

NO. A11-1925

STATE OF MINNESOTA
IN SUPREME COURT

Anne K. Detlefson-Delano,

Appellant,

and

Jack Antonio,

Respondent
(in Court of Appeals),

vs.

Marine Credit Union,

Respondent.

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. The quit claim deed did not effectively waive the requirement that Antonio sign a conveyance of the marital homestead.

Detlefsen has stated that the quit claim deed was signed at the request of, and for the convenience of, a realtor. (Supp. App. 013; A-0037). She has never said, as indicated by Marine Credit, that it was done so that she could sell the homestead without Antonio's signature. When asked at her deposition what the purpose of the quit claim deed was, Detlefsen replied, "I am not entirely sure what the purpose of the quit claim deed was. [The realtor] just asked us to do it." (Supp. App.-011).

Even if the realtor's intent was to allow Detlefsen to convey the homestead without Antonio's signature, it would not have had the desired effect. The quit claim deed from Antonio to Detlefsen included both homestead and non-homestead property, and while it may have allowed Detlefsen to independently convey the non-homestead property, it would not have allowed Detlefsen to convey the homestead property without Antonio's signature despite what the realtor may or may not have believed.

The quit claim deed would not have allowed Detlefsen to convey the homestead without Antonio's signature because it did not include any interest Antonio would have acquired after signing the quit claim deed. Quit claim deeds do not extend to after acquired interests in property unless expressly indicated. *See* Minn. Stat. § 507.07. After signing the quit claim deed, Antonio continued to assert his

homestead rights in the property. At the time the Mortgage was signed by Detlefsen, months after Antonio had signed the quit claim deed, Antonio was still married to Detlefsen and asserting his homestead rights in the property by living in the homestead. (A-0037). Therefore, the effect of the quit claim deed on Antonio's homestead rights at the time the quit claim deed was signed does not need to be determined. What is imperative is that at the time of the Mortgage, Antonio had homestead rights in the marital property and should have been afforded the protections of Minn. Stat. § 507.02.

II. The public purpose of Minn. Stat. § 507.02 is not fulfilled and the Mortgage should not be deemed valid.

Marine Credit argues that Detlefsen should not be allowed to contest the validity of the mortgage because she signed it, and that only the non-signing spouse should be able to assert the protections of 507.02. However, “[t]here is nothing in the text of section 507.02 that suggests that it can only be asserted by the non-signing spouse.” *Gores v. Schultz*, 777 N.W.2d 522, 525 (Minn. Ct. App. 2009), *review denied* (Minn. March 16, 2010). Anyone with an interest in real estate can challenge the validity of a competing interest. *Id.* In fact, in *Gores* the appellate court concluded that the protections under § 507.02 are “not a personal defense requiring privity” and allowed a lender to challenge the validity of another lender's mortgage. *Id.* at 526.

Marine Credit goes on to argue that Detlefsen waived her homestead rights when she signed the Mortgage. However, in making this argument Marine Credit is relying on a document that is void. Put differently, Marine Credit is relying on the void Mortgage in order to make the argument that the Mortgage should be valid. Until the mortgage is adopted or confirmed by the non-signing spouse, it has “no validity for any purpose.” *Gores* at 526. If a conveyance of a homestead is made without the signature of both spouses, the transaction is “not merely voidable but is void.” *Dvorak v. Maring*, 285 N.W.2d 675, 677 (Minn. 1979). Marine Credit cannot rely on the void Mortgage for any purpose.

Detlefsen has at all times denied the allegation that she told Marine Credit that Antonio had abandoned her and was unavailable to sign the mortgage. (A-0038). When Detlefsen applied for the loan she provided Marine Credit with both her and Antonio's income information. (A-0037). Detlefsen asked Marine Credit if Antonio should attend the closing to sign the Mortgage, and was told that there was no need for Antonio to be present. (A-0037). Detlefsen was told that “it takes one signature to buy and two to sell” and that they weren't going to put Antonio's name on the paperwork. (A-0037). Regardless, Marine Credit has cited no authority that would alter the requirements of Minn. Stat. § 507.02 if Antonio was unavailable.

Marine Credit also suggests that because Detlefsen and Antonio are now separated, this Court should find the mortgage to be valid; that the public purpose is therefore somehow fulfilled. But the Mortgage is absolutely void and would not be

rendered valid even if the property was no longer Detlefsen's and Antonio's marital homestead. *See Alt. v. Banholzer*, 39 Minn. 511, 512, 40 N.W. 830 (Minn. 1888). A federal district court applying Minn. Stat. § 507.02 recently confirmed the two-signature requirement when it held that a spouse had a marital interest in her husband's homestead despite being separated from him for twenty years and never living in the homestead herself. *See Larson v. Wells Fargo Bank, N.A.*, 799 F.Supp.2d 961, 967 (D. Minn. 2011).

“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.’” *National City Bank v. Engler*, 777 N.W.2d 762, 765 (Minn. Ct. App. 2010)(quoting *Wells Fargo Home Mortgage, Inc. v. Newton*, 646 N.W.2d 888, 895 (Minn. Ct. App. 2002)(quotations omitted), *review denied* (Minn. Sept. 25, 2002). That purpose was not fulfilled here. Marine Credit failed to require Antonio's signature, despite the fact that it knew Antonio and Detlefsen were married and the property was Antonio's homestead. Antonio's whereabouts are currently unknown and he hasn't appeared in this action, but that was not the case when Marine Credit closed the loan. What has happened since that time is immaterial because the Mortgage was void *ab initio* and has no effect whatsoever.

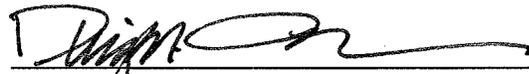
CONCLUSION

The requirements of Minn. Stat. § 507.02 are clear and strict, and place little burden on the grantee. Marine Credit should have known of and complied with the requirements of the statute. Marine Credit is in this position because of their own negligence, and is now arguing that the shield designed over a century ago to protect married individuals from an unknowing alienation of their homestead, should not be used for those individuals, but to protect Marine Credit from its own negligence. The purpose of Minn. Stat. § 507.02 is to protect families, not lenders.

For all the reasons stated above and previously, Appellant Detlefsen respectfully requests that the decision of the court of appeals be reversed.

Dated: October 22, 2012

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