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William Mitchell Law Review
2006

Minnesota Progressive?
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STILL CRAZY AFTER ALL THESE YEARS: LANDLORDS AND TENANTS AND THE LAW OF TORTS

I. Introduction

Is the state of landlord and tenant law in Minnesota progressive[1] or regressive,[2] liberal[3] or conservative,[4] populist[5] or capitalist[6]? Like most topics in the law, the answer is "it depends." ***428** It depends on whom you ask, their leanings, how they define the terms, and on which topic.

Even a question about whether the law favors landlords or tenants is still unsettled. On one hand, the eviction law clearly favors landlords. An eviction action, also called an unlawful detainer action, seeks possession of real property. Most often the plaintiff is a landlord and the defendant is a tenant, although the parties can be mortgagees and mortgagors, and contract-for-deed vendors and vendees.[7] The eviction process gives a defendant seven days notice of a court hearing, which will determine whether the defendant is allowed to stay or forced to leave.[8] The landlord is not required to notify a tenant before filing an eviction action.[9] Further, the eviction defendant has been unable to raise questions of title or equitable defenses to the plaintiff's title, although the issue now is in flux.[10] Therefore, a defendant who may have title to the property could lose possession of the property to a person without title. The eviction defendant also cannot raise counterclaims or set-offs, which are independent of the tenant's obligation to pay rent.[11] Further, the tenant does not have the right to cure violations of the lease.[12] A court may require a tenant to ***429** pay withheld rent to defend a claim against nonpayment of rent on the grounds that the landlord violated the statutory covenants of habitability,[13] even though in litigation most parties are not required to deposit disputed property. Finally, a tenant who loses an eviction trial can be forced to move within twenty-four hours.[14]

On the other hand, the law clearly favors tenants. An anti-retaliation statute provides that a landlord's notice-to-quit, coming within ninety days of the tenant enforcing her rights, creates a presumption of retaliation.[15] To overcome the presumption, the

landlord must prove a substantial non-retaliatory purpose, arising at or within a short time before service of the notice-to-quit, and wholly unrelated to and unmotivated by the tenant's protected activity.[16] Landlords must comply with statutory covenants of habitability, which require that the premises and all common areas be fit for the use intended by the parties, in reasonable repair, and in compliance with applicable state and local housing maintenance, health, and safety laws.[17] Further, tenants can litigate noncompliance to defend eviction actions as well as to enforce the covenants.[18] A tenant facing a nonpayment-of-rent eviction claim may redeem the tenancy by paying the rent and fees due before the court issues a writ of recovery to the plaintiff.[19] Tenants have statutory protection from privacy violations,[20] evictions for police calls,[21] lockouts,[22] and utility shutoffs.[23] The Minnesota State Legislature has created actions, which tenants can file to enforce their right to habitable housing,[24] to remedy emergency ***430** conditions,[25] and to regain possession of the property following a lockout.[26] Further, eviction defendants may request that the court expunge their eviction files.[27]

Some statutes provide protection to both landlords and tenants. For instance, all leases contain the covenant that landlords and tenants will not allow illegal drugs and certain criminal activity on the premises.[28] However, the covenant is not violated when a person other than the landlord or the tenant allows controlled substances in the premises unless the landlord or the tenant had reason to know of that activity.[29]

The most imbalanced area of landlord and tenant law is a landlord's liability in tort; specifically, the death and injury of tenants resulting from the landlord's failure to maintain the property. This article examines the origins of landlord tort liability in Minnesota, and how the efforts of the Minnesota State Legislature, one court of appeals judge, and two panels of the Minnesota Court of Appeals have not been able to bring the law into the 20th Century, let alone the 21st Century.

II. The Common Law: Tenant Beware, Watch Your Head, and Don't Bother Suing

The rule dating back to the 1800s was that the tenant takes the risk of his safe occupancy, and the landlord is not liable to the tenant or to any tenant invitee for injuries sustained by reason of the property's unsafe conditions.[30] To establish liability for negligence in Minnesota, the plaintiff must prove (1) a duty of care, (2) breach of the duty, (3) an injury, and (4) the breach as the proximate cause of the injury.[31] Generally, the landlord had no duty to the tenant, and thus no liability.[32] There were three ***431** exceptions to the rule: (1) the landlord agreed to repair the property; (2) the landlord committed fraud or concealed the property's condition; or (3) the landlord kept defects in the property secret.[33] The courts rejected the argument that there was an implied warranty by the landlord that the property was "fit for the purposes for which it was rented, or covenant to repair or to keep them so."[34] The rule placed the burden on the tenant to investigate the property's condition and determine its fitness.[35] The rule remained unaltered through the first half of the 20th Century.[36]

In 1960, the Minnesota Supreme Court created a new exception to the rule. In Johnson v. O'Brien, the court held that

> where a landlord has information which would lead a reasonably prudent owner exercising due care to suspect that danger exists on the leased premises at the time the tenant takes possession, and that the tenant exercising due care would not discover it for himself, then he must at least disclose such information to the tenant.[37]

The court followed the majority of jurisdictions at the time in concluding that the landlord did not need to have actual knowledge of defects on the property.[38] Oddly, the landlord would have the obligation to disclose, but not to repair.

III. The Legislature Speaks

In 1971 the Minnesota State Legislature created the landlord's ***432** covenants of habitability[39] which provides as follows:

> Subdivision 1. Requirements. In every lease or license of residential premises, the landlord or licensor covenants:
>
> (1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee; and

(3) to maintain the premises in compliance with the applicable health and safety laws of the state, including the weatherstripping, caulking, storm window, and storm door energy efficiency standards for renter-occupied residences prescribed by section 216C.27, subdivisions 1 and 3, and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Subd. 2. Tenant maintenance. The landlord or licensor may agree with the tenant or licensee that the tenant or licensee is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. No such agreement, however, may waive the provisions of subdivision 1 or relieve the landlord or licensor of the duty to maintain common areas of the premises.

Subd. 3. Liberal construction. This section shall be liberally construed, and the opportunity to inspect the premises before concluding a lease or license shall not defeat the covenants established in this section.

Subd. 4. Covenants are in addition. The covenants ***433** contained in this section are in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease or license.

Subd. 5. Injury to third parties. Nothing in this section shall be construed to alter the liability of the landlord or licensor of residential premises for injury to third parties.

Subd. 6. Application. The provisions of this section apply only to leases or licenses of residential premises concluded or renewed on or after June 15, 1971. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.[40]

The courts first interpreted the covenants of habitability with respect to the covenants' application in eviction cases. In Fritz v. Warthen, tenants facing eviction actions for nonpayment of rent raised as defenses that the landlord failed to comply with the statute.[41] The trial court held that the untenantability of residential premises could not be asserted as a defense to an eviction action--then called an unlawful detainer action--and the tenants appealed.[42] The Minnesota Supreme Court first noted that at common law, a tenant's covenant to pay rent was independent of a landlord's covenant to repair and maintain the premises, and a landlord's breach of the covenants did not relieve a tenant of the obligation to pay rent under the lease.[43] The court concluded that enactment of the covenants, along with the directive to liberally construe them, led it to hold that the

implied covenants of habitability and the covenant for payment of rent were mutually dependent rather than independent.[44] The court then held that an eviction defendant may raise breach of the covenants as a defense to an action for nonpayment of rent, noting that the "legislative objective in enacting the implied covenants of habitability is clearly to assure adequate and tenantable housing within the state."[45]

IV. The Courts Speak Louder

Enactment of the covenants should have changed tort law in the same way that it changed eviction law. The Fritz court held that ***434** eviction defendants now could raise violations of the statutory implied covenants, where before they could not even raise violations of express covenants upon which the parties had agreed. The common law of torts, before enactment of the covenants, contained an exception to the "tenant beware" rule where there was an agreement to repair the property by the landlord.[46] Surely tort law was changed by the existence of a covenant to repair in all leases that would be liberally construed, and could not be modified or waived, or be defeated by the tenant's opportunity to inspect the property before renting it.[47] The only limitation of the covenants to tort law was for injuries to third parties, not to the tenants.[48]

The issue of application of the covenants to tort law first appeared in Meyer v. Parkin.[49] A child of the tenants developed myoclonusopsoclonus encephalopathy, resulting in permanent neurological damage.[50] There was evidence that toxic poisoning from formaldehyde exposure caused the child's condition.[51] An investigation found that the apartment contained formaldehyde.[52] The trial court granted the defendant's motion for summary judgment, holding that Minnesota Statutes section 504.18 did not make the landlords strictly liable.[53] In reviewing both the statute and the Fritz decision, the court of appeals concluded that "[i]t seems clear that the legislature did not intend to alter a landlord's tort liability but only to require a landlord to covenant to keep leased residential premises in reasonable repair, fit for their intended use and maintained in compliance with applicable health and safety laws."[54] The Meyer court implied that since the Fritz court's discussion of remedies did not include actions in tort, the statute did not alter tort law, even though the only issue before the Fritz court was application of the statute in an eviction action.[55] The Meyer court concluded its discussion by holding that the "legislature did not intend to eliminate the element of scienter from the rule that a lessor has a duty to warn a lessee of any concealed defects the ***435** lessor knew or should have known existed."[56]

Two more Minnesota Court of Appeals decisions the next year followed suit, with one cautionary concurring opinion. In 1985, the court held, in Hanson v. Roe, that "negligence per se may only exist when the reasonable person standard of care is supplanted by a statutory standard of care,"[57] and that the enactment of the covenants of habitability does not alter a landlord's tort liability.[58]

One brief shining moment occurred later that year, but not in a majority opinion. In Broughton v. Maes, the heirs of tenants who died in a fire brought a wrongful death action against the landlord.[59] On appeal from summary judgment for the landlord, the court first noted that

> the rule in Minnesota, as to defective conditions on the premises, is that a landlord who has not agreed to repair the leased premises has only a duty to warn a tenant of a defective condition if the landlord knows or should know of the danger and if the tenant, exercising due care, would not discover it.[60]

The court then noted the existence of the covenants of habitability and the holding in Hanson stating that it did not affect the tort standard of care.[61] But the court's opinion misses the obvious question: how could it apply a standard based on the lack of a landlord agreement to repair when the covenants provide that exact agreement by statutory implication? The court concluded that the landlord's "failure to repair the outlet does not fit into any of the exceptions to landlord nonliability recognized in Minnesota. Specifically, there was no breach of a duty to warn because the evidence is uncontroverted that he [landlord] disclosed the malfunctioning outlet to the tenants."[62]

Judge Crippen, concurring specially, argued that he would certify the case for accelerated review by the Minnesota Supreme Court, in part to determine the covenants' legislative purpose.[63] He ***436** noted the Restatement (Second) of Torts:

> A lessor of land is subject to liability for physical harm caused to his lessee and others upon the land with the consent of the lessee or his sublessee by a condition of disrepair existing before or arising after the lessee has

> taken possession if
>
> (a) the lessor, as such, has contracted by a covenant in the lease or otherwise to keep the land in repair, and
>
> (b) the disrepair creates an unreasonable risk to persons upon the land which the performance of the lessor's agreement would have prevented, and
>
> (c) the lessor fails to exercise reasonable care to perform his contract.[64] He concluded:
>
> This case involves tragic injuries, related to a major defect on the premises that could have been readily repaired by the landlord before the disaster occurred. It is very important for this case and for others like it to determine whether it should be decided according to usual negligence standards and independent of historic standards that provide special protection for landlords.[65] Unfortunately, the Minnesota Supreme Court denied review,[66] and the court of appeals continued to decide its cases consistent with its past decisions.[67]

The Broughton court also discussed two other exceptions to the general bar against landlord liability:[68] when the premises are still in the control of the landlord[69] and when the landlord negligently ***437** repairs the premises.[70] It seems odd that the landlord who fails to repair the property, even though state law implies covenants to do so, may escape liability for injuries resulting from inaction, while the landlord who attempts repairs, but does so negligently, risks liability.

V. Rays of Hope Soon to Be Dimmed

In Bills v. Willow Run I Apartments, the Minnesota Court of Appeals held that a violation of the Uniform Building Code (UBC) in leased premises is negligence per se when the violation harms tenants in a way that the building code was intended to prevent.[71] However, on appeal, the Minnesota Supreme Court reversed the lower court and held that an owner is not negligent per se for a violation of the uniform building code unless:

> (1) The . . . owner knew or should have known of the Code violation; (2) the owner failed to take reasonable steps to remedy the violation; (3) the injury suffered was the kind the Code was meant to prevent; and (4) the violation was the proximate cause of the injury.[72]

The court has since ruled that both the theories of negligence and negligence per se are available in UBC cases.[73] The court has not addressed application of this standard to codes other than the UBC, such as local housing codes and other codes covered by the covenants of habitability.[74]

The greatest effort to modernize landlord and tenant tort law occurred in Funchess v. Cecil Newman Corp.[75] The trustee for the heirs of a murdered tenant brought a wrongful death action ***438** against the landlord.[76] The trustee alleged that the landlord negligently failed to repair the intercom and rear security-door lock of the tenant's building, which contributed to the tenant's death.[77] The trustee appealed from summary judgment for the landlord.

The Minnesota Court of Appeals noted that a landlord tenant relationship generally did not give rise to a duty to protect the tenant.[78] But the court found that changes in society, which have given landlords more control over the property, along with the landlord's acts in undertaking maintenance of security measures, resulted in this landlord having a duty to maintain the security system.[79] The court concluded that the landlord's duty also flowed from a city ordinance requiring certain security measures, and from a lease requirement providing for landlord maintenance of common areas.[80] The dissenting opinion

rejected the argument that a special relationship existed between the landlord and tenant.[81]

The Minnesota Supreme Court reversed on procedural and substantive grounds.[82] The court first concluded that the ordinance and lease claims were not properly part of the record and could not be considered.[83] The court next rejected the court of appeals' analysis that changes in society had created a special relationship between the parties.[84] Finally, the court held as an issue of first impression that a landlord's provision of security measures did not give rise to liability for harm from a failure to maintain the measures, concluding that such liability would discourage use of security measures.[85]

VI. Conclusion

Despite enactment of the covenants of habitability, Minnesota tenants have little recourse in tort for injuries sustained from landlord violations of the covenants. Little has changed since the ***439** 1800s. While there are several exceptions to the rule that the landlord has no duty in tort to the tenant, the general rule still exists despite creation of a landlord habitability obligation in statute. The Minnesota State Legislature should amend the covenants of habitability statute to provide that the landlord's covenant creates a duty in tort. Unless the legislature chooses to act again to make clear what should have been clear in 1971, tenants will remain relatively unprotected for a third century.

Footnotes

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1 Defined as "[p]romoting or favoring progress towards better conditions or new policies, ideas, or methods." American Heritage Dictionary of The English Language (4th ed. 2000).

2 Defined as "[t]ending to return or revert." Id .

3 Defined as "[f]avoring proposals for reform, open to new ideas for progress, and tolerant of the ideas and behavior of others." Id .

4 Defined as "tending to oppose change; favoring traditional views and values." Id .

5 Defined as "an advocate of populism." Populism is defined as "a political philosophy supporting the rights and power of the people in their struggle against the privileged elite." Id .

6 Defined as "[a] supporter of capitalism." Capitalism is defined as "an economic system, marked by open competition in a free market, in which the means of production and distribution are privately and corporately owned and development is proportionate to increasing accumulation and reinvestment of profits." Id .

7 Minn. Stat. § 504B.285, subdiv. 1 (2004).

8 Id. §504B.331(a).

9 See id. §504B.285, subdiv. 1(1) (outlining grounds for eviction and failing to mention any notice required by landlord).

10 See Dahlberg v. Young, 231 Minn. 60, 67-68, 42 N.W.2d 570, 576 (1950) (noting that "an unlawful detainer action ... determines

the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties"). See generally Sternaman v. Hall, 411 N.W.2d 18, 19 (Minn. Ct. App. 1987) (stating that "a municipal court has subject-matter jurisdiction to decide possession rights in unlawful detainer actions, but not equitable claims"). But see Real Estate Equity Strategies, L.L.C. v. Jones, 720 N.W.2d 352, 357 (Minn. Ct. App. 2006) (noting purported tenant's assertion of a claim to title to the property under Minnesota Statutes section 504B.121 (2004) does not deprive the district court of subject-matter jurisdiction to hear the eviction proceeding).

11 See Keller v. Henvit, 219 Minn. 580, 585, 18 N.W.2d 544, 547 (1945) (holding that the judgment in an unlawful detainer action determines only the right to the present possession and that such matters, including counterclaims, cannot be litigated in such action).

12 See Minneapolis Cmty. Dev. Agency v. Smallwood, 379 N.W.2d 554, 556 (Minn. Ct. App. 1985) (holding that a "[l]andlord's right to action for unlawful detainer is complete upon tenant's violation of [a] lease condition; subsequent remedial action by the tenant cannot nullify [a] prior lease violation").

13 Fritz v. Warthen, 298 Minn. 54, 61-62, 213 N.W.2d 339, 343 (1973).

14 Minn. Stat. §504B.365, subdiv. 1(a) (2004).

15 Id. §504B.285, subdiv. 2(1)-(2).

16 Id. § 504B.285, subdiv. 2(1)-(2). See also Parkin v. Fitzgerald, 307 Minn. 423, 425-26, 240 N.W.2d 828, 830-31 (1976) (interpreting Minnesota Statutes section 566.03 (1998) (repealed 1999)).

17 Minn. Stat. § 504B.161, subdiv. 1(1)-(3) (2004).

18 See Fritz, 298 Minn. at 56-59, 213 N.W.2d at 340-42 (interpreting Minnesota Statutes section 504.18 (1998) (repealed 1999)).

19 Minn. Stat. §504B.291, subdiv. 1(a) (2004). See also 614 Co. v. D. H. Overmyer Co., 297 Minn. 395, 397, 211 N.W.2d 891, 893-94 (1973) (interpreting Minnesota Statutes section 504.02 (1998) (repealed 1999)).

20 Minn. Stat. §504B.211 (2004).

21 Id. §504B.205.

22 Id. §504B.231.

23 Id. §504B.221.

24 Id. §504B.385 (explaining rent escrow action to remedy violations). See also id. §§504B.395-504B.471 (explaining procedures surrounding a tenant remedies action).

25 Id. §504B.381.

26 Id. §504B.375.

[27] Id. §484.014.

[28] Id. §504B.171, subdiv. 1(1)(i).

[29] Id. subdiv. 1(2).

[30] Gradjelick v. Hance, 646 N.W.2d 225, 231 (Minn. 2002) (citing Johnson v. O'Brien, 258 Minn. 502, 504-06, 105 N.W.2d 244, 246-47 (1960), and Breimhorst v. Beckman, 227 Minn. 409, 417, 35 N.W.2d 719, 726 (1949)).

[31] Id. at 230 (citing Lubbers v. Anderson, 539 N.W.2d 398, 401 (Minn. 1995)).

[32] Id. (citing Johnson v. O'Brien, 258 Minn. 502, 504-06, 105 N.W.2d 244, 246-47 (1960); Breimhorst v. Beckman, 227 Minn. 409, 417, 35 N.W.2d 719, 726 (1949)).

[33] Harpel v. Fall, 63 Minn. 520, 524, 65 N.W. 913, 914 (1896).

[34] Id. at 523-24, 65 N.W. at 914 (considering a plaintiff who was injured in a fall through a second-story porch).

[35] Meyer v. Parkin, 350 N.W.2d 435, 437 (Minn. Ct. App. 1984) ("At common law, in the absence of any covenant or agreement in the lease to repair ... there was no implied warranty that the leased premises were fit for the purposes for which they were rented, or covenant to put them in repair or to keep them so. The rule of caveat emptor required a tenant to investigate the premises in order to determine their adaptability to the purposes for which they had been rented." (citing Harpel, 63 Minn. at 524, 65 N.W. at 914)).

[36] Normandin v. Freidson, 181 Minn. 471, 474, 233 N.W. 14, 15 (1930) (noting that, in the absence of fraud and concealed dangers, the landlord is not liable for tenant's injuries from defective premises unless there is warranty or violation of covenant to repair).

[37] 258 Minn. 502, 506, 105 N.W.2d 244, 247 (1960) (considering serious injury to tenant's guest from collapse of stairway) (citation omitted).

[38] Id.

[39] Minn. Stat. § 504.18 (1972), renumbered as Minn. Stat. § 504B.161 (2004) by 1999 Minn. Laws ch. 199, art. 1, § 14.

[40] Minn. Stat. § 504B.161 (2004).

[41] 298 Minn. 54, 56, 213 N.W.2d 339, 340 (1973).

[42] Id. at 55, 213 N.W.2d at 340.

[43] Id. at 57, 213 N.W.2d at 341.

[44] Id. at 57-58, 213 N.W.2d at 341.

[45] Id. at 59, 213 N.W.2d at 342.

[46] See Harpel v. Fall, 63 Minn. 520, 523-24, 65 N.W. 913, 914 (1896).

[47] Minn. Stat. §504B.161, subdivs. 1-3 (2004).

[48] See id. subdiv. 5.

[49] 350 N.W.2d 435 (Minn. Ct. App. 1984).

[50] Id. at 436.

[51] Id.

[52] Id.

[53] See id. at 436.

[54] Id. at 438.

[55] See id.

[56] Id. at 439.

[57] 373 N.W.2d 366, 370 (Minn. Ct. App. 1985).

[58] See id. (citing Meyer, 350 N.W.2d at 437 (stating negligent maintenance of stairway in home caused death of tenant)).

[59] 378 N.W.2d 134, 134 (Minn. Ct. App. 1985).

[60] Id. at 136 (citing Johnson v. O'Brien, 258 Minn. 502, 506, 105 N.W.2d 244, 247 (1960)) (emphasis added).

[61] See id. (citing Hanson, 373 N.W.2d at 370).

[62] Id.

[63] Id. at 137 (Crippen, J., concurring).

[64] Id. (Crippen, J., concurring) (citing Restatement (Second) of Torts, § 357 (1975).

[65] Id. at 137-38.

66 Broughton v. Maes, 348 N.W.2d 134 (Minn. Ct. App. 1985), review denied, 378 N.W.2d 134 (Minn. 1986).

67 See generally Oakland v. Stenlund, 420 N.W.2d 248 (Minn. Ct. App. 1988) (granting landlord's summary judgment motion when tenants' guest was injured after falling down stairs).

68 378 N.W.2d at 135 (citing Restatement (Second) of Torts §§ 356, 357-62 cmt. a (1965)); W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 63 at 434-46 (5th ed. 1985).

69 Broughton, 378 N.W.2d at 135. See also Geislinger v. Vill. of Watkins, 269 Minn. 116, 125, 130 N.W.2d 62, 68 (1964) (finding that a landlord's liability may arise if landlord fails to properly inspect and maintain common areas); Stauffenecker v. Salmela, No. C4-02-1712, 2003 WL 1962160, at *1 (Minn. Ct. App. Apr. 29, 2003) (noting tenant injured from fall down the basement stairs; landlord did not control stairs).

70 See Canada v. McCarthy, 567 N.W.2d 496, 498 (Minn. 1997) (noting that landlord performing lead abatement work at tenant's property owes duty of care to tenant and guests; damages award affirmed).

71 See 534 N.W.2d 286 (Minn. Ct. App. 1995), rev'd, 547 N.W.2d 693 (Minn. 1996) (noting tenant injured by slipping on exterior landing).

72 Bills v. Willow Run I Apartments, 547 N.W.2d 693, 695 (Minn. 1996).

73 See Gradjelick v. Hance, 646 N.W.2d 225, 227 (Minn. 2002) ("A ... court errs when it analyzes whether plaintiffs are able to satisfy the elements of negligence per se ... but does not analyze the plaintiffs' claim under an ordinary common law negligence theory.").

74 See supra text accompanying notes 39-40.

75 615 N.W.2d 397 (Minn. Ct. App. 2000), rev'd, 632 N.W.2d 666 (Minn. 2001).

76 Id.

77 Id.

78 See id. at 400 (citing Spitzak v. Hylands, Ltd., 500 N.W.2d 154, 156-57 (Minn. Ct. App. 1993)).

79 Id. at 401.

80 Id. at 401-03.

81 Id. at 403-05 (Anderson, J., dissenting).

82 Funchess v. Cecil Newman Corp., 632 N.W.2d 666 (Minn. 2001).

83 Id. at 672-73, 675.

84 Id. at 673-74.

85 Id. at 674-75.

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