

Nos. A07-740 and A07-742

State of Minnesota  
In Court of Appeals

In re: A Purported Financing Statement in the  
District Court of Ramsey County, Minnesota

Camille Bohlke, moving party,  
*Respondent (A07-740),*

and

Bradley Parker, moving party,  
*Respondent (A07-742),*

vs.

Kevin E. Giebel,  
*Appellant.*

APPELLANT'S BRIEF AND APPENDIX

Zenaida Chico (#0299674)	Mark E. Gilbert (#0202149)
Kevin E. Giebel (#164112)	MARK E. GILBERT LAW OFFICES
GIEBEL, GILBERT, WILLIAMS	2601 Maxwell Drive, Suite C
& KOHL, P.L.L.P.	Hudson, WI 54016
2277 Highway 36 West, Suite 220	(715) 381-2700
St. Paul, MN 55113	
(651) 332-8555	<i>Attorney for Respondents</i>

Gene H. Hennig (#0044143)  
RIDER BENNETT, LLP  
33 South Sixth Street, Suite 4900  
Minneapolis, MN 55402  
(612) 340-8900

*Attorneys for Appellant*

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 ISSUE

- I. Whether the District Court Erred as a Matter of Law in Concluding that Appellant's Attorneys' Liens, Specifically Noticed and Filed Pursuant to Minnesota Statute §481 et. seq., were "fraudulent or otherwise improper" Pursuant Solely to Minnesota Statute §545.05 (2006).**

The District Court concluded that Appellant's attorneys' liens were fraudulent or otherwise improper under Minn. Stat. §545.05, subd. 1(a) (2006), without regard to Minnesota Statute §481 et seq. (2006).

Most Apposite Authority:

Minn. Stat. §481.13 (2006)

Minn. Stat. §545.05, subd. 2 (2006)

Minn. Stat. §336.9-109 (c)(2) (2006)

Minn. Stat. §336.9-109 (d)(2) (2006)

## STATEMENT OF THE CASE

On September 25, 2006, Appellant Kevin E. Giebel, Esq. served upon Respondents Bradley Parker and Camille Bohlke a Notice of Attorneys' Lien specifically "pursuant to Minnesota Statute §481, et seq." (A.18-23). Thereafter, on November 7 and 8, 2006 respectively, Appellant perfected the attorney's liens in strict accordance with Minnesota Attorney Lien Statute §481 et. seq. by following the perfection language mandated by Minnesota Statute §481. (A. 24-25).

On December 18, 2006, Respondents each filed a motion purportedly pursuant to Minnesota Statute §545.05, claiming that the Appellant's Attorneys' Liens were void under the Minnesota Commercial Code for failure to obtain Respondents' affirmative consent before filing. (A.26-31). Appellant filed the narrow Response to the Respondents' motions as required by Minnesota Statute §545.05. (A.32-39).

The matters were heard together on an expedited, summary basis before the Honorable Joanne M. Smith on January 31, 2007. (A.1,5). The District Court refused to hear Appellant's requests for evidentiary hearing, discovery and compel motions regarding unanswered discovery served upon Respondents prior to, and requested at, the January 32, 2007 hearing. (A.2).

On February 1, 2007, the District Court ruled that the Appellant's Attorneys' Liens were "fraudulent or otherwise improper under Minnesota Statute §545.05, subd. 1" and assessed sanctions. (A.2-3, 6-7). On April 9, 2007, Appellant filed two Notices of Appeal,

seeking this Court's review of the District Court's decisions, and reversal of the District Court's judgments in favor of Respondents Camille Bohlke and Bradley Parker, respectively. (A.40-43). On April 27, 2007, Appellant filed a Motion to Consolidate the two appeals. (A.44 ). This Court granted Appellant's Motion to Consolidate on April 27, 2007, and the matters are before this Court on a consolidated basis. (A.46).

## STATEMENT OF THE FACTS

On September 25, 2006, Appellant Kevin E. Giebel, Esq. served upon Respondents Camille Bohlke and Bradley Parker<sup>1</sup> a Notice of Attorneys' Lien pursuant to Minnesota Statute §481, et. seq., (A.18-23). Each of the Notices<sup>2</sup> unambiguously stated and advised that Appellant was claiming an "attorney lien . . . pursuant to M.S.A. §481 et. seq." (A.18-23). On November 7 and 8 of 2006, Appellant perfected the Attorneys' Liens against Respondents Parker and Bohlke, respectively, by using the Minnesota Secretary of State's office filing procedures as required by Minnesota Statute §481. (A. 24-25). Each of the filings stated that it was being filed "pursuant to M.S.A. §481, et. seq." (A.24-25).

On December 18, 2006, Respondents each filed a Motion for Judicial Review of a Financing Statement pursuant to Minn. Stat. §545.05, claiming that the Attorneys' Liens were fraudulent for failure to obtain Respondents' affirmative consent before filing. (A.26-31). Appellant timely filed the narrow Response to Motion for Judicial Statement mandated by §545.05. (A.32-39).

Both motions were heard before the Honorable Joanne M. Smith on January 31, 2007. (A.1,5). On February 1, 2007, the District court summarily granted Respondents' motions. (A.2-3, 6-7). Specifically, the District Court made the following narrow findings, again as

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Due to the consolidation of the two appeals, Respondents Camille Bohlke and Bradley Parker will hereinafter be referred to as "Respondents."

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Due to the consolidation of the two appeals the term "Notices" refers to the Notices of Attorneys' Liens served upon both Respondents.

mandated by §545.05: (1) Respondents “never consented to the filing of the financing statement” (A.2,6); (2) “[t]hat pursuant to Minn. Stat. §545.05 the issues to be determined by the Court are narrow” (A.2,6); and (3) “[t]hat this Court makes no findings as to any underlying claims of the parties involved and expressly limits its Findings of Fact and Conclusions of Law herein.”<sup>3</sup> (A.2,6). The District Court concluded, as a matter of law without evidentiary hearing: “[t]hat pursuant to Minn. Stat. §545.05, subd. 1, the financing statement[s] [were] fraudulent or otherwise improper”, and sanctioned Appellant pursuant to Minnesota Statute §545.05, subdivision 12. (A.2,6).

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With regards to Respondent Camille Bohlke, the District Court also issued a finding denying Appellant’s request for an evidentiary hearing and discovery (A.2). While Appellant also requested the same in Respondent Bradley Parker’s case, the Court did not address the issue. Also, the District Court made no mention of any other Minnesota Statutes in either decision. (A.1-7).

## ARGUMENT

### **I. THE DISTRICT COURT ERRED AS A MATTER OF LAW WHEN IT SUMMARILY CONCLUDED THAT APPELLANT’S ATTORNEYS’ LIENS WERE “FRAUDULENT OR OTHERWISE IMPROPER” UNDER MINNESOTA STATUTE §545.05, SUBDIVISION 1 (2006) FOR FAILURE TO FIRST OBTAIN RESPONDENTS’ AFFIRMATIVE CONSENT.**

#### **A. Standard of Review.**

The interpretation of a statute is a question of law that is reviewed de novo on appeal. *Carousel Auto., Inc. v. Gherity*, 511 N.W.2d 472, 475 (Minn. Ct. App. 1994). In short, “[a] trial court’s conclusion of law is not binding on the appellate court.” *MCC Investments v. Crystal Properties*, 451 N.W.2d 243, 246 (Minn. Ct. App. 1990)(citing *A.J. Chromy Constr. Co v. Commercial Mech. Services, Inc.*, 260 N.W.2d 579, 582 (Minn. 1977)).

The goal of the interpretation and construction of statutory language is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. §645.16 (2006). Words and phrases should be construed according to their plain and ordinary meaning. *Id.*; *Stanton v. Mazda 2001 VIN 4F2YU08121KM57063*, 660 N.W.2d 137, 139 (Minn. Ct. App. 2003). “When the language of a statute is not ambiguous, we will give effect to the plain meaning of the words.” *Alcozer v. North Country Food Bank*, 635 N.W.2d 695, 713 (Minn. 2001).<sup>4</sup>

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Respondents have not asserted in the District Court that Minnesota Statutes §481 et seq. are vague and/or ambiguous.

**B. Appellant's Attorneys' Liens Were Not "Fraudulent Or Otherwise Improper" Because They Were Filed Pursuant to Minn. Stat. §481, Which Does Not Require Affirmative Debtor Consent.**

An attorney's right to place an attorneys' lien on settlement proceeds is governed by Minnesota statute. Minnesota Statute §481.13, which provides for the creation, perfection, and enforcement of attorneys' liens, does not require that an attorney obtain consent of the debtor before filing an attorneys' lien. *See* Minn. Stat. §481.13 (2006). Specifically, the Attorneys' Lien statute provides that "an attorney has a lien for compensation where the agreement for compensation is expressed *or implied*". Minn. Stat. §481.13, subd. 1(a) (emphasis added). Therefore, consent of the client may be implied by the mere fact that the parties entered into a compensation agreement and/or the attorney simply provided legal services to the client. *See id.* Further, there is no language in Minnesota Statute §481.13 that provides any requirement that Appellant must first obtain debtor consent before filing an attorneys' lien.<sup>5</sup> *See generally* Minn. Stat. §481.13. Based upon the plain language of Minnesota Statute §481.13, Appellant was under no obligation to obtain consent from Respondents before filing his attorneys' liens. Unfortunately, the District Court did not apply

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While section 481, subdivision 2(b) states that if a lien is claimed on the client's interest in personal property the notice must be "filed in the same manner as provided by law for filing of a security," this language does not suggest that an attorneys' lien is a U.C.C. lien. To the contrary, the mere fact that the statute states that an attorneys' lien claimed on personal property must be filed as if it were a U.C.C. lien is further proof that the attorneys' lien is not a U.C.C. lien. Rather, the sole purpose of this subdivision is to place the clients on notice that a lien has been placed on their personal property, and it does not change the nature of the lien.

this statute in ruling upon the Respondents' motions. As such, the District Court erred as a matter of law.

The record before the District Court undisputably demonstrates that Appellant filed attorneys' liens pursuant to Minnesota Statute §481. The Notices served upon Respondents clearly indicated that Appellant was exercising his right to place attorneys' liens on Respondents' settlement proceeds pursuant to "Minn. Stat. §481 et. seq." . (A.18-23). In addition, when Appellant perfected the attorneys' liens by employing the Minnesota Secretary of State for §481 filing purposes, Appellant unequivocally stated in the filings that the attorneys' liens were being filed "pursuant to M.S.A. §481, et. seq.". (A.24-25). These documents are contained in the District Court record. *Id.*

Accordingly, the District Court erred as a matter of law in concluding that Appellant's attorneys' liens were "fraudulent or otherwise improper" under Minn. Stat. §545.05, subd. 1 (2006). Appellants's attorneys liens were clearly filed pursuant to "Minn. Stat. §481 et. seq.", and the District Court's ruling must be reversed.

**C. Minn. Stat. §545.05 Clearly Does Not Apply to Statutory Attorneys' Liens.**

Further proof that Appellant's attorneys' liens were not properly evaluated by the District Court, and were therefore not "fraudulent or otherwise improper", can be found within the provisions of Minnesota Statute §545.05 itself.

The sole statute relied upon by the District Court in support of its decision was Minnesota Statute §545.05. (A.2,6). The District Court's ruling in this matter was very

narrow<sup>6</sup>, providing only that Appellant's attorney' lien were "fraudulent or otherwise improper under Minn. Stat. §545.05, subd. 1." (A.2,6). §545.05 provides: "a financing statement or other record is fraudulent or otherwise improper if it is filed without the authorization of the obligor, person named as a debtor, or owner of collateral described or indicated in the financing statement or other record . . ." Minn. Stat. §545.05, subd. 1(a)(2006). However, Minnesota Statute §545.05, subdivision 1 applies only where "financing statement[s] [are] *filed under sections 336.9-101 to 336.9-709* (Uniform Commercial Code-Secured Transactions)", also known as Article 9 of the U.C.C. Minn. Stat. §545.05, subd. 2 (2006) (emphasis added).

As discussed *supra*, Appellant's Notice to Respondents and the Statements filed with the Minnesota Secretary of State clearly demonstrate that Appellant filed attorneys' liens pursuant to Minnesota Statute §481, not Article 9 of the U.C.C. (A.18-25). As noted above, attorneys' liens are statutory in nature, not U.C.C. liens subject to the consent requirements of Minnesota Statute §545.05, subdivision 1. *See* Minn. Stat. §481.13 (governing attorneys' liens); *see also In re Pierce*, 809 F.2d 1356, 1359-1360 (8<sup>th</sup> Cir. 1987); *Boline v. Doty*, 345 N.W.2d 285, 288 (Minn. Ct. App. 1992). Based upon the plain language of Minnesota Statute §545.05, subdivision 2, the District Court's conclusions were erroneous as a matter of law as Minnesota Statute §481, not Article 9 of the UCC, or any other article of the U.C.C. for that matter, governs the application of attorneys' liens.

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As required by Minnesota Statute §545.05.

Yet further evidence that attorneys' liens are not U.C.C. liens subject to Minnesota Statute §545.05, subdivision 1 (which expressly states that it applies only to financing statements filed under Article 9 of the U.C.C.), can be found in two separate provisions of Article 9 of the U.C.C., each which specifically exclude attorneys' liens from its application.

The first provision that excludes attorneys' liens from Article 9 is Minnesota Statute §336.9-109(c)(2), which states that Article 9 does not generally apply to the extent that "another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state." Minn. Stat. §336.9-109(c)(2)(2006); *see also Williams v. Dow Chem. Co.*, 415 N.W.2d 20, 26, FN 1 (Minn. Ct. App. 1987)(stating that "Minn. Stat. §336.9-104 (c)<sup>7</sup> expressly excludes statutory liens from the scope of Article 9." ). As discussed *supra*, Appellant's attorneys' liens are strictly governed by Minnesota Statute §481.13 as a matter of law. Minnesota Statute §481.13 provides the statutory terms governing the creation, "perfection", and enforcement of attorneys' liens, respectively. *See* Minn. Stat. §481.13; *see also Boline*, 345 N.W.2d at 288.

Attorneys' liens are also excluded from Article 9 by Minnesota Statute §336.9-109 (d)(2), which states: "This article does not apply to [] a lien, other than an agricultural lien,

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Effective July 1, 2001, Article 9, relating to secured transactions, was repealed and a new Article 9 was enacted, also relating to secured transactions. No substantive changes were made to Minn. Stat. §336.9-104, but it was renumbered Minn. Stat. §336.9-109.

given by statute or other rule of law for *services . . .*” Minn. Stat. §336.9-109(d)(2)(2006) (emphasis added). The attorneys’ liens statute, which governed the liens filed by Appellant as it does so even today, was established by the Legislature to provide attorneys a manner to receive compensation for their unpaid legal *services*. See Minn. Stat. §481.13; see also *Boline*, 345 N.W.2d at 288 (stating that “[t]he theory behind this lien is that a successful party should not be permitted the fruits of the judgment secured by the attorney’s services without paying for those services.”).

In fact, the U.C.C. in general does not apply to pure services. See Minn. Stat. §336.2-102 (2006) (applying Article 2 to sale of goods); *Id.* at §336.3-102 (2006) (applying Article 3 to negotiable instruments); *Id.* at §336.4-102(b) (2006) (dealing with the liability of a bank due to action or inaction); *Id.* at §336.5-103 (2006) (stating that Article 5 “applies to letters of credit and obligations arising out of transactions involving letters a credit); *Id.* at §336.7-101 (2006) (relating to documents of title); *Id.* at §336.8-101 (2006) (relating to investment securities). It is undisputed that Appellant’s attorneys’ liens in this action concern only services.<sup>8</sup>

Because attorneys’ liens are statutory in nature and are liens for services, they are excluded from Article 9, and therefore, cannot be subject to any consent requirement of Minnesota Statute §545.05, subdivision 1. See Minn. Stat. §545.05, subd. 2 (providing that Minn. Stat. §545.05, subd. 1 applies to financing statements “filed under sections 336.9-101

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And the reimbursement of advanced costs.

to 336.9-709", Article 9 of the U.C.C.); *Williams*, 415 N.W.2d at 26, FN 1(stating that "Minn. Stat. §336.9-104 (c)<sup>9</sup> expressly excludes statutory liens from the scope of Article 9"); *see also* Minn. Stat. §336.9-109(d)(2)(stating that Article 9 does not apply to statutory liens for services).

Accordingly, Appellant's attorneys' liens cannot be "fraudulent or otherwise improper" under Minnesota Statute §545.05 subdivision 1, as Minnesota Statute §545.05 cannot, and does not, apply to Appellant's non-UCC statutory Attorneys' Liens as a matter of law.

"Statutory enactments, even though they provide new procedures to enforce pre-existing rights at law and in equity, are to be read in harmony with the existing body of law, inclusive of existing equitable principles, unless an intention to change or repeal it is apparent." *In re: Lakeland Dev. Corp.*, 277 Minn. 432, 442, 252 N.W.2d 758, 765 (1967) The language in Minnesota Statute §545.05, subdivisions 1 and 2, when read together with Minn. Stat. §336.9-109(c)(2), (d)(2), are consistent and in harmony in demonstrating that attorneys' liens are not governed by Article 9 or any other Article of the U.C.C. Further, such a reading is also in harmony with the language of Minn. Stat. §481.13, which exclusively provides for the creation, perfection, and enforcement of attorneys' liens, and

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Effective July 1, 2001, Article 9, relating to secured transactions, was repealed and a new Article 9 was enacted, also relating to secured transactions. No substantive changes were made to Minn. Stat. §336.9-104, but it was renumbered Minn. Stat. §336.9-109.

does not require consent. The District Court's interpretation of Minnesota Statute §545.05 unfortunately derogates and renders void the well-established principles that attorneys' liens are governed exclusively by Minnesota Statute §481.13, and that the statute's fundamental purpose is to protect attorney's, not clients. *See Ewers v. Thunderbird Aviation, Inc.*, 289 N.W.2d 94, 101 (Minn. 1979)(quotation omitted)(stating that "[a] statute is not to be construed in derogation of well-established principles of common law . . . unless so required by express words or by necessary implication and then only to the extent clearly indicated."); *Boline*, 345 N.W.2d at 288 (stating that "[t]he theory behind this lien is that a successful party should not be permitted the fruits of the judgment secured by the attorney's services without paying for those services.").

The plain language of Minnesota Statute §§545.05 and 336.9-109(c)(2), (d)(2) unequivocally demonstrates that statutory attorneys' liens are not properly adjudicated under Minnesota Statute §545.05. Minnesota Statute §481.13 on the other hand, provides a complete and detailed procedure for adjudicating attorney's liens. *See* Minn. Stat. §481, subd. 3. Therefore, the District Court's summary adjudications that Appellant's Attorneys' Liens were "fraudulent or otherwise improper" under Minnesota Statute §545.05 are incorrect as a matter of law mandating reversal.

**D. The District Court's Legal Conclusions Are Contrary To The Plain Language and Purpose of Minnesota Statute §481.13, Rendering Minnesota Statute §481.13 and its Provisions Superfluous and Void.**

Finally, to conclude that an attorney must receive the consent of the client before filing an attorneys' lien would contradict the express language of Minnesota Statute §481.13 (which states that when attorneys enter into compensation agreements with their clients, they have a lien as a matter of right) and would give effect to a separate, inapplicable statute. *See* Minn. Stat. §481.13, subd. 1(a) (stating that "an attorney has a lien for compensation where the agreement for compensation is expressed or implied").

Furthermore, such an interpretation of Minn. Stat. §481.13 is inconsistent with the purpose of the statute. *See* Minn. Stat. §645.16 (stating that "[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature."). "The theory behind this lien is that a successful party should not be permitted the fruits of the judgment secured by the attorney's services without paying for those services." *Boline*, 345 N.W.2d at 288 (Minn. Ct. App. 1992). Minnesota Statute §481.13 is intended to protect the attorney, not the client. *See Johnson v. Blue Cross and Blue Shield of Minnesota*, 329 N.W.2d 49, 53 (Minn. 1983); *Boline*, 345 N.W.2d at 288. Therefore, to give clients the "final say" as to the validity of an attorney's lien removes the protection given to attorneys by the statute and would frustrate the intended purpose of the attorneys' lien statute—to protect attorneys from clients who do not want to pay for their legal services.

It would also appear futile that an attorney need first obtain a client's consent to assert

an implied entitlement for an attorney's lien, especially if the attorneys' lien can be defeated (and sanctioned) simply by the client refusing to do so, as the District Court decided in this case. This is notwithstanding the fact that Appellant cannot even envision a situation where a debtor-client would ever voluntarily consent to an attorney lien claim.

Clearly, Minn. Stat. §481 contemplates this absurd result by providing that attorneys may obtain a lien by implication. *See* Minn. Stat. §481.13, subd. 1(a). Nowhere does §481 otherwise state or intimate that client consent is required. For the District Court to now require same essentially voids §481, summarily removes attorneys' liens to uniform commercial code jurisdiction, and once there, places attorneys' liens in direct contradiction with the very purpose, scope and stated language of the UCC.

Such an interpretation of §545.05 would also render §481 superfluous and void, and would effectively overrule, retroactively, Minnesota Statute §481.13. Such a result is contrary to the well-established principle that “[a] statute should be construed so no phrase is ‘superfluous, void, or insignificant.’” *Weber v. Hvass*, 626 N.W.2d 426, 432 (Minn. Ct. App. 2001), *review denied* (Minn. June 27, 2001) (citing *Boutin v. LaFleur*, 591 N.W.2d 711, 716 (Minn. 1999)); *see also* Minn. Stat. §645.16 (“Every law shall be construed, if possible, to give effect to all its provisions.”).

In order to effectuate the clear intent of the attorneys' lien statute this Court must rule that attorneys' liens are governed by Minn. Stat. §481.13, and that therefore, as a matter of law, attorneys do not need the consent of their client-debtor before filing valid attorneys'

liens. The District Court's summary conclusions that Appellant's attorneys' liens were fraudulent or otherwise improper under Minnesota Statute §545.05, subdivision 1 are erroneous as a matter of law and must be reversed. Appellant's properly filed Minnesota Statute §481 attorneys' liens are valid, and eligible for §481 determination.

Lastly, Appellant believes that Minnesota Statute §545.05 was enacted in large part to address certain disgruntled individuals who were filing frivolous and harassing Article 9 UCC liens on real estate owned by court personnel and other public servants. These false claimant(s) were apparently not attorneys nor persons with legitimate attorney claims for attorney fees. The claimant(s) did not invoke, nor follow, the mandates of Minnesota Statute §481 et seq. The courts were in need for a quick way to address the false and harassing Article 9, UCC claims, and Minnesota Statute §545.05 was born. This is why Minnesota Statute §545.05 references such punitive language as "fraudulent" and "improper", and carries sanction language. *See* Minn. Stat. §545.05 (2006). It is also why the statute adjudicates such claims on an "expedited", summary basis, apparently without discovery, witnesses, exhibits, cross examination, jury trials or other customary due process procedures and rights in favor of a quick, statutory-only adjudication. The District Court's application of these principles in the instant case is misplaced.

Attorneys who provide legal services on behalf of clients and thereafter follow the mandates of the attorneys' lien statute, Minn. Stat. §481 et seq., are clearly not the targeted claimant(s) subjected to the harsh treatment of false claims under Minnesota Statute §545.05.

At the very least, attorneys who comply with Minnesota Statute §481 were never intended by the legislature, or the UCC, to face summary determination of having engaged in “fraudulent” conduct simply upon a debtor claiming the attorney lien was not formally consented to. Such a result in the instant case is not only contrary to the well-settled law of Minnesota as discussed above, but it offends all notions of fairness and justice by sanctioning the wrong claimant for the wrong conduct.

### CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the District Court’s decisions in these matters, and conclude as a matter of law that Appellant’s attorneys’ liens, filed pursuant to §481 et. seq., were not “fraudulent or otherwise improper” under inapplicable Minnesota Statute §545.05, subd. 1.

Dated this 9<sup>th</sup> day of May, 2007.

Respectfully Submitted,

**GIEBEL, GILBERT, WILLIAMS & KOHL, P.L.L.P.**



By: Zenaida Chico (No. 0299674)  
Kevin E. Giebel (No. 164112)  
Roseville West Building  
2277 West Highway 36, Suite 220  
Roseville, MN 55113  
(651) 332-8555 (v)  
(651) 639-1551 (f)

Gene H. Hennig (#0044143)  
RIDER BENNETT  
33 South Sixth Street, Suite 4900  
Minneapolis, MN 55402  
(612) 340-8900 (v)

*Attorneys for Appellant*

