: an unpublished opinion by this Court, *In the Matter of M Arnold Lyons Family Trust*, No. A08-1134, 2009 WL 1311912 (Minn. App. May 12, 2009) (A.50), and a district court default order awarding collection costs, *1010 Metrodome Square, LLC v. U.S. Bank Nat’l Assoc.*, 2007 WL 6336440 (Minn. Dist. Ct. Nov. 30, 2007) (A.47). But neither of these support awarding the Saliterman Firm its post-representation attorney’s fees and collection costs incurred in the lien action. *In the Matter of M Arnold Lyons Family Trust* provides no guidance, as the question presented there was whether court-awarded fees could be included when computing a contingent fee under a retainer agreement, which provided for payment of “one-third of any amount recovered,” and reimbursement of any unpaid fees or expenses. Unlike the instant case, which deals with Section 481.13, the issue dealt with whether “recovered” language under a retainer-agreement included statutory or court-awarded attorney fees. 2009 WL 1311912 at \*1, \*4. And *1010 Metrodome Square* is an order from a default hearing in which the defendant did not appear, so no party challenged

whether the attorney's fees incurred in pursuing the attorney's lien were properly includable in the lien amount. (A.47). These cases are distinguishable and do not support the notion that Section 481.13 authorizes attorney's fees or collection costs incurred in pursuing a lien.

The statute's use of the term "summarily" further supports the plain meaning of compensation and the notion that Section 481.13 does not authorize a court to award attorney's fees or collection costs incurred in pursuing a lien. Minn. Stat. § 481.13, subd. 1(c); *see Am. Fam. Ins. Group*, 616 N.W.2d at 278 ("While statutory construction focuses on the language of the provision at issue, it is sometimes necessary to analyze that provision in the context of surrounding sections."). Minnesota case law has long characterized attorney-lien actions as summary proceedings. *See, e.g., Village of New Brighton v. Jamison*, 278 N.W.2d 321, 323-24 (1979) ; *Akers v. Akers*, 233 Minn. 133, 138, 46 N.W.2d 87, 91 (1951) ; *Westerlund v. Peterson*, 157 Minn. 379, 381-82, 197 N.W. 110, 111 (1923) . The term "summarily" evinces the legislature's intent to provide attorneys the right to a quick and inexpensive summary proceeding in order to avoid incurring additional and significant attorney's fees in establishing an attorney's lien and determining its amount. Allowing attorney's fees and collection costs incurred in pursuing a lien to be included in the lien amount would be antithetical to that goal by incentivizing attorneys protracted lien proceedings to inflate the lien amount.

And this case serves as an example. Instead of participating in a summary proceeding to determine the amount of its lien, the Saliterman firm employed a strategy of drawing the matter out into a series of prolonged and contentious proceedings of the

kind not contemplated by the statute. Finally, after multiple hearings (beginning in 2009) and a motion for reconsideration, the district court ruled in April 2011 that the Saliterman Firm's fees were unreasonable. Specifically, the district court's order provided that the Saliterman Firm "billed over 113.5 hours for time spent drafting the complaint in this case." (ADD.40). The district court calculated that the first 60.5 hours were reasonable but that the remaining 53 hours were unreasonable, which amounted to \$9,611.25 in overbilling. (*See id.*). The district court went on to find that the Saliterman Firm had \$14,273.75 in excess charges. In addition, the district court found that the Saliterman Firm was attempting to collect \$18,873.75 in fees that were unrelated to this matter.<sup>7</sup> The district court also awarded the Saliterman Firm \$15,885.15 in collection costs that were included in the lien after reducing these costs by \$1,875.00 because the costs were "duplicative and excessive." Yet this drawn-out process of having the Saliterman firm's fees declared unreasonable was anything but "summary."

Finally, as a matter of fairness, Section 481.13 cannot be read to allow recovery of attorney's fees or collection costs incurred in pursuing a lien when, as here, that lien was predicated on unreasonable fees, as determined by the court. The Minnesota Rules of Professional Conduct provide that a lawyer shall not "charge or collect an unreasonable fee," and provides a list of eight non-exclusive factors to be considered in determining the reasonableness of a fee. Minn. R. Prof. Conduct 1.5(a). While the Rules of Professional Responsibility do not create liability for the basis of a claim, the public

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<sup>7</sup> The Saliterman Firm represented appellant George Effrem in an eviction proceeding commenced in the Hennepin County Housing Court.

policy behind the rule for not charging an unreasonable fee would be negated if lawyers are allowed to recover their own fees in connection with establishing an attorney's lien. Indeed, such an unfair and absurd result would violate one of the fundamental tenets of statutory construction. *See Am. Fam. Ins. Group*, 616 N.W.2d at 278 (stating that courts must "construe a statute to avoid absurd results and unjust consequences"). Thus, this case exemplifies why, as a matter of public policy, Minn. Stat. 481.13 does not allow an attorney to recover attorney's fees and collection costs in a lien action.

Here, the Effrems were very dismayed by the amount billed compared to the amount of work that the Saliterman Firm performed on their behalf — work that simply took the Effrems through the first step of litigation. And while the Effrems knew how expensive litigation can be, they knew that being charged \$81,000 for merely drafting a complaint—an effort that the Saliterman Firm expended three months on—was unreasonable. So after exercising their right to discharge the Saliterman Firm and challenge an unreasonable fee, the district court has now held the Effrems further liable for over \$50,000 of the Saliterman firm's attorney's fees and collection costs incurred post-representation. After fighting the amount of these unreasonable attorney's fees, the Effrems are now being ordered to pay over two times what the district court ruled were the reasonable attorney's fees to which the Saliterman Firm was entitled for its Lien. Could there be a bigger deterrent to a client challenging the reasonableness of an attorney's bill?

The legislature recognized this fact when it provided for a summary proceeding for establishment and enforcement of an attorney's lien in the statute and by further

remaining silent with respect to recovery of attorney's fees and collection costs incurred in connection with the summary proceeding. This is further evidenced by the statute's term "compensation," which is limited to "remuneration and other benefits received in return for services rendered" according to its plain, ordinary meaning. The legislature did not intend to abrogate an attorney's ethical obligations by allowing an attorney the right to make additional fees off clients who refuse to pay an unreasonable fee. Such a rule would reward unscrupulous attorneys for charging a higher rate from the beginning or billing excessive hours and even if challenged and ruled unreasonable, the attorney would still be able to collect for a reduced rate plus any amounts incurred in pursuing the lien under Section 481.13. This cannot be the result that was intended by a legislature that is fully aware of attorneys' ethical obligations.

Section 481.13 does not authorize including attorney's fees and collection costs incurred post representation in the Lien, as this would violate public policy. Therefore, the Court should reverse the district court's decision to include those amounts in the Lien.

**II. In the alternative, the Saliterman Firm's Lien amount for collection costs should be reduced because the Effrems have substantially limited the Saliterman Firm's claimed Lien.**

If the Court is inclined to interpret Minn. Stat. 481.13 to authorize inclusion of the attorneys' fees in the lien, the amount should be substantially reduced because the Effrems successfully reduced the principal lien amount by half. Limiting a lien claimants' request for attorneys' fees is not uncommon in other lien matters, especially in the mechanic's lien context, which is most analogous to an attorneys' lien because both liens arise from work performed by the lien claimant. For example, in *Asp v. O'Brien*,

277 N.W.2d 382 (Minn. 1979), the supreme court reduced the attorney's fees of the mechanic's lien claimant, reasoning that the mechanic's lien claimant was not entitled to an award of the full amount of attorneys' fees "in a case such as this where the property owner was successful in partially limiting the amount of recovery." *Id.* at 385. In *Bloomington Electric Company v. Freeman's, Inc.*, 394 N.W.2d 605 (Minn. App. 1986), this Court, following the reasoning in *Asp*, similarly reduced the fees of a mechanic's lien claimant because the property owner was again successful in limiting the mechanic's lien claimant's recovery. *Id.* at 608.

Here, the Effrems have not only successfully limited the Saliterman Firm's recovery amount, but also they have completely defeated the Saliterman Firm's claims that the lien attached to the real estate, the Saliterman Firm's claims that the lien attached to the Trusts, and the Saliterman Firm's claim that fees related to the eviction action should be included. The Effrems' main focus in this case has been the unreasonable fees that the Saliterman Firm charged. Because the Effrems have succeeded on the issue of the unreasonableness of the Saliterman Firm's fees, i.e. the district court specifically ruled that the Saliterman Firm sought to recover unreasonable fees, as well as on all of the other contested matters in this case, this Court should remand with instructions to the district court that it reduce the Saliterman Firm's attorneys' fees altogether, including the attorneys' fees in connection with the collection efforts that were awarded in the district court's June 24, 2011 Order.

## CONCLUSION

The path to recovery of attorney fees is either by statute or contract, but not both. And here, the Saliterman firm chose the path of the attorney-lien statute, Minn. Stat. § 481.13 — not the parties' retainer agreement — to pursue its attorney fees and collection costs. But Minn. Stat. 481.13 does not authorize recovery of collection costs and attorney fees incurred in pursuing an attorney's lien under it. And allowing such recovery under the statute would lead to the impermissibly absurd and unfair result of rewarding attorneys for both seeking unreasonable fees and drawing out what would otherwise be summary attorney's-lien proceedings. Therefore, the Effrems respectfully ask this Court to reverse the district court's ruling.

Respectfully submitted,

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## FORM AND LENGTH CERTIFICATION

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