

STATE OF MINNESOTA  
COUNTY OF SCOTT

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DISTRICT COURT  
FIRST JUDICIAL DISTRICT

Master File No. 70-CV-08-5027

In re Parish Marketing and Development  
Corporation Mechanic's Lien Foreclosure  
Litigation

Additional File No. Impacted by Order:

70-CV-07-30231

**FILED**

**ORDER 14**

JAN 21 2009

*JP*

SCOTT COUNTY COURTS

The above-entitled matter came before the Honorable Jerome B. Abrams, Judge of District Court, on November 21, 2008, at the Scott County Courthouse, Shakopee, Minnesota.

Richard J. Gabriel, Attorney at Law, appeared as counsel for and on behalf of Minnesota Concrete.

Jon R. Steckler, Attorney at Law, appeared as counsel for and on behalf of Angell Aire, Phase Electric, Simon Brick & Stone, Elfering Brothers Construction, and T&C Mechanical.

Frederick Young, Attorney at Law, appeared as counsel for and on behalf of Metro Home Insulation, LLC.

Allen E. Christy, Jr., Attorney at Law, appeared as counsel for and on behalf of the lenders including Washington Mutual Bank, Countrywide Home Loans, Inc., Bear Stearns Residential Mortgage Corporation, Aurora Home Loans, UBS AG Tampa, and Homecomings Financial LLC.

The matters before the Court were as follows:

1. Minnesota Concrete Structures' ("Minnesota Concrete") motion to modify Order No. 13. Ostensibly, Minnesota Concrete Structure is moving to protect its

interest that it has as a judgment creditor of Parish Marketing and Development Corporation ("Parish"). More specifically, Minnesota Concrete argues that 12 properties owned by – or in at least the name of – Jennifer Lake ("Lake") and Jason Bentson ("Bentson") were actually the result of fraudulent conduct on the part of Parish and, consequently, that somehow these should be considered as assets of Parish available for satisfaction of Minnesota Concrete's judgment debt.

2. Other parties have joined and agree with the position asserted by Minnesota Concrete, including Angell Aire ("Angell"), Elfering Brothers Construction, Inc., Simon Brick & Stone Company, Phase Electric, Inc., and T&C Mechanical LLC. The argument made on behalf of these parties joining Minnesota Concrete's position is that they "have judgments against Parish Marketing and Development Corporation, and specifically reserve the right to recover on the balance of those judgments" as part of their mediated settlement agreement.
3. Metro Home Insulation LLC ("Metro") also joins the position of Minnesota Concrete, indicated to the Court that it did not settle its claims directly against Parish Marketing and Development, and also advised the Court that it had a claim against Parish Marketing and Development that existed outside of the comprehensive litigation handled by this Court (Wright County District Court File No. 86-CV-08-9525).

**The Court being duly advised in the premises, having reviewed the submissions of the parties, its prior orders, the settlement agreements at issue, and the arguments of counsel makes the following Findings of Fact, Conclusions of Law, and Order for Judgment.**

## FINDINGS OF FACT

1. The moving party herein, Minnesota Concrete Structures LLC, and those parties identified joining Minnesota Concrete, have all settled all manner of claims arising by said party, asserted or assertible, in connection with their mechanic's lien actions memorialized in fully executed mediated settlement agreements.
2. The settlement of those claims resulted in payments being made by numerous lenders, and Mortgage Electronic Registration Systems (MERS) as referenced in the underlying files made payments to the moving parties as follows: Minnesota Concrete - \$160,000; Angell Air, Inc., Elfering Brothers Constructions, Inc., Jaeckels & Simon Masonry, Inc./Simon Brick & Stone; Phase Electric; T&C Mechanical LLC collectively - \$310,000; and Metro Home Insulation - \$81,250.
3. The purpose behind, and the ostensible reason for, the settlements being paid by lenders which provided either construction loans, or advanced proceeds for the purchase of properties built by or sold by Parish Marketing and Development was so that the lenders could ultimately obtain through foreclosure, ownership of the subject properties and have the ability to sell same.
4. At no time during the course of these difficult and protracted proceedings was an appearance made by Parish<sup>1</sup>.
5. Assignments of claims were made by the parties who received payments (movants herein) back to the lenders who paid them, of judgments the settling parties had as against Parish. In other words, each of the settling parties had or were in the process of obtaining judgments as against Parish Marketing and Development, and

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<sup>1</sup> Parish did appear fleetingly in the Dakota County District Court file (C6-07-010312) to initially oppose a separate action brought by Minnesota Concrete. Counsel for Parish withdrew making no appearance at the hearing which Minnesota Concrete obtained its judgment.

in consideration of payment by the lenders assigned the lenders a portion of their judgment equal to the amount the settling parties received from the lenders.

6. Counsel for Minnesota Concrete, with whom other counsel joining Minnesota Concrete's position argue that the only possible source of assets for which the unassigned portion of their judgment claims could attach in the cases covered by Master File No. 70-CV-08-5027 would be the twelve (12) properties at one time owned or in the name of Lake and Bentson.
7. All parties hereto have made assertions that the purported sale of properties to Lake and Bentson was accomplished fraudulently by Parish.
8. The interests of Ms. Lake and Mr. Bentson were separately settled by lenders who had a mortgage interest in the Lake and Bentson properties. Again, separate consideration was given to and received by Lake and Bentson to permit these lenders to acquire a complete interest in the property.
9. This Court has concluded that there was significant consideration paid, and a complete understanding known by all parties hereto that the lenders' payment was to resolve mechanic's lien claims, eliminate any competing priority interests in the subject properties, with the goal of the lenders acquiring title and subsequent possibility of resale of these properties in order to mitigate their losses on the construction loans and/or mortgages.
10. The judgment liens as against Parish Marketing and Development as judgment debtor do not create any priority, or for that matter, any interest in any properties in the consolidated proceedings conducted by this Court. In connection with each property at issue, either a construction loan or a mortgage utilized for purchase of the property, replaced or eliminated any interest that Parish Marketing and

Development had in any of the properties herein.

11. The only basis upon which the judgment creditors of Parish Marketing and Development Corporation, movants herein, have to assert an interest in changing the language of Order No. 13 is their purported desire to challenge the mortgages in the name of Lake and Bentson, set aside the validity of those mortgages, and thereby seek a judicial determination that such properties actually are assets of Parish.
12. Lake and Bentson have in every respect, including issuance of quit claim deeds, remised and conveyed their interest, if any, in the subject properties, back to the lenders who paid them for a complete relinquishment of their personal interest in any of these properties.
13. This Court issued Scheduling Orders requiring the amendment of pleadings to be completed by April 15, 2008, and the joinder of additional parties to be completed by April of 2008 in accordance with this Court's Order No. 6 filed on April 2, 2008. None of the moving parties herein sought to assert any claim or legal theory against Lake, Bentson, or Parish for fraud. Specifically, the remedies that movants now seek would have been required to have been asserted against Lake and Bentson. No such assertions were made by or against Lake and Bentson, despite the recognized possible claims movants herein could have asserted for mortgages being void ab initio. See Order No. 4, March 14, 2008, staying foreclosure sales.
14. Plaintiffs Phase Electric, Elfering Brothers, Angell Aire, Simon Brick & Stone a/k/a Jaeckels & Simon Masonry, T&C Mechanical in their complaint in Court File No. 70-CV-08-6764 in which they later took a default against Parish Marketing and Development, never asserted any claims against Lake or Bentson. The complaint

did assert claims against certain John and Jane Does (see Paragraph 14), but never enumerated any claims against them, despite the requirement in the Scheduling Order to amend the pleadings to include parties and claims.

15. Plaintiff Minnesota Concrete in their complaint in Court File No. C6-07-010312 in which they took a default against Parish Marketing and Development, never asserted any claims against any party except Parish.
16. Metro Insulation has not to this Court's knowledge in any claim before this Court asserted or pursued a claim against Lake or Bentson.
17. The interest being asserted by movants herein, i.e., that they can strip any legal interest belonging to Lake and Bentson and have it revert to Parish, is no longer legally cognizable.
18. Settlement agreements reached between the lenders and the moving parties hereto specifically release "any and all ... mechanic's lien claims against any and all Parish properties whether specifically asserted ... or not." Further, movants acknowledge and agree that "all of its mechanic lien interest in the ... against any and all Parish projects are satisfied and extinguished upon the payment bracket they received." The natural and ordinary meaning of these terms in the mediated settlement agreement submitted to the Court on behalf of all movants is similar or identical to that quoted above. These claims arise out of work performed by the movants on homes for Parish, and are not otherwise unrelated to the subject matter of the mechanic's liens pursued herein. The Court views – as each party has maintained – that any entitlement they had to relief arose from work performed for Parish on various properties. Whether asserted or not, the language of these releases is broad enough to include in its scope the work done which was subject to a

mechanic's lien claim as well as any work that was done which could have been the subject of a mechanic's lien claim, whether or not assertion of a mechanic's lien claim was valid or not. The Court construes these provisions as indicating a complete settlement for all work done for Parish which could have been the product of any type of mechanic's lien enforcement action. Consequently, since there is no independent basis for any of this work to arise outside the scope of a potential mechanic's lien claim, it appears from the nature of the settlement agreements that such settlements were to include mechanic's lien claims.

19. To the extent the lenders advanced money for the Lake and Bentson properties, lenders obtained and perfected purchase money mortgages in order to secure the funds advanced on the properties.
20. The Court finds that the transfer of title from Lake and Bentson to the lenders was a bona fide purchase for value, supported by adequate consideration.
21. To the extent necessary to effectuate the order herein, it appears to the Court that the lenders who paid to settle the underlying mechanic's lien claims, and further to pay off existing interest of Lake and Bentson are equitably subrogated to those interests which they satisfied. To be clear, based upon the payments made and acknowledged by all parties hereto, the rights of the lenders allow them to stand in the shoes of those interests which they acquired, succeeding to the rights of the parties whose interest they acquired.
22. The Court finds that in each case, marketable title exists within each mortgage lender, who gave value for the purchase of the subject property. Consequently, Parish Marketing has no right, title, or interest as their interests were paid and satisfied by reason of the financing provided by the mortgagee. Therefore, to the

extent that assertions are being made by the moving parties herein, they can set aside the title on the basis of fraud, such an action, if possible, would require security to be posted as the alienability of presumptively properly titled property would be in question during the time of determination of any of the purported challenges based on fraud.

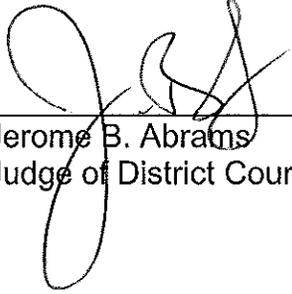
23. None of the moving parties hereto are willing to post any security for any challenge of title to the Lake or Bentson properties.

24. The requests of Minnesota Concrete, Angell, and Metro to amend or modify Order No. 13 are denied.

The attached memorandum is incorporated by reference.

Dated: JAN. 20, 2009

**BY THE COURT:**

  
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Jerome B. Abrams  
Judge of District Court

## MEMORANDUM

The Court finds efforts being undertaken to thwart the settlement in this case to be of no avail. Each of the moving parties hereto sought at one point in the litigation or another to protect their interest against what arguably were superior interests held first by Assured Financial, the initial construction lender for these homes, and secondly from the mortgagee interests at the time certain of these properties were sold. As part of that process, the lenders sought repeatedly the opportunity to get the underlying properties sold as soon as possible. Movants herein, inter alia, persuaded the Court that no security was required to prevent the sales from taking place so as to provide greater assurance that their clients' interest in getting paid for work that they did on the subject properties would be made more secure. The Court recognized this interest, and granted the relief of the stay on the foreclosure sales as requested by moving parties hereto, without security. See Order No. 4, March 14, 2008. Now, while even a more tenuous shoe is on the other foot, movants are unwilling to provide security while attempting to litigate rights which lie between theoretical and speculative.

First and foremost, these purported claims to setting aside deeds issued to the mortgage lenders reflect a very speculative, and from this Court's view, impossible challenge. The law of Minnesota for over 150 years has been to protect a purchaser for value without notice. See Cojo v. Ralph, 24 Minn. 294 (Minn. 1877). More recently, the Minnesota Supreme Court in First Fiduciary Court v. Blanco, 276 N.W.2d 30 (Minn. 1979) upheld the concept that the transfer of a legal title to a bona fide purchaser for value with no notice cuts off equities. And further, that once consideration is given, the face validity of a warranty deed is not subject to attack (Id. at 33). Movants herein are seeking to do just the opposite of what the Blanco decision holds. Movants are seeking

at multiple levels to undo the validity of certain transactions. First, those transactions in which Lake and Bentson became mortgagors of the subject properties and, secondly, the settlement in which Lake and Bentson provided quit claim deeds of their interest to the lenders herein. Given the nature of this litigation and the knowledge of movants of the circumstances and allegations that existed from the outset, negotiation of their own settlement, and knowledge of the settlements with Lake and Bentson compel them to act at some point to prevent the lenders from being in the position in which they seek to put them. Movants needed to assert their rights to try and undo the initial mortgage transactions long before the conclusion of the mediated settlements. It stands to reason that if mortgage lenders were seeking to resolve these cases and obtain title to these properties, they would not have paid anyone, including the movants, until these matters were resolved. Failure to follow the Court's scheduling order, as well as maintaining the present interpretation of the settlement agreement, demonstrates that movants are going forward with unclean hands. Additionally, Minnesota law has always recognized the equitable principle that those who seek equity must do equity.

This Court concludes that to the extent that mortgagees involved in the Lake and Bentson transactions advanced money, their mortgages are to be characterized as "purchase money mortgages." As a purchase money mortgage, these lenders' interests will be superior to any purported judgment lien interest that might possibly arise. See Wells Fargo Home Mortgage v. Newton, 646 N.W.2d 888 (Minn. App. 2002); see also Marin v. Knox, 136 N.W. 15 (Minn. 1912).

At best, movants are seeking to establish the rights for which they can't even currently provide standing. While they may be judgment creditors of Parish Marketing according to their view, and ignoring the Court's interpretation of the settlement

agreement, this does not give them close to the end result they seek. Movants would have the Court set aside the settlement agreement having negotiated and accepted payment for the value of their work on the subject properties, having not brought any claims against Lake and Bentson, having participated in the subject mediations without disclosure of their true intent, and without being willing to post security or return the funds they received in order to just begin to challenge the loans made to Lake and Bentson. To say this position is speculative and untenable at a minimum is understatement.

Movants also complain they were not provided notice of Order 13. This Court was advised by movants their claims were settled, following mediation. This Court held an extraordinary session at the pretrial conference on September 29, 2008 among all parties whose claims were not resolved. Notice of this was given, as this Court's record reflects, on April 14, 2008. If the moving parties wanted to present a position of assertion of their right as judgment creditors of Parish, they should have appeared at that time. It was at the pretrial on September 29, 2008 that resolution was had conveying the title to all properties remaining in the case (including the 12 Lake/Bentson properties that movants speculatively claim they could revert to Parish).

At a minimum, equity regards as done that which ought to be done. Equity also abhors a forfeiture. And of course, equity will not aid those who slumber on their rights. Movants land on the wrong side of every equitable maxim this Court can apply to the instant facts. Movants fare no better on the legal arguments.

Movants are also misconstruing the extent of their settlements, as well as the law, concerning the status of their judgments. As far as this Court is concerned, moving parties herein have settled and released all mechanic's lien rights they have on the

properties which are the subject of these consolidated proceedings. They did so by express agreement (see Paragraph No. 4, Minnesota Concrete settlement; Exhibit A to Affidavit of Richard Gabriel; Paragraph No. 3, mediated settlement agreement of Angell Aire, et al., under cover of letter of Jon Steckler, November 6, 2008; Paragraph No. 4, mediated settlement agreement of Metro Insulation under cover of letter of David Lenhardt, November 18, 2008.)

To the extent that the movants have “deficiencies” in the amount of the lien amounts they are owed, from their work on the subject properties, this Court likens the settlement as one akin to Pierringer v. Hoyer, 21 Wis.2d 182, 124 N.W.3d 106 adopted by Frey v. Snelgrove, 269 N.W.2d 918 (Minn. 1978). In other words, movants have made a deal to satisfy 100% of their mechanic’s lien claims, as against the subject properties, for the amounts received in the mediated settlement agreements. Contractually, as to the properties involved herein, movants have settled and released all interests arising from their mechanic’s lien claims as though they were paid for 100% of their work.

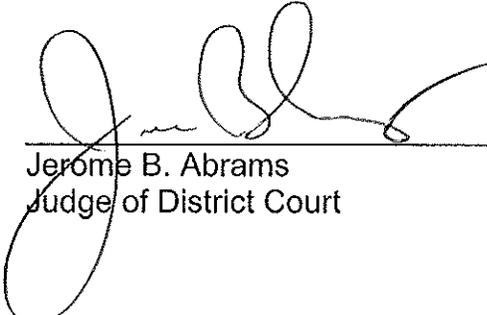
The Court recognizes that other properties and assets of Parish may be subject to judgment liens that moving parties have against Parish, for claims outside those asserted or assertible in this litigation. For whatever reason there are entities and individuals who may be judgment creditors of Parish. However, to the extent that movants are parties to these cases, which settled their lien claims concerning properties in these cases, their claims are satisfied and discharged. To the extent movants contend they, as judgment creditors of Parish, have a right or interest in any of the properties involved in this litigation (Master File No. 70-CV-08-5027), they do not, for the countless reasons stated above.

Movants may seek to enforce their judgments against other assets of Parish, to the extent such other assets exist. Minnesota case law does not preclude this possibility, e.g., Carolina Holdings Midwest, LLC v. Copouls, 658 N.W.2d 236, 241 (Minn. App. 2003); Karl Krahl Excavating Co. v. Goldman, 208 N.W.2d 719, 721 (Minn. 1973).

Although Paragraph 4 of Order 13 may reflect an unduly lengthy sentence, the tenor of the order is unmistakable: as to the properties involved in this case, movants have no further claims as judgment creditors of Parish, lien claimants, or in any other respect. As to what the movants do as against other assets of Parish, this Court takes no position.

Dated: JAN 20, 2009

**BY THE COURT:**



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Jerome B. Abrams  
Judge of District Court