

STATE OF MINNESOTA  
COUNTY OF ANOKA

DISTRICT COURT  
TENTH JUDICIAL DISTRICT

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Sandra L. Gustafson,  
Plaintiff,

Case File No. 02-CV-09-682  
Case Type: Civil, Quiet Title

vs.

Brian J. Smith,  
Midwest Equity Consultants, Inc.,  
Bradley R. Pederson,  
Amy L. Pederson,  
Lake Elmo Bank  
Defendants.

**PLAINTIFF'S MOTION  
IN LIMINE**

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Plaintiff, by and through her counsel, hereby files her Motion *In Limine*. The purpose of this motion is to limit the issues at trial. The Plaintiff has identified four areas for review *in limine*. First, the Plaintiff requests this Court preclude evidence and testimony regarding liability for Count VI as liability has clearly been established. Second, the Plaintiff requests this Court bar the Defendants Pederson from raising any of their counterclaims. Third, the Plaintiff asks this Court to rule that, as a matter of law, all defendants are precluded from raising and attempting to prove unjust enrichment. Lastly, the Plaintiff requests this Court limit the testimony and evidence regarding the current fee simple holder of the property. The Plaintiff respectfully submits the following arguments to limit these issues at trial.

## PROCEDURAL HISTORY

This equity stripping case was filed on January 26, 2009. This Court has issued two major Orders in this case related to questions of law. In its first Order, this Court ruled on cross motions for summary judgment, reserving the amount of damages for trial<sup>1</sup>. (Order and Memorandum, August 25, 2009). In so doing, this Court declared the foreclosure reconveyance transaction void. *Id.* at 7. Specifically, this Court held that:

A. The property was illegally encumbered, meaning that the lien between Lake Elmo Bank and the Pedersons was recorded with Anoka County, on September 6, 2007. This Court held that “[s]uch an encumbrance clearly violates §325N.17(f).” *Id.* at 6. The statute maintains that the lien can only be recorded after a five day waiting period. MINN. STAT. § 325N.17(f) (2007).

B. There was no separate written contract between Ms. Gustafson and Mr. and Mrs. Pederson outlining the entire agreement as required under Minn. Stat. § 325N.11. (Order and Memorandum, August 25, 2009, at 6).

C. The contract for deed does not include a notice of cancellation, nor any statement informing Ms. Gustafson that she had five (5) days to cancel the contract in violation of Minn. Stat. § 325N.13-14. *Id.*

D. The contract for deed does not state when the fair market value of the home would be assessed in violation of Minn. Stat. § 325N.17(b)(2)(ii). *Id.*

As it relates to Defendants Smith and Midwest Equity, the record shows that Smith and Midwest Equity violated Minnesota’s Foreclosure Consultant Statute, §§ 325N.01-09, by collecting compensation before completing all promised services; inducing Plaintiff to enter into a contract in violation of state law; and by retaining funds for purposes of restoring Plaintiff’s

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<sup>1</sup> This Court also ruled that Defendant Smith and Defendant Midwest Equity Consultants, Inc. had defaulted.

credit and failing to repair as promised. *Id.* at 8. Although the Court ruled that the Defendants Pederson violated various provisions of Minnesota Statute 325N, it reserved the question of amount of damages for trial. (Order and Memorandum, August 25, 2009).

In its Second Order, this Court determined that the mortgage attached to the property by Defendant Lake Elmo Bank and Defendants Pederson was void as it violated state law and public policy. (Order and Memorandum, April 28, 2010).

### **ARGUMENT**

Plaintiffs request that this Court grant her Motion *In Limine* related to four issues. The purpose of a motion *in limine* is to prevent "injection into trial of matters which are irrelevant, inadmissible and prejudicial." *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 418 (Minn. Ct. App. 2003) (quoting *Black's Law Dictionary* 1013 (6th ed. 1991)). In this case, the Plaintiffs have four general categories of testimony, evidence, or argument that should be precluded at trial.

First, the Plaintiff requests this Court preclude evidence and testimony regarding liability for Count VI as liability has clearly been established. Second, the Plaintiff requests this Court bar the Defendants Pederson from raising any of their counterclaims. Third, the Plaintiff asks this Court to rule that, as a matter of law, all defendants are precluded from raising and attempting to prove unjust enrichment. Lastly, the Plaintiff requests this Court limit the testimony and evidence regarding the current fee simple holder of the property. The Plaintiff respectfully submits the following arguments to limit the issues at trial.

**I. THIS COURT SHOULD PRECLUDE EVIDENCE AND TESTIMONY RELATED TO LIABILITY FOR COUNT VI AND ONLY ALLOW TESTIMONY AND EVIDENCE AS TO DAMAGES.**

Defendants should not be allowed to re-argue liability related to Count VI, and testimony should be limited to the calculation of damages. As previously stated, this Court determined that the Defendants Pederson violated many provisions of Minnesota Statute 325N. (Order and Memorandum, August 25, 2009, at 6). The Defendants should be precluded from any testimony or evidence that would suggest to the jury that questions of liability remain. This testimony would create confusion and prejudice Plaintiff.

Defendants Pederson initially argued to this Court that they were also the victims of fraud. They argued that Ms. Gustafson owed the Defendants Pederson a duty of agency, and that it was Ms. Gustafson's responsibility to ensure the contract comported with state law. *Id.* at 7. Therefore, there should be no liability. This Court rejected that argument and found them liable. *Id.* at 7, 8 (stating that "[t]he burden was on Defendants Pederson to comply with the statutes."). Later, at the second hearing to determine whether the mortgage between Defendants Pederson and Lake Elmo Bank should be voided, Defendants Pederson raised the same arguments, again, in their written brief and at oral argument. Since Defendant's liability has already been determined by this Court, these arguments are irrelevant and have a high probability of confusing the jury related to the actual issues that must be determined, For these reasons, testimony related to liability should be prohibited by the Court. There should only be testimony and cross-examination related to damages for violations of Minnesota Statute 325N (Count VI).

**II. THIS COURT SHOULD PRECLUDE EVIDENCE, TESTIMONY, AND ARGUMENTS RELATED TO DEFENDANTS BRADLEY PEDERSON AND AMY PEDERSON'S COUNTER-CLAIMS FOR BREACH OF CONTRACT AND ATTORNEYS' FEES.**

The Plaintiff respectfully requests this Court to rule that the Defendants Pederson are barred from raising their counterclaims for breach of contract and attorneys' fees. To allow testimony and argument related to these counter-claims would be prejudicial to Plaintiff because it would confuse the jury as to the issues actually before it. This Court has already ruled that the underlying contract is void. (Order and Memorandum, August 25, 2009) (holding that "[t]he Court finds the contract is illegal and therefore void."). Therefore, Defendants Pederson cannot argue and seek relief for a breach of void contract. Defendants Pederson also cannot seek attorneys' fees under a provision of that void contract.

**III. ALL DEFENDANTS ARE PRECLUDED FROM TESTIMONY, EVIDENCE, AND ARGUMENT RELATED TO OR IN FURTHERANCE OF AN UNJUST ENRICHMENT CLAIM AS A MATTER OF LAW.**

As a matter of law, an unjust enrichment claim cannot arise from a void transaction. *Brotherhood of Railway & S.S. Clerks, etc. v. State*, 303 Minn. 178, 193 (Minn. 1975). In addition, Defendants cannot prove they are entitled, as a matter of law, to raise unjust enrichment, because the Defendants have not acted in good faith. *Keystone Driller Co v. General Excavator Co*, 290 U.S. 240 (1933). Thus the Defendants should be precluded from soliciting evidence to support a claim for unjust enrichment. Therefore, this Court should preclude evidence and testimony related to both Defendants Pederson and Lake Elmo Bank to seek recovery from Ms. Gustafson through an unjust enrichment counter-claim.

A claim of unjust enrichment cannot be supported simply because “one party benefits from the efforts of others.” *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. Ct. App. 2001). The Defendants must show that Ms. Gustafson “knowingly” and “unjustly” received something of value that she knew she was not entitled to. *Id.* “Unjustly” means “illegally or unlawfully.” *Id.* There is no evidence nor has there ever been any allegation by any Defendant that Ms. Gustafson acted illegally or unlawfully. It has already been established by prior rulings of this Court that Ms. Gustafson was the victim of an illegal equity stripping scheme.

**a. The Defendants Cannot Adequately Show They Are Entitled to Prove Unjust Enrichment**

Equitable relief is not granted as a matter of course. Equitable relief through an unjust enrichment claim may only be made where an adequate appeal has been made to the court. *Laythe v. Minnesota Loan & Inv Co*, 101 Minn. 152, 112 N.W. 65 (1907); *See Wetmore v. St Paul & P RR*, 3 F. 177 (C.C.D. Minn. 1880); *Kropholler v. St Paul M & M Ry*, 2 F. 302 (C.C.D. Minn. 1880) (combination of creditors to purchase property of their debtor at judicial sale was held not invalid and afforded no ground for equitable relief). Whenever a party who as actor seeks to obtain some remedy has violated good faith or other equitable principles in his prior conduct, the doors of the court will be shut against him *in limine*; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy. *Keystone Driller Co v. General Excavator Co*, 290 U.S. 240 (1933); *Johnson v. Freberg*, 178 Minn. 594, 228 N.W. 159 (1929); *Stronge Warner Co v. H Choate & Co*, 149 Minn. 30, 182 N.W. 712 (1921).

In this case, Defendants Pederson and Lake Elmo Bank are not entitled to the equitable claim of unjust enrichment as a matter of course. Defendants Pederson and Lake Elmo Bank

must *in limine* show that their conduct did not violate good faith or other equitable principles, such as unclean hands. Here, Defendants cannot satisfy their burden.

Ms. Gustafson was the victim of equity stripping and the underlying transaction was declared void. Ms. Gustafson broke no laws. Therefore, any financial loss purportedly experienced by the Defendants is simply due to their own actions. Defendant Lake Elmo Bank was fully aware of the context in which it was lending money, and Defendant Lake Elmo Bank knew that Ms. Gustafson was in foreclosure. *See* Plaintiff's Reply Memo. in Support of Partial S.J. Regarding Count XI, 14 – 17 (describing that there were 7 previous foreclosure buyouts Defendant Lake Elmo Bank participated in, the 325N attorney opinion in Defendant Lake Elmo Bank's possession, the Gustafson "Loan Approval or Interim Loan Request," which described the transaction, and an e-mail exchange showing Defendant Lake Elmo Bank's awareness of the facts).

Defendant Lake Elmo Bank had reviewed all of the equity stripping documents prior to the transaction and even had a legal opinion in their file discussing the requirements of Minn. Stat. Section 325N (which the documents did not comply with). *Id.* Rather than walk away from a deal with Midwest Equity and Defendants Pederson, Lake Elmo Bank funded the transaction and established an escrow account in Ms. Gustafson's name. Every month, Lake Elmo Bank withdrew money out of Ms. Gustafson's account and paid itself interest on its loan. To the extent Ms. Gustafson received a benefit, Defendants should not be able to claw-back such benefit to mitigate damages they suffered from their own participation in a void transaction.

**b. Defendants Cannot Claim An Equitable Remedy From A Void Transaction**

As a matter of law, Lake Elmo Bank and Defendants Pederson cannot seek an equitable claim rooted in a void transaction. Illegal agreements or those void as against public policy will

not be validated by resort to an equitable remedy. *Brotherhood of Railway & S.S. Clerks, etc. v. State*, 303 Minn. 178, 193 (Minn. 1975) (holding that “[i]llegal agreements (or those void as against public policy) will not be validated by resort to an equitable remedy”). Because of the underlying illegal actions, this Court voided the foreclosure reconveyance transaction, pointing to the numerous violation of state law by the Defendants Pederson. The Defendants cannot now ask this Court to remedy their wrongs by equitably resolving this case.

**c. In The Alternative, Defendants Shall Be Precluded From Testimony, Evidence and Argument Related To An Equitable Trust Until A Jury Determines That They Have Established An Unjust Enrichment Claim.**

Until and unless Defendant Lake Elmo Bank successfully proves its claim for Unjust Enrichment, it should be precluded from raising testimony or evidence to support an equitable trust.<sup>2</sup> Prior to the jury’s determination regarding unjust enrichment, any evidence regarding an equitable trust is premature and irrelevant.

Defendant Lake Elmo Bank, in a previous pleading, asked the Court to declare itself the recipient of the benefits from an equitable trust, into which the Plaintiff would be required to pay the benefit she received as the result of the foreclosure reconveyance transaction. (Def.’s Memo. in Opp. To P’s Motion for Partial S.J., at 10).

Asking for an equitable trust is premature. As a threshold matter, Defendant Lake Elmo Bank must first establish unjust enrichment. There is no independent cause of action for

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<sup>2</sup> Although it should go without saying, if Defendants are allowed to pursue an unjust enrichment claim, Plaintiffs will enter evidence, solicit testimony and argue that liability cannot be found because it cannot be invoked merely because there has been a “bad bargain.” *Cady v. Bush*, 283 Minn. 105, 166 N.W.2d 358 (1969). Plaintiff will certainly raise the well-known axiom, “[h]e who comes into equity must come with clean hands.” *Hamilton v. Wood*, 55 Minn. 482, 57 N.W. 208 (1893) (equity will not interfere or refuse to interfere merely because subject matter in respect to which relief is sought may have grown out of fraudulent or illegal transaction); *Thompson v. Winter*, 42 Minn. 121, 43 N.W. 796 (1889) (inequitable conduct by party will defeat recovery only where it relates to particular transaction involved in action).



“equitable trust,” because an equitable trust is merely a potential remedy. Indeed, in its previous briefing, Defendant Lake Elmo Bank recognized that an equitable trust is “an unjust-enrichment, rectifying remedy. . .” *Id.* (quoting *Knox v. Knox*, 222 Minn. 477, 481-82 (1946)). Until a jury determines that Ms. Gustafson has been unjustly enriched, any discussion regarding an equitable trust is irrelevant.

For the same reasons that discussion of an equitable trust is irrelevant, such evidence, testimony and argument is also prejudicial. It is likely to cause the jury confusion.

#### **IV. DEFENDANTS ARE PRECLUDED FROM ANY TESTIMONY, EVIDENCE OR ARGUMENTS RELATED TO THE CURRENT FEE SIMPLE TITLE HOLDER OF THE PROPERTY.**

This case stems from an equity stripping transaction or a “foreclosure reconveyance transaction.” The pleadings previously filed with this case describe in great detail the transaction: The Plaintiff sold her property to the Defendants Pederson, at which point the Defendants Pederson conveyed the property back to her on a contract for deed. (Order and Memorandum dated August 25, 2009, at 1). In order to finance the purchase, the Defendants Pederson took out a mortgage with Defendant Lake Elmo Bank. *Id.* This Court, in its previous order, voided the foreclosure reconveyance transaction. *Id.* at 7. This Court also voided the mortgage between the Defendants Pederson and Lake Elmo Bank as it violated state law and public policy. (Order and Memorandum dated April 28, 2010). Based on the law of the case, Ms. Gustafson is the fee simple title holder of the property. For the purposes of trial, testimony, evidence, and argument should not be allowed to suggest that she is not the owner of this property.

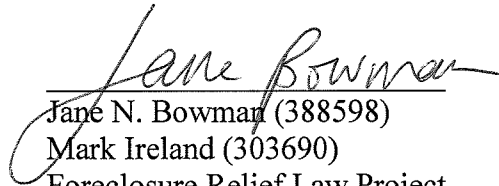
Right now, there remains a recorded Contract for Deed associated with the property. The Plaintiff further requests that at the conclusion of trial and resolution of issues of fact and law

that the Contract for Deed be voided. Regardless of result, the Contract for Deed cannot be used to invoke the idea that Ms. Gustafson is not the owner of the property.

**CONCLUSION**

The Plaintiff respectfully requests her Motion *In Limine* granted.

Dated: September 7, 2010

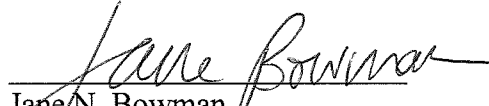
  
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**ATTORNEYS FOR PLAINTIFF**

### ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded, pursuant to Minn. Stat. § 549.21, subd. 2, to the party against whom the allegations in this motion are asserted.

Dated: September 7, 2010

  
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