

NO. A11-1925

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State of Minnesota
In Court of Appeals

Marine Credit Union,

Appellant,

vs.

Anne K. Detlefson-Delano and Jack Antonio,

Respondents.

APPELLANT'S BRIEF

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LEGAL ISSUES

Issue 1: Did the District Court err when it made a finding of fact that the Quitclaim Deed from Jack Antonio to Anne K. Detlefson-Delano, which was recorded on July 25, 2007, was signed after the Mortgage was executed on January 18, 2008?

District Court's Ruling: The District Court found that the Quitclaim Deed was signed after the Mortgage.

Relevant Authorities:

Minn. R. Civ. P. 52.01

Untiedt v. Grand Labs., Inc., 552 N.W.2d 571 (Minn. Ct. App. 1996)

Rathbun v. W. T. Grant Co., 219 N.W.2d 641 (Minn. 1974)

Whisler v. Findeisen, 160 N.W.2d 153 (Minn. 1968)

Issue 2: Did the District Court err when it held that the Mortgage was void under Minn. Stat. § 507.02 despite the fact that Jack Antonio had previously quitclaimed all of his right, title, and interest in the Property to his spouse Anne K. Detlefson-Delano?

District Court's Ruling: The District Court held that the Mortgage was void under Minn. Stat. § 507.02 and that the Quitclaim Deed did not operate as a waiver of Antonio's homestead rights.

Relevant Authorities:

Minn. Stat. § 507.02

Minn. Stat. § 500.19

Blackowiak v. Mielke, 692 N.W.2d 897 (Minn. Ct. App. 2005)

National City Bank v. Engler, 777 N.W.2d 762 (Minn. Ct. App. 2010)

STATEMENT OF THE CASE

This case, involving the spousal signature requirements of Minn. Stat. § 507.02, comes on appeal to this Court from the Fillmore County District Court, the Honorable Robert R. Benson presiding. Appellant Marine Credit Union initiated this action in June 2010 to foreclose its Mortgage on Respondent Anne K. Detlefson-Delano's ("Detlefson") home in Fillmore County (the "Property") and to collect on the accompanying Note secured by the Mortgage. Both Detlefson and her estranged husband, Respondent Jack Antonio ("Antonio"), were named as defendants. Detlefson counterclaimed that the Mortgage was void under Minn. Stat. §507.02 because Antonio did not sign the Mortgage. Antonio has not appeared. Antonio was never in title and had—at most—an inchoate interest in the Property.

Marine Credit Union brought a Motion for Summary Judgment contending that Detlefson should be equitably estopped from denying the validity of the Mortgage and that a previous quitclaim deed from Antonio gave Detlefson the ability to convey the Property without Antonio's involvement. Detlefson did not bring her own motion for summary judgment but argued in response to Marine Credit Union's motion that the Mortgage was void under Minn. Stat. § 507.02 because Antonio did not sign and he did not know the specifics of the Mortgage loan. She further argued that the quitclaim deed was not given for the purpose of waiving homestead rights, but rather to facilitate a possible sale of the Property. This fact was disputed by Marine Credit, who was instead informed that the Quitclaim Deed provided authority for Detlefson to enter into the transaction.

In an Order filed March 4, 2011, the district court denied Marine Credit Union's motion and instead granted summary judgment to Detlefson (and to Antonio, who did not appear let along bring his own motion) *sua sponte*, holding that the Mortgage was void under Minn. Stat. § 507.02. The Court rejected Marine Credit Union's equitable estoppel argument and mistakenly found that the July 2007 quitclaim deed was signed *after* the subject January 2008 Mortgage loan closing, and further held that the deed did not operate to waive Antonio's homestead rights. Marine Credit Union subsequently brought a motion for amended findings, which the district court denied via letter wherein the court stated it "remains satisfied with its decision." (A0148.)

The remaining issue of liability on the note was decided following a separate hearing before the Hon. Robert R. Benson. In an Order for Judgment entered on September 22, 2011, the district court determined that Detlefson was liable under the note and for additional expenses that Marine Credit Union had incurred. The court reaffirmed, however, that the Mortgage was void under Minn. Stat. § 507.02. Marine Credit Union now appeals from the September 22, 2011 Order, but specifically seeks review of the district court's March 4, 2011 Order.

STATEMENT OF FACTS

Detlefson owns real property located at [REDACTED], Minnesota (the "Property"), which is her homestead. (A0116.) She originally acquired the Property in 1994 with her then-husband Daniel Delano. (A0116.) In 2002, Detlefson and Delano consolidated their various loans into a short-term \$99,000.00 loan from Associated Bank which was secured by a mortgage on the Property. (A0116.) Following a divorce in

2003 or 2004, Detlefson was awarded the Property in the divorce decree and became the sole owner via a quit claim deed from Delano to Detlefson. (A0116.) On October 29, 2005, Detlefson married her now-estranged husband Jack Antonio. (A0128.) The couple made the Property their marital home. (A0117.)

In the summer of 2007, shortly after Detlefson and Antonio were separated for a time, they listed the Property for sale with a realtor. (A0083.) At this time Antonio was “on the road a lot as a truck driver.” (A0084.) Detlefson claims in a hearsay statement that the realtor requested that Antonio execute a quitclaim deed to Detlefson to facilitate the sale of the Property (the “Quitclaim Deed”). (A0086.) No Affidavit from the realtor or from Antonio as to the claimed advice of the realtor or the intention of Antonio was submitted by Detlefson. The Quitclaim Deed—which Detlefson personally drafted—is dated July 24, 2007 and was recorded the next day on July 25, 2007. (A0130; A0084.) The Quitclaim Deed conveys ownership directly to Detlefson, not to any third party, and states that Antonio “does hereby remise, release and quitclaim unto [Detlefson] forever, all the right, title, interest, and claim which [Antonio] has in [the Property]. (A0130.) Detlefson admitted that the Quitclaim Deed was needed because Antonio was frequently gone and it would make it easier to sell the Property. (A0086.) Detlefson did not hold the Quitclaim Deed for some eventual sale, but rather caused it to be recorded immediately. (A0130.)

In the fall of 2007, Detlefson contacted Marine Credit Union about refinancing the Associated Bank loan, as the loan was soon coming due. (A0087-0088.) It is undisputed that Detlefson informed Marine Credit Union of her deed from Antonio in conjunction

with seeking the Mortgage loan from Marine Credit Union. (A0108.) Eric Prochnow, the loan officer for the Mortgage, testified that in conversations with Detlefson he was given the impression that Antonio was out of the picture, had no interest in the Property, and had conveyed his interest to Detlefson. (A0108.) Detlefson claimed that Antonio did not know the details of the refinance with Marine Credit Union, but admitted that Antonio was aware of the need to refinance and thought it was necessary. (A0087.) Antonio has not been located and therefore has not offered his own testimony. (A0074.) Detlefson has not seen or heard from Antonio in almost three years. (A0082.)

In January 2008, Marine Credit Union made a loan to Detlefson in the amount of \$84,000 in exchange for a mortgage on the Property (the “Mortgage”). (March 4 Order, Finding no. 1; A0048-0072.) The Mortgage was executed on January 18, 2008. (A0068.) The new loan paid off the prior loan with Associated Bank. (March 4 Order, Finding no. 2.) Detlefson signed the Mortgage and Note; Antonio did not. (A0067.) Because Antonio had signed the Quitclaim Deed, which was recorded approximately six months prior to the closing, Marine Credit Union did not require him to sign the Mortgage. (A0108.) Detlefson stopped making payments on the loan in October 2009 and this action ensued. (September 22 Order, Finding no. 2.) Detlefson currently owes \$107,215.63 on the loan. (September 22 Order, p. 4.)

SUMMARY OF ARGUMENT

Two main issues are raised in this appeal. First, the district court’s finding that Antonio signed the Quitclaim Deed after the Mortgage was executed was erroneous. The Quitclaim Deed is dated July 24, 2007 and was recorded on July 25, 2007—six months

before the Mortgage was signed and recorded in January 2008. Detlefson's agreement as to the sequence of events, together with the undisputed public record of recorded documents, demonstrates that the district court's finding was clear error. Moreover, this factual finding is of great significance because it decidedly affects the court's legal analysis of whether the Mortgage is void.

Second, the district court erred when it held that the Mortgage was void under Minn. Stat. § 507.02. The Quitclaim Deed from Antonio to Detlefson extinguished all of Antonio's right, title, and interest in the Property and therefore operated as a waiver of his homestead rights. The Quitclaim Deed is unambiguous and the limited intent claimed by Detlefson was improperly relied upon by the district court. Further, the purpose of section 507.02 to protect the marital homestead is still fulfilled if the Mortgage is deemed valid despite lacking Antonio's signature.

Marine Credit Union therefore respectfully requests that this Court reverse the district court and hold as follows: (1) the district court erred when it found that the Quitclaim Deed was signed after the Mortgage was executed; and (2) the Mortgage is valid as a matter of law.

STANDARD OF REVIEW

Generally, this Court reviews the district court's findings of fact for clear error. Minn. R. Civ. P. 52.01; *Untiedt v. Grand Labs., Inc.*, 552 N.W.2d 571, 574 (Minn. Ct. App. 1996). But findings of fact in a summary judgment proceeding are not entitled to the respect which an appellate court is required to give findings made pursuant to Rule

52.01. *Rathbun v. W. T. Grant Co.*, 219 N.W.2d 641, 651 (Minn. 1974); *Whisler v. Findeisen*, 160 N.W.2d 153 (Minn. 1968).

Whether a district court has properly construed a statute is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996). If the language in a statute is clear, courts will rely on the plain meaning. Minn. Stat. § 645.16; *Correll v. Distinctive Dental Services*, 607 N.W.2d 440, 445 (Minn. 2000). If the language is ambiguous, courts apply the rules of statutory construction. Minn. Stat. § 645.16; *Correll*, 607 N.W.2d at 445. Language is ambiguous if it is reasonably subject to more than one interpretation. *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996).

ARGUMENT

I. THE DISTRICT COURT'S FINDING THAT ANTONIO SIGNED THE QUITCLAIM DEED AFTER THE MORTGAGE WAS EXECUTED WAS ERRONEOUS.

In its March 4, 2011 Order, the district court made a specific factual finding that the Quitclaim Deed was signed subsequent to the Mortgage. (Finding no. 9.) Even though Marine Credit Union alerted the court to this mistake in a motion for amended findings, the district court did not amend its Order. (A0148.) Generally, this Court reviews the district court's findings of fact for clear error. Minn. R. Civ. P. 52.01; *Untiedt*, 552 N.W.2d at 574. But findings of fact in a summary judgment proceeding are not entitled to the respect which an appellate court is required to give findings made pursuant to Rule 52.01. *Rathbun*, 219 N.W.2d at 651; *Whisler*, 160 N.W.2d 153.

Here, the error is so apparent that this Court can reverse Finding no. 9 under either standard of review. The Quitclaim Deed—which Detlefson personally drafted—is dated July 24, 2007 and was recorded the next day on July 25, 2007. (A0130; A0084.) The Mortgage was executed on January 18, 2008. (A0068.) These facts, evident on the face of the respective documents and of public record in the Office of the Fillmore County Recorder, are undisputed. Moreover, the chronological order of the documents is a crucial fact in the legal analysis of this case, as demonstrated below. Due to the erroneous finding, the district court’s legal holding regarding the effect of the Quitclaim Deed on Antonio’s homestead rights was fundamentally flawed. The district court’s finding was erroneous and must be reversed.

II. A MORTGAGE IS VALID UNDER MINN. STAT. § 507.02 WHERE THE NON-SIGNING SPOUSE PREVIOUSLY DEEDED THE PROPERTY TO THE SIGNING SPOUSE.

In a *sua sponte* decision granting summary judgment to Detlefson and Antonio, the district court held in its March 4, 2011 Order that Marine Credit Union’s Mortgage was void under Minn. Stat. § 507.02 because the Mortgage lacks signatures from both spouses. Section § 507.02 states, in relevant part:

If the owner is married, no conveyance of the homestead, except a mortgage for purchase money under section 507.03, a conveyance between spouses pursuant to section 500.19, subdivision 4, or a severance of a joint tenancy pursuant to section 500.19, subdivision 5, shall be valid without the signatures of both spouses. A spouse's signature may be made by the spouse's duly appointed attorney-in-fact.

It is undisputed that Detlefson and Antonio were married at the relevant time, that the Property to be conveyed was the marital homestead, and that the Mortgage was a

conveyance under the meaning of section 507.02. But the analysis does not end there. Section 507.02 provides an exception for a conveyance between spouses, and additional Minnesota statutes and case law provide that such interspousal conveyances operate to terminate the rights of the conveying spouse—precisely what happened in this case. Perhaps due in part to the erroneous finding that the Quitclaim Deed was signed after the Mortgage, the district court failed to properly address the effect of the Quitclaim Deed on Antonio’s interest in the Property.

Specifically, this Court should reverse the district court and hold that the Mortgage is valid because (A) the Quitclaim Deed from Antonio to Detlefson extinguished all of Antonio’s right, title, and interest in the Property and therefore operated as a waiver of his homestead rights; (B) the Quitclaim Deed is unambiguous and the limited purpose claimed by Detlefson was improperly relied upon by the district court; and (C) the purpose of section 507.02 to protect the marital homestead is fulfilled.

A. The Quitclaim Deed from Antonio to Detlefson Extinguished all of Antonio’s Right, Title, and Interest in the Property and therefore Operated as a Waiver of his Homestead Rights.

Minn. Stat. § 507.02 contains various exceptions to the general rule that both spouses must sign a conveyance of the homestead. Most relevant here is the exception for “a conveyance between spouses pursuant to section 500.19, subdivision 4.” Minn. Stat. § 507.02. The cross-referenced section provides as follows:

Subd. 4. Conveying interest directly.

(a) Subject to section 507.02 specifying when both spouses must join in a conveyance of their homestead, one or more owners of an interest in real estate may convey all or part of the interest directly to one or more other

persons or to one or more of themselves, or to any combination of one or more of themselves and other persons.

(b) Subject to section 507.02 specifying when both spouses must join in a conveyance of their homestead, conveyances between spouses are allowed under paragraph (a) to the same extent as those between unmarried persons.

Minn. Stat. § 500.19, subd. 4. This Court has held that the plain meaning of 500.19, read together with 507.02, “is that if one or both spouses own an interest in property, the one(s) with the record ownership interest may transfer that interest directly to the other spouse.” *Blackowiak v. Mielke*, 692 N.W.2d 897, 899 (Minn. Ct. App. 2005). The Court noted that its holding was in line with the Minnesota Standards for Title Examination, which states that “[c]onveyances between spouses are valid in all respects.” *Id.* at 899, n. 2.

In *Blackowiak*, a husband and wife both signed a deed that conveyed jointly-owned real property to the wife. *Id.* at 900. The wife then sold the property on a contract for deed. *Id.* The vendee sought to evict a tenant occupying the property, but the tenant challenged the action and argued that the deed between the spouses was ineffective, and therefore the vendee received no rights to the property via the contract for deed. *Id.* at 898. Most significantly—and most relevant to the present case—the Court held that “Although both [spouses] signed the deed [to the wife], the statutes do not require that both join in a conveyance of property owned by one of them (*even the homestead*), if the conveyance is to the other.” *Id.* at 900, n. 3 (emphasis added). Thus, the fact that the property at issue in *Blackowiak* was non homestead does not preclude the application of the Court’s holding to homestead property. Further confirming its holding, the Court

held, “Minn. Stat. §§ 500.19, subd. 4 and 507.02 allow married spouses to transfer an interest in real estate to one of the spouses individually”—even the homestead—and determined that the subsequent contract for deed transfer by the wife was valid. In summary, when one spouse deeds property (including the homestead) to the other, the grantee spouse can later transfer the property without the signature of the grantor spouse.

This Court’s holding in *Blackowiak* is consistent with Minn. Stat. § 507.07, which prescribes the effect of a quitclaim deed:

Every such instrument, duly executed, shall be a conveyance to the grantee, the grantee's heirs and assigns, of *all right, title, and interest* of the grantor in the premises described...

(Emphasis added). Black’s Law Dictionary similarly defines “quitclaim deed” as a deed “that conveys a grantor’s *complete interest* or claim in certain real property...” 339 (Abridged 7th Ed. 2000) (emphasis added); *see also Caughie v. Brown*, 93 N.W. 656, 657 (Minn. 1903) (noting that a quitclaim deed “passes such rights and interest as the grantor possesses at the time [of the conveyance]”). It is axiomatic that, following the execution of a quitclaim deed, the grantor no longer has any right, title, or interest in the property.

Here, Antonio signed the Quitclaim Deed to Detlefson on July 24, 2007 and it was recorded the next day on July 25, 2007. (A0130.) Tracking the language of section 507.07, the Quitclaim Deed states that Antonio “does hereby remise, release and quitclaim unto [Detlefson] forever, all the right, title, interest, and claim which [Antonio] has in [the Property]. (A0130.) As in *Blackowiak*, this was a perfectly valid transfer between spouses. The result of the Quitclaim Deed was Antonio transferred all of his

right, title, and interest in the Property to Detlefson. Thus Antonio no longer had any rights in the Property, including the homestead right.

The district court's analysis on this issue is sparse and misdirected. Instead of directly addressing the merits of Marine Credit Union's arguments that the Quitclaim Deed effectively terminated Antonio's rights in the Property, the district court simply determined that the deed was given for the purpose of listing the Property for sale.¹ (March 4 Order, p. 8.) It focused on Detlefson's claim that Antonio was living at the Property and "thus asserting his homestead rights." (March 4 Order, pp. 8-9.) While the district court correctly states that "the validity of the mortgage must be determined by the conditions which existed at the time thereof," the court fails to recognize that one of those conditions in January 2008 was that Antonio had already conveyed to Detlefson "all the right, title, interest, and claim" which he had in the Property. (March 4 Order, p. 8; *see infra*, section I.) The district court's mistake is further compounded when it states, "Even if Mr. Antonio intended to waive his homestead rights, the quitclaim conveyance occurred subsequent to the execution of the mortgage." (March 4 Order, p. 9.) Again, the Quitclaim Deed was signed and recorded *before* the Mortgage was executed. (A0130.) Thus the district court failed to make the proper analysis.

The undisputed sequence of events shows that Antonio granted all of his "right, title, and interest" in the Property to Detlefson *before* the Mortgage was executed. Accordingly, this Court should reverse the district court and hold that the Quitclaim Deed

¹ The district court's improper reliance on extrinsic and hearsay evidence in making this determination of intent is addressed in more detail below.

extinguished all of Antonio's interest in the Property, including his homestead rights, and therefore the Mortgage is valid under section 507.02.

B. The Quitclaim Deed is Unambiguous and the Limited Intent Claimed by Detlefson was Improperly Relied upon by the District Court.

In its March 4 Order, the district court rejected Marine Credit Union's argument that the Quitclaim Deed operated as a waiver of Antonio's homestead rights by relying on Detlefson's claim that "[t]he quitclaim deed was given for the purpose of listing the Property for sale." (March 4 Order, p. 8.) Indeed, the district court specifically relied on the claimed intent in granting summary judgment *sua sponte* to Detlefson, despite Marine Credit Union disputing this material "fact." Specifically, Marin Credit Union points to the affidavit of Eric Prochnow, the loan officer for the Mortgage, wherein he testifies that in conversations with Detlefson he was given the impression that Antonio was out of the picture, had no interest in the Property, and had even conveyed his interest to Detlefson. (A0108.) Had Detlefson actually made her own Motion for Summary Judgment, Marine Credit Union would have disputed the asserted intention both on evidentiary grounds and on the factual bases presented to its loan officer. But due to the procedural oddity created by the district court when it granted summary judgment to Detlefson despite the fact she made no such motion, Marine Credit Union was not afforded an opportunity to fully rebut Detlefson's claim as to the intent with its own evidence.² Thus, as it relates to the *sua sponte* ruling in favor of Detlefson, there is a genuine dispute of material fact as to Antonio's intent regarding the Quitclaim Deed, and therefore summary judgment for

² Marine Credit Union raised these arguments in its motion for amended findings (A0135-0147), which the district court denied in a letter to counsel. (A0148.)

Detlefson was improper.³

Regardless, the intent of the Quitclaim Deed is inapposite because the district court's consideration of extrinsic evidence of intent was improper under the parol evidence rule. The parol evidence rule prohibits the admission of extrinsic evidence to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing. *Danielson v. Danielson*, 721 N.W.2d 335, 338 (Minn. Ct. App. 2006). Accordingly, when parties reduce their agreement to writing, parol evidence is ordinarily inadmissible to vary, contradict, or alter the written agreement. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003). In addition to traditional contracts, the rule applies to deeds. *See La Cook Farm Land Co. v. N. Lumber Co.*, 200 N.W. 801, 802 (Minn. 1924) (stating that the rules for construing contracts apply to deeds); *Mollico v. Mollico*, 628 N.W.2d 637, 640–41 (Minn. Ct. App. 2001) (applying the parol evidence rule to a deed). Thus, only if a deed is ambiguous can evidence other than its language be considered to determine its meaning. *See City of St. Paul v. Dahlby (In re City of St. Paul)*, 123 N.W.2d 586, 592 (Minn. 1963) (stating “the terms of [an unambiguous] deed cannot be contradicted, altered, added to, or varied by parol evidence”); *Mollico*, 628 N.W.2d at 640–41 (stating

³ Even if Antonio's intent in signing the Quitclaim Deed was to facilitate the sale of the Property, it still evidences his willingness to completely waive his rights in the Property so that it could be conveyed by Detlefson alone. Detlefson's argument that Antonio agreed to allow Detlefson to sell the Property alone to a third party, but would not have agreed to a lesser conveyance (i.e., the Mortgage) is nonsensical.

Moreover, the testimony as to intent is inadmissible hearsay and should be disregarded. Minn. R. Evid. 802. Neither the realtor nor Antonio provided any testimony regarding the intent.

if a deed is ambiguous, courts can consider parol evidence). A deed is ambiguous if, “judged by its language alone and without resort to extrinsic evidence, it is reasonably susceptible to more than one meaning.” *Id.* at 641. Whether a deed is ambiguous is a question of law subject to de novo review. *Id.*

Here, the district court made no determination that the Quitclaim Deed was ambiguous. As such, it could not go beyond the language of the Deed to determine the intent or purpose of the document. Detlefson’s affidavit asserting a limited purpose to the recorded Quitclaim Deed was inadmissible because it would vary the terms of an unambiguous instrument to the prejudice of one who is not even a party to the instrument. In *Danielson*, this Court held that the plain language of the deed did not indicate that that transfer was either limited or reserved, but rather, on its face it was a “complete transfer of all interests” from the grantor to the grantee. 721 N.W.2d at 339. Here, like *Danielson*, the plain language on the face of the Quitclaim unambiguously states that Antonio “does hereby remise, release and quitclaim unto [Detlefson] forever, all the right, title, interest, and claim which [Antonio] has in [the Property]. (A0130.) There is no reservation of rights or other limitations.

The district court should not have considered contrary evidence of the purpose for the Quitclaim Deed and should have instead based its decision on the undisputed fact the Quitclaim Deed was recorded *before* Detlefson applied for the Mortgage. Thus the district court’s reliance on Detlefson’s claim of the intent of the Quitclaim Deed was improper and summary judgment should not have been granted to Detlefson. Accordingly, this Court should reverse the district court.

C. The Purpose of Section 507.02 to Protect the Marital Homestead is Fulfilled.

Even though Antonio didn't sign the Mortgage, the public policy and legislative purpose behind section 507.02 is still fulfilled. This Court recently stated the purpose of the statute:

The purpose of Minn. Stat. § 507.02 is to ensure “a secure homestead for families” by “protecting the alienation of the homestead without the willing signature of both spouses.” *Wells Fargo Home Mortgage, Inc. v. Newton*, 646 N.W.2d 888, 895 (Minn.App.2002) (quotations omitted), *review denied* (Minn. Sept. 25, 2002).

National City Bank v. Engler, 777 N.W.2d 762, 765 (Minn. Ct. App. 2010). In *Engler*, the husband signed the mortgage but the wife did not. Instead, she signed a waiver of her homestead rights. This Court reversed the district court and held that the mortgage was valid because the purpose of section 507.02 had been fulfilled:

The purpose of Minn.Stat. § 507.02, which is to protect the non-signing spouse from an unknowing conveyance of his or her interest in the homestead, has been satisfied by respondent's waiver of homestead rights.

Id. at 766.

In addition, when considering the Legislature's purpose and intent in passing section 507.02, courts have been unwilling to allow the statute to be used as a “sword” rather than a “shield.” In *Karnitz v. Wells Fargo Bank, N.A.*, 572 F.3d 572 (8th Cir. 2009), the Eighth Circuit observed that married mortgagors challenging the validity of a mortgage which was signed by only one spouse did not dispute the validity of the mortgage until four years after it was executed and they were facing foreclosure. The court held:

Strict compliance with the statute in these circumstances does not further the policy behind the statute; rather, it flaunts it by converting what the Legislature intended as a shield into a sword.

Id. at 575 (citing *Dvorak v. Maring*, 285 N.W.2d 675, 677 n. 3).

As in *Engler*, the purpose of section 507.02 was fulfilled here. Before the mortgage was executed, Antonio signed the Quitclaim Deed to Detlefson. Antonio's grant of "all right, title, interest, and claim" operated as a waiver of all of his rights in the Property, including the homestead right. There was no interest in Antonio remaining to protect at the time of the Mortgage. Moreover, as in *Karnitz*, Detlefson is using section 507.02 as a sword to attack the validity of the Mortgage now that she faces foreclosure for her failure to make payments for over two years. Ironically, Detlefson isn't even the non-signing spouse. Rather, she is seeking to invoke 507.02 based on the lack of Antonio's signature, despite the fact that Antonio previously deeded his interest to Detlefson (via a deed that she drafted) and hasn't even been heard from in over three years. (A0084; A0082.) In fact, the only evidence of Antonio's position on the Mortgage is that he was aware of the need to refinance and thought it was necessary. (A0087.)

Under these facts, the purpose of section 507.02 was fulfilled and a reversal of the district court's decision follows the legislature's intent.

CONCLUSION

For all the foregoing reasons, Marine Credit Union respectfully requests that this Court reverse the district court and hold that (1) the district court's finding that the

Quitclaim Deed was signed after the Mortgage was erroneous; and (2) the Mortgage is valid under Minn. Stat. §507.02.

Date: November 18, 2011

A handwritten signature in black ink that reads "Tom Olson". The signature is written in a cursive style with a large, sweeping initial "T" and "O".

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