# Appendix Townridge

Briefs and Decision Being Appealed
in
*Townridge Apts v Silver Crest Partnership*, File No. C6-97-1002
(Minn. Ct. App. 12/16/1997)

Table of Contents

Case No. C6-97-1002



State of Minnesota

# In Court of Appeals

**Townridge Apartments,**

*Respondent,*

*vs.*

**Silver Crest Partnership, a Minnesota partnership, and Andrew C. Grossman,**

*Appellants,*

*and* **Klienman Realty Co., a Minnesota corporation,**

*Defendant.*

## APPELLANTS' BRIEF AND APPENDIX

MEYER & NJUS, P.A.

Daniel B. Johnson (#50799)
1100 Pillsbury Center
200 South Sixth Street
Minneapolis, Minnesota 55402-9075
(612) 341-2181

*Attorneys for Appellants*

HELLMUTH & JOHNSON, P.A.

David G. Hellmuth (#229131)
300 Cabriole Center
9531 West 78th Street
Eden Prairie, Minnesota 55344-8006
(612) 941-4005

*Attorneys for Respondent*

## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

## CASES



## STATUTES AND ORDINANCES

**SECONDARY AUTHORITIES**

## STATEMENT OF THE CASE

Appellants were the vendees, and Respondent was the vendor, of a Contract for Deed for certain rental property situated in Ramsey County, Minnesota. Respondent served a 60-day Notice of Cancellation of Contract for Deed upon Appellants alleging default for failure to pay taxes in a timely manner. Appellants do not contest the propriety of the cancellation proceeding.

The redemption period expired June 8, 1996. On that date, Appellants were in possession of rents paid by tenants in advance for the month of June 1996 and were also in possession of security deposits paid by tenants.

Respondent commenced this action in Hennepin County District Court, Court File No. 96-14361, Fourth Judicial District, seeking recovery of the prorated June 1996 rents on the theories of "Misappropriation of Funds" [Count One] and "Unjust Enrichment" [Count Two], and seeking recovery of the security deposits and statutory penalties on the theory of "Wrongful Retention of Security Deposits in Violation of Minnesota Statute §504.20" [Count Three].

Cross-motions for summary judgment were heard on November 20, 1996. The court, the Hon. Delila F. Pierce presiding, issued its Order and Memorandum dated February 3, 1997, granting summary judgment in favor of Respondent in the amount of $15,563.39 for rents, together with costs and disbursements, and in favor of Respondent in the amount of $11,600.00 for punitive damages pursuant to Minn. Stat. §504.20, Subd. 7. (A.121). Judgment was entered in the trial court on March 3, 1997. (A.138).

Pursuant to Minn. R. Civ. App. P 103.03(a), this appeal to the Court of Appeals is taken from the judgment entered on March 3, 1997. (A.140).

## STATEMENT OF FACTS

The trial court's statement of the facts is complete. (See, A.123-127). That statement, edited only as to party designation on appeal, and numbered for reference purposes on appeal, is as follows:

1. Townridge Apartments ("Respondent"), is a Minnesota partnership and owner of the Townridge Apartments; Helena Bigos is a partner of Townridge Apartments.

2. Silver Crest Partnership ("Appellant Silver Crest") is a Minnesota partnership of which Andrew C. Grossman ("Appellant Grossman") is a partner. Klienman Realty Co. ("Defendant Klienman") was the leasing agent for Silver Crest Partnership.

3. On or about December 31, 1986, Respondent Town Ridge Apartments, (vendor) and Silver Crest Partnership, a Minnesota partnership (vendee), entered into a contract for deed for the sale and purchase of the real property ("Property") located in Ramsey County at the following addresses:

   2090 West County Road E, New Brighton, Minnesota
   2100 West County Road E, New Brighton, Minnesota
   2130 West County Road E, New Brighton, Minnesota
   2160 West County Road E, New Brighton, Minnesota

   (A.27). This property is comprised of apartment buildings.

4. The Contract for Deed states that the purchaser shall pay all real estate taxes payable in the year 1987 and in all subsequent years. Appellant Silver Crest defaulted on this obligation and a Notice of Cancellation of Contract for Deed was served on Silver Crest Partnership on April 8, 1996. (A.35). Silver Crest did not redeem its interest in the property within the sixty (60) days provided by Minn. Stat. §559.21 Subd. 2(a) (Supp. 1997) and fee title and ownership of the Property reverted to Townridge Apartments on

June 8, 1996. Neither party disputes the terms and conditions of the Contract for Deed nor the service and completion of the cancellation pursuant to Minn. Stat. §559.21.

5. Appellants claimed that Appellants other than Silver Creek were not proper parties because the Property was owned by "Timbercrest Limited Partnership" at the time the Contract for Deed cancellation proceeding was commenced. (A.10; A.56). They submitted papers and affidavits showing the formation of Timbercrest Limited Partnership. (A.58). The Limited Partnership Agreement shows Andrew C. Grossman as a 96% limited partner in the entity. (A.78).

6. Respondent claims it had no notice of this transaction and submits the Certificate of Title which contains all memorials dating back to August 7, 1975, including all recorded conveyances or transfers of the Property. (A.85; A.91-96). The transfers of title to the property are as follows:

| | | |
|---|---|---|
| Doc. No. 836176 | May 12, 1987 | Contract for Deed from Townridge Apartments, Vendors, to Silver Crest Partnership, Vendee. (A.28). |
| Doc. No. 918686 | Feb. 28, 1990 | Assignment of Vendees interest from Silver Crest to A.C. Grossman and M.A. Appleman. (A.103). |
| Doc. No. 918687 | Feb. 28, 1990 | Quit Claim Deed of Vendees interest from Silver Crest to A.C. Grossman and M.A. Appleman. (A.106). |
| Doc. No. 918688 | Feb. 23, 1990 | Assignment of Vendees interest from M.A. Appleman and M.K. Appleman to A.C. Grossman and Michael Rotenberg. (A.109). |
| Doc. No. 918689 | Feb. 23, 1990 | Quit Claim Deed of Vendees interest from M.A. Appleman and M.K. |

| | | |
|---|---|---|
| | | Appleman to A.C. Grossman and Michael Rotenberg. (A.111). |
| Doc. No. 1124465 | June 25, 1996 | Notice of Cancellation of Contract for Deed Doc. No. 836176. (A.35) |

7. Through its agent, Klienman Realty Co., Silver Crest Partnership collected rents for the month of June, 1996, in the amount of $23,678.34. Respondent claims that rents beginning with the date of repossession should be disbursed to them on a prorated basis. The prorated rents from June 8, 1996, through June 30, 1996, inclusive, twenty-three (23) days is $18,153.39. (A.50). Appellants do not dispute this would be the proration of rents collected by them and due for the period of June 8 through June 30, 1996.

8. On June 13, 1996, Appellants tendered a check in the amount of $2,590.00 to Respondent leaving a balance of $15,563.39 claimed by Respondent. (A.50).

9. Appellant Silver Crest had also received security deposits from fifty-eight (58) tenants in the amount of $12,195.00. (A.22). Although Appellants do not dispute their responsibility to turn over these deposits with accrued interest, as provided by Minn. Stat. §504.20 Subd. 5 (Supp. 1997), Appellants had not returned these deposits to either tenants or Respondent by August 22, 1996, when Respondent commenced this action by service of the Summons and Complaint upon Appellants, nor within two weeks after commencement of this action pursuant to Minn. Stat. §504.20, Subd. 7.

10. Whether these deposits should have been returned to tenants or to Respondent is in dispute. Following the commencement of this lawsuit, in a letter dated September 25, 1996, Appellants' attorneys advised Respondent that it would begin returning deposits to tenants on October 1, 1996. (A.118). On September 30, 1996, Respondent's attorney

responded to this letter by letter stating that Respondent had already refunded security deposits to tenants who had vacated the property since June 8, 1996. (A.120). Respondent had previously informed Appellants of this in a letter dated September 9, 1996. (A.100). In the September 30th letter, Respondent's attorney requested a time extension from Appellants' attorney to receive a list of these refunds from Respondent.

11. On October 31, 1996, "Timbercrest Limited Partnership" sent a letter addressed to "Timber Crest Residents" and enclosed a security deposit refund check which included interest earned through October 1996. (A.60). The letter advised tenants that they must return this second refund to "Timbercrest Limited Partnership" if their security deposit had previously been returned to them by Town Ridge Apartments.

12. Respondent brought its motion for summary judgment claiming Appellants' retention of rents from June 8, 1996 to June 30, 1996 is a misappropriation of funds and an unjust enrichment and that wrongful retention of security deposits is a violation of Minn. Stat. §504.20. (A.12). Respondent also sought an award of punitive damages provided by Minn. Stat. §504.20, Subd. 7, for bad faith retention of security deposits by Appellants.

13. In Appellants' cross-motion for summary judgment, Appellants argued that Respondent is not entitled to said proration of rents nor is Respondent entitled to punitive damages. (A.52). Appellants also sought a dismissal against all Defendants other than Defendant Silver Crest on the grounds that they were not proper parties Defendant.[1]

---

[1] Appellants do not seek review in this court of the trial court's holding that A.C. Grossman and Michael Rotenberg, as record owners of the property when the action was commenced, were proper parties.

14. The trial court granted Respondent's motion for summary judgment against Appellants Silver Crest Partnership and Andrew C. Grossman in the amount of $15,563.39 for rents, together with costs and disbursements, and in the amount of $11,600.00 for punitive damages pursuant to Minn. Stat. §504.20, Subd. 7. (A.121). The trial court denied Appellants' cross-motion for summary judgment. (A.122).

15. Judgment was entered accordingly in favor of Respondent and against Appellants for $27,355.09 on March 3, 1997. (A.138).

## LEGAL ISSUES

Issue No. 1 Where a contract for deed relating to rental property is cancelled, and where the vendee has collected rents from the tenants in advance for the month in which vendee's right of redemption expires, is the vendor entitled to recover from the vendee any portion of such rents?

The trial court held: Yes.
The trial court granted summary judgment in favor of Respondent in the amount of $15,563.39 as the prorated portion of the June 1996 rents representing the post-cancellation portion of June 1996 (i.e., from June 8, 1996, through June 30, 1996).

Issue No.2 Where a contract for deed relating to rental property is cancelled, and where the vendee is holding security deposits from the tenants, is the vendor entitled to recover punitive damages under Minn. Stat. §504.20, Subd. 7, if the vendee fails to deliver the security deposits to the vendor upon the vendor's demand?

The trial court held: Yes.
The trial court granted summary judgment in favor of Respondent in the amount of $11,600.00 for punitive damages pursuant to Minn. Stat. §504.20, Subd. 7, even though the security deposits had been refunded prior to the hearing on the motion for summary judgment.

## ARGUMENT

**The Standard of Review: De Novo**

In reviewing a grant of summary judgment, the appellate court must determine (1) whether there are any genuine issues of material fact and (2) whether the court erred in its application of the law. Betlach v. Wayzata Condominium, 281 N.W.2d 328, 330 (Minn. 1979). The nonmoving party is to receive "the benefit of that view of the evidence which is most favorable and is entitled to have all doubts and factual inferences resolved against the moving party." Lindner v. Lund, 352 N.W.2d 68, 70 (Minn. App. 1984) (citing Nord v. Herreid, 305 N.W.2d 337, 339 (Minn. 1981).

### I. Respondent is not entitled to recover a pro-rata portion of the June 1996 rents from Appellants.

#### A. By pursuing the cancellation of the contract for deed to a conclusion, Respondent has elected its remedies against Appellants.

When a contract for deed vendee is in default, the vendor has several possible remedies under the common law, including specific performance, rescission, damages, and an action for installments. Robitchek v. Maetzold, 198 Minn. 586, 270 N.W. 579 (1936); State Bank v. Sylte, 162 Minn. 72, 202 N.W. 70 (1925). In addition, the vendor may cancel the contract by initiating an action for judicial termination or by giving statutory notice of cancellation under Minn. Stat. §559.21. Kosbau v. Dress, 400 N.W.2d 106, 108 (Minn. App. 1987); Covington v. Pritchett, 428 N.W.2d 121 (Minn. App. 1988). Once the remedy of cancellation is elected, that becomes the vendor's exclusive remedy. Wayzata Enterprises, Inc. v. Herman, 268 Minn. 117, 128 N.W.2d 156 (1964).

### B. The doctrine of election of remedies bars Respondent from recovering other damages for breach of the contract, and from recovering rent under an unjust enrichment theory.

The doctrine of election of remedies is a bar to recovery under other theories. As applied by this Court, the doctrine bars any other recoveries:

> The doctrine of election of remedies applies when a party adopts two or more inconsistent remedies, and is designed to prevent double redress for a single wrong. If a contract for deed is canceled either by notice or through judicial action, to prevent a double recovery, the vendor is barred from recovering payments under the contract or recovering other damages for breach of the contract. The vendor is bound by the election of remedies doctrine if the action has been pursued to a determinative conclusion, the vendor has procured advantage from his or her actions, or if the vendee has been subjected to injury.

Covington v. Pritchett, 428 N.W.2d 121, 124 (Minn. App. 1988).

In Covington, supra, a cancellation proceeding was enjoined for over a year, on the ground that the terms of the contract were ambiguous, while the purchasers tried to refinance or sell the property. Even though the purchasers remained in the property during that time without making installment payments, the vendor was not allowed to recover the reasonable rent under an unjust enrichment theory. The Minnesota Court of Appeals reasoned:

> [Vendor] additionally seeks to recover reasonable rent for the time [Purchasers] resided at the property, and in particular seeks rent for the 16 to 17-month period [Purchasers] remained at the property without making any payments on the contract for deed. He seeks rent under an unjust enrichment theory, claiming it was inequitable for [Purchasers] to remain on the property for free and to enrich themselves at his expense. A vendor may not recover rent from a vendee under an unjust enrichment theory following cancellation of a contract for deed. Collection of rent generally is termed as a non-cancellation remedy, and is permitted when the vendor elects a remedy such as specific performance.

Covington, supra, 428 N.W.2d 121, 125 (1988).

The trial court sought to distinguish the present situation from Covington, supra, on the ground that the Covington court was dealing with rents accrued for use of the property before

the cancellation, while in the present case Respondent seeks to recover rents accrued for use of the property after the cancellation. (A.129). That distinction is not persuasive. The fact of the matter is that Appellants collected the June rents lawfully while in lawful possession of the property under a contract for deed that had not yet been canceled, that Appellants yielded possession of the property as of June 8, 1996, when their redemption rights expired, and that Appellants took no action after June 8, 1996, to collect additional rents from occupants of the property. Since Appellants did not themselves occupy the property after June 8, 1996, and collected no rents after yielding possession, Appellants are in no different position than the purchasers in Covington.

### C. To the extent that the cancellation of a contract for deed is analogous to a mortgage foreclosure, the law disfavors attempts by mortgagees to require rents to be applied toward the mortgage debt, especially where there has been no showing that the right to possess the property at the end of the redemption period is inadequate security for the mortgage debt.

The trial court sought to analyze this case under legal principles applicable in mortgage foreclosure cases. While the situations are analogous, the trial court failed to recognize that Minnesota foreclosure law cuts in favor of Appellants' argument and against Respondents' argument.

As a "lien theory of mortgages" state, Minnesota law traditionally has not permitted a mortgagee to exercise any control over rents and profits. The Minnesota Supreme Court summarized the development of the law in Cross Cos. v. Citizens Mortg. Inv. Trust, 232 N.W.2d 114, 117 (1975) as follows:

> In a line of decisions spanning nearly 80 years regarding the effect of mortgage foreclosure proceedings upon possession during the statutory period of redemption, this court has worked the principles it has applied into a finely constructed theory. At common law, a debtor could convey legal title and the right to possession, rents, and profits from real estate to the creditor as security for a debt. The result of a mortgage of this nature was that upon default in the performance of a duty under the mortgage, full title became vested in the mortgagee to allow him to recover possession. The common law was abrogated, however, by statute. Under the predecessor to Minn. St. 559.17 the debtor could no longer convey title or give the creditor the right to possession before a foreclosure. Essentially, the court did allow an assignment of rents in a contemporaneous instrument for the limited purpose of paying taxes, insurance premiums, and assessments. An extension of this allowance has historically evolved into the rule that rents collected from the mortgaged premises could be applied to a reduction of the mortgage debt if the assignment of rents was given subsequent to the mortgage.
>
> It is upon this latter theory that the major distinction took root and it is upon this distinction that this court has recently based its primary decisions. Beginning with the early cases of Fredin v. Cascade Realty Co., 205 Minn. 256, 285 N.W. 615 (1939), and Grady v. First State Security Co., 179 Minn. 571, 229 N.W. 874 (1930), this court has stated that any contract by which the mortgagor attempted to grant possession to the mortgagee (including rents and profits), whether contained in the mortgage instrument or in a separate instrument contemporaneously executed, created no lien in favor of the mortgagee with regard to the rents and profits, and that the latter had no right to apply them to the mortgage debt. (Other citations omitted - Ed.)

If the trial court had fully played out the mortgage foreclosure comparison, it would have realized that the present case essentially is an attempt by the Respondent-mortgagee to try to force the Appellants-mortgagors to apply rents *collected during the redemption period* toward the mortgage debt. The law would certainly not permit such a result without an assignment of rents. And even with an assignment of rents, the law would permit such a result only upon a showing that the value of the property itself, quite apart from the rents, is inadequate security for the mortgage debt. State Mut. Life Assur. v. Frantz Klodt & Son, 237 N.W.2d 354 (Minn. 1975). In short, when it comes to rents collected during the redemption period, Minnesota mortgage foreclosure law tends to favor the rights of mortgagors over the rights of mortgagees unless there

is some showing that the mortgagee is inadequately secured. Respondent has made no such showing.

**D. Respondent's decision not to evict the tenants after the cancellation does not entitle Respondent to recover rents from Appellants. Respondent has no standing to assert whatever claims the tenants may have against Appellants for the prorated June rents.**

As the trial court noted, citing Schrunk v. Andres, 222 N.W.2d 548, 551 (Minn. 1946), the cancellation of Appellants' contract for deed automatically terminated the leases of the tenants, since a lessor cannot create any greater interest in his lessee than the lessor himself possesses. (A.130). That principle is significant because it underscores the fact that Respondent was under no obligation whatsoever to allow the tenants to stay after the cancellation even though Appellants collected June rents from them. Not disrupting the tenants was obviously a prudent business decision by Respondent. Yet it does not entitle Respondent to recover rents from Appellants or to assert any rent refund claims on behalf of the tenants.

## II. Respondent is not entitled to punitive damages under Minn. Stat. §504.20 Subd. 7.

**A. Where a landlord wrongfully withholds a tenant's security deposit, a tenant has standing to recover damages, penalties and interest under Minn. Stat. §504.20, Subd. 4, and punitive damages in cases of bad faith under Minn. Stat. §504.20, Subd. 7. Respondent, as a landlord, does not have standing to seek such a remedy.**

Under Minn. Stat. §504.20, Subd. 4, a landlord "... shall be liable to the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord and interest thereon as provided in subdivision 2, as a penalty, ..." for wrongfully withholding a security

deposit. (Emphasis added, see A.146). Furthermore, under Minn. Stat. §504.20, Subd. 7, a landlord's bad faith retention of a deposit "... shall subject the landlord to punitive damages not to exceed $200 for each deposit in addition to the damages provided in subdivision 4. ..." (Emphasis added, see A.146).

The obvious intent of the statute is to create an effective remedy for tenants to recover the tenant's own money, and to add teeth to that remedy by tacking on punitive damages in bad faith cases. Under any reasonable reading of the statute, no person other than a tenant has standing to assert the remedies in Minn. Stat. §504.20.

Punitive damages under subdivision 7 are not appropriate unless the landlord is liable to the tenant under subdivision 4.

### B. The trial court erred in holding that, where the facts may merit a presumption of bad faith under Minn. Stat. §504.20, Subd. 7, that presumption gives rise to a cause of action for punitive damages by "successor in interest" landlords as well as tenants.

The trial court reasoned that, since a presumption of bad faith arises where a landlord fails to either return the deposit to the tenant or transfer it to the landlord's "successor in interest" within 60 days after the landlord's interest terminates, the legislature must have intended that a cause of action also arises for that "successor in interest". (A.135). A presumption is vastly different than a cause of action, however. The presumption inures to the benefit of the tenant whose money is being wrongfully withheld, not to the benefit of a landlord's "successor in interest."

### C. Awarding punitive damages to a landlord under Minn. Stat. §504.20 is an absurd result that the legislature could not have intended.

The trial court correctly notes that under Minn. Stat. §645.17, a statutory construction that would result in absurdity, injustice, or inconvenience is to be avoided if the language used will reasonably bear any other construction. (A.135). This is exactly that situation. The tenants have their security deposits, and none of them have sued Appellants, yet their landlord is $11,600 richer. But if, as the trial court concluded, the statute gives a right of action to Respondent as a "successor in interest" as well as to the tenants, and if Appellants are strictly liable for penalties and punitive damages by virtue of having missed the 60-day deadline of Minn. Stat. §504.20, Subd. 5, and the 2-week deadline of Minn. Stat. §504.20, Subd. 7, then what is to prevent the tenants from instituting their own actions against Appellants for damages and punitive damages under Minn. Stat. §504.20? Should Appellants have to pay twice if the tenants decide to sue on the very same facts that Respondent sued on? As absurd as that result would be, that is consistent with the trial court's holding.

Obviously, it is an absurd result for Respondent to receive punitive damages under these facts. The legislature did not enact Minn. Stat. §504.20 to raise the stakes in disagreements between vendors and vendees over contract for deed cancellation issues, or to create traps for the unwary. The legislature intended for alarm bells to sound loudly and clearly for all landlords whenever a tenant demands the return of the tenant's own money.

## CONCLUSION

The trial court erred in awarding Respondent the prorated portion of the June 1996 rents. Respondent elected its remedies by cancelling the contract for deed, and is barred from seeking to recover any rents that Appellants lawfully collected from the tenants while Appellants were lawfully in possession of the property. In addition, Respondent has made no showing that its security interest would be jeopardized if Appellants retain the June rents.

The trial court erred in awarding Respondent punitive damages for failure to promptly return the security deposits. Respondent has no standing to seek damages of any sort under Minn. Stat. §504.20, as that statute is a remedy exclusively for tenants. Allowing a landlord to recover penalties or punitive damages would lead to absurd results and double recoveries.

The decision of the trial court should be reversed, and judgment should be entered in Appellants' favor.

Respectfully submitted,

MEYER & NJUS, P.A.

Dated: 7/2/97

By _____

Daniel B. Johnson
Attorneys for Appellant
1100 Pillsbury Tower
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 341-2181
Attorney Registration No. 50799

ACKNOWLEDGMENT AS TO MINN. STAT. § 549.21

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorneys and witness fees may be awarded to the opposing party or parties pursuant to M.S.A. 549.21, Subd. 2, if the party or attorney against whom the costs, disbursements, reasonable attorney and

witness fees are charged acted in bad faith; asserted a claim in defense that is frivolous and that is costly to the other party; asserted an unfounded position solely to delay the ordinary course of the proceeding or to harass; or committed a fraud upon the Court.

Dated: 7/2/97 By _____

Daniel B. Johnson
Attorneys for Appellant

W5814 MF

CASE NO. C6-97-1002



# State of Minnesota
# In Court of Appeals

TOWNRIDGE APARTMENTS,

vs. *Respondent,*

SILVER CREST PARTNERSHIP, A MINNESOTA PARTNERSHIP AND ANDREW C. GROSSMAN,

and *Appellants,*

KLIENMAN REALTY CO., A MINNESOTA CORPORATION,

*Defendant.*

## RESPONDENT'S BRIEF

MEYER & NJUS, P.A.
DANIEL B. JOHNSON
ATTORNEY REG. NO. 50799
1100 PILLSBURY CENTER
200 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402-9075
(612) 341-2181

*Attorneys for Appellants*

HELLMUTH & JOHNSON, P.A.
DAVID G. HELLMUTH
ATTORNEY REG. NO. 229131
RANDALL H. STEINMEYER
ATTORNEY REG. NO. 270933
300 CABRIOLE CENTER
9531 WEST 78TH STREET
EDEN PRAIRIE, MN 55344-8006
(612) 941-4005

*Attorneys for Respondent*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

**MINNESOTA STATUTES**



**MINNESOTA COURT CASES**

**FEDERAL COURT CASES**



**OTHER AUTHORITIES**

## STATEMENT OF LEGAL ISSUES

1. **Whether the collection of rents by a vendee for a period of time which exceeds period of the vendee's ownership interest precludes the vendor from asserting a claim against the vendee for a prorata share of the rents where the vendor has cancelled the contract for deed?**

   The trial court properly held that the vendor was entitled to a prorata share of the rents for the period that exceeded the vendee's interest in the property.

2. **Is a vendor entitled to recover statutory penalties pursuant to Minnesota Statutes section 504.20, subdivision 7 where the vendee fails to return the security deposits until after the statutorily prescribed time for returning the deposits has run and where the statute specifically provides for statutory penalties for the failure to do so?**

   The trial court properly held that the vendor was entitled to the statutory penalties prescribed by Minnesota Statutes section 504.20, subdivision. 7.

## STATEMENT OF THE CASE

Appellants Silver Crest Partnership and Andrew C. Grossman were the vendees and Respondent Townridge Apartments was the vendor under a Contract for Deed for real property located in Ramsey County, Minnesota. Situated on the property are four apartment buildings. The property and the apartment buildings situated thereon reverted to Respondent Townridge Apartments following the expiration of the redemption period after the Appellants were served with a sixty (60) day Notice of Cancellation of Contract for Deed on April 8, 1996. The redemption period expired on June 8, 1997 and the cancellation is not in dispute.

Following the cancellation of the Contract for Deed, Appellants Silver Crest Partnership and Andrew C. Grossman remained in possession of security deposits in the amount of $12,195.00 paid by the tenants of the apartments together with the rents received by the Appellants for the rental period of June 1, 1996 through June 30, 1996. Respondent commenced the underlying action in Hennepin County District Court seeking recovery of the prorated June rents from June 8, 1996 through June 30, 1996, together with return of the security deposits and statutory penalties pursuant to Minnesota Statutes section 504.20, subdivision 7.

Cross-motions for Summary Judgment were heard by the Honorable Delila F. Pierce on November 20, 1996. On February 3, 1997, the Honorable Delila F. Pierce issued an Order and Memorandum granting the Respondent's Motion for Summary Judgment awarding $15,563.39 for prorated rents, $11,600.00 for statutory penalties pursuant to Minnesota Statutes section 504.20, subdivision 7, together with costs and disbursements.

## STATEMENT OF FACTS

On or about December 31, 1986, Respondent Townridge Apartments ("Respondent") sold to Silver Crest Partnership, a Minnesota partnership, as purchaser by Contract for Deed (the "Contract for Deed"), the real property located at the following addresses:

2090 West County Road E, New Brighton, Minnesota,

2100 West County Road E, New Brighton, Minnesota,

2130 West County E, New Brighton, Minnesota and

2160 West County Road E, New Brighton, Minnesota,

which is property located in the County of Ramsey ("Property"). (Memorandum at 3). Appellant Andrew C. Grossman ("Grossman") is a 97% partner of Appellant Silver Crest Partnership ("Silver Crest") (collectively referred to as "Appellants"). (Trial Court Memorandum at 3 ("Memorandum")).

The Property is comprised of apartment buildings ("Apartments") located in New Brighton, Minnesota. Id. The Contract for Deed required payment of all real estate taxes by Defendant Silver Crest Partnership. Id. Appellant Silver Crest defaulted on its obligation to pay the required real estate taxes.

On April 8, 1996, the Respondent served Grossman and Silver Crest with a Notice of Cancellation of Contract for Deed. Id. Pursuant to the Notice of Cancellation of Contract for Deed and Minnesota Statutes section 559.21, the Appellants had sixty (60) days in which to redeem their interest in the Property by paying the amounts in default. Id. at 4. Silver Crest failed to redeem its' interest in the Property. Id. Accordingly, pursuant to Minnesota Statutes

section 559.21, fee title and ownership of the Property reverted to Townridge Apartments on June 8, 1996. Id.

Defendant Klienman Realty Co. ("Klienman") was the leasing agent for Appellant Silver Crest until its interest reverted to the Respondent. Id. at 3 Klienman had the authority to and did collect rents from the leasing of the Apartments until June 8, 1996. Id. Following Klienman's collection of June rents and the cancellation of the Contract for Deed, the Respondent demanded that Klienman disburse these June rent proceeds collected on Silver Crest's behalf. (See Memorandum at 6). Respondent sought payment of prorated June rents after June 8, 1996. (See Memorandum at 6). This was the date of cancellation and reversion in fee of the property interest to the Respondent. Silver Crest, Grossman and Klienman all refused to disburse said prorated rent proceeds and continued to remain in wrongful possession of the same.

In addition to the Respondent's claim for reimbursement of rents collected for a prorated portion of June, 1996, the Respondent also commenced this action seeking the recovery of security deposits collected by the Appellants and held by them after the cancellation. After the Appellant's refused to return the security deposits in accordance with Minnesota Statutes section 504.20, the Respondents sought penalties for violation of this statute. The Respondent's rely on Minnesota Statutes section 504.20, subdivision 5 (and the penalty provisions of Subdivision 7 of this section) for their right to seek recovery of security deposits and applicable statutory penalties. The Respondent sought these amounts as the Appellants successor in interest. Prior to the institution of this action, the Appellants were in possession of fifty-eight (58) security deposits totaling Twelve Thousand One Hundred Ninety Five Dollars ($12,195.00). In their brief, the Appellants concede that they did not return the deposits in accordance with the statute.

However, Appellants argue that the Respondent is not a proper party to seek recovery of the deposits and lacks standing to bring a claim for violation of the statute.

On August 22, 1996, Respondent served Silver Crest, Grossman and Klienman with a Summons and Complaint. (See Memorandum at 6). The Complaint alleged that Silver Crest, Grossman and Klienman had received and benefited from rents from tenants of the Property which it no longer had an interest in and therefore the Respondent, as fee owner of the Property, was entitled to a prorated share of these rents. (Appendix at A.3-A.5). In addition, the Complaint demanded that Silver Crest, Grossman and Klienman return the security deposits that they were wrongfully withholding and alleged that the continued retention of the deposits after September 5, 1996 was in bad faith and rendered the Defendants subject to statutory penalties as a matter of law pursuant to Minnesota Statutes section 504.20, subdivision 7. (Appendix at A.6-A.7).

On September 4, 1996, Timothy Dodd, then counsel for Silver Crest, Grossman and Klienman, wrote to Respondent's counsel and advised him that the Property was not owned by Silver Crest, but by a limited partnership and that Grossman was only a limited partner of this entity and further advised that any judgment against this entity would be uncollectable. (Appendix at A.98).

On September 9, 1996, the Respondents' counsel wrote to the Timothy Dodd and advised him that the Respondent had already refunded significant amounts of deposits to tenants who had already vacated the Property since June 1996 and that the Property was not owned by a limited partnership but by Silver Crest Partnership. (Appendix at A.100). Timothy Dodd was once again advised that his clients' continued retention of the security deposits was in bad faith and again requested that the deposits be turned over to the Respondent. Id.

On October 18, 1996, Respondent brought a motion for summary judgment against Silver Crest, Grossman and Klienman for misappropriated prorated rents, security deposits and statutory penalties owed to the Respondent following the cancellation of the Contract for Deed. (See Appendix at A.43-A.120). On October 31, 1996, faced with a motion for summary judgment, Silver Crest, Grossman and Klienman returned the security deposits to the tenants of record in an obvious effort to manufacture a defense for themselves. This return of the deposits was made sixty-eight (68) days after Silver Crest, Grossman and Klienman were served with the Summons and Complaint and after many of the security deposits had been returned by the Respondent and after the statutory penalties had become applicable. (Memorandum at 13). The withholding of the deposits in violation of the statute, continuing to retain said deposits and then returning them after Silver Crest, Grossman and Klienman were notified that the Respondent had already reimbursed many of tenants as a result of the their failure to do so severely prejudiced the Respondent. The Respondent had no ability to deduct property damage charges from vacating tenants' security deposits. These actions by Silver Crest, Grossman and Klienman caused the Respondent to incur substantial and unnecessary costs as a result.

On November 7, 1996, Silver Crest, Grossman and Klienman filed a cross-motion for Summary Judgment alleging that the Respondent was not entitled to any statutory penalties or a proration of rents as a matter of law. On February 3, 1997 the trial court granted Respondent's Motion for Summary Judgment against the Appellants awarding $15,563.39 for prorated rents, awarding statutory penalties of $11,600 pursuant to Minnesota Statutes section 504.20, subdivision 7 together with costs and disbursements. (Order at 2). Judgment was entered in favor of Respondent and against Appellants in the amount of $27,355.09 on March 3, 1997. It is from this judgment that Appellants Grossman and Silver Crest now appeal.

## ARGUMENT

**I. Standard of Review: The trial court's award of summary judgment to the Respondent was proper because there are no issues of material fact and the trial court properly applied the law to the facts in this action.**

Summary judgment is appropriate when no genuine issues of material fact exist and judgment is proper as a matter of law. Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993). On appeal from summary judgment, this court reviews the record to determine "(1) whether there are genuine issues of material fact and (2) whether the trial court erred in applying the law." Oak Park Dev. v. Snyder Bros. of Minn., Inc., 499 N.W.2d 500, 504 (Minn. Ct. App. 1993). The function of the appellate court is not to set aside the trial court's factual findings unless clearly erroneous. Minn. R. Civ. P. 52.01.

Rule 56 of the Minnesota Rules of Civil Procedure provides 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 either party is entitled to summary judgment as a matter of law.

Minn. R. Civ. P. 56.03. Summary judgment is proper if the pleadings or other documents demonstrate that there is no genuine issue as to any material fact. Betlach v. Wayzata Condominium, 281 N.W.2d 328 (Minn. 1979); Karlstad State Bank v. Fritsche, 392 N.W.2d 615 (Minn. Ct. App. 1986); Bauer v. Friendland, 394 N.W.2d 549 (Minn. Ct. App. 1986). Once the moving party has met its burden of demonstrating that no genuine issue of fact exists, the burden of persuasion shifts to the opposing party to present specific facts that demonstrate a genuine issue for trial. Minn. R. Civ. P. 56.05.

In this case, this Court's review is simplified and limited because by bringing a cross motion for summary judgment, the Appellants concede that there are no genuine issues of material fact in this matter. Thus, this Court need only consider whether or not the district court properly applied the law to the facts in this matter. Appellants concede that there are no facts in dispute and that the trial court's statement of facts is complete. (Brief of Appellants at 6 ("Brief")). Therefore, this Court need only determine whether the trial court erred in its application of the law.

## II. The Respondent is entitled to recover a prorated portion of the June 1996 rents from the Appellants for the period of time which exceeds the appellants' ownership interest in the property.

Appellants hope to persuade this Court to swim against the tide of well established precedent and reverse the trial court's ruling which recognizes that the Respondent [vendor] is entitled to prorated rents for the period which exceeds the Appellants' [vendees] ownership interest in the Property. Appellants' argument is fraught with misconstrued legal principles and mischaracterizations of the cases cited in support thereof.

### A. By completing its' cancellation of the parties' Contract for Deed, the Respondent did not foreclose its right to recover rents for the period which exceeded the Appellants' ownership interest in the property.

Respondent has only asserted a claim for the rents that the Appellants received for the tenancy period which exceeded the Appellants' ownership interest in the Property. Appellants attempt to dismiss this claim by citing cases which refer to ***pre-cancellation*** benefits which hold that a vendor has no claim for rents which a vendee may have retained prior to the cancellation of the vendee's contract for deed. This reliance is entirely misplaced as the Respondent concedes that it is not entitled to the ***pre-cancellation*** benefits. Rather, the disputed benefits involve only ***post-cancellation*** benefits.

A contract for deed is a financing arrangement which affords a buyer to purchase property by borrowing the money from the seller. It is essentially a financing arrangement for a real estate sale in which the vendee has all the incidents of ownership except legal title. In re: Adolphsen, 38 Bankr. 776, 778 (Bankr. D. Minn. 1983). The seller or vendee has equitable title and the buyer or vendor retains legal title as security for the purchase price. Nolan v. Greeley, 185 N.W. 647, 648 (Minn. 1921). The vendor in a contract for deed retains a vendor's lien against the property for the amount of the unpaid purchase price. In re: Butler, 552 N.W.2d 226 (Minn. 1996). This lien is evidenced by the contract for deed which affords the vendor, upon the vendee's defaulting under the terms of the contract for deed, with the ability to cancel the contract pursuant to Minnesota Statutes section 559.21. A statutory cancellation of a contract for deed results in the vendee's forfeiture of all payments made and the restoration of full legal and equitable title in the property to the vendor. Once the statutory notice has been served and the redemption period expires, all rights between the vendor and the vendee relating to the contract are terminated. West v. Walker, 231 N.W. 826, 827 (Minn. 1930). Here, the notice of cancellation was served on April 8, 1996 and all rights between the parties terminated with respect to the Contract for Deed when the redemption period of sixty (60) days expired on June 8, 1996.

When a vendee under a contract for deed defaults, the vendor has its option of remedies. The vendor can sue on the contract for specific performance. See Wayzata Enterprises, Inc. v. Herman, 128 N.W.2d 156, 158 (Minn. 1964). Alternatively, the vendor can cancel the contract (as the Respondent has done here) either by suing for a judicial termination or by giving statutory notice of termination under Minnesota Statutes section 559.21. Miller v. Snedeker, 101 N.W.2d 213, 225 (Minn. 1960). Where the vendor chooses to cancel the contract, the vendor cannot

recover payments due under the contract. Wayzata, 128 N.W.2d at 158. The vendee forfeits any payments already made under the contract for deed. Andresen v. Simon, 213 N.W. 563, 564-65 (Minn. 1927). This election of remedies only relates to the benefits the vendee may have retained during the life of the contract for deed and up to the end of the redemption period. Any rights arising after the cancellation, including rights of ownership, are considered post cancellation benefits. Appellants' reference to cases dealing with pre-cancellation benefits are therefore inapplicable.

Appellants place the weight of their argument on Covington v. Pritchett, 428 N.W.2d 121 (Minn. Ct. App. 1988), for the proposition that a vendor may not recover rent from a vendee where the vendor has elected to cancel the parties' contract for deed. Covington does not hold that a vendor is not entitled to recover rents for the period after which the vendee's interest has been canceled. It appears that Appellants are attempting to create new law by cutting and pasting the Covington decision until it reads favorable to their position.

In Covington v. Pritchett, the vendor sought to recover from the vendee the reasonable rent for the time the vendee resided at the property until the vendee's interest in the property was canceled. Id. at 125. The procedural history of Covington evidences Covington's true holding and it is from there that Covington can be distinguished from the case at bar. Id. at 122. The vendor in Covington served a notice of cancellation on the vendee in March of 1985. Id. In April of 1985 the vendee sought and obtained a temporary injunction barring the vendor from canceling the contract. Id. The court in its ruling granting the temporary injunction held that the notice of cancellation was invalid. Id. In July of 1985, the vendor served the vendee with a second notice of cancellation and the trial court upheld the previous injunction and directed the parties to reach a settlement. Id. In September of 1985, the vendor motioned to lift the temporary

injunction which was denied. Id. In May of 1987, the vendee moved off the property and quit claimed the property to the vendor. Id. In June of 1987, the trial court lifted the 1985 injunction and canceled the contract. Id. The vendor then brought an action seeking to recover the reasonable rent for the time the vendees resided in the property ***prior*** to the cancellation of the Contract for Deed. Id. at 125. Unlike the Appellants, the vendees in Covington did not rent out or reap any benefits from the property ***after*** the cancellation of the contract for deed. The court held that the vendor could not recover the rent from the vendee for the period ***prior*** to the contract for deed cancellation. Id.

The purpose of this rule is to prevent the vendor from receiving a "double recovery." Wayzata Enters. v. Herman, 128 N.W.2d 156, 158 (Minn. 1964). Generally, when the courts discuss the principle of a "double recovery" in contract for deed cancellation cases, they are referring to the vendors' prospect of receiving both the payments due and also recovering the property which secures the payment obligations. For example, a vendor could not cancel its contract for deed with a vendee and then subsequently bring an action for the unpaid balance on the contract. Respondent concedes that these remedies are mutually exclusive. In contrast to the facts in the Covington decision, the Respondent does not seek recovery of rents or payments due during the term of the parties' contract. The Respondent [vendor] concedes that it could not now bring an action for the unpaid balance of the contract, the unpaid taxes the Appellants [vendees] failed to pay or for the rents received for the period which predated the cancellation. The recovery of these amounts combined with the cancellation of the parties' contract would constitute a "double recovery."

This case is clearly distinguishable from Covington because the Respondent does not seek a "double recovery" in this action. In this action, the Respondent makes a claim only for

rents received and wrongfully retained by the vendees concerning ***it's own period of ownership after*** the cancellation. The Respondent's position is that the Appellants should not be allowed to retain rents relating only to the Respondent period of ownership interest in the property. The only "double recovery" here is to the Appellants who collected rents from the tenants of the Property for a period in which they had not even a scintilla of ownership interest.

The rents sought from the Appellants here are not rents for the period which predate the cancellation of the parties' Contract for Deed, but the rents received for the period ***after*** the Appellants' interest in the property had expired. Defendant Klienman was the leasing agent for the Appellants until their interest reverted to the Respondent on June 8, 1996. Defendant Klienman collected rents from the leasing of the Apartments until June 8, 1996. These rents collected in June were for the tenancy period of June 1, 1996 through June 30, 1996. The Respondent seeks only payment of prorated June rents after June 8, 1996. The rents paid to the Appellants were for a period which exceeded the Appellants' ownership interest in the property and not, as in Covington, for the period during which the vendee maintained an ownership interest.

No monies are sought for the tenancy period that predates the Contract for Deed cancellation. To better illustrate this point, consider the scenario where the vendee collects prepaid rents from tenants for an entire year and half way through the tenancy the vendee loses its interest in the property. The vendee then has received six months of rent for a period in which the vendee does not even have an ownership interest in the property. Obviously, the vendee would be unjustly enriched under these circumstances. In this example, the unjust enrichment is six months worth of rent while in the case at bar there are only twenty-two (22) days worth of rent sought. The amount of enrichment is more substantial in the example but the principle is the

same. The Appellants claim that since they did not collect any rents "after yielding possession [of the property they] are in no different position than the purchasers in Covington." (Brief of Appellants at 14). Unlike the vendees in Covington, the Appellants here have received, retained and benefited from rent proceeds paid by the tenants of the Property for a period in which the Appellants had no ownership interest. This court should not sanction the absurd result described in the above example by reversing the lower court decision in this case.

### B. Appellants' reliance upon mortgage foreclosure case law only bolsters Respondents claim for prorated rents.

Statutory proceedings for cancellation of contract for deeds in default are in the nature of a statutory foreclosure, akin to a foreclosure under the power of sale in a mortgage. Dale v. Pushor, 75 N.W.2d 595, 596 (Minn. 1956). The Minnesota courts recognize that under a sale of land by contract for deed, the relationship of a vendor and vendee is analogous to that of a mortgagee and mortgagor. Nichols v. L&O, Inc., 196 N.W.2d 465 (Minn. 1972). Where an owner of property grants a mortgage for the purchase of the property a mortgagor only retains the right to possess the property until the end of the redemption period. Broszko v. Principle Mutual Life Insurance Co., 533 N.W.2d 656 (Minn. Ct. App. 1995). Similarly, in a purchase financed by a contract for deed a vendee only retains the right to possess the property until the end of the redemption period. See Pushor, 75 N.W.2d at 596. A vendee acting as a lessor can only convey the interest in the property that the vendee holds. See Schrunk v. Andres, 22 N.W.2d 548, 551 (Minn. 1946) (Cancellation of lessor's contract for deed automatically terminated lessee's interest in the property since a lessor cannot create any greater interest in his lessee than he himself possess). In the absence of a reservation to the contrary, rents follow title to the land. In re Owsleys' Estate, 142 N.W. 129 (Minn. 1913).

Appellants attempt to distinguish their case from this long line of established case law on the basis that "if" this were a case involving a mortgage, the mortgagee would not have a right to apply rents collected during the redemption period to the mortgage debt. Again, Appellants' argument misconstrues the law and facts. The Respondent does not seek to apply the post cancellation rents at issue to the underlying debt. Appellants cite Grady v. First State Security Co., 229 N.W. 874 (Minn. 1930), in support of their contention. First, Grady involved the issue of whether a mortgage creates a lien on rents and profits derived from a property for the benefit of the mortgagee. Id. The court there held that the mortgagor is entitled to the rents and profits derived from the property only until the mortgage has been foreclosed and the period for redemption has expired. Id. Grady therefore offers no support to Appellants' claim. Just like the mortgagee in Grady, the vendor in this case has no claim on the rents or other benefits derived from the property prior to the time the redemption period expired. Rather, the only rights the vendor is asserting and is entitled to under existing law are those benefits which relate to the post cancellation period.

The Appellants apparently fail to recognize that the Respondent is not attempting to apply the rents towards any monies originally owed on the Contract for Deed. The parties concede that the contract was cancelled. The fact that the rents were "collected during the redemption period" is insignificant and does not bolster Appellants' argument. If Appellants had leased the Property to the tenants for a period of 10 years beginning June 7, 1996 and also collected all 10 years rent in advance on that very day, should they be entitled to keep all such rents just because "they were collected during the redemption period?" Of course not. By reversing the lower court's decision this court would essentially be espousing this absurd proposition. The law Appellants rely on deals with circumstances where the mortgagor collects

rents during the redemption period and such rental period ends on or ***prior*** to the end of the redemption period. In the present case, Appellant's redemption period ended on June 7, 1996. As of June 8, 1996, Appellants held no interest in the property. Thus, as a matter of law, Appellants could convey nothing more than the right to inhabit the Property until June 7, 1996. The Appellants collected and received $23,678.34 from the Property tenants for the rental period of June 1, 1996 through June 30, 1996. The Respondent, having fee title and ownership, is entitled to the recovery of June rents prorated from June 8, 1996 through June 30, 1996.

### C. Respondent's decision not to evict the tenants following the cancellation of Contract for Deed does not preclude it from asserting a claim against Appellants.

After being named as Defendants in the underlying action and being served with a motion for summary judgment, Appellants served and filed their own summary judgment motion. The Appellants' motion was summarily dismissed. Appellants second response was to bring this appeal which cited inapplicable law and misconstrued the holding in long established precedent. Seeking a third bite at the apple after having choked on their first two attempts, Appellants, in their last attempt to hold on to the prorated rents, claim that the Respondent has no standing to assert a claim for these rents.

Litigants are bound on appeal by the theory or theories upon which the case was tried. Johnson v. Jensen, 446 N.W.2d 664, 665 (Minn. 1989). It is a well established and fundamental tenet of appellate jurisdiction that assignments of error which have not been presented to the trial court for consideration will not be reviewed on appeal. Gruenhagen v. Larson, 246 N.W.2d 565, 568 (Minn. 1976). The plethora of Minnesota case law upholding this tenet are cited in 1B Dunnell, Dig. (3 ed.) Section 384(2). Here, the issue of whether the Respondent has standing to assert a claim for the prorated rents was neither pled nor presented at the trial court level.

Therefore, the Appellants are not entitled to raise this issue on appeal and this Court need not reach the merits of the Appellants' standing argument as it relates to the prorated rents.

**III. Respondent is entitled to recover statutory penalties pursuant to Minnesota Statutes Section 504.20, subdivision 7 for the Appellants' failure to return the security deposits within the time prescribed by the statute.**

Appellants admitted in their Answer that they no longer have any claim of title to the Property. (Appendix at A.10). The Appellants do not dispute that fee title and ownership reverted to the Respondent on June 8, 1996. (Brief at 6-7). Thus, there is no question of fact as to whether the Respondent has fee title and ownership of the Property or when this interest reverted to the Respondent. Further, there is no question of fact as to whether Appellants failed to return deposits collected while it was the landlord of the Property.

Minnesota Statutes section 504.20, subdivision 5, provides, in relevant part:

> Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within sixty days of termination of the interest or when the successor in interest is required to return or otherwise account for the deposit to the tenants, which ever occurs first, do one of the following acts, either of which shall relieve the landlord or agent of further liability with respect to such deposits:
>
> a. Transfer such deposits, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, ***to the landlord's successor in interest*** and thereafter notify the tenant of such transfer and of the transferee's name and address; or
>
> b. Return such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant. (emphasis added).

Minn. Stat. Ann. 504.20. subd. 5 (West 1995). Appellants failed to return the deposits until: (1) after Appellants had exceeded the statutory limit for returning the deposits by fifty-four (54) days; (2) after Appellants' interest in the Property had reverted to the Respondent more than one hundred fifty-five (145)

days prior thereto with knowledge that some of the deposits had already been returned by the Respondent; and (3) after Appellants were served with lawsuit and a summary judgment motion and the Respondent had incurred costs incurred therewith. (Memorandum at 14). Appellants do not allege that they transferred the security deposits to the Respondent as its successor in interest or to the tenants within the time prescribed by statute. Rather, Appellants challenge the trial court's holding that the Respondent is not entitled to statutory penalties under Minnesota Statutes section 504.20, subdivision 7 on the basis that the Respondent lacks standing to pursue a claim thereunder.

Standing is a requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court. Sierra Club v. Morton, 405 U.S. 727 (1972). The standing is acquired in two ways: either the Plaintiff has suffered some "injury in fact" or the Plaintiff is the beneficiary of some legislative enactment granting standing. Snyder's Drug Stores, Inc. v. Minnesota State Bd. of Pharm., 221 N.W.2d 162, 165 (Minn. 1974). The goal of the standing requirement is to insure that issues before the courts will be vigorously and adequately presented. Channel 10, Inc. v. Independent Sch. Dist. No. 709, 215 N.W.2d 814, 821 (Minn. 1974). Since Minnesota Statutes section 504.20, subdivision 5 clearly states that the return of the security deposits shall be made to the tenants or the successor in interest the legislature has, without question, created a right in a successor in interest as well as the tenant to receive the security deposits. Obviously, the punitive damages provided by Minnesota Statutes section 504.20, subdivision 7 exist for the purpose of punishing landlords who fail to comply with the statute and to deter other landlords from such violations. The purpose of this statute is consistent with its effect and impact in this case.

Appellants also argue that the statutory construction of Minnesota Statutes section 504.20 should bar the Respondent from pursuing its claim under this Statute. (Brief at 18). Appellants' argument is unpersuasive. There is no room for judicial construction where the statute speaks for itself. Comm'r of Revenue v. Richardson, 302 N.W.2d 23, 26 (Minn. 1981). Furthermore, "when the words of a law and their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Id. In support of their statutory construction argument, the Appellants argue that the Respondent will receive a "windfall" if punitive damages are granted to the Respondent. This proposition is ludicrous given that the Respondent returned significant amounts of deposits to tenants and has incurred significant legal fees in pursuing this matter. The Appellants should not be allowed to avoid statutory penalties resulting from their direct violation of the applicable statute. To allow the Appellants to avoid the statutory penalties, would undermine the purpose and deterrent effect of the statute.

Appellants also argue that if the tenants decided to sue on the very same facts as the Respondent sued upon, the Appellants would have to pay twice. This argument is without merit. When the tenants began vacating the property following the cancellation of the Contract for Deed at the end of the redemption period, and Respondent, out of its own pockets, began refunding the tenants' security deposits since the Appellants had failed to do so. All tenants who have vacated the property and had any security deposits due and owing have received those amounts. Therefore, where the Appellants failed, the Respondent has stepped in so that no tenants could bring an action since they had been unharmed.

The plain language of the statute is clear on its face and specifically identifies the successor in interest [Respondent] as an entity that is entitled to receive the security deposits.

See Minn. Stat. Ann. § 504.20, subd. 7 (West 1995). This statute clearly creates a right or a cause of action in the successor in interest to receive the deposit. Minnesota Statutes section 504.20, subdivision 7 provides:

> The bad faith retention by a landlord of a deposit, the interest thereon, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200.00 for each deposit in addition to the damages provided in subdivision 4. ***If the landlord has failed to comply with the provisions of subdivision 3 or 5, retention of a deposit shall be presumed in bad faith unless the landlord returns the deposit within two weeks after the commencement of any action for the recovery of the deposit.***
>
> (emphasis added.)

Minn. Stat. Ann. § 504.20, subd. 7 (West 1995). Since the Appellants' interest in the Property reverted to the Respondent on June 8, 1996, and the Appellants did not return the deposits within sixty (60) days from the termination of that interest, the Appellants became subject to punitive damages unless they returned the deposits within two weeks after the commencement of this suit. See Minn. Stat. Ann. § 504.20, subd. 7 (West 1995). The Appellants were served with a Summons and Complaint on August 22, 1996. Hence, pursuant to Minnesota Statutes section 504.20, subdivision 7, the continued retention of the deposits after September 5, 1996 is presumed to be in bad faith and the Respondent is entitled to statutory penalties as a matter of law. Appellants do not challenge or attempt to rebut the trial court's finding of bad faith. The following table illustrates the application of Minnesota Statutes section 504.20 to the facts in this case:

| | **Days elapsed after presumption of bad faith** |
|---|---|
| **4/8/96** | Appellants are served with notice of cancellation. |
| **6/8/96** | Property reverted to Respondent. |
| **6/14/96** | Respondent's counsel sends Appellants demand letter for rents and security deposits. |
| **8/8/96** | Statutory sixty days runs. |

| | |
|---|---|
| 8/14/96 | Respondent's counsel advises appellants counsel that Appellant is insolvent. |
| 8/22/96 | Appellants are served with the summons and the complaint. |
| 8/26/96 | Appellants counsel advises Respondents' counsel that they would only pay the security deposits if Respondent waives the claim for rents. |
| 9/5/96 | Respondent's counsel receives letter from Appellants' counsel claiming that his client has no assets and that any judgment would be uncollectable. As of this date, the failure to return security deposits is presumed to be in bad faith. |
| 9/9/96 | Respondent's counsel advised Appellants' counsel that security deposits had already been returned to many of the tenants of the Property. 4 Days |
| 9/25/96 | Appellants' counsel sends letter to Respondent conditioning return of deposits on settlement of lawsuit. 20 Days |
| 10/18/96 | Respondent brings motion for summary judgment against Appellants. 33 Days |
| 10/31/96 | Appellants return security deposits. 56 Days |

**Appellants subject to statutory penalties.**

Appellants collected and wrongfully withheld fifty-eight (58) deposits totaling $12,195.00 from the tenants of the Property. Pursuant to Minnesota Statutes section 504.20, the Respondent was entitled to collect from the Appellants the amount of $12,195.00 in security deposits withheld together with statutory penalties of $11,600.00 for the bad faith retention of the fifty-eight (58) security deposits. [1] Since the deposits were returned only in response to the Respondent's motion for summary judgment, the Respondent asks that this Court affirm the lower court's award of statutory penalties.

## CONCLUSION

It is clear that Respondent Townridge Apartments is entitled to the prorated rents for the period that exceeded the Appellants' ownership interest in the Property and to statutory penalties pursuant to Minnesota Statutes section 504.20, subdivision. 7. Appellants' Brief is devoid of any

[1] $200 x 58 deposits = 11,600.00.

precedent, fact or any argument for the reversal of existing law that would render the trial court's ruling in error. Cutting and pasting precedent is no substitute for valid legal argument. Therefore, the trial court's Order granting the Respondents' motion for summary judgment should be affirmed.

HELLMUTH & JOHNSON, P.A.

Dated: August 4, 1997.

By: _____

David G. Hellmuth, ID #229131
Randall H. Steinmeyer, ID #270933
Attorneys for Respondent
300 Cabriole Center
9531 West 78th Street
Eden Prairie, MN 55344
Telephone: (612) 941-4005

**Case No. C6-97-1002**

State of Minnesota

# In Court of Appeals

**Townridge Apartments,**

Respondent,

vs.

**Silver Crest Partnership, a Minnesota partnership, and Andrew C. Grossman,**

Appellants,

*and* **Klienman Realty Co., a Minnesota corporation,**

Defendant.

## APPELLANTS' REPLY BRIEF

MEYER & NJUS, P.A.

Daniel B. Johnson (#50799)
1100 Pillsbury Center
200 South Sixth Street
Minneapolis, Minnesota 55402-9075
(612) 341-2181

*Attorneys for Appellants*

HELLMUTH & JOHNSON, P.A.

David G. Hellmuth (#229131)
300 Cabriole Center
9531 West 78th Street
Eden Prairie, Minnesota 55344-8006
(612) 941-4005

*Attorneys for Respondent*

**1. Respondent Is Not Entitled to Judgment for the Prorated Rents as a Matter of Law Because Any Unjust Enrichment Claim Belongs to the Tenants, Not Respondent.**

Respondent argues that Appellants had no interest in the property after cancellation of the contract for deed and therefore "could convey nothing more than the right to inhabit the property until June 7, 1996." (Respondent's Brief, p. 15). Appellants do not disagree, just as Appellants do not disagree with the trial court's holding that the cancellation automatically terminated the leases of the tenants. (Appellants' Brief and Appendix, p. 16). Yet that fact, together with the fact that Appellant collected rents for the entire month of June 1996, does not logically compel the conclusion that Respondent is entitled to maintain this action for unjust enrichment.

Respondent suggests a hypothetical example in which a vendee collected 10 years of rent in advance shortly before cancellation. Respondent argues persuasively that the law should not allow the vendee to keep that much advance rent. Respondent begs the question, however, when Respondent concludes ipso facto that the vendor (who has yet to provide 10 years worth of leasehold) may recover it. It is the tenants who have paid for something they have not received, not the vendor. It is the tenants who are entitled to a refund of the money, not the vendor.

The main conceptual difficulty with allowing the vendor to maintain such an action is that if the leases are automatically terminated by the cancellation, then the vendor cannot acquire any rights or status under the old leases. Respondent does not stand in the shoes of Appellants under the old leases. Respondent may evict the tenants, or may enter into new leases with the tenants on an ongoing basis, but neither Respondent nor the tenants can wish the old leases back into existence. This is important because Respondent seems to believe that its status is analagous to that of a successor trustee seeking to remedy misappropriations of funds by a predecessor trustee.

This case is very different from that situation. This case is analagous to two separate and distinct trusts which may have the same beneficiaries and the same provisions, but which never co-existed in time and which had different trustees. The trustee of one trust does not have (and probably would not want) the right or the obligation to oversee the actions of the trustee of the other trust. In the same way, Respondent as landlord under the current lease does not have the right or the obligation to ensure the performance of Appellants' obligations as landlord under the prior lease.

Other conceptual problems with allowing a vendor such as Respondent to assert an unjust enrichment claim in these circumstances are apparent by altering the facts of Respondents' hypothetical. Suppose, for example, that the vendee in the hypothetical had forfeited a huge equity interest. Could the vendor maintain an unjust enrichment action when the vendor has actually profited by the cancellation? Or suppose that, in a desperate attempt to save its unusually large equity in the property, the vendee had used the advance rents to pay principal payments to the vendor. Could the vendor maintain an unjust enrichment action against the vendee when the vendor actually has possession of the funds?

The controversy is not over whether Appellants should be permitted to keep the prorated rents. The controversy is over whether Appellants are accountable to Respondent for the prorated rents that belong to the tenants. Respondent's status as vendor in possession after a cancellation does not entitle Respondent to such a recovery. Therefore, under the undisputed facts of this case, Respondent is not entitled to judgment as a matter of law.

**2. The Trial Court's Interpretation of Minn. Stat. Section 504.20 Could Lead to the Absurd Result of Being Exposed to Double Punitive Damages Regardless of the Lack of Harm to Any Person.**

Respondent argues that Appellant is not in any danger of paying punitive damages twice under Minn. Stat. Section 504.20 if the tenants were to seek punitive damages because the tenants were "unharmed". (Respondent's Brief, p. 18). Yet the fact that Respondent was unharmed did not deter Respondent from obtaining $11,600 in punitive damages in the trial court. The trial court did not award punitive damages because of any harm suffered by Respondent. The trial court awarded punitive damages because Appellants put Respondent in an uncomfortable position, namely, that Respondent "would be liable for the same penalties" if Respondent had failed to return a tenant's security deposit even though Respondent never had the tenant's security deposit. (Appellants' Appendix, p. A. 136). If the trial court's interpretation of the statute, that harm is irrelevant and technicalities are all, is sustained, then landlords may well have to pay twice under the statute.

## CONCLUSION

The decision of the trial court should be reversed, and judgment should be entered in Appellants' favor.

Respectfully submitted,

MEYER & NJUS, P.A.

Dated: 8/18/97

By _____

Daniel B. Johnson
Attorneys for Appellant
1100 Pillsbury Tower
200 South Sixth Street
Minneapolis, Minnesota 55402

Telephone: (612) 341-2181
Attorney Registration No. 50799

## ACKNOWLEDGMENT AS TO MINN. STAT. § 549.21

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorneys and witness fees may be awarded to the opposing party or parties pursuant to M.S.A. 549.21, Subd. 2, if the party or attorney against whom the costs, disbursements, reasonable attorney and witness fees are charged acted in bad faith; asserted a claim in defense that is frivolous and that is costly to the other party; asserted an unfounded position solely to delay the ordinary course of the proceeding or to harass; or committed a fraud upon the Court.

Dated: 8/18/97

By _____
Daniel B. Johnson
Attorneys for Appellant

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

---

Townridge Apartments,
a Minnesota partnership

Plaintiff,

v.

**ORDER AND MEMORANDUM**
FILE NO. CT 96-14361

Silver Crest Partnership,
a Minnesota partnership and
Andrew C. Grossman and
Klienman Realty Co.,
a Minnesota partnership,

Defendants.

---

The above-entitled matter came on for hearing before the Honorable Delila F. Pierce, one of the judges of the above-named court, on the 20th day of November 1996, on parties' cross-motions for summary judgement.

David G. Hellmuth, Esq. appeared for and on behalf of Plaintiff; Timothy H. Dodd, Esq. appeared for and on behalf of Defendants.

Now, therefore, based on the files, records and proceedings, and the arguments of counsel:

**IT IS HEREBY ORDERED:**

1. Plaintiff's motion for summary judgment is granted as follows.

> a.) Plaintiff Townridge Apartments is entitled to Judgment against Defendants Silver Crest Partnership and Andrew C. Grossman in the amount of $15,563.39 for rents, together with its costs and disbursements herein.

b.) Plaintiff Townridge Apartments is entitled to judgement for punitive damages against Defendants Silver Crest Partnership and Andrew C. Grossman pursuant to Minn. Stat. §504.20, Subdivision 7, in the amount of $11,600.

2. Defendants' motion for summary judgment is denied.

3. All other motions are hereby denied.

4. The attached Memorandum is incorporated into and made a part of this Order.

5. Since this Court's decision decides this case, there is no just reason for delay under Minn. R. Civ. P. 54.02.

**LET JUDGEMENT BE ENTERED ACCORDINGLY.**

BY THE COURT:

Dated: February 3, 1997.

Delila F. Pierce
Judge of District Court

**MEMORANDUM**

This matter came before this Court on the parties cross-motions for summary judgement.

**I. FACTS**

Townridge Apartments ("Plaintiff"), is a Minnesota partnership and owner of the Townridge Apartments; Helena Bigos is a partner of Townridge Apartments. Silver Crest Partnership ("Defendant Silver Crest") is a Minnesota partnership of which Andrew C. Grossman ("Defendant Grossman") as a partner. Klienman Realty Co. ("Defendant Klienman") was the leasing agent for Silver Crest Partnership.

On or about December 31, 1986, Plaintiff Townridge Apartments, (vendor), and Silver Crest Partnership, a Minnesota partnership (vendee), entered into a contract for deed for the sale and purchase of the real property (Property) located in Ramsey County at the following addresses:

2090 West County Road E, New Brighton, Minnesota;

2100 West County Road E, New Brighton, Minnesota;

2130 West County Road E, New Brighton, Minnesota;

2160 West County Road E, New Brighton, Minnesota.

This property is comprised of apartment buildings.

The Contract for Deed states that purchaser shall pay all real estate taxes payable in the year 1987 and in all subsequent years. Defendant Silver Crest defaulted on this obligation and a Notice of Cancellation of Contract of Deed was served on Silver Crest Partnership on April 8, 1996. Silver Crest did not redeem

its interest in the property within the sixty (60) days provided by Minn. Stat. §559.21 Subd. 2(a) (Supp. 1997) and fee title and ownership of the Property reverted to Townridge Apartments on June 8, 1996. Neither party disputes the terms and conditions of the Contract for Deed nor the service and completion of the cancellation pursuant to Minn. Stat. §559.21.

Defendants claim that Defendants other than Silver Crest are not proper parties Defendant because the Property was owned by "Timbercrest Limited Partnership" at the time the Contract for Deed cancellation proceeding was commenced. They have submitted papers and affidavits showing the formation of Timbercrest Limited Partnership. The Limited Partnership Agreement shows Andrew C. Grossman as a 96% limited partner and Mitchell Rotenberg as a 3% limited partner in the entity.

Plaintiff claims it had no notice of this transaction and submits the Certificate of Title which contains all memorials dating back to August 7, 1975, including all recorded conveyances or transfers of the Property. The transfers of title to the property are as follows:

| | | |
|---|---|---|
| Doc. No. 836176 | May 12, 1987 | Contract for Deed From Townridge Apartments, Vendors, to Silver Crest Partnership, A Minnesota partnership, Vendee |
| Doc. No. 918686 | Feb. 28, 1990 | Assignment of Vendees interest from Silver Crest to A. C. Grossman and M. A. Appleman. |

| | | |
|---|---|---|
| Doc. No. 918687 | Feb. 28, 1990 | Quit Claim Deed of Vendees interest from Silver Crest to A. C. Grossman and M. A. Appleman. |
| Doc. No. 918688 | Feb. 23, 1990 | Assignment of Vendees interest from M. A. Appleman and M. K. Appleman to A. C. Grossman and Michael Rotenberg. |
| Doc. No. 918689 | Feb. 23, 1990 | Quit Claim Deed of Vendees interest from M.A. Appleman and M. K. Appleman to A.C. Grossman and Michael Rotenburg. |
| Doc. No. 1124465 | June 25, 1996 | Notice of cancellation of Contract for Deed Doc. No. 836176. |

Through its agent, Klienman Realty Co., Silver Crest Partnership collected rents for the month of June, 1996, in the amount of $23,678.34. Plaintiff claims that rents beginning with the date of repossession should be disbursed to them on a prorated basis. The prorated rents from June 8, 1996 through June 30, 1996, inclusive, twenty three (23) days is $18,153.39. Defendants do not dispute this would be the proration of rents collected by them and due for the period of June 8 through June 30, 1996. On June 13, 1996, Defendants tendered a check in the amount of $2,590.00 to Plaintiff leaving a balance of $15,563.39 claimed by Plaintiff.

Defendant Silver Crest had also received security deposits from fifty eight (58) tenants in the amount of $12,195.00. Although Defendants do not dispute their responsibility to turn

over these deposits with accrued interest, as provided by Minn. Stat. §504.20 Subd. 5 (Supp. 1997), Defendants had not returned these deposits to either tenants or Plaintiff by August 22, 1996, when Plaintiff commenced this action by service of the Summons and Complaint upon Defendants, nor within two weeks after the commencement of this action pursuant to Minn. Stat. §504.20, Subdivision 7.

Whether these deposits should have been returned to tenants or to Plaintiff is in dispute. Following the commencement of this lawsuit, in a letter dated September 25, 1996, Defendants' attorneys advised Plaintiff that it would begin returning deposits to tenants on October 1, 1996. On September 30, 1996, Plaintiff's attorney responded to this letter by letter stating that Plaintiff had already refunded security deposits to tenants who had vacated the property since June 8, 1996. Plaintiff had previously informed Defendant of this in a letter dated September 9, 1996. In the September 30th letter, Plaintiff's attorney requested a time extension from Defendants' attorney to receive a list of these refunds from Plaintiff.

On October 31, 1996 "Timbercrest Limited Partnership" sent a letter addressed to "Timber Crest Residents" and enclosed a security deposit refund check which included interest earned through October 1996. The letter advised tenants that they must return this second refund to "Timbercrest Limited Partnership" if their security deposit had previously been returned to them by Town Ridge Apartments.

Plaintiff brings this motion for summary judgement claiming Defendants' retention of rents from June 8, 1996 to June 30, 1996 is a misappropriation of funds and an unjust enrichment and that wrongful retention of security deposits is a violation of Minn. Stat. §504.20. Plaintiff also seeks an award of punitive damages provided by Minn. Stat. §504.20, Subd. 7, for bad faith retention of security deposits by Defendants.

In Defendants' cross-motion for summary judgement, Defendants argue that Plaintiff is not entitled to said proration of rents nor is Plaintiff entitled to punitive damages. Defendants also seek a dismissal against all Defendants other than Defendant Silver Crest on the grounds that they are not proper parties Defendant.

## II. DISCUSSION

### 1. Legal Standard

Summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. *Asmus v. Ourada*, 410 N.W.2d 432 (Minn. Ct. App. 1987). Thus, the function of a trial court in passing on a motion for summary judgment is to determine whether there is an issue of fact to be tried. *Louwagie v. Witco Chem. Corp.*, 378 N.W.2d 63 (Minn. Ct. App. 1985). A party moving for summary judgment has the burden of showing that there are no genuine issues as to any material facts. *Carl v. Pennington*, 364

N.W.2d 455 (Minn. Ct. App. 1985). The nonmoving party, on the other hand, has the benefit of the view of the evidence most favorable to him. *Id.* A motion of summary judgment should be denied if reasonable persons might draw different conclusions from the evidence presented. *Id.*

**2. Proper Parties Defendant**

Defendants assert that at the time the Contract for Deed cancellation proceeding was commenced, the Property was owned by Timbercrest Limited Partnership; and, therefore the action should properly have been against it and not the named Defendants.

The Certificate of Title for the Property contains all memorials dating back to August 7, 1975 and includes all recorded conveyances or transfers of the Property. The Title shows that on Feb 23, 1990 vendees, M. A. Appleman and M. K. Appleman quit claimed their interest to A. C. Grossman and Michael Rotenburg. There were no recorded transfers of interest between that date and June 25, 1996 when the Notice of Cancellation of Contract for Deed, Doc. No. 1124465, was recorded.

On the date this lawsuit was the commenced, August 22, 1996, A.C. Grossman and Michael Rotenburg held record title to the Property. As such they are proper parties defendant.

**3. Proration of Rents**

Defendants do not dispute that Klienman Realty Co., an agent of Silver Crest Partnership, collected rents for the month of June, 1996, in the amount of $23,678.34 which it turned over to Defendant Silver Crest. Plaintiff claims that rents from the date of their

repossession, June 8, 1996, through June 30, 1996 should be disbursed to them on a prorated basis.

Defendants argue that pursuant to the doctrine of election of remedies, Plaintiff elected to cancel the Contract for Deed, and, therefore, Plaintiff has foregone any remedy for recovery of prorated June rents. As a basis for this conclusion Defendants cite to *Covington v. Pritchett*, 428 N.W.2d 121 (Minn. Ct. App. 1988), which holds:

> If a contract for deed is canceled either by notice or through judicial action, to prevent a double recovery, the vendor is barred from recovering payments under the contract or recovering other damages for breach of contract.

The present case is distinguishable from *Covington v. Pritchett*. In *Covington*, appellant was seeking recovery of rents for a period of time prior to the cancellation of the contract. Here, Plaintiff is not seeking rent as damages for breach of contract in addition to cancellation of their contract, but rather to enforce their right to rents following repossession of the Property. The doctrine of election of remedies is not applicable to the present case.

Whether rents should be distributed to Plaintiff on a prorated basis can be determined according to the legal principles of foreclosure. In *Dale v. Pusher*, 75 N.W.2d 595 (Minn. 1956), the court cited *McKinley v. State*, 247 N.W. 389, 391 (Minn. 1933), for the legal principle that "[p]roceedings under [Minn. Stat.] § 559.21 for the cancellation of a contract for deed which is in default are in the nature of a statutory foreclosure, akin to a

foreclosure under a power of sale in a mortgage." *Dale* at 598. *Fogerty v. Rosenwald,* 391 N.W.2d 93, 95 (Minn. Ct. App. 1986).

Claims to possession of the real estate and the right to rents and profits pursuant to mortgage foreclosure have been addressed by the court as follows:

> It is settled law in this state, under its lien theory of mortgages, that a mortgagor during the period of redemption from foreclosure retains his right of ownership, including the right to possession and the right to rents and profits . . .

*Cross Companies, Inc. v. Citizens Mortgage Investment Trust*, 232 N.W.2d 114, 119 (Minn. 1975). *Mutual Benefit Life Ins. Co. v. Frantz Klodt & Son, Inc.*, 237 N.W.2d 350 (Minn. 1975). However, once the period of redemption has passed, the right to possession of the property reverts to the vendor or mortgagee along with the right to profits and rents. *See Schrunk v. Andres*, 22 N.W.2d 548, 551 (Minn. 1946) (Cancellation of lessor's contract for deed automatically terminated lessee's interest in the property since a lessor cannot create any greater interest in his lessee than he himself possesses). *See Brozco v. Principal Mutual Life Insurance Co.*, 533 N.W.2d 656, 658 (Minn. Ct. App. 1995). In the absence of a reservation to the contrary, rents follow title to the land. *In re Owsley's Estate*, 122 Minn. 190, 142 N.W. 129 (Minn. 1913).

It is undisputed that Defendant Silver Crest breached the contract for deed and that Notice of Cancellation of Contract of Deed was served on Silver Crest Partnership on April 8, 1996. Silver Crest did not redeem its interest in the property within the sixty (60) days provided by Minn. Stat. §559.21, Subdivision 2(a). Fee title and ownership of the Property reverted to Townridge

Apartments on June 8, 1996, pursuant to that statute.

Defendants' redemption period ended on June 7, 1996. Thus, under *Cross Companies,* 232 N.W.2d 114 (Minn. 1975), and *Schrunk v. Andres*, 22 N.W.2d 548 (Minn. 1946), Defendants' right to possession, rents and profits ended on June 7, 1996. As a matter of law, Defendant Silver Crest could only convey the right to inhabit the Property until June. 7, 1996. See also Minn. Stat. §504.201, Subd. 2 (Supp. 1997). Plaintiff is entitled to prorated rents from June 8, 1996 through June 30, 1996, inclusive, twenty three (23) days in the amount of $18,153.39. On June 13, 1996, Defendants tendered a check for $2,590.00 to Plaintiff leaving a balance of $15,563.39 to be paid to Plaintiff. Accordingly, Plaintiff's Motion for Summary Judgement on this issue is granted and Defendant's Motion for Summary Judgement on this issue is denied.

**4. Security Deposits**

Plaintiff claims that Defendants failed to return security deposits to the 58 tenants or to Plaintiff, Defendants' successor in interest, within the time prescribed by Minn. Stat. §504.20, Subd. 5 and Subd. 7. Accordingly, Plaintiff asserts that it is entitled to punitive damages of $11,600 under Minn. Stat. §504.20, Subd. 7, as a matter of law. Defendants argue that while Minn. Stat. §504.20, Subd. 7, is intended to protect a tenant from the wrongful retention of a security deposit by a landlord, this protection is not extended to a "Contract for Deed vendor". However, a Contract for Deed vendor is a successor in interest.

Defendants further argue that notwithstanding these issues of law, a fact issue exists as to whether Plaintiff is responsible for the delay.

Minn. Stat. §504.20 provides in pertinent part that:

> Subd. 2. Any deposit of money ... shall be held by the landlord for the tenant who is party to the agreement ... to the last day of the month in which the landlord, in good faith, complies with the requirements of subdivision 3 or to the date upon which judgement is entered in any civil action involving the landlord's liability for the deposit, whichever date is earlier ...
>
> Subd. 3. Every landlord shall: ...
>
> (3) transfer or return a deposit as required by subdivision 5, ...
>
> Subd. 5. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of a receiver or otherwise, **the landlord or the landlord's agent shall, within 60 days of termination of the interest or when the successor in interest is required to return or otherwise account for the deposit to the tenant, whichever occurs first, do one of the following acts**, either of which shall relieve the landlord or agent of further liability with respect to such deposit:
>
> **(a) Transfer such deposit ... to the landlord's successor in interest and thereafter notify the tenant of such transfer and of the transferee's name and address; or**
>
> **(b) Return such deposit ... to the tenant.** (emphasis added)

As discussed above, fee title and ownership of the Property reverted to Townridge Apartments on June 8, 1996, following Defendants' failure to redeem the Property. Accordingly, Defendants' interest in the Property was terminated and Townridge Apartments became the successor in interest on June 8, 1996. In accordance with Minn. Stat. §504.20, Subd. 5, Defendants were required to return or account for the deposit to the tenants or to transfer security deposits to Plaintiff. This was to have been

accomplished at such time as Plaintiff was required to return or otherwise account for the deposit to the tenant, or by August 7, 1996 (60 days), whichever occurred first.

In a letter of September 25, 1996, Defendants' attorney advised Plaintiff that deposits would be returned to tenants beginning October 1, 1996. Plaintiff's attorney responded by letter dated September 30, 1996, informing Defendants that it had already returned security deposits to several tenants who had left the building since June 8, 1996. Plaintiff's attorney requested time to compile a list of these tenants and the amount of money already returned. It is unclear from the record if this list was given to Defendants' attorney prior to Plaintiff's summary judgment motion. Defendants returned security deposits to tenants on or about October 31, 1996.

Defendants now argue that a fact issue exists as to whether Plaintiff's request caused the delay in returning deposits.

Under the Minnesota Rules of Civil Procedure, a grant of summary judgment is proper when:

> The pleadings. depositions. answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no issue as to any material fact and that either party is entitled to judgement as a matter of law.

Minn. R. Civ. P. P. 56.03. A material fact issue is one which will affect the outcome of the case depending on its resolution. *Northwestern Nat'l. Cas. Co. v. Khosha Inc.* 520 N.W.2d 771, 773 (Minn. Ct. App. 1994), *Pischke v. Kellen*, 384 N.W.2d 201, 205 (Minn. Ct. App. 1986) (citing *Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641, 646 (Minn. 1974).

While an issue of fact may exist as to whether Plaintiff's request that Defendants delay returning security deposits caused additional delay, this fact is not a material fact that would affect the outcome of the case depending on its resolution except as to whether or not the maximum amount of punitive damages should be imposed for said deposits. Plaintiff asked Defendants to delay returning deposits to tenants by letter dated September 30, 1996. This was 114 days after Defendants' interest in the Property had terminated. Defendants had already exceeded the statutory limit of 60 days for returning deposits by 54 days. Moreover, Defendants had notice as early as September 9, 1996 that Plaintiff had been required to account for or return security deposits to tenants. Arguably, Defendants were required to return or transfer deposits at that time. Defendants ultimately returned the deposits to tenants on or about October 31, 1996, 145 days after their interest was terminated, with the knowledge that some of the deposits had already been returned by Plaintiff. Defendants were in violation of Minn. Stat. § 504.20 without consideration of any delay that may have been occasioned by Plaintiff.

Plaintiff further claims that Defendants should be subjected to punitive damages for the retention of these deposits pursuant to Minn. Stat. §504.20, Subd. 7, which reads as follows:

> The bad faith retention by a landlord of a deposit, the interest thereon, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200 for each deposit in addition to the damages provided in subdivision 4 [providing damages for portion of a deposit wrongfully withheld]. **If the landlord has failed to comply with the provisions of subdivisions 3 or 5, retention of a deposit shall be presumed to be in bad faith unless the**

**landlord returns the deposit within two weeks after the commencement of any action for the recovery of the deposit.** (emphasis added)

Defendants argue that while Minn. Stat. §504.20, Subd. 7, is intended to protect a tenant from the wrongful retention of a security deposit by a landlord, this protection is not extended to a successor in interest.

A statutory construction that would result in absurdity, injustice, or inconvenience is to be avoided if the language used will reasonably bear any other construction. Minn. Stat. §645.17; *Sullivan v. Credit River Tp.*, 217 N.W.2d 502 (Minn. 1974). Minn. Stat. §504.20 Subd. 1 states that " [a]ny deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, ... shall be governed by this section." Subdivision 5 provides for return of deposits to the tenant or the transfer of deposits to the landlord's successor in interest. In doing so, the legislature has created a right in a successor in interest as well as a tenant to receive the deposit. To limit remedy for the abridgement of this right solely to the tenant would be inconsistent with the statute and would lead to unreasonable and absurd results. Defendants' argument that Plaintiff will receive a windfall if punitive damages are granted to Plaintiff is without merit. The punitive damages are to punish landlords who fail to comply with the statute in a timely fashion and to deter other landlords from such violations. It would be an absurd result to allow landlords, who have the ability to limit their liability by complying with the statute, to

avoid the penalties by claiming they need only return the deposits to tenants at any time they decide to do so, even after an action is commenced by the successor in interest who would be liable for the same penalties if they failed to comply with Subdivision 5 or Subdivision 7 of said statute.

Plaintiff commenced this action for the recovery of security deposits by serving upon Defendants a Summons and Complaint on August 22, 1966. Pursuant to Subdivision 7, Defendants' failure to return deposits within the statutory period of two weeks, i.e. no later than September 5, 1996, is presumptively bad faith and Plaintiff is entitled to punitive damages as a matter of law. As discussed above, Plaintiff asked Defendants to delay returning deposits to tenants on September 30, 1996, as Plaintiff had already returned some of these deposits to tenants who had moved as required by Subdivision 5. Notwithstanding any delay this may has caused, Defendants exceeded the statutory period by twenty (20) days. Because Defendants would have been in violation of Subdivision 7 in any case, this is not a material fact which would affect the outcome of the case depending on its resolution. Defendants could have avoided any further delay by following the option provided by Subdivision 5(a) of transferring the deposits to Plaintiff, the landlord's successor in interest, and notifying the tenant of such transfer and of the transferee's name and address. By failing to take this option, or to return these deposits to the tenants prior to Plaintiff being required to return these deposits to tenants who moved from the premises, Defendants have not only

violated this statute's requirements, but have also increased Plaintiff's damages for said returned deposits. The fact that Defendants returned deposits to tenants after the two week period allowed in Subdivision 7 does not relieve them of their liability for punitive damages under said subdivision.

Therefore, as a matter of law, Plaintiff is entitled to punitive damages pursuant to Minn. Stat. §504.20, Subd. 7. Accordingly, Plaintiff's Motion for Summary Judgement on this issue must be granted and Defendants' Motion for Summary Judgement must be denied.

DFP