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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1508**

William F. Jones,
Respondent,

vs.

JCO, Inc., et al.,
Appellants.

**Filed July 14, 2009
Reversed and remanded
Shumaker, Judge**

Hubbard County District Court
File No. 29-CV-08-1187

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Considered and decided by Shumaker, Presiding Judge; Lansing, Judge; and Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellants allege that the district court erred in ordering their eviction from real property without an evidentiary hearing to determine the question of which party was entitled to possession of the property, and that the district court erred by failing to address an allegation regarding a conflict of interest by respondent's attorney. We agree as to both issues, and we reverse and remand.

FACTS

This is an eviction action relating to certain real estate that the parties refer to as the Park Rapids property. Respondent William Jones brought the action against his alleged tenants, appellants JCO, Inc.; Carol Koch; and Jon Koch, claiming that they had significantly defaulted in their rent payments. He sought the restoration of possession of the property.

Appellants, or one or more of them, claimed entitlement to possession under a purchase agreement. They also claimed that Jones had failed to give notice of their alleged default and that the statute of limitations barred the eviction action.

After issue had been joined, the district court held what appears to be a procedural telephone conference with the parties' respective attorneys. The minutes of that conversation show that "[n]o evidence [was] offered or admitted, and no testimony [was] taken. The Court request[ed] briefs on the legal issues." The minutes further reflect that the court told the attorneys, "We're set" for an evidentiary hearing.

The parties submitted memoranda and supporting materials. The district court held no evidentiary hearing but instead summarily determined that Jones was entitled to a writ of recovery of the premises. In making its award, the district court found that “[t]here are no issues of material fact.” The district court also found that the Kochs and JCO, Inc. had failed “to pay rent” and were “41 lease payments in arrears”; that the Kochs and JCO, Inc. “have not been in quiet possession of the premises”; and that the Kochs and JCO, Inc. “had constructive notice to vacate.” The district court did not address the issue of the statute of limitations. Appellants contend that the district court’s rulings were erroneous and that, in any event, it was improper for the district court to determine fact issues summarily and without an evidentiary hearing.

In addition to disputing the allegations in Jones’s complaint for eviction, the Kochs and JCO, Inc. moved to disqualify Jones’s attorney from representing Jones in the action because that attorney had represented JCO, Inc. in a lawsuit relating to the Park Rapids property brought by Carol Koch against Jones and JCO, Inc. The Kochs and JCO, Inc. claimed that the attorney had represented JCO, Inc. for about a year and then withdrew from representation and brought the instant eviction action as attorney for Jones. The district court did not rule on or otherwise address this motion.

DECISION

Although no party formally moved for summary judgment, by its summary determination of the eviction action the district court in effect granted summary judgment in favor of Jones. Thus, our standard of review requires us to “determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a

matter of law.” *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). We view evidence in the record “in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellamo*, 504 N.W.2d 758, 761 (Minn. 1993). Although an eviction action is designed to be “summary” in nature, Minn. Stat. § 504B.001, subd. 4 (2008), entitlement to possession must be affirmatively shown and the occupant of the premises has the right to a trial to dispute the allegation of that entitlement. Minn. Stat. § 504B.335 (2008); *see also Mac-Du Props. v. LaBresh*, 392 N.W.2d 315, 317 (Minn. App. 1986) (stating that landlord “must plead and prove facts which show the [tenant] is in unlawful possession of [the] property”), *review denied* (Minn. Oct. 29, 1986).

The first issue brought to the district court’s attention was that of whether the parties stood in the relationship of landlord and tenants or of contract vendor and contract vendees. In his eviction complaint, Jones refers to an agreement he reached with Jon Koch regarding “the terms of the sale” of the Park Rapids property. Jones alleged that the agreement was for a lease with a purchase option. The Kochs and JCO, Inc., in their answer, admitted that Jones was the “fee owner of record of the subject property when he agreed to sell . . .” it, but they denied that there had been a “rent to own agreement.” They then described the alleged terms of the agreement for the sale of the property, which designated JCO, Inc. as the purchaser.

It is both unproductive and unnecessary for us to attempt to analyze the background of the convoluted relationships between and among the parties to this action because the materials submitted in the dispute persuade us that genuine issues of material fact for resolution by trial exist. *See Donnay v. Boulware*, 275 Minn. 37, 45, 144 N.W.2d

711, 716 (1966) (allowing parties “a full opportunity to present evidence of facts and circumstances and conditions” when issues of fact are in dispute).

There is a fact issue as to whether Jones was the landlord under a lease or was a contract vendor. A landlord is generally entitled to evict a tenant who is in default in his rent obligations. Minn. Stat. § 504B.291, subd. 1 (2008). But if Jones is a contract vendor, the vendee, as the equitable owner, is entitled to possession until and unless the contract is cancelled. *Stiernagle v. County of Waseca*, 511 N.W.2d 4, 5 (Minn. 1994). The district court’s eviction order assumes that Jones was a landlord, that rent was due, and that the tenants failed to make rent payments. That assumption could follow only if the district court had decided disputed material fact issues as to the relationship of the parties and which party holds the right of possession. Such issues may not be decided summarily. Thus, the district court’s order for a writ of recovery must be reversed and the matter remanded.

On remand, the district court must also address the appellants’ motion to disqualify Jones’s attorney. It appears to be undisputed that the attorney had represented JCO, Inc. in a lawsuit in which Carol Koch and Jon Koch were parties adverse to JCO, Inc. The attorney then withdrew as the company’s lawyer and opted to represent Jones in this action against JCO, Inc. Both actions involved the Park Rapids property and both raised issues regarding the nature of the legal relationships of the parties to each other and of their legal connections, if any, to the ownership of or other rights in the Park Rapids property. Rule 1.9(a) of the Minnesota Rules of Professional Conduct provides the basic conflict-of-interest proscription:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

The purpose of this rule "is to ensure the attorney's absolute fidelity and to guard against inadvertent use of confidential information." *Nat'l Texture Corp. v. Hymes*, 282 N.W.2d 890, 894 (Minn. 1979) (citation omitted).

There are fact issues for determination by the district court as to (1) whether Jones's attorney had a disqualifying conflict of interest in the eviction action; (2) if so, whether information the attorney gained from his prior representation helped in the successful prosecution of the eviction action against his former client; and (3) whether the conflict of interest, if any, and information, if any, derived from the former client and used in the eviction action render the eviction void.

Appellants have moved to strike various documents from the appendix to respondent's brief on the ground that they are not properly part of the record on appeal. We have not considered those documents in our determination of this appeal, and, because the matter is reversed and remanded, it is not necessary for us to rule on the motion.

Reversed and remanded.