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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-838**

Maplewood Mall Associates,
Limited Partnership,
Respondent,

vs.

Tou Doua Yang d/b/a Osaka of Japan,
Appellant.

**Filed December 15, 2009
Reversed
Klaphake, Judge**

Ramsey County District Court
File No. 62-HG-CV-09-26

John P. Brendel, Burke J. Ellingson, Brendel and Zinn, Ltd., 8519 Eagle Point Boulevard, Suite 110, Lake Elmo, MN 55042 (for respondent)

Daniel Sach Le, Dan Le & Associates, 333 Washington Avenue N., Suite 202, Minneapolis, MN 55401 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Tou Doua Yang, d/b/a Osaka of Japan, appeals from an award of attorney fees entered in an eviction action brought by respondent Maplewood Mall Associates. Appellant argues that the attorney fees award was improper because it

exceeded the fees authorized by Minn. Stat. § 504B.291, .345 (2008), was outside the scope of the eviction proceeding, and was untimely.

Because we conclude that appellant was prejudiced when he was not given proper notice of the summary judgment proceeding during which the attorney fees were awarded, we reverse.

D E C I S I O N

Minn. R. Civ. P. 56.03 requires service of a motion for summary judgment no less than 10 days before the scheduled hearing. “Absent a clear waiver by the adversary, the time-period requirements of rule 56.03 are mandatory.” *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 419 (Minn. App. 2003). When a motion for summary judgment is improperly noticed, a district court will generally not consider it. *Id.* A district court may sua sponte grant summary judgment when there are no genuine issues of material fact, one of the parties is entitled to judgment as a matter of law, and the absence of a formal motion creates no prejudice to the party against whom judgment is granted. *Id.* But the court in such a situation must provide the non-moving party a meaningful opportunity to oppose such an action. *Id.*

Here, as in *Hebrink*, appellant did not have a reasonable time to oppose imposition of over \$9,000 in attorney fees. Respondent served its motion for attorney fees, which it stated was made pursuant to rule 56, on Wednesday, April 1, 2009 for hearing on Monday, April 6, 2009. According to the record, respondent served its motion by mail, which adds an additional three days to the service period. The file does not reflect when appellant received the motion papers, although his responsive pleading was made in a

letter dated April 6, 2009, sent to the court by fax and mail. Compounding the problem, the court made its ruling without an evidentiary hearing.

Under these circumstances, we conclude that appellant was prejudiced because he did not have a meaningful opportunity to raise what could be meritorious defenses to respondent's request for attorney fees. We therefore reverse the district court's award of attorney fees without prejudice.

Reversed.