Notable Appellate Decisions

by Rob Stefanonwicz

Construction Defect: Home-Warranty Notice

Peterson v. Johnson addresses the manner and form of the written notice requirement for home-warranty claims. The Minnesota Court of Appeals ruled that the six-month written notice requirement for home-warranty claims can be satisfied by the homeowner’s service of a detailed summons and complaint on the contractor. The appellant argued that the written notice requirement should be treated as a condition precedent to commencing a lawsuit, thereby giving the contractor an opportunity to cure any defect. The court disagreed, indicating that the homeowner’s service of the summons and complaint satisfied the written notice requirement because the statute does not limit the form of the written notice or require it to be given before commencing a lawsuit.

Zoning and Planning Dispute: Residential Development and Regulatory Takings

In Winmann Realty, Inc. v. City of Eagan, the owner of golf course property, held a hearing to appeal the city’s decision to refuse to rezone the property. The Minnesota Supreme Court held that the city’s denial of an application to amend the zoning and development regulations did not constitute a regulatory taking under the Fifth Amendment.

Property Tax Appeals: Burden of Proof

The Minnesota Supreme Court addressed several issues in Southern Minnesota Better Sugar Cooperative v. County of Renville, including the burden of proof imposed on the taxpayer/property owner. The taxpayer, an owner of a beet processing plant, contested the property taxes assessed by the county, arguing that the county’s estimated market value of the property was greater than the actual market value and that the property was unequally assessed when compared to other properties. The tax court found that neither the taxpayer nor the county presented sufficient evidence to enable the court to value the property, and therefore, the tax court could not determine the reasonable market value of the property. The tax court did not make a determination as to value, but rather affirmed the county assessor’s estimated market value.

The Minnesota Supreme Court sent the matter back to the tax court to make a determination as to whether the property owner had met its burden of overcoming the presumed validity of the county’s assessment. The Supreme Court offered that if the taxpayer offers evidence to invalidate the assessment and shows that the assessment does not reflect the true market value of the property, the tax court must determine the market value of the property. If the tax court determines that the taxpayer does not show that the county’s assessment did not reflect the true market value, the court’s order should explain why and the court should affirm the county’s assessment.

If you have questions or concerns regarding the content of these decisions or would like any additional information, please contact us.

In This Issue:

The Changing Face of Settlement: The Effect of Hoyt Properties v. Production Resource Group

Please enjoy this issue of Re:Litigation and feel free to call any one of us if we can be of service on any of your real estate or land use problems.

Letter From The Department Head

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My, how the real estate market has changed since we published our inaugural issue of Re:Litigation in Spring 2007.

While we anticipated that home building would be cooling off from its previous red-hot levels, the real excitement occurred when the sub-prime mortgage market imploded, catapulting virtually all markets into a tailspin that only seemed to abate when the Federal Reserve Bank stepped in and lowered the discount rate in mid-August.

We all know that the real estate boom could not last forever, but it always is a rude awakening when any market inevitably turns south. About all I will say that I know for sure is that change is inevitable and yes, the markets will turn up again—just don’t ask me when.

Since our last issue, the Real Estate Litigation practice group has been busy with a series of seminars, working hard for our clients and writing for this issue of the newsletter.

Our spring seminar series included breakfast presentations in March, April and May at the Airport Hilton in Bloomington, at which over 50 people attended. In March, we presented topics on valuation litigation, including condemnation and property tax appeals. In April, we discussed construction defect issues, with particular emphasis on mold. In May, we covered development-related litigation issues, including development fee issues. All the seminars included a guest speaker and I think the attendees found the presentations informative and of value.

Our practice group has continued offering fine service and great results for our clients, with several recent successes that bear noting. Mike Mergens helped our client Frontline Investments to a victory, obtaining summary judgment from the court on allegations of breach of the covenant of good faith and fair dealing, unjust enrichment, indemnification/contribution, quiet title and a count for attorneys’ fees. Tamara O’Neill Moreland and Scott Johnson scored a significant victory for our client Brookdale Cornet, LLC, in recovering over $400,000.00 in rent, liquidated damages and attorneys’ fees for a breaching commercial tenant. Rob Stefanonwicz won both at trial and on appeal on a claim for our client Giles Properties, seeking to enforce a purchase agreement to acquire a parcel of undeveloped land worth over a million dollars.

In this issue, Tamara O’Neill Moreland provides observations and advice on how a recent Minnesota Court of Appeals decision, Hoyt Properties v. Production Resource Group, may force some changes in how attorneys represent clients on settlements. Additionally, Scott Johnson highlights important new changes in the Minnesota Building Code that were adopted by the Legislature this past session and Rob Stefanonwicz reviews three notable Appellate decisions.

Finally, I’m very pleased to announce to welcome back to the firm and our practice group, Jim Susag. Jim left us at the end of 2005 after eight years as both an associate attorney and a shareholder, to become Chief Litigation Counsel for U.S. Bancorp at its corporate headquarters in Minneapolis. For a year and a half, Jim managed significant defensive litigation nationwide for U.S. Bancorp, the sixth-largest financial services corporation in the country. The call of the challenges and excitement of private practice proved too strong for Jim, however, and he came back to Larkin Hoffman in July. We think Jim’s experience at U.S. Bancorp is to our benefit and we are very happy to welcome him back to the group.

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Gary Van Cleve is an associate in the Real Estate Litigation practice group. Rob’s practice encompasses all areas of real estate and construction litigation.

Gary Van Cleve has broad experience in all real estate-related litigation areas in state and federal courts at both the trial and appellate levels. He serves as chair of the Real Estate Litigation practice group and on the firm’s Board of Directors.

Rob Stefanonwicz is an associate in the Real Estate Litigation practice group. Rob’s practice encompasses all areas of real estate and construction litigation.
In Hoyt Properties, the plaintiff, an attorney with not only legal experience, but also significant business and real estate experience, brought an action claiming that the defendants’ attorney made a misrepresentation in settlement discussions, which resulted in him signing a settlement agreement. These discussions took place at a housing court hearing regarding the plaintiff’s eviction action against its tenant. The defendants’ attorney requested that the agreement include a release of liability for the tenant’s parent company, while the plaintiff would retain a claim for damages against the tenant. The alleged misrepresentation arose when the plaintiff asked the defendants’ attorney, “I don’t know of any reason how we could pierce the veil, do you?” and the defendants’ attorney responded, “There isn’t anything. [Parent] and [tenant] are totally separate.” The plaintiff then directed his attorney to include the release in the agreement. The plaintiff later discovered that a third party commenced an action against the parent for the liability of the tenant and the plaintiff brought this action to nullify the release in the agreement. The plaintiff later discovered that a third party commenced an action against the parent for the liability of the tenant and the plaintiff brought this action to nullify the settlement agreement due to the alleged misrepresentation.

In order to sustain such a claim for intentional misrepresentation, a plaintiff must establish that he or she was reasonably relied on a fraudulent representation. The district court granted the defendants’ summary judgment, finding that due to the plaintiff’s extensive experience, his claimed reliance was unreasonable as a matter of law. The Supreme Court, however, disagreed. The Court determined that “a party can reasonably rely on a representation unless the falsity of the representation is known or obvious to the listener” and the listener is under no obligation to conduct an investigation of the representation. Even with the limited representation made and the vast experience of the plaintiff, the Court determined that the plaintiff’s reliance was not unreasonable as a matter of law.

As a result of this decision, parties must be cautious when providing persuasive statements or providing opinions in settlement negotiations or at a housing court hearing regarding the plaintiff’s eviction action. Therefore, you must operate with extreme caution when using persuasive statements or providing opinions in settlement negotiations or at a housing court hearing regarding the plaintiff’s eviction action.

The Minnesota Amendments make one other window-related change that is unrelated to water intrusion, but is a significant benefit to homeowners. The existing code required all windows installed in bedrooms to meet current egress requirements, even if the window was merely replacing an existing window. The new amendment exempts replacement windows from this requirement, as long as the replacement window is the manufacturer’s largest standard size window that will fit in the existing frame or rough opening. This amendment will allow homeowners to replace old windows with new, more energy-efficient windows without having to make expensive structural modifications.

The New Minnesota State Building Code is here to stay. The changes to the code should have benefits for builders and homeowners alike. As stated above, these are just a few of the many changes contained in the new Minnesota Amendments to the 2006 IRC. For a complete summary of all changes, Minnesota Bar Association of Minnesota members can go to www.bamm.org. Additionally, DOLI has made its summary of the changes available at www.doli.state.mn.us/pdf/2006_ircreport.pdf.

Knowing when the changes take effect is as important as knowing what the changes accomplish. As previously noted the effective date of the new code is July 10, 2007. That date, however, means different things depending on the status of a project.