

Case No. A05-2018

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*State of Minnesota*  
***In Court Of Appeals***

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*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.*

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**RESPONDENT WELLS FARGO BANK, N.A.'S  
BRIEF AND SUPPLEMENTAL APPENDIX**

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## STATEMENT OF THE ISSUES

Whether the plain and unambiguous language of Minnesota Statutes section 514.12, subdivision 3, which applies to all mechanic's lien foreclosure actions and which states that "[n]o lien shall be enforced in any case unless the holder thereof shall assert the same, either by filing a complaint or answer with the court administrator, within one year after the date of the last item of the claim as set forth in the recorded lien statement" and that "no person shall be bound by any judgment in such action unless made a party thereto within the year" after the date of that last item of the claim, prohibits Appellant Mavco, Inc., d/b/a Maverick Construction ("Mavco") from asserting its mechanic's lien against Respondent Wells Fargo Bank, N.A. ("Wells Fargo") in a supplemental complaint where it is undisputed that Wells Fargo was not made a party to Mavco's mechanic's lien foreclosure action within the statutorily imposed one year limitation period.

The District Court held that Minnesota Statutes section 514.12, subdivision 3, barred Mavco from enforcing its mechanic's lien as to Wells Fargo once the statutorily imposed one year limitation period had expired, and therefore exercised its discretion to deny Mavco's motion for leave to file a supplemental complaint that sought to make Wells Fargo a party in Mavco's mechanic's lien foreclosure action after the statutory one year limitation period had expired.

### *Apposite Legal Authority:*

- Minn. Stat. § 514.12, subd. 3
- Ryan Contracting, Inc. v. JAG Invs., Inc., 634 N.W.2d 176, 183 & 187 (Minn. 2001)
- Morrison County Lumber Co. v. Duclos, 163 N.W. 734, 736 (Minn. 1917)
- Stang Concrete Co., Inc. v. Milleon, 1989 WL 7616, at \* 1-2 (Minn. Ct. App. 1989)
- Killmer Elec. Co., Inc. v. Santarsiero, 1989 WL 23540, at \* 2 (Minn. Ct. App. 1989)

## STATEMENT OF THE CASE

Appellant Mavco, Inc., d/b/a Maverick Construction completed the last item of its work on the real property owned by Respondents Rodney Eggink and Karla Eggink (collectively, the "Egginks") on November 26, 2003. (A2) Mavco subsequently commenced this mechanic's lien action by filing and serving a Summons and Complaint dated May 14, 2004. (A7-A16) The Egginks filed their Answer dated June 30, 2004, in which they specifically denied Mavco's allegation that the real property was subject to a mortgage in favor of the Vermillion State Bank, and expressly asserted "there is a mortgage on their residence with Wells Fargo Home Mortgage." (A79-A81)

The Egginks thereafter responded to Mavco's written discovery requests in November of 2004 by, among other things, providing Mavco with a copy of the Wells Fargo mortgage. (A23, A85) Notwithstanding having actual notice as to the existence of Wells Fargo's mortgage and a copy of the mortgage itself, Mavco did not make Wells Fargo a party to its mechanic's lien action at any time on or before November 26, 2004—which was one year from November 26, 2003 when the last item of work had been completed. (A86)

Mavco subsequently moved the District Court on June 6, 2005 for leave to file a supplemental complaint naming Wells Fargo as a party, and requested that its supplemental complaint against Wells Fargo relate back to the filing and service of its original summons and complaint dated May 14, 2004. (A87) The District Court correctly exercised its discretion to deny Mavco's motion for leave to file a supplemental complaint based upon the plain and unambiguous language of Minnesota Statutes

section 514.12, subdivision 3, which states “[n]o lien shall be enforced in any case unless the holder thereof shall assert the same, either by filing a complaint or answer with the court administrator, within one year after the date of the last item of the claim as set forth in the recorded lien statement” and that “no person shall be bound by any judgment in such action unless made a party thereto within a year.” (A84-A90)

Mavco has appealed the District Court’s denial of its motion for leave to file and serve its Supplemental Complaint.

## STATEMENT OF THE FACTS

Respondents Rodney Eggink and Karla Eggink owned certain residential property in Becker, Minnesota. (A10) Mavco entered into an agreement with the Egginks by which Mavco undertook to provide certain services, labor, skill, and material in connection with improvements to the Egginks' property. (A9) The mechanic's lien statement filed by Mavco with the Sherburne County Recorder's Office states the date that Mavco provided the last item of services, labor, skill, and material in connection with this work occurred on November 26, 2003. (SA4)

Mavco alleged the Egginks failed to pay Mavco for a portion of the services, labor, skill, and material which Mavco provided. (A9-A10) Mavco commenced the instant mechanic's lien foreclosure action by serving and filing a Summons and Complaint dated May 14, 2004. (A7-A16) Mavco did not make Wells Fargo a party to its mechanic's lien foreclosure action. (A7-A16)

On May 14, 2004—three days prior to Mavco's commencement of the mechanic's lien action—the Egginks refinanced their debt and granted Wells Fargo a mortgage against their property. (A85) Thereafter, on July 28, 2004, Wells Fargo's mortgage was recorded with the Sherburne County Recorder's Office. (A85)

The Egginks responded to Mavco's Summons and Complaint with an Answer dated June 30, 2004. (A79-A81) The Egginks' Answer expressly denied there was a mortgage lien against their property in favor of Vermillion State Bank, and expressly asserted "that there is a mortgage on their residence with Wells Fargo Home Mortgage." (A80)

Notwithstanding receipt of the Egginks' Answer which provided clear and express notice of the existence of Wells Fargo's mortgage, Mavco did not make Wells Fargo a party to its mechanic's lien foreclosure action within the mandatory one year jurisdictional limitation period which expired on November 26, 2004—one year from November 26, 2003, which was the date of the last item of any services, labor, skill, or material provided by Mavco in connection with its work on the property. (A86)

Approximately one week prior to the November 26, 2004 deadline, Mavco received additional notice of the existence of Wells Fargo's mortgage in the form of the Egginks' responses to Mavco's written discovery requests. (A23, A85) Specifically, as Mavco itself acknowledges, the Egginks provided Mavco with a copy of the Wells Fargo mortgage. (A23, A85) Notwithstanding receiving clear notice of Wells Fargo's mortgage on the property, Mavco did not make Wells Fargo a party to the mechanic's lien foreclosure action prior to November 26, 2004. (A86) Thus, the statutorily imposed one year limitation period to enforce Mavco's mechanic's lien expired on November 26, 2004, without any action by Mavco to make Wells Fargo a party to its mechanic's lien foreclosure action. (A86)

On May 6, 2005, Mavco brought a motion to make Wells Fargo a party by requesting leave to file and serve a Supplemental Complaint naming Wells Fargo as a defendant in this action and seeking to establish priority of its lien over Wells Fargo's mortgage. (A86)

The District Court correctly held that, at the time this motion was made, Mavco's mechanic's lien action was barred by the clear and unambiguous language in Minnesota

Statutes section 514.12, subdivision 3, and appropriately exercised its discretion to deny Mavco's motion for leave to file and serve its Supplemental Complaint. (A84-A90)

The District Court correctly observed "Minnesota's mechanic's lien statutes are remedial laws" and "the mechanic's lien is a creature of statute, and it depends entirely on compliance with statute for its existence." (A86) In addressing the one year limitation period imposed by Minnesota Statutes section 514.12, subdivision 3, the District Court properly observed this "one year limitation of the lien statutes is no ordinary statute of limitations; it puts a limit to the life and duration of the lien." (A86) (citation omitted). Thus, as to each defendant party actually named in a particular mechanic's lien foreclosure action, "a lien action is commenced and is pending only from the time of service of the summons, and may not be commenced after expiration of the year because the duration of the lien has then expired, removing the underlying cause of action." (A80-A81) (citations omitted). "The failure to perfect a lien action is jurisdictional, whether due to neglect or mistake." (A81) (citations omitted).

Based upon this sound articulation of the application of the one year limitation, the District Court went on to properly exercise its discretion in denying Mavco's request for leave to file and serve a Supplemental Complaint that would make Wells Fargo a party to the mechanic's lien foreclosure action and relate back to the filing and service of the original summons and complaint dated May 14, 2004. (A87-A88, A90)

In considering the request, the District Court correctly recognized that Mavco was "attempting to circumvent the one year statutory limitation by arguing that the Supplemental Complaint should relate back to the date of the original Complaint pursuant

to Minn. R. Civ. Proc. 15.03.” (A87) Mavco’s request to make Wells Fargo a party and have the Supplemental Complaint relate back to the date of the original commencement of the action clearly conflicted with the Minnesota Legislature’s clearly stated limitation imposed in Minnesota Statutes section 514.12, subdivision 3. (A87-A88) The District Court correctly pointed out that the Rules of Civil Procedure do not apply when “used to circumvent the provisions of the mechanic’s lien statutes.” (A87)

The District Court succinctly summed up the matter by stating, “[t]he failure of Mavco to join Wells Fargo as a defendant or to assert a mechanic’s lien against Wells Fargo in a timely manner precludes Mavco from joining Wells Fargo to the current legal action.” (A87)

Mavco was provided actual notice of the Wells Fargo mortgage on June 30, 2004, and Defendants’ Answer to Mavco’s Complaint, and by answers to discovery received before expiration of the one year limit on the action. Constructive notice of the mortgage was provided on July 28, 2004, when the mortgage was recorded with the Sherburne County Recorder’s Office. Mavco failed to amend the Complaint to assert its mechanic’s lien against Wells Fargo by the November 26, 2004 deadline created by Minn. Stat. § 514.12. The cause of action was extinguished at that time and cannot be revived via the Rules of Civil Procedure.

(A87-A88)

Mavco appeals the District Court’s exercise of discretion in denying Mavco’s motion for leave to file and serve its Supplemental Complaint.

## ARGUMENT

Requests for leave to interpose a supplemental complaint are subject to the District Court's exercise of discretion. Beberman v. Frisch, 64 N.W.2d 132, 139 (Minn. 1954); Muirhead v. Johnson, 46 N.W.2d 502, 505 (Minn. 1951). As such, the District Court is given a good deal of deference in ruling on such requests. The Court of Appeals will not reverse the denial of a motion to amend a complaint "absent a clear abuse of discretion." Christensen v. County of Kandiyohi, 1993 WL 459894, at \*3 (Minn. Ct. App. 1993) (citing Utecht v. Shopko Dept. Store, 324 N.W.2d 652, 654 (Minn. 1982)).

The District Court certainly has the discretion and authority to deny a motion to amend a complaint where the claim that the moving party seeks to add could not survive summary judgment. Id. (citing M.H. v. Caritas Family Servs., 488 N.W.2d 282, 290 (Minn. 1992)). See also LaFee v. Winona County, 655 N.W.2d 662, 668 (Minn. Ct. App. 2003); Stead-Bowers v. Langley, 636 N.W.2d 334, 341 (Minn. Ct. App. 2001); Bebo v. Delander, 632 N.W.2d 732, 740-41 (Minn. Ct. App. 2001); Schumacher v. Schumacher, 627 N.W.2d 725, 730 (Minn. Ct. App. 2001).

There are no grounds upon which to assert the District Court abused its discretion by denying Mavco's motion for leave to file and serve its Supplemental Complaint in the instant case given the District Court's proper application of Minnesota Statutes section 514.12, subdivision 3.

Minnesota Statutes section 514.12, subdivision 3, provides, in pertinent part, as follows:

No lien shall be enforced in any case unless the holder thereof shall assert the same, either by filing a complaint or an answer with the court administrator, within one year after the date of the last item of the claim as set forth in the recorded lien statements; and, no person shall be bound by any judgment in such action unless made a party thereto within the year . . . .

Minn. Stat. § 514.12, subd. 3. Thus, the one year limitation period set forth in section 514.12, subdivision 3, requires (1) that a mechanic's lien foreclosure complaint must be filed and served within one year of the lien complainant's last date of work *and* (2) that any party with an interest in the subject real property must be made a party to the suit within one year of that last contribution to the improvement.

This one year limitation "puts a limit to the life and duration of the lien." Ryan Contracting, Inc. v. JAG Invs., Inc., 634 N.W.2d 176, 183 (Minn. 2001). "The requirements for the attachment and creation of a mechanics lien are to be strictly construed." Id. (citing Dolder v. Griffin, 323 N.W.2d 773, 780 (Minn. 1982)). The one year limitation period is jurisdictional and can neither be ignored nor extended. Killmer Elec. Co., Inc. v. Santarsiero, 1989 WL 23540, \*2 (Minn. Ct. App. 1989). Simply stated, the one year limitation timeframe bears directly on the existence of subject matter jurisdiction. Id.

If the action is not filed with the Court and served on the interested parties within that one year period of time, "the liens and any cause of action flowing therefrom cease to exist as a matter of law at the end of the year as to the omitted party." Ryan Contracting, Inc., 634 N.W.2d at 183 (citing Bauman v. Metzger, 176 N.W. 497, 499 (Minn. 1920)). Accordingly, the Minnesota Supreme Court has held that, "[i]f a person is

not made a party to a lien action within the one year time limit of section 514.12, subd. 3, that person is not bound by any judgment from the action; in effect, the lien is terminated as to that person.” Ryan Contracting, Inc., 634 N.W.2d at 187. See also Steinmetz v. St. Paul Trust Co., 52 N.W. 915, 915 (Minn. 1892); Stang Concrete Co., Inc. v. Milleon, 1989 WL 7616, at \* 1-2 (Minn. Ct. App. 1989); Killmer Elec. Co., 1989 WL 23540, at \*2; Thompson Plumbing Co., Inc. v. JEC, Inc., 422 N.W.2d 26, 28 (Minn. Ct. App. 1988).

It is undisputed that the last item upon which Mavco’s mechanic’s lien is based had occurred on November 26, 2003. Accordingly, Mavco had one year from that date, i.e. November 26, 2004, in which to commence its mechanic’s lien against Wells Fargo. It is undisputed that Mavco failed to name Wells Fargo in its mechanic’s lien foreclosure action and file and serve a foreclosure summons and complaint upon Wells Fargo on or before November 26, 2004. As a result, the Court’s jurisdiction over Wells Fargo with respect to Mavco’s mechanic’s lien ceased to exist and Wells Fargo could no longer be bound by any judgment on Mavco’s mechanic’s lien.

Mavco has not, and cannot, effectively distinguish Morrison County Lumber Co. v. Duclos, 163 N.W. 734 (Minn. 1917), in which the Minnesota Supreme Court applied the very same statutory language to hold that “persons” who are not made parties within the one year timeframe shall not be bound by a judgment. Id. at 736. Mavco notes that the “mortgagee in that case did have an interest of record at the time the mechanic’s lien foreclosure was commenced” and that “the mortgagee in that case provided a mortgage without any notice of the mechanic’s lien.” Mavco’s Brief at 6.

Mavco, of course, omits to mention the mortgagee subsequently took a new mortgage for a greater sum that was secured by the same property and, “in ignorance of the lien claims, satisfied the old mortgage.” Morrison County Lumber Co., 163 N.W. at 736. Thus, the equities of constructive notice, waiver, excusable neglect, inadvertence, and the like could have been argued equally by either party. However, the Court did not base its decision on any of these grounds. The Court instead held it was absolutely bound by the fact that the mortgagee had not been properly made a party within the one year timeframe and, therefore, as to that mortgagee, “it was beyond the power of the court to revive a lien which the statute declares dead.” Id.

Mavco seeks to sidestep the clear, unambiguous, and unequivocal one year limitation period imposed by section 514.12, subdivision 3, by misconstruing the plain language of that statute and cobbling together references to several other inapplicable statutes. This effort is misguided and should be rejected.

Minnesota Statutes section 514.12, subdivision 3, does not distinguish between “two classes of persons” when it comes to the application of the one year limitation requirement. Mavco’s Brief at 4. The statute simply and clearly provides that a party who seeks to foreclose on a mechanic’s lien as to other parties in interest must make sure they are “made a party” to the mechanic’s lien foreclosure action. Whether this requires the party seeking to foreclose on its mechanic’s lien to conduct a subsequent review of the record title does not change the language of the statute as enacted by the Minnesota Legislature.

Mavco cannot fairly claim this “puts an incredible burden on the lien claimant” in the instant case. Mavco’s Brief at 5. The undisputed facts establish that Mavco was notified by the Egginks in their June 30, 2004 Answer—some five months prior to the expiration of the one year limitation period—that their property was subject to Wells Fargo’s mortgage. (A80) Accordingly, Mavco has no excuse for its failure to name Wells Fargo within the one year limitation period.

Notwithstanding Mavco’s arguments to the contrary, Minnesota Statutes section 507.34 does not obviate the clear and unequivocal one year limitation period mandated by section 512.14, subdivision 3. Mavco’s Brief at 5. Section 507.34 focuses exclusively on subsequent purchasers, and simply provides that conveyances of real estate shall be recorded and that any conveyance that is not so recorded shall be void as to a subsequent purchaser in good faith. Minn. Stat. § 507.34. This case does not involve a subsequent purchaser.

Mavco’s reliance on Minnesota Statutes section 507.32 is similarly misplaced. Mavco’s Brief at 6 (citing Minn. Stat. § 507.32 & Minn. Central R.R. Co. v. MCI Telecomms. Corp., 595 N.W.2d 533 (Minn. Ct. App. 1999)). Indeed, section 507.32 actually renders further support for Wells Fargo’s position insofar as it provides that, once Wells Fargo recorded its mortgage on July 28, 2004, Mavco was deemed to have notice of that mortgage as a matter of law. Minn. Stat. § 507.32. Thus, Mavco received notice of Wells Fargo’s mortgage in multiple ways several months before the expiration of the one year limitation period.

Moreover, Mavco's reliance on the doctrine of "constructive notice" is misplaced in any event. The statute states: "no person shall be bound by any judgment in such action unless made a party thereto within a year." Minn. Stat. § 514.12, subd. 3. Thus, any claims regarding alleged notice—whether actual notice or constructive notice—are entirely irrelevant because the statute plainly and unambiguously requires that the "person" must be made a party to the proceedings within the one year timeframe—not merely that the "person" be aware of the mechanic's lien interest or proceeding, and not merely that the "person" have an opportunity to intervene as a party to the mechanic's lien action. Thus, the outcome of the instant case is entirely controlled by the undisputed fact that Wells Fargo was not made a party to Mavco's mechanic's lien action prior to November 26, 2004—one year after Mavco had completed the last item upon which its mechanic's lien was asserted. Based on this undisputed fact, Wells Fargo cannot be bound by any judgment that could have been obtained in Mavco's mechanic's lien foreclosure action.

Mavco's reliance on the statutory authorization in Minnesota Statutes section 557.02 for filing notices of lis pendens likewise does not relieve it of the obligations imposed by the one year limitation period. Mavco's Brief at 7-10. The one year limitations period imposed in actions for foreclosure of mechanic's liens expressly states and unequivocally requires without exception or qualification whatsoever that "no party shall be bound by any judgment in such action unless made a party thereto within the year." Minn. Stat. § 514.12, subd. 3. There are no loopholes or alternative procedures based on the recording of notices of lis pendens, actual or constructive notice,

or any other method by which a non-party may otherwise be bound by a mechanic's lien judgment.

Accordingly, Mavco's reliance on Bredeson v. Nickolay, 194 N.W. 460 (Minn. 1923), Marr v. Bradley, 59 N.W.2d 331 (Minn. 1953), Howard, McRoberts & Murray v. Starry, 382 N.W.2d 293 (Minn. Ct. App. 1986), and Fingerhut Corp. v. Suburban Nat'l Bank, 460 N.W.2d 63 (Minn. Ct. App. 1990) is also misplaced. Mavco Brief at 7-9. All of these cases focus on the significance of the filing of notices of lis pendens in a variety of different circumstances. However, none of these cases involved the application of the mechanic's lien statute and its absolute requirement that a "person" cannot be bound by the judgment in a mechanic's lien action if he, she, or it has not been properly made a party in that action within the one year timeframe. Mavco's appeal to this Court to engraft an exception for alleged imputed or constructive notice. However, this Court may not redraft or amend the plain, unambiguous, and unconditional language in Minnesota Statutes section 514.12, subdivision 3. Instead, as the Minnesota Supreme Court stated in Morrison County Lumber Co. v. Duclos, 163 N.W. 734 (Minn. 1917), "it was beyond the power of the court to revive a lien which the statute declares dead." Id. at 736.

Just as it seeks to seize upon a factual distinction in Morrison County Lumber Co. that was not relevant to the Minnesota Supreme Court's decision, Mavco also attempts to avoid Hokanson v. Gunderson, 56 N.W. 172 (Minn. 1893), based on a factual distinction that was not material to the Court's decision. Mavco's Brief at 9-10. In Hokanson, the Minnesota Supreme Court held that an unnamed party could not be bound by the

judgment in a mechanic's lien action. Hokanson, 56 N.W. at 173. In dealing with the issue of notice, the Court emphatically stated that actual notice is not enough: "It is not material at all whether the defendant Marvin had actual notice of the suit, unless she could be legally bound by the adjudication therein." Id. at 172-173. As stated in the plain and unambiguous language of the statute, in order to be legally bound by a judgment in a mechanic's lien proceeding, a person must be made a party to that action in a timely fashion. Minn. Stat. § 514.12, subd. 3.

Contrary to Mavco's misguided attempts to portray it as such, the statutorily imposed one year limitations period is *not* merely a "technical defense." Mavco's Brief at 10. This one year statute of limitations goes to the very heart of the court's subject matter jurisdiction over mechanic's lien foreclosure actions. Killmer Elec. Co., 1989 WL 23540, at \*2. The District Court lost subject matter jurisdiction when Mavco failed to timely name Wells Fargo in the action prior to the expiration of the one year limitations period. Id.

There are no exceptions to the absolute one year limitation set forth by the Minnesota Legislature, and this is not the case in which any such exception should be created. Mavco has no lawful justification for its failure to comply with section 514.12, subdivision 3. Mavco received three different forms of notice and had actual knowledge as to the existence of Wells Fargo's mortgage prior to the November 26, 2004 jurisdictional deadline for making Wells Fargo a defendant in its mechanic's lien foreclosure action. First, the Egginks served Mavco with their June 30, 2004 Answer clearly denying that the property was the subject of a mortgage in favor of Vermillion

State Bank *and* expressly notifying Mavco of the existence of Wells Fargo's mortgage on the property. (A80) Second, Wells Fargo recorded their mortgage on July 28, 2004, which is deemed notice to all parties. Minn. Stat. § 507.32. Third, Mavco itself has acknowledged receipt of a copy of the actual mortgage from the Egginks in November of 2004 prior to the expiration of the one year limitations period on November 26, 2004. (A23, A85) Thus, wholly apart from the absolute language and nature of the one year limitation imposed by statute, there is no justification to create and apply an exception in the instant case where Mavco had actual knowledge and ample opportunity in which to make Wells Fargo a party in the mechanic's lien foreclosure action prior to the expiration of the one year jurisdictional deadline.

Under the circumstances, the District Court certainly did not abuse its discretion in denying Mavco's motion for leave to file a supplemental complaint. A "supplemental complaint cannot be used to correct or remedy a defective cause of action set up in the original complaint." Muirhead v. Johnson, 46 N.W.2d 502, 505 (Minn. 1951). Likewise, it is well established that the District Court most certainly has the discretion to deny a motion seeking leave to serve and file a amended complaint where "it legally would serve no purpose" such as where a party cannot establish an essential element of his claim. Pischke v. Kellen, 384 N.W.2d 201, 204 (Minn. Ct. App. 1986); Malmsten v. Berryhill, 65 N.W. 88, 89-90 (Minn. 1895). It is also well settled that leave to amend should be denied where the proposed amendment would be futile. Holisak v. Northwestern Nat'l Bank of St. Paul, 210 N.W.2d 413, 415 (Minn. 1973); Lumberman's Underwriting Alliance v. Tifco, Inc., 465 N.W.2d 580, 584 (Minn. Ct. App. 1991).

In the instant case, the District Court properly exercised its discretion to deny Mavco's motion for leave to file the supplemental complaint because, as a matter of law, Mavco's cause of action had expired with the expiration of the statutory one year limitation set forth in Minnesota Statutes section 514.12, subdivision 3. Indeed, as a matter of law, the expiration of that statutory one year limitation divested the Court of jurisdiction that would allow it to impose such an untimely mechanic's lien against Wells Fargo. Accordingly, the District Court had no discretion, but instead was compelled to deny Mavco's request for leave to file and serve a Supplemental Complaint because its subject matter jurisdiction over the matter had expired.

Finally, Mavco's attempts to utilize a supplemental complaint that would relate back to its original summons and complaint under Rule 15.03 is wholly inappropriate. It is well established in the case law, as well as in the Minnesota Rules of Civil Procedure themselves, that the Rules shall not and cannot be utilized in a way that would conflict with or circumvent Minnesota's Mechanic's Lien Statute. See Minn. R. Civ. P. 81.03(a) & Appendix A; Ryan Contracting, Inc., 634 N.W.2d at 181. "The mechanic's lien statute has express requirements for bringing an action, and [Minnesota courts] will not allow manipulation of the Minnesota Rules of Civil Procedure in order to circumvent those requirements." Lyman Lumber Co. v. Dior Develop. Inc., 409 N.W.2d 30, 32 (Minn. Ct. App. 1987). See also Wangerin, Inc. v. Derrick Dev. Corp., 1990 WL 163052, at \*2 (Minn. Ct. App. 1990) (party cannot manipulate Rules of Civil Procedure to extend one year period because mechanic's lien expires when it is not asserted within one year). Thus, Mavco's request for leave to file and serve a supplemental pleading to relate back

to its original Complaint in the instant case is not only contrary to controlling law, but it also would impermissibly prejudice Wells Fargo because it would have the effect of creating liability where liability no longer exists. See, e.g., Wangerin, Inc., 1990 WL 163052, at \*3.

Mavco relies upon R.B. Thompson, Jr. Lumber Co. v. Windsor Development Corp., 383 N.W.2d 357 (Minn. Ct. App. 1986), to argue for reversal of the District Court's denial of Mavco's request for leave to file a Supplemental Complaint that would relate back to the original commencement of the action. Mavco's Brief at 13. Mavco's reliance on R.B. Thompson is misplaced on at least two separate and material grounds.

First, R.B. Thompson arose out of a misnomer situation in which the mechanic's lienholder had thought it had named the correct party and the trial court had simply exercised its discretion in order to clear up what was essentially a clerical error. R.B. Thompson, Jr. Lumber, 383 N.W.2d at 361. Mistakenly naming a party by the wrong name is fundamentally different from altogether failing to name a party at all. In the instant case, neither Wells Fargo nor anyone affiliated in any way with Wells Fargo was ever named a party in Mavco's mechanic's lien foreclosure action within the statutory timeframe.

Second, and more importantly, R.B. Thompson simply held the district court had not abused its discretion in allowing the amendment. Id. In the instant case, the District Court's denial of Mavco's request for leave to file a Supplemental Complaint is reviewed under an abuse of discretion standard. Beberman, 64 N.W.2d at 139; Muirhead, 46 N.W.2d at 505; Christensen, 1993 WL 459894, at \*3. In light of the Minnesota Supreme

Court's decisions in cases such as Ryan Contracting, Inc., 634 N.W.2d at 183 and 187, and Morrison County Lumber Co., 163 N.W. at 736, and this Court's decisions in cases such as Stang Concrete Co., 1989 WL 7616, at \* 1-2, and Killmer Electric Co., 1989 WL 23540, at \*2—which all uniformly hold that a person who is not made a party in a timely manner cannot be bound by a judgment in a mechanic's lien foreclosure action—Mavco cannot reasonably claim that the District Court abused its discretion by denying Mavco's request and applying the plain and unambiguous language in Minnesota Statutes section 514.12, subdivision 3, as enacted by the Minnesota Legislature, which states “no person shall be bound by any judgment in such an action unless made a party thereto within the year.”

CONCLUSION

Based on the foregoing, Respondent Wells Fargo Bank, N.A. respectfully requests the Court of Appeals to affirm the District Court in all respects based on its proper application of Minnesota Statutes section 514.12, subdivision 3, and the appropriate and sound exercise of its authorized discretion to deny Appellant Mavco, Inc., d/b/a Maverick Construction's motion for leave to file and serve a Supplemental Complaint.

Dated: February 1, 2006

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Minnesota Rule of Civil Appellate Procedure 132.01, subd. 3, the undersigned hereby certifies, as counsel for Appellants, that this brief complies with the type-volume limitation as there are 5,109 words of proportional space type in this brief. This brief was prepared using Microsoft Word 2000.

Dated: February 1, 2006

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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).