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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0667**

CitiMortgage, Inc.,
Respondent,

vs.

Deborah Roback,
Appellant,

Michael Davis, et al.,
Defendants.

**Filed December 23, 2013
Affirmed
Chutich, Judge**

Anoka County District Court
File No. 02-CV-12-1213

Bradley N. Beisel, Beisel & Dunlevy, P.A., Minneapolis, Minnesota (for respondent)

James Heiberg, Minneapolis, Minnesota (for appellant)

Considered and decided by Chief Judge Johnson, Presiding; Rodenberg, Judge;
and Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

In this mortgage dispute, appellant Deborah Roback argues that the district court erred in finding her mortgage valid under Minnesota Statutes section 507.02 (2012) and

that genuine issues of material fact preclude summary judgment. Because the district court properly granted summary judgment to respondent CitiMortgage, Inc., we affirm.

FACTS

In December 2001, Roback and defendant Michael Davis were married. In June 2004, Roback purchased a home in Coon Rapids. At the time she bought it, she gave a purchase-money mortgage against the home in favor of Mortgage Electronic Registration Systems, Inc. as nominee for MILA, Inc. in the principal amount of \$129,693.14. Roback purchased the home in her own name because she “always purchased the houses on [her] own” and she “qualified with [her] own financial qualifications.” Davis helped with the down payment and agreed to have only Roback’s name on the title to the home. Roback and Davis lived together in the home until the fall of 2006.

In 2005, Roback discussed with Davis her wish to refinance the purchase-money mortgage. Davis told Roback he did not agree with refinancing. Roback decided to refinance the purchase-money mortgage over Davis’s objection.

On January 10, 2006, Roback gave a new mortgage on the home in favor of Mortgage Electronic Registration Systems, Inc. as nominee for American Brokers Conduit in the principal amount of \$127,400 (2006 mortgage). Davis did not sign the 2006 mortgage or the note. Roback is listed, in typewriting, as “a married women” on page two of the 2006 mortgage. In an affidavit signed by Kevin Kokesh, the witness to the 2006 mortgage, “a married person” is handwritten after Roback’s name. The balance of the 2004 purchase-money mortgage was paid in full from the proceeds of the 2006 mortgage.

That same day in January 2006, Roback obtained a second mortgage on the home in favor of Mortgage Electronic Registration Systems, Inc. as nominee for American Brokers Conduit in the principal amount of \$35,600 (second mortgage). With the 2006 mortgage and second mortgage, Roback was able to lower her monthly payments and to pay off other debts.

Roback thought that the 2006 mortgage was valid and paid the mortgage payments through 2010. Roback lost her job in 2009, and after about one year, she was no longer able to pay the mortgages. She filed for bankruptcy in 2011, and she included the debt from the 2006 and second mortgages in the list of debts owed. Roback believed that the 2006 mortgage was valid until this lawsuit began. She stated in her deposition that “[n]o one told [her] that a second signature [was required] or no one ever advised [her that she] needed a co-signer on these loans.”

Roback and Davis are still married, but have been living apart since the fall of 2006. In explaining what caused their relationship to deteriorate, Roback stated, “We discussed refinancing the mortgage, and he was absolutely set on not refinancing the mortgage because of the economy and the market. And he wanted to sell the property versus refinancing. And I went ahead and refinanced it without his knowledge, and my marriage ended.” Davis confirmed that he moved out of the home in approximately September 2006 and that the relationship deteriorated because Roback refinanced when he disagreed with it and without telling him. Davis stated that he “was upset because of the deceit. The deceit is what pushed me to the divorce, to push forward on that.”

The 2006 mortgage was assigned to CitiMortgage, Inc. (CitiMortgage) in June 2011. CitiMortgage discovered that the 2006 mortgage was signed only by Roback and brought action in February 2012 to determine its validity. Roback answered and counterclaimed to quiet title, claiming that the 2006 mortgage is void under section 507.02 of the Minnesota Statutes. Davis responded in a pro se letter to CitiMortgage's attorney that he has no interest in the home and "there was no mutual mistake" in the mortgage.

CitiMortgage deposed Roback and Davis in July 2012. Shortly after depositions, CitiMortgage and Davis, represented by counsel, stipulated that "Davis has abandoned, and disclaims any interest in the Subject Property that he may have claimed or be entitled to claim as the spouse of Roback" and that Davis "is not in default" and "bears no responsibility for the [2006 mortgage]." The district court then issued an order in August 2012 that reflected these stipulations and stated that Davis "waives and relinquishes any rights he may have to contest the validity of the [2006 mortgage]" and "may be dismissed" from the litigation.

CitiMortgage moved for summary judgment, and Roback opposed, arguing that genuine issues of material fact exist and the mortgage is void. The district court granted CitiMortgage's motion for summary judgment. This appeal followed.

DECISION

"We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir*

Doran, LLC v. JADT Dev. Grp., LLC, 790 N.W.2d 167, 170 (Minn. 2010) (internal citation omitted). “[T]he reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Summary judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03.

I. Application of Minnesota Statutes Section 507.02

The parties contest whether section 507.02 applies to invalidate the 2006 mortgage. Roback argues that the district court erred in granting summary judgment because section 507.02 makes the mortgage void. CitiMortgage contends that Roback is estopped from challenging the validity of the 2006 mortgage because she retained the benefits of the conveyance. For the reasons set forth below, we agree with CitiMortgage.

We review de novo questions of statutory interpretation. *Marine Credit Union v. Detlefson-Delano*, 830 N.W.2d 859, 864 (Minn. 2013). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2012). “We determine legislative intent primarily from the language of the statute itself.” *Brayton v. Pawlenty*, 781 N.W.2d 357, 363 (Minn. 2010) (quotation omitted). If the statute’s language is clear, “statutory construction is neither necessary nor permitted and we apply the statute’s plain meaning.” *Id.* (quotation omitted).

With exceptions that are not relevant in this case, section 507.02 provides, “If the owner is married, no conveyance of the homestead . . . shall be valid without the signatures of both spouses.” Minn. Stat. § 507.02. Here, the parties do not dispute that the mortgage was a conveyance, Roback and Davis are married, and the property was a “homestead” for both Roback and Davis at the time Roback signed the 2006 mortgage.

In determining the effect of section 507.02 on the 2006 mortgage, we are mindful of authority stating that “when no exception to section 507.02 applies, a conveyance of the homestead by a married person without the signatures of both spouses is not merely voidable but is void.” *Marine Credit Union*, 830 N.W.2d at 863–64 (quotation omitted). But *Marine Credit Union* did not involve a claim of equitable estoppel, *id.* at 862, and another line of well-established authority makes clear that, under certain circumstances, a spouse may be estopped from challenging the validity of a mortgage, even though the plain language of section 507.02 applies. *See, e.g., Dvorak v. Maring*, 285 N.W.2d 675, 677 (Minn. 1979).

Estoppel is “an equitable doctrine addressed to the discretion of the court” and is “intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights.” *Brown v. Minnesota Dep't of Pub. Welfare*, 368 N.W.2d 906, 910 (Minn. 1985) (quotation omitted). Given the clear purpose of section 507.02—“to protect the non-signing spouse from an unknowing conveyance of his or her interest in the homestead”—most cases invoking estoppel under section 507.02 have involved non-signing spouses. *Nat'l City Bank v. Engler*, 777 N.W.2d 762, 766 (Minn. App.

2010), *review denied* (Minn. Apr. 20, 2010); *see also HSBC Mortgage Services, Inc. v. Graikowski*, 812 N.W.2d 845, 848–49 (Minn. App. 2012), *review denied* (June 19, 2012).

Caselaw has accordingly applied equitable estoppel to determine that a conveyance is valid where the non-signing spouse has “consent and full knowledge of the transaction” and has retained the benefits of the conveyance, and the party seeking to invoke estoppel has detrimentally relied on the transaction. *Dvorak*, 285 N.W.2d at 677–78; *see also Karnitz v. Wells Fargo Bank, N.A.*, 572 F.3d 572, 574–75 (8th Cir. 2009) (“[E]stoppel applies where (1) the nonsigning spouse consents to and has prior knowledge of the transaction, (2) the nonsigning spouse retains the benefits of the transaction, and (3) the party seeking to invoke estoppel has sufficiently changed its position to invoke the equities of estoppel.” (citing *Dvorak*, 285 N.W.2d at 677–78)).

This case involves a signing spouse and most closely aligns with *HSBC Mortgage Services, Inc. v. Graikowski*, where a lender claimed that the signing spouse should be estopped from challenging a mortgage’s validity under section 507.02. *See* 812 N.W.2d at 845. Appellant Graikowski refinanced his homestead mortgage debt, and, in filling out the loan-application forms, he told the loan officer that he was currently single. *Id.* at 847. Two days before closing on the mortgage loan, Graikowski got married. *Id.* At the closing, he signed the loan application, which identified him as a “single man.” *Id.* His wife did not sign the note or the mortgage and was unaware of the loan. *Id.* After defaulting on the loan, Graikowski and his wife divorced, and he received sole title to the property. *Id.*

HSBC Mortgage Services (HSBC) filed suit, seeking, among other things, a declaration that the mortgage was valid. *Id.* Graikowski moved for partial summary judgment, claiming the mortgage was void, but not the promissory note. *Id.* The district court granted HSBC's motion for summary judgment and denied Graikowski's motion, determining that the mortgage was valid. *Id.*

On appeal, we considered whether Graikowski, the signing spouse, should be estopped from challenging the validity of his mortgage under section 507.02. *Id.* We concluded that "Graikowski, as the signing spouse, is estopped from challenging the validity of his mortgage because (1) he procured the conveyance through an intentional or negligent misrepresentation of fact, (2) the lender relied on the misrepresentation to its detriment, and (3) he retained the benefits." *Id.* at 851. And we were not persuaded by Graikowski's arguments that "nothing in the record suggests that he knew that his wife needed to sign the mortgage, that he knew that the documents he signed at closing indicated that he was single, or that he intended to perpetrate a fraud." *Id.* at 850.

Similarly, we conclude that Roback is estopped from contesting the validity of the 2006 mortgage. The record shows that she intended to convey a valid mortgage when she refinanced her home and that she retained the benefits of the transaction. Cases applying the equitable estoppel doctrine in the "specific context of the homestead signature requirement of § 507.02 have found . . . a culpability requirement satisfied by the nonsigning spouse's prior knowledge and agreement of the conveyance coupled with the retention of the benefits of the conveyance." *Karnitz*, 573 F.3d at 576 (quotation omitted). While Roback did not misrepresent her marital status to the lender, she

obtained the 2006 mortgage behind her husband's back and with the knowledge that he did not agree.

The lender loaned Roback \$127,400, believing its loan would be secured by a first mortgage against the home. Roback paid the 2006 mortgage payments and included the 2006 mortgage in her bankruptcy filing. She used the proceeds from the 2006 mortgage to pay off a previous mortgage, and she appears to have had no intention of disputing its validity until CitiMortgage filed this lawsuit.

This case is not the typical scenario where the non-signing spouse needs the protection of section 507.02 from an unknowing conveyance of his interest in the homestead. *See Engler*, 777 N.W.2d at 766 (holding that “when the non-signing spouse actively and knowingly participates in the transaction and waives his or her homestead rights, the purpose of the statute is fulfilled and the mortgage may be enforced”). Davis, the non-signing spouse here, has disclaimed and relinquished any interest in the property and has waived his rights to contest the validity of the 2006 mortgage. Although section 507.02 “evidences the clear and unambiguous legislative policy of ensuring a secure homestead for families,” upholding the validity of the mortgage here does not undermine the statutory protection of the homestead because the non-signing spouse claims no interest in the home and waives his right to challenge the mortgage's validity. *See Dvorak*, 285 N.W.2d at 677. Based on the unique circumstances of this case, we hold that Roback is estopped from claiming the mortgage is invalid under section 507.02.

II. Genuine Issues of Material Fact

When a motion for summary judgment is made and supported, the nonmoving party “may not rest upon the mere averments or denials of the adverse party’s pleading but must present specific facts showing that there is a genuine issue for trial.” Minn. R. Civ. P. 56.05. “A material fact is one of such a nature as will affect the result or outcome of the case depending on its resolution.” *Zappa v. Fahey*, 310 Minn. 555, 556, 245 N.W.2d 258, 259–60 (1976). No genuine issue of material fact exists “when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

Roback argues that genuine issues of material fact exist that preclude summary judgment, including: whether she was “induced by mortgage professionals into signing [the 2006 mortgage]”; whether the mortgage professionals committed fraud; and whether Roback knew that the 2006 mortgage “was contrary to law without Mr. Davis’ signature or consent.” CitiMortgage does not dispute that Roback did not know the 2006 mortgage required Davis’s signature, and it contends, persuasively, that nothing in the record suggests that either Roback or CitiMortgage wanted to have a defective mortgage. It contends, and we agree, that questions about how the absence of Davis’s signature came about are irrelevant in view of Roback’s conduct in seeking out the mortgage and accepting its benefits and Davis’s waiver of any rights that he may have under section 507.02.

Because Roback has failed to present any specific facts showing a genuine issue of material fact for trial, we affirm the district court's grant of summary judgment to CitiMortgage.

Affirmed.