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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-271**

Gregory F. Becker, et al.,
Respondents,

vs.

Robert L. Olson,
Respondent,

Jane Doe,
Defendant,

and Real Estate Equity Strategies, LLC,
plaintiff in intervention,
Appellant,

vs.

Thomas Leggate, et al.,
Defendants,

Gregory F. Becker, et al.,
Respondents,

Robert L. Olson,
Respondent,

Philip Rosar,
Respondent.

**Filed September 12, 2011
Affirmed in part, reversed in part, and remanded; motion granted
Johnson, Chief Judge**

Anoka County District Court
File No. 02-C7-06-011137

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Considered and decided by Stoneburner, Presiding Judge; Johnson, Chief Judge; and Willis, Judge.*

UNPUBLISHED OPINION

JOHNSON, Chief Judge

This appeal arises from competing claims to a parcel of real property located in the city of Ramsey. Gregory F. Becker and Diane M. Becker commenced the action against Robert L. Olson to quiet title to the property. Real Estate Equity Strategies, LLC (REES), intervened because it held a mortgage on the property that had been executed by the Beckers. The district court decided the case by dividing ownership of the property between Olson, as holder of legal title, and the Beckers, as holders of equitable title; by establishing that Olson holds an equitable lien on the property that is superior to all other liens, including REES's mortgage; by entering a money judgment for REES and against the Beckers; and by ordering a sheriff's sale of the Beckers' equitable interest.

On appeal, REES presents three arguments for reversal. First, REES challenges the validity of the quit-claim deed by which Olson obtained his interest in the property.

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

Second, REES challenges the district court's determination of Olson's property rights. And third, REES challenges the district court's partial denial of its motion for attorney fees. We conclude that the district court did not err with respect to the merits of the claims but erred by denying part of REES's motion for attorney fees. Thus, we affirm in part, reverse in part, and remand for further proceedings on REES's motion for attorney fees.

FACTS

The facts of this case are complicated and unusual. We will not attempt a comprehensive recitation of the historical facts and the procedural history of the case but, rather, will merely summarize the facts that are most pertinent to the resolution of this appeal.

In January 2004, Thomas and Beth Leggate sold their home to the Beckers for approximately \$205,500 pursuant to a contract for deed, and the Beckers leased the property back to the Leggates. The property was encumbered by a mortgage securing a loan with a balance of approximately \$89,400. The Leggates and the Beckers agreed that the Beckers would assume the Leggates' mortgage and relieve the Leggates of other debts in lieu of paying cash, but they also agreed that the Leggates would make lease payments by making monthly payments on the mortgage directly to the lender. The Beckers did not record the contract for deed at the time of the transaction; their attorney did so on November 10, 2005.

In March 2005, the lender began foreclosure proceedings because the Leggates had stopped making payments. Olson learned that the property was in foreclosure, that

the Leggates were the record owners of the property (because the Beckers had not yet recorded the contract for deed), and that the Leggates had moved to Wisconsin. Olson approached the Leggates and offered to purchase their interest in the property. On October 29, 2005, the Leggates conveyed their interest in the property to Olson via a quit-claim deed. At the time, Beth Leggate was an inmate in a Wisconsin jail. Thomas Leggate executed the quit-claim deed in the parking lot of the jail; Beth Leggate executed it in a hallway of the jail. Olson's real-estate agent notarized the deed. For consideration, Olson paid \$535 in bail to secure Beth Leggate's release from jail and gave the Leggates \$500 in cash. Olson recorded the deed in Anoka County on October 31, 2005.

On November 14, 2005, the last day of the redemption period, both the Beckers and Olson independently deposited \$95,351.25 with the Anoka County sheriff's office to redeem the property from foreclosure. The sheriff gave a certificate of redemption to the Beckers and also gave a certificate of redemption to Olson. The Beckers obtained funds for their redemption by borrowing money from REES. The Beckers' loan was secured by a mortgage on the property.

In March 2006, the Beckers commenced this action against Olson to quiet title to the property. In March 2008, REES intervened in the action. The following month, the Beckers and Olson entered into a settlement agreement. They agreed that Gregory Becker would recover the funds that the Beckers had deposited with the sheriff to redeem the property from foreclosure, that Olson's deposited funds would be used to redeem the property from foreclosure, that Olson would take title to the property, and that the

Beckers would dismiss their complaint. In April 2008, the district court adopted the agreement, ordered the Beckers' funds to be released to Gregory Becker, and dismissed the action.

In June 2008, REES moved to vacate the district court's April 2008 order on the ground that REES was a party to the action but had not approved the settlement agreement. In July 2008, the district court granted REES's motion, vacated its April 2008 order, and ordered Gregory Becker to return the funds that he had recovered from the sheriff pursuant to the prior order. Gregory Becker did not return the funds, even after the district court issued a subsequent order and a bench warrant for his arrest, which later was quashed.

In March 2010, the district court conducted a two-day bench trial. In July 2010, after the parties' post-trial submissions, the district court issued its findings of fact, conclusions of law, and order for judgment. The district court determined, among other things, that Olson should have legal title to the property pursuant to the quit-claim deed by which the Leggates assigned their rights as vendors under the contract for deed; that the Beckers should have equitable title to the property as vendees under the contract for deed; that REES should have a mortgage on the Beckers' interest in the property; that Olson should have a lien on the property in the amount due on the purchase price that is "superior to all other liens," including REES's mortgage lien; and that REES should have a money judgment against the Beckers in the amount of \$95,229.27. The district court ordered a sheriff's sale of the Beckers' equitable interest, the proceeds of which would be

applied to REES's judgment against the Beckers. The district court further determined that the Leggates should have no remaining interest in the property. REES appeals.

D E C I S I O N

I. Validity of Quit-Claim Deed

REES first argues that the district court erred by not declaring invalid the quit-claim deed by which the Leggates transferred their interest in the property to Olson. REES contends that the quit-claim deed is invalid for two reasons: first, because it does not identify Thomas and Beth Leggate as "husband and wife" and, second, because Olson's real-estate agent, a Minnesota notary public, certified the acknowledgement of the deed in the state of Wisconsin. For the first contention, REES relies on a statute providing that "if husband and wife join in and acknowledge the execution of any instrument, they shall be described in the certificate of acknowledgment as husband and wife." Minn. Stat. § 358.14 (2010). We apply a *de novo* standard of review to a district court's determination of the validity of a quit-claim deed that is based on the interpretation of a statute. *Stone v. Jetmar Properties, LLC*, 733 N.W.2d 480, 484 (Minn. App. 2007).

A deed is a valid transfer of real property if four requirements are met. First, the deed must be in writing. Minn. Stat. § 513.04 (2010). Second, the real property to be transferred must be sufficiently described. *Daly v. Duwane Const. Co.*, 259 Minn. 155, 162, 106 N.W.2d 631, 636 (1960). Third, the deed must be signed by the grantor or grantors. Minn. Stat. § 513.04; *see also* Minn. Stat. § 507.02 (2010) (requiring married persons' conveyance of jointly held homestead to be signed by both persons). Fourth, the

deed must be delivered. *Stone*, 733 N.W.2d at 486 (citing *Slawik v. Loseth*, 207 Minn. 137, 139, 290 N.W. 228, 229 (1940)).

REES's factual assertions find some support in the record. The deed states that it was acknowledged by "Thomas R. Leggate a married person and Beth A. Leggate a married person, Grantors," though it does not expressly state that they are married to each other. And the deed reflects a notary stamp of a Minnesota notary public. Errors of this type might have caused the quit-claim deed to not be recorded. But any errors in acknowledgment or certification would not affect the validity of the deed because a deed is valid as between the parties even if it is not acknowledged. *See Wellendorf v. Wellendorf*, 120 Minn. 435, 437, 139 N.W. 812, 813 (1913); *Bank of Benson v. Hove*, 45 Minn. 40, 43, 47 N.W. 449, 450 (1890). Acknowledgement of a deed and certification of the acknowledgement are two of the prerequisites to the valid *recording* of a deed. Minn. Stat. § 507.24, subd. 1 (2010); *see also* Minn. Stat. § 359.04 (stating that notary public may certify acknowledgement of deed). But a deed need not meet the recording requirements to be valid as between the parties to the deed. *Exsted v. Exsted*, 202 Minn. 521, 525, 279 N.W. 554, 558 (1938); *Morton v. Leland*, 27 Minn. 35, 35, 6 N.W. 378, 378 (1880).

REES also contends that the quit-claim deed is invalid because it was obtained by fraud. More specifically, REES contends that Olson's real-estate agent falsely represented to the Leggates that the Beckers intended to allow the property to fall into foreclosure and to default on their contract for deed with the Leggates. But REES presented this fraud theory for the first time after trial, in a post-trial motion, without

giving Olson an opportunity to develop evidence or present legal argument on that issue. Accordingly, REES did not properly preserve the issue for appeal. *See Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002), *review denied* (Minn. Oct. 15, 2002).

Thus, the district court did not err by concluding that the quit-claim deed is valid.

II. Equitable Relief

REES next argues that the district court erred by determining that Olson should have legal title to the property and an equitable lien that is superior to REES's mortgage lien. REES contends that Olson's interest in the property was extinguished when the Beckers redeemed the property from foreclosure.

In an action to determine adverse claims to real property, courts may grant "equitable relief . . . upon such terms and conditions as may be necessary to do justice." *Miller v. Hennen*, 438 N.W.2d 366, 371 (Minn. 1989) (citing *Engel v. Swenson*, 191 Minn. 324, 326, 254 N.W. 2, 3 (1934)). A district court has broad discretion when fashioning an equitable remedy. *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979). This court will reverse a district court's equitable remedy only if the district court has abused its discretion. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011) (citing *Nadeau*, 277 N.W.2d at 524). A district court abuses its discretion if "its decision is against the facts in the record" or if its "ruling is based on an erroneous view of the law." *Id.* at 24.

The respective interests of Olson and REES flow from the quit-claim deed given to Olson by the Leggates and the mortgage given to REES by the Beckers. A contract for deed is a "financing arrangement" for the sale of real property, whereby the buyer

purchases property and borrows money from the seller. *In re Butler*, 552 N.W.2d 226, 229 (Minn. 1996). The seller is the vendor, and the buyer is the vendee. *Id.* When the contract for deed is executed, the vendee obtains equitable title to the property and “all the incidents of property ownership,” while the vendor retains legal title to the property as security for the purchase price. *Id.*; *Tollefson Dev., Inc. v. McCarthy*, 668 N.W.2d 701, 704 (Minn. App. 2003). The vendor also retains a vendor’s lien, which “is an implied equitable lien upon real property for the amount of the unpaid purchase price.” *First Constr. Credit, Inc. v. Simonson Lumber of Waite Park, Inc.*, 663 N.W.2d 14, 18 (Minn. App. 2003) (quoting *Butler*, 552 N.W.2d at 229). The vendor’s lien “exists independently of any express agreement at the time of the conveyance and without regard to the absence of the [vendor]’s intention to claim it.” *Id.* (quoting *Grace Dev. Co. v. Houston*, 306 Minn. 334, 335, 237 N.W.2d 73, 75 (1975)). A vendor can establish a vendor’s lien only if the debt owed by the vendee is “solely for the purchase price of real property.” *Grace Dev. Co.*, 306 Minn. at 336, 237 N.W.2d at 75. “If the purchase price has in fact been paid,” then no vendor’s lien exists. *Brooks v. Thorne*, 176 Minn. 188, 191, 222 N.W. 916, 918 (1929). The vendor’s lien is a creature of equity, not contract law or statute. *First Constr. Credit, Inc.*, 663 N.W.2d at 18. The concept of a vendor’s lien is based on “the broad equitable principle that a person having obtained the estate of another should not be allowed to keep it without paying the purchase price.” *Butler*, 552 N.W.2d at 229 (quoting *Grace Dev. Co.*, 306 Minn. at 335, 237 N.W.2d at 75); *see also Kurtz v. Gramhill*, 269 N.W.2d 68, 71 (Minn. 1978) (reviewing “balance of equities” to determine whether equitable lien exists).

We approve of the district court's approach to resolving this difficult case. The district court's panoply of remedies is consistent with the equitable nature of a vendor's lien. *See Butler*, 552 N.W.2d at 229. The Beckers obtained an equitable interest in the property as contract-for-deed vendees, but they have not paid for the property because the money they deposited with the sheriff to redeem the property has been returned to them. *See Grace Dev. Co.*, 306 Minn. at 336, 237 N.W.2d at 75; *Brooks*, 176 Minn. at 191, 222 N.W. at 918. Consequently, the contract-for-deed vendors (here, the Leggates) would have retained legal title and a vendor's lien on the property for the amount of the unpaid purchase price, but the Leggates' interest was conveyed to Olson via a quit-claim deed. *See Trondson v. Janikula*, 458 N.W.2d 679, 682-83 (Minn. 1990) (explaining that assignee of vendor's interest in contract for deed has same rights as vendor). Thus, Olson, as the vendor under the contract for deed, continues to hold legal title to the property, subject to the Beckers' interest as contract-for-deed vendees, and as security for the Beckers' performance of their remaining obligation. *Butler*, 552 N.W.2d at 229. Olson also holds a vendor's lien to ensure that the Beckers, having received equitable title to the property, do not "obtain[] the estate of another . . . without paying the purchase price." *Id.*

The most readily apparent alternative for the district court that would have benefitted REES would have been an award of title to the Beckers, which would have allowed REES to obtain title through foreclosure, and a money judgment against the Beckers in favor of Olson. But the Beckers should not obtain greater property rights due to their disobedience of the district court's orders to return the funds that the sheriff

refunded to them. *See Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 715 (Minn. 1985) (“[H]e who seeks equity must do equity, and he who comes into equity must come with clean hands.”). By extension, REES also should not obtain greater property rights because REES’s interests are derivative of the Beckers’ interests. *See Pro-Vid-All Mills, Inc. v. Cargill, Inc.*, 274 Minn. 24, 30, 142 N.W.2d 290, 293 (1966) (explaining that mortgagee takes no greater interest in property than mortgagor possesses). The district court’s chosen remedies preserved the Beckers’ opportunity to obtain title by performing their obligations as vendee under the contract for deed, and also preserved REES’s opportunity to obtain title by purchasing the Beckers’ interest at the sheriff’s sale. In resolving the parties’ conflicting claims, the district court appropriately exercised its discretion and achieved an equitable result.

Nonetheless, REES contends that we should ignore all events subsequent to the Beckers’ redemption of the property. REES reasons that the Beckers completed their performance under the contract for deed by redeeming the property from foreclosure and that title to the property vested in them at that time. We reject REES’s contention for two reasons. First, the Beckers’ performance of their obligation to pay off the Leggates’ mortgage was effectively nullified by the settlement agreement, which permitted Gregory Becker to recover the funds that the Beckers had deposited with the sheriff, and by his subsequent refusal to redeem a second time. REES’s contention might have merit if the Beckers had complied with the district court’s subsequent orders that rejected the settlement agreement and vacated the order dismissing the action. But the Beckers decided to keep the redemption money.

Second, performance under a contract for deed does not, by itself, convey title. Rather, such performance merely authorizes the performing party to demand the other party's specific performance. *See Thompson v. Kromhout*, 413 N.W.2d 884, 885 (Minn. App. 1987). "Specific performance is an equitable remedy" and "is generally not afforded where it will work a hardship or injustice on either party." *Lilyerd v. Carlson*, 499 N.W.2d 803, 811 (Minn. 1993). The Beckers have refused to reaffirm their willingness to perform under the contract for deed because they have not returned the money that they recovered from the sheriff, despite the district court's orders that they must do so. Thus, the Beckers have no equitable basis for a claim for specific performance. To grant the Beckers legal title to a property for which they did not pay the purchase price would defy the equitable principles supporting both the doctrine of specific performance and the nature of vendor's liens.

Thus, the district court did not err by concluding that Olson holds legal title to the property and a vendor's lien on the property.

III. Attorney Fees

REES last argues that the district court erred by denying in part its motion for attorney fees. REES sought attorney fees from Gregory Becker under the promissory note and from both of the Beckers, jointly and severally, under the mortgage. The district court granted the first part of the motion, which is based on the promissory note, on the ground that REES prevailed on its claim that Gregory Becker failed to repay the note. But the district court denied the second part of the motion, which is based on the

mortgage, on the ground that REES did *not* prevail on its efforts to foreclose on the Beckers' mortgage.

Under the American rule, each party to a lawsuit bears responsibility for his or her own attorney fees. *See Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 363 (Minn. 1998). But a party may recover attorney fees if a statute or a contract allows attorney fees to be shifted. *Schwickert, Inc. v. Winnebago Seniors, Ltd.*, 680 N.W.2d 79, 83 (Minn. 2004); *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 85 (Minn. 1979). Ordinarily, we apply an abuse-of-discretion standard of review to a district court's grant or denial of attorney fees. *See, e.g., Lee v. Lee*, 775 N.W.2d 631, 641 (Minn. 2009). But here, we are asked to determine whether REES is entitled to attorney fees based on a provision in its mortgage with the Beckers. A mortgage, like a note, is a contract. *See Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011). The interpretation of a contract is a question of law, to which we apply a *de novo* standard of review. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009).

Numerous statutes provide that a party seeking statutorily authorized attorney fees must be the "prevailing party" in the underlying action. *See, e.g.*, Minn. Stat. §§ 10A.20, subd. 15 (2010); 82A.19, subd. 3 (2010); 115A.30 (2010); 216B.164, subd. 5 (2010); 238.18, subd. 3 (2010); 299A.80, subd. 7 (2010); 299K.10, subd. 7 (2010); 308B.501, subd. 4(h)(1) (2010); 325C.04 (2010); 336.5-111(e) (2010); 363A.33, subd. 7 (2010); 469.1771, subd. 1(a) (2010); 504B.165(a) (2010); 515A.3-115(f); 515B.4-116(b) (2010); 549.211, subd. 4 (2010). But the "prevailing party" requirement does not apply to fee awards that are authorized by contract, unless the contract says so. In *Oleisky v. Midwest*

Fed. Sav. & Loan, 398 N.W.2d 627 (Minn. App. 1986), *review denied* (Minn. Feb. 18, 1987), we held that a party may receive an award of contractually authorized attorney fees even if that party was not the prevailing party in the action. *Id.* at 629. As in this case, the *Oleisky* case concerned a recovery of attorney fees pursuant to a mortgage. *See id.* Since *Oleisky*, this court consistently has looked to the terms of an agreement between the parties when considering whether the agreement authorizes the recovery of attorney fees. *See, e.g., Northfield Care Ctr., Inc. v. Anderson*, 707 N.W.2d 731, 736-37 (Minn. App. 2006); *Bolander v. Bolander*, 703 N.W.2d 529, 548 (Minn. App. 2005); *TIG Ins. Co. v. Anderson*, 663 N.W.2d 1, 6-7 (Minn. App. 2003), *review denied* (Minn. May 20, 2003); *Pioneer Peat, Inc. v. Quality Grassing & Servs., Inc.*, 653 N.W.2d 469, 473-74 (Minn. App. 2002).

In this case, the mortgage states that the Beckers agreed “to pay any other expenses and attorney’s fees incurred by [REES] by reason of litigation with any third party for the protection of the lien of this Mortgage.” Nothing in this provision or any other provision of the mortgage requires REES to be the prevailing party in a legal action concerning the mortgage before recovering attorney fees. Rather, the agreement requires only that REES engage in litigation with a third party to protect the lien of the mortgage. REES did so by intervening in the action between the Beckers and Olson, and the district court determined that REES continues to hold a valid mortgage on the Beckers’ equitable interest in the property.

Thus, the district court erred by denying that part of REES’s motion for attorney fees that is based on the fee-shifting provision in the Beckers’ mortgage. The case is

remanded to the district court for further proceedings, not inconsistent with this opinion, on the relevant part of REES's motion for attorney fees.

Finally, REES moved to strike Olson's appendix, which contains a document that was not admitted into evidence at trial. *See* Minn. R. Civ. App. P. 110.01. Olson did not respond to the motion. We hereby grant the motion.

Affirmed in part, reversed in part, and remanded; motion granted.