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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1832**

The Business Bank,
Respondent,

vs.

Kevin C. Hanson, et al.,
Appellants,

Option One Mortgage Corporation,
Respondent,

The United States of America,
Defendant.

**Filed October 28, 2008
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-06-14599

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Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Harten, Judge.*

UNPUBLISHED OPINION

JOHNSON, Judge

Business Bank sought to enforce a guaranty agreement signed by Kevin Hanson and to foreclose on a mortgage on Hanson's home. Hanson defended against Business Bank's breach-of-contract action by alleging that he was fraudulently induced to sign the guaranty agreement. Hanson also alleged that Business Bank wrongfully denied him access to the bank account of the borrower whose debt he had guaranteed. Option One, which has another mortgage on Hanson's home, defended against Business Bank's foreclosure action by arguing that its subsequently recorded mortgage has priority over Business Bank's mortgage because Business Bank's mortgage does not comply with a statutory requirement that a registered mortgage state the total amount of the mortgagor's debt to the mortgagee.

The district court entered summary judgment for Business Bank with respect to both Hanson and Option One. We conclude, however, that there are genuine issues of material fact concerning Hanson's claim of fraudulent inducement, although we affirm the district court's grant of summary judgment to Business Bank on Hanson's allegations concerning access to a borrower's bank account. We also conclude that Business Bank's

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

mortgage does not comply with the applicable statute and, thus, is invalid. Therefore, we affirm in part, reverse in part, and remand.

FACTS

A. Background

In early 2004, Kevin Hanson and Travis Carter formed North American Pet Distributors, Inc. (NAPD) to purchase the assets of US Pet, a wholesaler of exotic fish. To finance the acquisition and operations following the acquisition, NAPD initially borrowed \$250,000 from Business Bank. At the same time, Jesse Yap, the former owner of US Pet, borrowed approximately \$112,000 from Business Bank. Both Carter and Hanson personally guaranteed both loans.

In the summer of 2004, NAPD obtained \$150,000 in additional financing from Business Bank. Hanson signed an amended and restated guaranty agreement, which guaranteed not only the \$400,000 that Business Bank had lent to NAPD but also the \$112,000 that Business Bank had lent to Yap. To secure his guaranty agreement, Hanson and his wife executed a mortgage on their home for “up to \$200,000.”

In 2004 and 2005, Hanson and Carter struggled to make NAPD profitable. The relationship between Hanson and Carter became strained. By late 2005, Carter had taken over control of NAPD and changed the locks on NAPD’s office, effectively excluding Hanson from participating in the business. Carter also changed the password used to access NAPD’s account with Business Bank so that Hanson did not have access to the bank account. Hanson alleges that he contacted Business Bank in an attempt to regain access but was unsuccessful.

On October 31, 2005, Hanson and his wife executed a mortgage on their home in favor of Option One in the amount of \$1,170,000. The mortgage was recorded in December 2005.

In late 2005, Yap defaulted on his loan obligations to Business Bank and filed a voluntary bankruptcy petition. In early 2006, NAPD ceased operations and defaulted on its loan obligations to Business Bank. In June 2006, Carter satisfied half of the outstanding debt to Business Bank and was released from further obligations. Business Bank sought to enforce Hanson's guaranty agreement to obtain repayment of the remaining half of the loan balance. Hanson did not perform.

B. Procedural History

On July 31, 2006, Business Bank sued Hanson, his wife, and Option One to enforce the guaranty agreement against Hanson and to foreclose on its mortgage. Business Bank also sought a declaration that its mortgage has priority over Option One's mortgage. Two days later, Hanson commenced an action against Business Bank and Carter. With respect to Business Bank, Hanson alleged that the guaranty agreement was induced by fraudulent misrepresentations. The two cases were consolidated in September 2006.

Business Bank moved for summary judgment against both Hanson and Option One. On June 8, 2007, the district court issued an order granting Business Bank's motion for summary judgment against Hanson and Option One and severing Hanson's claims against Carter. On August 8, 2007, the district court ordered foreclosure and a money judgment in favor of Business Bank.

Hanson filed a notice of appeal from the August 8 order. Option One filed a notice of review from the same order, which this court construed to be a notice of appeal. The two appeals are essentially consolidated.

D E C I S I O N

“On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district court] erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). “A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). If there are genuine issues of material fact, a reviewing court will reverse the grant of summary judgment and remand for trial. *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 330 (Minn. 2004).

I. Hanson’s Claims Against Business Bank

Hanson is pursuing two claims against Business Bank, which also constitute defenses to Business Bank’s breach-of-contract claim against Hanson. First, Hanson alleges that Business Bank fraudulently induced him to sign the guaranty agreement. Second, Hanson alleges that Business Bank took certain actions that increased the risk of Hanson’s exposure on the guaranty agreement.

A. Fraudulent Inducement Claim

Hanson has alleged four fraudulent statements by Business Bank:

1. that Business Bank employee Peter Reichardt told him that Business Bank was “oversecured” on Yap’s debt;
2. that Reichardt told him that there was “virtually no risk” to Hanson if he guaranteed Yap’s debt;
3. that Reichardt told him that signing the guaranty agreement was a “no brainer”; and
4. that Business Bank made misrepresentations by omission by failing to tell Hanson that Yap intended to, and ultimately did, file a bankruptcy petition.

To prevail on a claim of fraud, the plaintiff must prove that

(1) there was a false representation by a party of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made as of the party’s own knowledge without knowing whether it was true or false; (3) with the intention to induce another to act in reliance thereon; (4) that the representation caused the other party to act in reliance thereon; and (5) that the party suffer[ed] pecuniary damage as a result of the reliance.

Hoyt Props., Inc. v. Production Res. Group, L.L.C., 736 N.W.2d 313, 318 (Minn. 2007) (quotation omitted); *see also Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 747 (Minn. 2000) (articulating similar seven-factor test); *Davis v. Re-Trac Mfg. Corp.*, 276 Minn. 116, 117, 149 N.W.2d 37, 38-39 (1967) (articulating similar eleven-factor test).

The only element at issue in this appeal is the fourth element of the *Hoyt Properties* test. To establish that element, a plaintiff must prove both actual and reasonable reliance. *Hoyt Props.*, 736 N.W.2d at 320-21. The party receiving a representation of a past or existing material fact generally does not have an obligation to

investigate and, thus, may “reasonably rely on a representation unless the falsity of the representation is known or obvious to the listener.” *Id.* (citing *Speiss v. Brandt*, 230 Minn. 246, 253, 41 N.W.2d 561, 566 (1950)). This element is viewed in light of “whether the representations were of such a character and were made under such circumstances that they were reasonably calculated to deceive, not the average man, but a person of the capacity and experience of the particular individual who was the recipient of the representations.” *Speiss*, 230 Minn. at 254, 41 N.W.2d at 567.

The district court granted summary judgment to Business Bank on the ground that Hanson failed to introduce evidence sufficient to prove that he reasonably relied on the alleged fraudulent representations. The district court had two general reasons for this conclusion. First, the district court reasoned that Hanson “provided . . . only bald assertions” that Reichardt made the alleged representations. Business Bank argued in its briefs that this statement reflects a proper analysis of the evidence, but when pressed at oral argument, Business Bank conceded that Hanson’s testimony was competent evidence that could create genuine issues of material fact. Second, the district court reasoned that the guaranty agreement contained terms that precluded Hanson from claiming reliance on the alleged oral representations. Business Bank rests its arguments to this court on the second basis for summary judgment, which has two parts.

1. Release

Business Bank first argues that Hanson released Business Bank from any liability for fraud by agreeing to certain language in the September 2005 reaffirmation of the guaranty agreement. Although it is unclear whether the reaffirmation signed by Hanson is in the district court record, the parties agree that it states, in relevant part:

[Hanson] agrees that [Business Bank] has completely fulfilled all of the terms, provisions and conditions of the Loan Documents . . . to be performed by [Business Bank] through the date hereof and [Hanson] hereby releases, acquits and discharges all claims, demands, suits, debts, causes of action, damages and defenses that it now has, whether known or unknown, by reason of any performance or non-performance by [Business Bank] from the time of execution of the Loan Documents . . . through the date hereof.

In support of this argument, Business Bank cites *Midway Nat'l Bank v. Gustafson*, 282 Minn. 73, 165 N.W.2d 218 (1968), arguing that guarantors such as Hanson “can contract away practically every right that they may later attempt to claim as a defense.”

Business Bank’s argument fails for two reasons. First, the contractual language on which Business Bank relies is not broad enough to be a waiver of Hanson’s fraud claim. Rather, the language waives only contractual claims that existed at the time the acknowledgment and reaffirmation were signed on September 28, 2005. Second, the supreme court in *Midway* upheld a broadly written guaranty agreement, but no fraud was alleged in that case. *Id.* at 79, 165 N.W.2d at 223. In another case, the supreme court clearly explained, “A party who makes fraudulent representations to induce another to make a contract cannot escape liability for his fraud by incorporating a disclaimer of

fraud in the contract.” *National Equip. Corp. v. Volden*, 190 Minn. 596, 600, 252 N.W. 444, 445 (1934).

2. *Contradictory Warranties*

Business Bank also argues that Hanson cannot prove reasonable reliance because of more specific acknowledgments contained in the guaranty agreement that, it contends, are inconsistent with the substance of the representations allegedly made orally by Reichardt. Business Bank argues that four sections of the guaranty agreement contradict Hanson’s claims of reliance as a matter of law.

First, section 3 of the guaranty agreement states that Business Bank is not required to perfect or enforce a security interest in any other asset before proceeding against Hanson:

The liabilities of [Hanson] shall not be affected by any failure, delay, neglect or omission on the part of [Business Bank] to realize upon any of the obligations of [NAPD] to [Business Bank], or upon any collateral or security for any of the Obligations, nor by the taking by [Business Bank] of (or its failure to take) any other guaranty or guaranties to secure the Obligations, nor by the taking by [Business Bank] of (or its failure to take or its failure to perfect its security interest in or other lien on) collateral or security of any kind. No act or omission of [Business Bank], whether or not such action or failure to act varies or increases the risk, or affects the rights or remedies, of [Hanson] shall affect or impair the obligations of [Hanson] hereunder.

Second, section 4 of the guaranty agreement contains a waiver of Hanson’s right to force the bank to proceed against any other debtor before enforcing the guaranty agreement:

[Hanson] hereby waives any and all right . . . to cause [Business Bank] to proceed against any security for the Obligations or any other recourse which [Business Bank] may have and waives any requirement that [Business Bank] institute any action or proceeding at law or in equity, or obtain any judgment, against [NAPD] or any other person, or with respect to any collateral or security for the Obligations, as a condition precedent to making demand on, or bringing an action or obtaining and/or enforcing a judgment against, [Hanson] upon this Guaranty.

Third, section 9(A) of the guaranty agreement states that Hanson is familiar with all the facts and circumstances that a “diligent inquiry would reveal” and that “would bear upon the risk of nonpayment or nonperformance”:

[Hanson] is familiar with the financial condition of [NAPD] and with all other facts and circumstances which a diligent inquiry would reveal and which would bear upon the risk of nonpayment or nonperformance of the Obligations, and [Hanson] has executed and delivered this Guaranty based on [Hanson’s] own judgment and not in reliance upon any statement or representation of Lender. [Business Bank] shall have no obligation to provide [Hanson] with any advice or information whatsoever or to inform [Hanson] at any time of [Business Bank’s] actions, evaluations or conclusions on the financial condition of or any other matter concerning [NAPD].

Fourth, section 12 states that Hanson’s liabilities and obligations will not be affected by any bankruptcy proceedings of NAPD or “any other person”:

The liabilities and obligations of [Hanson] under this Guaranty shall not be impaired or affected by the institution by or against [NAPD] or any other person of any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or any other similar proceedings for relief under any bankruptcy law or similar law for the relief of debtors. Any discharge of any of the Obligations pursuant to any such bankruptcy or similar law or other law shall not diminish, discharge or otherwise affect in any way the obligations of

[Hanson] under this Guaranty, and upon the institution of any of the above actions, such obligations shall be enforced against [Hanson].

The applicable caselaw provides that a plaintiff alleging fraud may not prove reasonable reliance on an alleged oral representation if the oral representation was “directly contradictory to the terms of” a written agreement. *Dahmes v. Industrial Credit Co.*, 261 Minn. 26, 35, 110 N.W.2d 484, 490 (1961); *see also Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 194 (Minn. App. 1985) (“reliance on an oral representation was unjustifiable as a matter of law only if the written contract provision explicitly stated a fact completely contradictory to the claimed misrepresentation”), *review denied* (Minn. Nov. 18, 1985). “When a promise is not in plain contradiction of a contract or, if contradictory, when it is accompanied by misrepresentations of other material facts in addition to the contradictory intent, the question of reasonable reliance is for the trier of fact.” *Johnson Bldg. Co.*, 374 N.W.2d at 194. Thus, we examine each misrepresentation to determine if it is “directly contradictory” to the terms of Hanson’s guaranty agreement. *Dahmes*, 261 Minn. at 35, 110 N.W.2d at 490.

a. “Oversecured”

Hanson alleges that Reichardt told him that the bank was “oversecured” on the Yap loan but that Business Bank actually considered the Yap loan to be “undersecured.” Business Bank argues that Section 3 of the guaranty agreement contradicts this alleged representation because it states that Business Bank is not required to perfect or enforce any other security interests before proceeding against Hanson. According to Business Bank, section 3 makes the oral representation “irrelevant to whether the Bank may

enforce the guaranty agreement.” The language of section 3 is not directly contradictory to the alleged statement of Reichardt. *See id.* at 35, 110 N.W.2d at 490. Hanson could accept as true both the oral statement and the written statement without inconsistency. Business Bank has not identified any other provision of the guaranty agreement that directly contradicts this alleged oral representation.

b. “Virtually No Risk”

Hanson alleges that Reichardt told him that there was “virtually no risk” to him in guaranteeing Yap’s debt but that Reichardt actually believed otherwise. Business Bank argues that section 3 of the guaranty agreement contradicts this alleged oral representation because it states, in part, “No act or omission of [Business Bank], whether or not such action or failure to act varies or increases the risk, or affects the rights or remedies, of [Hanson] shall affect or impair the obligations of [Hanson] hereunder.” Business Bank also refers to section 9, which states that Hanson “is familiar with the financial condition of [NAPD] and with all other facts and circumstances which a diligent inquiry would reveal and which would bear upon the risk of nonpayment or nonperformance of the Obligations.” Again, the language of these provisions is not directly contradictory to the alleged oral representation of Reichardt. *See id.* at 35, 110 N.W.2d at 490. The meaning of the alleged oral representation, though inherently vague because of the word “virtually,” appears to minimize the degree of risk but not to eliminate the concept altogether. Again, Hanson could accept as true both the oral statement and the written statements without inconsistency.

c. *“No Brainer”*

Hanson alleges that Reichardt told him that signing the guaranty agreement was a “no brainer.” Business Bank has not attempted to identify any provision in the guaranty agreement that is directly contradictory to the alleged oral representation. *See id.* at 35, 110 N.W.2d at 490.

d. *Omission of Mention of Bankruptcy*

Hanson alleges that Business Bank failed to inform him that Yap was planning to file bankruptcy in the spring of 2004, before Hanson signed the original guaranty, and that Yap had filed bankruptcy before Hanson signed a reaffirmation of the guaranty agreement in September 2005. Business Bank argues that section 12 of the guaranty agreement contradicts this alleged oral representation because it states that the guaranty agreement is unaffected by the filing of bankruptcy by any person, including Yap or NAPD. Again, the language of the guaranty agreement is not directly contradictory to the omission of any mention by Business Bank of Yap’s bankruptcy. *See id.* at 35, 110 N.W.2d at 490. Hanson could accept as true the written statement regardless whether he was aware of Yap’s bankruptcy.

Thus, Hanson is not foreclosed by the above-quoted portions of the guaranty agreement from proving reasonable reliance on any of Business Bank’s four alleged fraudulent representations. We note that other elements of Hanson’s fraud claim are not at issue on this appeal, and we take no position as to whether the evidence is sufficient to satisfy those elements. We merely conclude that the district court erred by holding that,

as a matter of law, Hanson may not prove reasonable reliance on Business Bank's alleged fraudulent representations.

B. "Increased Risk" Claim

Hanson alleges that Business Bank wrongfully increased Hanson's risk on the guaranty agreement because Reichardt colluded with Carter to prevent Hanson from accessing NAPD's bank accounts. Business Bank construed Hanson's claim to be for rescission of the guaranty agreement. The district court granted summary judgment to Business Bank on this claim.

In support of his argument, Hanson relies on *Dewey v. Henry's Drive-Ins, Inc.*, 301 Minn. 366, 222 N.W.2d 553 (1974), *Minnesota Fed. Sav. & Loan Ass'n v. Central Enter., Inc.*, 311 Minn. 46, 247 N.W.2d 46 (1976), and *Loving & Assocs., Inc. v. Carothers*, 619 N.W.2d 782 (Minn. App. 2000), *review denied* (Minn. Feb. 13, 2001). In each of these cases, there was a change in the form or structure of the principal debtor, and the court considered whether the change led to "a material alteration in the contract between the principal and the creditor [that] discharges a guarantor." *Loving & Assocs.*, 619 N.W.2d at 789. Hanson relies primarily on *Dewey*, noting its statement that "a material alteration in the principal contract, made after execution of the guaranty contract and without consent of the guarantor, discharges the guarantor if the alteration adversely affects the guarantor's interests." 301 Minn. at 370, 222 N.W.2d at 555.

The cases cited by Hanson do not allow him to establish a claim for relief. First, there was not a change in NAPD's business "of sufficient magnitude to justify releasing a guarantor." *See Loving & Assocs.*, 619 N.W.2d at 787 (holding that merger between

principal debtor and another corporation did not discharge guarantor as a matter of law but raised questions of fact); *see also Minnesota Fed. Sav. & Loan Ass'n*, 311 Minn. at 50-51, 247 N.W.2d at 49-50 (holding that increase in financing limit did not discharge guarantor); *Dewey*, 301 Minn. at 370, 222 N.W.2d at 555-56 (holding that conversion of drive-in restaurant to eat-in restaurant with more leased space did not discharge guarantor). Second, there was not “a material alteration in the contract between the principal [i.e., NAPD] and the creditor,” i.e., Business Bank. *See Loving & Assocs.*, 619 N.W.2d at 789. Hanson contends that Business Bank altered the checking-account agreement between the bank and NAPD. No such agreement, strictly speaking, is in the record. Hanson cites to NAPD’s corporate authorization resolution of February 2004, which grants equal powers to Hanson and Carter to act on behalf of NAPD. But Business Bank did not alter that resolution simply by continuing to recognize Carter as the chief executive officer of NAPD. The resolution provides that Hanson’s authority to conduct business with the bank exists only “so long as [he] act[s] in a representative capacity as [an] agent[] of” NAPD. At the relevant times, Hanson had been forced out of NAPD’s operations, which prevented him from representing NAPD. Whether the freeze-out was right or wrong is immaterial for these purposes. Hanson does not cite any other legal authority that would allow him to pursue an increased-risk claim against Business Bank in light of the evidence in the record. Thus, summary judgment is appropriate on this claim.

II. Option One's Claim Against Business Bank

Option One contends that Business Bank's mortgage is invalid because it does not comply with statutory requirements. Option One's mortgage on the Hansons' home was recorded in October 2005, more than a year after Business Bank's mortgage was recorded in August 2004. But Option One sought to invalidate Business Bank's mortgage so that its own mortgage would have priority. The district court granted summary judgment for Business Bank, concluding that Business Bank's mortgage is valid.

The relevant statute provides: "No instrument, other than a decree of marriage dissolution or an instrument made pursuant to it, relating to real estate shall be valid as security for any debt, unless the fact that it is intended and the initial known amount of the debt are expressed in it." Minn. Stat. § 287.03 (2006). The word "debt" is defined in chapter 287 as "the principal amount of an obligation to pay money that is secured in whole or in part by a mortgage of an interest in real property." Minn. Stat. § 287.01, subd. 3 (2006).

Business Bank's mortgage states:

[I]n consideration of the Mortgagee making a loan to [NAPD], and other good and lawful consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure, and as security for, the payment of up to \$200,000 (the "Mortgage Amount") of principal and interest and other premiums, penalties and charges . . . [Hanson] does hereby grant . . . unto [Business Bank] . . . a mortgage lien and security interest to [Business Bank]

Option One contends that Business Bank's mortgage is not in compliance with the statute because the mortgage does not properly state the amount of Hanson's guaranty,

i.e., “the principal amount of [Hanson’s] obligation to pay money [to Business Bank] that is secured in whole or in part by [the] mortgage.” *Id.* Option One asserts that the amount of the “debt” that should have been “expressed in” the mortgage is approximately \$512,000. Business Bank’s mortgage secured only \$200,000 of the Hansons’ guaranty to Business Bank, and that is the only figure stated in the mortgage.

Whether Business Bank’s mortgage complies with section 287.03 presents a question of statutory interpretation, which we review de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). If a statute is reasonably susceptible to more than one meaning, it is ambiguous. *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). But if “a statute’s meaning is plain, judicial construction is neither necessary nor proper.” *Occhino v. Grover*, 640 N.W.2d 357, 359 (Minn. App. 2002), *review denied* (Minn. May 28, 2002). Here, the meaning of the statute is plain. An instrument securing debt by granting a mortgage to real property must state the amount of the entire debt. The mortgage that Hanson granted to Business Bank was security for the amended guaranty Hanson executed in August 2004, which extended to all loans Business Bank had made to NAPD and Yap at that time, which totaled approximately \$512,000. Thus, Business Bank’s mortgage does not comply with the statute because it does not express “the initial known amount of the debt.” Minn. Stat. § 287.03.

Business Bank contends that, notwithstanding its noncompliance, its mortgage is valid because the purpose of the statute is to ensure the payment of mortgage registry taxes and because it actually paid the correct amount of tax, which is calculated only on

the amount of the secured portion of the debt. *See* Minn. Stat. § 287.035 (2006). Business Bank correctly states that it has paid the proper amount of tax, and it also correctly states that section 287.03 is codified alongside statutory provisions that are designed to ensure the payment of mortgage registry taxes. But the express language of section 287.03 plainly states that a mortgage is invalid if it does not state the total amount of debt.

Business Bank cites cases that, it contends, stand for the proposition that a mortgage should not be invalidated because of noncompliance with the statute. *See, e.g., Engenmoen v. Lutroe*, 153 Minn. 409, 190 N.W. 894 (1922); *Staples v. East St. Paul State Bank*, 122 Minn. 419, 142 N.W. 721 (1913). The cases are germane because they concern a statute that is the predecessor to section 287.03, which contained substantially identical language.¹ The cases, however, are inapplicable because of the facts and procedural posture of this case.

In *Staples*, the security instrument was facially deficient, but the creditor asked the district court to reform it so as to cure the deficiency. *Staples*, 122 Minn. at 420-21, 142 N.W. at 721. The district court granted that relief, and the supreme court affirmed, reasoning that reformation was proper because there was no intent to evade the tax and no other improper intent. *Id.* at 422, 142 N.W. at 722; *see also First State Bank of Boyd*

¹ The statute at issue in *Engenmoen*, which was enacted in 1907 and was first amended and renumbered in 1913, provided: “No instrument relating to real estate shall be valid as security for any debt, unless the fact that it is so intended and the amount of such debt are expressed therein.” *Engenmoen*, 153 Minn. at 412, 190 N.W. at 895 (quoting Minn. Gen. Stat. § 2301 (1913)). The statute at issue in *Staples* was practically identical. 122 Minn. at 421, 142 N.W. at 722.

v. Hayden, 121 Minn. 45, 51, 140 N.W. 132, 134-35 (1913) (affirming reformation of security interest in similar circumstances); *Mason v. Fichner*, 120 Minn. 185, 194, 139 N.W. 485, 488-89 (1913) (same); *Forest Lake State Bank v. Ekstrand*, 112 Minn. 412, 416, 128 N.W. 455, 456 (1910) (same). But Business Bank did not plead reformation or otherwise undertake to reform a concededly invalid mortgage. Thus, *Staples* is inapplicable.

In light of Business Bank's arguments to the district court, this case is more like *Engenmoen*, in which the party seeking to foreclose on a facially invalid mortgage did not seek relief by way of reformation. The supreme court held that the security instrument was "unenforceable, unrecordable, [and] ineffective as notice and inadmissible as evidence until" the deficiency was cured. *Id.* at 412, 190 N.W. at 896. The supreme court further explained that "the contractual rights created [by the mortgage] are not divested or rendered nugatory by a failure to comply with the provisions of the act" but, rather, "remain in abeyance or a state of dormancy and no affirmative proceeding to enforce them can be maintained until the purpose of the statute has been accomplished." *Id.* at 413-14, 190 N.W. at 896. The supreme court, however, also held that the deficiency would not cause a mortgage to be subordinated to a subsequent mortgage if the subsequent mortgagee had notice of all facts that are required by the statute to be disclosed. *Id.* at 414, 190 N.W. at 896. The supreme court held that "the rights of a subsequent purchaser with notice would be subordinate to the rights of plaintiff," who was the prior mortgagee, "[a]nd where a subsequent purchaser claims to have purchased without notice of an unrecorded instrument, the burden is on him to

prove that fact.” *Id.* Because the plaintiff had actual notice of the information to which she was entitled by statute, the facially deficient security instrument was saved. *Id.*

Thus, *Engenmoen* and other cases interpreting the prior version of section 287.03 stand for the proposition that a mortgage that does not comply with section 287.03 is invalid unless the noncompliance has been cured, such as by filing a proper mortgage (if the mortgage originally filed is deficient on its face) or by a district court judgment reforming the mortgage, in which event the mortgage would have priority as though it were proper when filed. But even in the absence of cure, a noncompliant mortgage is valid against a third party seeking to invalidate the mortgage if the third party had actual notice of all facts to which the third party is entitled by the statute.

Here, the district court stated in its memorandum that “Hanson did not disclose his prior mortgage lien in favor of the Business Bank to Option One in his mortgage application.” The district court explained that Hanson construed the obligations to Business Bank to be “a corporate liability” and, thus, “did not inform Option One of the prior mortgage.” The district court stated that Option One had “constructive notice of prior interests in the property,” but that statement appears to mean only that Option One was aware that Hanson had granted a mortgage to Business Bank. The relevant inquiry, however, is whether Option One knew the “initial known amount” of the whole of Hanson’s debt to Business Bank because that is the information to which Option One is entitled by section 287.03. In light of the district court’s recitation of the undisputed facts, it appears that Option One did not have actual notice of the amount of Hanson’s guaranty to Business Bank. Business Bank’s mortgage is invalid unless its

noncompliance with section 287.03 was cured by actual notice of the amount of Hanson's guaranty. Accordingly, the district court erred in granting summary judgment in favor of Business Bank and against Option One.

Affirmed in part, reversed in part, and remanded.