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LEGAL BRIEFS FROM THE ATTORNEYS OF MACKALL, CROUNSE & MOORE, PLC

## Creditors' Corner

### **BANK CANNOT SET OFF AGAINST SPECIAL DEPOSIT ACCOUNT**

In the case of *In re K. D. Builders, Inc.*, (Bankr. D. Mass. 2008) the bank had made a loan to the debtor which was secured by land on which the debtor was going to develop a subdivision. In return for the town's approval of a subdivision plan, the debtor and the bank obligated themselves to pay the city \$209,000 for sewer and water installation. This obligation was to be secured by a portion of the mortgage proceeds held in a special deposit account. If the debtor failed to complete the subdivision, the money was to be paid to the city. If the development was complete then the debtor received the proceeds. The account was funded. Debtor filed a Chapter 7 before the development was complete and abandoned the project. The bank sought relief from stay to apply the proceeds to the mortgage debt. The court denied the motion saying that statutory set off rights do not apply to special deposit accounts and that only the city could authorize the disbursement of the money.

**PRACTICE POINTER:** Special deposit account loan agreements should be drafted with a clause authorizing the set off by the bank and consent to relief from stay in the event of a bankruptcy filing IF the town or city would agree to the same.

### **FOR REDEMPTION PURPOSES, AN ASSIGNMENT OF JUDGMENT MUST BE FILED IN COUNTY RECORDER'S OFFICE OR REGISTRAR OF TITLES**

*Northern Realty Ventures v. Minnesota Housing Finance Agency*, 2008 WL 1748243, (Minn. App., April 15, 2008)

A judgment creditor that intends to redeem a foreclosed property must record the judgment and any assignments in the county recorder or registrar of titles office before the mortgagor's 60-day redemption period ends. The legislature amended the redemption law to require this in 2004. Thus, in addition to recording a notice to redeem within the 60-day period, Minnesota Statute section 580.24(a) provides that the creditor must "record in each office where notice is recorded all documents necessary to create the lien on the mortgaged premises and to evidence the creditor's ownership of the lien." All documents filed in the recorder's office or registrar of titles must also be delivered to the sheriff within the 60-day period.

The judgment creditor in *Northern Realty Ventures* took assignment of a judgment, but failed to record the assignment in the county recorder's office, although it recorded the notice to redeem, and the judgment was already recorded in the name of the predecessor. The judgment creditor only filed the assignment of lien with the court administrator in the district court, which perfects the assignment under Minnesota Statute section 548.13 against other creditors. In a timely manner, the judgment creditor provided the sheriff with its notice to redeem, a certified copy of the recorded judgment, and a certified copy of the assignment of judgment. Upon attempting to redeem, the judgment creditor argued that the section 580.24(a) only requires recording of documents if recording the documents is necessary to create the lien. Here docketing the judgment and filing the assignment with the county administrator of the district court created the lien – no documents additional were required to be recorded to create the lien.

The court rejected this argument and strictly applied the statute. Thus, ownership documents of the assignment also needed to be recorded with the county recorder, notwithstanding the fact that the lien properly existed based on the documents filed by the judgment creditor. The court examined the legislative history and found that the legislature intended for the sheriff to verify priority by having the ability to have all the documents recorded in one location.



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If you have any questions, please call one of the following in our MCM Creditors' Remedies group:

**Timothy D. Moratzka**

(612) 305-1456

[tdm@mcmlaw.com](mailto:tdm@mcmlaw.com)

**Robert S. Lee**

(612) 305-1448

[rsl@mcmlaw.com](mailto:rsl@mcmlaw.com)

**Stacy A. Woods**

(612) 305-1409

[saw@mcmlaw.com](mailto:saw@mcmlaw.com)

**Andrew P. Moratzka**

(612) 305-1418

[apm@mcmlaw.com](mailto:apm@mcmlaw.com)

**Allen E. Christy, Jr.**

(612) 305-1490

[aec@mcmlaw.com](mailto:aec@mcmlaw.com)

**Patrick C. Summers**

(612) 305-1473

[pcs@mcmlaw.com](mailto:pcs@mcmlaw.com)

**Matthew A. Anderson**

(612) 305-1401

[maa@mcmlaw.com](mailto:maa@mcmlaw.com)

**Mychal A. Bruggeman**

(612) 305-1478

[mab@mcmlaw.com](mailto:mab@mcmlaw.com)

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1400 AT&T Tower • 901 Marquette Avenue • Minneapolis, MN 55402

Telephone: 612.305.1400 • Fax: 612.305.1414

E-mail: [info@mcmlaw.com](mailto:info@mcmlaw.com) • Web: [www.mcmlaw.com](http://www.mcmlaw.com)