

NO. A05-1450

State of Minnesota
In Court of Appeals

Darrell T. Peterson,

Respondent,

v.

Arthur B. Johnson and Mary Ann Johnson,

Appellants.

APPELLANTS' REPLY BRIEF

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INTRODUCTION

Appellants Arthur B. and Mary Ann Johnson (the “Johnsons”) submit this Reply Brief to the Brief of Respondent Darrell T. Peterson (“Peterson”). For the reasons stated below, Peterson’s brief violates Minn. R. App. P. 128(c) and fails fairly to state the law and its application to the facts.

In his brief, Peterson attempts to eat his cake and have it, too. When his ends are served by certain evidence in the summary judgment record, he urges this court to rely on it. When his ends are not served, he either (a) conveniently ignores conflicting evidence, or, (b) as in the case of the ambiguous December 1986 agreement (the “Agreement”), requests in contradictory fashion that the court both rely on the Agreement and void it. Peterson would have the court rely on the Agreement to conclude that the transactions that took place between the parties in September and December of 1986 constituted an equitable mortgage, but also void the Agreement as usurious—a conclusion which Peterson argues entitles him to fee simple ownership of the Property at no cost and without compensating the Johnsons, the fee owners of record and the payers of the property taxes since the mid-1990s, when the Johnsons paid the delinquent back taxes on the Property and recorded the deed absolute on its face.

In considering the merits of this appeal, the court must be mindful of the factual framework underpinning the dispute. Peterson conveyed the Property to Johnson in September 1986; the only record evidence on the value of the land was (a) what the Johnsons paid for it, and (b) conflicting affidavit testimony on whether a third party had

offered Peterson less than what the Johnsons paid¹; the only record evidence on what the Property may now be worth is Peterson's affidavit claim that it is worth \$1,000 per acre. *See RA-7*. After sitting on any claim he purports to have to the Property for over 17 years, Peterson sued the Johnsons in 2003 and now seeks to recover a windfall. Peterson was not entitled to summary judgment at the district court because (1) his claim was barred by the statute of limitations; and (2) material issues of fact exist. This court must reverse the district court's grant of summary judgment and either rule in favor of the Johnsons outright because Peterson's claim is time-barred, or remand the case for trial because genuine issues of material fact exist over the nature of the conveyance.

I. PETERSON HAS FAILED TO STATE THE FACTS FAIRLY AND WITH COMPLETE CANDOR.

The Minnesota Rules of Civil Appellate Procedure provide the form of brief that both appellant and respondent are required to submit on an appeal from a judgment of the District Court. *See* Minn. R. Civ. App. P. 128.02, subd. 1. Among other requirements, "the facts must be stated fairly, with complete candor, and as concisely as possible." Minn. R. Civ. App. P. 128.02, subd. 1(c). Additionally, "Each statement of a material fact shall be accompanied by a reference to the record." *See id.* Peterson's brief fails to set forth fairly the facts, instead arguing Peterson's interpretation of the facts, and fails to cite to any portion of the record in support of several material factual assertions.

Among the factual assertions that Peterson fails to state fairly and candidly are the following:

¹ Compare A.A.7 (Arthur Johnson affidavit) with RA-2 (Kathleen Peterson affidavit).

- Peterson claims that the Johnsons informed him,

That they would no longer allow Peterson to redeem his land for repayment of the loan plus interest, but now required him to pay the current full market value of the land which was then conservatively valued at \$360,000.

Respondent's Brief ("R. Brief") at 6. Peterson mischaracterizes the contents of the letter dated December 28, 2002, from Arthur Johnson to Peterson, to which Peterson cites in support of the above claim. In the December 28, 2002, letter, Arthur Johnson merely states that:

[O]ur economy has changed over the last 16 years, as you well know. The 1986 dollar has a much different value as do land values. If you are interested in repurchasing this land, I am willing to give you the "right of first" refusal when it is offered for sale.

RA-10. Peterson fails to cite to any portion of the record that supports the claim that the Property was, in 2004, worth \$360,000, and takes liberties in interpreting the letter of Arthur Johnson in the Statement of the Facts.

- Peterson argues that the notion that the Petersons conveyed the Property to the Johnsons and retained an option to repurchase is "absurd given the insignificant size of the loan extended (\$9,500.00) in comparison to the value of the 360-acre parcel of property given as security (\$360,000.00, or more)."² R. Brief at 10. Peterson's characterization of the value of the Property is a disingenuous and highly misleading conflation. By this

² The record contains evidence that the Johnsons either paid \$9,500.00 for the Property or \$9,200.00. The amount, for purposes of this appeal, does not raise a genuine issue of material fact.

assertion, Peterson would have the court believe that at the time of the 1986 conveyance to the Johnsons, the Property was worth \$360,000.00. There is absolutely no evidence to support this misleading and implausible assertion.³ The only record evidence that the Property may have been worth \$360,000.00 in 2003, when Peterson instituted his action, is Peterson's self-serving opinion in his affidavit. RA-7. No evidence in the record supports his claim in his brief that the Property was worth that amount in 1986. The only evidence of the arguable worth of the Property in 1986 is the amount that the Johnsons advanced to the Petersons for the Property: \$9,200.00.⁴

- Peterson misleadingly argues that the Johnsons have taken the position that the contract is unambiguous because, in their Answer to the Complaint, the Johnsons stated, "the Agreement speaks for itself." R. Brief at 19. Peterson mischaracterizes the Johnsons' statement by disingenuously turning a common pleading convention for refusing to accept an opposing

³ Indeed, had the Property been worth such a handsome sum in 1986, it strains credulity that Peterson would have equitably mortgaged the Property to the Johnsons for \$9,500.00.

⁴ The record evidence of the 1986 value of the Property suggests that it was worth either what the Johnsons paid for it, *or less*: (a) the Johnsons' purchase price of \$9,500.00; (b) Arthur Johnson's affidavit testimony that Kathleen Peterson told him about a third party who had offered less than the \$9,500.00 that the Johnsons were willing to pay for it; and (c) Kathleen Peterson's conflicting affidavit testimony denying that she had ever told Arthur Johnson that a third party had offered them less than the Johnsons' purchase price for the Property.

party's characterization of a document into a purported admission about the meaning of the document. This is apparent once the phrase seized upon by Peterson is restored to its proper context, *e.g.*, in paragraph 5 of the Johnsons' Answer and Counterclaim: "With respect to Paragraph 4 of the Complaint, the Johnsons affirmatively state that the Agreement speaks for itself *and deny Plaintiff's characterization of the same.*" RA-18 (emphasis added).

Among the purported "facts" that Peterson fails to present fairly and candidly are the following:

- Peterson argues that in 1986 he approached the Johnsons for a loan (R. Brief at 4); Peterson fails to cite to the record for this factual proposition and the Johnson dispute this characterization (A.A.7);
- Peterson argues that, "The written agreement, signed and acknowledged by all the parties, *clearly states* that the deed was given according to its terms." R. Brief at 5 (emphasis added). In fact, the written agreement contains no such statement (*see* A.A. 3-4 (Agreement));
- Peterson argues that he continues to make regular monthly payments on a mortgage he obtained on the Property. R. Brief at 6. In support of this claim, Peterson improperly places before the court a document purporting to be a mortgage that Peterson took against the Property in 1994 and that is not a part of the record. RA-29. The Johnsons by separate motion have requested this court to strike the mortgage from the record and Peterson's

argument in reliance on it. As to the substance of the improperly-included document, the two-page mortgage contains no legal description to verify whether it relates to the Property. Moreover, the document only serves further to indict the profligate Peterson: if the 1994 mortgage is what Peterson purports it to be, at the same time he was failing to pay the Johnsons (on what he claims was a loan), he was borrowing additional money (which, again, he failed to use to “repay” the Johnsons and save his interest in the Property) and further encumbering the Property that he had deeded to the Johnsons some eight years prior.

- Peterson argues that, “[U]pon discovering that the Johnsons had recorded the deed, Peterson wrote Johnson requesting an explanation and return of the title to his land.” R. Brief at 6. Peterson does not cite to the record to support this factual proposition and there is no such letter in the record.

II. PETERSON HAS MISCONSTRUED THE LAW AND ITS APPLICATION TO THIS DISPUTE.

A. Peterson’s Only Potential Claim to the Property Is Barred as an Untimely-Brought Adverse Claim to Property.

Peterson argues that his claim need not have been brought pursuant to Minn. Stat. § 559.01 and that, even if it had been brought under this statute, the six-year statute of limitations found in Minn. Stat. § 541.05 is inapplicable and does not bar his claim. *See* R. Brief at 10, 16. Peterson’s argument, as detailed more fully in Appellants’ initial Brief, ignores that Peterson’s action requested the court to construe the conveyance, absolute on its face, to be an equitable mortgage and to direct that the mortgage could “be

foreclosed only by action.” RA-14 (Complaint, Prayer for Relief, ¶ 1). Additionally, Peterson prayed for a determination that the Johnsons had no interest in the Property and that he was the rightful fee owner. *Id.* Peterson’s claims cannot be characterized as anything other than adverse claims to the Property—real property to which Peterson claims title notwithstanding the Johnsons’ record fee ownership. *See* Appellants’ Brief (“A. Brief”) at 4-6 (discussing proper characterization of Peterson’s claim in more detail). It is patent that such claims are governed by the Adverse Claims to Property Statute, Minn. Stat. § 559.01.

Peterson argues further that a six-year statute of limitations does not apply to actions under Minn. Stat. § 559.01. This begs the question that if Minn. Stat. § 559.01 does *not* apply to Adverse Claims to Property, then what statute of limitations does? The answer: there is no other limitations period that applies. An Adverse Claim to Property, which has codified the common-law action of quiet title, does not contain an explicit statute of limitations. *See* Minn. Stat. § 559.01 (no statute of limitation specified). Pursuant to Minnesota Statutes, any statutory liability which does not contain an explicit statute of limitations is governed by the six-year statute of limitations found in Minn. Stat. § 559.01.

Through vague and scattergun pleading, Peterson has attempted to present his claim in a way that purports to defy characterization in the hope that no statute of limitations could be held to bar the relief he seeks. On the contrary, no matter how Peterson’s action is characterized, the statute of limitations has run on any claim arising out of a now 19-year-old conveyance of title to the Johnsons that was absolute on its face.

Accordingly, Peterson is foreclosed from collaterally attacking the Johnsons' fee simple title to the Property.

B. Peterson Fails to Cite to This Court the Applicable Standard of Review for Interpretation of Statutes.

Peterson argues that the 15-year statute of limitations for actions to declare a conveyance an equitable mortgage, Minn. Stat. § 559.19, is not applicable to the cause of action that he brought in the district court. *See* R. Brief at 14-16. Under this limitations statute, Peterson was required to commence his action “within 15 years from the time of execution” of the conveyance. *See* Minn. Stat. § 559.19. Peterson and his then-wife executed the warranty deed conveying the Property to the Johnsons on September 23, 1986—more than 17 years before he commenced this action.

Peterson argues (and the district court erroneously concluded) that the statute of limitations governing mortgage foreclosures should apply, not the limitations period for actions to declare an equitable mortgage. *See id.* Peterson's argument that Minn. Stat. §§ 559.18 and 559.19 do not apply is premised upon his assertions that: (1) the caption to Minn. Stat. § 559.18, “Conveyance by mortgagor to mortgagee,” demonstrates conclusively that the statute does not apply to the transactions here; (2) the language of the statute is unambiguous; and (3) even if there is an ambiguity, courts have previously interpreted the statute in a way which support Peterson's position. *See* R. Brief at 16 (“[E]very predecessor statute provided by the Johnsons [in the Johnsons' Appendix] is entitled “*Conveyance by mortgagor to mortgagee.*” * * * “There is no ambiguity in

Minn. Stat. §§ 559.18 and 559.19.”); *see also* pp. 14-16 (discussing prior determinations from decisions dating between 1921 and 1934).

Peterson contends that the caption of the statute unambiguously manifests the intention of the legislature to limit the statute’s application to an existing mortgagor/mortgagee relationship. *See* R. Brief at 16. But Minn. Stat. § 645.19, which sets forth permissible construction of statutory language, provides clearly that courts may not consider the caption to be part of the statute. *See* Minn. Stat. § 645.49; *See also Ass. Builders & Contractors v. Ventura*, 610 N.W.2d, 293, 303 (Minn. 2000). Peterson’s argument that the caption of Minn. Stat. § 559.18 is controlling in determining the intent of the legislature is therefore not a correct statement of the law.

Next, Peterson argues that the language of the statute, itself, is not ambiguous. *See* R. Brief at 16. This court reviews questions of statutory construction *de novo*. *Houston v. Int’l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002). When the language of a statute is ambiguous, courts may consider the legislative history as one factor in construing the intent of the legislature. Minn. Stat. § 645.16, subd. 7 (2004). After all, “the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” *See id.* The court may also look to the occasion and necessity for the law, the circumstances under which it was enacted, the mischief to be remedied, and other factors in aiding its interpretation of an ambiguous statute. *See id.* All this suggests that the legislative histories provided by the Johnsons, which illustrate that the purpose of Minn. Stat. §§ 559.18 and 559.19 are to govern the limitation on actions for equitable mortgages, are the proper guide to the court in its construction of the

statutes. *See* A. Brief at 6-9. Upon careful review of the histories, it is clear that the legislature intended for Minn. Stat. §§ 559.18 and 559.19 to apply not only to parties with a prior relationship as mortgagor/mortgagee, but also to parties “sustaining”⁵ a relationship of mortgagor/mortgagee. *See id.*; *see also*, A. A. 14-23. The argument that the legislature intended one limitation on actions for equitable mortgages between parties with a previous relationship as mortgagor/mortgagee and another completely different limitation on actions for parties “sustaining” a relationship as mortgagor/mortgagee is simply not reasonable. The Johnsons refer the court to their initial Brief’s discussion of the legislative history (pp. 6-9), which demonstrates in more detail that the legislature clearly intended that Minn. Stat. §§ 559.18 and 559.19 apply to equitable mortgages.

Finally, Peterson argues that even if there is an ambiguity in the statute, courts have previously interpreted the statute in a way that dictates the outcome in this case. *See* R. Brief at 14-16. This is not a fair statement of the holdings in the cited cases. First, the issues in the cases cited by Peterson are distinguishable from the issues presented here. Those decisions may demonstrate that Minn. Stat. §§ 559.18 and 559.19 limited the ability of individuals already in a mortgagor/mortgagee relationship to pursue a claim for equitable mortgage, but the decisions do not foreclose the application of Minn. Stat. §§ 559.18 and 559.19 to a situation where the parties to a transaction “sustain” a mortgagor/mortgagee relationship. Here, the evidence is uncontradicted that the deed conveying the Property passed from Peterson to Johnson in the autumn of 1986

⁵ Minn. Stat. § 559.18 applies to conveyances “absolute in form between parties *sustaining* the relation of mortgagor and mortgagee.” (emphasis added).

and that the Agreement between the parties was not executed until the winter of 1986. See A.A. 1, 3. These facts make the transactions between the Petersons and the Johnsons distinguishable from the cases cited by Peterson in support of his argument that Minn. Stat. § 559.19 does not apply. Compare *Craig v. Baumgartner*, 191 Minn. 42, 254 N.W. 440 (1934); *McKinley v. State ex rel Sageng*, 188 Minn. 325, 247 N.W. 389 (1933); *Roehrs v. Thompson*, 179 Minn. 73, 228 N.W. 340 (1929); *Jentzen v. Pruter*, 148 Minn. 8, 180 N.W. 1004 (1921). Second, in the case of ambiguity, the court looks to the intention of the legislature as promulgated in the statute and in any legislative history to determine the intention. See Minn. Stat. § 645.16, subd. 7. The court should not look to decisions factually distinct from the case presented to aid in the interpretation of an ambiguous statute.

Because the limitation on actions seeking a declaration of an equitable mortgage found in Minn. Stat. §§ 559.18 and 559.19 bars the action which Peterson attempted to bring, the court should reverse the district court's grant of summary judgment and hold that Peterson's claim to the Property is barred as untimely.

C. Because Intent Is a Necessary Element of the Claim Upon Which the District Court Granted Summary Judgment, and the Intention of the Parties Cannot Be Ascertained from Ambiguous Agreements, the District Court Erred in Granting Summary Judgment.

Only if a court determines that "both parties so intended" should a transaction be construed to be an equitable mortgage. *Ministers Life & Cas. Union v. Franklin Park Towers Corp.*, 307 Minn. at 134, 138, 239 N.W.2d 207, 211 (1976). Intention is ascertained by the written memorials of the transaction along with the attendant facts and

circumstances. *Westberg v. Wilson*, 185 Minn. 307, 309, 241 N.W. 315, 316 (1932). But the intention of the parties cannot be ascertained by the written memorials if they are ambiguous, meaning that the memorials are “susceptible to more than one interpretation based on [the] language alone.” *Lamb Plumbing & Heating Co. v. Krause-Anderson of Minneapolis, Inc.*, 296 N.W.2d 859, 862 (Minn. 1980).

Here, Peterson argues that three separate documents must be read together to evince the intent of the parties unambiguously: the letter from the Johnsons to the Petersons dated August 25, 1986 (the “Letter”) (A.A. 10); the agreement between the Johnsons and the Petersons dated December 15, 1986 and December 5, 1986 (the “Agreement”) (A.A. 3); and the warranty deed from the Petersons to the Johnsons dated December 4, 1986 (the “Deed”) (A.A. 1). After arguing that these memorials of the 1986 transaction unambiguously provide for an equitable mortgage, Peterson fails to set forth for the court in a fair and candid way any of the terms in these written memorials that contradict his position. A close examination of the relevant documents shows that the intent of the parties cannot be ascertained from the written memorials because they contain conflicting statements that support more than one interpretation; essentially, they are ambiguous.

The Letter contains both terms evincing an intent to create a mortgage and terms demonstrating that the parties intended the conveyance of the Property to be in fee simple, including such terms that (1) the Johnsons covenanted to sell the Property back to the Petersons; and (2) that Arthur Johnson desired “that the title not be registered in my name to allow that the arrangement be held in confidence.” See A.A. 10. Likewise, the

Agreement contains ambiguous terms, which could be interpreted to create either an equitable mortgage or an absolute conveyance. Among other provisions, the Johnsons agreed to “reconvey” the Property to the Petersons in the future. *See* A.A. 3.

Finally, there is no ambiguity with respect to the deed; the deed states unambiguously that it is a conveyance in fee simple of the Property from the Petersons to the Johnsons. The deed on its face plainly supports a determination that the transaction constituted an outright conveyance.

The intention of the parties cannot be clearly ascertained by the surrounding memorials of the 1986 transactions. Simply put, the language of the documents is ambiguous; it supports both an interpretation that an equitable mortgage was intended and an interpretation that an agreement for an absolute conveyance was intended. Because the district court concluded erroneously that the intention of the parties was unambiguously demonstrated by the surrounding memorials, the grant of summary judgment was erroneous and should be reversed. Therefore, while a correct application of the governing statutes of limitations compels outright reversal of the decision below, the district court’s erroneous granting of summary judgment alternatively compels reversal and remand for trial on whether the 1986 warranty deed conveyance was absolute or an equitable mortgage.

III. PETERSON’S REMAINING CLAIMS ARE WITHOUT MERIT.

The Johnsons will only briefly address Peterson’s remaining claims found on pp. 26-30 of his Responsive Brief.

A. The District Court Properly Dismissed Peterson's Claim for Unjust Enrichment.

Courts have consistently applied a six-year statute of limitation for claims for unjust enrichment. *See, e.g., Block v. Litchy*, 428, N.W.2d 850,854 (Minn. App. 1988) (citing Minn. Stat. § 541.05, subd. 1(1) for the proposition that the “applicable time limit for bringing an action in unjust enrichment is six years”). The six-year limitation on unjust enrichment actions begins to run when the cause of action accrues. *See Jacobson v. Bd. of Trustees of the Teacher's Retirement Ass.*, 672 N.W.2d 106, 110 (Minn. App. 2001).

Peterson's claim that the Johnsons would be unjustly enriched if the conveyance was determined to be an outright conveyance is barred by the statute of limitations. The claim accrued no later than November 21, 1996, when Johnson recorded the warranty deeds conveying the Property. Peterson commenced this action in October 2003, more than six years after the recording of the deed. *See* RA-15 (Peterson's Summons and Complaint dated October 17, 2003). Accordingly, Peterson cannot maintain an action for unjust enrichment.⁶

⁶ Peterson's Brief states that a fiduciary relationship was created between the Johnsons and Peterson based on, apparently, their familial relationship. *See* R. Brief at 27. Minnesota law holds that a fiduciary relationship only arises “when the evidence indicates that one of the parties enjoyed superior or excessive influence over the other party.” *May v. First Nat. Bank of Grand Forks, North Dakota*, 427 N.W.2d 285, 289 (Minn. App. 1988). Here, there is no evidence of such a relationship and therefore no evidence of a fiduciary duty between the parties.

B. Peterson Did Not Properly Plead in the District Court, and Therefore is Not Entitled to Request the Appellate Court, to Determine the Remaining Balance Due and Owing if an Equitable Mortgage is Found.

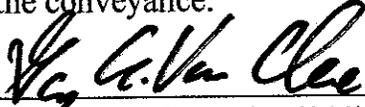
Peterson states that his “request, both for a finding of an equitable mortgage and a finding of usurious interest, although poorly pled, were intended to elicit a determination from the court of the remaining balance due and owing under the Agreement.” *See* R. Brief at 29. In fact, Peterson did not request this relief from the district court in his summons and complaint or motion for summary judgment and his attempt to inject the issue into the proceedings below was summarily rejected by the district court. *See* Order of the District Court dated May 23, 2005 (determining that, “All issues pled by the parties have been resolved in this case”). The decision by the district court was correct on this issue and this court should reject Peterson’s attempt to re-raise the issue. As the Johnsons argued below, determination of the amount of the debt only becomes necessary upon a final ruling that the conveyance was an equitable mortgage and upon foreclosure of such mortgage. For all the arguments made by the Johnsons on this appeal, the question of the amount of the purported mortgage debt need never be addressed on account of Peterson’s claims being time barred.

CONCLUSION

For all the above-stated reasons, the Johnsons respectfully request this court to reverse the decision of the district court and to dismiss this action with prejudice because under either applicable statute of limitations—the six-year limitations period for adverse claims to real estate, or the 15-year limitation for actions to declare an equitable mortgage—Peterson’s action commenced in October 2003 was untimely. Moreover, the

district court erred in deciding on summary judgment that the conveyance was an equitable mortgage because the ambiguity surrounding the transactions inexorably compels the conclusion that genuine issues of material fact exist that preclude summary judgment. Accordingly, in the alternative, this court must reverse and remand this case for a trial to determine the nature of the conveyance.

Dated: *24 October 2005*



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