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STATE OF MINNESOTA
IN THE COURT OF APPEALS

Appellate Case No.: A13-2177

Yolanda Bass,
Respondent

v.

Equity Residential
Holding LLC,
Appellant

Appellant's Brief 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 trial court properly determine that Appellant was in default?**

II. **Did the trial court properly determine that it had jurisdiction to enter a monetary judgment in favor of Respondent?**

III. **Did the trial court properly determine that Respondent's damages included damages for damaged personal property when the claim by Respondent was a claim for improper ouster, was entitled to treble damages plus additional bad-faith punitive damages, and that Respondent had no duty to mitigate damages?**

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STATEMENT OF THE CASE

1. On March 20, 2013 Appellant filed an unlawful detainer action against Respondent in Hennepin County Housing Court. (App'x. 2, Nov. 6, 2013 Findings of Fact, Conclusions of Law, and Order ("Order"), at F.F. ¶ 1.)
2. The presiding referee ordered the case set for an evidentiary hearing for April 5, 2013, which would proceed as long as Respondent deposited $960 in to the court. The Court's order provided that if Respondent failed to make the deposit, the Court would issue a Writ of Recovery and Order to Vacate. (App'x. 1, Order, at F.F. ¶ 6.)
3. Respondent failed to deposit the money, and the Court granted judgment for recovery of premises in favor of Appellant. (App'x. 1, Order, at F.F. ¶ 7–8.) The Court ordered a Writ of Recovery and Order to Vacate to issue on request of Appellant and payment of the associated fees. (*Id.* at ¶ 8.)
4. Instead of requesting the Writ, on April 9, 2013, Appellant's agent viewed the property and determined that it had been abandoned. (T. 36:1–37:5.) Appellant's agent changed the locks and deposited the remaining property in a dumpster. (App'x. 3, Order, at F.F. ¶¶ 11–12.)

5. Respondent sent a letter to Appellant and immediately brought an action alleging unlawful ouster. (App'x. 3, Order, at F.F. ¶¶ 13–14.)
6. Appellant did not appear to challenge unlawful ouster, but did challenge Respondent's claims of damage in the later damages hearing. (App'x. 3, Order, at F.F. ¶ 15.)
7. At the damages hearing, Respondent offered a list of personal property and her handwritten estimate of the value of each item. (App'x. 3, Order, at F.F. ¶ 17.) The Court took this number, tripled it as punitive damages, added an extra $1,000 in more punitive damages, and ordered Appellant to pay $10,386.97 within 60 days. (*Id.* at ¶ 18.)
8. Appellant did not request a stay of judgment, but requested judicial review, which was granted. (App'x. 3–4, Order, at F.F. ¶ 19.)
9. On review, the court held that because Appellant had not paid on the judgment entered in housing court, it was in default and therefore not entitled to review. (App'x. 5–7, Order, at C.L. ¶¶ 1–5.)
10. Alternatively, the court determined that Appellant had no authority to dispose of Respondent's property in a dumpster—a conclusion Appellant had never disputed. (App'x. 8, Order, at C.L. ¶ 10.) In the claim for unlawful ouster, the court incorporated the referee's findings to conclude that personal property damages could also be considered

damages for ouster, and that punitive damages were appropriate. (*Id.* at ¶¶ 10–11.) This appeal follows.

STATEMENT OF FACTS

1. The allegations in this case stem from a residential lease by Respondent of Appellant's property at

   Minneapolis, Minnesota. (App'x. 2, Order, at F.F. ¶¶ 2–3.)

2. On April 5, 2013, the Housing Court referee issued an order granting judgment and recovery of the premises to Appellant. (App'x. 2, Order, at F.F. ¶ 8.)

3. As of April 9, 2013, when Appellant's agent went to the property, he observed less than ten percent of Respondent's personal property remained in the premises; he suspected that the property had been abandoned. (T. 36:1–37:1).

4. Appellant's agent then set a box behind the door in such a position that if anyone entered or used the door to the property, the box would be moved. On returning the next day, he found that the box had not been moved, and concluded that no one had entered or exited the property, and that it had been abandoned. (T. 39:9–23.)

5. Appellant's agent removed the personal property, which appeared to be abandoned, into a dumpster behind the premises, and changed the locks. (App'x. 3, Order, at F.F. ¶ 12.)

6. That afternoon, Respondent through the Minneapolis Police Department called Appellant to determine the location of her property and was told at that time that it was in the dumpster behind the property. (App'x. 2, Order, at F.F. ¶ 12.)
7. Respondent went to the dumpster took photos of the property, but did not remove it from the dumpster. (App'x. 2, Order, at F.F. ¶ 12.)
8. At trial, Respondent offered the photos she had taken of the property, but claimed that the items were all a total loss, giving the court a list of items and her opinion their values. (App'x 2, Order at F.F. ¶12; App'x. 18, Aug. 13, 2013 Housing Court Order ("H. Court Order"), at F.F. ¶ 63.) Respondent offered no further evidence of the value of the personal property than her own opinion and personal research; no receipts or other evidence was offered. (*Id.*)

STANDARD OF REVIEW

Review of legal determinations of the trial court are reviewed *de novo*. *In re Estate of Barg*, 752 N.W.2d 52, 63 (Minn. 2008). On questions of fact where, as here, Appellant has raised issue with the credibility of Respondent's proof of damages, the standard of review is on a "clearly erroneous" standard. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

ARGUMENT

The facts of this case are troubling, certainly. Appellant brought an action against Respondent for non-payment of rent, and after Respondent's failure to deposit rent, the housing court adjudicated Appellant entitled to possession of the premises. Appellant did not execute a Writ of Recovery, however; it merely changed the locks on the premises and left the remaining personal property—which Appellant's agent testified was less than 10 percent of Respondent's property—in a dumpster. Appellant does not bring this appeal to claim that this was the best way to deal with the situation. However, the troubling facts of the case lead to a judgment which was wildly overstated as a matter of law, and Appellant brings this appeal as a matter of law to demonstrate the error of the trial court's entry of damages against it.

Because Appellant was not in default, because the housing court had no jurisdiction to enter a monetary judgment against it based on the pleadings,

and because the trial court improperly determined that Respondent's damages included damages for damaged personal property when the claim by Respondent was a claim for improper ouster, the decision of the trial court[1] should be reversed and the matter remanded.

I. Appellant Was Not In Default

As a threshold issue, the first question is whether Appellant was in default following the housing court order, and therefore not entitled to review in the district court. "[A] party not in default may seek judge review of a decision or sentence recommended by the referee by serving and filing a notice of review on the form prescribed by the court administrator." Minn. R. Gen. Prac. 611(a). The trial court in the first instance held that because Appellant, although it had challenged the damages at issue, had not *actually paid* the judgment ordered by the housing court referee, it was in default. (App'x 5–7, Order at C.L. ¶¶ 1–5.) This is an incorrect reading of the rule.

The court's definition of "default" as "failure to perform a legal duty within the time specified" including "failure to pay a debt when due" (App'x 5, Order at C.L. ¶ 1) is contrary to common sense as it applies to this case. By the court's definition, no tenant would *ever* be able to seek review on a

[1] "Trial court" in this memorandum will refer to the district court's review from which appeal is taken; references to the housing court or the referee will be distinguished.

non-payment of rent case, because they are "in default" by "failing to pay a debt when due." The definition of default should not depend on whose ox is being gored—if a landlord cannot seek review when damages are due to a tenant, then a tenant cannot seek review when damages are due to a landlord. This reading of "default" is nonsensical.

A more common-sense approach is to read "default" as it is intended by Minn. R. Civ. P. 55.01: "When a party against whom a judgment for affirmative relief is sought *has failed to plead or otherwise defend within the time allowed therefore by these rules or by statute,* and that fact is made to appear by affidavit, judgment by default shall be entered against that party" (emphasis added). This is a much less strained reading of "default" in this context: party cannot ask for review when it has failed to contest the claims of the opposing party.

For this reason, Appellant was not in default, and his appeal should be heard on the merits.

II. The Housing Court Had No Jurisdiction To Enter A Monetary Judgment In A Claim for Unlawful Ouster

The next question is whether, in a complaint plead in housing court for unlawful ouster, the housing court had the jurisdiction to enter a monetary judgment. Housing courts are courts of limited jurisdiction and here, because of the language and intent of the statute, as well as public policy

considerations, the housing court had no jurisdiction to enter a monetary judgment, because the statute contains no express authorization for such a judgment.

A. Statutory Language

If not expressly authorized by the enabling statute, the housing court as a court of limited jurisdiction may not enter monetary judgment. *See Hildebrand v. Brod,* A03-1833 2004 WL 2855814 at *2 (Minn. Ct. App. December 14, 2004) (App'x 24) (citing *Meyer v. Parkin,* 350 N.W.2d 435, 438 (Minn. Ct. App. 1984) for the proposition that a cause of action for alleged remedies of a violation of a landlord's duties must stem from the statute or case law); *see also Kutscheid v. Emerald Square Properties, Inc.*, 770 N.W.2d 529, 533 (Minn. Ct. App. 2009) ("[T]his court cannot add language that is not present in the statute or supply what the legislature purposely omits or inadvertently overlooks" (citing *Semler v. Klang,* 743 N.W.2d 273, 280 (Minn.App.2007) (quotation omitted), *review denied* (Minn. Feb. 19, 2008)). Importantly, in the landlord/tenant statute, Minn. Stat. § 504B, the legislature *did* carve out some instances when the housing court is authorized to enter judgment. In each case, the authority of the housing court to enter judgment is expressly stated.

In Tenant Remedies Action, Minn. Stat. § 504B.395 et seq., the legislature has laid out a procedure to bring the complaint and hold a hearing for violations of specific provisions of 504B. The statute contains an express authorization for monetary judgment to be entered, in the section describing what sorts of judgment are allowed. Minn. Stat. § 504B.425(g). In contrast to the examples below, the court is not merely taxing, ordering, or determining the damage award, but expressly entering judgment. *Id.* Contrary examples are replete through the landlord/tenant statute, in which the statute authorizes a remedy while clearly not intending the remedy to be available in housing court.

The first and most obvious example is intentional ouster. The statute makes the intentional ouster and interruption of utilities a misdemeanor (Minn. Stat. § 504B.225), yet counsel is aware of no instance where a housing court referee has (or could, consistent with citizens' Fifth and Sixth Amendment rights) enter *criminal judgment* against a landlord in a setting similar to the summary proceedings in an eviction. Although Minn. R. Gen. Prac. 602 states that housing court referees "may preside over all actions brought under Minnesota Statutes, Chapter 504B," this stands as evidence that the provisions of Minn. Stat. § 504B were not solely intended to be adjudicated in housing court.

This interpretation is supported by the practice in housing court. The housing court statute allows the award of penalties, costs, or fees to a tenant whose landlord unlawfully charges or fails to return an applicant screening fee (Minn. Stat. § 504B.173, subd. 4) or prelease deposit (Minn. Stat. § 504B.175, subd. 4), or in an action for rental of a condemned premises (Minn. Stat. § 504B.204(a)). Additionally, a landlord in a residential tenant eviction action is entitled to his costs (Minn. Stat. § 504B.291, subd. 1), and those costs may be taxed against the tenant (or landlord, if the tenant prevails) (Minn. Stat. § 504B.345) but *monetary* judgment is not entered against the tenant either for rent or costs. Instead, these claims are all litigated in conciliation court (or, in the case of misdemeanor violations, criminal district court). Even the combining conciliation and housing cases, which was recently the practice in Hennepin and Ramsey Counties, is no longer current practice.

The housing court's determination, affirmed on review to the district court, that it was authorized to enter a monetary judgment without express authorization to do so, is contrary to both the language and intent of the statute. Moreover, it is contrary to the interests of judicial economy.

B. Public Policy Considerations

In addition to the lack of authorization to enter monetary judgment, the public policy behind the creation of housing courts in Hennepin and Ramsey Counties undercuts the housing court's judgment.

Both housing courts and conciliation courts are courts of limited jurisdiction, and set up with a specific purpose: as a summary proceeding in circumstances where the full weight of a district court trial is inappropriate or a waste of judicial resources. Conciliation courts are courts of limited jurisdiction because of the maximum limit on the subject matter. Minn. Stat. § 491A.01, subd. 3. Similarly, housing courts exist in Hennepin and Ramsey Counties only to provide for expedited relief because of the summary nature of the proceeding. *See Federal Home Loan Mortgage Corp. v. Nedashkovskiy*, 801 N.W.2d 190, 192 (Minn. Ct. App. 2011). As will be argued below, Respondent's claim may have stemmed from violations of Minn. Stat. § 504B, but it was really a conversion claim properly brought in district court or conciliation court. The housing court may determine an unlawful ouster—just as it may determine that a tenant should be evicted for failure to pay rent. But just as a landlord must bring his claim for monetary damages (including the costs permitted under Minn. Stat. § 504B.345) then in conciliation court, the tenant must also bring her claim for damages in the same court.

Equitably, and as a matter of judicial economy, this makes sense. Appellant here had a claim against Respondent for unpaid rent, and Respondent had a claim against Appellant for conversion. To avoid inconsistent judgments, such counter-claims are properly decided by the same court, not split into two different trials under two different jurisdictions.

III. The Trial Court Improperly Determined Respondent's Damages

The trial court also concluded that Respondent was entitled to remedies for damage to her personal property, in the amount of triple her claimed damages plus an additional $1,000 for extra punitive damages, even though she had brought a claim for improper ouster, made little attempt to prove the value of her property and no attempt to mitigate her damages.

A. Damages for ouster

The housing court concluded, and the trial court affirmed, that Respondent was entitled to the total listed value of all her property without any duty to mitigate, even though damages for ouster (as Respondent pled) are different from damage to personal property. This conclusion was incorrect as a matter of law.

1. Total damages and Respondent's duty to mitigate

The next question is whether Respondent proved her damages, and if so, whether she had a duty to mitigate her damages. In this case, Respondent

presented merely an itemized list of items she considered damaged, and her opinion of their value. (App'x 18, H. Court Order C.L. at ¶ 63.) As argued above, because this claim was not properly brought in a court intended to calculate monetary damages, Appellant was not able to have proper discovery on the actual items and their value. The housing court's reliance on a conclusory list of item values is misplaced. The deeper error, however, was in the housing court's conclusion, affirmed by the trial court, that Respondent was under no duty to mitigate her damages.

Although the housing court was correct that mitigation in a landlord-tenant context is always necessary, it was wrong to conclude, and the trial court was wrong as a matter of law to affirm, that Respondent had no duty to mitigate.

The housing court cited *Wavra* v. *Karr,* 172 N.W. 118, 120 (Minn. 1919) and *Nelson* v. *Smith,* 349 N.W.2d 849, 854 (Minn. Ct. App.1984), *pet. for rev. denied* (Minn. July 26, 1984) correctly for the proposition that generally, there is a duty to mitigate damages. However, the court goes on to cite several cases where there is no duty, and draws the general conclusion that "courts have cound that in the context of a landlord tenant relationship there is no duty to mitigate damages." (App'x 19, H. Court Order at C.L. ¶ 73.) This is simply incorrect. True, many courts have found that a landlord need not accept the

tenant's surrender of property and mitigate his damages. But it is not a general rule in landlord-tenant cases. *See, e.g., Guthrie v. Hagen,* 203 N.W. 216, 217 (Minn. 1925); *Albert Lea Art Center v.* Crane, 2012 WL 4328966, *4 (Minn. Ct. App. September 24, 2012) (App'x 27) ("The harmed party has the duty to take reasonable measures to mitigate damages and has the burden to demonstrate consequential damages 'with a reasonable degree of certainty and exactness.'" (*citing County of Blue Earth v. Wingen,* 684 N.W.2d 919, 924 (Minn. Ct. App. 2004.))

"Consequential damages are the damages which naturally flow from the breach of a contract, or may reasonably be contemplated by the parties as a probable result of a breach of the contract." *Imdieke v. Blenda–Life, Inc.,* 363 N.W .2d 121, 125 (Minn. Ct. App. 1985), *review denied* (Minn. Apr. 26, 1985). Distasteful as it might sound, it was not proper for the court to decide that Respondent could simply give up all her property as lost without even an attempt to salvage any of it. Respondent removed her property from the dumpster, took photographs of it, and returned it to the dumpster. Requiring her to mitigate her damages required her to do no more than she had already done.

2. Damage to personal property

Minnesota statutes provide that when a landlord "unlawfully and in bad faith" excludes a tenant from a residence, the tenant may be entitled to treble damages. Minn. Stat. § 504B.231. A separate statute, Minn. Stat. § 504B.271, governs damages for "fail[ing] to allow the tenant to retake possession of the [personal] property." Minn. Stat. § 504B.271, subd. 2. Here, the trial court conflated the two, without evidence for either.

The trial court concluded that Respondent's claimed damages to her *personal property*, $3,128.99, were damages for ouster. That is incorrect. Damages for ouster can include things such as the share of the rent paid by tenant for time she was excluded from the property, or expenses to stay at a hotel because the tenant has been excluded from the property. *Lindner v. Foy*, A04-2060, 2005 WL 1514461 at *2 (Minn. Ct. App. June 28, 2005) (App'x 33) (allowing pro rata share of rent but refusing damages for rental of truck to move property, because that was an expense the plaintiff would have incurred anyway). Damages for *personal property* are governed by another statute, Minn. Stat. § 504B.271. Under that statute a tenant does have a cause of action when a landlord prevents her from retaking her property after she makes a written demand. Minn. Stat. § 504B.271, subd. 2. This is not what happened here.

Appellant did not fail to allow the tenant to retake possession of the property after written demand. The property was set outside in the dumpster. This is not to defend the actions of Appellant's agent as the best way to deal with the situation, but plainly, Respondent's cause of action was for conversion in district or conciliation court. As argued above, such an action would have protected her rights while retaining the protections Appellant would have had in district court, including discovery to determine the correct amount of damages for its actions. Additionally, Respondent's written demand was not made until after she discovered her property. (App'x. 3, Order, at F.F. ¶ 13.) Such a demand, by the plain language of the statute, underlies any determination of punitive damages. Minn. Stat. § 504B.271, subd. 2.

The trial court was incorrect to hold that the damage to Respondent's personal property was actually damages for ouster.

B. Treble Damages and Bad Faith Punitive Damages

Finally, the trial court was incorrect to hold that the circumstances of Appellant's actions were in bad faith and did not merit further review, as requested by Appellant in its Rule 60 motion, but instead merited punitive damages in the amount of treble damages *plus* additional punitive damages.

The housing court held that Respondent was entitled to treble damages without ever making a finding of bad faith as required by Minn. Stat. §

504B.231(a). (*See generally* H. Court Order, App'x 10.) The trial court affirmed without making such a finding, either. (*See generally*, Order, App'x 1.) The trial court record supports a contrary conclusion: that Appellant's agent, aware that Appellant was entitled to possession of the property and believing the remaining property to be abandoned, removed what he thought to be abandoned property to the dumpster. This was not a situation where Appellant was "well aware that [Respondent] was asserting her right to possession." *Berg v. Wiley,* 264 N.W.2d 145, 150 (Minn. 1978). Indeed, Respondent had no right to possession. (App'x. 1, Order, at F.F. ¶ 7–8.) Appellant's actions, unfortunate as they were, were not done in bad faith, and therefore the trial court was incorrect to fail to review the factual situation and simply award treble damages.

Additionally, the trial court erred as a matter of law in awarding both punitive damages under both Minn. Stat. § 504B.231 and Minn. Stat. § 504B.271, subd. 2 for the same action. The treble damages award under Minn. Stat. § 504B.231is a punitive measure based on bad faith. Minn. Stat. § 504B.231. The $1,000 granted under Minn. Stat. § 504B.271, subd. 2 is *also* a punitive measure (subdivision 1 is labeled "Landlord's punitive damages"). The housing court, and the trial court, took the same actual damages amount,

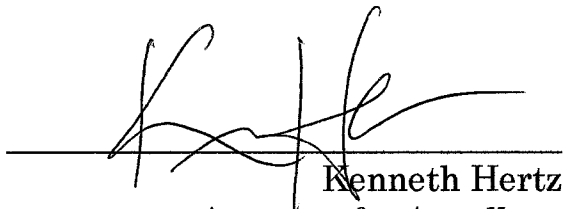
tripled it, and added $1,000 of *extra* punitive damages on top of the already tripled punitive damage award.

Both statutes limit the recovery to triple the actual damages; neither authorizes additional punitive damages over this punitive award. Minn. Stat. §§ 504B.231, .271, subd. 2. The trial court was wrong as a matter of law to impose extra damages in this case at all, let alone impose what it did, and therefore the judgment should be vacated.

IV. Conclusion

Although the facts of the case are troubling, the conclusions of the housing court and trial court in favor of the sympathetic situation of the Respondent are equally troubling. The trial court on review upheld a judgment of money damages by the housing court, conflated two separate statutes when neither applied to the situation at hand, and awarded Respondent over $10,000 in damages by piling punitive damages on top of punitive damages. It required little in the way of proof and nothing at all in the way of mitigation of Respondent's damages. Appellant's actions may have caused damage to Respondent, but it is entitled to a proper forum and adequate defenses to Respondent's claims. It got none of these, and for those reasons, Appellant respectfully requests that the judgment be vacated and remanded.

Respectfully submitted,



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Dated: December 23, 2013

State of Minnesota
In the Court of Appeals

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Yolanda Bass,
Respondent

v.

Word Count Compliance Certificate

Equity Residential Holding, LLC.,
Appellant

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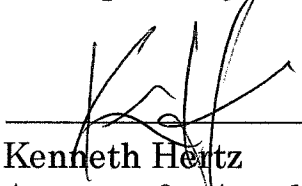
Respectfully submitted,



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