

NO. A05-1178

State of Minnesota
In Court of Appeals

In the Matter of the Petition of Joshua S. Collier,
in Relation to Property Registered in Certificate of Title No.
1596547 for an Order Directing Entry of a New Certificate and
Declaratory Relief

**APPELLANT'S
REPLY BRIEF**

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LEGAL ISSUES

- I. Whether the district court erred as a matter of law in granting the property to M & I Bank FSB?

The district court held: M & I Bank FSB's interests are superior to any of those of Joshua Collier.

ARGUMENT
THE DISTRICT COURT ERRED AS A MATTER OF LAW IN DETERMINING
APPELLANT'S INTEREST IN THE PROPERTY WAS SUBORDINATE TO
RESPONDENT M & I BANK'S INTEREST.

A. Actual Knowledge.

Respondent argues that Appellant had actual knowledge of Respondent Bank's interests in the property, therefore he is not a good-faith purchaser and is not entitled to the property. [Respondent's Brief at p. 7]. Respondent Bank cites and analyzes several cases in support of its position, some of which are unpublished.¹ See Nolan v. Stuebner, 429 N.W.2d 918 (Minn.Ct.App. 1988); In Petition of Willimus, 1996 WL 33095 (Minn.Ct.App. Jan. 30, 1996); Hynek v. Sedgwick, 1992 WL 295133 (Minn.Ct.App. Oct. 20, 1992); 5th Street Ventures, L.L.C. v. Frattalone's Hardware Stores, Inc., 2004 WL 1878822 (Minn.Ct.App. Aug. 24, 2004).

The Torrens statutes make clear that mortgages are not "effective" on the title or against the land until they are registered. Minn.Stat. § 508.54. As Respondent Bank failed to properly register its mortgage, it was not "effective" except as a contract between the parties. Minn.Stat. § 508.54; Fingerhut Corp. v. Suburban Nat'l Bank, 460 N.W.2d 63, 66 (Minn.Ct.App. 1990).

Thus, what Appellant had actual knowledge of was of an ineffective mortgage,

¹ As our Supreme Court has regularly advised the Bar, unpublished cases have no precedential value and should not be relied upon as such. See Dynamic Air, Inc. v. Bloch, 502 N.W.2d 796 (Minn.Ct.App. 1993).

which means Appellant had knowledge of an agreement not enforceable against the land. See Comstock v. Davis, Inc., v. G.D.S. Assocs., 481 N.W.2d 82, 85 (Minn.Ct.App. 1992) (actual notice means actual knowledge of an enforceable agreement).

The fact of the matter is that Respondent Bank failed to properly register their mortgage, therefore they lost any lien potential it might have. There is nothing in the statute that validates the mortgage if Appellant has “knowledge” of an ineffective mortgage.

B. Minnesota Torrens Act.

When the language of a statute is clear, statutory construction is not only unnecessary, it is not permitted. See State by Beaulieu v. RSJ, Inc., 552 N.W.2d 695, 701 (Minn. 1996).

The Minnesota Torrens Act is as clear as can be. Minnesota Torrens Act states:

An owner of registered land may use any form of deed, mortgage, lease, or other voluntary instrument sufficient in law for the purpose intended. No voluntary instrument of conveyance purporting to convey or affect registered land, except a will, and a lease for a term not exceeding three years, shall take effect as a conveyance, or bind or affect the land, but shall operate only as a contract between the parties, and as authority to the registrar to make registration. The act of registration shall be the operative act to convey or affect the land.

Minn.Stat. § 508.47, subd. 1 (emphasis added).

Every conveyance, lien, attachment, order, decree, or judgment, or other instrument or proceeding, which would affect the title to unregistered land under existing laws, if

recorded, or filed with the county recorder, shall, in like manner, affect the title to registered land if filed and registered with the registrar in the county where the real estate is situated, and shall be notice to all persons from the time of such registering or filing of the interests therein created. Neither the reference in a registered instrument to an unregistered instrument or interest nor the joinder in a registered instrument by a party or parties with no registered interest shall constitute notice, either actual or constructive, of an unregistered interest.

Minn.Stat. § 508.48 (emphasis added).

All interests in registered land, less than an estate in fee simple, shall be registered by filing with the registrar the instrument which creates, transfers, or claims the interest, and by brief memorandum or memorial of it made and signed by the registrar upon the certificate of title.

Minn.Stat. § 508.49 (emphasis added).

The owner of registered land may mortgage the same by deed or other instrument sufficient in law for that purpose ***. Such deed, mortgage, or other instrument *** shall be registered and take effect upon the title only from the time of registration.

Minn.Stat. § 508.54 (emphasis added).

These statutes are clear that it is irrelevant whether Appellant had actual notice, actual knowledge, constructive notice, etc. Registration of a mortgage is the only act that will render a mortgage effective. Minn.Stat. § 508.54.

If this Court were to decide otherwise, it will render the Torrens statutes worthless. See Mill City Heating & Air Cond. v. Nelson, 351 N.W.2d 362, 364-65 (Minn. 1984) (the purpose of the Torrens system is to ensure that a person need look no further than the

certificate of title for any transactions that might affect the land).

This Court must read the clear statutory language as written, not how Respondent Bank wants them to be read.

CONCLUSION

For the reasons stated above, Appellant respectfully requests this Court reverse the district court's decision.

Dated: August 18, 2005

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