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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2277

Bridgewater Bank,
Respondent,

vs.

Nancy Raddahl, a/k/a Nancy Raddohl, et al.,
Defendants,
Todd R. Haugan,
Appellant.

Filed July 15, 2013
Affirmed; motion granted
Stoneburner, Judge
Rodenberg, Judge, concurring in part, dissenting in part

Hennepin County District Court
File No. 27CV1021554

Bruce A. Boeder, Bruce A. Boeder, P.A., Wayzata, Minnesota (for respondent)

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Considered and decided by Connolly, Presiding Judge; Rodenberg, Judge; and Stoneburner, Judge.

U N P U B L I S H E D   O P I N I O N

STONEBURNER, Judge

Appellant attorney challenges two district court orders declaring his attorney's lien void ab initio, requiring him to disgorge proceeds from satisfaction of the lien, and awarding those funds to his client's judgment creditor. Because the district court had

jurisdiction over the challenge, the judgment creditor had standing to challenge the validity of the attorney's lien, and, after the attorney's lien was declared void, the judgment creditor's interest in the subject funds had priority over the attorney's interest, we affirm. We also grant respondent's motion to strike section VIII of appellant's reply brief.

FACTS

Appellant Todd R. Haugan, an attorney, conditioned his representation of a client on receiving an attorney's lien on real property (the property) owned by the client but that was not involved in Haugan's representation of the client. Haugan filed notice of his intention to claim a lien on the property in the appropriate county. The notice erroneously stated that the property "is and was involved" in the action for which Haugan provided legal services.

On November 21, 2011, an entry of judgment was ordered against Haugan's client in the amount of $490,938.70, with interest, in favor of respondent Bridgewater Bank (judgment creditor). A U.S. Department of Housing and Urban Development Settlement Statement dated November 22, 2011, reflects that, on that date, Haugan's client sold the property and $50,000 from the sale was distributed to Haugan's law firm from the closing entity to satisfy what the statement describes as a "mortgage loan."[1]

[1] Haugan asserts that, at the time the property was sold, his client owed $72,134.67 in attorney fees and costs, but he and his client had agreed before closing that he would accept $50,000 from the sale of the property as complete payment.

On December 21, 2011, judgment was entered against Haugan's client.[2] On December 23, 2011, the judgment creditor obtained a writ of execution. After discovering that Haugan had been paid $50,000 from the sale of the property under an invalid attorney's lien, the judgment creditor moved the district court for an order requiring Haugan to disgorge the amount he received pursuant to the attorney's lien. After a hearing on the motion, the district court declared Haugan's attorney's lien void ab initio and ordered Haugan to disgorge the funds received and deposit those funds with the district court.

In a subsequent proceeding, the district court determined that the judgment creditor's claim to the funds had priority over Haugan's claim and awarded the funds to the judgment creditor. The district court denied Haugan's request for reconsideration, and this appeal followed.

D E C I S I O N

I. Standard of review

The parties do not allege any dispute of facts in this case. "When the material facts are not in dispute, we review the [district] court's application of law de novo." *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). Statutory construction is a question of law to be reviewed de novo. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). Jurisdiction is

[2] The record shows that judgment was prematurely entered on November 23, 2011, due to an error in the district court administrator's office. That judgment was vacated by the district court on December 2, 2011, and judgment was again entered on December 21, 2011.

also a question of law subject to de novo review. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 710 (Minn. 2007).

II. Jurisdiction

Haugan argues on appeal that the district court did not have "jurisdiction" to decide the issue of the validity of the attorney's lien or to order disgorgement of the funds Haugan received to satisfy the lien. Haugan's "jurisdictional" argument is not well briefed, but plainly does not assert lack of subject matter jurisdiction. At oral argument on appeal, Haugan rephrased the claim as a challenge to the district court's authority rather than to its jurisdiction. *Cf. Moore v. Moore*, 734 N.W.2d 285, 287 (Minn. App. 2007) (noting the common but inappropriate use of the word "jurisdiction" to refer to non-jurisdictional limits on a court's authority to decide matters), *review denied*, (Minn. Sept. 12, 2007).

But Haugan failed to raise the issue of the district court's authority or jurisdiction in the district court. At the beginning of the hearing on the judgment creditor's motion seeking to void the attorney's lien and disgorge the funds received to satisfy the lien, the district court, noting that neither party had raised the issue, asked "is there any reasonable question but that [the] issue with regard to the attorney's lien is properly before me?" The judgment creditor's attorney responded that it was their position that the issue was properly before the district court and Haugan did not object. Because Haugan's failure to object to proceeding with this issue in the district court deprived the district court of the opportunity to determine the issue, we decline to address the issue on appeal. *See Thiele*

v. Stich, 425 N.W.2d 580, 582 (Minn. 1988) (stating that, generally, an appellate court will not consider matters not argued to and considered by the district court).

III. Judgment creditor's standing to challenge the invalid attorney's lien

Citing Minn. Stat. § 549.01 (2012), Haugan asserts that the judgment creditor did not have "standing to challenge [Haugan's] fee arrangement with his client." The statute provides, in relevant part, that a party "shall have an unrestricted right to agree with an attorney as to compensation for services, and the measure and mode thereof." Minn. Stat. § 549.01. Implicit in Haugan's assertion is that a client can confer the right to file an attorney's lien on the client's property. But an attorney's lien can be created only in the manner prescribed by statute. *See Nielsen v. City of Albert Lea*, 91 Minn. 388, 390, 98 N.W. 195, 196 (1904). Because Haugan's attorney's lien could only be created under the statute and it was not done so, the issue is whether the judgment creditor had standing to challenge Haugan's claim to a superior interest in the proceeds of the sale of the client's property. Haugan's attempt to cast the judgment creditor's challenge as a challenge to his right to payment for legal services is without merit.

"Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). "Standing is acquired in two ways: either the [party] has suffered some 'injury-in-fact' or the [party] is the beneficiary of some legislative enactment granting standing." *Id.* The judgment creditor plainly has standing to challenge the priority of claims on the client's funds.

IV. Disgorgement order

Haugan does not dispute that his attorney's lien was invalid, but he asserts that the district court "wrongly ordered" him to disgorge the funds because "[b]y paying [Haugan, the client] completed a legitimate and legal contract she entered into with [Haugan] for his legal services." Haugan argues that once the funds were deposited into his general account, the money belonged to his law firm. But Haugan ignores the fact that he was not paid the funds by his client: he was paid by the closing agent because his lien was recorded as an encumbrance on the property that had to be satisfied for closing to proceed. Because his lien was invalid, Haugan should not have been paid by the closing agent. Haugan asserts that, had he not filed an attorney's lien and the funds been given directly to his client, his client would have paid him before the judgment creditor obtained a judgment lien. But Haugan chose to proceed under an invalid attorney's lien that he required his client to provide before he would represent her and the district court did not err by concluding that Haugan did not obtain the funds through voluntary payment by his client.

"It is in the nature of an equitable remedy to compel one unjustly enriched at the expense of another to disgorge, and it is not restricted by technical rules." *Norris v. Cohen*, 223 Minn. 471, 479, 27 N.W.2d 277, 282 (1947). Because Haugan's lien was invalid, the district court did not err by declaring the lien void ab initio. Because the lien was void, Haugan was not entitled to priority payment at closing on the sale of the property. Haugan postulates other scenarios by which he might have legitimately possessed the subject funds before the judgment creditor levied on client's property, but

the reality is that he proceeded to obtain the funds unjustly, and we conclude that the district court did not abuse its discretion by ordering disgorgement of the funds.

V. Award of disgorged funds to judgment creditor

After the funds were disgorged, the district court determined that the funds should be distributed to the judgment creditor. Once the judgment creditor obtained a writ of execution, which it did before the district court disgorged the funds, it became a secured creditor. *See* Minn. Stat. §§ 550.02 ("Where a judgment requires the payment of money . . . it may be enforced in th[at] respect[] by execution."), .10 ("All property, real and personal, including . . . money . . . may be levied upon and sold on execution. Until a levy, property not subject to the lien of the judgment is not affected by the execution.") (2012). Once Haugan's lien was declared void, Haugan had no priority claim to funds from the sale of the property. Once Haugan disgorged the unjustly obtained funds, the district court could have distributed the funds to the client (although the client made no claim to the funds), but by then the judgment creditor had obtained a writ of execution and could have executed on funds in the client's possession. Under the circumstances of this case, we conclude that the district court did not err by ordering the funds distributed to the judgment creditor.

VI. Motion to strike

The bank moved to strike section VIII from Haugan's reply brief, arguing that it asserted matters not supported by the record. We agree and grant the motion to strike.

Affirmed; motion granted.

RODENBERG, Judge (concurring in part and dissenting in part)

I concur with Sections I, II, and VI of this opinion, but am unable to agree that respondent Bridgewater Bank (Bridgewater) had standing to challenge the distribution of the proceeds of a real estate transaction, which closed prior to Bridgewater having a secured interest in the real estate as a judgment creditor. I also see no basis for the district court to have invoked its equity jurisdiction where Bridgewater had adequate legal remedies that it failed to utilize. Further, Haugan was not unjustly enriched when he received a compromised amount of his fees. Therefore, I respectfully dissent from parts III, IV, and V of the court's opinion.

The district court properly determined that Haugan's attempted attorney's lien was void ab initio. Haugan candidly agrees that his lien was improper, apparently due to his own carelessness in using an inapplicable legal form. However, the district court focused only on whether *Haugan's* security interest was perfected, and failed to analyze whether *Bridgewater* had an interest sufficient to confer standing to challenge the disposition of the real-estate-sale proceeds.

On November 21, 2011, the district court filed its order for judgment, concluding that Bridgewater was entitled to judgment against Haugan's client, Nancy Raddohl. On November 22, Raddohl closed a sale of certain real property not involved in Bridgewater's litigation against Raddohl. In closing that sale, and based on Haugan's claimed attorney lien, the closer paid Haugan $50,000 of the sale proceeds. On December 21, judgment was entered on the November 21, 2011 order for judgment, and that judgment was docketed. But, when the sale of Raddohl's real property closed, the

judgment had not yet been docketed, and, therefore, Bridgewater had no enforceable interest in that property. *See* Minn. Stat. § 548.09, subd. 1 (2012) (stating that, with exceptions not relevant here, a judgment becomes a lien on real property "[f]rom the time of docketing"); *Lowe v. Reierson*, 201 Minn. 280, 284, 276 N.W. 224, 226 (1937) (stating that "[t]he right to proceed against the [judgment debtor] accrues immediately upon entry and docketing of judgment"); *C & M Real Estate Servs, Inc. v. Thondikulam*, 739 N.W.2d 725, 728 (Minn. App. 2007) (stating that "by statute, a judgment becomes a lien against a debtor's property when the judgment is docketed" and that, "[b]ecause a judgment lien provides the legal basis for a judgment creditor to proceed against a judgment debtor, until the judgment is docketed, no lien exists against the debtor's property, and a right of action to collect the debt secured by that lien has not accrued"), *review denied* (Minn. Dec. 19, 2007). At the time the judgment against her was docketed, Raddohl lacked the real property sold on November 22, 2011. She also lacked the portion of the sale proceeds paid to Haugan.

By order filed March 2, 2012, the district court granted Bridgewater's motion to declare void Haugan's claimed attorney lien. That determination was doubtless correct. But the district court also ordered Haugan to disgorge to the court the portion of the proceeds paid him by the closer. Disgorgement is an equitable remedy, often associated with unjust enrichment. *See, e.g.*, *Nelson v. Tripp*, 264 Minn. 216, 220, 118 N.W.2d 805, 808 (1962) (noting that disgorgement is "[a]n equitable remedy" available when one is "unjustly enriched at the expense of another" and is "not restricted by technical rules"); *Norris v. Cohen*, 223 Minn. 471, 479, 27 N.W.2d 277, 282 (1947) (same). Equitable

remedies, however, are limited to situations where legal remedies are not available or are inadequate. *See, e.g.*, *Roske v. Ilykanyics*, 232 Minn. 383, 389, 45 N.W.2d 769, 774 (1951) (stating that, if legal remedies are adequate, a court "may not decide the case as one sounding in equity and thereby deprive the parties of a right to a jury trial in the absence of a waiver of such jury"); *Bankers' Reserve Life Co. v. Omberson*, 123 Minn. 285, 288, 143 N.W. 735, 736 (1913) (stating that a plaintiff may not obtain equitable remedies if the available legal remedies are adequate and that equity "will not take cognizance of the case, or grant the relief, where it appears that plaintiff has a plain, speedy, and adequate remedy at law").

Here, before its judgment was entered and docketed, Bridgewater could have sought to attach Raddohl's assets if it believed that Raddohl might dispose of those assets improperly. *See* Minn. Stat. §§ 570.02, subd. 1 (addressing circumstances when an attachment order may be obtained), .025 (addressing the "extraordinary circumstances" allowing "[p]reliminary attachment") (2012). Attachment is a legal remedy. *See Allstate Sales and Leasing Co., Inc. v. Geis*, 412 N.W.2d 30, 32 (Minn. App. 1987) (referring to attachment under "Minn. Stat. §§ 570.01-.14 (1986)" as "an adequate legal remedy"). The inadequacy of attachment was not asserted by Bridgewater. Nor was it found by the district court. Therefore, the district court's invocation of the equitable remedy of disgorgement was improper. *Cf. Wenzel v. Mathies*, 542 N.W.2d 634, 644 (Minn. App. 1996) (agreeing that "the adequacy of the Wenzels' legal remedies under the Minnesota

attachment provisions precludes [the equitable remedy of] a restraining order"), *review denied* (Minn. Mar. 28, 1996).[3]

Of course, Bridgewater also had available to it the ordinary legal remedies of a judgment creditor. Whether any of those remedies would have been successful cannot be determined on this record. And the district court did not conclude that the available legal remedies were inadequate, as Bridgewater never pursued those legal remedies.

Since Bridgewater had legal rights and remedies that, for whatever reason, it did not pursue, there was no occasion for an exercise of the district court's equitable powers. Having failed to pursue its legal rights, Bridgewater should not now benefit from an unnecessary exercise of the district court's equity jurisdiction to bypass the consequences of its own inaction. *Cf. Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 287 (Minn. 2010) (stating that "equity aids the vigilant, and not the negligent") (citation omitted).

The supreme court has "limited the application of unjust enrichment to claims premised on an implied or quasi-contract between the claimant and the party alleged to be unjustly enriched." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012). Here, Bridgewater lacked an interest in Raddohl's property when it was

[3] Bridgewater also may have a legal remedy under Chapter 513, the Uniform Fraudulent Transfers Act (UFTA), if it can demonstrate that Raddohl's sale of her real property was fraudulent. But Bridgewater neither claimed nor demonstrated that the sale was fraudulent. The record contains nothing to show that the sale is, in fact, one that would allow relief under the UFTA, but the potential availability of legal relief under the UFTA is additional support for my conclusion that awarding the bank equitable relief was improper.

sold, was a stranger to Raddohl's sale of the property, did not seek a prejudgment attachment of that property, and was a stranger to Haugan's attorney-client relationship with Raddohl. Further, the district court did not identify any implied or quasi-contractual relationship Bridgewater had with Haugan that would allow the bank to assert an unjust enrichment claim against Haugan. Absent more, Bridgewater has not shown that it has standing to argue that Haugan was unjustly enriched at the bank's expense.

Even if Bridgewater had standing to assert that Haugan was unjustly enriched at its expense,

> [t]o establish an unjust enrichment claim, *the claimant must show that the defendant has knowingly received or obtained something of value for which the defendant in equity and good conscience should pay*. [U]njust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully.

ServiceMaster of St. Cloud v. GAB Bus. Servs, Inc., 544 N.W.2d 302, 306 (Minn. 1996) (emphasis added) (citations omitted) (internal quotation marks omitted). Here, it is undisputed that, at the time of closing, Raddohl owed Haugan $72,134.67, and that Haugan accepted $50,000 from the closing in full payment of that debt. While the *vehicle* by which Haugan was paid (the attorney lien) was defective, the record does not support the conclusion that, by accepting $22,134.67 *less* than he was undisputedly owed, Haugan knowingly received or obtained something of value for which he, in equity and good conscience, *should pay*. Haugan was not unjustly enriched, and it was neither illegal nor unlawful for him to receive *less* than the full amount of a debt that he was

undisputedly owed, particularly where Raddohl submitted an affidavit stating that, had she known that Haugan's attorney lien was defective, she would have paid Haugan from the proceeds of the property.[4]

For these reasons, I would reverse and remand to the district court to effectuate repayment to Haugan of the funds that Bridgewater has now inequitably received.

[4] The district court's conclusion that Haugan's failure to perfect an attorney lien requires that he disgorge the $50,000 he received at the closing in his agreement with Raddohl and, ultimately, that those funds must be paid to Bridgewater, means either that Haugan still has a claim against Raddohl for $72,134.67 (a claim that Raddohl thought she had settled) or that Haugan's paperwork blunder precludes him from ever recovering fees he unquestionably earned (and which were not disputed by Raddohl). The former is inequitable to Raddohl. The latter is inequitable to Haugan.