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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1530**

Scott W. Wildung and Susan K. Wildung,  
Appellants,

vs.

The Bank of New York Mellon  
as Trustee for RBSGC Mortgage Loan Trust  
Mortgage Pass-Through Certificates, Series 2005-RPI,  
Respondent.

**Filed May 5, 2014  
Affirmed  
Johnson, Judge**

Otter Tail County District Court  
File No. 56-CV-11-3019

Charles A. Krekelberg, Sarah Estep-Larson, Krekelberg, Skonseng & Miller, P.L.L.P.,  
Pelican Rapids, Minnesota (for appellants)

Bradley N. Beisel, David J. Krco, Beisel & Dunlevy, P.A., Minneapolis, Minnesota (for  
respondent)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and  
Crippen, Judge.\*

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\*Retired judge of the Minnesota Court of Appeals, serving by appointment  
pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**JOHNSON**, Judge

Scott and Susan Wildung jointly own their home. But only Scott executed a promissory note to borrow the money needed to purchase the home, and only Scott executed a mortgage to secure repayment of the loan. After the Wildungs defaulted on the loan, the mortgage holder commenced this action to establish that the mortgage is valid against both Scott's interest and Susan's interest. On a motion for summary judgment, the district court granted relief to the mortgage holder and ruled that Susan ratified the mortgage. We affirm.

### FACTS

In early 2001, the Wildungs contacted a mortgage broker to obtain financing for the purchase of a home. After they submitted financial information to the broker, the broker recommended that, because of Susan's credit history, they rely only on Scott's ability to borrow money for the purchase. Thereafter the couple used only Scott's name and credit information to obtain financing.

In July 2001, the Wildungs agreed to purchase a home in the city of Fergus Falls. Both Scott and Susan signed the purchase agreement, and both signed an addendum indicating that they intended to finance the purchase. Thereafter, Susan communicated with the mortgage broker on behalf of the couple. Scott was approved for a loan in the amount of the purchase price, \$73,900.

In August 2001, the Wildungs closed on their purchase. Both Scott and Susan attended the closing. The warranty deed transfers the property to both Scott and Susan as

joint tenants. Only Scott signed the promissory note. Only Scott signed a mortgage that was granted to the North American Mortgage Company. The mortgage indicates that the sole “borrower” is “Scott Wildung, a married man.” The mortgage states that Scott is “lawfully seised of the [home] and has the right to mortgage . . . the [home].”

After the Wildungs moved into the home, Susan handled most of the couple’s finances and made mortgage payments by writing checks on the couple’s joint checking account. For several years, Susan handled communications with the mortgage holder whenever necessary to remedy late payments or missed payments. Susan believed that she and Scott would lose their home if their mortgage payments were not brought up to date. In 2011, Susan communicated with Wells Fargo (which held the mortgage at that time) in an attempt to make the couple’s mortgage payments current. In August 2011, she sent a cashier’s check to Wells Fargo for \$3,600, but the bank returned the check because it did not represent the total amount due. Wells Fargo began the foreclosure process. Susan submitted financial information to Wells Fargo in an attempt to prevent foreclosure.

In July 2011, Wells Fargo assigned the mortgage to The Bank of New York Mellon. In November 2011, the bank commenced this lawsuit against the Wildungs. The bank initially pleaded only one cause of action, a claim of reformation, to make Susan a party to the mortgage. In April 2012, the bank amended its complaint to allege six claims: (1) reformation of the mortgage; (2) equitable estoppel; (3) estoppel by ratification; (4) unjust enrichment; (5) equitable lien; and (6) breach of mortgage covenants and warranties.

In August 2012, the bank served and filed a motion for partial summary judgment on its second and third claims. In September 2012, the Wildungs served and filed a cross-motion for summary judgment, which sought judgment in their favor on all of the bank's claims. In January 2013, the district court granted the bank's summary-judgment motion in part by granting relief to the bank on its ratification claim, and denied it in part by denying relief on the bank's estoppel claim. The district court also denied the Wildungs' cross-motion for summary judgment. The Wildungs appeal from the partial grant of the bank's motion.

## **D E C I S I O N**

A district court must grant a motion for summary judgment if the evidence demonstrates "that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to the district court's legal conclusions on summary judgment and views the evidence in the light most favorable to the non-moving party. *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 6 (Minn. 2012).

The Wildungs argue that the district court erred by granting summary judgment in the bank's favor on the bank's ratification claim, for four reasons. We note at the outset that neither the Wildungs nor the bank have challenged the district court's ruling that sections 507.02 and 507.03 of the Minnesota Statutes do not apply to the mortgage in this

case.<sup>1</sup> The effect of the district court’s interpretation of sections 507.02 and 507.03 is that Scott and Susan own their home as joint tenants, but the mortgage is valid only against Scott’s interest in the home, unless Susan ratified the mortgage. Because neither party has called the district court’s analysis into question with respect to the interpretation of sections 507.02 and 507.03, we assume, for purposes of this case, that the district court’s ruling is correct in that respect.

A district court may conclude that a party has ratified an agreement if the party “give[s] sanction and validity to something done without authority.” *Steffens v. Nelson*, 94 Minn. 365, 368, 102 N.W. 871, 873 (1905) (quotation omitted). To establish a claim of ratification, a plaintiff must prove that a defendant, “having full knowledge of all the material facts, confirm[ed], approve[d], or sanction[ed], by affirmative act or acquiescence, the originally unauthorized act of another, thereby creating an agency relationship and binding the principal by the act of his agent as though that act had been done with prior authority.” *Anderson v. First Nat’l Bank of Pine City*, 303 Minn. 408, 410, 228 N.W.2d 257, 259 (1975). The ratification doctrine has been applied in the context of a purchase money mortgage. *Wells Fargo Home Mortg., Inc. v. Chojnacki*, 668 N.W.2d 1, 5 (Minn. App. 2003).

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<sup>1</sup>The first of these two statutes provides: “If the owner is married, no conveyance of the homestead, except a mortgage for purchase money under section 507.03, . . . shall be valid without the signatures of both spouses.” Minn. Stat § 507.02 (2012). The second statute provides: “When a married individual purchases real property during marriage and mortgages the real property to secure the payment of the purchase price . . . , the other spouse shall not be entitled to any inchoate, contingent, or marital property right or interest in the real property as against the mortgagee . . . .” Minn. Stat. § 507.03 (2012).

### A.

The Wildungs argue that the district court erred by concluding that there are no genuine issues of material fact about the unauthorized act that was ratified. The supreme court caselaw requires the bank to prove that a defendant ratified an “originally unauthorized act of another.” *See Anderson*, 303 Minn. at 410, 228 N.W.2d at 259. This court’s caselaw implies that an unauthorized act occurs if one person executes a mortgage on his or her own behalf only, even though his or her spouse also has an ownership interest in the property being mortgaged. *See Chojnacki*, 668 N.W.2d at 5; *see also National City Bank v. Engler*, 777 N.W.2d 762, 766 (Minn. App. 2010), *review denied* (Minn. Apr. 20, 2010). In this case, it is undisputed that both Scott and Susan acquired the property but that only Scott signed the mortgage. The mortgage purported to encumber the entire property, even though Scott was authorized to encumber only his own interest in the property. In light of *Chojnacki* and *Engler*, the district court did not err by concluding that the bank had established conclusively the existence of an unauthorized act.

### B.

The Wildungs also argue that the district court erred by concluding that genuine issues of material fact do not exist as to whether Susan had “full knowledge of all the material facts.” *See Anderson*, 303 Minn. at 410, 228 N.W.2d at 259.

The record indicates that Susan was involved in every aspect of the couple’s relationship with the lender and the various mortgage holders. The following facts are undisputed: The Wildungs originally intended to be joint borrowers. When Susan’s

credit history became an obstacle, she helped Scott complete the application for the loan. Susan attended the closing and observed Scott sign various documents. The mortgage purports to encumber the entire property, which would encompass both Scott's interest and Susan's interest. Susan acted and spoke as if she shared Scott's obligation to ensure repayment of the loan, in part by making statements such as, "we had a mortgage to pay." Susan knew that the proceeds of Scott's loan was used to purchase the home that they jointly owned. Susan personally wrote the checks for Scott's monthly mortgage payments from the couple's joint checking account. Susan believed that the bank could foreclose on their property and that they would lose their home if they did not make their mortgage payments. Based on these undisputed facts, there is no genuine issue of material fact as to whether Susan had "full knowledge of all the material facts." *See Anderson*, 303 Minn. at 410, 228 N.W.2d at 259.

### C.

The Wildungs also argue, in the alternative, that the district court erred on the ground that any ratification by Susan would be invalid because it is not in writing. In response, the bank argues that the Wildungs' argument is, in essence, an argument about the statute of frauds, which they did not present to the district court and, thus, forfeited. The cases on which the Wildungs rely were decided based on the statute-of-frauds defense. *See Judd v. Arnold*, 31 Minn. 430, 432, 18 N.W. 151, 151-52 (1884); *Gresser v. Hotzler*, 604 N.W.2d 379, 385-86 (Minn. App. 2000); *Olson v. Ronhovde*, 446 N.W.2d 690, 693-94 (Minn. App. 1989). The Wildungs did not plead an affirmative defense based on the statute of frauds in their answer, and the district court did not consider the

statute-of-frauds issue when resolving the parties' summary-judgment motions. This court generally will not consider arguments that are raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Doe ex rel. Doe v. Columbia Heights Sch. Dist.*, 842 N.W.2d 38, 42-43 (Minn. App. 2014). Thus, we decline to address the Wildungs' statute-of-frauds argument.

#### **D.**

The Wildungs last argue that the district court erred on the ground that ratification is impossible because the bank's mortgage is void with respect to Susan's "undivided one-half interest" in the property.

The Wildungs rely on *Wells Fargo Home Mortg., Inc. v. Dietz*, No. Civ. 04-3061 (JNE), 2005 WL 758595 (D. Minn. Mar. 30, 2005). The facts of *Dietz* are similar to the facts of this case. *See* 2005 WL 758595, at \*1. After the couple filed a bankruptcy petition, the bankruptcy trustee sought to avoid the mortgage as to the wife's interest in the property. *Id.* In response, the mortgage holder argued that the mortgage was effective against the entire property, even without the wife's signature, based on sections 507.02 and 507.03. *Id.* at \*2. The federal district court concluded that sections 507.02 and 507.03 do not apply if both spouses acquire property as joint tenants and only one spouse has signed a purchase money mortgage. *Id.* at \*2-4. The federal district court reasoned that sections 507.02 and 507.03 apply only to inchoate marital property rights, not to presently held property rights. *Id.* at \*3. Because the wife did not sign the mortgage and had a non-inchoate interest in the property as a joint tenant, the federal

district court determined that the mortgage was “null [and] void” against the wife’s “undivided one-half interest” in the property. *Id.* at \*4.

In this case, the district court based its ruling in significant part on *Dietz*. The bank and the Wildungs agree that *Dietz* is a correct application of Minnesota law, and neither party has challenged the district court’s reliance on *Dietz*. Thus, for purposes of this appeal, we assume that, prior to the commencement of this action, the mortgage was void with respect to Susan’s undivided one-half interest in the property. Nonetheless, the *Dietz* decision does not address ratification, and it does not appear that the parties in that case raised the issue. *See id.* at \*1-4. Thus, *Dietz* does not foreclose the possibility that ratification may be appropriate and effective in altering the parties’ respective rights and obligations.

The Wildungs also rely on *Anderson*, 303 Minn. 408, 228 N.W.2d 257. The Wildungs contend that *Anderson* stands for the proposition that a void mortgage cannot be ratified. In *Anderson*, a wife forged her husband’s signature on a promissory note and mortgage deed to obtain a mortgage on their homestead, which they owned as joint tenants. *Id.* at 409-10; 228 N.W.2d at 258. The supreme court determined that the mortgage was void under section 507.02 because the mortgage did not contain the husband’s actual signature. *Id.* at 411, 228 N.W.2d at 259. The supreme court then considered whether the husband ratified the mortgage. *Id.* at 411-12, 228 N.W.2d at 259-60. The supreme court first noted that a person cannot ratify an action that they could not have originally authorized. *Id.* at 412, 228 N.W.2d at 260. The supreme court then looked to a statute that, at that time, provided, “No contract between husband and wife

relative to the real estate of either, or any interest therein, nor any power of attorney or other authority from the one to the other to convey real estate, or any interest therein, shall be valid . . . .” *Id.* at 411, 228 N.W.2d at 259 (quoting Minn. Stat. § 519.06 (1974)). The supreme court reasoned that, because the husband could not have authorized his wife to sign the mortgage for him under section 519.06, the husband could not ratify the mortgage. *Id.* at 411-12, 228 N.W.2d at 259-60.

When *Anderson* was decided, section 519.06 invalidated real estate agreements between spouses, without exception. *See* Minn. Stat. § 519.06 (1974). When Scott executed the mortgage in this case, section 519.06 contained exceptions to the general rule that spouses may not enter into contracts concerning real estate owned by a spouse, exceptions that were not present in the 1974 version. *See* Minn. Stat. § 519.06 (2000). For example, since at least 2000, a person may convey an interest in real property to his or her spouse and may appoint a spouse as an attorney-in-fact for purposes of real estate transactions. *See* Minn. Stat. §§ 519.06, 500.19, subd. 4(b) (2000). Thus, in 2001, Susan could have authorized Scott to encumber her interest in their property, either by transferring her interest in the property to him or by authorizing him to act on her behalf as her attorney-in-fact. Because the statute was amended after 1974, *Anderson* no longer is valid to the extent that it stated that a party was not permitted to ratify a void mortgage.

Thus, the district court did not err by rejecting the Wildungs’ argument that ratification is impossible because the bank’s mortgage is void with respect to Susan’s undivided one-half interest in the property.

In sum, the district court did not err by granting the bank's motion for partial summary judgment and by concluding that Susan ratified the mortgage.

**Affirmed.**