

Court File No. A05-2083

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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Michael E. Jones and Edith A. Jones,

Appellants,

vs.

Real Estate Equity Strategies, LLC,

Respondent.

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**APPELLANTS' REPLY BRIEF**

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## INTRODUCTION

Appellants Michael and Edith Jones respectfully submit this reply brief. Respondent attempts to utilize the summary nature of eviction proceedings as both a shield and sword. Respondent asserts that Appellants hinge their success on appeal based on allegations not litigated or proven below.<sup>1</sup> *See Respondent Real Estate Equity Strategies, LLC's Brief*, pp. 5-6. Respondents then advance the irreconcilable argument that Appellants failed to preserve for appeal their challenge to Respondents' title. *See id.*, pp. 15-19. Respondents' incongruent arguments only lend credence and support to the arguments of the Appellants, and the *amici* as to why the district court must be reversed on appeal, namely that the district court erred in its failure to dismiss the eviction action where Appellants permissibly attacked Respondent's title under Minn. Stat. §504B.121, since the limited nature of the summary proceedings prohibited the district court from determining title, and thus limited Appellants in their pursuit of establishing facts for purposes of appeal. Fortunately, Appellants successfully preserved the necessary evidence and issues for the purposes of this appeal and respectfully request that this court reverse the district court's Order and restore Appellants to possession of the Property.

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<sup>1</sup> Respondent further informs this court that the allegations in Appellants' federal complaint are subject to a Motion to Dismiss. What Respondent fails to advise is that Respondent is not attacking the Complaint for failure to state a claim, but ironically for lack of subject matter jurisdiction. Appellants respectfully assert that the discovery of facts in the federal case have been strategically thwarted by Respondent's Motion to Dismiss to assure that there is no impact on this appeal. On January 5, 2006, the Magistrate Judge granted Appellants' motion for leave to amend their complaint to add a necessary party and address the "perceived" deficiencies.

## ARGUMENT

### **I. RESPONDENT FORCIBLY EVICTED APPELLANTS FROM THE PROPERTY**

In a hollow attempt to avoid this appeal, Respondent asserts, contrary the facts and its own statement of facts, that “[t]he property was vacated by the appellants.” This is hardly an accurate statement. On the same day Respondent received Appellants’ Notice of Appeal, Respondent’s counsel wrote to the district court “requesting the Court issue an immediate Writ of Recovery for the premises.” *See Supp. App.*, pp. 1-3. In Respondent’s Appendix is a copy of the district court’s writ of recovery issued at the insistence and request of Respondent. *See Resp. App.*, p. 1. The issuance of the Writ of Recovery and Appellants’ continual and tireless opposition to Respondent’s pursuit to possess the Property, fails to support the assertion that Appellants voluntarily vacated the Property. Rather, the record reflects that Appellants were forcefully evicted from their Property.

Respondent’s reliance on *Lanthier* to support the argument that Appellants’ appeal is moot misses the mark. The determination in *Lanthier* that the appeal was moot is premised, in part, on the tenant “relinquish[ing] the premises voluntarily prior to the execution of the writ of restitution. *See Lanthier v. Michaelson*, 394 N.W.2d 245, 245 (Minn. Ct. App. 1986). In this case, the eviction of Appellants from the Property is anything but voluntary. Respondent requested the district court to immediately issue the Writ of Recovery the same day Respondent learned Appellants had been unable to post the supersedes bond to stay the enforcement of the court’s October 10, 2005 Order and obtained a Writ of Recovery.

Appellants preserved their right to appeal, notwithstanding that their financial resources prevented the posting of the supersedes bond. The only purpose of the supersedes bond is to stay the enforcement of a judgment issued by the district court. See Minn. R. Civ. App. P. 108.01, subd. 1. Failure to post the supersedes effects only Appellants' right to stay the court's October 10, 2005 Order and their right to possess the Property during this appeal. Appellants properly preserved their right to challenge the district court's October 10, 2005 Order by complying with the mandates set forth in Minn. R. Civ. App. P. 103.01 and Minn. Stat. §504B.371.

**II. THE DISTRICT COURT ERRED IN ITS DENIAL OF APPELLANTS' MOTION TO DISMISS WHERE APPELLANTS ATTACKED RESPONDENT'S TITLE TO THE PROPERTY AS IS PERMISSIBLE UNDER MINN. STAT. 504B.121**

An unlawful detainer proceeding is a summary action to quickly ascertain the possessory rights to property. *Lilyard v. Carlson*, 499 N.W.2d 803, 812 (Minn. 1993) (relying on the predecessor statute to Minn. Stat. Chap. 504B, Minn. Stat. Chap 504.) The action "merely determines the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties." *Gallagher v. Moffet*, 46 N.W.2d 792, 793 (Minn. 1951). Thus, the truth of the facts alleged in the complaint is the only issue in an unlawful detainer proceeding. *Mac-Du Properties v. LaBresh*, 392 N.W.2d 315, 317 (Minn. Ct. App. 1986).

Thus, once a defendant in an eviction action permissibly attacks plaintiff's title, as permitted by Minn. Stat. 504B.121<sup>2</sup>, the limited nature and scope of the eviction court's subject matter jurisdiction, namely to determine possessory rights only, mandates that the district court dismiss the 504B action for lack of subject matter jurisdiction to permit the issues of title and possession to be litigated concurrently. In this case, the district court made the wrong decision in denying Appellants' motion to dismiss when their Answer clearly attacked Respondent's title on the basis of rescission under Minn. Stat. Chap. 325N and alternatively on the basis that the transaction constituted an equitable mortgage. *See App.*, pp. 3-33. Moreover, the Appellants provided facts at trial to show the likelihood that the transaction at issue constituted an equitable mortgage, and further showed that Respondents did not even possess title to the Property on May 9, 2005, the date of the lease it sought to enforce. The district court wrongfully denied Appellants' motion to dismiss for lack of subject matter jurisdiction, and continued with the summary proceeding even in light of Appellants' attack on Respondent's title based on multiple legal grounds and theories.<sup>3</sup>

Respondents assert that Appellants failed to preserve the issue of title for appellate review. *See Respondent Real Estate Equity Strategies, LLC's Brief*, p. 17-19. This is hardly the case. In Defendants' Answer and Motion to Dismiss and Expunge, Appellants

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<sup>2</sup> Minn. Stat. §504B.121 provides an exception to the principle that a tenant is estopped from denying the landlord's title when the owner/tenant possessed the property under a claim of title that was adverse or hostile to that of the landlord. *See* Minn. Stat. §504B.121 (1999).

<sup>3</sup> As stated by the court "I can't, and I won't, look at the whole package." Tr. p. 8, lns. 8-9.

sufficiently placed both Respondent and the district court on notice of Appellants' challenge to title. Moreover, in light of the district court's refusal to consider "the whole package," Appellants were limited in their ability in the eviction proceeding to illicit testimony from the witnesses regarding the title issue. However, Appellants were not unsuccessful. Respondent testified at trial that it entered into a series of documents with Appellants, including a 4 page Purchase Agreement, Contract for Deed Proposal, and the Lease. *Trans.* at p. 17, lns. 16-20. Appellants offered the Purchase Agreement into evidence at trial and drew no objection from Respondent. *Trans.* Ex. 3. Furthermore, the Contract for Deed Proposal mentioned by Respondent during cross-examination is attached to Defendants' Answer and Motions to Dismiss and Expunge. *See* App. p. 60-61.

Appellants successfully set forth the framework at the district court level in their Answer and Motion to Dismiss and Expunge and through testimony to prove that there existed a colorable attack on Respondent's putative title to the Property, which was directly adverse and hostile to Respondent. *See* Minn. Stat. 504B.121. The testimony and documents clearly indicate that the transaction, taken as a whole, is a foreclosure

re-conveyance transaction under Minn. Stat. §325N.01(c)<sup>4</sup> and constitutes an equitable mortgage.<sup>5</sup> Once Appellants successfully attacked Respondent's title, the district court should have dismissed the eviction action, as the summary nature of the proceeding

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<sup>4</sup> Foreclosure reconveyance means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

Minn. Stat. 325N.01(c).

<sup>5</sup> An alleged sale of property may be treated as a mortgage if "the real nature of the transaction between the parties is that of a loan, advanced upon the security of realty granted to the party making the loan." *First Nat'l Bank of Saint Paul v. Ramier*, 311 N.W.2d 502, 503 (Minn. 1981). The following testimony from Respondent under cross-examination demonstrates the likelihood that the transaction between the parties constitutes an equitable mortgage when taken as a whole, to-wit:

Q: If the homeowner is successful in making timely lease payments, then REES will enter into a Contract for Deed with the homeowner?

OBJECTION [PLAINTIFF'S COUNSEL]: Objection calls for speculation, and its not relevant.

THE COURT: I agree with you on that and I sustain those objections, but I am curious about the purported position of the parties. So although I am sustaining the objection, out of my idle curiosity, would you answer her question?

\* \* \*

A: Its been awhile since the question was asked, but I believe the answer was yes.

prohibited the district court to determine the issue of title. *See Gallagher*, 46 N.W.2d at 793. Its failure to reconcile Minn. Stat. §504B.321 with Minn. Stat. §504B.121 constitutes reversible error.<sup>6</sup>

Alternatively, Respondent unpersuasively argues that if Appellants successfully preserved the title issue for appeal, that there exists no hostile or adverse to the title of the Property because Appellants failed to timely rescind the transaction under Minn. Stat. §325N.13, and therefore failed to claim at trial a title issue prior to May 9, 2005.<sup>7</sup> *See Respondent Real Estate Equity Strategies, LLC's Brief*, p.18-19. This analysis is legally and factually flawed. Not only did Appellants prove at the district court level that on May 9, 2005, Appellants held title to the Property, not Respondent, but that Appellants held title until the putative conveyance by warranty deed on June 2, 2005. *Trans.* at p. 14, lns. 8-16. Clearly, at and prior to the execution of the putative lease on May 9, 2005, the parties' interest in the Property was hostile and adverse to one another. The Joneses held fee title to the Property, while the only interest held by Respondent in the Property flowed from its rights under the putative Purchase Agreement, which Appellants have timely rescinded under both Minn. Stat. Chap. 325N and the federal Truth in Lending Act.

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<sup>6</sup> *See Combined Brief of Amici Curiae Mid-Minnesota Legal Assistance & The State of Minnesota*, pp. 14-15, for a discussion on the requirement of interpreting Minn. Stat. §§504B.121 and 504B.321 in harmony with one another.

<sup>7</sup> This argument exemplifies Respondent's attempt to use the summary nature of a 504B proceeding as both a shield and sword. Respondent asserts that Appellants did not preserve the issue of a hostile and adverse title at trial, but argues contradictory that the limited scope of the prohibited Appellants from attacking title. As stated by the district court "I can't, and I won't, look at the whole package." *Trans.*, at p. 7, lns. 8-9.

Respondent disingenuously asserts that Appellants failed to timely rescind the transaction, because it did not occur within the five (5) days as required by Minn. Stat. §325N.13.<sup>8</sup> Noticeably absent from Respondent's statement is that Respondent provided Appellants with a defective cancellation notice that did not comply with the statutorily required notice under Minn. Stat. §325N.14. The notices of cancellation provided by Respondent notified Appellants of the right to cancel any time before April 26, 2005 on one form and April 25, 2005 on another dates that pre-date the May 9, 2005, documents. *See App.*, pp. 27 and 30. In this case, the misleading series of documents, all of which were drafted by Respondent, which constitute the complete foreclosure re-conveyance transaction, is precisely the reason why these type of transactions are so heavily

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<sup>8</sup> Minn. Stat. §325N.13 states:

(a) Right to cancel any contract with a foreclosure purchaser until midnight of the fifth business day following the day on which the foreclosed homeowner signs a contract that complies with sections 325N.10 to 325N.15 or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first.

(b) Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation to the address specified in the contract.

(c) A notice of cancellation given by the foreclosed homeowner need not take the particular form as provided with the contract.

(d) Within ten days following receipt of a notice of cancellation given in accordance with this section, the foreclosure purchaser (a) In addition to any other right of rescission, the foreclosed homeowner has the shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

scrutinized under Minn. Stat. Chap. 325N. Here, Respondent alleges it entered into a lease with Appellants on May 9, 2005, however, Respondent is not the putative owner of the Property, and thus had no interest to convey to Appellants through the lease.<sup>9</sup> Furthermore, Respondent does not possess in its files copies of the documents it intended to enforce against Appellants, including the lease, that have been executed by Respondent. *Trans.*, p. 17, ln. 10; *App.*, pp. 22-33. And finally, Respondent fails to comply with the statutorily mandated cancellation notices by providing Appellants with two different dates to cancel, both of which precede May 9, 2005. Failure to comply with the statutorily mandated notices constitutes a violation of Minn. Stat. § 325N.10, et. seq. and entitled Appellants to the remedies set forth in Minn. Stat. § 325N.18, as well as Minn. Stat. § 325N.13, as a cumulative remedy permitted by Minn. Stat. § 325N.18, subd. 3.

In light of the multitude of documents and information before the district court that evidenced a colorable attack on Respondent's putative title, the district court erred in continuing with the eviction action where the scope of the proceeding was limited to possession only. The limited subject matter to be determined under a 504B Complaint, required the district court to dismiss the eviction action, and its failure to do so constitutes reversible error.

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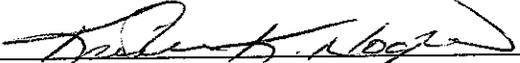
<sup>9</sup> Respondent did not come into putative title to the Property until June 2, 2005, the date of closing.

**CONCLUSION**

For the reasons stated herein, Appellants request the relief as requested in their initial brief.

Dated: Jan 9, 00

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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).