

Case No. A05-2018

State of Minnesota
Supreme Court

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.

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

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STATEMENT OF THE ISSUE

Whether the plain and unambiguous language of Minnesota Statutes section 514.12, subdivision 3—which unequivocally states that “[n]o [mechanic’s] 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 “*no person shall be bound by any judgment in such action unless made a party thereto within the year*”—prohibits a mechanic’s lienholder from asserting its mechanic’s lien as to a party who has not been joined in the mechanic’s lien foreclosure within the jurisdictional one-year limitation period.

The District Court held that, pursuant to Minnesota Statutes section 514.12, subdivision 3, once the statutorily imposed one-year limitation period had expired, it lacked jurisdiction to permit Appellant Mavco, Inc., d/b/a Maverick Construction (“Mavco”) to enforce its mechanic’s lien as to Respondent Wells Fargo Bank, N.A. (“Wells Fargo”), and the District Court, therefore, exercised its discretion to deny Mavco’s motion for leave to file a supplemental complaint to join Wells Fargo as a party to the mechanic’s lien foreclosure action after the jurisdictional one-year limitation period had expired. The Court of Appeals affirmed the District Court in all respects.

Apposite Legal Authority:

- Minn. Stat. §§ 514.10 & 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)
- Hokanson v. Gunderson, 56 N.W. 172, 172-73 (Minn. 1893)
- Steinmetz v. St. Paul Trust Co., 52 N.W. 915, 915 (Minn. 1892)

STATEMENT OF THE CASE

On November 26, 2003, Mavco completed the last item of the work in question on the real property owned by Respondents Rodney Eggink and Karla Eggink (collectively, “Egginks”). (A2)

On May 14, 2004, the Egginks refinanced their debt and granted Wells Fargo a mortgage against the subject property. (A50)

Thereafter, on May 17, 2004, Mavco commenced a mechanic’s lien foreclosure action. (A50 & SA1-SA7)¹ Mavco did not join Wells Fargo as a party to the foreclosure proceedings at that time. On May 19, 2004, Mavco filed its notice of lis pendens. (A7-A9)

On June 30, 2004, the Egginks served Mavco with their Answer to Mavco’s Summons and Complaint in which the Egginks expressly asserted “there is a mortgage on their residence with Wells Fargo Home Mortgage.” (A31) The Egginks’ Answer was signed by their legal counsel as required under Rule 11 of the Minnesota Rules of Civil Procedure, and contained an express acknowledgment pursuant to Minnesota Statutes section 549.21, subdivision 2. (A32) Mavco did not join Wells Fargo as a party to the foreclosure proceedings at that time.

On November 3, 2004, the Egginks served Mavco with their Answers to Mavco’s Interrogatories. (A37-A45) In their Answer to Interrogatory No. 2, the Egginks again advised Mavco that “[t]here is another mortgage of May 14, 2004, to Wells Fargo

¹ Citations to Wells Fargo’s Supplemental Appendix shall be referenced as “SA” followed by the relevant page designation.

Bank, N.A. in the amount of \$391,000.” (A38) Mavco did not join Wells Fargo as a party to the foreclosure proceeding at that time.

Nearly one year later, on or about May 6, 2005, Mavco served and filed a motion for leave to assert a supplemental complaint to join Wells Fargo in the foreclosure proceedings. (A51) This was some six months after the jurisdictional and statutorily imposed one-year limitation period had expired. Thereafter, Mavco appeared before the District Court on June 6, 2005, for the hearing on its motion seeking leave to file and serve a supplemental complaint joining Wells Fargo as a party and seeking to have that supplemental complaint relate back to the filing and service of Mavco’s original Summons and Complaint. (A52 & SA8-SA49)

The District Court correctly held that it did not have jurisdiction to permit Mavco to assert its mechanic’s lien against Wells Fargo because Mavco had failed to join Wells Fargo in the mechanic’s lien foreclosure action within the one-year statutory limitation period. (A49-A55) The District Court properly held that, because the one-year period had expired, its jurisdiction under the mechanic’s lien statute did not extend to Wells Fargo because it had not been joined as a party to the mechanic’s lien foreclosure action within the one-year limitations period set forth in Minnesota Statutes section 514.12, subdivision 3. (A49-A55)

Mavco thereafter appealed the District Court’s denial of its motion for leave to file and serve its proffered supplemental complaint. The Court of Appeals correctly affirmed the District Court’s decision in all respects. Mavco, Inc. v. Eggink, 720 N.W.2d 841, 843-844 (Minn. Ct. App. 2006). (A56-A63)

Mavco subsequently filed a petition for review with this Court on September 26, 2006. The court granted Mavco's Petition for Review by order dated November 14, 2006.

STATEMENT OF THE FACTS

The Egginks owned certain residential property in Becker, Minnesota. (SA4) 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. (SA3) 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. (A2)

On May 14, 2004, the Egginks refinanced their debt and granted Wells Fargo a mortgage against their property. (A50) Wells Fargo's mortgage was thereafter recorded with the Sherburne County Recorder on July 28, 2004. (A10-A29 & A50)

Mavco alleged the Egginks failed to pay Mavco for a portion of the services, labor, skill, and material which Mavco provided. (SA3-SA4) On May 17, 2004, Mavco commenced a mechanic's lien foreclosure action in Sherburne County before the Tenth Judicial District Court. (A50 & SA1-SA7) Mavco did not make Wells Fargo a party to its mechanic's lien foreclosure action. (SA1-SA7) Mavco filed a notice of lis pendens with the Sherburne County Recorder on May 19, 2005. (A7-A9 & A50)

Mavco's original Complaint named, *inter alia*, Vermillion State Bank, as a party to the foreclosure proceedings and alleged in Paragraph Seven of the Complaint the

existence of certain mortgages on the subject property in favor of Vermillion State Bank.
(SA1 & SA3-SA4)

On June 30, 2004, the Egginks served their answer to Mavco's Summons and Complaint. (A30-A32) The Egginks' Answer, *inter alia*, expressly denied Paragraph Seven of the Complaint which had alleged 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." (A31) The Egginks' Answer was signed by the Egginks' attorney as required under Rule 11 of the Minnesota Rules of Civil Procedure. (A32) In so doing, the Egginks' counsel certified as an officer of the court that, among other things, the Egginks' denial of the existence of the Vermillion State Bank mortgages and the Egginks' affirmative assertion that there is a "mortgage on their residence with Wells Fargo Home Mortgage" had "evidentiary support" or, at the very least, was "likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." Minn. R. Civ. P. 11.02(c). The Egginks' counsel also executed and appended a statutory acknowledgment to the Egginks' Answer to comply with the statutory requirement that counsel certify the existence of "evidentiary support" or, at the very least, a likelihood of "evidentiary support after a reasonable opportunity for further investigation or discovery," for all of the factual allegations contained in the Egginks' Answer, including the Egginks' denial of the existence of the Vermillion State Bank mortgages and the Egginks' affirmative

assertion “that there is a mortgage on their residence with Wells Fargo Home Mortgage.”
(A32)²

Thus, Mavco had received express notice through the Egginks’ Answer that Wells Fargo had a mortgage interest in the property more than five months before the one-year limitation period imposed under the mechanic’s statute was to expire on November 26, 2004.

Mavco asserts in Appellant’s Brief to this Court—apparently for the first time and without any citation to the record—that upon receiving the Egginks’ June 30, 2004 Answer, it made inquiry regarding the Egginks’ assertion in their Answer “that there is a mortgage on their residence with Wells Fargo Home Mortgage,” but was unable to obtain a satisfactory explanation at that time. (Mavco’s Brief at 1 & 11)

Once it had commenced the action, Mavco, of course, had the right to conduct written discovery and/or take depositions in order to obtain information from any of the parties Mavco had joined in its mechanic’s lien foreclosure action. Minn. R. Civ. P. 30, et seq., 33, et seq. & 34, et seq. Additionally, upon commencement of the action, Mavco also had the ability to obtain information and testimony from any appropriate non-party through the use of court issued subpoenas. Minn. R. Civ. P. 45.01, et seq. Thus, Mavco could have promptly followed up on its unsatisfied inquiry regarding the Wells Fargo

² While the Egginks’ attorney actually referenced to “Minn. Stat. § 549.21, subd. 2” (A32), it is apparent that counsel’s intent was to set forth the statutory acknowledgment mandated by Minnesota Statutes section 549.221, subdivision 2.

mortgage using formal discovery methods to obtain information from the Egginks and/or Wells Fargo.

Eventually, Mavco apparently served the Egginks with written discovery requests. (A33-A36) On November 3, 2004—more than three weeks prior to the one-year jurisdictional deadline to add parties was to expire on November 26, 2004—the Egginks responded to Mavco’s written discovery requests by, among other things, advising Mavco of the “mortgage of May 14, 2004, to Wells Fargo Bank, N.A. in the amount of \$391,000” and producing to Mavco a copy of the Wells Fargo mortgage. (A38, A45, A50 & SA14) Thus, more than three weeks prior to the November 26, 2004 deadline, Mavco received further confirmation as to the existence of Wells Fargo’s mortgage in the form of the Egginks’ responses to Mavco’s written discovery requests. (A38, A45, A50 & SA14)

Notably, Mavco did not even have to engage in any discovery whatsoever as a prerequisite to joining Wells Fargo as a party in its mechanic’s lien foreclosure action. Mavco already had in its possession sufficient information upon which to join Wells Fargo as a party based upon the Egginks’ June 30, 2004 Answer. The Egginks, of course, were parties to the Wells Fargo mortgage. As such, their assertion that Wells Fargo had a mortgage on their residence in a pleading served and filed with the District Court in the mechanic’s lien foreclosure action would have been an adequate and good faith basis for Mavco to have immediately moved to join Wells Fargo in the mechanic’s lien foreclosure action. The existence of adequate evidentiary support for the Egginks’ assertion that Wells Fargo had a mortgage on their residence was further bolstered by the Egginks’

attorney who had signed the Answer so as to certify that there was an evidentiary basis for the Egginks' assertion "that there is a mortgage on their residence with Wells Fargo Home Mortgage."

In any event, notwithstanding the fact that it had received actual notice several months earlier, and notwithstanding the fact that it had been provided with a copy of the mortgage itself, Mavco did nothing to join Wells Fargo as a party to the mechanic's lien foreclosure action prior to November 26, 2004. (A51) 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 join Wells Fargo as a party to its mechanic's lien foreclosure action. (A51)

Although Mavco asserts that it never had any obligation to join Wells Fargo, Mavco has admitted that its failure to previously join Wells Fargo to its mechanic's lien foreclosure action had been a "mistake." (Mavco's Brief at 13; Appellant's Brief to Court of Appeals at 12; SA21.) Indeed, Mavco's belated attempt to join Wells Fargo as a party effectively evidences Mavco's own recognition and acknowledgment that, to the extent it wished to be able to enforce a judgment against Wells Fargo, it was obliged to have joined Wells Fargo as a party in the proceedings prior to November 26, 2004.

On May 6, 2005, Mavco filed and served 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. (A51) The motion was subsequently heard by the District Court on June 6,

2005. (A49 & SA8-SA49) The District Court filed its Findings of Fact, Conclusions of Law, and Order and Judgment denying Mavco's motion on August 8, 2005. (A49-A55)

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; that the expiration of this one-year limitation period divested the District Court of jurisdiction as to claims against parties who had not been joined within that one-year timeframe; and that Mavco's motion for leave to file and serve its Supplemental Complaint was an impermissible attempt to revive a claim that had been extinguished under the terms of the mechanic's lien statute. (A49-A55)

The District Court correctly observed "Minnesota's mechanic's lien statutes are remedial laws," and that "the mechanic's lien is a creature of statute, and it depends entirely on compliance with statute for its existence." (A51) In addressing the one-year limitation period imposed by Minnesota Statutes section 514.12, subdivision 3, the District Court acknowledged 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." (A51) (citation omitted). The District Court recognized that, as to any given party, "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." (A51) (citations omitted). The District Court held that "[t]he failure to perfect a lien action is jurisdictional, whether due to neglect or mistake." (A52) (citations omitted). Based upon this sound and well supported articulation of the application of the one-year limitation, the District Court

denied Mavco's request for leave to file and serve a Supplemental Complaint to join 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. (A52-A53 & A55)

The District Court astutely 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." (A52) 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. (A52-A53) 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." (A52)

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." (A52)

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.*

(A52-A53) (emphasis added)

Mavco thereafter appealed the District Court's denial of its motion for leave to file and serve its Supplemental Complaint. The Court of Appeals correctly affirmed the District Court's decision in all respects. Mavco, Inc. v. Eggink, 720 N.W.2d 841, 843-844 (Minn. Ct. App. 2006). (A56-A63)

In affirming the District Court's decision, the Court of Appeals pointed out that “[t]he one-year limitations period in Minn. Stat. § 514.12, subd. 3, has been *strictly enforced for more than one hundred years.*” Mavco, 720 N.W.2d at 843 (emphasis added). In so holding, the Court of Appeals cited to this Court's decision in Morrison County Lumber Co. v. Duclos, 163 N.W. 734 (Minn. 1917), which held that “it was beyond the power of the court to revive a lien which the statute declares dead.” Mavco, 720 N.W.2d at 843. The Court of Appeals further cited to this Court's decision in Hokanson v. Gunderson, 56 N.W. 172 (Minn. 1893), which held that the plain statutory language applies *without regard to when the mortgage was executed and recorded.* Mavco, 720 N.W.2d at 843. The Court of Appeals also relied on this Court's more recent decision in Ryan Contracting, Inc. v. JAG Investments, Inc., 634 N.W.2d 176 (Minn. 2001), wherein this Court reiterated and confirmed the well established principles under Minnesota law that “[t]he requirements for the attachment and creation of a mechanic's lien are to be *strictly construed*,” that “[t]he 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*,” and that “[i]f these requirements are not met, the lien and any cause of action flowing therefrom

cease to exist at the end of the year.” Mavco, 720 N.W.2d at 843 (quoting Ryan Contracting, 634 N.W.2d at 183) (emphasis added).

Based on the foregoing, the Court of Appeals held that it lacked jurisdiction over any claims Mavco may seek to enforce against Wells Fargo because Mavco had not joined Wells Fargo as a party in the mechanic’s lien foreclosure action within the jurisdictional one-year limitations period. Mavco, 720 N.W.2d at 844. In so ruling, the Court of Appeals properly rejected Mavco’s contention that Wells Fargo was obliged to intervene in Mavco’s mechanic’s lien foreclosure action. Id. The Court of Appeals pointed out the well established principle that Mavco, as the party seeking a judgment to enforce its mechanic’s lien, was ultimately responsible for joining Wells Fargo in a timely manner: “The plain language of Minn. Stat, § 514.12, subd. 3, *expressly places the burden on the lienholder to bring parties into a mechanic’s lien foreclosure action within one year after the lienholder’s final contribution to an improvement. The statutory language is consistent with the longstanding precedent of strict enforcement of the one-year limitations. . . .*” Id. (emphasis added).

The Court of Appeals concluded that, based upon the statutory language, a mortgagee such as Wells Fargo, who has issued the mortgage before the mechanic’s lien foreclosure action was commenced, is protected by the statute of limitations even when, as in this case, the mortgage was not recorded until after the mechanic’s lien foreclosure action had been commenced. Id.

ARGUMENT

This case involves the straightforward application of plain and unambiguous statutory requirements that have been strictly enforced by Minnesota courts for more than a century. These are clearly established procedures and jurisdictional limitations that lienholders have always been able to follow and rely upon in the adjudication of lienholders' rights. It is exceedingly important to maintain and preserve the clarity of these procedures. The Court should therefore reject the uncertainty and instability that would accompany case-by-case exceptions to these well established procedures of the sort that Mavco and amici curiae advocate.

The analysis of the issues in this case must begin with a simple proposition: Mavco is the party seeking to enforce its rights as a lienholder to obtain a mechanic's lien judgment. The relief sought by Mavco is considerable and, if obtained, its rights shall be liberally construed in its favor. Those rights are derived solely from the mechanic's lien statute. Because Mavco is the party seeking the expansive and liberally construed rights available under the mechanic's lien statute, Mavco has the burden to ensure strict compliance with all of the procedural and jurisdictional requirements necessary to obtain the relief and judgment it seeks.

Mavco's burdens are twofold. First, Mavco must comply with all of the requirements necessary for it to perfect its mechanic's lien interest. In order to accomplish this objective, Mavco must (1) provide timely pre-lien notice to the property owner, Minn. Stat. § 514.011; (2) file a mechanic's lien statement with the Sherburne County Recorder or Registrar of Titles and serve that mechanic's lien statement on the

owner within 120 days of performing the last work or furnishing the last materials for the subject property, *id.* at § 514.08; and (3) commence a mechanic's lien foreclosure action in the District Court in Sherburne County within one year of the date of the last item as set forth in the recorded and served mechanic's lien statement. *Id.* at § 514.10.

Second, Mavco has a separate responsibility to ensure that the District Court in which the mechanic's lien foreclosure action is pending has jurisdiction over those parties with interests against whom Mavco seeks to enforce its judgment. The mechanic's lien statute expressly limits the District Court's jurisdiction, and provides that such jurisdiction shall not extend to any person who has not been made a party to the mechanic's lien foreclosure action within one year from the date of the last item of the claim as set forth in the recorded lien statement. Minn. Stat. § 514.12, subd. 3. Mavco had the right and wherewithal to join any and all parties against whom it wished to assert its mechanic's lien judgment. This is more than a mere right; this goes to the heart of the District Court's jurisdiction. The District Court cannot exercise jurisdiction over any party who has not been joined in the mechanic's lien foreclosure proceedings within the one-year statutorily imposed limitation period. Ultimately, Mavco has the burden—as the party seeking to enforce a mechanic's lien and obtain a judgment on that lien—to make sure all of the parties over whom it seeks priority have been timely joined as parties in its mechanic's lien foreclosure action within the one-year limitations period.

Mavco's and amici curiae advance a variety of arguments that ignore these basic and well established procedural and jurisdictional requirements. In particular, they have cobbled together a complex argument based on an amalgam of statutory provisions in

order to achieve a particular outcome in this case. The overriding and ultimate flaw of their approach is their failure to address the statutorily circumscribed and strictly limited jurisdiction of the District Court, which cannot and does not extend to parties who are not actually joined—by whatever means—in the mechanic’s lien foreclosure action within one year from the date of the last item of the claim as set forth in the recorded lien statement. Minnesota courts have recognized that the legislatively imposed jurisdictional limits in this regard are firm and absolute, and that there are no circumstances in which jurisdiction can be extended as to parties not so joined in the mechanic’s lien foreclosure proceedings prior to the expiration of that one-year limitations period.

I. THE COURT APPLIES AN ABUSE OF DISCRETION STANDARD OF REVIEW TO THE DENIAL OF LEAVE TO ASSERT A SUPPLEMENTAL COMPLAINT.

Mavco has appealed the District Court’s order and judgment denying Mavco’s request for leave to interpose a supplemental complaint to join Wells Fargo as a party to the mechanic’s lien proceedings after the expiration of the one-year limitations period. The denial of such relief by the District Court is subject to an abuse of discretion standard of review. Given the District Court exercised its discretion to deny Mavco leave to interpose the supplemental complaint to join Wells Fargo based on the fact that it lacked jurisdiction over Mavco’s claims against Wells Fargo once the one-year limitation period had expired, there is no basis to hold that the District Court abused its discretion.

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). This Court has held that the

District Court is given a good deal of deference in ruling on such requests, and will not reverse the denial of a motion to amend a complaint “absent a clear abuse of discretion.” Utecht v. Shopko Dep’t 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. 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).

In the instant case, the District Court correctly held that its jurisdiction under the mechanic’s lien statute did not extend to include the joinder of Wells Fargo after the one-year limitations period had expired. (A51-A52) Thus, it would have been futile for the District Court to have granted leave to serve and file the Supplemental Complaint, only to subsequently grant a motion to dismiss or a motion for summary judgment in favor of Wells Fargo based on a lack of jurisdiction.

There do not appear to be any grounds in the instant case upon which this Court could hold that the District Court abused its discretion by denying Mavco’s motion for leave to file and serve its Supplemental Complaint. The District Court’s properly interpreted and applied Minnesota Statutes section 514.12, subdivision 3, to hold that it lacked jurisdiction over claims by Mavco against Wells Fargo once the one-year limitations period had expired.

II. THE MINNESOTA LEGISLATURE HAS IMPOSED STRICT LIMITATIONS ON MECHANIC’S LIEN CLAIMS AGAINST PARTIES WHO ARE NOT JOINED PRIOR TO THE EXPIRATION OF THE ONE-YEAR LIMITATIONS PERIOD.

The mechanic’s lien statute is remedial in nature and the rights afforded to contractors and materialmen thereunder shall be liberally construed. Dolder v. Griffin, 323 N.W.2d 773, 779-780 (Minn. 1982) (citations omitted). Thus, the rights of a mechanic’s lienholder shall be broadly and liberally construed in favor of that judgment creditor once that party has perfected its interest and obtained a judgment. Id. However, “[c]ounterpoised to this principle” is the principle that the procedural and jurisdictional requirements of the statute to obtain and enforce a mechanic’s lien must be “strictly construed. . . .” Id. at 780. Because the rights of such a judgment creditor are so significant and expansive, Minnesota law requires that mechanic’s lienholders strictly and completely comply with the requirements necessary to obtain such a judgment. Id. (citations omitted). These requirements are statutory and jurisdictional, and the mechanic’s lienholder, as the party seeking the judgment, has the ultimate burden and responsibility to make sure that all of the applicable procedural and jurisdictional requirements are met and satisfied.

This Court has recognized that any “apparent conflict” between these principles has “been harmonized by the following reasoning:”

Mechanic’s lien laws are strictly construed as to the question whether a lien attaches, but are construed liberally after the lien has been created. While the Mechanic’s Lien Act is to be liberally construed as a remedial act, yet mechanics’ liens exist only by virtue of the statute creating them, and such statutes must be strictly followed with reference to all requirements upon which the right to a lien depends.

Dolder v. Griffin, 323 N.W.2d 773, 780 (Minn. 1982) (quoting Annot., 76 A.L.R. 3d 605, 618 (1977)) (footnotes omitted from original & emphasis added).

These basic principles that shall apply in all cases where a party is seeking to impose its mechanic's lien rights. Specifically, because mechanic's liens arise exclusively from the mechanic's lien statute, the applicable statutory requirements control all aspects of the party's right to obtain such a lien, and all of the procedures and jurisdictional requirements set forth therein must be strictly complied with in all respects. The party who is seeking to perfect and enforce a mechanic's lien interest has ultimate responsibility to make certain that those requirements are fully met. Moreover, the limited and highly circumscribed jurisdiction permitted under the mechanic's lien statute cannot be expanded on any grounds by the parties to the mechanic's lien foreclosure proceedings or by the court presiding over those proceedings. These are basic and well established principles that apply to the procedural and jurisdictional restrictions imposed by the mechanic's lien statute with respect to the perfection and attachment of a lien. It is only through full and complete compliance with all of these rigid principles and restrictions that a lien may be created and asserted as to those parties over which the District Court has jurisdiction.

A. The Mechanic's Lien Statute Imposes A One-Year Limitation Period That Is Jurisdictional And Absolute.

The mechanic's lien statute and corresponding case law set forth clear and well defined procedures. As a result, mechanic's lienholders such as Mavco are given clear guidance as to exactly what they need to do in order to perfect and enforce their

mechanic's lien. One of the specific requirements and procedures that is clearly set forth in the statute and which, as the Court of Appeals pointed out, has "been strictly enforced for more than 100 years" is the requirement that the lienholder must join all parties with an interest in the property within one year. Mavco, 720 N.W.2d at 843. Not only is this requirement clear and well established, but it also is a fair and equitable requirement. The party seeking the expansive and liberally construed rights available under a mechanic's lien should make certain to include all parties against whom it wishes to assert those rights. It is only fair that, because the lienholders seeking to avail itself of the powerful remedies available under the mechanic's lien statute, it has the obligation to make sure it complies with all of the procedural and jurisdictional requirements necessary to obtain judgment in the mechanic's lien foreclosure action. Dolder, 323 N.W.2d at 780.

Minnesota Statutes section 514.10 sets forth the manner under which parties shall foreclose on their mechanic's lien interests. Minn. Stat. § 514.10. Section 514.10 states at the outset that "[s]uch liens may be enforced by action in the district court of the county in which the approved premises or some part thereof are situated . . . which action shall be begun and conducted in the *same manner as actions for the foreclosure of mortgages upon real estate . . .*" Minn. Stat. § 514.10 (emphasis added). Notably, actions for foreclosure of mortgages upon real estate require that *all persons* that have, or claim to have, an interest in the property shall be named as defendants in order to be bound by the judgment. Banning v. Bradford, 21 Minn. 308, 1875 WL 3770, at *2 (1875); Harper v. E. Side Syndicate, 40 Minn. 381, 42 N.W. 86 (1889).

Under the mechanic's lien statute, no party can be bound by any judgment entered in a mechanic's lien foreclosure action unless that party has been joined within one year from the date of the last item of the claim as set forth in the recorded lien statement. Minn. Stat. § 514.12, subd. 3. Specifically, 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. Id.

This Court had held that the statutory 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, at *2 (Minn. Ct. App. 1989). Simply stated, the one-year limitation timeframe bears directly on the existence of subject matter jurisdiction. Id.

In the instant case, Mavco failed to join Wells Fargo, a mortgagee, within the one-year jurisdictional limitations period imposed under § 514.12, subd. 3. Mavco's failure to join Wells Fargo within that one-year jurisdictional limitation period means that the judgment entered in that action shall have no effect as to Wells Fargo. See, e.g., Lyman Lumber Co. v. Dior Dev., Inc., 409 N.W.2d 30, 32-33 (Minn. Ct. App. 1987) (trial court did not abuse discretion in mechanic's lien action by denying motion to amend pleadings to add a claim against mortgagee in an attempt to retroactively join that mortgagee as a party in circumvention of one-year jurisdictional limitations); Thompson Yards v. Standard Home Bldg. Co., 201 N.W. 300, 302 (Minn. 1924) (mechanic's lien statute imposes one-year jurisdictional limitations period after which no party who has not been joined through the service of a summons upon that party within the one-year limitations period can be bound by a judgment in an action to foreclose the lien.)

B. The Minnesota Legislature Provided That Jurisdiction Shall Not Extend To Claims Against Any Party Who Is Not Joined In The Foreclosure Proceedings Within One Year From The Date Of The Last Item Of The Mechanic's Lien Claim.

The application of the one-year limitations period applies to exclude jurisdiction as to any claims against any party who has not been joined in the mechanic's lien foreclosure action in a timely manner. That is how the Minnesota Legislature crafted the language in Minnesota Statute section 514.12, subdivision 3—without any limitation, condition, or qualification whatsoever. That is exactly how Minnesota courts have interpreted and applied the one-year limitations period for more than a century. Specifically, this Court has held that, 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 parties. Ryan Contracting, Inc., 634 N.W.2d at 183 (citing Bauman v. Metzger, 176 N.W. 497, 499 (Minn. 1920)) (emphasis added). This Court has further 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 (emphasis added). 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); Thompson Plumbing Co., Inc. v. JEC, Inc., 422 N.W.2d 26, 28 (Minn. Ct. App. 1988).

This Court has observed that “the *language is emphatic* that no lien shall be enforced in any case unless asserted . . . with one year, and *the intention that the lien will expire . . . at the end of the year is made clear* by the provision that *no person shall be bound by the judgment in an action to enforce a lien unless he was made a party to the action within the year.*” Bauman, 176 N.W. at 500 (emphasis added). See also Smith v. Hurd, 52 N.W. 922, 922 (Minn. 1892) (lien action was not commenced and pending at time of service of summons and may not be commenced after expiration of one-year limitation period because duration of lien has then expired).

Notwithstanding Mavco’s arguments to the contrary (Mavco’s Brief at 10), this Court’s decision in Morrison County Lumber Co. v. Duclos, 163 N.W. 734 (Minn. 1917), reflects the unqualified and unconditional application of the one-year limitations period.

In Morrison County, this 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 attempts to distinguish the facts and circumstances of the instant case, arguing that in Morrison County “the mortgagee’s interest was of record before the foreclosure action was commenced” and “the mortgagee in that case had issued its mortgage and recorded its interest without any actual notice of the mechanic’s lien.” (Mavco’s Brief at 10.) However, Mavco’s discussion of the facts in Morrison County is incomplete. Mavco omits to mention the fact that 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 may have been argued by either party in Morrison County. However, the Court did not base its decision on a balancing of the equities. The Court instead relied on a strict interpretation of the statute to hold that 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.

Just as it seeks to seize upon a factual distinction in Morrison County that was not relevant to this 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 5.) In Hokanson, this 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.

The Minnesota Legislature clearly and plainly expressed its intent to be as broad and fully encompassing as possible by providing that “*no person shall be bound by any judgment in [a mechanic’s lien] action unless made a party thereto within the year*” limitations period. Minn. Stat. § 514.12, subd. 3 (emphasis added). The statute does *not* refer to “no person *without notice*” or “no person *who obtains an interest prior to commencement of an action*” or “no person *who does not have the ability to intervene.*” The statute clearly and unconditionally states “no person” shall be bound unless joined within the one-year limitations period.

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., up until November 26, 2004, in which to join Wells Fargo and assert its mechanic’s lien claim against Wells Fargo. It is undisputed that Mavco failed to join Wells Fargo in its mechanic’s lien foreclosure action on or before November 26, 2004. As a result, pursuant to Minnesota Statutes section 514.12, subdivision 3, the District Court lacked jurisdiction to allow Mavco to assert a claim against Wells Fargo in Mavco’s mechanic’s

lien foreclosure action, and Wells Fargo could not be bound by any judgment on Mavco's mechanic's lien.

C. The Mechanic's Lien Statute Does Not Impose An Obligation Upon Parties to Intervene In Foreclosure Actions.

Mavco argues that, once the lienholder has commenced the foreclosure action, a mortgagee who subsequently files its mortgage on the property is obligated to intervene in the pending action. Mavco's argument in this regard conflicts with both the plain language of the statute and the well established and long standing case law. Most notably, this argument ignores the strict and fundamental jurisdictional limitations that prevent a mechanic's lienholder from seeking to enforce its judgment against the party who has not been properly and timely joined in the mechanic's lien foreclosure action. The legislatively defined limitations on the Court's jurisdiction cannot be modified or expanded simply because Mavco could have—but did not—join Wells Fargo, or because there may have been some vehicle through which Wells Fargo could have intervened in the mechanic's lien foreclosure action. The jurisdictional limits are clear and absolute.

The fact that the statute allows parties to intervene if they wish to litigate their interest does not mean that they are required or obligated to intervene. More to the point, the statute's provision that such parties may intervene does not relieve the lienholder who is seeking a judgment from its ultimate burden and responsibility to make certain that all of the parties against whom it will eventually seek to enforce such a judgment are properly joined in the mechanic's lien foreclosure proceedings.

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, 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. It is up to the party who is seeking to foreclose on the mechanic's lien to decide whether it may be necessary to conduct a subsequent review of the record title. However, it must be remembered that Mavco would not have been required to conduct any subsequent review of the recorded title in the instant case. Mavco was fully aware of Wells Fargo's interest as a mortgagee in June of 2004—some five months before the expiration of the one-year jurisdictional limitations period. Moreover, if Mavco did review the record title, Mavco would have easily identified the mortgage filed by Wells Fargo in July 2004—some four months before the end of the one-year jurisdictional limitations period.

The dissent filed with the Court of Appeals' decision in this case expresses a concern regarding the theoretical possibility of "a person who recorded an interest 364 days into the one-year deadline for foreclosure" on a mechanic's lien and the potential that such a party could obtain priority over the holder of the mechanic's lien unless the lienholder amended his complaint in the brief one day before the one-year deadline expired. Mavco, 720 N.W.2d at 845. Wells Fargo must respectfully disagree with the premise and orientation underlying the dissent's hypothetical. First, and foremost, the

“364th day” hypothetical posed by the dissent to the Court of Appeals’ opinion does not fairly or accurately describe the facts in this case, in which Wells Fargo obtained its interest prior to the commencement of Mavco’s foreclosure action, and in which Mavco had actual notice of Wells Fargo’s interest some five months before the one-year limitations period eventually expired.

Furthermore, the dissent’s hypothetical ignores the typical practices and customs followed by parties with interest. It is highly doubtful that parties with legitimate interests would jeopardize their own rights by intentionally delaying the recording of their interest. Moreover, lienholders such as Mavco have the ability to conduct discovery of the property owner, other parties in the proceedings, and even non-parties, and through such discovery the lienholders can easily ascertain who has an interest in the subject property well before the expiration of the one-year jurisdictional deadline. Indeed, Mavco already had in its possessions sufficient information that would have allowed it to join Wells Fargo in June, 2004.

The dissent and amici curiae raise issues concerning delays in recording interests on property title records and argue that the burden of “last-minute checking of real estate records” imposes unfair risks and excessive burdens on mechanic’s lienholders. As noted, lienholders have other methods, such as formal discovery, through which they can obtain the identity of parties with interests, and therefore are not prejudiced by the time lag between the filing and recording of title records. As the party seeking to obtain a judgment that will be liberally construed in its favor, it is not too much of a burden for the lienholder to engage in some simple discovery.

Even if there were some possibility that the “364th day” hypothetical might constitute a realistic circumstance that may arise sometime in the future, this very rare and highly unlikely scenario would neither change the plain and unambiguous jurisdictional limitations imposed by the Minnesota Legislature, nor would it undermine the reasonableness of the public policy underlying the jurisdictional limits imposed by the Legislature. Specifically, the Minnesota Legislature obviously sought to balance the liberal and remedial nature of mechanic’s lien rights, with strict procedural and jurisdictional restrictions that the lienholder must make sure are followed in order to obtain the relief it seeks. While it is theoretically possible that this may produce rare situations that may be considered inequitable in the eyes of some, the Minnesota Legislature determined that rigid adherence to clearly-defined statutory procedures and circumscribed judicial jurisdiction is preferable to uncertainty and ambiguity as to how lienholders shall perfect and enforce their lien interests.

To the extent there are legitimate and reasonable concerns regarding a theoretical potential for some inequity that may arise under the hypothetical circumstances posited by the dissent, the appropriate method to address those concerns is to present the hypothetical to the Minnesota Legislature as a justification for possible amendment to the mechanic’s lien statute. After all, it was the Legislature that imposed the strict limits on jurisdiction and, therefore, the Legislature should be involved in any deviations from the plainly stated restrictions it enacted. Moreover, the legislative process would allow for input from all interested parties, as well as a careful analysis and reevaluation of the

relevant policy considerations. This approach would be far better than seeking to change the plain and unambiguous terms of the statute through the courts.

D. Mavco's And The Amici Curiae's Reliance Upon Other Statutory Provisions Is Unavailing.

Rather than simply conceding the necessary import of the plain and unambiguous language of the mechanic's lien statute, Mavco and the amici curiae have sought to infuse language and legislative intent from other statutory sources in order to dilute and qualify the unconditional and unqualified jurisdictional limitations imposed by section 514.12, subdivision 3. Specifically, Mavco and the amici curiae construct an elaborate scheme under which a variety of separate provisions from other statutes are purportedly inextricably intertwined to make up what they contend is a comprehensive statutory approach. This elaborate effort is not only result oriented, but it also conflicts with the simple, straightforward, and uniform manner in which Minnesota courts have been interpreting section 514.12, subdivision 3, for more than 100 years. Mavco, 720 N.W.2d at 843 (citing Morrison County, 163 N.W. at 736; Hokanson, 56 N.W. at 172-73).

As a general matter, Mavco and the amici curiae's attempts to inject other statutory provisions into the analysis of this case focuses on what Wells Fargo may have known and whether Wells Fargo had an obligation to intervene in the mechanic's lien foreclosure proceedings commenced by Mavco. This focus is fundamentally misplaced for at least two basic reasons.

First, as Wells Fargo has noted and emphasized throughout this brief, the Minnesota Legislature has clearly set forth jurisdictional limitations that cannot be altered

by either the Court or the parties. Those limits are strict and absolute in providing that the mechanic's lien judgment can only be entered against parties who have actually been joined in the mechanic's lien foreclosure action. These jurisdictional requirements apply without qualification or restriction based on a party's knowledge or notice of a pending proceeding, or a party's potential right to intervene in a proceedings. The jurisdictional limits in the mechanic's lien statute are plain, simple, and absolute.

Second, parties such as Wells Fargo would certainly have good and sufficient reasons not to intervene in a pending mechanic's lien foreclosure action even if they were aware of the pendency of such an action. For example, parties need not engage in litigation and incur the costs relating to such litigation if they do not believe that the subject proceedings may impact their rights. Further, even in a disputed situation, parties in interest may choose not to intervene in a pending action because they do not wish to expose themselves to the risk of having that dispute adjudicated either at that time or in that particular forum. Thus, the fact that the statute provides that such parties *may* intervene in mechanic's lien foreclosure proceedings does not make that option to intervene mandatory, nor does it mean that it would always be appropriate or wise for those parties to intervene.

The bottom line is that the mechanic's lienholder controls its own destiny and ultimately makes the determination as to who should be joined in its mechanic's lien foreclosure action. The commencement of an action to foreclose on a mechanic's lien against the owner of a property does not otherwise preserve the lien as against other lienholders or encumbrances who are not joined within the statutory period for bringing

such an action. Falconer v. Cochran, 71 N.W. 386, 386 (Minn. 1897); Smith v. Hurd, 52 N.W. 922, 922 (Minn. 1892). In Ryan Contracting, Inc. v. JAG Investments, Inc., 634 N.W.2d 176 (Minn. 2001), this Court held that a development corporation's actual knowledge of the contractor's mechanic's lien action, without more, was insufficient to subject the development corporation to the jurisdiction of the court presiding over that mechanic's lien foreclosure action where the development corporation had not been properly joined in the action. Id. at 180-181.

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 514.12, subdivision 3. 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. To the extent section 507.34 applies to a mortgage such as Wells Fargo, it is undisputed that Wells Fargo recorded its mortgage. (A10-A29) However, the fact that Wells Fargo recorded the mortgage is a separate and distinct matter from the jurisdictional requirement of the mechanic's lien statute. Mavco could have joined Wells Fargo as a party regardless of whether Wells Fargo had recorded its interest. Mavco's failure to do so statutorily restricts its ability and right to assert its mechanic's lien against Wells Fargo (regardless of whether Wells Fargo perfected its interest through the recording of the mortgage).

Mavco's and the amici curiae's reliance on Minnesota Statutes section 507.32 is similarly misplaced. Any alleged constructive notice that arises from Mavco's filing of

its statement of mechanic's lien does not constitute notice of a pending foreclosure action. More importantly, it does not alter the limits on the court's jurisdiction. If anything, section 507.32 simply 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 constructive, as well as actual, notice of Wells Fargo's mortgage in multiple ways several months before the expiration of the one-year limitation period. Ultimately, section 507.32 does not alter the inescapable and statutorily expressed principle that the court's jurisdiction in mechanic's lien proceedings does not extend to claims against any parties who have not been joined within the one-year limitations period. Minn. Stat. § 514.12, subd. 3. Mavco's reliance on the doctrine of "constructive notice" to alter the court's limited jurisdiction is simply misplaced. 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. Any claims regarding alleged notice—whether actual notice or constructive notice—are entirely irrelevant because the statute plainly and unambiguously requires that a "person" must be made a party to the proceedings within the one-year timeframe. There is no exception as to a "person" who is aware of the mechanic's lien interest or proceeding, nor is there any exception for a "person" who does not avail itself of an opportunity to intervene in the mechanic's lien action. 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. The one-year limitations period imposed in actions for foreclosure of mechanic's liens expressly and unequivocally states *without exception or qualification* 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 (emphasis added). There are no loopholes or alternative procedures based on the recording of notices of lis pendens, the occurrence of actual or constructive notice, or any other method by which a person who is not joined within the one-year limitations period may otherwise be bound by a mechanic's lien judgment.

Notably, this Court has held that "the filing of [a] notice of lis pendens is not a condition precedent to a right of action" to enforce a mechanic's lien, and "[n]either does it go to the jurisdiction of the court" over a mechanic's lien foreclosure proceeding. Julius v. Callahan, 65 N.W. 267, 267 (Minn. 1895). In an action to enforce a mechanic's lien, the filing of a notice of lis pendens is not binding upon a person claiming an interest in the premises affected by the mechanic's lien, unless that party has either been joined in the action or is claiming under the rights of a party who has been joined in that action within the one-year jurisdictional limitations period. Hokanson v. Gunderson, 56 N.W. 172, 172-73 (Minn. 1893). For this reason, Mavco's reliance on Bredeson v. Nickolay,

194 N.W. 460 (Minn. 1923) is misplaced because that case involved a subsequent owner who was claiming an interest through the owner of record. Id. at 461. In contrast, Wells Fargo is not in privity with any of the parties who were, in fact, joined in Mavco's mechanic's lien foreclosure action prior to the expiration of the one-year jurisdictional limitations period, and Wells Fargo is not claiming its interest as mortgage is based on any such party's rights.

Mavco's reliance on 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 3-4.) While these cases purport to show the significance of the filing of notices of lis pendens in a variety of different circumstances, none of these cases involved the application of the mechanic's lien statute and its absolute requirement that no "person" may be bound by "any 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 limitations period.

Mavco appeals to this Court to engraft an exception for alleged imputed or constructive notice. This Court may not, however, redraft or amend the plain, unambiguous, and unconditional language in Minnesota Statutes section 514.12, subdivision 3. State v. Theodore Hamm Brewing Co., 78 N.W.2d 664, 670 (Minn. 1956) ("Where the statute is unambiguous, its provisions couched in plain and simple language, nothing is to be read into it, and this court is bound to follow its clear statutory directions."). As this 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 (emphasis added).

E. Mavco’s New Argument Alleging Privity Between Wells Fargo And The Egginks Fails As A Matter Of Law.

In a brief to this Court, Mavco has asserted, for the very first time, that Wells Fargo must be bound by the judgment in the mechanic’s lien foreclosure action as a matter of law because Wells Fargo and the Egginks are in privity. (Mavco Brief at 5-7.) This is an inappropriate argument that must be soundly rejected by this Court.

First, Mavco has never before raised this “privity” argument either before the District Court or in the Court of Appeals. This Court has held on numerous occasions that an appellant is not entitled to review of new issues or arguments that are raised for the very first time on appeal. Sletten v. Ramsey County, 675 N.W.2d 291, 302 (Minn. 2004) (“Issues raised for the first time on appeal are not to be considered.”); In re Welfare of Children of Coats, 633 N.W.2d 505, 512 (Minn. 2001) (same), cert. denied, 535 U.S. 920 (2002); Fahrendorff v. N. Homes, Inc., 597 N.W.2d 905, 909 (Minn. 1999) (same).

Second, even if this argument had been raised and addressed in the earlier proceedings, it would have been rejected because it is simply wrong as a matter of law. The case law cited to by Mavco in support of its “privity” argument stands for nothing more than the general proposition that a party who *is in privity* with another party shall be bound by a judgment that has been entered against that other party. (Mavco’s Brief at 6.) Wells Fargo does not challenge the proposition that “[j]udgments are binding on parties

and privies.” Carl v. DeToffol, 25 N.W.2d 479, 483 (Minn. 1946); see also Leader v. Joyce, 135 N.W.2d 34, 37 (Minn. 1965); Lowe v. Patterson, 135 N.W.2d 38, 41-42 (Minn. 1965). However, Mavco cannot prevail in its assertion that Wells Fargo and the Egginks are in privity. Indeed, as a matter of law, just the opposite is true. While Wells Fargo and the Egginks are both parties to a contract, i.e., the mortgage, they are on the opposite sides of that transaction. Wells Fargo is the mortgagee and the Egginks are the mortgagors. As lender and borrower, Wells Fargo’s and the Egginks’ relationship and respective interests are obviously quite different. Just as their respective rights and interests are separate and distinct and, correspondingly, so too their rights and interests as to the subject property are separate and distinct.

The rights of the Egginks are those of fee simple title owners of the subject property; whereas, in contrast, the right of Wells Fargo under the mortgage is to secure the Egginks’ debt with a lien on the subject property, which provides the mortgagee with an interest in neither title to the land nor any right to any beneficial interest therein. Estate of Brown v. Bank of Piedmont, 763 S.W.2d 719, 723 (Mo. Ct. App. 1989) (citing R.L. Sweet Lumber Co. v. E.L. Lane, Inc., 513 S.W.2d 365, 368 (Mo. 1974)). As such, Mavco cannot fairly argue that the doctrines of *res judicata* and collateral estoppel could be applied to impose the judgment in this case upon Wells Fargo. Id. “[U]nder well settled principles of jurisdiction, governing all courts, a decree against a mortgagor with respect to property does not bind a mortgagee whose interest was acquired before the commencement of the suit, unless he was made a party to the proceedings.” Chase Nat’l Bank v. City of Norwalk, 291 U.S. 431, 438 (1934) (citations omitted). Obviously,

contractual transactions, in and of themselves, do not give rise to privity, and likewise contractual relationships do not extinguish the jurisdictional requirement to timely join a mortgagee such as Wells Fargo as a party to the extent Mavco seeks to enforce a mechanic's lien judgment against that mortgagee.

F. This Case Does Not Hinge On A “Technicality” That Calls For The Creation Of An Equitable Exception To The Jurisdictional Limitations That Have Been Imposed By The Minnesota Legislature.

Contrary to Mavco's misguided attempts to portray it as such, the statutorily imposed one-year limitations period is *not* a mere “technical” defense. This one-year limitations period goes to the very heart of the court's jurisdiction over claims that may be asserted in mechanic's lien foreclosure actions. Killmer Elec. Co., 1989 WL 23540, at *2. The District Court's subject matter jurisdiction does not extend to Mavco's claims against Wells Fargo because Mavco failed to join Wells Fargo prior to the expiration of the one-year limitations period. Id.

There are no established exceptions to the absolute one-year limitation set forth by the Minnesota Legislature, nor is 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 had actual knowledge as to the existence of Wells Fargo's mortgage well before the one-year jurisdictional limitations period expired on November 26, 2004, and Mavco could have taken steps to join Wells Fargo as a defendant in its mechanic's lien foreclosure action prior to that time. 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. (A31) 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 that the Egginks also informed them of the Wells Fargo mortgage in their answers to interrogatories and provided Mavco with a copy of the actual mortgage from the Egginks in early November of 2004, approximately three weeks prior to the expiration of the one-year limitations period on November 26, 2004. (A38 & SA14)

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 because 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 limitations period.

III. THE DISTRICT COURT'S DENIAL OF MAVCO'S MOTION TO FILE A SUPPLEMENTAL COMPLAINT WAS NOT, AND BY DEFINITION COULD NOT HAVE BEEN, AN ABUSE OF DISCRETION.

Under the circumstances, the District Court cannot be held to have abused 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 motions seeking leave to serve and file a amended complaint where "it legally would serve no purpose" can and should be denied. Pischke v. Kellen, 384 N.W.2d 201, 204 (Minn. Ct. App. 1986); Malmsten v. Berryhill, 65 N.W. 88, 89-90 (Minn. 1895). This is consistent with the well settled proposition that

leave to amend may be denied where the proposed amendment would be futile. Holisak v. N.W. 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 right to assert a claim against Wells Fargo 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 District Court of any jurisdiction it might have had that would allow it to impose a judgment on the mechanic's lien against Wells Fargo. Accordingly, the District Court was compelled to deny Mavco's request for leave to file and serve a supplemental complaint because its jurisdiction over any such claim against Wells Fargo had expired.

Moreover, Mavco's attempt to utilize a supplemental complaint that would relate back to its original summons and complaint under Rule 15.03 was misplaced and wholly inappropriate. It is well established that the Minnesota Rules of Civil Procedure 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 Dev. 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 Court of Appeals' affirmation 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 12-13.) The Court of Appeals specifically analyzed its prior decision in R.B. Thompson in its opinion affirming the District Court's exercise of discretion in the instant case, noting that R.B. Thompson appears to be "[t]he only reported case applying Minn. R. Civ. P. 15.03 in a mechanic's lien foreclosure action . . ." Mavco, 720 N.W.2d at 844. The Court of Appeals properly distinguished R.B. Thompson, which involved the substitution of the parent corporation of the named defendant, from the instant case in which neither Wells Fargo nor any party related to or in privity with Wells Fargo had been joined. Specifically, the Court of Appeals noted that, in R.B. Thompson, "the parent corporation 'had received notice and knew that, but for a mistake concerning the identity of the proper party, an action would have been brought against it.'" Id. (Moreover, the parent and subsidiary could also be said to be in

privity for at least some purposes.) In contrast, “there is no relationship between Vermillion State Bank and Wells Fargo” in the instant case. Id. The Court of Appeals concluded, “[t]herefore, it was not an abuse of discretion for the District Court to deny Mavco’s supplemental complaint.” Id.

Mavco’s reliance on R.B. Thompson is misplaced on at least two separate and material grounds. First, as noted, 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. Moreover, Mavco cannot fairly claim this is a misnomer situation because it knew Wells Fargo had an interest and simply chose not to join it as a party.

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 v. County of Kandiyohi, 1993 WL 459894, at *3 (Minn. Ct. App. 1993). This Court’s decisions in Ryan Contracting, Inc., 634 N.W.2d at 183 and 187, and Morrison County Lumber Co., 163 N.W. at 736, recognize 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 based on the plain and unambiguous language in Minnesota Statutes section 514.12, subdivision 3, as enacted by the Minnesota Legislature, and as strictly interpreted by this Court, that "no person shall be bound by any judgment in such an action unless made a party thereto within the year." The Court of Appeals therefore properly and correctly distinguished the situation that gave rise to R.B. Thompson, and appropriately held that "it was not an abuse of discretion for the District Court to deny Mavco's supplemental complaint." Mavco, 720 N.W.2d at 844.

CONCLUSION

Based on the foregoing, Wells Fargo respectfully requests the Court to affirm the Court of Appeals in all respects based on its proper application of Minnesota Statutes section 514.12, subdivision 3, and its appropriate affirmance of the District Court's sound exercise of discretion in denying Mavco's motion for leave to file and serve a supplemental complaint.

Dated: January 16, 2007

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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 11,886 words of proportional space type in this brief. This brief was prepared using Microsoft Word 2000.

Dated: January 16, 2007

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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).