

NO. A11-1925

State of Minnesota
In Supreme Court

Marine Credit Union,

Respondent,

vs.

Anne K. Detlefson-Delano,

Appellants,

and

Jack Antonio,

Respondent.

**BRIEF AND APPENDIX OF
RESPONDENT MARINE CREDIT UNION**

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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 THE ISSUE

Is a quitclaim deed from a grantor spouse who is not in title to the grantee spouse in title effective to convey all right, title, and interest of the grantor spouse, including the homestead interest, to the grantee spouse, so as to permit the grantee to mortgage the homestead?

Court of Appeals Ruling: The Court of Appeals reversed the District Court and held that the mortgage is valid because Antonio validly conveyed to Detlefson, without limitation, all interest he had in the property before Detlefson signed the mortgage.

Relevant Authorities:

Minn. Stat. § 507.02

Minn. Stat. § 500.19

HSBC Mortgage Services, Inc. v. Graikowski, 812 N.W.2d 845

(Minn. Ct. App. 2012)

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 Petition for Review to this Court from the Minnesota Court of Appeals. Respondent Marine Credit Union initiated this action in June 2010 to foreclose its Mortgage on Appellant Anne K. Detlefson-Delano's ("Detlefson") home in Fillmore County (the "Property") and for judgment on the accompanying Note secured by the Mortgage. Both Detlefson and her estranged husband, Jack Antonio ("Antonio"), were named as defendants. Antonio was validly served via publication. Detlefson counterclaimed that the Mortgage was void under Minn. Stat. §507.02 because Antonio did not sign the Mortgage. Antonio has never appeared and no one, including Detlefson, has any knowledge of his whereabouts. Antonio was never in title (he never had a deeded interest); he had only an inchoate interest in the Property prior to execution of a quitclaim deed to Detlefson. Before the Fillmore County District Court, the Honorable Robert R. Benson presiding, 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 grant a mortgage on 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 because, she claimed, he did not know the specifics of the Mortgage loan. She further argued that the quitclaim deed which ran to her was not

given for the purpose of waiving homestead rights, but rather to facilitate a possible sale of the Property.

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 alone 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 appealed the September 22, 2011 Order and specifically sought review of the district court's March 4, 2011 Order. The Minnesota Court of Appeals reversed the district court, holding, "[b]ecause [Antonio] validly conveyed, without limitation, all interest he had in the property before [Detlefson] signed the mortgage, the district court erred by concluding that [Antonio]'s signature was required on the mortgage." Detlefson petitioned this Court for review and review was granted.

STATEMENT OF FACTS

Detlefson owns real property located at Harmony, Minnesota (the “Property”), which is her homestead. (A-0036.) She originally acquired the Property in 1994 with her then-husband Daniel Delano. (A-0036.) 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. (A-0036.) 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. (A-0036.) On October 29, 2005, Detlefson married her now-estranged husband Jack Antonio. (A-0048.) The couple made the Property their marital home. (A-0037.) It is undisputed that Antonio was never in record title to the Property; he had only an inchoate interest.

In the summer of 2007, shortly after Detlefson and Antonio were separated for a time, Detlefson listed the Property for sale with a realtor. (Supp. App. -- 010.) At this time Antonio was “on the road a lot as a truck driver.” (Supp. App. -- 011.) Detlefson testified that Antonio executed a quitclaim deed to her (the “Quitclaim Deed”) so that she could sell the Property without him. (Supp. App. -- 013.) The Quitclaim Deed—which Detlefson personally drafted—is dated July 24, 2007 and was recorded the next day on July 25, 2007. (A-0050; Supp. App. -- 011.) The Quitclaim Deed conveys ownership directly to Detlefson 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]. (A-0050.) Detlefson admitted that the Quitclaim Deed was needed

because Antonio was frequently gone and it would allow her to sell the Property without his involvement. (Supp. App. -- 013.) Detlefson has never claimed that the Quitclaim Deed was given for estate planning or tax purposes—only that it would facilitate a conveyance to a third party. Detlefson did not hold the Quitclaim Deed for some eventual sale, but rather caused it to be recorded immediately. (A-0050.)

Detlefson did not sell the Property. Instead, in the fall of 2007, Detlefson contacted a small, local credit union called Marine Credit Union about refinancing the Associated Bank loan. The loan was soon coming due and Detlefson would face foreclosure if it was not paid. (Supp. App. -- 014-015.) Detlefson told the loan officer that Antonio was not available to sign papers but had deeded the home to her. (Supp. App. -- 035.) She gave the loan officer the impression that Antonio was out of the picture, had no interest in the Property, and had conveyed his interest to Detlefson. (Supp. App. -- 035.) Detlefson claims 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. (Supp. App. -- 015.) Antonio has not been located and therefore has not offered his own testimony. (Supp. App. -- 001.) Antonio has never appeared in this action and is in default; he is a named party but was never represented and has not contested this action. Thus, significantly, Antonio has not sought to enforce his homestead rights to defeat the Mortgage. (There is no evidence the property remained his homestead when the action was begun.) Detlefson has not seen or heard from Antonio in years. (Supp. App. -- 009.)

In January 2008, Marine Credit Union loaned Detlefson \$84,000 in exchange for a mortgage on the Property (the "Mortgage"). (ADD 11; A-0012-0026.) The Mortgage was executed on January 18, 2008. (A-0026.) The new loan paid off the prior loan with Associated Bank that was coming due. (ADD 12.) Detlefson signed the Mortgage and Note; Antonio did not. (A-0025.) Because Antonio had signed and Detlefson had recorded the Quitclaim Deed only about six months prior to the closing, Marine Credit Union did not require him to sign the Mortgage. (Supp. App. -- 035.) By signing the Mortgage, Detlefson expressly waived her homestead rights in favor of Marine Credit Union should it have to foreclose to recover their loan, per the following language in the Mortgage: "Waiver of Homestead. Borrower waives all right of homestead exemption in the Property." (A-0024.) Detlefson stopped making payments on the loan in October 2009 and Marine Credit Union commenced a foreclosure by action. (Add. -- 001.) Detlefson currently owes \$107,215.63 on the loan. (Add. -- 004.)

SUMMARY OF ARGUMENT

The Court of Appeals correctly held that the Mortgage was valid even though only Detlefson signed the Mortgage. First, the Quitclaim Deed that Antonio gave to Detlefson before the Mortgage was executed conveyed all of Antonio's right, title, and interest in the Property to Detlefson. Under the applicable statutes, Minn. Stat. §§507.02 and 500.19, subd. 4, such conveyances between spouses are permitted and have the same effect as a conveyance to a third party. Other statutes and case law further provide that a quitclaim deed like the one Antonio gave to Detlefson is sufficient to convey all right, title, and interest in real property. This is exactly what Antonio did here.

Second, the Quitclaim Deed also had the effect of a waiver of Antonio's homestead rights. Detlefson admitted that Antonio intended to convey all of his interest in the Property so that she could sell without his involvement. Antonio willingly signed and waived his rights via the Quitclaim Deed, which unambiguously and unequivocally states that he conveyed all of his right, title, and interest in the Property without reservation. Detlefson waived her own homestead rights when she signed the Mortgage and therefore has no standing to challenge the validity of the Mortgage; nor may she rely on Antonio's right where he does not contest this action and where he gave over his rights to her for purposes of a sale or other transfer.

Third, the Court of Appeals' decision fulfills the legislative purpose of section 507.02 to protect the marital homestead. The statute was designed to protect the *non-signing* spouse and, significantly, Minnesota courts have never allowed the *signing* spouse to vicariously invoke the non-signing spouse's rights in order to invalidate a mortgage. The statute was never intended to be used as a sword instead of a shield. Having had no contact with Antonio for over three years, Detlefson seeks to defeat the Mortgage that she willingly signed by invoking Antonio's rights—despite the fact that Antonio himself has never appeared to assert any rights. Detlefson's position is not in harmony with the purpose of the statute.

Marine Credit Union therefore respectfully requests that this Court affirm the Court of Appeals and hold that the Mortgage is valid as a matter of law.

STANDARD OF REVIEW

Whether a 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. BECAUSE ANTONIO HAD PREVIOUSLY QUITCLAIMED ALL INTEREST IN THE PROPERTY TO DETLEFSON, ONLY DETLEFSON'S SIGNATURE WAS NECESSARY TO GRANT A VALID MORTGAGE ON THE HOMESTEAD.

The Court of Appeals correctly held that only Detlefson's signature was necessary on the Mortgage since Antonio had previously quitclaimed all of his right, title, and interest in the Property to Detlefson. On appeal to this Court, Detlefson advocates an overly simplistic and incomplete application of the law governing conveyance of the homestead. 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 Minn. Stat. § 507.02. But the analysis does not end there. Section 507.02 specifically authorizes a conveyance of the homestead between spouses, and additional Minnesota statutes and case law provide that such interspousal conveyances operate to transfer the rights of the conveying spouse—precisely what

happened in this case. Second, an unambiguous deed containing no limitations can serve as a waiver of the homestead right, and did so in this case. Finally, the purpose of section 507.02 is to protect the *non-signing* spouse and no Minnesota case has ever allowed a *signing* spouse to invoke the rights of the non-signing spouse to defeat a mortgage. The irony is that, here, the non-signing spouse is not before the Court seeking to protect his right; instead Detlefson, who consented to and signed the Mortgage expressly waiving her homestead right, now seeks to raise her absent spouse's claimed right.

Specifically, this Court should affirm the Court of Appeals and hold that the Mortgage is valid because (A) the Quitclaim Deed from Antonio to Detlefson transferred all of Antonio's right, title, and interest in the Property; (B) the Quitclaim Deed operated as a waiver of Antonio's homestead rights; and (C) the purpose of section 507.02 to protect the marital homestead is fulfilled.

A. The Quitclaim Deed from Antonio to Detlefson Transferred all of Antonio's Right, Title, and Interest in the Property to Detlefson.

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." The two statutes must be read together:

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.

Minn. Stat. § 507.02.

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. The Court of Appeals has held that the plain meaning of the statutes read together “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. Then the question is faced: what is the consequence of a conveyance by one spouse to the other, especially in the context of this case where Antonio was not in title and the only interest he had to convey was the non-record, inchoate interest?

The consequence of such a conveyance is again found in the sum of 507.02 and 500.19. Read together, they provide that a spouse may deed an interest to his spouse; and when he has done so, that interest is the equivalent of any other conveyance. Detlefson’s position is the Quitclaim Deed has no effect at all, contrary to the express words of the statute. She says the deed is ineffective if I want to get a Mortgage but it would have been effective if I wanted to sell. Thus, while section 507.02 undeniably requires signatures by both spouses joining in a conveyance of the homestead generally, the same

statute expressly authorizes and makes fully effective a homestead conveyance from one spouse to another. If it were otherwise, the statutory framework permitting interspousal conveyances is flouted because the conveyance then has no effect, when instead, the statute specifies it has the same effect as a deed to a third party. The worry Detlefson claims to have, that estate plans will somehow be overturned, can be adequately addressed when estate planning is the purpose, but it is an irrelevant concern here as Detlefson intended no such purpose. And, this was not an estate planning device such as a Transfer on Death Deed, authorized by Minn. Stat. § 507.071 where the statute expressly requires that the Deed state the transfer is only effective at the time of the grantor's death.

The interspousal conveyance instrument in this case was that of a Quitclaim Deed.

Minn. Stat. § 507.07 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). Note that a quitclaim deed conveys not just “title,” but also all “right” and “interest.” 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]”). Minn. Stat. § 507.06 is also instructive: “A deed of quitclaim and release shall be sufficient to pass *all the estate* which the grantor could convey by a deed of bargain and sale.” (Emphasis added). It is axiomatic that,

following the execution of a quitclaim deed, the grantor no longer has any right, title, or interest in the property. Just because the homestead right is not dependent on record title, as Detlefson argues by citing Minn. Stat. §510.04, it does not follow that a quitclaim deed is limited just to title and cannot convey the homestead right. Rather, a quitclaim deed conveys “all right, title and interest of the grantor.”

Here, Antonio signed the Quitclaim Deed to Detlefson on July 24, 2007 and it was recorded the next day on July 25, 2007. (A-0050.) The language of the Quitclaim Deed closely tracks the language of section 507.07, stating that Antonio “does hereby remise, release and quitclaim unto [Detlefson] forever, all the right, title, interest, and claim which [Antonio] has in [the Property]. (A-0050.) The Quitclaim Deed contains no reservation of any right, including the homestead right. (A-0050.) The Court of Appeals correctly held below that despite Detlefson’s assertion that the Quitclaim Deed was for the limited purpose of allowing a sale (rather than a lesser conveyance of a mortgage) of the homestead without Antonio’s signature, the Quitclaim Deed does not contain any limitation or reservation. Citing Minn. Stat. § 507.06 and *Danielson v. Danielson*, 721 N.W.2d 335, 338-339 (rejecting a claim that a quitclaim deed grantor intended to retain an ownership interest in the property conveyed), the Court of Appeals correctly concluded that the Quitclaim Deed was a complete transfer of all of Antonio’s interest in the homestead to Detlefson. As in *Blackowiak*, this was a perfectly valid transfer between spouses. The consequence of the conveyance 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.

Ironically, Detlefson's position that the Quitclaim Deed did not transfer Antonio's homestead interest is based on the argument that the Deed—which she herself drafted—is in essence a nullity and that this Court is compelled to disregard it. Antonio was not in title and had only an inchoate interest in the Property, therefore he conveyed all that he had—the homestead right. Otherwise, the Quitclaim Deed would have no meaning despite the statute which states that it does have effect. *See* Minn. Stat. § 507.06. If the Quitclaim Deed did not convey Antonio's inchoate interest, what did it convey? If the legislature had intended that an inchoate interest may never be transferred between spouses, that idea could be clearly expressed in either section 507.02 or 500.19 by stating something like: “the non-record spousal interest is not transferred by a deed from that individual to his or her spouse” or “a deed between spouses transfers only the legal title, but has no effect on the inchoate interest.” The statutes contain no such language limiting the effect of a deed.

Detlefson points to Minn. Stat. § 510.04 and two cases in support of her contention that Antonio retained his homestead right after he signed the Quitclaim Deed. But, critically, both decisions are decided on clear policy grounds to avoid sanctioning a fraud in the conveyance, a distinction clearly not present here. Neither section 510.04 nor the cases specifically address Minn. Stat. § 507.02. Section 510.04 addresses debtor exemptions and Detlefson cites no authority tying this statute to section 507.02. The purpose of section 510.04 can be summarized by saying the legislature knew couples can hold title jointly, or in one name, and wished to afford homestead protection in both instances. This is different from a situation as here where a spouse having only an

inchoate, non-titled interest conveys outright ownership to his titled spouse. In *In re Gullberg*, the court's analysis centered on the State's strong interest in recovering Medicaid benefits, which is governed by its own unique statutes. There is no holding relevant to the subsequent transfer of the homestead to a third party. Moreover, even though this Court concluded that Mr. Gullberg continued to have some legal interest in the homestead sufficient to justify recovery of the Medicaid benefits paid, the court also noted that interest was "contingent on any number of factors." 652 N.W.2d at 713. *Stassen v. Stassen*, 351 N.W.2d 20 (Minn. Ct. App. 1984) involves a marital dissolution, does not even mention the word "homestead", and does not implicate section 507.02 in any way. There the parties conveyed the property in an attempt to avoid third party creditors. Neither of these decisions holds the conveyance would be ineffective between the spouses; instead, they hold where legitimate third party claims have accrued, an interest may be recognized as remaining sufficient to be attached. The courts would not wish to allow a conveyance to be used to circumvent a legitimate obligation.

Finally, Detlefson suggests that there are situations in which a spouse may want to deed to the other for purposes of estate or tax planning, but retain the homestead right. But there is no evidence that was the case here. Indeed, Detlefson's own claim as to the purpose of the Quitclaim Deed was to allow her to sell the Property without Antonio's involvement, and there is no evidence that he signed the Deed involuntarily. Nevertheless, intent need not be determined in each case as Detlefson suggests would be the result (though Detlefson concedes that determination of intent is considered in the context of waiver, discussed below). The simple solution where a conveyance is given

for the purpose to transfer only legal title for estate planning or other purposes, is for the grantor to include a specific reservation of homestead rights in the deed. This was not done here. (A-0050.) Instead, Antonio conveyed all right, title, and interest without any reservation, and to this day is absent, is not himself invoking the right Detlefson says he still has, and has not sought to enforce his rights. That Antonio may have at one time lived in at the Property does not change the result. It is true that the Mortgage's validity must be determined, as Detlefson correctly states, in light of "the conditions which existed at the time" it was executed. But Detelfson fails to acknowledge that one of those January 2008 conditions was that Antonio had conveyed to Detlefson "all the right, title, interest, and claim" which he had in the Property. (A-0050.)

Accordingly, this Court should affirm the Court of Appeals and hold that the Quitclaim Deed transferred all of Antonio's right, title, and interest in the Property, including his homestead rights, and therefore the Mortgage is valid under section 507.02 because Antonio's signature was not required.

B. The Quitclaim Deed from Antonio to Detlefson Operated as a Waiver of Antonio's Homestead Rights.

In addition to conveying Antonio's homestead rights, the Quitclaim Deed operated as a waiver of his rights. Waiver is yet another applicable exception to the general two-signature rule of section 507.02. In *National City Bank v. Engler*, 777 N.W.2d 762, 765 (Minn. Ct. App. 2010), the husband signed the mortgage but the wife did not. Instead, she signed a waiver of her homestead rights. In reversing the district court's decision to void the mortgage, the Court of Appeals held that a party that waives their homestead

rights also waives the protection of Minn. Stat. § 507.02, and accordingly the purpose of the statute was satisfied by the wife's waiver of her homestead rights. *Id.* at 766. Detlefson cites *Engler* as well as *In re Huesman*, 381 N.W.2d 73 (Minn. App. 1986) for the proposition that homestead rights may generally only be waived by an act which evidences an unequivocal intention to do so. In doing so, Detlefson correctly invites this Court to examine the circumstances surrounding Antonio's Quitclaim Deed to Detlefson in determining what rights were waived.

There is no question that Detlefson properly waived her homestead rights when she signed the Mortgage, which contains a homestead waiver clause. (A-0024.) Thus she has no standing to invoke her own homestead right to invalidate the Mortgage. *See Infra., Section C.* As for Antonio, although he did not sign the Mortgage, he did sign the Quitclaim Deed which Detlefson admitted was for the purpose of allowing her to sell the Property without his signature. (Supp. App. -- 013.) The Deed runs to Detlefson rather than any third party buyer; thus the parties plainly intended that Detlefson alone would execute and deliver a deed to the eventual buyer. The Quitclaim Deed here is clear and unambiguous: there is nothing equivocal about the words: "does hereby remise, release and quitclaim unto [Detlefson] forever, all the right, title, interest, and claim which [Antonio] has in [the Property]." (A-0050.) By willingly signing the Quitclaim Deed with the admitted intention of allowing Detlefson to sell the Property without him, Antonio waived his homestead right. That Antonio has never appeared in this action to assert any homestead right only confirms the waiver.

Detlefson's assertion that Antonio did not waive his homestead rights conflicts with her own admission that the Quitclaim Deed would have been effective to allow her to sell the Property without Antonio's signature. (Supp. App. -- 013.) Of course, even if Antonio's intent in signing the Quitclaim Deed was only to facilitate the sale of the Property, it is still an unequivocal intent 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 (the Mortgage), is nonsensical. Accordingly, this Court should hold that the Mortgage is valid.

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

Detlefson correctly notes the legislative intent of section 507.02 of protecting the marital homestead. But even though Antonio didn't sign the Mortgage, the public policy and legislative purpose behind section 507.02 is still fulfilled if the Mortgage is deemed valid. The recent *Engler* case 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).

777 N.W.2d at 765. The court 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 (emphasis added). Of particular importance and relevance to this case is that the purpose of the statute is to protect the *non-signing* spouse. In a more recent Minnesota case, *HSBC Mortgage Services, Inc. v. Graikowski*, 812 N.W.2d 845 (Minn. Ct. App. 2012), the Court of Appeals reaffirmed the purpose of section 507.02 to protect the non-signing spouse. The court surveyed the long history of section 507.02 cases and noted that “no Minnesota state court case supports the application of section 507.02 to void a conveyance solely to protect a signing spouse.” *Id.* at 849. Here, of course, Detlefson is a *signing* spouse attempting to invoke Antonio’s rights—not the situation that section 507.02 was designed to protect. To allow Detlefson to void the mortgage that she willingly signed would be the first such ruling in Minnesota.

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 cited with approval to this Court’s ruling in *Dvorak v. Maring*, 285 N.W.2d 675 (Minn. 1979) requiring strict compliance with section 507.02, but drew a distinction on the facts of that case:

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.

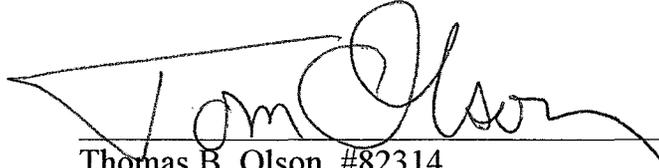
As in *Engler*, the purpose of section 507.02 was fulfilled here. Before the mortgage was executed, Antonio signed the Quitclaim Deed to Detlefson. (A-0050; A-0026.) Antonio's grant of "all right, title, interest, and claim" operated as a waiver of all of his rights in the Property, including the homestead right. There was no interest in Antonio remaining to protect at the time of the Mortgage. The homestead right is Antonio's to invoke, and he has never asserted his rights. Instead, 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 vicariously 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. (Supp. App. -- 011.) 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. (Supp. App. -- 15.) Detlefson further compounded the problem when she represented to Marine Credit Union that Antonio was out of the picture, had no interest in the Property, and had even conveyed his interest to Detlefson. (Supp. App. -- 035.) She actively sought out the mortgage loan from Marine Credit Union, which she needed in order to pay a loan which was coming due.

Under these facts, the purpose of section 507.02 was fulfilled and affirming the Court of Appeals' decision follows the legislature's intent.

CONCLUSION

For all the foregoing reasons, Marine Credit Union respectfully requests that this Court affirm the Court of Appeals and hold that the Mortgage is valid.

Date: October 8, 2012

A handwritten signature in black ink, appearing to read "Tom Olson", written over a horizontal line.

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