

Case No. A05-2018

State of Minnesota
In Court of Appeals

Mavco, Inc., d/b/a Maverick Construction,

Appellant,

vs.

*Rodney Eggink and Karla Eggink,
Wells Fargo Bank, N.A.,
Craig A. Moore and Nicole M. Moore,
and Great River Federal Credit Union,*

Respondents.

APPELLANT'S BRIEF AND APPENDIX

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Issues.....	iv
Facts and Procedural History.....	1
Argument	iv, 3, 11
Conclusion	14
Appendix and Its Index	
Index to Appendix.....	A-1
Mechanic’s Lien Statement.....	A2 – A6
Summons and Complaint	A7 – A13
Notice of Lis Pendens.....	A14 – A16
Transcript of Proceedings of June 6, 2005	A17 – A58
Wells Fargo Mortgage recorded on July 28, 2004	A59 – A78
Answer of Rodney and Karla Eggink.....	A79 – A81
Mediated Settlement Agreement	A82 – A83
Trial Court’s Findings of Fact, Conclusions of Law, Order and Judgment	A84 – A90
Scheduling Order dated July 30, 2004	A91 – A93

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES:</u>	
<u>Bredeson v. Nickolay</u> , 194 N.W. 460 (Minn. 1923)	7
<u>Fingerhut Corp. v. Suburban National Bank</u> , 460 N.W.2d 63 (Minn. 1990)	8
<u>Hokanson v. Gunderson</u> , 56 N.W. 172 (Minn. 1893)	9, 10
<u>Howard, McRoberts & Murray v. Starry</u> , 382 N.W.2d 293 (Minn. Ct. App. 1986)	8
<u>Marr v. Bradley</u> , 59 N.W.2d 331 (Minn. 1953)	8
<u>Minnesota Central Railroad v. MCI</u> , 595 N.W.2d 533 (Minn. Ct. App. 1999)	6
<u>Morrison County Lumber v. Duclos</u> , 163 N.W. 734 (Minn. 1917)	5, 6
<u>R.B. Thompson, Jr. Lumber v. Windsor Development</u> , 383 N.W.2d 357 (Minn. Ct. App. 1986)	12
<u>STATUTES:</u>	
Minn. Stat. § 507.32	10
Minn. Stat. § 507.34	5, 6, 10
Minn. Stat. § 514.05	10
Minn. Stat. § 514.11	3
Minn. Stat. § 514.12	3, 4, 6
Minn. Stat. § 557.02	7, 13
M.R.C.P. 15.03	11, 12
M.R.C.P. 15.04	11, 12

ISSUES

- I. DOES THE ONE YEAR LIMITATION ON MECHANIC'S LIEN ACTIONS CONTAINED IN MINN. STAT. § 514.12 APPLY TO A SUBSEQUENT MORTGAGEE WHO ISSUES A MORTGAGE WITH KNOWLEDGE OF A RECORDED MECHANIC'S LIEN AND WHO FAILS TO RECORD ITS MORTGAGE UNTIL AFTER THE MECHANIC'S LIENOR COMMENCES A FORECLOSURE ACTION AND RECORDS THE NOTICE OF LIS PENDENS?

THE TRIAL COURT RULED THAT IT DID.

- II. IS A MECHANIC'S LIEN THAT IS VALIDLY PERFECTED AND FORECLOSED AGAINST ALL PERSONS WITH AN INTEREST OF RECORD WELL WITHIN A YEAR AFTER THE WORK WAS COMPLETED PRIOR TO A MORTGAGE WHICH WHILE ISSUED SHORTLY BEFORE THE FORECLOSURE ACTION WAS COMMENCED AND THE NOTICE OF LIS PENDENS FILED, WAS NOT RECORDED UNTIL MONTHS LATER EVEN IF THE LIENOR LEARNS OF ITS EXISTENCE DURING THE PENDENCY OF THE ACTION.

THE TRIAL COURT RULED THAT THE MORTGAGE DID HAVE PRIORITY.

- III. SHOULD THE TRIAL COURT HAVE GRANTED THE PLAINTIFF'S MOTION BROUGHT PURSUANT TO MINN. R. CIV. P. 1503 WHICH SOUGHT TO FILE A SUPPLEMENTAL COMPLAINT ADDING THE SUBSEQUENT MORTGAGEE AND FURTHER SOUGHT TO HAVE THAT COMPLAINT RELATE BACK TO THE COMMENCEMENT OF THE ACTION.

THE TRIAL COURT REFUSED TO ALLOW THE FILING OF A SUPPLEMENTAL COMPLAINT OR TO GIVE IT RETROACTIVE EFFECT.

ARGUMENT

- I. A MORTGAGEE WHO ISSUES A MORTGAGE WITH KNOWLEDGE OF AN OUTSTANDING MECHANIC'S LIEN AND WHO HAS NOT RECORDED ITS MORTGAGE AT THE TIME THE LIEN FORECLOSURE ACTION IS COMMENCED IS NOT A PARTY TO WHOM THE ONE YEAR STATUTE OF LIMITATIONS CONTAINED IN 514.12 APPLIES AND UNDER THESE CIRCUMSTANCES THE APPELLANT'S MECHANIC'S LIEN SHOULD HAVE PRIORITY.

- II. EVEN IF THE ONE YEAR STATUTE OF LIMITATIONS WAS APPLICABLE TO WELLS FARGO, THE COURT SHOULD HAVE ALLOWED THE SUPPLEMENTAL COMPLAINT AND GIVEN IT RELATION BACK EFFECT UNDER THESE CIRCUMSTANCES.

FACTS AND PROCEDURAL HISTORY

This appeal is taken from the district court's order determining that the Respondent Wells Fargo's mortgage had priority over a mechanic's lien of the Appellant, and from the district court's order denying Appellant's motion to file a supplemental complaint substituting the Respondent Wells Fargo for prior mortgagees and giving such complaint a relation back effect.

The Appellant Mavco contracted with Rodney and Karla Eggink to repair the Egginks' home which had been damaged by a fire that occurred in May of 2004. Significant labor and material were provided by Mavco in accomplishing those repairs. Following completion of the work in November of 2003, the Egginks refused to pay for the work. Mavco then filed and recorded a mechanic's lien statement. (See Appendix, p. A2-A6.) When payment was still refused, Mavco then started this action to foreclose its lien and did so by filing and serving a Summons and Complaint dated May 17, 2004. (See Appendix, p. A7-A13.) Pursuant to statute, a Notice of Lis Pendens was then filed for record on May 19, 2004. (See Appendix, p. A14-A16.)

Prior to the commencement of this action, record title was checked by the Appellant and all persons who had or had the potential to have any interest in the property were named as defendants. (See Appendix, p. A22.) Unbeknownst to Mavco, the Egginks had refinanced their property and as part of that refinancing, provided a mortgage to Wells Fargo on May 14, 2004. Wells Fargo, however, did not record that mortgage until July 28, 2004. (See Appendix, p. A59-A78.)

In their answer to the Complaint seeking to foreclose the lien, the Egginks did indicate that there was a mortgage on the property with the Respondent Wells Fargo. (See Appendix, p. A79-A81.) However, because that conflicted with the record at the time which indicated that the

mortgage on the property was held by Vermillion State Bank, discovery was served seeking to clarify that contradiction. No response to that discovery was received until November of 2004 at which time the Egginks indicated they had refinanced the property on May 14, 2004, with the Respondent Wells Fargo. It was at that time that a copy of the mortgage was received. (See Appendix, p. A23 and A85.) At that point the foreclosure action was already set up for trial and a scheduling order was in place. The scheduling order that was in place required that any additional parties be added by September 1, 2004. (See Appendix, p. A91-A93.)

Mediation then took place in early January of 2005, and a settlement agreement was reached, the terms of which required the Egginks to pay to the Appellant \$100,000 by March 5, 2005. If payment was not made, the agreement was that the lien could then be foreclosed. By later agreement, that date was extended until April 5, 2005; but notwithstanding that, no payment was received. (See Appendix, p. A91-A93.)

It was also at or around that time that Respondent Wells Fargo first communicated its position to the Appellant that the Appellant's lien was not binding on it because it had not been formally named as a party to the foreclosure action within one year after the completion of the work. (See Appendix, p. A23.) Mavco then brought the motions that are in issue on this appeal asking the court to determine that in fact Mavco's lien was valid against and superior to Wells Fargo, and requesting leave to file a supplemental complaint substituting Wells Fargo for the previous mortgagee and giving that complaint relation back effect. The court denied that motion, refused to allow the supplemental complaint, and determined that Wells Fargo's mortgage had priority over the Mavco lien. This appeal followed.

ARGUMENT

I. A MORTGAGEE WHO ISSUES A MORTGAGE WITH KNOWLEDGE OF AN OUTSTANDING MECHANIC'S LIEN AND WHO HAS NOT RECORDED ITS MORTGAGE AT THE TIME THE LIEN FORECLOSURE ACTION IS COMMENCED IS NOT A PARTY TO WHOM THE ONE YEAR STATUTE OF LIMITATIONS CONTAINED IN 514.12 APPLIES AND UNDER THESE CIRCUMSTANCES THE APPELLANT'S MECHANIC'S LIEN SHOULD HAVE PRIORITY.

At the time this foreclosure action was commenced by Mavco, Wells Fargo had no interest of record in the property. Mavco had no separate knowledge of their interest. Mavco did what it was required to do. It checked the record prior to the time it commenced this action, and all parties with a real or potential interest were named as defendants. Minn. Stat. § 514.11 reads as follows:

The action may be commenced by any lienholder who has filed a lien statement for record and served a copy thereof on the owner pursuant to section 514.08, and all other such lienholders shall be made defendants therein . . .

Thus the only required parties in a lien action, other than the owners, are lien holders similarly situated. That is those who have recorded a mechanic's lien statement. While mortgagees are not specifically listed as mandatory defendants, historically our courts have recognized that mortgagees are proper parties to such an action since a determination of the amount and priority of their liens may be necessary to effectuate the proper foreclosure remedy. However, just as a lien holder who fails to record its statement could not be expected to be named as a defendant, so also a mortgagee who has issued a mortgage with knowledge of a perfected mechanic's lien but who fails to record its interest cannot be expected to be named as a party. Minn. Stat. § 514.12 goes on to state as follows:

Subd. 2. One action for all. After such filing, no other action shall be commenced for the enforcement of any lien arising from the improvement described, but all such lienholders shall intervene in the original action by answer as provided in section 514.11. Any such lienholder not named as a defendant may answer the complaint and be admitted as a party . . .

The obvious implication of these two statutes when read together is that the lien holder who commences the action must only name those with a recorded interest. Those whose interest arises or is placed of record after the commencement action have the obligation to intervene on their own. Subd. 3 of § 514.12 does state that no lien shall be enforced unless the holder thereof shall assert the same within one year from the last date of work. It also does state that no person shall be bound by any judgment in such action unless made a party thereto within the year.

However, subd. 3 then goes on to discuss another class of persons:

. . . and, as to a bona fide purchaser, mortgagee, or encumbrancer without notice, the absence from the record of a notice of lis pendens of an action after the expiration of the year in which the lien could be so asserted shall be conclusive evidence that the lien may no longer be enforced and,...

Thus, subd. 3 really deals with two classes of persons. The first are those with an interest of record at the time of the commencement of the action, and the second class deals with subsequent encumbrancers such as Wells Fargo in this case.

In regard to that second class of persons, those who acquire or record an interest after the lien is perfected and after the action is commenced, it is only those with no notice who can take advantage of the lapse of one year. More importantly and by implication, the existence of a Notice of Lis Pendens within one year would clearly negate the presumption contained in the statute and in fact give notice to the subsequent encumbrancer of the action itself and put the onus on it to intervene to protect its interest. There in fact would be no reason for subd. 3 to include language protecting subsequent purchasers or encumbrancers if the statute required that

subsequent mortgagees or encumbrancers be named if their interest came into effect and was recorded after the perfection of the lien and the commencement of the foreclosure action. Thus Wells Fargo's rights should not be determined as if they were a party with interest at the time the foreclosure action was commenced. Rather, its interest should be analyzed as would any other subsequent purchaser or encumbrancer, and if Wells Fargo had notice of the lien which it clearly did, and if the Notice of Lis Pendens was filed and recorded within a year from the day of the last day of work which it clearly was, then its interest is subject to that lien whether it was formally made a party or not.

To hold as the district court did that a subsequent mortgagee whose interest appears of record well after the foreclosure action was commenced still must be added as a party within the year, puts an incredible burden on the lien claimant. It literally forces the lien claimant to check the record title continually as the action proceeds to determine whether or not any new person has acquired an interest in the property, this notwithstanding the fact that the recording act, Minn. Stat. § 507.34, and the lien statute clearly give priority to a lien claimant who has recorded its interest. While it is true in this case that the existence of Wells Fargo was disclosed by the Egginks in their answer, the record title at that time still contradicted that assertion and necessitated further discovery. While responses to that discovery were obtained shortly before the one year anniversary of the last date of work, it would have been extremely difficult in the short period remaining to get the scheduling order amended and approval for the addition of Wells Fargo as a new party. While theoretically possible, there frankly should be no reason for a lien claimant to have to do that since the action when commenced was commenced against all persons with a recorded interest.

The Respondent Wells Fargo has and no doubt will continue to make much of the holding in the case of Morrison County Lumber v. Duclos, 163 N.W. 734 (Minn. 1917). That case is distinguishable from this case. While the Supreme Court in the Morrison County Lumber case did apply the one year statute of limitations in regard to a subsequent mortgagee, the mortgagee in that case did have an interest of record at the time the mechanic's lien foreclosure action was commenced. Perhaps more importantly, the mortgagee in that case provided a mortgage without any notice of the mechanic's lien. The mechanic's lien statements in that case were filed subsequent to June, 1913. However, the mortgage was issued on June 11, 1913. In addition, the mortgage that was provided on June 11, 1913 included a pre-existing mortgage of \$7,000 which had been issued before any of the work involved in the mechanic's lien was accomplished. It was on that record and on those facts that the Supreme Court indicated that the mortgagee should have been named as a party within one year.

These facts are different. Wells Fargo had not recorded its mortgage by the time the lien action was commenced. Indeed, it did not get around to doing so until the end of July of 2004. More importantly, when it issued the mortgage, Mavco's lien statement was already of record. Thus as a matter of law, it had notice of a mechanic's lien since the facts supporting the lien were set out in the mechanic's lien statement recorded in January. See Minn. Stat. § 507.32 and Minnesota Central Railroad v. MCI, 595 N.W.2d 533 (Minn. Ct. App. 1999). As a matter of law, the recording of a document provides constructive notice to all subsequent encumbrancers whether or not they had actual notice. Thus when Wells Fargo issued its mortgage, it is deemed to have notice of the prior mechanic's lien pursuant to Minn. Stat. § 507.32. Any interest in the property it acquired by issuing the mortgage was void as against that prior recorded interest. (Minn. Stat. § 507.34.)

In addition to requiring the commencement of the foreclosure action within one year, Minn. Stat. § 514.12 also requires that a Notice of Lis Pendens be filed and recorded. Mavco did that here. The effect of a Notice of Lis Pendens is set out in Minn. Stat. § 557.02. That statute reads as follows:

In all actions in which the title to, or any interest in or lien upon, real property is involved or affected, or is brought in question by either party, any party thereto, at the time of filing the complaint, or at any time thereafter during the pendency of such action, may file for record with the county recorder of each county in which any part of the premises lies a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in such county involved, affected or brought into question thereby. From the time of the filing of such notice, and from such time only, the pendency of the action shall be notice to purchasers and encumbrancers of the rights and equities of the party filing the same to the premises

...

The effect of this statute and the filing and recording of a Notice of Lis Pendens on persons who had an unrecorded interest in property prior to the recording of the Notice of Lis Pendens has been determined by our Supreme Court. In the case of Bredeson v. Nickolay, 194 N.W. 460 (Minn. 1923), the Supreme Court held that a person having an unrecorded interest in property which was not recorded until after a Notice of Lis Pendens was recorded took subject to the results of the action for which the Notice of Lis Pendens had been recorded. The facts in that case involve a plaintiff who had purchased property from a defendant without knowledge of a prior unrecorded deed that had been given to the defendant's sister. When the dispute developed, the plaintiff sued for specific performance and filed a Notice of Lis Pendens. This Notice of Lis Pendens was filed and recorded before the sister placed on record her evidence of title. The court held that since the Notice of Lis Pendens was recorded prior, the sister's interest

was subject to the rights of the plaintiff as determined in the action; and the plaintiff thus took the property free and clear of the sister's interest.

Similar is the case of Marr v. Bradley, 59 N.W.2d 331 (Minn. 1953). In that case the Supreme Court again held that one who purchases property after a Notice of Lis Pendens has been properly filed takes the property subject to the final disposition of the pending case and is bound by the decision which is entered in that case whether or not he was actually a party to the action.

In accord is the holding of the Court of Appeals in the case of Howard, McRoberts & Murray v. Starry, 382 N.W.2d 293 (Minn. Ct. App. 1986). In that case, a Notice of Lis Pendens involving title to property was recorded prior to the attempted foreclosure of an attorney's lien. The court held in that case that the attorney's lien was subject to whatever judgment was ultimately entered into in the action reflected in the Notice of Lis Pendens. As the court indicated there, somebody who records their interest subsequent to a recorded Notice of Lis Pendens is not a good faith purchaser for value and, as such, the subsequent encumbrancer's interest is void as against the claims in the pending action.

The same reasoning was used by the court in the case of Fingerhut Corp. v. Suburban National Bank, 460 N.W.2d 63 (Minn. Ct. App. 1990). While that case did deal with registered property, the court in that case did hold that a mortgage that was registered after a recorded Notice of Lis Pendens was subject to the outcome of that pending litigation, even though the mortgagee was never a party to the litigation. As the court held there, a subsequent encumbrancer takes subject to the final disposition of the pending action even though it was not a party.

While the Fingerhut case dealt with registered property, and the particularities of the registered property statute, its holding is clearly applicable here. While Wells Fargo did acquire an interest in the Egginks' property just shortly before the Notice of Lis Pendens was filed and recorded, it did so with knowledge of the Appellant Mavco's lien. It makes precious little difference whether Wells Fargo actually examined title before giving the mortgage, or whether it simply failed to look. The fact that the mechanic's lien statement was recorded imputes the knowledge of the lien's existence to Wells Fargo.

In taking the property subsequent to and with knowledge of the lien, its interest was void as against the prior recorded lien of Mavco. As such, at least in regard to the issue that is involved in the Notice of Lis Pendens, it had no recognizable interest. When Wells Fargo finally recorded its deed in July, it again had notice of the recorded documents that preceded its recorded interest. That included knowledge of the Notice of Lis Pendens. Thus at that point as a matter of law, Wells Fargo knew that the lien existed, had been perfected by the filing of the mechanic's lien statement, and was in fact in the process of being foreclosed on. It also knew as a matter of law that its interest was subject to that lien. If Wells Fargo had any issue with that, it could and should have intervened. Rather, it did nothing. However, whether it was a party or not, under these circumstances it was bound by the result in this action. This action after all was commenced well within one year subsequent to the completion of the work. The Notice of Lis Pendens gave notice to Wells Fargo that the foreclosure action was proceeding. Wells Fargo knew it took its interest in the property from the Egginks who were named defendants in the foreclosure action.

In the case of Hokanson v. Gunderson, 56 N.W. 172 (Minn. 1893), the Supreme Court long ago dealt specifically with the effect of a Notice of Lis Pendens in a mechanic's lien action.

While the court in that case did hold that a Notice of Lis Pendens is not binding on a party with a subsequently acquired interest, it did so only under the following circumstances. It limited that non applicability to situations where the party sought to be bound was not a party, or claiming under a party, to the litigation. The Hokanson case involved an individual who acquired title through a mortgage foreclosure action. The court in that case indicated that since the source of the person's title was not from the owner of the property against whom the lien claim had been made but rather from an uninvolved third party, the Notice of Lis Pendens and the subsequent result from that litigation was not binding on her. In this case, however, Wells Fargo's interest flows directly from the Egginks. Its mortgage was only as good as the Egginks' title at the time the mortgage was issued. Wells Fargo knew when it issued the mortgage that the Egginks' title was subject to the Mavco lien. Wells Fargo further knew by virtue of the Notice of Lis Pendens that the lien was being foreclosed. Because its claimed interest comes from the Egginks who were a party to the action during the life of the lien, Wells Fargo is bound by the result whether it was a party or not.

Without the technical defense of the one year statute of limitations which is simply not available to Wells Fargo for the reasons set forth above, there should be no issue at all as to the priority of Mavco's lien over the Wells Fargo mortgage. The Mavco lien statement was recorded well before the mortgage was issued. Minnesota is a race/notice state. Minn. Stat. § 507.32 and 507.34 have historically been construed in that matter. Because Mavco's lien was recorded prior to the time Wells Fargo issued the mortgage, it has priority. The mechanic's lien statute itself clearly gives priority to a lien that is based on work performed before a mortgage is obtained. Minn. Stat. § 514.05 states as follows:

Subd. 1. All liens, as against the owner of the land, shall attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement, and shall be preferred to any mortgage or other encumbrance not then of record, unless the lien holder had actual notice thereof . . .

The operative effect of these statutes when combined with the recorded Notice of Lis Pendens make Wells Fargo's interests void as against Mavco's rights in the property. It further binds Wells Fargo to the results of the foreclosure action whether it was a party to that action or not. Because they do, the district court order in regard to priority should be reversed.

II. EVEN IF THE ONE YEAR STATUTE OF LIMITATIONS WAS APPLICABLE TO WELLS FARGO, THE COURT SHOULD HAVE ALLOWED THE SUPPLEMENTAL COMPLAINT AND GIVEN IT RELATION BACK EFFECT UNDER THESE CIRCUMSTANCES.

M.R.C.P. 15.03 reads as follows:

Whenever a claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and within the period provided by law for commencing the action against the party, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits; and (2) knew or should have known but for a mistake concerning the identity of the proper party, the action would have been brought against that party.

In turn, M.R.C.P. 15.04 of the Minnesota Rules of Civil Procedure states as follows:

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or of a defense . . .

Based on these rules, Mavco did make the alternative motion for leave to file a supplemental complaint by substituting Wells Fargo as a defendant for Vermillion State Bank. Vermillion State Bank was named originally because the record title as of the date of the commencement of the action listed them as the mortgagee on the property.

As set forth above, Wells Fargo not only had notice of the pre-existing mechanic's lien when it issued its mortgage, but it also had record notice of the Notice of Lis Pendens which told it as a matter of law that that lien was being foreclosed. Under these circumstances, it is clear that Wells Fargo within one year after the last day of work did have notice of the institution of the action. As of May 19, 2004, the Notice of Lis Pendens was recorded. Not only did that provide constructive notice, but it is obvious that when Wells Fargo recorded its deed and got an updated abstract of title, it had to have actual knowledge of this action going on. Wells Fargo also knew that it had failed to record its interest when the mortgage was issued. As such, it had to know since prior mortgagees were included as defendants, that but for its mistake and the ensuing mistake of Mavco, Wells Fargo would have been named as the defendant rather than Vermillion. Finally the claim being made arose out of the same transaction as is set forth in the original complaint.

M.R.C.P. 15.04 deals with transactions, occurrences or events that happened since the date of the pleading. Obviously the knowledge of Wells Fargo's interest by the Appellant, such as it was, arose after the original pleading. Clearly the district court under these circumstances, if it felt that the one year statute was an issue, should have granted leave to file the supplemental complaint and have the claim against Wells Fargo relate back to the commencement of the action. The knowledge that Wells Fargo had concerning the pending foreclosure action and the

fact that it clearly knew that it had not been named because it had not recorded its interest at the time the action was commenced, should have mandated that.

In similar situations involving mechanic's liens new defendants have been substituted after the one year time limit, and the effect of that substitution or amendment has related back to the commencement of the action. In the case of R.B. Thompson, Jr. Lumber v. Windsor Development, 383 N.W.2d 357 (Minn. Ct. App. 1986), the Court of Appeals recognized that allowing an amendment and allowing it to relate back were appropriate in a mechanic's lien action. In that case as here, the right mortgagee had notice of the pendency of the action and knew that but for a mistake, it would have been named as the defendant mortgagee originally. The Court of Appeals under these circumstances upheld the amendment substituting the new mortgagee, and upheld the trial court's finding that that amendment should have relation back effect pursuant to the provisions of M.R.C.P. 15.03. In doing so, the court cited with approval this language from the trial court, "Substantive rights should not be decided on technical grounds, particularly if no harm results." This is especially true here since the mistake in naming the wrong mortgagee was substantially contributed to by Wells Fargo's own failure to record its interest at the time it issued the mortgage. Obviously if it had, it would have been named originally. Without recording its notice, however, it could not reasonably expect to be named. As a sophisticated lender, however, it had to have known that but for its mistake, it would have been named instead of Vermillion. Because the criteria set forth in M.R.C.P. 15.03 are met here, the motion should have been granted.

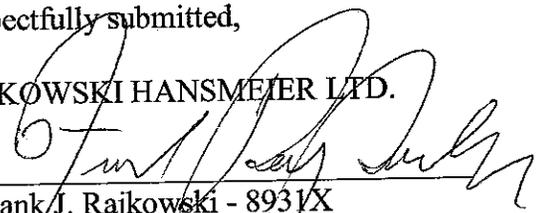
CONCLUSION

In conclusion, the Appellant's lien should have the priority that the mechanic's lien statute, the recording act and Minn. Stat. § 557.02 mandate. Its lien was recorded well prior to the time that Wells Fargo acquired any interest in the property. Both the recording act and the mechanic's lien statute give clear priority to the mechanic's lien under these circumstances. A mortgagee who does not record its interest, cannot and should not be expected to be named as a party in the mechanic's lien foreclosure. A mortgagee who does not record its interest with knowledge of a prior mechanic's lien and with knowledge of the Notice of Lis Pendens referencing the action to foreclose the lien, is bound by the results of that action whether it was a party or not. As such, the trial court's order should be reversed and this court should order that the Appellant's lien is prior to the lien of Wells Fargo. In the alternative, if the one year statute has any applicability, the trial court's order denying the filing of the supplemental complaint with the substitution of Wells Fargo as the defendant mortgagee should be reversed, and it should be ordered that such supplemental complaint be filed with relation back effect. In either case, the result should be what was or should have been known to Wells Fargo when it issued the mortgage, namely that its mortgage interest was subject to Mavco's lien.

Dated this 30th day of December, 2005.

Respectfully submitted,

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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) (with amendments effective July 1, 2007).