

NO. A11-1521

State of Minnesota
In Court of Appeals

Amos Graves,

Appellant,

vs.

Michael Wayman, et al., REA Group, Inc., C&M Real Estate Services,
Inc., Trademark Properties Group, LLC, and First Minnesota Bank,

Respondents.

RESPONDENT FIRST MINNESOTA BANK'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED

I. Whether the District Court erred in concluding that Respondent First Minnesota Bank's status as a bona fide purchaser protects its interest in the property from Appellant's purported cancellation of the foreclosure reconveyance transaction.

How the issue was raised in the trial court: This issue arose at trial when Respondent First Minnesota Bank filed its Motion for Amended Findings of Fact, Conclusions of Law and Order for Judgment and the District Court granted the motion. (See APP70; R.APP001-22.) After the District Court's Amended Findings of Fact Conclusions of Law, and Order for Judgment left a question regarding which party held title to the property (see A49-50, ¶¶ 40-42), Respondent First Minnesota Bank filed a Motion for Clarification and/or Clerical Mistake Under the Rules, which Appellant opposed (see R.APP-114-121).

Concise statement of trial court's ruling: The District Court determined that Respondent First Minnesota was a bona fide purchaser (see A49-50, ¶¶ 40-42), and that any interest in the Property held by Appellant was subject to First Minnesota's interest. (See A50, ¶ 2.) The District Court clarified this holding in its Order of June 14, 2011, which declared that First Minnesota Bank, as a bona fide mortgagee, owns the property free and clear of any encumbrances of other parties. (See R.APP121-22.)

List of most apposite cases and statutory provisions:

Engel v. Swanson, 191 Minn. 324, 254 N.W. 2 (Minn. 1934).
Daml v. Meyers, No. 07-4384, 2010 WL 7326389 (D. Minn., Dec. 22, 2010).
Minn. Stat. § 325N.17(f)(3) (2007).
Minn. Stat. § 325N.18 (2007).

II. Whether the District Court erred when it misstated the burden of proving bona fide purchaser status in the Preliminary Statement of the Case of its Amended Findings of Fact, Conclusions of Law and Order for Judgment.

How the issue was raised in the trial court: In the Preliminary Statement of the Case in its Amended Findings of Fact, Conclusions of Law and Order for Judgment, the District Court stated: "The Court further finds that the Plaintiffs have not met their burden to show by a preponderance of the evidence that First Minnesota Bank was not a good faith bona fide mortgagee of the premises." (See A29.) Appellant brought a Motion for Amendment of Findings of Fact, Conclusions of Law or Order for Judgment or, In the Alternative, A New Trial. (See APP72-73; R.APP085-86.) Respondent First Minnesota Bank opposed this motion both substantively and because the Minnesota Rules of Civil Procedure do not contemplate a second motion for amended findings. (See R.APP-097-102.)

Concise statement of trial court's ruling: The District Court denied Appellant's motion (R.APP103) and ordered that Respondent First Minnesota Bank, as a bona fide mortgagee, owns the subject property free and clear of any encumbrances. (R.APP121-22).

List of most apposite cases and statutory provisions:

Miller v. Hennen, 438 N.W.2d 366 (Minn. 1989).

Minnwest Bank, M.V. v. All, Inc., No. A10-936, 2011 WL 781178 (Minn. Ct. App., Mar. 08, 2011).

Minn. R. Civ. P. 61.

III. Whether the District Court erred in concluding that Respondent First Minnesota Bank is a bona fide purchaser.

How the issue was raised in the trial court: This issue was argued extensively at trial by Respondent First Minnesota Bank. (See Trial Tr., generally.) When the District Court issued its Findings of Fact, Conclusions of Law and Order for Judgment (*see* A2-27), its stated findings were clearly erroneous based upon the facts proven at trial. Accordingly, Respondent First Minnesota Bank brought a motion for Amended Findings of Fact, Conclusions of Law and Order for Judgment. (*See* APP70; R.APP001-22.) The other respondents brought a separate Motion for Amended Findings of Fact or in the Alternative a New Trial. (*See* R.APP038-58.) The District Court granted the Respondents' motions. (*See* A28, A49-50.) Appellant later raised the issue of "conclusive evidence" in his own Motion for Amendment of Findings of Fact, Conclusions of Law and Order for Judgment or, in the Alternative, A New Trial (*see* APP72-73; R.APP086-093), which Respondent First Minnesota Bank opposed (*see* R.APP-097-102).

Concise statement of trial court's ruling: In its Amended Findings of Fact, Conclusions of Law and Order for Judgment, the District Court determined that Respondent First Minnesota Bank was a bona fide mortgagee, entitled to priority over any interest in the Property held by Appellant. (*See* A49-50.) The District Court denied Appellant's subsequent motion (R.APP103) and held that Respondent First Minnesota Bank, as a bona fide mortgagee, owns the subject property free and clear of any encumbrances (R.APP121-22).

List of most apposite cases and statutory provisions:

Claflin v. Commercial State Bank of Two Harbors, 487 N.W.2d 242 (Minn. 1992).

Miller v. Hennen, 438 N.W.2d 366 (Minn. 1989).

Teal v. Scandinavian-American Bank, 114 Minn. 435, 131 N.W. 486 (Minn. 1911).

Stone v. Jetmar Properties, LLC, 733 N.W.2d 480 (Minn. Ct. App. 2007).

Minn. Stat. § 507.01 (2007).

Minn. Stat. § 507.34 (2007).

IV. Whether the District Court erred in concluding that any interest Appellant held in the property is inferior to Respondent First Minnesota Bank's interest as a bona fide purchaser.

How the issue was raised in the trial court: This issue was raised before the District Court following entry of its Amended Findings of Fact, Conclusions of Law and Order for Judgment (*see* A28-50), when Appellant brought a Motion for Amendment of Findings of Fact, Conclusions of Law or Order for Judgment or, In the Alternative, A New Trial. (*See* APP72-73; R.APP093-94.) Respondent First Minnesota Bank opposed Appellant's motion. (*See* R.APP-097-102).

Concise statement of trial court's ruling: In its Amended Findings of Fact, Conclusions of Law and Order for Judgment, the District Court held that Respondent First Minnesota Bank was a bona fide mortgagee and that any interest held by Appellant was subject to Respondent First Minnesota Bank's superior interest. (A49-50.) The District Court denied Appellant's Motion for Amendment of Findings of Fact, Conclusions of Law or Order for Judgment or, In the Alternative, A New Trial. (*See* R.APP103.) The District Court also clarified in a separate June 14, 2011 Order, that First Minnesota, as a bona fide purchaser, "is the owner of the premises free and clear of any encumbrances of other parties." (*See* R.APP121-22.)

List of most apposite cases and statutory provisions:

Hecht v. Anthony, 204 Minn. 432, 283 N.W. 755 (Minn. 1939).

First Const. Credit, Inc. v. Simonson Lumber of Waite Park, Inc., 663 N.W.2d 14 (Minn. Ct. App. 2003).

V. Whether the District Court erred in denying Appellant's common law fraud claim against the Waymans.

Appellant's fifth issue in this appeal does not involve Respondent First Minnesota Bank. Moreover, the Court stayed this appeal, as it relates to Respondents Cori and Michael Wayman, in its Order dated September 23, 2011. (*See* R.APP131.) Accordingly, Respondent First Minnesota does not address this issue in its brief.

STATEMENT OF THE CASE

The Honorable Dale B. Lindman, Judge of the Ramsey County District Court presided over these matters in the District Court.

In 2007, Wells Fargo foreclosed its mortgage on Appellant's home after Appellant defaulted on repaying the mortgage loan. The Sheriff's sale was conducted on March 13, 2007. This triggered Appellant's six-month redemption period, which expired on September 13, 2007. During the redemption period, Appellant did not complete a single loan application to redeem the mortgage. Apart from the transaction at issue in this litigation, Appellant did not have the financial ability to redeem the Wells Fargo mortgage.

On August 15, 2007, Appellant and his late wife met with Michael Wayman at the home. Wayman owned C&M Real Estate Services, Inc. and REA Group, Inc.¹ During the meeting, Appellant signed a quit claim deed and purchase agreement. Appellant alleges that he cancelled the transaction with Wayman the next day. Notwithstanding the cancellation, however, Appellant made twenty monthly payments to Wayman pursuant to a rent back agreement with C&M, which was a component of the sale transaction.

Following Appellant's meeting with Wayman, C&M procured a loan from First Minnesota Bank ("First Minnesota"), to redeem the property from the Wells Fargo

¹ For the convenience of the Court, all respondents are hereafter identified by name, such as "Wayman" for Michael Wayman, or "C&M" for C&M Real Estate Services, Inc. Where both C&M and REA are discussed, they are referred to as the "Wayman Entities." The non-bank respondents are referred to collectively hereafter as "Wayman Respondents."

foreclosure. First Minnesota provided its loan to C&M after Appellant's redemption period had expired and Appellant no longer held an interest in the residence. At the time the loan was granted, the only documents that were provided to First Minnesota were the quit claim deed and purchase agreement. The loan was memorialized by typical loan documents and was secured by a mortgage on the property granted to First Minnesota by C&M. C&M subsequently defaulted on the loan, First Minnesota foreclosed, and was granted a decree of foreclosure.

Appellant began the litigation underlying this appeal to request a vendors lien on the property for the unpaid proceeds from the sale to the Wayman Entities. First Minnesota asserted that it was a bona fide purchaser. The District Court initially held that First Minnesota was not a bona fide purchaser, and awarded Appellant a judgment against Wayman and the Wayman Entities. Each of the respondents, including First Minnesota, brought motions for amended findings, or in the alternative for a new trial, arguing that the findings were clearly erroneous. The District Court granted First Minnesota's motion, and held that First Minnesota was a bona fide mortgagee. However, the Amended Order indicated that Appellant held title, subject to First Minnesota's mortgage. Because the District Court had previously awarded title to the property to First Minnesota in a separate foreclosure action, First Minnesota brought an additional motion for clarification to confirm that it owned the property, free of any other interests. The District Court granted First Minnesota's motion and declared that First Minnesota, as a bona fide purchaser, owns the property free and clear of Appellant's claims. At this time, Appellant brought a motion for amended findings or a new trial, which First Minnesota

argued was improper under the Minnesota Rules of Civil Procedure. The District Court granted First Minnesota's motion, denied Appellant's motion, and Appellant filed this appeal.

STATEMENT OF THE FACTS

I. The Property And Initial Foreclosure

Appellant purchased the property at issue in this appeal, located at 1221 Bradley Street, Saint Paul, Minnesota (the "Property"), with his late wife in 1999. (A30; Trial Tr., pp. 27-28.)² Appellant lived at the Property at all times relevant to this proceeding. (A30; Trial Tr., p. 27.) To finance Appellant's initial purchase of the Property, he withdrew funds from his 401(k) account and received a loan from Norwest Mortgage, for which he granted a mortgage on the Property. (A30; Trial Tr., pp. 29, 31-33.) The mortgage to Norwest Mortgage was subsequently transferred to Wells Fargo. (A30; Trial Tr., pp. 34-35.)

On March 13, 2007, as a result of Appellant's financial default on his mortgage, Wells Fargo foreclosed on the mortgage and purchased the Property at a sheriff's sale. (A30; Trial Tr., pp. 35, 36.) Appellant's redemption period on the Property expired on September 13, 2007. (A30; Trial Tr., pp. 36, 80.) Appellant was not immediately aware of the foreclosure; his late wife, who was primarily responsible for the mortgage, subsequently informed Appellant of the foreclosure. (Trial Tr., pp. 81-82.)

² Citations in the form of "A__" refer to the Addendum of Appellant's Brief and citations in the form of APP__" refer to Appellant's Appendix. Citations in the form of "R.APP__" refer to First Minnesota's Appendix.

Appellant testified that, between March 13, 2007 and August 15, 2007, he did not speak with anyone at Wells Fargo about the foreclosure. (Trial Tr., p. 82.) Indeed, although Appellant testified that he visited various organizations to inquire about foreclosure relief, he never filled out a single loan application during the redemption period. (Trial Tr., pp. 37-38, 84.) Aside from the transaction at issue here, Appellant never had funds to redeem the Property during the redemption period, or through the time of trial. (Trial Tr., pp. 83-84.)

II. Appellant's Meeting With Wayman

On August 15, 2007, Wayman met with Appellant and his wife at the Property. (A31; Trial Tr., pp. 45-46.) However, both prior to and during the August 15 meeting, Wayman and Appellant's wife discussed issues related to the transaction while Appellant was not present. (Trial Tr., p. 103.) Wayman had met with Appellant's wife at the Property prior to August 15, while Appellant was not present, and although the meeting on August 15 lasted one and one-half hours, Appellant only attended the meeting for a portion of the time. (Trial Tr., pp. 85, 103.)

During the August 15, 2007 meeting, Appellant and his wife entered into a transaction with Wayman, whereby Appellant would convey his interest in the Property to the Wayman Entities via quit claim deed, the Wayman Entities would redeem the Property from foreclosure, and the Wayman Entities would rent the Property back to Appellant with an option to repurchase it at a later date. The relevant documents included a Purchase Agreement (APP109), Quit Claim Deed (APP108), Rent Back Agreement (APP103), Residential Lease (APP106-07), and Cancellation of Contract

Notice (APP104-05). (See A32; Trial Tr., pp. 46-48.) At this time, Wayman read, or at least explained, the Quit Claim Deed to Appellant (Trial Tr., pp. 86-87, 116.) Appellant testified at his deposition that Wayman read the Residential Lease to Appellant at the meeting; however, Appellant disavowed this at the trial. (Trial Tr. 89-90.) During the meeting, Appellant signed the Purchase Agreement and Quit Claim Deed (Trial Tr., pp. 46-48), however, he testified that he did not sign the Rent Back Agreement or the Residential Lease. (Trial Tr., p. 48-49, 126-128.)³

The District Court found that Appellant cancelled the transaction with C&M on August 16, 2007. (See A34.) However, as will be discussed below, it is not clear that Appellant cancelled the Quit Claim Deed (see p. 12-13, *infra*) and he proceeded at trial under a vendor's lien theory and sought recovery for the unpaid proceeds from the sale of the Property. (See Trial Tr., p. 8-10; R.APP128-29.) On September 5, 2007, with only eight days remaining in Appellant's redemption period, the Quit Claim Deed executed by Appellant was recorded in the Office of the Ramsey County Recorder. (A35, ¶ 28; APP78.)

III. First Minnesota's Loan To C&M To Redeem The Property

Prior to the transaction between Appellant and the Wayman Entities at issue in this appeal, Wayman and the Wayman Entities had a banking relationship with First Minnesota, whereby the Wayman Entities obtained financing pursuant to a master loan

³ Appellant's testimony regarding whether he signed the Rent Back Agreement and the Residential Lease is inconsistent both between his deposition and the trial and at various times throughout the trial. (See Trial Tr., pp. 90, 127-28.)

agreement to operate Wayman's real estate business. (Trial Tr., p. 142.) The terms of the master loan agreement did not require Wayman or the Wayman Entities, to maintain all of their bank accounts with First Minnesota. (Trial Tr., p. 175.) On September 7, 2007, two days after C&M recorded the Quit Claim Deed, Wayman sent an e-mail to Bryan Guse, a former First Minnesota loan officer,⁴ regarding financing to redeem the Property, in which Wayman requested a closing date of September 21, 2007. (*See* R.APP130.)⁵

On September 11, 2007, REA granted a \$100.00 mortgage on the Property to C&M, which enabled C&M to redeem the Property as a junior creditor (A35, ¶ 30.) That same day, C&M filed a Notice of Intention to Redeem. (*Id.* at ¶ 31.)

On September 13, 2007, the last day of Appellant's redemption period from the Wells Fargo foreclosure, Wayman faxed copies of the Quit Claim Deed and Purchase Agreement to First Minnesota. (A35.) These were the only documents that First Minnesota received pertaining to the transaction between Appellant and the Wayman Entities until after C&M had defaulted on its loan with First Minnesota. (Trial Tr., p. 178.)

On September 17, 2007, four days after Appellant's redemption period had expired, First Minnesota granted a loan to C&M in the amount of \$145,000 to finance the

⁴ Mr. Blair testified that Mr. Guse was a former employee of First Minnesota and that he did not know Mr. Guse's current whereabouts. (*See* Trial Tr., p. 143.)

⁵ Amended Finding 29 indicates the date as August 21, 2007. (A35, ¶ 29.) This is most likely a typographical error.

redemption. (A36, ¶ 34-35.) The HUD-1, prepared by ATA Title, indicates that \$110,105.34 was to be paid to the Ramsey County Sheriff and \$30,577.11 was to be paid to Appellant. (APP110-12.) First Minnesota's loan to C&M was memorialized by typical loan documents, including a promissory note and an assignment of leases and rents, and was secured by a mortgage on the Property. (A36; Trial Tr., p. 137.)

IV. First Minnesota's Foreclosure Litigation

Respondent C&M subsequently defaulted on the promissory note to First Minnesota and First Minnesota foreclosed its mortgage in Ramsey County Court File No. 62-CV-08-10362. (See A38; R.APP123-27.) The District Court took judicial notice of the entirety of *First Minnesota Bank v. Michael Wayman et al.*, Court File No. 62-CV-08-10362 (the "Foreclosure Matter"), in the present matter.

In the Foreclosure Matter, First Minnesota sued Respondents C&M and Wayman for various relief, including a decree of foreclosure on the Property. (See R.APP123-14, generally.) First Minnesota brought a motion for summary judgment in the Foreclosure Matter, which the Court partially granted. In its Order for Judgment dated May 20, 2009, the trial court held:

(e) All Defendants and all others who may claim an interest in the Properties are forever barred and foreclosed from any equity of redemption, equity of lien or interest in the Property, except the right to redeem from the foreclosure sale(s) as provided by statute.

(R.APP125.)

V. Appellant's Commencement Of This Litigation

Appellant commenced the action underlying this Appeal by service of his Summons and Complaint in May 2009. (Appellant's Br., p. 13.) Appellant later filed an Amended Complaint to add a count that sought a vendor's lien for unpaid sale proceeds from the transaction with the Wayman Entities. (Appellant's Br., p. 13.)

The Amended Complaint included multiple causes of action, which, in essence, alleged counts related to the Wayman Respondents, and sought an equitable mortgage and vendor's lien resulting from unpaid sales proceeds owed to Appellant pursuant to the Purchase Agreement. (Appellant's Brief, p. 13.) As to First Minnesota, Appellant alleged he was entitled to own the Property free and clear of First Minnesota's mortgage, despite the fact that the Property would not have been redeemed from the Wells Fargo foreclosure but for First Minnesota's financing. (*See* Appellant's Br., p. 13.)

Prior to the commencement of trial, Appellant pursued alternative, but conflicting theories—*i.e.*, a mortgage theory and a sales theory requesting a vendor's lien; Judge Lindman thus issued a pretrial order requiring Appellant to choose which theory of liability Appellant intended to pursue on at trial. (*See* Trial Tr., p. 8-10.) Appellant's counsel confirmed that Appellant opted to proceed on a sale theory. (*Id.*; *see* R.APP128-29.) Pursuant to the direction of the trial court and Appellant's designation, Appellant proceeded to trial, asserting that the Property was sold and that he was entitled to unpaid sales proceeds through a vendor's lien. (*See id.*)

VI. The Trial

The trial in this matter was conducted on October 6, 2010. (Trial Tr., p. 1.) During cross-examination at trial, Appellant twice admitted that he had lied during his sworn discovery deposition. (See Trial Tr., pp. 90-91.) Specifically, Appellant testified:

Q. That wasn't my question. My question was, you were not telling the truth in September of 2009 when you said Mr. Wayman read to you the lease agreement?

A. I was probably lying there.

(Trial Tr., p. 90.)

Appellant further testified that he was untruthful at a different point during his sworn deposition:

Q. That wasn't my question. My question was, during the time when I had to come up here during this trial and read to you portions of your deposition and you told me I read them correctly, during your deposition you were lying - -

A. Last year I probably was.

(Trial Tr., pp. 90-91.)

Appellant also testified that he sent the Cancellation of Contract Notice to Wayman on August 16, 2007. (Trial Tr., pp. 55, 105.) However, Appellant's cancellation apparently related only to the Rent Back Agreement, contained in Trial Exhibit 21, as evidenced by the following exchange:

The Court: I'm sorry counsel, maybe I missed something along the way. I don't understand, this is a cancellation of contract notice for what contract?

Mr. Steinert: This is just – says cancellation of contract notice, exactly the effect of this cancellation will be more or less under the 325N cancellation rules whether it's sufficient but it's a form that was provided.

The Court: But what I'm saying from the testimony so far and the exhibit itself, I'm not sure what the exhibit is intended to cancel.

Mr. Pierce: I can speak to it if you would like. If you look at Exhibit 21, the top right hand side has a fax number of Page 17. Exhibit 22 top right is Page 18. It's my understanding Exhibit 22 relates to 21.

The Court: I see, that that is what I didn't understand. You may proceed.

(Trial Tr., pp. 55-56.) Appellant did not dispute the clarification of what was cancelled.

(*See id.*, generally.)

Despite purportedly canceling the transaction with the Wayman entities, Appellant continued to occupy the Property, and made monthly payments to Wayman. (Trial Tr., pp. 73-74, 78.) These payments were for \$1,302.00, which is the dollar amount listed in the Rent Back Agreement, a document Appellant testified he did not sign. (Trial Tr., pp. 48-49, 73-74, 78.) Appellant's payments began in September 2007 and concluded in May 2009. (Trial Tr., p. 76.) Appellant testified that he made these payments because he did not hear from Wayman and he desired to comply with his understanding of the transaction. (Trial Tr., p. 78.)

The Wayman Respondents called no witnesses at trial. (Trial Tr., p. 131.) First Minnesota called Mr. Charles Blair ("Blair"), an executive vice president at First Minnesota, to testify regarding its counterclaim and affirmative defenses. (Trial Tr., p. 131.) Blair has worked in the banking industry for forty-four years. (Trial Tr., p. 138.) As an executive vice president of First Minnesota, Blair is generally familiar with loans conducted through the bank, its loan policies and procedures, and the loan at issue in this matter. (Trial Tr., p. 133.) At the time First Minnesota made its loan to C&M, First

Minnesota had no information indicating that Appellant may have had an interest in the Property. (Trial Tr., pp. 137-138, 179.) In the normal course of business, First Minnesota keeps all correspondence. (Trial Tr., p. 156.) The only documents that were included in First Minnesota's files pertaining to interest in the Property at the time of the loan, were an e-mail from Wayman to Bryan Guse at First Minnesota, regarding the purchase of the Property and a fax from Wayman to First Minnesota that included the Purchase Agreement and Quit Claim Deed. (Trial Tr., pp. 155-158.)

Blair testified, without contradiction, regarding each element of the bona fide purchaser defense. (Trial Tr. 138-39.) There is no dispute that \$110,105.34 of the loan proceeds from First Minnesota to C&M was paid to the Ramsey County Sheriff to redeem the Property. (Trial Tr., p. 176.) Blair further testified that First Minnesota did not make the loan to C&M to take advantage of Appellant, as there was no reason for First Minnesota to "put itself in that position." (Trial Tr., p. 138, 139.) As to the issue of notice, Blair testified that First Minnesota made the loan to C&M without knowledge of any interest Appellant may have alleged in the Property. (Trial Tr., p. 139, 179.) Blair testified that Wayman provided the Rent Back Agreement to First Minnesota only after C&M had defaulted on its loan to First Minnesota. (Trial Tr., p. 178.) There was nothing in the trial exhibits or the loan file that indicated First Minnesota should have been aware of any interest Appellant purportedly retained in the Property at the time First Minnesota took its interest in the Property. (*See* Trial Tr., p. 179.)

Blair further testified that First Minnesota reviews documents prior to loan closing, but relies heavily on opinions from title companies. (Trial Tr., p. 143-144.)

Blair testified that First Minnesota cared that a borrower has clear title to the Property and First Minnesota verifies this through a title company. (Trial Tr., p. 164.) In this matter, First Minnesota procured a title policy, a preliminary portion of which was introduced in evidence at trial. (See A99-100.) Schedule B to the title policy contains a section regarding exclusions, which provides:

**SCHEDULE B – SECTION II
EXCEPTIONS**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

* * *

b. Rights or Claims of Parties in Possession;

* * *

k. Subject to the interest of Carol A. Saunders and Amos Graves in the insured property.

(APP101) Each of these exceptions is initialed. (See *Id.*)

Blair testified:

That is – what you are looking at is a preliminary, you will see on the side where it’s been initialed off that all these matters had been addressed at the time of the closing of the loan.

(Trial Tr., 146.)

Blair further testified:

Q: I believe your testimony was sir, when we were dealing with the title insurance or title opinion, the initials on the side indicated all of those issues had been taken care of?

A: That is what that means.

Q: At the time of closing, any issues relating to Amos Graves was resolved by the closing company?

A: That's correct.

Q: Again, nothing to put you on notice that you should call them and say hey do you have an interest?

A: That's correct.

Q: As far as you know, it was all extinguished, no interest whatsoever.

A: That's correct.

(Trial Tr., p. 180.) First Minnesota called no other witnesses.

At the conclusion of trial, the following exchange occurred:

Mr. Pierce: I know it's perfunctory, I know what the result is going to be, but just to preserve the record, at the close of plaintiff's case, I would have brought a motion pursuant to Rule 41.02 for involuntary dismissal. I would have asked the Court that I be allowed to provide proposed findings pursuant to Rule 52. . . .

The Court: Certainly those would have been taken seriously if we were in a jury trial. Being a court trial, in my mind at least, it doesn't make sense to grant those motions, so that's what happened.

(Trial Tr., 193.)

The District Court issued its Findings of Fact, Conclusions of Law, and Order for Judgment on January 18, 2011 (the "First Order"). (A2-27.)

VII. Post Trial Motions

Following the District Court's First Order, each respondent filed a motion for amended findings, or in the alternative, for a new trial. (*See* APP70-73; R.APP001-22,

R.APP038-58.)⁶ Appellant submitted responsive briefs, and was present at the motion hearing. (See R.APP023-37, R.APP059-73.) The trial court granted First Minnesota's motion, and issued Amended Findings of Fact, Conclusions of Law, and Order for Judgment on April 27, 2011 (the "Amended Order"). (See A28-50.)

In its Amended Order, the trial court concluded First Minnesota was a bona fide mortgagee and specifically found that: "On this record, this Court finds nothing that should disqualify First Minnesota from its status as a bona fide mortgagee." (A49-50, ¶ 42.) Additionally, the court found that, even if First Minnesota had inquired of Appellant:

. . . they would only have been made aware of the limited extent of Graves' interest in the property. A title search would have shown that a previous foreclosure had occurred, the redemption period had expired, the property had been redeemed, and that Graves continued to occupy the premises pursuant to a Rent Back Agreement. Under the circumstances of this case, First Minnesota's status would not have been affected by those disclosures.

(*Id.*)

The trial court also addressed Appellant's admission to lying during his deposition by noting:

At trial Defendants sought to impeach Plaintiff for false testimony both in his pretrial deposition and again at trial. This Court was present during the trial testimony. During his trial testimony, the Plaintiff became frustrated and visibly upset with the tone of the cross-examination and the accusations made against him. While Plaintiff admitted testifying falsely on some

⁶ First Minnesota believed there were other Findings that were clearly erroneous, but only moved to amend those Findings that related to itself. (See R.APP001.)

matters, the court, who must weigh the evidence provided at a court trial, is satisfied that not all of his testimony should be disregarded. . . .

(A31-32, FN2.)

In its Amended Order, the trial court awarded title to the Property to Appellant, subject to the interest of First Minnesota as a bona fide mortgagee. (A50, ¶ 2.) In the Foreclosure Matter, the District Court had previously awarded title to First Minnesota (*see* R.APP123-27); thus, the trial court's Amended Order created a situation where two separate parties were in "title," even though First Minnesota's interest was superior to Appellant's interest. (*See id*; A50.) Based upon this inconsistency, First Minnesota brought a Motion to Clarify Findings, or in the Alternative, to Correct Clerical Mistakes. (*See id*; APP74-77.) Contemporaneous with this motion, Appellant brought a Motion for Amendment of Findings of Fact, Conclusions of Law or Order for Judgment or, in the Alternative, A New Trial. (APP72-73.) In this motion, Appellant first raised the issues of conclusive evidence and improper bona fide purchaser standard. (*See* APP72-73; R.APP074-98.) First Minnesota opposed Appellant's motion substantively and also argued that it was improper because the Minnesota Rules of Civil Procedure do not permit a second motion to amend. (*See* R.APP097-102.) The trial court denied Appellant's motion. (*See* R.APP103.)

Finally, on June 14, 2011, after considering the numerous arguments and motions that had variously been presented, the District Court issued its final Order, clarifying First Minnesota's rights in the Property. (*See* R.APP121-22.) That Order provided:

Based upon all the files, records and proceedings herein, this Court finds:

- 1) That the subject property was purchased from foreclosure by First Minnesota Bank, a bona fide purchaser and highest bidder. The redemption period having expired, First Minnesota Bank is the owner of the premises free and clear of any encumbrances of the parties.

ACCORDINGLY, IT IS HEREBY ORDERED:

- 1) That First Minnesota Bank owns the subject property free and clear of encumbrances of other parties.

(*Id.*)

Appellant then filed this appeal.

STANDARD OF REVIEW

A district court's conclusions of law are reviewed *de novo*. See *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989). However, a district court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses." Minn. R. Civ. P. 52.01 (2011). When reviewing mixed questions of law and fact, the Court of Appeals corrects erroneous applications of law, but must accord the district court discretion in its ultimate conclusions, thus the Court of Appeals reviews such conclusions under an abuse of discretion standard. *Porch v. General Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. Ct. App 2002). A District Court's correct decision will not be reversed because it was based on the wrong reasoning. See *State by Clark v. Wolkoff*, 250 Minn. 504, 509, 85 N.W.2d 401, 405 n.10 (Minn. 1957). A district court's decision to deny a motion for new trial is reviewed for abuse of discretion. *Moorhead Economic Development Authority v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010).

Appellant states that his issues on appeal are subject to *de novo* review because of the District Court's misstatement regarding which party must bear the burden of proving bona fide purchaser status. (See Appellant's Br., p. 7.)⁷ As discussed in Section II, *infra*, the District Court's misstatement constitutes a harmless error and does not entitle Appellant to *de novo* review of the District Court's factual determinations or its ultimate conclusion on every issue. The District Court's holding that First Minnesota was a bona fide mortgagee is a factual determination that is subject to strong deference. See *Stone v. Jetmar Properties, LLC*, 733 N.W.2d 480, 488 (Minn. Ct. App. 2007) (citing *Miller v. Hennen*, 438 N.W.2d 366, 369 (Minn. 1989)).

ARGUMENT

The foundation of this appeal is Appellant's assertion that he cancelled the transaction with the Wayman Entities. This foundation is faulty; it is diametrically opposed to the very theory Appellant sought to prove at trial, namely that the Property was sold and he was entitled to a vendor's lien for the unpaid proceeds. (See Trial Tr., p. 8-1; R.APP128-29.) By this appeal, Appellant seeks to disavow his theory of his case.

The reason this theory seems to have merit, which it does not, results from the District Court's First Order, which merely incorporated, verbatim, many of Appellants proposed findings. (See R.APP038). After multiple post trial proceedings, the District

⁷ *In re Collier*, 726 N.W.2d 799 (Minn. 2007), does not appear to stand for Appellant's asserted position that this appeal is entitled to *de novo* review. The standard of review announced in *Collier* is that, where material facts are undisputed, the court reviews the District Court's application of law *de novo*. See *id.* at 803. Moreover, *Collier* addresses the issue of a bona fide purchaser under the Torrens Act and is thus inapposite here.

Court clearly understood that the First Order was wrong because it issued the Amended Order to reach the just and proper result supported by the facts and the law. Perhaps the District Court should have amended additional findings, but the inescapable conclusion is that the District Court's factual conclusion that First Minnesota was a bona fide purchaser is correct and is supported by the record.

I. FIRST MINNESOTA'S INTEREST IN THE PROPERTY IS PROTECTED FROM APPELLANT'S PURPORTED CANCELLATION OF THE FORECLOSURE RECONVEYANCE.

A. Appellant's Purported Cancellation Does Not Entitle It To A Windfall At The Expense Of First Minnesota.

In an action to determine adverse claims to real property, the court may exercise its equitable powers in granting whatever relief the nature of the case, may require, upon such terms and conditions as may be necessary to do complete justice. *See Engel v. Swanson*, 191 Minn. 324, 326, 254 N.W. 2, 3 (Minn. 1934). As an initial matter, it is important to note that Appellant selected and proceeded at trial under a theory that the Property was sold and that he Appellant was entitled to a judgment for the unpaid price, and a vendor's lien to secure that amount. (Trial Tr., p. 8-10.) Appellant essentially now seeks to re-litigate this matter after the court ruled on his chosen theory; he should be estopped from doing so.

The relevant facts of the case, as they relate to First Minnesota, are straight forward. At trial, Appellant received a judgment in his favor against the Wayman Respondents, along with a corresponding vendor's lien to secure the amount of the proceeds to which he was allegedly entitled pursuant to the Purchase Agreement. The

District Court correctly concluded that, while Appellant was entitled to a judgment against Wayman, he was not entitled to a vendor's lien superior to First Minnesota's interest in the property. Appellant now asserts that the sale was cancelled and thus First Minnesota's mortgage is invalid. The result is that Appellant is in the inexplicable position of asserting that he is entitled both to the proceeds from the sale and unencumbered title to the Property. Such a result would simply be inequitable in this case. Indeed, the equities lie in First Minnesota's favor on this issue.

The uncontroverted facts in the record establish that the Property was in foreclosure because Appellant had defaulted on his obligation to his prior mortgagee. (A30, ¶ 9.) During the redemption period, Appellant did not possess the means to redeem the Property. (Trial Tr., pp. 37-38, 84.) Indeed, but for First Minnesota's financing and the mortgage to secure the financing, the Property would not have been redeemed from the Wells Fargo foreclosure even if Appellant had cancelled the transaction with the Wayman Respondents; Appellant's redemption period had expired.

Moreover, Appellant lived at the Property from May 2009, the date of his last payment to Wayman (Trial Tr., p. 76.), until the date of the trial (A29, ¶ 1) without making payments to anyone. (See A28-50, generally.) Thus, it is Appellant's position that the Court should grant him both the amount provided under the Purchase Agreement, and fee title to the Property, despite the fact that at the time First Minnesota took its interest Appellant had no ownership interest in the Property, his right to redeem having expired. The trial court clearly understood that it would be inequitable for Appellant to reap such a financial windfall at the expense of First Minnesota.

B. First Minnesota Is Protected As A Bona Fide Purchaser Under Minn. Stat. §§ 325N.17-.18, Even If Appellant Cancelled The Transaction.

The Minnesota Recording Act protects bona fide purchasers. *See* Minn. Stat. § 507.34 (2007) (the "Recording Act"). Under the Recording Act, any unrecorded conveyance of real estate is void against any subsequent purchaser in good faith, or bona fide purchaser. *See id.*; *Stone*, 733 N.W.2d at 488 ("The good-faith-purchaser statute operates to establish priority over earlier unrecorded conveyances.") However, as is relevant to this case, section 507.34 is not the only source of protection for a bona fide purchaser's interests.

Minnesota law also specifically protects bona fide purchasers, such as First Minnesota, from claims brought by the former owners of property in foreclosure reconveyance transactions. *See* Minn. Stat. § 325N.17(f)(3) (2007). Section 325N.17(f)(3) provides that, ". . . no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and without notice of a violation of sections 325N.10 to 325N.18." *Id.* As discussed in the following two sections, First Minnesota's interest in the Property is protected by sections 325N.17(f)(3) and 325N.18 because First Minnesota was a bona fide mortgagee and did not have notice of any of the Wayman Respondent's violations of sections 325N.10 to 325N.18.

1. First Minnesota's interest in the Property is protected from the Wayman Respondents' violations of the foreclosure reconveyance statutes.

Appellant's first argument is that, even if First Minnesota is a bona fide mortgagee, the Recording Act does not protect its interest in the Property. Appellant improperly

frames this issue as a question of whether the Wayman Entities had any interest to convey to First Minnesota. This argument is wholly without merit because it completely ignores the protections provided to a bona fide purchaser in Minnesota Statutes sections 325N.17 and 325N.18.

The Court's decision in *Stone v. Jetmar Properties* clearly establishes both that the Recording Act only protects bona fide purchasers against prior unrecorded conveyances and that a voided transaction is not an prior unrecorded conveyance. *See Stone*, 733 N.W.2d at 488; *see also* Appellant Br., p. 16-17. However, Appellant misplaces his reliance on *Stone* for the proposition that First Minnesota, as a bona fide mortgagee, is not protected. *Stone* is inapposite here because that case did not involve a foreclosure reconveyance transaction and, therefore, did not consider the independent protections extended to bona fide purchasers by Minnesota Statutes sections 325N.17-.18. *See Stone*, 733 N.W.2d at 483-84.⁸ Although First Minnesota does not concede that Appellant actually voided his transfer of title,⁹ it does not rely solely upon section 507.34 to protect its interest in the Property. Notably absent from Appellant's brief is any discussion of the

⁸ *Stone* only addressed the rights of a good-faith purchaser in a series of commercial real estate transactions involving standard mortgages. There, a quitclaim transaction was void because the entity to which the property was deeded did not legally exist at the time of the purported conveyance. *See Stone*, 733 N.W.2d at 483-84. That factual scenario is inapposite to the matter before this Court.

protections extended to a bona fide purchaser under Minnesota Statutes sections 325N.17 and 325N.18, or the common law.

Minnesota law specifically protects bona fide purchasers from claims by former owners of property in foreclosure reconveyance transactions. See Minn. Stat. § 325N.17(f)(3) (2011); see also *Daml v. Meyers*, No. 07-4384, 2010 WL 7326389, *3 (D. Minn. Dec. 22, 2010). Section 325N.17(f)(3) provides, in relevant part:

A foreclosure purchaser shall not:

* * *

- (f) do any of the following until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed:

* * *

- (3) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party, ***provided no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and without notice of a violation of sections 325N.10 to 325N.18, and knowledge on the part of any such person or entity that the property was "residential real property in foreclosure" does not constitute notice of a violation of sections 325N.10 to 325N.18.*** This section does not abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure;

⁹ As noted above, the record establishes that Appellant's cancellation likely applied only to the Rent Back Agreement. See Statement of the Facts, § VI, *supra*. Moreover, Appellant's twenty rental payments pursuant to the Rent Back Agreement, which was a component of the sale transaction with the Wayman Entities, is an apparent ratification of the transfer, if not an outright confirmation that Appellant never intended to cancel the transaction.

Minn. Stat. § 325N.17(f)(3) (emphasis added.) In addition to this plain language, Minnesota Statutes section 325N.18, subd. 3, provides that, "[n]o action under this section shall affect the rights in the foreclosed property held by a good faith purchaser for value under sections 507.37, 508.48, 508A.48, or other applicable law." *Id.* at § 325N.18, subd. 3 (2007). These sections clearly protect a bona fide purchaser that has no knowledge of any violation of sections 325N.10 – 325N.18, from defects in title that might arise as the result of problems in the foreclosure reconveyance process, such as those alleged by Appellant throughout this litigation.

Although this Court is not bound by the U.S. District Court's decision in *Daml*, it appears to be the only available caselaw discussing the bona fide purchaser protections contained in section 325N.17 and it provides guidance in this matter. In *Daml*, the plaintiffs conveyed their property by deed to a foreclosure purchaser who, in order to finance the purchase of the property, granted a mortgage on the property to a third party financing company. *See Daml*, 2010 WL 7326389 at *1. The financing company subsequently assigned the mortgage to another mortgage company that later foreclosed on the property, after the foreclosure purchaser defaulted on the loan. *Id.* The plaintiffs alleged that the foreclosure reconveyance transaction had been an equitable mortgage and their deed to the foreclosure purchaser was meant only as security for a loan, not as transfer of title. *Id.* This allegation, if true, would have deprived the foreclosure purchaser of the interest it had purportedly conveyed to the mortgagee. Notwithstanding the plaintiffs' assertion, the *Daml* court recognized that a bona fide purchaser would be protected by section 325N.17 and properly framed the dispositive issue as simply a

question of whether or not the mortgagee was a bona fide purchaser. *Id.* at *3. If the mortgagee was a bona fide purchaser, it had a protected interest in the property regardless of the original owner's claims against the foreclosure purchaser. *See id.*

As in *Daml*, the sole question with respect to First Minnesota's interest in the Property is whether First Minnesota is a bona fide purchaser. Because First Minnesota is a bona fide purchaser, as discussed in Section III, *infra*, Appellant's claims cannot defeat or affect First Minnesota's interest in the Property unless First Minnesota had notice of a violation of sections 325N.10-325N.18. *See* Minn. Stat. § 325N.17(f)(3).

2. First Minnesota did not have notice of any violation of sections 325N.10 – 325N.18.

According to the plain text of section 325N.17(f)(3), the "grant of any interest or encumbrance" to a bona-fide purchaser is not "defeated or affected" unless the bona-fide purchaser had "notice of a violation of sections 325N.10 to 325N.18." Appellant makes no argument that First Minnesota had actual notice of a violation of these sections. Indeed, any such assertion would be wholly unsupported by the record before this Court. Appellant instead argues that First Minnesota *should have known* that the transaction involved a foreclosure reconveyance. (*See, e.g.,* Appellant Br., pp. 22.) This argument is without merit.

The express language of section 325N.17(f)(3) refutes the notion that knowledge the transaction involved a foreclosure reconveyance can alone affect First Minnesota's interest. Section 325N.17(f)(3) provides that, "knowledge on the part of [a bona fide purchaser] that the property was 'residential property in foreclosure' does not constitute

notice of a violation of sections 325N.10 to 325N.18." Thus, even if First Minnesota had knowledge that the Property was part of a foreclosure reconveyance transaction prior to taking an interest in the Property, such knowledge would not be enough to abrogate First Minnesota's protected status as a bona fide purchaser. To lose its bona fide purchaser protections under section 325N.17, First Minnesota would have to have had notice that Wayman or one of the Wayman Entities had violated sections 325N.10 to 325N.18. The record is absolutely void of any evidence that First Minnesota had such notice prior to this litigation, and Appellant cannot make such a showing.

At the time First Minnesota took its interest in the Property and granted C&M a loan, First Minnesota had only the Quit Claim Deed, the Purchase Agreement, and its title report. The title report indicated that any outstanding issues had been resolved. Further, without declaring that First Minnesota was under an obligation to inquire, the trial court correctly concluded that, had First Minnesota nevertheless inquired, it would only have been made aware of Appellant's limited interest as a renter of the Property. (*See* A50, ¶ 42.) It is important that, at this time, Appellant's redemption period from the Wells Fargo foreclosure had already expired. Indeed, a title search at that precise moment "would have shown that a previous foreclosure had occurred, the redemption period had expired, the property had been redeemed, and that Graves continued to occupy the premises pursuant to a Rent Back Agreement." (*Id.*) None of these factors would have put First Minnesota on notice of the Wayman Respondents purported violations of sections 325N.17-.18.

Indeed, the record clearly indicates First Minnesota did not possess any evidence of any purported violations of 325N.10-.18, including the purported violation of 325N.11, until well after the mortgage on the Property was granted by C&M. This means the sole question with respect to First Minnesota's interest in the Property is whether it is a bona fide purchaser. *See Daml*, 2010 WL 7326389 at *3.

As to Appellant's purported cancellation, even though the Amended Order states that the sale transaction was cancelled, the facts establish that First Minnesota was, and is, a bona fide purchaser. Appellant's theory of the case at trial was that he sold the Property, was entitled to damages for unpaid sales proceeds pursuant to the Purchase Agreement, and should be granted a vendor's lien to secure the unpaid sale price. Appellant nevertheless asserts that "[t]he lack of delivery [of title] means the Graves continued to hold the fee title. Appellant apparently forgets that he did not hold fee title at the time First Minnesota took its interest, as the redemption period had expired and, but for the financing provided by First Minnesota, the Property would have been lost altogether.

Accordingly, Respondent First Minnesota respectfully requests that this Court affirm the District Court's holding that First Minnesota is a bona fide purchaser whose interest in the Property is free from any claims by the other parties to this action.

II. THE DISTRICT COURT'S MISSTATEMENT REGARDING THE BURDEN OF PROVING BONA FIDE PURCHASER STATUS WAS HARMLESS ERROR.

The District Court's determination that First Minnesota was a bona fide purchaser is a factual determination that must be sustained unless this Court has a firm and definite

impression that a mistake has been made. *Stone*, 733 N.W.2d at 488 (citing *Miller*, 438 N.W.2d at 369.) A determination regarding bona fide purchaser status is not a matter of statutory construction and is not subject to *de novo* review, as Appellant suggests. *See id.*

No error or defect in any ruling or order is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, "unless refusal to take such action appears to the court inconsistent with substantial justice." Minn. R. Civ. P. 61. Indeed, "[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." *Id.* A court's reference to an incorrect standard is harmless error and should be ignored when the court's holding is nevertheless properly supported by the evidence. *See, e.g., Minnwest Bank, M.V. v. All, Inc.*, No. A10-936, 2011 WL 781178, *3 (Minn. Ct. App. March 08, 2011). A District Court's correct decision will not be reversed because it was based on the wrong reasoning. *See State by Clark v. Wolkoff*, 250 Minn. 504, 509, 85 N.W.2d 401, 405 n.10 (Minn. 1957).

First Minnesota agrees with Appellant that the party asserting bona fide purchaser status as a defense must bear the burden of establishing that it purchased or acquired such title in good faith. *Miller*, 438 N.W.2d at 369 (citing *Fifield v. Norton*, 82 N.W. 581, 581 (Minn. 1900); *Mead v. Randall*, 71 N.W. 31, 32-33 (Minn. 1897)). First Minnesota met its burden at trial by producing uncontroverted testimony regarding what it knew at the time it became a mortgagee to the Property. Nothing in the record indicates that the District Court's finding is not supported by the evidence.

Appellant asserts that the District Court improperly placed the burden on Appellant to disprove that First Minnesota was a bona fide purchaser (*See* Appellant Br., p. 18.), however, this assertion overstates the meaning and importance of the misstatement made by the District Court. In its Amended Order, the District Court stated: "The Court further finds that Plaintiffs have not met their burden to show by a preponderance of the evidence that First Minnesota Bank ("the Bank") was not a good faith bona fide mortgagee of the premises." (*See* A29.) This is merely a harmless error because it was only a part of the District Court's Preliminary Statement of the Case and it did not affect the substantial rights of the parties. *See* Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.")

A court's reference to an incorrect standard is harmless error and should be ignored when the court's holding is nevertheless properly supported by the evidence. *See, e.g., Minnwest Bank, M.V. v. All, Inc.*, No. A10-936, 2011 WL 781178, *3 Minn. Ct. App. March 08, 2011). Indeed, as discussed in further detail in Section III, *infra*, the District Court's ultimate conclusion that First Minnesota is a bona fide purchaser is wholly supported by the record. (*See* A49-50, ¶¶ 40-42.) The court's conclusion is supported by sufficient evidence to demonstrate that its misstatement regarding the burden of proof constitutes harmless error. Properly understood, the court's statement indicates that Appellant produced nothing sufficient to controvert First Minnesota's proffered evidence that it took a mortgage in the Property in good faith. The District Court's conclusion confirms this understanding: "On this record, this Court finds nothing

that should disqualify First Minnesota from its status as a bona fide mortgagee." (*Id.* at ¶. 42.) Moreover, the District Court subsequently considered Appellant's arguments on the issue a third time and again concluded that First Minnesota was a bona fide purchaser, and therefore the sold title-holder. (*See* R.APP121-22.)

Setting aside the District Court's final judgment—that First Minnesota holds title to the Property free and clear of Appellant's claims—would be inconsistent with substantial justice and therefore inconsistent with Rule 61. The Property initially went into foreclosure because of Appellant's default. Appellant admitted he had no means to redeem the Property from the Wells Fargo foreclosure, aside from the transaction with the Wayman Entities, and had not even filled out an application for financing. Indeed, but for funds provided by First Minnesota's financing, the Property would not have been redeemed. Moreover, Appellant lived in the Property for a significant period without making payments to anyone. As the District Court clearly understood, it would be inequitable to allow Appellant to reap a financial windfall at the expense of First Minnesota. The District Court correctly concluded that it would be unjust to award Appellant an interest superior to that of First Minnesota.

The District Court's statement regarding the burden of proof is harmless error. When given a third opportunity to reconsider the various parties' positions in this matter, the District Court entered its final order, declaring in plain and unambiguous language, that First Minnesota was a bona fide purchaser. (*See* R.APP121-22.) Setting aside this judgment would be inconsistent with substantial justice. First Minnesota therefore

respectfully requests that this Court affirm the District Court's determination that it is a bona fide purchaser and holds the Property free and clear of Appellant's claims.

III. FIRST MINNESOTA IS A BONA FIDE PURCHASER.

The Minnesota Recording Act protects a bona fide purchaser from unrecorded conveyances of real estate. *See* Minn. Stat. § 507.34; *Stone*, 733 N.W.2d at 488 ("The good-faith-purchaser statute operates to establish priority over earlier unrecorded conveyances."). As discussed previously in Section I.B., *supra*, bona fide purchasers are also protected by various other statutory provisions, including Minnesota Statutes sections 325N.17(f)(3) and 325N.18.

Whether one is a good faith purchaser is a factual determination that will be sustained unless the reviewing court has a firm and definite impression that a mistake has been made. *Stone*, 733 N.W.2d at 488 (citing *Miller*, 438 N.W.2d at 369.) A bona fide purchaser is one who provides valuable consideration for property without actual, constructive, or implied notice of others' inconsistent outstanding rights. *Miller*, 438 N.W.2d at 369 (citing *Anderson v. Graham Investment Co.*, 263 N.W.2d 382, 384 (Minn. 1978)). For purposes of the Recording Act, a "purchaser" includes a mortgagee. Minn. Stat. § 507.01. The elements of a bona fide purchase of real property are well-established and long standing in Minnesota: (1) the payment of a valuable consideration; (2) good faith, and without purpose to take an unfair advantage of third persons; and (3) absence of notice, actual or constructive, of outstanding rights of others. *Goette v. Howe*, 44 N.W.2d 734, 738 (Minn. 1950); *Bergstrom v. Johnson*, 111 Minn. 247, 250, 126 N.W. 899, 900

(Minn. 1910). First Minnesota satisfies each of these elements and the District Court properly concluded that it is a bona fide purchaser.

A. First Minnesota Did Not Have Actual Or Constructive Knowledge Of Appellant's Purported Outstanding Rights In The Property.

There can be no dispute that First Minnesota provided value. Blair testified that First Minnesota provided the funds to redeem the Property. (Trial Tr., p. 136-37.) The payment amount was secured by a mortgage note for the Property. (Trial Tr., p. 137.) Blair further testified that the loan was not made to take advantage of or cause injury to Appellant or anyone else, as there would be "no reason for First Minnesota Bank to put itself in that position." (Trial Tr., p. 138-39.) Appellant introduced no evidence to contradict this testimony. Accordingly, the only remaining issue is whether First Minnesota had notice of Appellant's purported outstanding interest.

There are three types of notice that can preclude a party from being a bona fide purchaser: actual, constructive, or implied. *Miller*, 438 N.W.2d at 369. There is no dispute that First Minnesota did not have actual notice of Appellant's claimed interest. (See Trial Tr., p. 137-39.) The Minnesota Supreme Court has clearly defined the meaning of constructive notice as:

Constructive notice is a creature of statute and, as a matter of law, imputes notice to all purchasers of any properly recorded instrument even though the purchaser has no actual notice of the record.

Miller, 438 N.W.2d at 369-370 (quoting *Anderson*, 263 N.W.2d at 384). Constructive notice is not at issue here because there is no testimony on record that there was ever a recorded instrument, let alone a properly recorded instrument, setting forth Appellant's

claimed interest in the Property. (See Trial Tr., generally.) Indeed, the District Court recognized this when it concluded: "A title search would have shown that a previous foreclosure had occurred, the redemption period had expired, the property had been redeemed, and that Graves continued to occupy the premises pursuant to a Rent Back Agreement." (A49, ¶ 42.)

This leaves implied notice as the only potential avenue to preclude First Minnesota's status as a bona fide purchaser. See *Miller*, 438 N.W.2d at 369. "Implied notice has been found where one has *actual knowledge of facts* which would put one on further inquiry." *Miller*, 438 N.W.2d at 369-370 (citing *Anderson*, 263 N.W.2d at 384-85) (emphasis added).

For example, *if* a subsequent purchaser was aware that someone other than the vendor was living on the land, the purchaser would have a duty to inquire concerning the rights of the inhabitant of the property and would be charged with notice of all facts which such an inquiry would have disclosed.

Id. (citing *Murphy v. Anderson*, 150 N.W. 387, 389 (Minn. 1914)) (emphasis added).

The Supreme Court further explained:

One is not a bona fide purchaser . . . *if* he had knowledge of facts which ought to have put him on an inquiry that would have led to a knowledge of such conveyance.

Miller, 438 N.W.2d at 369-370 (citing *Henschke v. Christian et al.*, 36 N.W.2d 547, 550 (Minn. 1949)) (emphasis added); see also *Claflin v. Commercial State Bank of Two Harbors*, 487 N.W.2d 242, 244 (Minn. 1992).

Appellant vigorously argues that First Minnesota had implied notice because it did not inquire of Appellant regarding his alleged interest in the Property and he alleges that

First Minnesota would have learned of many things, if it had only asked. Appellant fails, however, to identify a single relevant fact in evidence, that First Minnesota knew, which would have triggered an obligation to make such an inquiry. Indeed, the Minnesota Supreme Court's plain language in *Miller*, discussing implied notice, clarifies this issue: "*if* a subsequent purchaser was aware . . . *if* he had knowledge of facts. . . ." *See id.* (emphasis added).

To have implied notice, the purchaser must actually know someone with inconsistent rights was occupying the property; a survey of the applicable caselaw demonstrates this point. For example, in *Claflin*, the appellant and her son signed a note and a quit claim deed, but the son only recorded the deed. *Claflin*, 487 N.W.2d at 245. The bank then granted the son a loan secured by a mortgage on that deeded property and the son told the bank that his mother was living in the house. *Id.* at 245, 248. The mother sued the bank seeking a declaration that the mortgage was invalid. *Id.* at 246. On appeal, the Court held that one has the duty to inquire concerning the rights of the inhabitant, "[i]f one is aware that someone other than the vendor is living on the land." *Id.* at 248. The *Claflin* court concluded that the bank was not a bona fide purchaser because it was chargeable with implied notice of the mother's unrecorded interest in the property. *Id.* at 248-249.

Even the cases cited by Appellant confirm that a party charged with implied notice must actually know that a party with inconsistent rights was in possession of the property. *See Hauger v. J.P. Rodgers Land Co.*, 156 Minn. 45, 49, 194 N.W. 95, 97 (Minn. 1923) ("Actual possession of real property is notice to all the world . . . and a purchaser thereof

knowing the possession to be in a third person is chargeable with notice of such facts."); *Ludowese v. Amidon*, 124 Minn. 288, 294, 144 N.W. 965, 968 (Minn. 1914) (The purchaser had received a copy of the lease indicating a tenant was in possession of the land.); *Teal v. Scandinavian-American Bank*, 114 Minn. 435, 441, 131 N.W. 486, 488 (Minn. 1911) ("Defendant was *expressly informed* before the mortgages were executed that plaintiff was so in possession, yet made not inquiry concerning his rights, relying wholly upon statements made by Johnson."); *see also Konantz v. Stein*, 167 N.W.2d 1, 8 (Minn. 1969) ("once [purchaser] became aware that the land in dispute was in the actual possession of a person other than the prospective vendor, it became her duty to ascertain the nature and extent of the possessor's rights[.]") These cases do not find or apply implied notice to a purchaser based solely on the fact that a third party was in possession of the property; rather, they require actual notice that someone is living on the property at issue before inquiry is required. In that very important way, these cases are distinguishable from this situation.

In this case, the evidence shows that, unlike the banks in *Clafin* and *Teal*, and every other relevant case dealing with this issue, First Minnesota was never informed and never knew about Appellant's possession of the Property. (*See* Trial Tr., pp. 137, 172, 179-180.) Moreover, unlike *Clafin*, First Minnesota did not ignore the language of the title insurance exceptions. In fact, Blair testified that the initials on the side of each listed exception to the title insurance policy indicated that the matters had been addressed and resolved at the time of the closing of the loan. (Tr. Trans., pp. 145-46, 180; *see also* A100.) This specifically indicated to First Minnesota that any interest of Appellant or

any other tenant or person in possession was resolved. (*See* APP100.) First Minnesota simply had no information that put it on notice to inquire further regarding any possible rights in the Property held by anyone else, including Appellant. (Trial Tr., p. 179-80). In fact, at the time First Minnesota loaned money to redeem the Property, the documents in First Minnesota's file did not include any information about the purported reconveyance documents beyond the Quit Claim Deed and Purchase Agreement. (Trial Tr. pp. 138, 176-79.) No testimony or other evidence contradicted the fact that First Minnesota was unaware Appellant was living in the Property. (*See* Trial Tr., generally.)

Appellant specifically asserts that, because First Minnesota had a copy of the Purchase Agreement prior to closing, First Minnesota should have known that Appellant had not been paid, which, Appellant argues, should have put First Minnesota on notice. (Appellant's Br., p. 25.) However, the HUD-1 settlement statement, prepared by ATA Title, indicated the majority of the funds were to be used to pay Appellant and to redeem his obligation to Wells Fargo. (*See* APP110-12.) Appellant does not explain how knowing the amount the Wayman Entities owed to Appellant could have indicated to First Minnesota whether Appellant had been paid, or how that would have put First Minnesota on notice to inquire. The Purchase Agreement did not indicate a date by which Appellant was to be paid. (*See* APP109.) Moreover, there are no facts in the record indicating that First Minnesota's financing was the Wayman Entities' only source of funding for the transaction. Indeed, First Minnesota never required the Wayman Entities to maintain all of their accounts with First Minnesota (Trial Tr., p. 175.) and it would not have known whether the Wayman Entities had other capital on hand to fully or

partially meet their obligation to Appellant. Appellant's assertion is simply a conclusion without support in fact or law.

Appellant further cites *Stone* for the proposition that these "suspicious circumstances" should have triggered inquiry notice. (*See* Appellant's Br., p. 25.) However, as noted in Section I, *supra*, *Stone* addressed the rights of a good-faith purchaser in a series of commercial real estate transactions involving standard mortgages. *See Stone*, 733 N.W. 2d at 483-84. There, a quit claim transaction was void because the entity to which the property was deeded did not legally exist at the time of the purported conveyance. *See id.* That factual scenario is simply inapposite to the instant matter and does not speak as to how the Purchase Agreement could have put First Minnesota on notice that something was awry, as Appellant contends.

Moreover, even assuming, as Appellant argues, that First Minnesota could or should have known that Appellant had not yet been paid the money that was owed to him pursuant to Minnesota Statute section 325N.17(b), this still does not constitute notice. (*See* Appellant's Br., p. 26.) Section 325N.17(b) provides that payment must be made "within 150 days of either the eviction or voluntary relinquishment of possession of the dwelling by the foreclosed homeowner." Minn. Stat. § 325N.17(b)(2). 150 days had not yet passed since Appellant entered into the transaction with the Wayman Respondents. The money was not yet due to Appellant under the plain language of the statute, so First Minnesota could not be charged with knowledge of a violation of sections 325N.17-.18, even if it had known Appellant had not been paid.

The uncontroverted evidence at trial plainly establishes that First Minnesota was a bona fide mortgagee when it took its interest in the Property. First Minnesota did not have actual, constructive, or implied notice of Appellant's purported interest in the Property. The District Court properly concluded that it would be improper to allow Appellant to hold a superior position in the Property and thereby receive the windfall of having First Minnesota pay for the redemption from Wells Fargo. There is nothing in the record that supports a firm and definite impression that the District Court erred. Accordingly, First Minnesota respectfully requests that this Court affirm the final determination and judgment of the District Court.

B. The Conclusive Evidence Standard Is Not Relevant Here Because First Minnesota Did Not Know Any Fact That Put It On Inquiry Notice.

Regarding Appellant's argument that First Minnesota failed to produce conclusive evidence, the decision of the District Court should be affirmed because, as discussed above, First Minnesota was not under a duty to inquire. Conclusive evidence only becomes relevant when, pursuant to the doctrine of implied notice, some knowledge of possession triggers a duty to inquire. *See Teal*, 114 Minn. at 442, 131 N.W.2d at 488.

Moreover, even if conclusive evidence were relevant here, the court properly concluded that the knowledge with which First Minnesota could be charged does not affect its rights as a bona fide purchaser. Once the duty to inquire has been triggered and no inquiry has been made by the party invoking the bona fide purchaser defense, that party is charged with the knowledge of the claims of the possessor. *Id.* The District Court correctly concluded that at the time First Minnesota extended the loan to C&M,

Appellant's right to redeem had expired. The District Court further declared that the only thing First Minnesota would have learned regarding Appellant's interest in the Property is that he rented it pursuant to an agreement with C&M and that he no longer had an ownership interest in the Property. For these reasons, Respondent First Minnesota respectfully requests that this Court affirm the District Court's determination that First Minnesota is a bona fide purchaser and owns the Property free of any interests asserted by Appellant.

IV. THE DISTRICT COURT CORRECTLY CONCLUDED THAT ANY INTEREST APPELLANT HELD IN THE PROPERTY WAS SUBJECT TO FIRST MINNESOTA'S INTEREST AS A BONA FIDE PURCHASER.

The District Court properly concluded that Appellant's interest in the Property was inferior and ultimately non-existent due to First Minnesota's interest. First Minnesota does not disagree with Appellant's description of a vendor's lien, except to note that vendor's liens are extremely disfavored in this state. *First Const. Credit, Inc.*, 663 N.W.2d at 18 (citing *Hecht v. Anthony*, 204 Minn. 432, 437, 283 N.W. 755 (Minn. 1939).) Setting aside courts' justified distaste for vendor's liens, even the authority cited by Appellant establishes that vendor's liens are not enforceable against a bona fide purchaser. (See Appellant Br., p. 25 (citing *Brooks v. Thorne*, 176 Minn. 188, 191, 222 N.W. 916, 918 (Minn. 1929) ("A vendor's lien follows the land into the hands of subsequent purchasers and mortgagees, *except a bona fide purchaser or mortgagee without notice.*") (emphasis added)); accord *Radke v. Myers*, 140 Minn. 138, 141, 167 N.W. 360, 361 (Minn. 1918) ("In this state [a vendor's lien] is recognized but is

disfavored; and here as elsewhere it is not of avail to effectuate a secret lien against the superior equity of a bona fide purchaser or incumbrancer.".)

Appellant's argument further ignores the fact that a vendor's lien is an equitable remedy that applies only to the sale of real estate. *See First Const. Credit, Inc.*, 663 N.W.2d at 18 (citing *Peters v. Tunell*, 43 Minn. 473, 475, 45 N.W. 867, 868 (Minn. 1890) ("A vendor's lien is a concept applicable only to sales of real estate."); *Soukup v. Wenisch*, 163 Minn. 365, 367, 204 N.W. 35, 35 (Minn. 1925) ("It is a lien created by equity rather than contract or statute.")). Equitable relief may be granted in an action to determine adverse claims to real property, upon such terms as are necessary to do justice. *Engel*, 191 Minn. at 326, 254 N.W. at 3. As between Appellant and First Minnesota, the equities weight in favor of First Minnesota. Appellant's argument on this issue demonstrates that his position is inherently inconsistent and would result in injustice to First Minnesota—he argues that he is entitled to both a judgment and a vendor's lien, resulting from the Wayman Entities' non-payment of sales proceeds, in addition to a declaration that First Minnesota has no interest in the Property because Appellant's transfer of title was purportedly cancelled.

The District Court did not grant Appellant a superior interest than that of First Minnesota because doing so would have been inconsistent with justice. The Property initially went into foreclosure because of Appellant's default. (A30, ¶ 9.) Except for the transaction with the Wayman Entities, Appellant never completed a single application to refinance the Property, and did not have the money to redeem. (Trial Tr., pp. 37-38, 84.) Appellant lived in the Property for a significant period without making any payments to

anyone. (See A28-50, generally.) First Minnesota provided the funds that were used to redeem the Property. (A36, ¶ 34-35.) As the District Court clearly understood, it would be inequitable to allow Appellant to reap a financial windfall, at the expense of First Minnesota, by receiving both a judgment against the Wayman Respondents for the sale proceeds, and fee title to the Property, which Appellant had never owned free and clear and had actually lost in foreclosure. Given these circumstances, the District Court correctly concluded that it would be inequitable to award Appellant a vendor's lien superior to the interest of First Minnesota, and the District Court should be affirmed on this issue.

In the remainder of its argument, Appellant apparently intended to reassert its argument that First Minnesota is not a bona fide purchaser. To this end, Appellant asserts the various things that it believes First Minnesota could have known if it had inquired with Appellant. As discussed in Section III, *supra*, First Minnesota did not have knowledge that would have triggered a duty to inquire. Further, as discussed in section I, *supra*, Minnesota Statutes section 325N.17(f)(3) protects First Minnesota as a bona fide purchaser even if First Minnesota had known that the transaction involved "residential real property in foreclosure." See Minn. Stat. § 325N.17(f)(3.)

Setting aside Appellant's commingled factual and legal assertions, the simple question on this issue is whether the District Court erred in holding that Appellant's vendor's lien interest in the Property, if any, was inferior to First Minnesota's interest as a bona fide mortgagee. To this specific point, the court need consider no more than whether a vendor's lien is enforceable against a bona fide purchaser. It is not. See

Brooks, 176 Minn. at 191, 222 N.W. at 918; *Radke*, 140 Minn. at 141,167 N.W. at 361. Accordingly, First Minnesota respectfully requests that this Court affirm the District Court's holding that any rights in the Property held by Appellant are subject to First Minnesota's superior rights as a bona fide purchaser.

V. APPELLANT'S FIFTH ISSUE ON APPEAL DOES NOT INVOLVE FIRST MINNESOTA BANK AND WAS STAYED BY THE COURT'S ORDER OF SEPTEMBER 23, 2011.

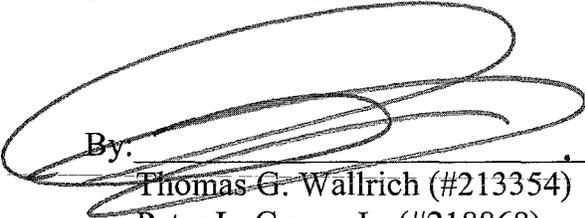
Appellant's fifth issue on appeal does not involve claims against First Minnesota in this matter. Additionally, the issues asserted against Respondents Wayman were stayed by this Court's Order of September 23, 2011. Accordingly, First Minnesota will not address this issue.

CONCLUSION

For the foregoing reasons, Respondent First Minnesota Bank respectfully requests that this Court affirm the District Court's order and entry of judgment in favor of First Minnesota, holding that First Minnesota hold the Property free of any other party's asserted claims.

Respectfully submitted this 3rd day of February, 2012.

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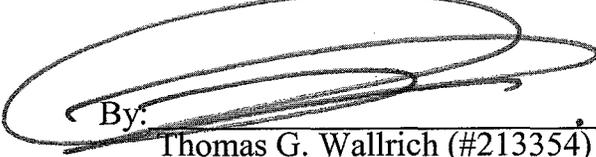
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CERTIFICATION OF BRIEF LENGTH

I, Peter L. Crema Jr., hereby certify that Defendant/Respondent First Minnesota Bank's Appellate Brief conforms to the requirements of Minnesota Rule of Appellate Procedure 132.01, subds. 1 and 3, for a brief produced with a 13-point proportional font. The length of this brief is 13,206 words. This brief was prepared using Microsoft Word 2003, and this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

Date: February 3, 2012

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