

STATE OF MINNESOTA
HENNEPIN COUNTY

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

COURT FILE NUMBER: **27-CV-08-8849**

CASE TYPE: QUIET TITLE

BRADLEY N BEISEL
282 US TRUST CENTER
730 SECOND AVENUE SOUTH
MPLS MN 55402-2444

**NOTICE OF ENTRY OF
JUDGMENT**

**IN RE: NORTHWEST VENTURE CAPITAL INC VS NORMANDALE LAKE CONDOMINIUM
ASSOCIATION, LOANCITY, MORTGAGE ELECTRONIC REGISTRATION SYSTEM AS NOMINEE
FOR LOANCITY, SCOTT D COOK, KIMBERLY A COOK**

You are notified that judgment was entered on 11-20-08 pursuant to the findings filed 11-17-08.

DATED: NOVEMBER 20, 2008

MARK S. THOMPSON
COURT ADMINISTRATOR

HENNEPIN COUNTY DISTRICT COURT
300 SOUTH SIXTH STREET, C-12
MINNEAPOLIS MN 55487-0421
612-348-3169

CC: JEAN BENOIT ROTH
JENNIFER CHRISTINE TOOHEY
JEFFREY CHARLES O'BRIEN

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FILED
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FOURTH JUDICIAL DISTRICT

Northwest Venture Capital, Inc., a Minnesota
Corporation,

Plaintiff,

v.

Normandale Lake Condominium Association,
Loancity, Mortgage Electric Registration
system, as nominee for Loancity, Scott D.
Cook and Kimberly A. Cook,

Defendants,

and

Mortgage Electric Registration system, as
nominee for Loancity, Scott D. Cook and
Kimberly A. Cook,

Third-Party Plaintiffs,

v.

Donald L. Reisterer,

Third-Party Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER FOR
JUDGMENT**

Court File No. 27CV08-8849

The above-entitled matter came before the Honorable Robert A. Blaeser, Judge of Hennepin County District Court, on September 9, 2008, on Defendants Loancity, Mortgage Electronic Registration System, as nominee for Loancity, Scott D. Cook and Kimberly A. Cook's Motion for Partial Summary Judgment.

J.B. Roth, Esq., and Greg Miller, Esq., appeared for and on behalf of Plaintiff,

Bradley Beisel, Esq., appeared for and on behalf of Defendants,

Based upon all files, records, and proceedings herein, together with the arguments of counsel, the Court hereby makes the following:

FINDINGS OF FACT

- 1) The property involved is a residential condominium unit located at 8301 Creekside Circle, Unit 100, Bloomington, MN. The property is part of Normandale Lake Condominium Association, Common Interest Community No. 721, of Hennepin County (the "Condo Association"). The Condo Association was formed in 1996 through the recording of a Declaration of the Condominium ("Declaration") dated August 2, 1996 and recorded September 9, 1996 as Hennepin County Recorder Document number 6630994.
- 2) The Declaration provides: "This declaration is made . . . pursuant to the provisions of Minnesota Common Interest Ownership Act, Minnesota Statutes Section 515B.1-101 – 515B.4-118, as amended."
- 3) Article 10.06 of the Declaration provides:

Lien Priority: Foreclosure. A lien under this Section is prior to all other liens and encumbrances on a unity except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the unit, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit.
- 4) On or about December 29, 2005, Third-Party Defendant Donald L. Riesterer deeded the property to Defendants and Third-Party Plaintiffs Scott and Kimberly Cook (the "Cooks").
- 5) On or about December 29, 2005, the Cooks executed a mortgage in favor of Mortgage Electronic Registration Systems, Inc. ("MERS"), in the amount of \$1,000,000 ("First Mortgage"). That same day the Cooks executed another mortgage in favor of MERS in the amount of \$500,000 ("Second Mortgage").
- 6) On or about November 21, 2006, the Condo Association filed an Assessment Lien against the property as Document No. 8895147 ("Assessment Lien").
- 7) On or about December 15, 2006, the Condo Association recorded its Notice of Foreclosure on the Assessment Lien.
- 8) On or about January 19, 2007, the Warranty Deed, First Mortgage, and Second Mortgage were recorded in the Office of the County Recorder in Hennepin County as documents numbered 8924472, 8924477, and 8924478, respectively.
- 9) On or about February 22, 2007, the Assessment Lien was foreclosed through a foreclosure sale through the Hennepin County Sheriff's Office and recorded on February 23, 2007 as Document No. 8941818. The highest bidder at the sale was the Condo Association in the amount of \$28,385.90.

- 10) On or about August 22, 2007, the Condo Association assigned the Sherriff's Certificate of Sale to Northwest Venture Capital, Inc. for \$31,404.67 and recorded as Document No. 9028367.
- 11) On or about April 8, 2008, Northwest Venture Capital Inc. commenced this litigation to declare the rights of the parties relative to the property and recorded a notice of Lis Pendens as document No. 9119118.
- 12) The current value of the property is in dispute. In 2005 during the housing bubble the property sold for \$1.5 million. Another assessment of the property has not been done.

CONCLUSIONS OF LAW

- 1) Rule 56.03 of the Minnesota Rules of Civil Procedure establishes the standard for summary judgment:

Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Minn. R. Civ. P. 56.03 (2007).

- 2) In a summary judgment motion, the facts are viewed in a light most favorable to the non-moving party. *Offerdahl v. Univ. of Minn. Hosp. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). The moving party bears the burden of showing that the material facts in the case are undisputed. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Mems v. City of St. Paul, Dep't of Fire & Safety Serv.*, 224 F.3d 735, 738 (8th Cir. 2000).
- 3) If the evidence is merely colorable, or is not sufficiently probative, summary judgment may be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). The moving party cannot rely upon mere general statements of fact, hearsay, speculation or conjecture. *Id.*
- 4) The Minnesota Common Interest Ownership Act ("MCIOA") provides: "This chapter . . . applies to all common interest communities created within this state on and after June 1, 1994." Minn. Stat. 515B.1-102(a) (2007). Therefore, the Condo Association and the property are subject to the provisions of the MCIOA. Minn. Stat. §§ 515B.1-101-515B.4-118 (2007).
- 5) The MCIOA provides that "A lien under this section is prior to all other liens and encumbrances on a unit except . . . any first mortgage encumbering the fee simple interest in the unit. . ." Minn. Stat. 515B.3-116(b)(ii) (2007).
- 6) The Declaration and MCIOA both provide an assessment is subject to a first mortgage.

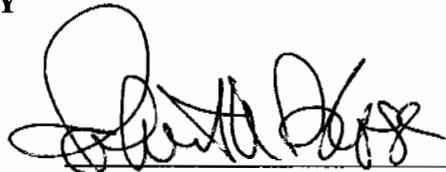
- 7) The Loancity First Mortgage was recorded prior to the foreclosure of the Condo Associations Assessment Lien. The First Mortgage is a "first mortgage encumbering the fee simple interest in the unit" under the MCIOA section 515B.3-116(b)(ii) (2007). The First Mortgage has priority over the Assessment Lien. See also, *Youngdahl v. HBC Enterprises*, 2008 WL 2106588 (Minn. Ct. App. May 20, 2008).
- 8) The Loancity Mortgage, as a first mortgage, is a valid and enforceable mortgage over the property.

IT IS HEREBY ORDERED:

- 1) Defendant's Motion for Partial Summary Judgment is **GRANTED**.
- 2) The court finds the parties other arguments unpersuasive.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: November 13, 2008



Robert A. Blaeser
Judge of District Court
C-655 Government Center
Minneapolis, MN 55487
(612) 348-4964