CASE NO. A09-1591

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State of Minnesota
In Court of Appeals

MIRAB Y. BAKKEN,

Plaintiff/Appellant,

vs.

OLAF HELGESON, ESTATE OF OLAF HELGESON, WALTER HOLCOMB, CAROL J. LINDGREN, MYRNA O. WARWICK, MARY A. HICKERSON, LINDA J. WINKLER, WAYNE H. YOEMANS, CATHERINE YOEMANS, SPRUCE SHADOWS, INC., a Minnesota Corporation, ERICH SCHISSEL, FIRST NATIONAL BANK BAGLEY, FOSSTON,

Defendant/Respondent.

APPELLANT'S BRIEF AND APPENDIX

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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).

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STATEMENT OF LEGAL ISSUES

I.

Is a marital lien, which by its terms, does not mature until the property pledged as security is sold, subject to the ten year statute of limitations as provided by MSA §548.09 and/or 550.01?

The District Court answered the above question in the affirmative.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

On June 15, 1983 Mirab Bakken's (f/k/a Mirab Helgeson) ("Ms. Bakken") marriage to Olaf Helgeson (Mr. Helgeson) was dissolved. The judgment and decree provided that Ms. Bakken quit claim her interest in the parties homestead to Mr. Helgeson. As and for her share of the property Ms. Bakken "shall have a lien against said homestead real estate in the amount of $5,000.00 payable when the premises are sold." (App. 1-6).

The judgment and decree was filed in the County Recorder's office on June 16, 1983[1].

In the years after the divorce Ms. Bakken released portions of the property from her lien, without consideration.

In 1993 Mr. Helgeson conveyed the remainder of the property to his children, again without consideration, retaining a life estate in the real property.

Mr. Helgeson died June 11, 2007. In November of that year his children sold the property to Defendant Spruce Shadows, Inc. a Minnesota corporation who, in turn, sold a portion thereof to Erich Schissel.

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[1] The decree also provided that in the event Ms. Helgeson fails to deliver said quit claim deed to Mr. Helgeson, a certified copy of the judgment and decree shall serve to transfer all right, title, interest and equity in said homestead to said petitioner. Therefore, the recording of the certified copy of the decree passed Ms. Bakken's interest to Mr. Helgeson (App. 7).

In September, 2008 Ms. Bakken commenced a foreclosure by action, alleging, among other things, that she had a valid lien, and sought to have the property sold to satisfy it.

Respondents moved for summary judgment to which Ms. Bakken resisted. The Trial Court concluded that Ms. Bakken's caused of action, which was initiated approximately fifteen years after the ten year statute of limitation (as the Court noted and provided in MSA §548.09/550.01) was unenforceable.

ANALYSIS

A summary judgment entered pursuant to an Order of the Trial Court is a final adjudication on the merits and is appealable. (MRCAP 103.03 (A). On appeal the Court of Appeals must determine (1) whether any issue of material fact exists, or (2) whether the Trial Court erred in its application of the law. Betlach vs. Wayzata Condominium 281 N.W.2d 325. The evidence must be viewed in the light most favorable to the one against whom summary judgment was granted. Abdallah, Inc. vs. Martin, 242 Minn. 416, 65 N.W.2d 641.

In order to determine the propriety of Ms. Bakken's position the definition of the relevant terms of the divorce judgment need to be determined.

First, what is a lien upon land?

A lien upon land is a mere hold or claim thereon as security for some debt or charge of the lienor (Marquette National Bank vs. Mullin, 205 Minn. 562, 287 N.W. 233; Atwater vs. Manchester Savings Bank 48 N.W. 187). A common definition of a lien is that it is a charge upon land for the payment of a debt or

duty. See 25 Words and Phrases, Permanent Edition, Lien, page 228; 33 Am. Jur. Liens §2. A lien is no sense and estate or interest in the land. Donohue vs. Ladd, 31 Minn. 244, 17 N.W. 381; Brackett vs. Gilmore, 15 Minn. 245; Bidwell vs. Webb, 10 Minn. 59. Applying the above definitions to the instant case would suggest that the lien Ms. Bakken has is a hold or claim on the property of Mr. Helgeson intending that the lien should be a charge or claim upon his property subject to whatever triggering events may occur such that would reduce or terminate the lien. Thus the use of the "lien" was intended in its legal and popular sense. Gau vs. Hyland, 230 Minn. 235, 41 N.W.2d 444.

The concept of a "sale" reasonably assumes the acquisition of something for value Redmound vs. Redmound, 594 NW2d. 272. In the context of the instant case the lien of Ms. Bakken remains as such until and if the property is sold. Accordingly, she does not accrue a cause of action for which the Statute of Limitations begins to run until and when the property is sold (Marquette National Bank of Minnesapolis vs. Mullin, id). It is disputed between the parties whether any prior conveyances of parts of the property constituted a sale. However, the District Court, in its reasoning determined that the Statute of Limitations began to run upon the entry of judgment, of the divorce itself, in 1983. If Ms. Bakken's right to claim the $5,000.00 only accrues when the property is sold there is nothing she can do to force the payment of the money due from her former husband. It has been repeatedly held that the Statute of Limitations begins to run when a cause of action accrues. See Weston vs. Jones, 160 Minn. 32, 199 N.W. 431; Everett vs. O'Leary,

90 Minn. 154, 95 N.W. 901, and Ganser vs. Ganser, 83 Minn. 199, 86 N.W. 18. If the Statute of Limitations is to be considered as applicable to the instant case then the statute has not begun to run until it can be reasonably determined that some or all of the property has been conveyed for value.

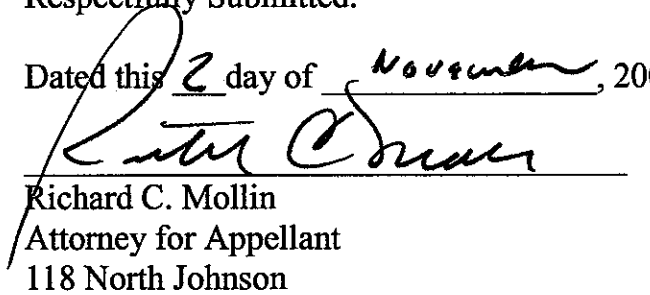
At first glance enforcement of the 1983 judgment would appear to be barred by the Statute of Limitations. However, if the lien contained within the judgment only begins to be payable after the sale of the property then the ten year Statute of Limitations has no effect until such time as Ms. Bakken knew or should have known of a sale.

In the instant case the first time evidence of record shows a sale of the property is in November, 2007 when Mr. Helgeson's children sold the property to Spruce Shadows.

For the foregoing reasons the Summary Judgment of the District Court should be vacated and set aside and this matter returned to the District Court to determine if any of the previous transactions represented a sale of the real estate and, if so, when such matters may or did occur.

Respectfully Submitted.

Dated this 2 day of November, 2009.



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