

NO. A10-257

State of Minnesota
In Court of Appeals

Galt Funding, LLC,

Appellant,

v.

The Minneapolis Grand, LLC, Benjamin Reed,
Benjamin Miller, Paul Maeker, and Erik Anderson,

Respondents.

**BRIEF OF RESPONDENTS THE MINNEAPOLIS GRAND, LLC,
BENJAMIN REED, BENJAMIN MILLER, PAUL MAEKER,
AND ERIK ANDERSON**

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STATEMENT OF ISSUES

- I. Did the district court properly permit Respondents to exercise their right to obtain a release Appellant's blanket lien on the four condominium units through a proportionate tender as provided by MINN. STAT. § 515B.3-117(a)?**

The district court held that Appellant was required to release its lien on the four condominium units which are the subject of this action upon the tender of a proportionate share of the lien pursuant to MINN. STAT. § 515B.3-117(a).

Statutes

MINN. STAT. § 515B.3-117(a)

MINN. STAT. § 515B.1-108

- II. Did the district court properly exercise its discretion by using its equitable powers to vacate Appellant's foreclosure sale, which returned the parties to the status quo, preserved Respondents' rights under Chapter 515B, and avoided a windfall in favor of Appellant?**

The trial court vacated Appellant's foreclosure sale to allow Respondents the opportunity to exercise their rights under MINN. STAT. § 515B.3-117(a).

Cases

Romkey v. Saumweber, 170 Minn. 438, 212 N.W. 816 (1927)

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Statutes

MINN. STAT. § 515B.3-117(a)

MINN. STAT. § 515B.1-108

STATEMENT OF THE CASE

The district court properly applied section 3-117 of the Minnesota Common Interest Ownership Act ("MCIOA") to compel Appellant to release its blanket lien on the four subject condominium units upon Respondents' tender of a proportionate share of the

balance of the lien on the Project. Appellant seeks a windfall of nearly \$2,000,000, at the expense of the Respondents, the owner of the units and its predecessors. The district court used its equitable powers to vacate Appellant's foreclosure sale, based on the compelling facts of this case.

Respondents Minneapolis Grand, LLC, Benjamin Reed, Benjamin Miller, Paul Maeker, and Erik Anderson ("Respondents") commenced the present action immediately after Appellant Galt Funding, LLC ("Appellant") rejected the tender of \$94,148.96, the uncontested proportionate share of Appellant's lien on the four subject units as calculated under MINN. STAT. § 515B.3-117(a). Appellant refused to release its lien on the four condominium units owned by Respondent Minneapolis Grand, LLC ("Minneapolis Grand") absent payment of its entire loan balance. Respondents brought a motion for a temporary restraining order to prevent the expiration of the redemption period from Appellant's foreclosure sale, which was granted. The parties brought cross motions for summary judgment regarding the application of MINN. STAT. § 515B.3-117(a).

The Honorable Denise D. Reilly, District Court Judge, Fourth Judicial District, Hennepin County granted Respondents' motion and held that Minneapolis Grand was entitled to the release of Appellant's lien on its four units upon tender of payment of the proportionate share of Appellant's blanket lien as provided by MINN. STAT. § 515B.3-117(a). The district court vacated Appellant's foreclosure sale, invoking its equitable powers. Subsequently, Respondents voluntarily dismissed their other claims and judgment was entered.

ADDITIONAL FACTS

Appellant advanced Chicago Commons Corporation (“CCC”) \$1,500,000 to finance the completion of the Chicago Commons condominium project as evidenced by a note dated September 1, 2005 (the “Appellant’s Note”). App. 405, *et seq.* The advances were used for the completion of the entire Project, not any smaller or limited portion of the Project (*e.g.* specific individual units). Appellant’s Note was secured by a second priority mortgage, as well as guarantees from Gary A. Carlson, Julie A. Carlson, Carlson Family, L.P. and Danna, Inc. *Id.*

Appellant’s mortgage dated September 1, 2005 encumbered the entire Property to secure Appellant’s Note. *See* Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Financing Statement (the “Appellant’s Mortgage”), App. 176.

Appellant’s Mortgage referenced the senior Marshall Bank mortgage on the Property, which secured a senior lien in the amount of \$11,900,000 (the “Marshall Bank Mortgage”). *Id.*, subsection A, App. 176. Appellant’s Mortgage states:

Mortgagee [Appellant] has agreed to make a mortgage loan to the Mortgagor [CCC] in the amount of One Million Five Hundred Thousand and no/Dollars (\$1,500,000) (“Loan”) the proceeds of which are to be used of the purpose of financing the development of eighty-one (81) condominium residences and approximately 34,000 square feet of retail and/or commercial space located at 2401 Chicago Avenue South, Minneapolis, Minnesota (the “Project”).

Id., page 2, subsection B, App. 177. This confirms several facts. First, Appellant agreed that its mortgage lien would be junior to the Marshall Bank Mortgage. Second, Appellant’s mortgage lien would encumber the entire Project, not just the four units ultimately foreclosed by Appellant. Third, Appellant was aware that the Project

contained condominium residences, and would thus be subject to Chapter 515B, the Minnesota Common Interest Ownership Act, which includes MINN. STAT. § 515B.3-117(a). Fourth, the Project contained eighty-one separate residential condominium units. Thus, Appellant accepted and agreed that any unit owner could tender a proportionate portion of Appellant's mortgage lien encumbering the unit, and Appellant would be required to release its lien on that unit. Fifth, the proceeds of its \$1,500,000 loan would finance the development of the entire Project, and not just four units.

Respondents Benjamin Reed, Benjamin Miller, Paul Maeker, and Erik Anderson each purchased a residential condominium unit in the Property during the fall of 2005 (hereinafter, the four units they bought are referred to as the "Units"). App. 086. At the time each of the four individual Respondents purchased a Unit, Marshall Bank released its lien on the Unit purchased. App. 100. After default by CCC, on the remaining Marshall Bank indebtedness, Marshall Bank foreclosed its mortgage on the Project (except the four released Units) by and through a voluntary foreclosure agreement. The sheriff's sale on Marshall Bank's foreclosure occurred on August 22, 2006, and Marshall Bank was the successful bidder. App. 100, 210-248. Appellant chose not to redeem from Marshall Bank's foreclosure, despite its right to do so under MINN. STAT. § 582.32, subd. 9, 580.24 & 580.24. App. 100. As Appellant did not redeem from the Marshall Bank foreclosure, its mortgage lien was extinguished on the collateral remaining subject to Marshall Bank's mortgage, *i.e.* 77 of the 81 condominium units, and the retail and commercial space. App. 101. Respondents had no role in Appellant's decision not to redeem.

Marshall Bank and Respondents Benjamin Reed, Benjamin Miller, Paul Maeker, and Erik Anderson conveyed their respective interests in the Property in May, 2007 to Tria Properties, LLC by warranty deeds. App. 142-175. Tria Properties, LLC later assigned its interests to Respondent Minneapolis Grand. *Id.*

Appellant foreclosed its mortgage by advertisement on the four Units only. App. 249-263. The sheriff's sale was held on April 10, 2008. *Id.* Appellant bid the entire \$1,979,161.04 balance of its blanket mortgage loan on the entire Project, allocated only between the four Units. *Id.* The method used by Appellant to divide the balance of its blanket mortgage on the Project among the four Units is unknown.

The balance of Appellant's loan as of September 15, 2008 was \$2,101,539.16, calculated by taking the total amount Appellant bid at its foreclosure sale, plus interest at the rate set forth in Appellant's Note and Mortgage. Under MINN. STAT. § 515B.3-117(a), this amount is multiplied by the percentage of common expense liability for each of the 81 residential condominium units in the Project, as set forth in Exhibit B to the Declaration for Common Interest Community Number 1420, 24 Chicago. App. 321 (the "Declaration"). Minneapolis Grand tendered to Appellant the amounts noted below, in compliance with the statute:

Unit Number	Percentage of Expense Liability, as set forth in Exhibit B to the Declaration	Tender per MINN. STAT. § 515B.3-117(a)
210	.97%	\$20,384.93

305	.94%	\$19,754.47
411	1.40%	\$29,421.55
412	1.17%	\$24,588.01

See Letter dated September 15, 2008 tendering funds to Appellant, App. 264-5.

Appellant summarily rejected the tender. Appellant demanded the tender of \$1,979,161.04 before it would release its lien. See Letter dated September 16, 2008, App. 266-7. This is the amount Appellant bid at the foreclosure sale on its mortgage, the full balance of Appellant's blanket loan.

The estimated market value of the Units (as of 2008) is set forth below, according to the Hennepin County Assessor:

Unit Number	Original Owner	Tender per MINN. STAT. § 515B.3-117(a)	Estimated Market Value	Demanded by Galt
210	Benjamin Reed	\$20,384.93	\$147,000	\$415,623.82
305	Benjamin Miller	\$19,754.47	\$143,000	\$415,623.82
411	Paul Maeker	\$29,421.55	\$225,000	\$653,123.14

412	Erik K. Anderson	\$24,588.01	\$187,000	\$494,790.26
		<u>Total Tendered:</u>		<u>Total Demanded:</u>
		\$94,148.96		\$1,979,161.04

App. 386-389. The windfall sought by Appellant is evident from these figures.

Appellant demands payment \$1,885,512.08 more than it is permitted to receive under MINN. STAT. § 515B.3-117(a).

ADDITIONAL STANDARD OF REVIEW

The standard for the review of a decision of a district court using its equitable powers is abuse of discretion. *See Metropolitan Life Ins. Co. v. Belland*, 583 N.W.2d 592, 593 (Minn. Ct. App. 1998).

ANALYSIS

I. The trial court properly confirmed Respondents' right to obtain a release of Appellant's blanket lien on the four condominium Units through a proportionate tender as provided by MINN. STAT. § 515B.3-117(a).

The district court properly protected Respondents' rights under MCIOA and held that Appellant must accept the tender of funds made pursuant to MINN. STAT. § 515B.3-117(a) and release the four Units. The decision properly enforces and harmonizes the provisions of MCIOA and Chapter 580. It is supported by the language of the statute, the intent of the Legislature, and the facts of this case. Respondents respectfully request that this Court affirm the decision of the district court.

Buried on page 14 of its brief, Appellant reveals the full effect of the relief it seeks. Appellant demands that Respondents be required to pay 100% of each of its bids at the foreclosure sale. These bids total \$1,979,161.04, the balance of Appellant's loan to finish the entire Project. This amount is not the amount attributable to the four Units. Respondents' right to make a proportionate tender under Section 3-117 of MCIOA would be entirely eliminated. Contrary to Appellant's assertion, such a reading is inconsistent with MCIOA, and would not give "full effect" to Respondents' proportionate tender rights under Section 3-117. However, the Legislature presumptively intends all legislative acts to be given meaning. *See* MINN. STAT. § 645.17(3). Appellant's interpretation is contrary to this presumption.

MCIOA provides a unit owner the right to compel the holder of a blanket lien on common interest community (such as a condominium) to release its lien on a specific unit, upon payment of the amount the lien secures which is attributable to the unit. The statute states, in relevant part:

(a) Except in a cooperative and except as otherwise provided in this chapter or in a security instrument, an individual unit owner may have the unit owner's unit released from a lien if the unit owner pays the lienholder the portion of the amount which the lien secures that is attributable to the unit. Upon the receipt of payment, the lienholder shall promptly deliver to the unit owner a recordable partial satisfaction and release of lien releasing the unit from the lien. The release shall be deemed to include a release of any rights in the common elements appurtenant to the unit...

MINN. STAT. § 515B.3-117(a). This section provides a method to calculate the amount "attributable to the unit". The statute states:

The portion of the amount which a lien secures that is attributable to the unit shall be equal to the total amount which the lien secures multiplied by a percentage

calculated by dividing the common expense liability attributable to the unit by the common expense liability attributable to all units against which the lien has been recorded...

MINN. STAT. § 515B.3-117(a) (in relevant part). The “common expense liability” referenced in this statute for each unit is set forth in the Declaration for the common interest community, a public record. There is no dispute that the amount of the tender made by Minneapolis Grand was sufficient and properly calculated under this provision.

Appellant’s theory is that Respondents no longer have the right to make a proportionate tender based on its mortgage lien on the entire Project, and that Respondents’ tender must be calculated from its overstated bids at the foreclosure sale. This position is contrary to MCIOA and the facts of this case. Minneapolis Grand properly tendered to Appellant the amount required by MINN. STAT. § 515B.3-117(a) to obtain a release of Galt’s interest in the four Units. Appellant violated the statute when it rejected such tender, and refused to release its lien. The district court held:

Reviewing the plain language of the statute, the Court concludes that [Respondents] can discharge any valid lien claimed by [Appellant] on the Units by tendering a proportionate amount under the Act. As currently written, the Act provides that any lien upon multiple units in a common-interest ownership building is apportioned among the units. The Legislature adopted this apportionment process in order to ensure that individual unit-holders in common-interest-community complexes were not held liable for the aggregate liability of a complex as a whole.

Order, Add. 08. This analysis is consistent with the clear text of Section 3-117. Respondents’ four Units were affected proportionately by Appellant’s \$1,500,000 loan provide to complete the entire Project, and are entitled to a release of Appellant’s lien upon payment of such proportionate amount.

The relief sought by Appellant would eviscerate Minneapolis Grand's right under MCIOA to a release upon the tender of a proportionate amount of the lien balance on its four Units. The district court held:

Sanctioning Galt's conduct in this case would gut the proportionate-tender protections provided to unit-holders of units in common-interest ownership communities under § 515B.3-117(a). The Court refuses to endorse an interpretation of the Act and § 580.23 that could compel a single-unit holder in a common-interest ownership community to satisfy obligations properly attributed to every unit-owner before it may redeem his or her unit from foreclosure. *See* MINN. STAT. § 515B.1-108 (recognizing that principles of equity "supplement the provisions of [the Act]"). A unit-holder's right of redemption would be hollow indeed if a creditor with a lien attached to an entire common-interest ownership community could assert the full amount of such lien against an individual unit-holder.

Order, Add. 10-11. The district court's holding promotes the marketability of condominium units, by preventing the holder of a blanket lien from demanding payment from a unit owner of an amount in excess of the proportionate share of such lien. It also harmonizes Section 3-117, which provides a unit owner the absolute right to make a proportionate tender, with a unit owner's right to redeem from a foreclosure under Chapter 580. The trial court properly granted summary judgment in favor of Respondents, preserving their rights under MINN. STAT. § 515B.3-117(a).

The statute makes clear that Appellant did not eliminate Respondents' right to make a proportionate tender when it allowed its lien on the bulk of the Project to be extinguished through failing to redeem from the Marshall Bank foreclosure, or when it bid its entire loan balance on the foreclosure of only the four Units. The focus of the statute is on the original scope of the subject lien, and not subsequent changes in the number of units encumbered or other modifications in the nature of the lien caused by the

lien claimant's own actions. The statute provides that the scope of a lien on a particular unit is limited to the part of the lien attributable "to all units against which the lien has been recorded". MINN. STAT. § 515B.3-117(a) (emphasis added). As noted by the district court, this language ensures:

[T]hat a lien on a common-interest ownership community complex is attributable to an individual unit in proportion to all units against which it had attached, rather than in proportion to the number of units which are subject to a lien at a given moment in time.

Order, Add. 09. The lien attributable to each of the four Units is the share of Appellant's loan on the eighty-one units in the Chicago Commons common interest community. Appellant lent funds to CCC to complete the Project, secured by a second position loan on the entire common interest community. Appellant's lien "has been recorded" against the entire Project- all 81 condominiums, and not just the four Units.

Appellant states that Respondents purchased their Units with knowledge of Appellant's Mortgage. This is a red herring and irrelevant. Respondents no longer challenge that Appellant has a lien on the four Units. The relevant issue is that Appellant's blanket lien is subject to MCIOA, which includes the ability of an owner to obtain a release of such blanket lien through payment under Section 3-117. Appellant was granted a mortgage on a common interest community subject to Chapter 515B, and thus had notice of each unit owner's right to a release of its mortgage after a proportionate tender. Appellant knew and accepted the risk of nonpayment of its loan. App. 434.

Appellant claims that the district court erred in applying Section 3-117 as mandatory rather than permissive. It asserts that the court did not take the language of

the section in context. This is incorrect. MINN. STAT. § 515B.3-117(a) provides a mechanism for an individual unit owner to compel a lienholder to release a lien from his or her unit through payment of a “portion of the amount which the lien secures that is attributable to the unit”. A unit owner is not compelled to make such a tender, but the statute provides a mechanism for the exercise of such right. The statute defines the amount of a blanket lien which can be attributed to a particular unit. This definition is mandatory, and governs the actions of the holder of a blanket lien on an entire common interest community, and requires the release of a lien for the proportionate amount thereof attributable to a unit. It is axiomatic that a lien cannot secure payment of an amount exceeding that required to obtain the release.

The rights of the owners of Units are governed by MCIOA. The Units are condominium units as defined under MINN. STAT. § 515B.1-103, subd. 11, and within a Common Interest Community, as defined by MINN. STAT. § 515B.1-103, subd. 10. The Legislature provided that MCIOA controls over other statutes, stating:

THIS CHAPTER PREVAILS; SUPPLEMENTAL LAW.

The principles of law and equity, including the law of corporations, the law of real property, the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

MINN. STAT. § 515B.1-108 (emphasis added). MCIOA is specific to the particular issues which face common interest communities, and so controls over any inconsistent statutes or principals of law and equity, including mortgage foreclosure statutes. See MINN.

STAT. § 645.26, subd. 1. The problem addressed by MINN. STAT. § 515B.3-117(a) is particularly acute in common interest communities formed under MCIOA, where a large mortgage lien encumbers an entire community to secure a loan for improvements that provide a benefit to all units. Absent MINN. STAT. § 515B.3-117(a), an owner of an individual unit could be compelled to pay the entire balance of a loan which benefited the whole common interest community. The relief sought by Appellant would strip Respondents of the rights provided by MINN. STAT. § 515B.3-117(a) and would be inconsistent with MCIOA and marketability. Appellant's application of the foreclosure statutes and MCIOA does not harmonize these statutes. Rather, its interpretation would eliminate Respondents' rights under MINN. STAT. § 515B.3-117. The lien attributable to each of the four Units is the proportionate share of Appellant's loan benefitting the entire Project, and not the amount of the bids Appellant chose to make at its foreclosure sale.

Youngdahl v. HBC Enterprises, 2008 WL 2106855 (Minn. Ct. App.)

(unpublished) is distinguishable from the present case. *Youngdahl* involved the foreclosure of a condominium association assessment lien. At the sale, HBC (a third party) was the successful bidder at the foreclosure sale, not the original lien holder. HBC paid off and satisfied the assessment lien through its cash bid at the sheriff's sale. Wells Fargo was granted a "first" mortgage on the subject unit, after the date of the foreclosure sale on the association lien. Wells Fargo did not redeem the subject property before the expiration of the redemption period. MCIOA provides that an assessment lien is "prior to all other liens and encumbrances on a unit except ... any first mortgage encumbering the fee simple interest in the unit..." See MINN. STAT. § 515B.3-116(b)(ii). *Youngdahl* did

not involve MINN. STAT. § 515B.3-117. *Youngdahl* did not involve a lien for something benefitting more than one unit.

In the present case, Respondents are the present and former owners of the four Units, not a lender such as Wells Fargo. Appellant is the holder of a blanket lien on a entire condominium community, not the purchaser of an assessment lien. The redemption period has not expired, as occurred in *Youngdahl*. Respondents were properly permitted by the district court to exercise their rights under MINN. STAT. § 515B.3-117 and obtain release of their units from a mortgage and loan which had been placed on the entire common interest community. *Youngdahl* does not prevent Respondents' exercise of their rights under MCIOA.

II. The trial court did not abuse its discretion in vacating Appellant's foreclosure sale, which returned the parties to the status quo, preserved Respondents' rights under Chapter 515B, and avoided a potential windfall in favor of Appellant.

The district court properly used its equitable powers to vacate the foreclosure sale to protect Respondents' rights under MCIOA. The standard of review applicable to an aware of such equitable relief is abuse of discretion. *See Metropolitan Life Ins. Co. v. Belland*, 583 N.W.2d 592, 593 (Minn. Ct. App. 1998). Equity was used to put the parties in the positions they negotiated, and preserved their rights under both Chapter 580 and MCIOA. At the time Appellant was granted a blanket mortgage lien on the entire 81 unit condominium Project, it knew that MCIOA applied, including the requirement that Appellant release its lien on each unit if the unit owner tendered a proportionate share of the amount secured by its lien.

MCIOA specifically preserves the ability of the district court to perform equity when necessary. Section 515B.1-108 of MCIOA provides that MCIOA controls if other claims and principals are inconsistent with MCIOA. This is consistent with the mandate that general statutory provisions (such as mortgage foreclosure laws) and specific statutory provisions (such as MCIOA) shall all be given effect to the extent possible, and that the specific (such as MCIOA) shall prevail over and be given effect over the general (such as the mortgage foreclosure statutes) in the event of conflict. *See* MINN. STAT. § 645.26, subd. 1. The reversal sought by Appellant would apply Chapter 580 in a manner inconsistent with section 3-117, and the clear rights provided by the legislature for a unit owner to obtain a release of a blanket lien through payment of a proportionate share of a lien.

A district court may vacate a foreclosure sale in the interests of equity, under long-standing precedent. *See Hargreaves v. Federal Deposit Ins. Corp.*, 1990 WL 77060 (Minn. Ct. App. June 12, 1990) (can overturn a foreclosure sale for overstatement) (cited by district court); *see Semlek v. National Bank of Alaska*, 458 P.2d 1003 (Alaska 1969) (an overstated bid which may deter bidders renders a foreclosure sale invalid) (cited by district court). A common policy in these cases is to return the parties to the status quo, and avoid windfalls or other inequitable results. *Cf., Lane v. Holmes*, 55 Minn. 379, 57 N.W. 132 (1893) (directing that foreclosure sale be set aside as unjust result will occur if sale not vacated); *Romkey v. Saumweber*, 170 Minn. 438, 212 N.W. 816 (1927) (affirming vacation of foreclosure sale in interests of equity, did not deprive other party of any right or advantage); *In re Strawberry Commons Apartment Owners Association I*,

356 N.W.2d 401 (Minn. Ct. App. 1984) (affirming setting aside of foreclosure sale due to inadequacy of price and procedural flaws with process)(cited by district court). The bids made by Appellant on the Units well exceed the market value of the Units, which would deter any bidder. The district court properly vacated the foreclosure sale to protect Minneapolis Grand's right to obtain a release of Appellant's lien on its condominium Units through the tender of a proportionate share of the blanket lien.

The facts of this case support the court's proper exercise of its inherent equitable powers. Appellant knew when it was granted a blanket second position mortgage on the Project that it contained 81 residential condominium units, and that its rights would be subject to Chapter 515B. This includes Section 3-117(a) of MCIOA, and the right of a unit owner to compel Appellant to release its lien on a particular unit if the owner tenders a proportionate share of such lien as calculated under the statute. It would be inequitable if Appellant could force a unit owner to tender a one-fourth share of the nearly \$2,000,000 balance of its loan, rather than a percentage based on eighty-one units. This would be a windfall for Appellant, contrary to its expectations and the deal negotiated at the time Appellant's Mortgage was recorded. The result demanded by Appellant, that Minneapolis Grand be required to pay off the balance of Appellant's \$2,000,000 loan to CCC to retain title to the four Units, would be a significant and inequitable hardship to Respondents.

The result sought by Appellant would also be inequitable in light of its decision not to redeem from the Marshall Bank foreclosure sale. Respondents played no part in

Appellant's choice to allow its lien to be eliminated from the bulk of the units in the Project.

In *TCF Banking & Savings, F.A. v. Loft Homes, Inc.*, 439 N.W.2d 735 (Minn. Ct. App. 1989), the court noted that equities considered when vacating a foreclosure sale include the absence of negligence by the moving party, unjust enrichment at the expense of the other party, restoration of the status quo and a disastrous result. *Id.* at 738-739. *TCF Banking* involved an action by the foreclosing mortgagee to vacate its own foreclosure sale due to error. The analysis in *TCF Banking* supports the actions of the district court in the present matter. Respondents were not negligent. They seek to exercise their rights under MCIOA. Appellant would be unjustly enriched if permitted to recover hundreds of thousands of dollars more than it is entitled to receive under MCIOA and from only four of the 81 units encumbered by Appellant's Mortgage. The court's decision reinstates the status quo. Appellant knew that it could be compelled to release its lien on particular units, if a tender was made under section 3-117. It chose to let the bulk of the units subject to its lien be discharged by failing to redeem from Marshall Bank's foreclosure. *TCF Banking* held that an important factor for determining whether restoration to the status quo is possible is whether there was any detrimental reliance on the foreclosure, and any subsequent rights obtained by a third party. *Id.* at 739. There is no evidence of detrimental reliance by Appellant, or any rights to the Units obtained by a third party that would be harmed by the vacation of the foreclosure sale.

The district court's decision is based on the specific and unusual facts of this case does not create a new duty for foreclosing lenders beyond those mandated by MCIOA,

contrary to Appellant's argument. Appellant owned a second priority mortgage on 81 condominium units, and 34,000 square feet of retail and commercial space. By its own actions, its lien was discharged from all but these four Units. Its loan balance remained nearly \$2,000,000. Under these facts, Appellant's decision to bid the full balance of its loan at the foreclosure of the four Units resulted in significantly overstated bids. The bid amounts, if allowed to remain, would strip Minneapolis Grand of its rights to either redeem or to make a proportionate tender under Section 3-117. It is uncontested that the amounts bid by Appellant are well in excess of the market value of these four Units. As noted by the district court:

A unit-holder's right of redemption would be hollow indeed if a creditor with a lien attached to an entire common-interest ownership community could assert the full amount of such lien against an individual unit-holder.

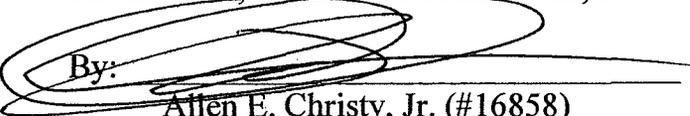
Order, App. 11. The present case involves the circumstance that Sections 3-117 and 1-108 of MCIOA were created to address.

CONCLUSION

Respondents Minneapolis Grand, Benjamin Reed, Benjamin Miller, Paul Maeker, and Erik Anderson respectfully request that this Court affirm the decision of the district court.

Dated: June 7, 2010.

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