

No. A 06-1459

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Ganesh Thondikulam,

Appellant,

vs.

C & M Real Estate Services, Inc.,

Respondent.

APPELLANT'S BRIEF AND APPENDIX

ATTORNEYS FOR APPELLANT

Darrell A. Jensen, #49980
Susan E. Sheely, #343705
Barna, Guzy & Steffen, Ltd.
400 Northtown Financial Plaza
200 Coon Rapids Boulevard
Coon Rapids, Minnesota 55433
Telephone: (763) 780-8500

ATTORNEYS FOR RESPONDENT

Matthew Anderson, #284257
Babcock, Nielson, Mannella & Klint, PLLP
118 East Main Street
Anoka, MN 55303
Telephone: (763) 421-5151

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF LEGAL ISSUES	1
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	6
ARGUMENT	8
I. STANDARD OF REVIEW	8
II. THE TRIAL COURT ERRED IN THE APPLICATION OF MINN. STAT. § 548.09.....	9
A. Omega was a judgment lienholder at the time the Notice of Intent to Redeem was filed.	9
B. Public policy supports the finding that Omega was a judgment lienholder prior to the filing of the Notice of Intent to Redeem	12
III. THE HOLDER OF A SHERIFF’S CERTIFICATE OF SALE HAS NO STANDING TO CHALLENGE THE REDEMPTION BY A JUNIOR LIENHOLDER.....	13
IV. THE REDEMPTION REQUIREMENTS OF MINN. STAT. §§ 580.24 AND 580.25 WERE SUBSTANTIALLY COMPLIED WITH	15
CONCLUSION.....	19
APPELLANT’S APPENDIX	

TABLE OF AUTHORITIES

STATUTES

Minn. Stat. § 548.09 (2005)	3, 9, 10, 11, 12, 13, 18
Minn. Stat. § 580.24 (2005)	12, 15, 16, 18
Minn. Stat. § 580.25 (2005)	15, 16, 17, 18

COURT DECISIONS

<u>Art Goebel, Inc. v. North Suburban Agencies, Inc.</u> , 567 N.W.2d 511 (Minn. 1997).....	8
<u>Bixler by Bixler v. JC Penney Co., Inc.</u> , 376 N.W.2d 209 (Minn. 1985).....	8
<u>Brady v. Gilman</u> , 96 Minn. 234, 104 N.W. 897 (1905).....	10, 11
<u>Carl v. Pennington</u> , 364 N.W.2d 455 (Minn. Ct. App. 1985).....	8
<u>Donnay v. Boulware</u> , 144 N.W.2d 711 (Minn. 1966)	8
<u>Fabio v. Bellomo</u> , 504 N.W.2d 758 (Minn. 1993).....	8
<u>In re Petition of Brainerd Int'l. Bank</u> , 383 N.W.2d 284 (Minn. 1986).....	17
<u>Nussbaumer v. Fetrow</u> , 556 N.W.2d 595 (Minn. Ct. App. 1997).....	9
<u>Remole v. Jonathan Dev. Corp.</u> , 277 N.W.2d 362 (Minn. Ct. App. 1979)....	13, 14, 15, 17
<u>Sieve v. Rosar</u> , 613 N.W.2d 789 (Minn. Ct. App. 2000).....	14, 17
<u>State by Cooper v. French</u> , 460 N.W.2d 2 (Minn. 1990).....	8
<u>Timeline, LLC v. Williams Holdings, #3, LLC</u> , 698 N.W.2d 181 (Minn. Ct. App. 2005).....	17

STATEMENT OF THE ISSUES ON APPEAL

1. **DID THE TRIAL COURT ERR IN THE APPLICATION OF MINN. STAT. § 548.09 IN ITS DETERMINATION THAT APPELLANT'S PREDECESSOR IN TITLE WAS NOT A JUDGMENT LIENHOLDER AT THE TIME THE NOTICE OF INTENT TO REDEEM WAS FILED WHERE APPELLANT'S PREDECESSOR IN TITLE HAD FILED ALL THE NECESSARY DOCUMENTS TO DOCKET THE JUDGMENT LIEN NINETEEN DAYS PRIOR TO THE FILING OF THE NOTICE OF INTENT TO REDEEM?**

Trial Court Decision: The trial court determined that Appellant's predecessor in title was not a judgment lienholder at the time the Notice of Intent to Redeem was filed notwithstanding the prior filing of the necessary documents.

Apposite Authorities:

Minn. Stat. § 548.09, subd.1 (2005).

2. **DID THE TRIAL COURT ERR IN ITS DETERMINATION THAT RESPONDENT, THE HOLDER OF A SHERIFF'S CERTIFICATE OF SALE, HAD STANDING TO CHALLENGE THE REDEMPTION?**

Trial Court Decision: The trial court determined that Respondent's challenge to the redemption was not barred for lack of standing because Appellant's predecessor in title was not a judgment lienholder at the time the Notice of Intent to Redeem was filed.

Apposite Authorities:

Remole v. Jonathan Dev. Corp., 277 N.W.2d 362 (Minn. Ct. App. 1979).

3. **DID THE TRIAL COURT ERR IN ITS DETERMINATION THAT THE REDEMPTION REQUIREMENTS OF MINN. STAT. §§ 580.24 AND 580.25 WERE NOT SUBSTANTIALLY COMPLIED WITH WHERE APPELLANT'S PREDECESSOR IN TITLE HAD FILED ALL THE NECESSARY DOCUMENTS TO ESTABLISH THE JUDGMENT LIEN NINETEEN DAYS BEFORE THE FILING OF THE NOTICE OF INTENT TO REDEEM?**

Trial Court Decision: The trial court determined that the redemption statutes had not been substantially complied with because Appellant's predecessor in title was not a judgment lienholder at the time the Notice of Intent to Redeem was filed.

Apposite Authorities:

Sieve v. Rosar, 613 N.W.2d 789 (Minn. Ct. App. 2000)

Remole v. Jonathan Dev. Corp., 277 N.W.2d 362 (Minn. Ct. App. 1979).

Timeline LLC v. Williams Holdings #3, LLC, 698 N.W.2d 181 (Minn. Ct. App. 2005)

STATEMENT OF THE CASE

This matter involves an ejectment action commenced by C & M Real Estate Services, Inc. (“C & M” or “Respondent”) against Ganesht Thondikulam (“Thondikulam” or “Appellant”) to recover possession of property located at 9034 Lexington Ave, Lexington, Minnesota and legally described as:

Lot 11, Block 1, Lexington Center, Anoka County, Minnesota.
 (“the Property”).

Mr. Daniel Landon (“mortgagor”) was the mortgagor of the Property. He defaulted on his mortgage and the Property was sold in foreclosure by the Anoka County Sheriff. The mortgagee, U.S. Bank, purchased the Sheriff’s Certificate of Sale in the foreclosure sale and then sold that Certificate to Respondent C & M.

Appellant Thondikulam’s predecessor in title, a corporation by the name of Omega Financial LLC (“Omega”) took an assignment of a conciliation court judgment against the mortgagor and filed the paperwork necessary under Minn. Stat. § 548.09 to docket that judgment in the Anoka County District Court. Nearly three weeks later Omega filed a Notice of Intent to Redeem, tendered the necessary funds for redemption to the Anoka County Sheriff and received, and recorded, a Certificate of Redemption. Appellant Thondikulam then purchased the Property from Omega by a Warranty Deed.

Plaintiff refused to accept the redemption funds, returned the funds to the Sheriff and brought an unlawful detainer action. The unlawful detainer action was

dismissed as an improper forum for litigating title to the Property and C & M subsequently brought an action in ejectment.

C & M's Complaint stated a cause of action for ejectment and sought an adjudication that it was the fee owner of the Property and an award of damages. Thondikulam answered, also claiming rightful ownership of the Property pursuant to the Warranty Deed granted to him by Omega.

C&M's motion for summary judgment was heard by the Honorable Sean C. Gibbs, Judge of the Anoka County District Court on December 16th, 2005. C&M argued in summary judgment that Thondikulam did not have good title to the Property because the redemption by his predecessor in title was void because the Notice of Intent to Redeem was filed 1 ½ hours before the judgment was stamped as docketed¹.

Thondikulam opposed C&M's motion for summary judgment on the grounds that Omega was a judgment creditor of the mortgagor at the time the Notice of Intent to redeem was filed and that as a holder of a Sheriff's Certificate, C&M had no standing to object to the redemption of a junior lienholder because it could not show any prejudice resulting from the redemption.

On March 20th, 2006 the Trial Court issued an Order granting partial summary judgment in favor of C&M on the issue of ownership and ordered

¹ C & M also argued that Thondikulam unlawfully "broke and entered" onto the Property and that it was entitled to mesne profits as the proper measure of damages. These issues were not raised in the Complaint, and with regard to the "breaking and entering" matter was improperly raised in the context of a civil action. The Trial Court correctly denied summary judgment on these points.

Appellant Thondikulam to vacate the Property. Defendant brought a motion to stay the execution of the Trial Court's order for removal from the premises pending the appeal. This motion was granted conditioned upon the posting of a bond in the amount of \$15,000 by Appellant. Appellant posted the bond accordingly and remains in possession of the Property, although his tenant has since terminated the lease and moved out.

The Trial Court's March 20th Order for Partial Summary Judgment was not appealable because the it contained only part of the language required by Minn. R. Civ. App. P. 103.03(a) and Minn. R. Civ. P. 54.02. On a motion by the Appellant, the Order was amended to include all the necessary language. For reasons unknown, judgment was not entered on the Amended Order and June 19th, 2006 a *nunc pro tunc* Order was signed directing entry of judgment on the Amended Order and judgment was entered accordingly. This appeal followed.

STATEMENT OF THE FACTS

On May 27, 2004 as a result of the foreclosure by U.S. Bank of a first mortgage on the Property, the Anoka County Sheriff struck off and sold the Property at a Sheriff's sale. (AA 1). The purchaser at the Sheriff's sale was the mortgagee, U.S. Bank, who purchased the Property for the sum of \$102,682.85, subject to a six month redemption period ending November 29, 2004. (AA 1).

On September 17, 2004 Ms. Sheri Welch obtained a conciliation court judgment against U.S. Bank's mortgagor, Mr. Daniel Landon. (AA 36). On November 10, 2004 Welch assigned that judgment to Omega. (AA 37). Immediately thereafter, on November 10, 2004, Omega filed its Assignment of Judgment with the Anoka County Conciliation Court and filed an Affidavit of Judgment Debtor with Anoka County District Court to docket the judgment in the District Court. (AA 38).

On November 17, 2004 C & M purchased an assignment of the Sheriff's Certificate of Sale from U.S. Bank for the sum of approximately \$110,000.00. (AA 13). On November 29, 2004 at 10:20 A.M, the last day of the mortgagor's redemption period, Omega filed with the Anoka County Recorder a Notice of Intent to Redeem. (AA 14-15). Though Omega had filed its assignment of judgment and Affidavit of Judgment Debtor on November 10 2004, Anoka County Court Administration did not stamp the judgment as "docketed" until November 29, 2004 at 11:30 A.M. (AA 16; AA 37).

The mortgagor did not redeem the property. (AA 2). As holder of the Sheriff's Certificate, C & M conditionally gained title to the Property on November 29, 2004 subject to redemption by any of the junior lienholders. (AA 6-13)

On December 3, 2004 Omega tendered the necessary funds to the Anoka County Sheriff to redeem the Property, furnished a proper Affidavit of Amount Due and Owing, and was issued a Certificate of Redemption. (AA 17-18). Omega recorded the Certificate of Redemption on December 3, 2004. (AA 19). The Sheriff then forwarded a copy of the Certificate of Redemption and sent the certified funds to Plaintiff, C & M. (AA 17-18).

On December 9, 2004 C & M rejected the funds tendered by Omega and objected to the redemption. (AA 20-22).

On January 5, 2005 Omega sold and conveyed the property by Warranty Deed to Appellant Thondikulam. (AA 39).

LEGAL ARGUMENT

I. STANDARD OF REVIEW.

On appeal from summary judgment, a reviewing court asks whether (1) there are any genuine issues of material fact; and (2) whether the lower court erred in its application of the law. State by Cooper v. French, 460 N.W.2d 2, 4 (Minn. 1990). “The reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.” Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn.1993). This review is undertaken de novo. Art Goebel, Inc. v. North Suburban Agencies, Inc., 567 N.W.2d 511, 515 (Minn. 1997) (a de novo standard of review is used to determine whether the district court erred in its application of the law).

Summary judgment is a “blunt instrument, which should be employed only where it is perfectly clear that no issue of fact is involved in the cause of action.” Donnay v. Boulware, 144 N.W.2d 711, 716 (Minn. 1966). Summary judgment must be used sparingly as it “is not a substitute for trial and may be granted only if, based on the entire record, no issue or material fact exists, and the moving party is entitled to judgment as a matter of law.” Bixler by Bixler v. J.C. Penney Co., Inc., 376 N.W.2d 209, 215 (Minn. 1985). Thus, a motion for summary judgment should be denied if reasonable persons might draw different conclusions from the evidence presented. Carl v. Pennington, 364 N.W.2d 455, 457 (Minn. App. 1985).

II. THE TRIAL COURT ERRED IN ITS APPLICATION OF MINN. STAT. § 548.09.

The Trial Court erred in its analysis and application of Minn. Stat. §548.09, subd. 1 in concluding that Omega was not a judgment lien creditor at the time the Notice of Intent to Redeem was filed.

A. Omega was a judgment lienholder at the time the Notice of Intent to Redeem was filed.

Omega's judgment lien arose on November 10th, 2004 when Omega filed its Affidavit of Judgment Debtor and Assignment of Judgment and therefore it was a judgment lienholder at the time the Notice of Intent to Redeem was filed on November, 29th, 2004.

A judgment becomes a lien against a debtor's real property at the time of docketing. Nussbaumer v. Fetrow, 556 N.W.2d 595, 596 (Minn. Ct. App. 1997). C&M relied on the Nussbaumer case as authority for using the "docketed" stamp as conclusive evidence of the time the judgment lien arose. However, although Minn. Stat. § 548.09 states that the judgment is a lien from the time of docketing, this statute also expressly provides that judgment shall be docketed upon the filing of the Affidavit of Judgment Debtor. Minn. Stat. § 548.09, subd. 1 (2005) (emphasis added).

The Trial Court erred in its application of Minn. Stat. § 548.09, subd. 1 because it's analysis proceeded from a presumption that under the statute Appellant did not have a judgment lien against the Property because the judgment had not been stamped as docketed prior to the filing of the Notice of the Intent to

Redeem. (Amended Order for Partial Summary Judgment, Dated March 31, 2006, pg. 8)(emphasis added). The Trial Court misapplied the law by focusing on the effect of the docketing instead of on the effective time of docketing given the filing of the required affidavit and the language of the statute.

Statutes must be read to give effect to their plain language. In this case, the statute in question states that judgment shall be docketed upon the filing of the Affidavit of Judgment Debtor. Minn. Stat. § 548.09, subd. 1 (2005). It is undisputed that the Affidavit of Judgment Debtor was filed on November 10th, 2004 and therefore, Omega's judgment lien must be considered to have arisen effectively on that day.

In concluding that Omega was not a judgment lien creditor and therefore its redemption was invalid, the Trial Court relied entirely on the discussion in Brady v. Gilman², 96 Minn. 234, 104 N.W.897 (1905). (Order pgs. 8-9). However, the Trial Court's reliance on Brady was misplaced because the Brady case is distinguishable in two important regards. First, the Plaintiff in that case obtained a Confession of Judgment and delivered it to the Clerk for docketing at 12:30 p.m. on the very same day and then immediately thereafter, at 1:00 p.m., filed the Notice of Intent to Redeem. Brady v. Gilman, 96 Minn. at, 235, 104 N.W. at 897. In the case at bar, Omega filed its Affidavit of Judgment Debtor, together with the

² It is worthwhile noting that the Brady v. Gilman case is over 100 years old and is the only case that addresses these issues reasonably directly. The docketing of a judgment is an administrative function and as the times have changed since this case was decided, the administrative burden on court administrators have dramatically increased.

Assignment of Judgment nineteen days prior to the filing of its Notice of Intent to Redeem. The case at bar does not involve a situation in which Omega was racing to the Courthouse to undermine Respondent's claim to the Property or where Omega was negligent in the execution of the necessary procedures. Respondent and the Trial Court focus their analysis entirely on the 1 ½ hours gap between the filing of the Notice of Intent to Redeem and the time the docketing stamp was affixed to the judgment. However, this Court should not ignore the nearly three weeks that passed between the filing of the Affidavit of Judgment Debtor and the filing of the Notice of Intent to Redeem.

Second, the Brady case is distinguishable because it involved a challenge to the effect of a retroactive attempt by Court Administration to "back-date" the docketing to 12:30 p.m. after discovery of the untimely action of the clerk. Brady, 96 Minn. at 236, 104 N.W.2d at 897. The Court concluded that the Court's attempted amendment of the docketing was improper and the rest of the discussion is simply dicta.

Furthermore, the Trial Court's rationale that, because Minn. Stat. §548.09 provides a five-dollar statutory remedy for violations by Court Administration, the statute therefore cannot mean docketing is effective upon filing, is also not persuasive. (Order pg. 10). The five dollar penalty is intended to remedy only the nominal damages suffered by judgment creditors as a result of violations of the docketing procedures. It is not reasonable to interpret the five dollar provision as intended to compensate a judgment creditor for the value of a lost lien, lost by no

fault of the creditor. Given the strict timelines in the redemption statutes, Omega could not have re-filed its Notice of Intent to Redeem upon discovery of the excessively tardy docketing by Court Administration because the mortgagor's redemption period had already elapsed. Minn. Stat. § 580.24, subd. (a) (2005).

The Trial Court erred in its application of Minn. Stat. § 548.09, subd. 1. Omega was a judgment lienholder of the mortgagor on November 10th, 2004, nineteen days before its filing of the Notice of Intent to Redeem.

B. Public policy supports the finding that Omega was a judgment lienholder prior to the filing of the Notice of Intent to Redeem.

Public policy supports the finding that Omega was a judgment lienholder prior to the filing of its Notice of Intent to Redeem. Omega complied with the requirements of Minn. Stat. § 548.09 and filed the Affidavit of Judgment Debtor, along with the Assignment of Judgment, on November 10th, 2004.

In this case there was an unexplained nineteen day delay in processing the docketing of the judgment by the Anoka County Court Administrator which, though it may not be unusual, is completely outside Omega's control. Given the fluctuating workloads of Court Administration there is no way for a judgment creditor to know how much time will elapse between when the documents required by Minn. Stat. § 548.09, subd. 1 for docketing a judgment are filed and when the formal "docketed" stamp is actually affixed to the judgment.

Under Respondent's and the Trial Court's interpretation of this statute, there is no way for a judgment creditor to know how much "lead time" is

necessary to ensure that the judgment is stamped as “docketed” prior to the deadline for the filing of a Notice of Intent to Redeem. Indeed, given the experience of lengthy delays in processing, persons who become judgment creditors a few days or even weeks before the expiration of the applicable redemption period may well be denied their right of recovery, by no fault of their own, but simply because of bureaucratic back-logs. This uncertainty greatly undermines creditors’ rights and puts the enforceability of those rights squarely in the palm of Court Administration, instead of with the creditors themselves.

Omega filed all the documents necessary to docket judgment in its favor on November 10th, 2004 and should not be stripped of its lien rights as a result of an unforeseeable and uncontrollable delay on the part of Court Administration.

Public policy considerations support the finding that Omega became a judgment lienholder on November 10th, 2004, upon the filing of the paperwork required by Minn. Stat. § 548.09 – any other finding contravenes public policy and results in uncertainty and risk in the enforcement of creditors’ rights.

III. THE HOLDER OF A SHERIFF’S CERTIFICATE OF SALE DOES NOT HAVE STANDING TO CHALLENGE THE REDEMPTION BY A JUNIOR LIENHOLDER.

The Trial Court erred in concluding that Respondent C&M was not barred by lack of standing to object to Omega’s redemption.

Absent a showing of prejudice, the holder of the Sheriff’s Certificate of Sale has no standing to object to redemption by a junior creditor. Remole v. Jonathan Dev. Corp., 277 N.W.2d, 362, 363 (Minn. 1979). The redemption

statutes are intended to protect junior lienholders, not holders of a Sheriff's Certificate. Remole, 277 N.W.2d at 363. This rule of law makes sense because a holder of a Sheriff's Certificate of Sale has no independent right to redeem, but rather only holds title to the property subject to redemption by the mortgagor and junior lienholders. Remole, 277 N.W.2d at 363 (emphasis added). The financial interests of the holder of the Sheriff's Certificate are protected regardless of whether a junior lienholder redeems or not. If no lienholder redeems, the holder of the Sheriff's Certificate takes title to the property. If a lienholder does redeem then the Certificate holder recovers the money spent purchasing the Certificate, together with any other costs incurred. Lienholders on the other hand are protected only if they redeem; failure to redeem results in the loss of their lien. Sieve v. Rosar, 613 N.W.2d 789, 792 (Minn. Ct. App. 2000).

Respondent cannot establish, nor has it attempted to establish, that it would be prejudiced as a result of Omega's redemption. It was tendered an amount sufficient to cover all costs expended in the course of the redemption. By contrast, Omega stands to lose the entire value of its lien if the redemption is upheld to be invalid.

The Trial Court concluded that Remole was not controlling and Respondent was not barred for lack of standing to challenge Omega's redemption by distinguishing Remole on the basis of its prior, erroneous, conclusion that Omega was not a junior lien creditor at the time the Notice of Intent to Redeem was filed. (Order pg. 11). As discussed above, the court's analysis on this point was

erroneous, and so too is the court's conclusion that Remole is sufficiently distinguishable to negate its application in this case.

The Court's further attempt to distinguish this case from Remole on the grounds that the Respondent is a subsequent purchaser of the Sheriff's Certificate is irrelevant; the redemption requirements are adequate to ensure its protection just as the original holder of the Sheriff's Certificate. (*See* Order pg. 11).

Absent a showing of prejudice, the holder of the Sheriff's Certificate of Sale has no standing to object to redemption by a junior lien creditor. Remole, 277 N.W.2d at 363. The Trial Court erred in concluding that Respondent was not barred by a lack of standing to object to Omega's redemption.

IV. THE REDEMPTION REQUIREMENTS OF MINN. STAT. §§ 580.24 AND 580.25 WERE SUBSTANTIALLY COMPLIED WITH.

The Trial Court erred in concluding that the redemption requirements of Minn. Stat. §§580.24 and 580.25 were not substantially complied with.

As discussed above, Omega's judgment lien arose and was effectively docketed on November 10th, 2004, nineteen days before it filed the Notice of Intent to Redeem. Omega was a judgment creditor of the mortgagor, timely filed its Notice of Intent to Redeem prior to the expiration of the mortgagor's redemption period and substantially fulfilled the requirements for redemption of the Property pursuant to Minn. Stat. §§ 580.24 and 580.25. The Trial Court erred in concluding that the redemption statutes were not substantially complied with

because Omega was not a judgment lien creditor at the time the Notice of Intent to Redeem was filed. (Order pg. 11).

The redemption statutes state that in order to redeem, a creditor must, within the mortgagor's redemption period, "file all documents necessary to create the lien on the mortgaged premises and to evidence the creditor's ownership of the lien." Minn. Stat. § 580.24(a)(2) (2005)(emphasis added). This statute does not say that judgment must be docketed; the statute requires only that all documents necessary to create the lien be filed prior to the expiration of the mortgagor's redemption period. Minn. Stat. § 580.24(a)(2) (2005). Omega complied with this requirement. The required Affidavit and Assignment were filed on November 10th, 2004 well before the expiration of the redemption period.

Minn. Stat. § 580.25 provides in pertinent part:

The person desiring to redeem shall pay the amount required by law for the redemption, and shall produce to the person or officer receiving the redemption payment:

(1) a copy of the docket of the judgment, . . . of the record or files evidencing any other lien certified by the officer with custody of the docket . . .with the certificate of record endorsed on it;

(2) a copy of any assignment necessary to evidence the person's ownership of the lien, certified by the officer with custody of the assignment, or the original of each instrument of assignment with the certificate of record endorsed on it. If the redemption is under an assignment of a judgment, the assignment shall be filed in the court entering the judgment, as provided by law, and the person so redeeming shall produce a certified copy of it and of the record of its filing, and the copy

of the docket shall show that the proper entry was made upon the docket. . . .; and

(3) an affidavit of the person or the person's agent, showing the amount then actually claimed due on the person's lien and required to be paid on the lien in order to redeem from the person.

Minn. Stat. § 580.25 (2005) (emphasis added). In tendering the redemption funds, Omega complied with all the stated requirements of Minn. Stat. § 580.25.

The redemption statutes are intended to protect junior lienholders by ensuring that as many of the lien creditors as possible are satisfied out of the value of the property foreclosed. Remole, 277 N.W.2d at 363. In order to promote certainty and predictability in real-estate transactions, the redemption statutes are interpreted strictly according to their terms. In re Petition of Brainerd Nat'l Bank, 383 N.W.2d 284, 289 n. 7 (Minn.1986).

However, “[w]hile the essential elements of the statute must be strictly adhered to, failure to comply with the more formal requirements may be overlooked[]” and “[s]ubstantial compliance with the redemption requirements is all that is required to effect a valid redemption.” Sieve v. Rosar, 613 N.W.2d at 793. The validity of redemption turns on whether the redeeming party has substantially complied with the statutory redemption procedures. Timeline, LLC v. Williams Holdings, #3, LLC, 698 N.W.2d 181 (Minn. Ct. App. 2005).

On December 3, 2004 Omega tendered the full redemption amount of \$110,581.20 in certified funds to the Sheriff of Anoka County along with certified copies of the docketed judgment, the filed Assignment of Judgment and the

necessary Affidavit of Amount Due and Owing. As a result, Omega received a Certificate of Redemption from the Sheriff which it immediately recorded on December 3, 2004 as Document No. 1971126.

The Trial Court's conclusion that Omega did not substantially comply with the redemption statutes was based entirely on its erroneous conclusion that Omega was not a junior lien creditor at the time the Notice of Intent to Redeem was filed. (Order pgs. 11-12). As discussed at length above, Omega filed all the necessary paperwork to docket the judgment nearly three weeks prior to the filing of the Notice of Intent to Redeem. Pursuant to the express language of Minn. Stat. ¶ 548.09, the judgment was effectively docketed upon the filing of the Affidavit of Judgment Debtor.

The Trial Court erred in its analysis by focusing on the impact of docketing and making presumptions as to the time of docketing. As a result, the Trial Court erred in its ultimate conclusion that Omega did not substantially comply with the statutory redemption requirements set forth in Minn. Stat. § 580.24 and 580.25.

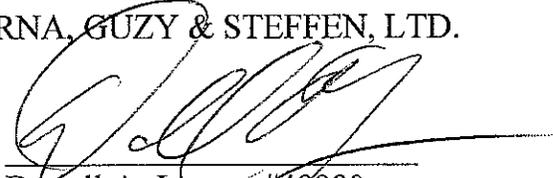
CONCLUSION

The Trial Court erred in its analysis of the time upon which Omega's judgment lien arose; Omega was effectively a judgment lien creditor of the mortgagor at the time it filed its Affidavit of Judgment Debtor and Assignment of Judgment. As such, the redemption was valid, substantially complied with the applicable statutes and Respondent had no standing to challenge the transaction. Public policy considerations weigh strongly in favor of Appellant's interpretation of the applicable law.

Based on the arguments herein, it is respectfully requested that the Court of Appeals reverse the District Court's Order for Partial Summary Judgment and remand this matter for trial on the merits.

Dated: 9-1, 2006

BARNA, GUZY & STEFFEN, LTD.

By: 

Darrell A. Jensen, #49980

Susan E. Sheely, #343705

Attorneys for Appellant Thondikulam

400 Northtown Financial Plaza

200 Coon Rapids Boulevard

Minneapolis, MN 55433

Phone: (763) 780-8500

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).