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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0632**

Petition of Minnesota Housing Finance Agency for
an Order Directing Entry of New Certificate of Title After Mortgage Foreclosure Sale
Certificate No. 112938 - Foster.

**Filed January 21, 2025
Affirmed
Smith, John, Judge*
Concurring specially, Larson, Judge**

Anoka County District Court
File No. 02-CV-22-1889

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respondent)

Considered and decided by Larson, Presiding Judge; Wheelock, Judge; and Smith,
John, Judge.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's grant of summary judgment in favor of respondent
because (1) respondent did not waive its right to challenge appellant's redemption,

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

(2) appellant did not have a valid lien from which to redeem, and (3) appellant was not a bona fide purchaser.

FACTS

The following summarizes the undisputed factual findings by the district court along with other facts from the record helpful to assist understanding of this case. Respondent Minnesota Housing Finance Agency (MHFA) foreclosed on a mortgage it held on to property previously owned by Raymond Foster. MHFA purchased the property at a sheriff's sale and received a sheriff's certificate of sale, subject to a six-month owner redemption period. Foster had passed away, and the property was owned by his heirs. Foster's heirs transferred their interests to Renovation Group, who received quitclaim deeds and filed claims of unregistered interest with Anoka County. Appellant Creative Real Estate (Creative) issued the checks to Foster's heirs to pay for Renovation's purchase of the property. No parties redeemed during the six-month owner redemption period.

Renovation authorized Creative to perform improvements on the purchased property, and Creative began work on January 27, 2022. Creative invoiced Renovation \$507.20 for their work. On January 31, 2022, Creative filed a mechanic's lien statement for the work done on the property. In February, Creative recorded a notice of intention to redeem based on the mechanic's lien. On March 4, Creative gave the redemption funds to the sheriff, who mailed the check to MHFA. Creative received a certificate of redemption.

During this time, Creative entered into an agreement to sell the property to appellant E & T Property (E&T). Creative retained Executive Title of MN, LLC as the title and escrow company to handle the transaction. On March 3, Creative signed a satisfaction of

the mechanic's lien. Executive Title stated that it told Creative to execute the satisfaction "in the event that there were unexpected title issues after [c]losing," not because the lien had actually been satisfied. On March 4, Executive Title filed both Creative's redemption and the satisfaction with the Anoka County Registrar of Titles, and Executive Title stated that the filing of the satisfaction was a mistake. On March 17, the Examiner of Titles rejected Creative's notice of intent to redeem because the satisfaction was executed on March 3, meaning Creative did not have redemption rights based on the mechanic's lien when it furnished the funds for its redemption on March 4.

On March 24, Executive Title contacted MHFA and informed MHFA that Creative executed a satisfaction of the mechanic's lien and that MHFA was now the fee owner of the land due to the expiration of the redemption period. On April 25, MHFA returned the redemption funds to its counsel.

MHFA filed a petition requesting an order directing the Registrar of Titles to cancel the current certificate of title and enter a new certificate of title in MHFA's name. E&T and Creative each filed a response containing affirmative defenses alleging that the satisfaction was invalid and unenforceable, MHFA lacked standing, and E&T was a bona fide purchaser of the property. On August 9, MHFA and E&T entered into a stipulation to keep the redemption funds deposited in MHFA's counsel's trust account, where they had been held since April. During discovery, MHFA served requests for admission on Creative. Creative's relevant answers are as follows:

REQUEST FOR ADMISSION 7: In 2021, Creative Real Estate Inc. entered into a written agreement to acquire an interest in the Property.

RESPONSE: Admit.

REQUEST FOR ADMISSION 8: In 2021 or 2022, Creative Real Estate Inc. entered into a written agreement with one or more of Nicole McKemon, Karla Foster, and Raymond Foster, which required them to vacate the Property in exchange for payment.

RESPONSE: Admit only that the referenced parties were paid for their heirship interest in the real property. Deny any further allegation or implication.

The parties filed cross-motions for summary judgment. In Creative's memorandum of law opposing MHFA's motion for summary judgment, Creative attempted to amend its answers to two of the requests for admission, as follows:

REQUEST FOR ADMISSION 7: In 2021, Creative Real Estate Inc. entered into a written agreement to acquire an interest in the Property.

AMENDED RESPONSE: Deny.

REQUEST FOR ADMISSION 8: In 2021 or 2022, Creative Real Estate Inc. entered into a written agreement with one or more of Nicole McKemon, Karla Foster, and Raymond Foster, which required them to vacate the Property in exchange for payment.

AMENDED RESPONSE: Deny that Creative Real Estate Inc. was a party to any written agreement with Nicole McKemon, Karla Foster, or Raymond Foster. Admit only that the referenced parties were paid by Creative Real Estate Inc. to convey their heirship interest in the Property to Renovation Group, Inc. Deny any further allegation or implication.

Creative did not bring a motion to amend its answers.

The district court denied Creative's and E&T's motions for summary judgment and granted MHFA's, concluding that (1) MHFA had standing; (2) "MHFA did not waive its right to challenge the validity of [Creative's] redemption by receiving funds from the sheriff"; (3) Creative's mechanic's lien was invalid; (4) "Creative [was] not a junior creditor entitled to redeem"; (5) Creative's "Certificate of Redemption and the subsequent deed to E&T [were] void"; (6) "MHFA became the owner of the Property" after the redemption period expired; and (7) "E&T [was] not a bona fide purchaser." Notably, the district court also concluded that it would not consider Creative's amended answers because Creative "did not [move] the court to amend its admissions," and therefore, the original admission was "conclusively established."

Creative and E&T appeal.

DECISION

Appellate courts review the grant of summary judgment de novo to determine "whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)). In doing so, appellate courts "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) (citation omitted). A genuine issue of material fact exists if, considering the record as a whole, a rational trier of fact could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). Additionally,

appellate courts “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted).

We begin with a brief overview of the law of redemption. “[T]he right of redemption is a strict legal right, to be exercised, if at all, in accordance with the terms of [the] statute by which the right is conferred” *In re Petition of Nelson*, 495 N.W.2d 200, 202 (Minn. 1993) (quotation omitted). After a sheriff’s sale following a foreclosed mortgage, a mortgagor is given a six-month period to redeem the property. Minn. Stat. § 580.23, subd. 1(a) (2022). If the mortgagor fails to redeem within this period,

the most senior creditor having a legal or equitable lien upon the mortgaged premises, or some part of it, subsequent to the foreclosed mortgage, may redeem within seven days after the expiration of the redemption period determined under section 580.23 or 582.032, whichever is applicable[.]

Minn. Stat. § 580.24(a) (2022). The junior creditor who intends to redeem must, “one week or more prior to the expiration of the period allowed for redemption by the mortgagor,” (1) record a notice of intent to redeem, (2) record documents “necessary to create the lien on the mortgaged premises and to evidence the creditor’s ownership of the lien,” (3) deliver the recorded documents to the sheriff who conducted the sale, and (4) pay the required amount either “to the holder of the sheriff’s certificate of sale . . . or to the sheriff for the holder.” Minn. Stat. § 580.24(a), (c) (2022). When a creditor redeems by paying the sheriff, and a junior creditor redeems afterwards, the sheriff sends a redemption check to the senior creditor. *See, e.g., Hanson v. Woolston*, 701 N.W.2d 257, 261 (Minn. App. 2005), *rev. denied* (Minn. Oct. 18, 2005). If a junior lienholder properly redeems, “the certificate of

redemption, executed, acknowledged, and recorded as provided in section 580.26, operates as an assignment to the creditor of the right acquired under such sale, subject to such right of any other person to redeem as provided by law.” Minn. Stat. § 580.27 (2022).

I. The district court did not err by determining that MHFA did not waive its right to challenge Creative’s redemption.

Creative and E&T first argue that, by accepting Creative’s check and not returning it, MHFA waived their right to challenge Creative’s redemption. The district court, analogizing the case to *Hanson*, determined that MHFA “did not waive its right to challenge the validity of the Creative redemption.” 701 N.W.2d at 257. We agree with the district court.

All parties cite a line of cases from the Minnesota Supreme Court discussing waiver of a challenge to a junior creditor’s redemption. First, the parties cite *Clark v. Butts*, 76 N.W. 199 (Minn. 1898). In *Clark*, the plaintiff attempted to buy the sheriff’s certificate of sale from the purchaser of foreclosed property. *Id.* at 200. When a creditor redeemed from the purchaser, the plaintiff went to the sheriff’s office and withdrew the redemption funds. *Id.* The supreme court concluded that the plaintiff had waived his right to object to the irregularities in the creditor’s redemption when he accepted the redemption money. *Id.* at 202. The supreme court explained that the plaintiff’s attempts to return the money to the sheriff a week or more later did not rescind the waiver. *Id.*

The parties also cite *Orr v. Sutton*, in which the supreme court concluded that a purchaser waived his right to challenge a redemption by accepting the redemption money and relinquishing any title to the property. 148 N.W. 1066, 1069-70 (Minn. 1914). Creative

relies on the language in *Orr* that states, “Even when the redemptioner has no right to make it, or does not conform to the law in so doing, the title nevertheless passes to him if the one from whom redemption is made accepts the redemption money” *Id.* at 1069.

Next, the parties cite *Grant v. Bibb*, in which the plaintiff attempted to challenge a redemption that was based on a judgment that was later reversed. 152 N.W. 728, 729 (Minn. 1915). The supreme court noted that the plaintiffs could have successfully challenged the redemption had they refused to recognize it initially but concluded that they waived their right to object to the redemption because they “received the redemption money and accepted and appropriated it to themselves.” *Id.*

The parties next cite *Hanson*, 701 N.W.2d at 263, in which the sheriff sent a redemption check to a senior creditor after a junior creditor redeemed. In distinguishing *Hanson* from *Clark*, this court determined that the senior creditor did not solicit the funds from the sheriff. *Id.* at 263-64. Additionally, there was no evidence in the record to show that the senior creditor was aware of the redemption’s defects. *Id.* This court concluded that a senior creditor did not waive his right to challenge a junior creditor’s redemption despite receipt of the redemption check. *Id.*

We also note that this court recently decided *L and T Tree Sers., LLC v. Andersen*, No. A24-0572, 2024 WL 4344956 (Minn. App. Sept. 30, 2024). In *L & T*, this court discerned from the previous line of cases that “a party waives the right to challenge a redemption when they accept redemption money and appropriate it to themselves.” *Id.* at *4. This court determined that the plaintiff knew about alleged defects in the creditors’

redemption and still deposited the funds. *Id.* at *5. The plaintiff therefore had waived its challenges to the creditor’s redemption. *Id.*

This case differs from the supreme court line of cases in key respects. As the district court concluded, this case differs from *Clark* because MHFA did not “actively solicit[]” the redemption funds. Unlike the creditor in *Clark*, MHFA did not go to the sheriff’s office to receive the funds; the check was sent to them. Additionally, unlike the creditor in *Orr*, it cannot be said that MHFA “accepted” the redemption money. *See Orr*, 148 N.W. at 1069. *Grant* clarifies that a party waives their right to object to a redemption if they “received the redemption money and accepted and appropriated it to themselves.” 152 N.W. at 729. We reaffirmed this principle in *L & T*. 2024 WL 4344956, at *4 (determining that “because plaintiffs received the redemption money and accepted and appropriated it to themselves, they conceded that the creditor had the right to redeem and waived any defect in [the creditor’s] title to do so.” (Quotations omitted)). However, this case differs from *L & T* because MHFA did not deposit the funds in its own account. *Id.* at *5. Similar to *Hanson*, MHFA did not cash the check once it was received. MHFA held onto the check, and once it learned of potential defects in Creative’s redemption, it deposited the check in its counsel’s trust account. MHFA offered to return the funds to the sheriff or deposit them with the district court, and eventually entered into a stipulation with E&T to keep the funds in MHFA’s counsel’s trust account. There is no evidence that MHFA has moved the funds from this trust account since then. At no time did MHFA “appropriate [the funds] to” itself. *See id.* at *4. Thus, MHFA did not waive its challenge to Creative’s redemption.

Because MHFA did not appropriate the funds to itself, the district court did not err by holding that MHFA did not waive its right to challenge Creative's redemption.

II. The district court did not err by holding that Creative was not entitled to redeem.

Creative argues that, even if MHFA did not waive its right to challenge Creative's redemption, Creative was entitled to redeem because it had a valid mechanic's lien on the property. The district court held that Creative's mechanic's lien was invalid because Creative was an equitable owner of the property at the time the lien was filed. We agree.

Under Minnesota law, the creditor in a lawsuit for a money judgment can attach a judgment lien against the debtor's real property. Minn. Stat. § 548.09, subd. 1 (2022). This lien attaches to the debtor's property when the judgment is docketed. *Id.* A judgment creditor may collect on the money judgment by executing on the debtor's property. Minn. Stat. § 550.02 (2022). However, Minn. Stat. § 514.01 "precludes the filing of a mechanics' lien by an owner upon his own property." Minn. Stat. § 514.01 (2022); *Nelson v. Nelson*, 415 N.W.2d 694, 697 (Minn. App. 1987).

Here, the district court determined that Creative was an equitable owner based on Creative's original answers to MHFA's requests for admission. In answers seven and eight, Creative admits that "Creative Real Estate Inc. entered into a written agreement" with Foster's heirs to acquire an interest in the property. While Creative attempted to amend its answers in its motion for summary judgment to deny these allegations, the district court appropriately declined to consider the amendments. To withdraw or amend an admission, a party must move the court, and the admission will be considered conclusively established

unless the court grants the motion to withdraw or amend. Minn. R. Civ. P. 36.02. It is undisputed that Creative did not move the court to amend its answers. Therefore, the district court found it “conclusively established” that Creative entered into a written agreement to acquire the property and delivered checks to Foster’s heirs. It was thus also “conclusively established” that Creative had an ownership interest in the property. Therefore, the district court did not err in holding that Creative did not have a valid mechanic’s lien to redeem.

Because Creative was an equitable owner of the property, the district court did not err by holding that Creative was not entitled to redeem.

III. The district court did not err by holding that E&T was not a bona fide purchaser.

E&T argues that, regardless of whether Creative was entitled to redeem, the district court should have concluded that E&T is a bona fide purchaser.

“It is well established under Minnesota law that when a grantor has no power to convey land due to a void deed, the purchaser does not acquire title, and it is immaterial whether [the purchaser] was a bona fide purchaser or not.” *Graves v. Wayman*, 859 N.W.2d 791, 801 (Minn. 2015) (quotations omitted). “The good faith of a purchaser cannot create a title where none exists.” *Hanson*, 701 N.W.2d at 266 (quotation omitted).

Here, Creative did not have a title to convey to E&T. As discussed, Creative’s mechanic’s lien was invalid due to its equitable ownership of the property, meaning Creative could not gain valid title to the property through redemption. If Creative did not

have title to the land, E&T's good faith purchase could not "create a title where none exists." *Id.* (quotation omitted).

E&T also argues that the district court's conclusion that Creative was an equitable owner of the property "contradicts its conclusion that Creative could not convey title to E&T." We disagree. Given that the certificate of sale was filed on August 26, 2021, the six-month redemption period for owners ended on February 26, 2022. However, Creative did not pay the redemption funds until March 4. By that time, the window for Creative to redeem as an equitable owner had already expired. Because of this, any ownership interest was extinguished at the end of that period. Therefore, Creative did not have valid title to convey to E&T on the closing date of March 8.

Because Creative did not have valid title to the property when making the conveyance to E&T, the district court did not err by holding that E&T was not a bona fide purchaser.

Affirmed.

LARSON, Judge (concurring specially)

I concur in the majority opinion. I write separately to highlight a gap in the caselaw regarding what is necessary to avoid waiving the right to challenge a redemption. It appears that at the time the supreme court issued its decisions regarding waiver, accepting redemption money required an affirmative act on the part of the foreclosure purchaser or senior creditor. *See Grant v. Bibb*, 152 N.W. 728, 728-29 (Minn. 1915); *Orr v. Sutton*, 148 N.W. 1066, 1069-70 (Minn. 1914); *Clark v. Butts*, 76 N.W. 199, 200 (Minn. 1898). For example, in *Clark*, the senior creditor (Wilmot) “went to the sheriff’s office, and drew out the redemption money.” 76 N.W. at 200.

Since that time, a new practice seems to have evolved that the sheriff can send an unsolicited redemption check to the foreclosure purchaser or senior creditor when a junior creditor redeems. *See, e.g., Hanson v. Woolston*, 701 N.W.2d 257, 261 (Minn. App. 2005), *rev. denied* (Minn. Oct. 18, 2005); *L & T Tree Servs., LLC v. Andersen*, No. A24-0572, 2024 WL 4344956, at *2 (Minn. App. Sept. 30, 2024). This change has resulted in litigation over what a party must do with the unsolicited check to avoid waiver. In *Hanson*, we concluded waiver did not occur because the senior creditor did not cash the check and, ultimately, returned the check to the sheriff. 701 N.W.2d at 263-64. But in *L & T*, we concluded that depositing the unsolicited check into the senior creditor’s bank account constituted waiver. 2024 WL 4344956, at *4-5.

This case falls in between those two decisions. Here, MHFA received the unsolicited redemption check from the sheriff around March 9, 2022. MHFA learned about the alleged defects in the redemption on March 24, 2022. On April 25, 2022, MHFA sent

the check to its counsel, who deposited the check into an attorney trust account around April 28, 2022. MHFA formally objected to the redemption on April 28, 2022. Thereafter, MHFA “offered to return the Redemption Funds . . . to the Anoka County Sheriff, to deposit the Redemption Funds with the Court, or to hold the Redemption Funds in [MHFA’s] attorney’s trust account pending resolution of this matter.” But the parties did not stipulate to keeping the redemption funds in the attorney trust account until August 9, 2022.

In my view, this is a very close case. Because MHFA deposited the check into the attorney trust account before entering the stipulation, it arguably had unfettered access to the redemption money for several months like appellant in *L & T*. See 2024 WL 4344956, at *1-2, 4-5. But, from the record, it appears that—by depositing the check into the attorney trust account rather than its own account—MHFA was attempting to avoid appropriating the redemption money to itself. See *Grant*, 152 N.W. at 729. And in the absence of guidance regarding the actions a senior creditor or foreclosure purchaser must take to avoid waiver when the sheriff sends an unsolicited redemption check, I cannot conclude that waiver occurred here. I would note, however, that there may be more prudent courses of action a party could take to prevent waiver challenges, such as returning the check to the sheriff, depositing the check with the court, or entering a stipulation with the junior creditor *before* depositing the check.