

NO. A06-0347

**State of Minnesota
In Court of Appeals**

Robert H. Lehmann,

Appellant

vs.

Ronald Enright, as attorney in fact
for S.E. and Marlys Enright, dba
Pride-One Co. and Associated Bank,

Respondents

APPELLANT'S BRIEF AND APPENDIX

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Statement of Legal Issues

I. Whether funds contributed solely by Zandra Lehmann to a joint bank account are subject to garnishment for a judgment against Appellant.

Trial court ruled in the affirmative

apposite cases and statutory provisions: Park Enterprises v. Trach, 47 N.W.2d 194, 233 Minn. 467 (1951); Bar-Meir v. No. American Die Casting Association, No. C6-03-331, 2003 WL 22015444 Minn. App. Aug 26, 2003, 2003.MN.0001410<
<http://www.versuslaw.com>>; Browning & Herdrich Oil Company, Inc. v. Hall, 489 N.E.2d 988 (Ind. App. 1986); RepublicBank Dallas v. Nat'l Bank Daingerfield, 705 S.W.2d 310 (Tex. App. 1986); Minn. Stats. §524.6-202 (2005); Minn. Stats. §524.6-203(a) (2005)

II. Whether Appellant's motion to vacate the judgments against him under Rule 60.02 of the Minnesota Rules of Civil Procedure should be granted.

Trial court ruled in the negative

apposite cases: Finden v. Klaas, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964); . Sommers v. Thomas, 251 Minn. 461, 468, 88 N.W.2d 191, 196 (1958); . Taylor v. Steinke , 295 Minn. 244, 246, 203 N.W.2d 859, 860 (1973); Hinz v. Northland Milk & Ice Cream Co., 237 Minn. 28, 30, 53 N.W.2d 454, 455-56 (1952)

III. Whether Appellant's motion to reinstate his Answer should be granted.

Trial court ruled in the negative

apposite cases:

Jadwin v. City of Dayton, 379 N.W.2d 194 (Minn. App. 1985); Bio-Line Inc. v. Wilfley, 364 NW2d338 (Minn. App. 1985); Sudheimer v. Sudheimer, 372 NW2d 792 (Minn. App. 1985)

IV. Whether Appellant's motion to amend his Answer should be granted.

Trial court ruled in the negative

apposite cases: Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993); Hughes v. Micka, 130 N.W.2d 505, 510 (Minn. 1964); Tomlinson Lumber Sales, Inc. v. J.D. Harrold Co., 117 N.W.2d 203, 207 (Minn. 1962); Eisert v. Greenberg Roofing and Sheet Metal Co., 314 N.W.2d 226, 228-229 (Minn. 1982).

Statement of the Case

In early 2005, Respondent Ronald Enright (hereinafter "Enright") sued Appellant for \$7,287.50 rent due under a lease entered into between Respondent's parents and Lehmann Engineering, Inc., a Minnesota corporation owned by Appellant. A-18, A-50 Appellant's ability to deal with this lawsuit was severely compromised by significant health problems. A-45-48

In 2000, Appellant's health had begun deteriorating, and the various physicians he consulted between 2000 and 2005 prescribed progressively more and more powerful drugs to treat his extremely high blood pressure. A-45-48 By early 2005 when Enright commenced this lawsuit, Appellant was suffering serious side effects from these prescribed drugs, including debilitating fatigue, both physical and mental, along with confusion and difficulty in understanding things. A-47 Because of his substantial medical problems, Appellant has not been able to earn any income since October, 2004. A-46-47.

Appellant appeared pro se and, with the help of an attorney friend of his wife, prepared and served an Answer to Enright's Complaint denying personal liability under the corporation's lease.¹ A-47 After that, Appellant's physical and mental problems prevented him from being able to sufficiently understand or respond to Enright's

¹ Lehmann Engineering, Inc. did not answer or otherwise defend in the action and a default judgment against the corporate defendant was entered on March 14, 2005 in the amount of \$8,823, including attorney's fees, costs and disbursements. That judgment is not at issue here.

subsequent discovery requests directed to the corporate defendant, Lehmann Engineering, Inc., or to understand or deal with the ensuing proceedings which culminated in a default judgment against Appellant. A-47-48

Enright's motion to compel discovery relating to the discovery requests directed to the corporate defendant resulted in a partial judgment on May 20, 2005 against both the corporation and Appellant for \$682.50 in attorney's fees. A-26 Enright then brought a motion for sanctions against Appellant based on:

- (a) failing to file his Answer with the court;
- (b) failing to file a Certificate of Representation;
- (c) failing to file an Informational Statement;
- (d) failing to pay the court filing fee; and
- (e) failing to respond to Enright's document production request.

A-28 On August 2, 2005, on Enright's motion for sanctions, the district court ordered Appellant's Answer stricken and ordered judgment against him in the amount of \$7,287.50, plus additional attorney's fees in the amount of \$1,306.50, plus costs and disbursements of \$756.00. A-32

In the meantime, one of Appellant's doctors discovered significant blockage in Appellant's carotid arteries and on September 28, 2005 Appellant underwent carotid artery surgery to restore adequate blood flow to his brain. A-48 The next day, Appellant suffered a heart attack. A-48

About two weeks later, Enright garnished bank accounts at Associated Bank titled in the names of both Appellant and his wife Zandra Lehmann, but which did not contain any funds contributed by Appellant. A-48, A-64 Appellant's health had improved enough after his surgery so that he was able to retain an attorney to represent him. A-48

Appellant objected to the garnishment and brought motions asking the district court to (a) dissolve the garnishments under Section 524.6-203(a) of the Minnesota Multi-Party Accounts Act; (b) vacate the judgments against him under Rule 60.02 of the Minnesota Rules of Civil Procedure; (c) reinstate his Answer to Enright's Complaint, and allow him to amend his Answer. A-43

Appellant presented uncontroverted evidence that all of the funds in the garnished joint bank accounts were contributed by Zandra Lehmann and part of those funds consisted of Zandra Lehmann's retirement benefits. A-71 Appellant also presented evidence that his medical problems had prevented him from understanding the significance of the papers he received from Enright's attorney and prevented him from being able to adequately respond to them. A-45-48 In addition, Appellant presented evidence of a reasonable case on the merits of his denial of individual liability under the lease, due diligence in acting after notice of the judgment, and lack of substantial prejudice to Enright if his motion were granted. A-45-48 Appellant and Enright presented conflicting affidavits on the issue of whether Appellant had told Respondent's attorney that he had medical problems that interfered with his ability to defend against Respondent's lawsuit. A-47, A-73

Dakota County District Court, First Judicial District, the Honorable William Thuet presiding, denied appellant's motions in their entirety in an order filed December 20, 2005. A-83 The District Court's Findings of Fact, Conclusions of Law and Order denying Appellant's motions did not address the issues of whether Appellant has a reasonable case on the merits regarding individual liability under the corporation's lease,

or the issues of due diligence, substantial prejudice or ownership of the funds in the joint bank accounts. A-83-85 Although Appellant's affidavit stated that he didn't understand the papers he received in the lawsuit, the District Court found that Appellant did not submit any document stating that he was unable to understand the nature of the proceedings. A-47-48, A-85 Although the documents presented by Enright's attorney showed that Enright's Document Production Request was directed solely to Lehmann Engineering, Inc., the court found that the Request was served on both Appellant and the corporate defendant. A-76-78, A-84

Statement of Facts

Lease Between Lehmann Engineering, Inc. and Enright's Parents

Lehmann Engineering, Inc. was incorporated as a Minnesota corporation under Minnesota Statutes Chapter 302A on December 22, 1995. A-45 Lehmann Engineering, Inc. rented office space from Respondent Enright's parents, S.E. and Marlys Enright, who were doing business as an unincorporated partnership called Pride-One Co., under a one-year written lease dated June 10, 1999. A-45, A-50-58 The lease provided in Section 5.1 that if the tenant remained in possession of the premises after the one year term without executing a new lease, it should be deemed to be occupying the premises on a month-to-month basis. A-51

Appellant signed the lease as President of Lehmann Engineering, Inc. A-58, A-45 He did not sign any personal guarantee or other document obligating him personally under the lease with Enright's parents. A-45

Lehmann Engineering, Inc. continued to occupy office space in the building owned by Enright's parents after the initial one year term expired without executing a new lease. A-45 During 2000, Appellant began experiencing serious health problems, including extremely high blood pressure. A-45

Appellant's Medical Problems

During 2000 Appellant began to see Dr. David Widdifield for treatment. A-68, A-46 Dr. Widdifield is a family practice doctor and during the last five years he has

referred Appellant to a number of different specialists and also to Mayo Clinic in an effort to get his blood pressure down. A-68, A-46 Dr. Widdifield states that Appellant's blood pressure was the worst he had ever seen in thirty years of practice as a physician. A-68 These efforts continued unsuccessfully until approximately the Fall of 2005. A-45-48 The many and various medications prescribed for Appellant's condition during the period from 2000 through the present have caused him to experience chronic debilitating fatigue, both physical and mental. A-68-69, A-70, A-63-64, A-45-48 This fatigue has at times been overwhelming and has severely impaired his ability to work and to deal with tasks that require any kind of focus or concentration. A-63-64, A-45-48

Appellant's health problems eventually caused him to close his engineering business. A-46 Prior to that, Appellant had had conversations with Respondent Enright about his health problems and Appellant kept Enright informed of what was going on with his treatment. A-46 Enright has not disputed this. Appellant was seen at the Mayo Clinic from the end of 2000 through the beginning of 2001 but those efforts were unsuccessful at controlling his blood pressure. A-46 January, 2001 was the last time Appellant worked as an engineer, although the corporation's other employees continued to work in the engineering business through the summer of 2001. A-46 Lehmann Engineering, Inc. vacated the office space in Enright's building in 2001 after Enright told Appellant that they had found a new tenant for the office space. A-46

Appellant's health further deteriorated in 2004. A-46 In April, 2004 he became violently ill, with constant vomiting for 24 hours. A-46 He was taken to the emergency

room, where the staff found that his blood pressure was off the charts, and Appellant was hospitalized for about a week for treatment of his high blood pressure. A-46

After this hospitalization, Appellant's medications were changed and he felt well enough in May, 2004 to begin working as a service technician for Brambilla's in Shakopee, Minnesota. A-46 He was only able to continue working for Brambilla's until October, 2004. A-46 In October, 2004 he again became violently ill, with vomiting and shortness of breath, and was hospitalized again for about a week. A-46, A-63

After the October, 2004 hospitalization, Appellant's medications were changed again and after that the side effects from the new medications were extremely debilitating. A-46 Since then, he has been taking between 9-14 different medications per day, most of which are for his high blood pressure. A-46 Much of the time during 2005, he has been unable to think clearly and had trouble with dizziness, memory, and feeling exhausted. A-47-48 He would wake up in the morning in a fog and have to go back to bed because of dizziness. A-46 He had trouble remembering things. A-46

Appellant has been unemployed since October, 2004 and has not received any type of disability benefit or earned income since that time. A-47

Enright's Lawsuit

Enright commenced this lawsuit in early 2005 against both Lehmann Engineering, Inc. and Appellant individually for unpaid rent. A-18 Appellant did not understand why Enright was suing him individually, when he had signed the lease only as President of Lehmann Engineering, Inc. A-47 Appellant believed that all he had to do was to provide

the Enright's attorney with a written Answer to the Complaint, because that is what the Summons directed him to do. A-47, A18 He gave the original Answer to Enright's attorney. A-47

After service of the Summons and Complaint, Appellant had a phone conversation with Enright's attorney and told him that he had very serious medical problems. A-47 Appellant was not represented by counsel, but had obtained the help of an attorney that his wife had gone to school with to help him draft an Answer to the Complaint. A-47 His wife's friend told Appellant that he thought it was clear that Appellant did not have any individual liability under the lease, but that he couldn't help him any further with the matter. A-47

Appellant hand-delivered his original Answer to Enright's attorney's office. A-47 Appellant did not know that he should have served a copy of the Answer on Enright and retained the original for filing with the Court. A-47

On March 14, 2005, approximately two weeks after Appellant had delivered his Answer to Enright's attorney, a default judgment was entered against Lehmann Engineering, Inc. in the amount of \$8,823. A-87 This amount included attorney's fees, costs and disbursements. A-87 Three days later, Enright's attorney served a Document Production Request directed to Lehmann Engineering, Inc. requesting information regarding the corporation's assets. A-23

Enright's Document Production Requests Directed to Corporate Defendant

Enright's Document Production Request asked the corporation for approximately six years' worth of bank statements, cancelled checks, deposit slips, check book journals, financial statements, employee salary records, business records, account records, accounts receivable records, listings of business equipment, tools, machinery and inventory, listings of farm supplies, implements, livestock and grain, and documents relating to asset transfers, as well as a very broad laundry list of other asset-related records, including a listing of household goods, furnishings and personal effects. A-25 Enright's Document Production Request read as follows:

DOCUMENT REQUEST

Pursuant to Rules 34 and 69 of the Minnesota Rules of Civil Procedure, plaintiff, represented by the undersigned, requests that the defendant, Lehmann Engineering, Inc., produce the documents herein described on Exhibit A, or true and correct copies thereof for inspection and copying, at the offices of Robert J. Bruno, Ltd., Suite 107, 1601 W. Highway 13, Burnsville, Minnesota, on April 7, 2005.

A-24 (emphasis added) The Request was dated March 17, 2005.

Appellant was confused by this because the Request asked for many documents that either never had existed or no longer existed, and he didn't understand why Enright was asking for so many documents that seemed completely irrelevant. A-47 He called and spoke to Enright's attorney and told him that he didn't have most of what was requested. A-47 Enright's attorney told him to do what he could. A-47 Appellant also

told Enright's attorney again that he had extreme hypertension and that things were difficult for him. A-47 Appellant was physically unable to comply with the document production request due to the chronic extreme fatigue and confusion he was experiencing.

A-47

Although Enright now argues that the discovery request was "served on" both defendants, he has not produced any evidence that the discovery request was directed to Appellant. A-73 To the contrary, Enright's attorney attached a copy of correspondence to his Affidavit addressed only to "Lehmann Engineering, Inc." threatening a motion to compel if the documents were not produced. A-78

Enright's Motion to Compel Discovery

Approximately two weeks after the responses to the Document Production Request were due, Enright brought a Motion to Compel Discovery against both defendants regarding the Document Production Requests, which had been directed only to Lehmann Engineering, Inc. A-73, A-88

Throughout this time period, Appellant was aware that he was receiving papers in the mail from Enright's attorney, but did not understand the papers and was physically unable to deal with the issues presented because of the debilitating side effects from his various medications. A-48

In connection with Enright's motion to compel, Enright's attorney submitted an Affidavit to the Court stating that Appellant had offered no excuse or explanation for not responding to the discovery requests, even though Appellant had, in fact, spoken to

Enright's attorney about his confusion about the requests and told him about his physical difficulties. A-89, A-73, A-47

The Court ordered that the documents be produced and awarded Enright \$682.50 in attorney's fees. A-26 This Order and Partial Judgment was directed against both defendants, even though the discovery requests had only been directed to Lehmann Engineering, Inc. A-26

Enright's Motion for Sanctions

Two months later, about the time that Appellant began seeing Dr. Somerville, another different specialist for treatment of his blood pressure, Enright's attorney brought a Motion for Sanctions for Defendants' failing to file an Answer, failing to file a Certificate of Representation, failure to file an informational statement, failing to pay a filing fee, and failing to respond to Enright's document production request. A-70, A-28 Enright's attorney's affidavit submitted with this motion did not reveal to the Court that the original Answer to Enright's Complaint that should have been filed with the Court was, in fact, in the possession of Enright's attorney. A-30 Nor did Enright's attorney bother to mention that Rule 104 of the Minnesota General Rules of Practice for the District Courts did not even require Defendants to file a Certificate of Representation because Enright, as the filing party, had done so. A-30 Nor had Appellant been aware of the requirement with respect to filing an Informational Statement. A-48

In connection with this motion, Enright's attorney again submitted an affidavit to the Court stating that Appellant had offered no excuse, justification or explanation for not responding to the document production requests. A-30

On August 2, 2005, on Enright's Motion for Sanctions, the Court ordered Appellant's Answer stricken and ordered judgment against him in the amount of \$7,287.50, plus attorney's fees in the amount of \$1,306.50, plus costs and disbursements of \$756.00. A-32 This judgment was separate from and in addition to the previous judgment against Lehmann Engineering, Inc. for \$8,823. A-87

Orders for Disclosure were entered against both Lehmann Engineering, Inc. and Robert Lehmann on August 19, 2005. Appellant has provided Enright's attorney with this financial disclosure on behalf of both Lehmann Engineering, Inc. and himself. A-48, A-74

Appellant's Surgery and Heart Attack

In the meantime, one of Appellant's doctors discovered significant blockage in Appellant's carotid arteries and on September 28, 2005 Appellant underwent carotid artery surgery to restore adequate blood flow to his brain. A-48 The next day, Appellant suffered a heart attack. A-48 After recovering from the heart attack, Appellant began to feel somewhat better. A-48

Garnishment

About two weeks after his heart attack, Enright's attorney served Associated Bank and Appellant with Garnishment Summonses for three bank accounts. A-48 One bank

account was titled in the name of Lehmann Engineering, Inc., and there has been no objection to the garnishment of that account. A-48

The other two bank accounts garnished by Enright are titled jointly in the names of Appellant and his wife, Zandra Lehmann. A-48 All of the funds in both accounts were contributed by Zandra Lehmann. A-64, A-48 These funds represent Zandra Lehmann's compensation and expense reimbursements from her employment with Intelligent Marketing Systems, Inc., distributions from her account with the Ceridian Retirement Plan, and inheritance distributions from a trust established by her recently deceased father. A-64, A-66-67 Zandra Lehmann deposited these funds to this joint account for convenience only. A-64

Appellant's health had improved enough after his surgery so that he was able to retain an attorney to represent him. A-48 Because none of the garnished funds in the two joint accounts belonged to Appellant under the Minnesota Multiparty Accounts Act, Minn. Stats. Section 524.6-201 et seq., Appellant, in the Exemption Notices he returned to Enright's attorney and the Garnishee, claimed that these funds were exempt under Minn. Stat. §524.6-203, and supplied Enright's attorney with documentary evidence showing that the funds in the accounts were contributed by Zandra Lehmann. A-48

Appellant's Motions

After Enright objected to Appellant's claim of exemption, Appellant moved the district court to (a) dissolve the garnishments under Section 524.6-203(a) of the Minnesota Multi-Party Accounts Act; (b) vacate the judgments against him under Rule

60.02 of the Minnesota Rules of Civil Procedure; (c) reinstate his Answer to Enright's Complaint, and allow him to amend his Answer. A-43

Appellant presented uncontroverted evidence that all of the funds in the garnished joint bank accounts were contributed by Zandra Lehmann and part of those funds consisted of Zandra Lehmann's retirement benefits. A-64 Appellant also presented evidence that his medical problems had prevented him from understanding the significance of the papers he received from Enright's attorney and prevented him from being able to adequately respond to them. A-47-48 In addition, Appellant presented evidence of a reasonable case on the merits of his denial of individual liability under the lease, due diligence in acting after notice of the judgment, and lack of substantial prejudice to Enright if his motion were granted.

While Appellant's motion was pending, Enright's attorney obtained and served on Respondent Associated Bank two separate writs of execution, one against the corporate defendant based on the \$8,823 judgment of March 14, 2005 and a second against Appellant individually, based on the \$9,350 judgment of August 2, 2005. A-91-106

Dakota County District Court, First Judicial District, the Honorable William Thuet presiding, denied appellant's motions in their entirety in an order filed December 20, 2005. A-83 The District Court's Findings of Fact do not address (a) whether Appellant has a reasonable case on the merits of his denial of individual liability under the corporate lease; (b) whether Appellant acted with due diligence after notice of entry of the judgment; (c) whether granting Appellant's motion to vacate the judgments would cause substantial prejudice to Enright; or (d) ownership of the funds in the joint accounts. A83-

85 The District Court's Conclusions of Law do not address the issue of whether Minn. Stat. Section 524.6-203(a) prevents garnishment of funds in a joint account contributed by an owner other than the debtor. A-85

Appellant and Respondent Enright presented conflicting affidavits on the issue of whether Appellant had told Enright's attorney that he had medical problems that interfered with his ability to defend against Enright's lawsuit. A-47, A-73 Respondent Enright did not present any evidence contradicting Appellant's statements that he had talked to Enright about his medical problems. Although Appellant's affidavit stated that he didn't understand the papers he received in the lawsuit, the District Court found that Appellant did not submit any document stating that he was unable to understand the nature of the proceedings, contact an attorney, or otherwise protect his interests in the lawsuit. A-47-48, A-85 Although the documents presented by Enright's attorney showed that Enright's Document Production Request was directed solely to Lehmann Engineering, Inc., the court found that the Request was served on both Appellant and the corporate defendant. A-76-78, A-85

Summary of Argument

Clear and unambiguous provisions of the Minnesota Multiparty Accounts Act limit a creditor's rights to funds in a joint account to that proportion of the funds contributed by the debtor. Because Appellant contributed none of the funds in the joint accounts at issue here, Enright was not entitled to any funds from those accounts and his garnishments should be vacated.

The judgments against Appellant should be vacated under Rule 60.02(a) because has shown (a) a reasonable case on the merits; (b) a reasonable excuse for his failure to act; (c) that he acted with reasonable diligence after notice of entry of the judgments against him; and (d) that there would be no substantial prejudice to Enright if his motion to vacate were granted. Alternatively, the judgments against Appellant should be vacated under Rule 60.02(f) because the equities weigh heavily in favor of petitioner and clearly require relief be granted to avoid an unconscionable result.

Appellant's Answer affirmatively stated and alleged that the lease at issue was solely between plaintiff and Lehmann Engineering, Inc. Appellant signed the lease only in his capacity as President of Lehmann Engineering, Inc. A shareholder of a Minnesota corporation is not personally liable for corporate debts under Minn. Stats. Sec. 302A.425 (2005). Appellant did not personally guarantee the lease. Under Sommers v. Thomas, 251 Minn. 461, 88 N.W. 2d 191 (1958), where a proposed Answer sets forth a good defense on the merits and a reasonable excuse for delay is shown, the default judgment should be reversed.

The other judgment against Appellant was a partial judgment for attorney's fees based on Enright's motion to compel discovery. The discovery that was the subject of Enright's motion had been directed to Lehmann Engineering, Inc., and not to Appellant individually. Because Appellant was never served with any discovery requests directed to him individually, he has a reasonable case on the merits regarding individual liability for attorney's fees resulting from the corporate defendant's failure to respond to discovery requests.

Appellant has a reasonable excuse for failure to act because he had been suffering from an extremely serious and disabling medical condition that physically prevented him from being able to defend against Enright's claims or complying with procedural and other requirements. Once Appellant's health started to improve in early October, 2005 he took steps to complete the Financial Disclosure forms the court ordered him to complete, and to hire an attorney to represent him in this matter.

Granting Appellant's motion to vacate will not result in substantial prejudice to Enright because he will have the opportunity to present whatever evidence he might have as to Appellant's liability.

Minnesota courts have upheld a liberal policy of allowing trial of causes on their merits. Taylor v. Steinke, 295 Minn. 244, 246, 203 N.W. 2d 859, 860 (1973) The goal of all litigation is judgments based on trials on the merits. Sommers, supra at 468, 88 N.W. 2d at 196 (1958).

For these reasons, the judgments against him should be vacated, his Answer reinstated and he should be allowed to amend his Answer to assert a claim for attorneys fees under the provisions of the lease.

Argument

I. SCOPE OF REVIEW

On appeal from an order, "the appellate courts may review any order affecting the order from which the appeal is taken," and "may review any other matter as the interest of justice may require. Minn. R. Civ. App. P. 103.04. Bush Terrace Homeowners

Association, Inc., v. Ridgeway, 437 N.W.2d 765 (Minn. App. 1989). Riemer v. Zahn, 420 N.W.2d 659, 662 (Minn. App. 1988); Denial of a motion to vacate a default judgment is appealable because it is the only means of obtaining review of the merits of the case. Spicer v. Carefree Vacations, 370 N.W.2d 424 (Minn. 1985). As the court in Spicer observed, prior to entry of the default judgment,

no evidence existed in the record with respect to the merits of [appellant's] claim that the default should be vacated. Without this crucial evidence, the appellate court would have nothing to review respect to the vacation since the district court record is conclusive on appeal. See, e.g., Turner v. Alpha Phi Sorority House, 276 N.W.2d 63 (Minn. 1979). Although trial courts have broad discretion in denying orders to vacate default judgments, that discretion is not unlimited. Yet to deny appealability of orders denying vacation of defaults would result in investing such unlimited discretion in the trial courts.

Spicer at 426.

No deference is given to a lower court on questions of law. Modrow v. JP Foodservice, Inc., 656 N.W.2d 389 (Minn. 2003); Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984). There are no disputed facts regarding the garnishment issue. Appellant presented uncontroverted evidence that his wife Zandra contributed all of the funds in the joint accounts at issue. Because the issue of whether Enright's garnishment of the joint accounts should be dissolved is purely a legal issue, no deference need be given to the district court's ruling on this issue.

When the district court's treatment of mixed questions of law and fact and its treatment of the ultimate issues may involve a misapplication of the law, the appellate court should carefully review the trial court's explanation of how applicable legal factors led to its conclusions. Maxfield v. Maxfield, 452 N.W.2d 219 (Minn. 1990). In this

case, Appellant's motion to vacate the judgments against him involved an analysis of the factors set out in the Minnesota Supreme Court's opinion in Finden v. Klaas, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964): (a) a reasonable case on the merits; (b) a reasonable excuse for the failure to act; (c) due diligence after notice of the entry of judgment; and (d) no substantial prejudice to the opposing party. Because, as in Maxfield, these are mixed questions of law and fact, Maxfield requires careful review of the district court's explanation of how applicable legal standards led to its conclusion.

The district court's Findings of Fact, however, only address one of the four Finden factors and they mis-state the testimony contained in Appellant's affidavit. As set forth in more detail below, Appellant presented evidence sufficient to address all of the Finden factors and his motion to vacate the judgments against him should be granted. Because these are mixed questions of law and fact, the appellate court is not bound by the district court's ruling.

All of the evidence presented in connection with Appellant's motions was in the form of Affidavits and documentary evidence. When the evidence before the district court is documentary, rather than witness testimony, there is no need to defer to the district court's assessment of the meaning or credibility of that evidence, and where a trial judge decides a fact issue on the basis of affidavits alone, the appellate court may disregard the finding of the trial judge and review the documentary evidence de novo. NSP Company v. Williams, 343 N.W.2d 627, 630 (Minn. 1984).

II. THE DISTRICT COURT ERRED BY NOT VACATING THE GARNISHMENT OF THE JOINT ACCOUNTS.

The District Court erred by not vacating the garnishment of the joint accounts because Zandra Lehmann is the sole owner of the funds in those accounts under Minn. Stats. Section 524.6-203 and Respondent Enright does not have a judgment against her.

Section 524.6-203(a) of the Minnesota Multiparty Accounts Act states:

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

Minn. Stats. §524.6-203(a) (2005). If there is any doubt that this provision applies to disputes between an account owner and the creditor of a non-contributing account owner, the language in Section 524.6-202 dispels any uncertainty:

The provisions of sections 524.6-203 to 524.6-205 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 524.6-208 to 524.6-212 govern the liability of financial institutions who make payments pursuant thereto, and their setoff rights

Minn. Stats. §524.6-202 (2005) (emphasis added) Appellant presented uncontroverted evidence that all of the funds in the joint accounts at issue were contributed by his wife, Zandra Lehmann. Under Section 524.6-203(a), therefore, the joint accounts belonged to Zandra Lehmann and were not subject to garnishment for the judgment against Appellant.

The Court of Appeals has applied these provisions to rule that a co-owner who contributed nothing to a joint account had only an inchoate interest in them during the

contributing co-owner's life. Hefner v. Estate of Ingvoldson, 346 N.W.2d 204 (Minn. App. 1984). In that case, a mother and daughter jointly owned savings bonds and certificates of deposit. The mother's attorney in fact withdrew the funds and placed them in accounts in the mother's name only. After the mother's death, the daughter claimed that the monies belonged to her and the court disagreed, relying on the Multiparty Accounts Act, because the daughter had not contributed anything to the accounts and for that reason none of the monies belonged to her.

In a case decided long before the enactment of the Minnesota Multiparty Accounts Act, the Supreme Court addressed this same issue, but with somewhat different facts than the case here. In Park Enterprises v. Trach, 233 Minn. 467, 47 N.W.2d 194 (1951) the court dealt with a situation in which it was "impossible to determine on an evidentiary basis the exact amount of funds each of [the owners] has contributed to the joint account." Park, supra at 468, 47 N.W.2d at 195. The court in that case, without any applicable statutory authority prescribing the method of determining ownership of a joint account, held that "[w]here two depositors maintain their funds in a 'joint and several' bank account under a contract which gives either depositor alone an unconditional right to withdraw all or any part of the account at any time, such account can be garnisheed for the individual debt of one of the depositors." Park at 467, 47 N.W.2d at 195.

The Park case does not apply to the case at hand for two reasons. First, unlike the facts in Park, Appellant has presented evidence showing that all of the contributions to the accounts were made by his wife. In Park, both co-owners contributed to the account. Park at 468, 47 N.W.2d at 195. The opinion in Park would allow presentation of

evidence of contributions to the account. See, Delta Fertilizer, Inc. v. Weaver, 547 So. 2d 800 (Miss. 1989) In this case, because of Appellant's inability to earn any income, it is clear that all of the contributions have been made by his wife.

Second, the court in Park had no governing statutes to apply to the question of ownership of the joint account. Instead, the court looked to the account agreement between the bank and the account owners, reasoning that since either account owner could withdraw all of the funds in the account, either account owner's creditors should be able to garnish all of the funds in the account because in theory the creditor was subrogated to the debtor's rights in the account. The court emphasized that in that case, each owner not only had the ability, upon request made to the bank, to withdraw all of the funds from the joint account, but also the absolute and unconditional legal right to do so without breaching any agreement with the other joint owner.

This is in stark contrast to the provisions of the Multiparty Accounts Act, which clearly do give an owner who contributes to a joint account legal rights against a non-contributing owner who withdraws funds from the account.² If one applies a subrogation theory to these different statutory rights as the court did in Park, a creditor subrogated to the non-contributing owner's rights would have no greater right to the funds in the joint account than the non-contributing owner, and the creditor would not be able to garnish

² One commentator has stated that Park has been superceded by the Multiparty Accounts Act. Martha A. Churchill, Annotation, *Joint Bank Account as Subject to Attachment, Garnishment, or Execution by Creditor of One Joint Depositor*, 86 A.L.R.5th 527, fnotes. 15 and 17 (2001).

the funds contributed by the non-debtor owner. In fact, Section 524.6-202 codifies this subrogation approach by clarifying that the provisions of Sections 524.6-203 to 524.6-205 apply to controversies between these account owners and their creditors and other successors.³

Although no Minnesota court has ruled on this issue, an unpublished Court of Appeals opinion, Bar-Meir v. No. American Die Casting Association, No. C6-03-331, 2003 WL 22015444 Minn. App. Aug 26, 2003, 2003.MN.0001410<
<http://www.versuslaw.com>>, saw a conflict between the garnishment statutes and the Multiparty Accounts Act, but did not rule on the issue because it held that the judgment debtor in that case did not present any evidence of who contributed funds to the account in question. In this case, however, Appellant has presented such evidence.

The Minnesota Multiparty Accounts Act is a uniform act, and courts of other states that have enacted this uniform act, when faced with this issue, have concluded that the Multiparty Accounts Act does, in fact, govern ownership of a joint account in the garnishment context. In Browning & Herdrich Oil Company, Inc. v. Hall, 489 N.E.2d 988 (Ind. App. 1986), the judgment debtor garnished certificates of deposit and a savings account titled in the names of the debtor and his mother. The debtor's mother had contributed all of the funds to these accounts. The court, in rejecting arguments based on

³ The Act contains a separate set of provisions that apply only to controversies between account owners and financial institutions, Sections 524.6-208 through 524.6-212.

cases decided before adoption of Uniform Multiparty Accounts Act⁴, described the "rather obvious consequences" of that uniform act:

IND. CODE 34-4-1.5-3(a) is perfectly clear. It needs no judicial construction or interpretation. It is controlling and the court correctly applied it. We hold that insomuch as Opal contributed all of the funds for the purchase of the CDs, and since there was no clear and convincing evidence of an intent to make an inter vivos gift, she alone owned the CDs. They were not owned by Gerald, and they were thus not subject to garnishment by Browning in its attempt to satisfy its judgment against him.

Browning, supra, at 992.

Similarly, the appellate court in Texas, which also has adopted the Uniform Multiparty Accounts Act, held that the judgment creditor could not garnish funds in a bank account to which all of the funds had been contributed by the debtor's parents, even though the parents had added the names of the debtor and their other child to the account.

⁴ The relevant provisions of Indiana's Multiparty Accounts Act read as follows:
"A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent."
IND. CODE 32-4-1.5-3(a)(1976).

"The provisions of sections 3 [32-4-1.5-3], 4 [32-4-1.5-4), and 5 [32-4-1.5-5] of this chapter concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multi-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 8 [32-4-1.5-8] through 13 [32-4-1.5-13] of this chapter govern the liability of financial institutions who make payments pursuant thereto, and their setoff rights."

IND. CODE 32-4-1.5-2(1976). These are identical to Minn. Stats. Sec. 524.6-203(a) (2005) and 524.6-202 (2005).

RepublicBank Dallas v. Nat'l Bank Daingerfield, 705 S.W.2d 310 (Tex. App. 1986), In reaching this conclusion, the court stated:

In most jurisdictions, joint bank accounts are vulnerable to seizure by the creditor of any of the depositors, but the creditor's right to seize the funds is limited to the funds in the account that are equitably owned by the debtor and does not extend to funds equitably owned by other parties. See generally 11 A.L.R.3d 1465 (1967), and 38 C.J.S. Garnishment § 80 (1943). Texas appears to follow this general rule.

RepublicBank Dallas, supra at 311. The court went on to state that the Uniform Multi-party accounts act provision, enacted in Texas, supports this result.⁵ See also Lamb v. Thalimer Enterprises, 386 S.E.2d 912, 193 Ga. App. 70 (1989).

The majority of courts faced with this issue that have decided it under common law rather than statute have limited garnishment to the debtor's equitable ownership in the joint account. 86 A.L.R.5th 527 §3; See, e.g., Beehive State Bank v. Rosquist, 26 Utah 2d 62, 484 P.2d 1188 (1971); Delta Fertilizer, Inc. v. Weaver, 547 So. 2d 800 (Miss. 1989); Esposito v. Palovick, 101 A.2d 568, 29 N.J.Super. 3 (N.J.Super.App.Div. 1953); Society of LLOYD's v. Collins, 284 F.3d 727 (7th Cir. 2002); Peterson v. Peterson, 571 P.2d 1360 (Utah 1977).

For all of the above reasons, the garnishment of the joint accounts should be vacated because the all of the funds in the accounts belong to Zandra Lehmann under

⁵ The court stated, "Tex. Prob. Code Ann. § 438 (Vernon 1980) appears to specifically support the conclusion that Pat and Marie McGee are the owners of the money in this account. It provides that during the lifetime of the parties a joint account belongs to the parties in proportion to the contributions each party has made to the amount on deposit. Tex. Prob. Code Ann. § 437 (Vernon Supp. 1986) provides that Section 438 applies concerning ownership between parties to multiple party accounts in controversies between the parties and their creditors." RepublicBank Dallas, supra at 311-312.

Minn. Stats. Section 524.6-203(a) and Respondent Enright does not have a judgment against her.

III. THE DISTRICT COURT ERRED BY NOT VACATING THE JUDGMENTS AGAINST APPELLANT INDIVIDUALLY.

The District Court erred by not vacating the judgments against Appellant individually because he has a reasonable case on the merits, a reasonable excuse for the failure to act, he has acted with due diligence after notice of the entry of judgment; and there will be no substantial prejudice to the opposing party if the motion to vacate is granted.

Rule 60.02 of the Minnesota Rules of Civil Procedure states, in relevant part:

60.02 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.

On motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

...

or

(f) Any other reason justifying relief from the operation of the judgment.

Minn. R. Civ. P. 60.02

A party seeking relief under rule 60.02(a) on the basis of mistake, inadvertence, surprise, or excusable neglect must demonstrate that relief is appropriate under four factors:

- (1) a reasonable case on the merits;
- (2) a reasonable excuse for the failure to act;
- (3) that [the moving party] acted with due diligence after notice of the entry of judgment; and
- (4) that there would be no substantial prejudice to the opposing party if the motion to vacate is granted.

Imperial Premium Fin., Inc. v. G.K. Cab Co., Inc., 603 N.W.2d 853, 857 (Minn. App. 2000) (citing Finden v. Klaas, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964)). Courts favor a liberal application of these factors to further the policy of resolving cases on their merits. Kemmerer v. State Farm Ins. Cos., 513 N.W.2d 838, 841 (Minn. App. 1994), review denied (Minn. June 2, 1994).

There are two judgments against Appellant in this matter. An Order and Partial Judgment dated May 20, 2005 awards Enright \$682.50 in attorneys fees against both Appellant and Lehmann Engineering, Inc. A second Order and Judgment dated August 2, 2005 strikes Appellant's Answer and awards Enright \$7,287.50 plus attorneys fees in the amount of \$1,306.50 plus costs and disbursements in the amount of \$756.00.

A. Appellant has a Reasonable Case on the Merits.

1. The August 2, 2005 Judgment Against Appellant.

The only allegation in Enright's Complaint in this action that might support personal liability under the lease is the allegation in paragraph 2 that the premises were

leased to Appellant.⁶ This conclusory allegation was denied in Appellant's Answer and is clearly contradicted by the actual Lease, which was signed by Appellant as president of Lehmann Engineering, Inc. and not individually. (See Lease Agreement attached to Affidavit of Robert H. Lehmann as Exhibit A).

A shareholder of a Minnesota corporation organized under Chapter 302A of the Minnesota Statutes is not personally liable for corporate debts. Minn. Stats. Section 302A.425 (2004); Groves v. Dakota Printing Services, Inc., 371 N.W.2d 59 (Minn. App. 1985). Appellant did not sign any personal guarantee of the lease or otherwise agree to become personally liable for the corporation's obligations under the lease.

In determining whether a movant has a reasonable case on the merits, the Minnesota Supreme Court has simply looked to the party's pleadings. "It is now well settled that where a proposed answer discloses a good defense upon the merits and a reasonable excuse for delay occasioning a default is shown, the default should be opened and the case brought to trial. . ." Sommers v. Thomas, 251 Minn. 461, 468, 88 N.W.2d 191, 196 (1958).

Appellant, in his Answer, ". . .affirmatively states and alleges that the lease existed solely between plaintiff and Lehmann Engineering, Inc." A-21 Under Sommers, this is sufficient to show a reasonable case on the merits.

2. Partial Judgment for Attorney's Fees Based on Motion to Compel.

⁶ It was only after Appellant brought his motion to vacate the judgment that Enright raised the novel argument that Appellant "occupied" the leased premises as an individual. A-79, A-19. Appellant denied having done so. A-82

The May 20, 2005 partial judgment for attorney's fees was based on Enright's motion to compel discovery. The discovery requests were directed to Lehmann Engineering, Inc., not to Appellant individually. Enright's motion papers and supporting Affidavit and Memorandum did not contain any basis or justification whatsoever for an order against Appellant.

To the contrary, Exhibits A and B to Enright's attorney's affidavit affirmatively demonstrate that the discovery requests were directed only to Lehmann Engineering, Inc. and not to Appellant. For the same reasons outlined above, there is no legal basis in this case for holding Appellant personally liable for the obligations of Lehmann Engineering, Inc.

For these reasons, Appellant more than meets the requirement of a reasonable case on the merits.

B. Appellant Has a Reasonable Excuse for Failure to Act.

Appellant's extremely serious and disabling medical condition has physically prevented him from being able to defend against Enright's claims or complying with procedural requirements or discovery demands. His primary physician, Dr. Widdifield, stated that in all of his thirty years of medical practice, he has never seen a patient with blood pressure as bad as Appellant's. This condition has persisted and worsened over the last five years in spite of Appellant's relentless search for a doctor or clinic or treatment that would improve his blood pressure without causing the overwhelming, debilitating fatigue he has been forced to try to deal with.

In spite of his overwhelming physical limitations, Appellant did what he could to try to deal with the lawsuit. He put together an Answer and hand-delivered it to Enright's attorney. He tried to deal with Enright's' Request to Produce that was served on Lehmann Engineering, Inc. by calling Enright's attorney, explaining that he was very sick, telling him that most of the documents requested did not exist. Enright's attorney told him to do what he could. Unfortunately, Appellant was simply physically unable to comply with the discovery requests at that time.

Because of his extremely debilitating physical condition, Appellant had a reasonable excuse for failing to act.

C. Appellant Acted with Due Diligence after Notice of the Entry of Judgment.

During this entire lawsuit, Appellant has been extremely ill. The judgment against Appellant individually was entered August 2, 2005. After undergoing surgery at the end of September, and once Appellant recovered from the heart attack that followed the next day, he has slowly begun to feel somewhat better. This helped enable him in October to complete the Financial Disclosure Forms the Court ordered him to complete, and in that same month to hire an attorney to represent him in this matter.

What constitutes a reasonable time depends on the facts of each case. Sommers, supra. The Minnesota Court of Appeals held that a delay of three months after notice of entry of judgment was not so long as to preclude a finding of due diligence in acting to vacate a judgment. Kemmerer v. State Farm Insurance, 513 N.W.2d 838 (Minn. App. 1994). Unlike this case, in Kemmerer, there was no claim that the appellant himself had

suffered from any illness that prevented him from acting sooner. In Letourneau v. Schindler Elevator Corp., No. A03-1704, 2004 WL 1381592 Minn.App. Jun 22, 2004, 2004.MN.0000939 <<http://www.versuslaw.com>>, the Court of Appeals affirmed the finding that a delay of seven months was not too long to bring a motion to vacate a judgment. In this case, Appellant served and filed its motion to vacate approximately 3 ½ months after entry of the default judgment.

For these reasons, Appellant acted to bring this motion to vacate with due diligence after notice of entry of the judgment.

D. There would be no Substantial Prejudice to Respondent Enright if the Motion to Vacate is Granted.

Granting Appellant's motion to vacate will not result in substantial prejudice to Enright. Enright will have the opportunity to present whatever evidence he might have as to Appellant's liability.

Delay, inconvenience and expense do not constitute substantial prejudice under Rule 60.02. Riemer v. Zahn, 420 N.W.2d 659, 662 (Minn. App. 1988); Kemmerer, supra.

"[T]he goal of all litigation is to bring about judgments after trials on the merits and for this reason courts should be liberal in opening default judgments." Sommers, supra at 468, 88 N.W.2d at 196 (1958). The trial court should keep in mind the liberal policy of allowing trial of causes on their merits. Taylor v. Steinke, 295 Minn. 244, 246, 203 N.W.2d 859, 860 (1973); Hinz v. Northland Milk & Ice Cream Co., 237 Minn. 28,

30, 53 N.W.2d 454, 455-56 (1952); Wiethoff v. Williams, 413 N.W.2d 533 (Minn. App. 1987).

For these reasons, granting Appellant's motion to vacate will not result in substantial prejudice to Plaintiffs.

Alternatively, and for all of the reasons described above, the judgments against Appellant should be vacated under Rule 60.02(f) because the equities weigh heavily in favor of petitioner and clearly require relief be granted to avoid an unconscionable result Wiethoff v. Williams, 413 N.W.2d 533, 536 (Minn. App. 1987); Albright v. Fraser, 1995 WL 497265 Minn.App. Aug 22, 1995, 1995.MN.21069 <<http://www.versuslaw.com>>.

IV. THE DISTRICT COURT ERRED IN NOT RE-INSTATING APPELLANT'S ANSWER TO ENRIGHT'S COMPLAINT AND NOT ORDERING ENRIGHT'S ATTORNEY TO RETURN THE ORIGINAL ANSWER TO APPELLANT'S ATTORNEY SO THAT IT CAN BE FILED WITH THE COURT.

The Minnesota Supreme Court has stated:

An order of dismissal on procedural grounds runs counter to the primary objective of the law to dispose of cases on the merits. Since a dismissal with prejudice operates as an adjudication on the merits, it is the most punitive sanction which can be imposed for noncompliance with the rules or order of the court or for failure to prosecute. It should therefore be granted only under exceptional circumstances

Firoved v. General Motors Corp. 277 Minn. 278, 283, 152 N.W.2d 364, 368 (1967). In

this case, Appellant's Answer was stricken as a sanction for:

- (a) failing to file his Answer with the Court;
- (b) failing to file a certificate of representation;
- (c) failing to file an informational statement;
- (d) failing to pay a filing fee; and

(e) failing to comply with the Court's May 20, 2005 order, which ordered Appellant to respond to the discovery requests that had been served on Lehmann Engineering, Inc.

A-28, A-32. Not one of these failures justifies the extreme sanction of striking Appellant's Answer under the circumstances here. Appellant's original Answer was in the possession of Enright's attorney and Appellant was unaware that he should have filed it with the court. Appellant was not even required to file a certificate of representation, since Enright had done so. Minn. Gen. R. Prac. 104. Appellant's failure to file an informational statement and pay a filing fee were relatively minor violations compared to the draconian punishment inflicted, and as discussed above, Appellant should not have been sanctioned for his corporation's failure to respond to discovery requests.

For all of these reasons, Appellant's Answer should be reinstated and Enright's attorney should be ordered to return Appellant's original Answer to Appellant's attorney so that it can be filed with the Court.

V. THE DISTRICT COURT ERRED IN NOT ALLOWING APPELLANT TO AMEND HIS ANSWER TO ENRIGHT'S COMPLAINT TO ASSERT A COUNTERCLAIM FOR ATTORNEY'S FEES AND COSTS UNDER THE LEASE.

Appellant should be allowed to amend his Answer to Enright's Complaint to assert a Counterclaim for attorneys' fees and costs under the Lease.

After a responsive pleading has been filed, a party may amend a pleading with the consent of the adverse party or by leave of the Court. Minn. R. Civ. P. 15.01 states: “[L]eave [to amend a pleading] shall be freely given when justice so requires.” In construing Rule 15.01 of the Minnesota Rules of Civil Procedure, the Minnesota

Supreme Court has stated that “amendments should be freely granted, except where to do so would result in prejudice to the other party.” Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 15.01; Hughes v. Micka, 130 N.W.2d 505, 510 (Minn. 1964)). See also Smith v. Woodwind Homes, Inc., 605 N.W.2d 418, 424 (Minn. Ct. App. 2000) (holding that motions to amend should be liberally granted when justice requires and prejudice to the adverse party does not result).

An amendment should be allowed “unless a party opposing an amendment can establish some prejudice other than merely having to defend against an additional claim or defense.” Envall v. Indep. Sch. Dist. No. 704, 399 N.W.2d 593, 597 (Minn. Ct. App. 1987) (citing Hughes, 130 N.W.2d at 510).

In this case, amending Appellant's Answer to add a Counterclaim for attorney's fees and costs under the Lease would not prejudice Enright, beyond merely having to defend against the claim. The claim itself should be no surprise to Enright, since he himself has asserted a claim under the same lease provision. The timing here is reasonable where the claim is being brought at the same time as the motion to vacate the judgment, and Enright still has a full opportunity to defend against the claim. Based upon the facts and circumstances, Enright cannot claim any prejudice other than merely having to defend against an additional claim or defense.

The Envall Court outlined additional factors that may be considered by a trial court in determining whether a motion for leave to amend should be granted: 1) the stage of the proceedings when the motion for leave to amend is brought (citing Tomlinson Lumber Sales, Inc. v. J.D. Harrold Co., 117 N.W.2d 203, 207 (Minn. 1962)); 2) whether

substantial delay would occur as a result of granting the motion (citing Hughes, 130 N.W.2d at 510); and 3) whether the proposed amendment would accomplish anything, e.g. whether the proposed amendment states a cognizable claim (citing Eisert v. Greenberg Roofing and Sheet Metal Co., 314 N.W.2d 226, 228-229 (Minn. 1982)). Envall, 399 N.W.2d at 597.

No delay will occur solely as a result of this proposed amendment. Furthermore, there should be no surprise because the counterclaim is based on exactly the same lease provision as is Enright's claim for attorney's fees and costs.

For the purposes of this motion, Appellant is not required to demonstrate that he will ultimately be successful in pursuing the counterclaim. Rather, he simply has the burden of demonstrating that the proposed amendments state a cognizable claim. Envall, 399 N.W.2d at 597.

Based upon the foregoing analysis, Appellant has demonstrated that his proposed amendment states a cognizable claim and that the proposed amendment does not burden Enright with any undue prejudice. Therefore, Appellant's motion to amend his Answer to assert a claim for attorney's fees and costs under the lease provision should be granted.

Conclusion

For all of the reasons set forth above, Appellant requests the Court to reverse the district court's order and (a) vacate the garnishment of the two joint accounts titled in the names of Zandra and Robert Lehmann because all of the funds in the two accounts belong to Zandra Lehmann and Enright does not have a judgment against her; (b) vacate

the judgments against Appellant individually under Rule 60.02 of the Minnesota Rules of Civil Procedure; (c) re-instate Appellant's Answer to the Plaintiff's Complaint; (d) order Enright's attorney to return Appellant's original Answer to Appellant's attorney so that it can be filed with the Court; and (e) allow Appellant to amend his Answer to add a claim for attorney's fees and court costs pursuant the lease agreement.

Respectfully submitted,

Date: March 16, 2006

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).