

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re: )  
) Chapter 7  
Janet Lenora Olson, fka Janet Lenora Gross, )  
) Case No. 04-50231 GFK  
Debtor. )  
) **NOTICE OF HEARING AND MOTION FOR**  
) **ORDER AVOIDING JUDICIAL LIEN**  
) **IMPAIRING EXEMPTION**  
)  
)

---

TO: Robert R. Kanuit, Chapter 7 Trustee; John A. Hedback, United States Trustee; Michael T. Pourpore, judgment creditor; Karen Olson, attorney for Michael T. Poupore; and all other parties in interest.

1. Janet Lenora Olson, fka Janet Lenora Gross, Debtor in this Chapter 7 proceeding (“Debtor”), by and through her duly authorized attorneys, moves the court for the relief requested below and gives notice of hearing herewith.

2. The court will hold a hearing on this motion at 2:00 p.m. on October 6, 2004, before the Honorable Gregory F. Kishel in Courtroom No.2, United States Courthouse, 515 West First Street, Duluth, Minnesota 55802, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than October 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than September 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion is filed pursuant to Bankruptcy Rules 4003(d) and 9014 and Local Rules 9013-1 through 9013-3. Debtor seeks entry of an order avoiding a judicial lien which impairs an exemption of the Debtor pursuant to 11 U.S.C. § 522(f).

5. This case was commenced by the filing of a voluntary Chapter 7 petition by the Debtor on March 3, 2004. The case is now pending in this court. The court has jurisdiction over this motion pursuant to 28 U.S.C. § 1334 and 157(a), Local Rule 1070-1 and 11 U.S.C. § 522(f). This is a core proceeding.

6. On October 10, 2003, the Honorable Mark A. Munger, District Court Judge, Sixth Judicial District, St. Louis County, State of Minnesota, entered Findings of Fact, as well as an Order and Memorandum of Law, in that state District Court case entitled Michael T. Poupore v. Janet L. Gross, NKA Janet L. Olson, District Court File Number C6-02-602368 (hereinafter “the State Action”). A true and accurate copy of Findings of Fact, Order and Memorandum of Law are attached hereto and marked as Exhibit A.

7. Judge Munger’s October 2003 Order directed the entry of Judgment in favor of plaintiff Michael Poupore and against the Debtor in the amount of \$27,111.14 on Poupore’s claim for unjust enrichment. Specifically, Judge Munger found that, during the period of the parties’ cohabitation, Poupore had contributed \$17,682 in labor and \$9,429.14 in materials toward the improvement of the Debtor’s homestead located at 4931 Fish Lake Road in Duluth, Minnesota.<sup>1</sup> Judgment in the amount of \$27,111.14 was entered in favor of plaintiff Poupore and

---

<sup>1</sup> Earlier in the State Action, specifically by Order and Memorandum of Law dated and filed May 16, 2003, Judge Munger granted the Debtor’s motion for summary judgment (1) dismissing with prejudice plaintiff’s claim seeking establishment and enforcement of a Mechanics Lien under Minn Stat. §514 *et seq*, (2) dismissing with prejudice plaintiff’s claim for declaration of a constructive trust, (3) dismissing with prejudice plaintiff’s request for an order requiring the sale of the Debtor’s homestead, and (4) declaring the plaintiff’s Notice of Lis Pendens null and void. A true and accurate copy of Judge Munger’s Order and Memorandum of Law dated and filed May 16, 2003, is attached hereto and marked as Exhibit B.

against the Debtor on November 10, 2003 (hereinafter “the State Court Judgment”).<sup>2</sup> The State Court Judgment was docketed in St. Louis County, Minnesota on March 2, 2004. This Chapter 7 case was filed the following day, March 3, 2004.

8. On October 10, 2003, and at all times since that date, the Debtor has resided at 4931 Fish Lake Road, Duluth, St. Louis County, Minnesota, 55803, which she has during that period solely owned and occupied as her homestead along with her husband, Michael Olson, her two children and her husband’s three children. This real property is more fully described as the South ½ of the Southwest ¼ of the Southeast ¼ of the Northeast ¼, Section 23, Township 52, Range 15, St. Louis County, Minnesota (hereinafter “the Real Property”).

9. The approximate fair market value of the Real Property was on October 10, 2003, and has since that date been, approximately \$175,000.

10. The Real Property is currently subject to and encumbered by a first priority real estate mortgage lien executed in favor of Bank of America (hereinafter “the First Mortgage”). The current balance of the First Mortgage debt is approximately \$88,000.

11. Schedule F filed by the Debtor in connection with this bankruptcy case listed plaintiff Michael T. Poupore as a creditor with an address of 3953 E. Calvary Road, Duluth, MN, as well as c/o the plaintiff’s attorney, Ms. Karen Olson, at 2002 West Superior Street, Duluth, MN 55816.

12. Schedule C filed by the Debtor in connection with this bankruptcy case listed the Real Property as exempt pursuant to Minn. Stat. §510.01 and §510.02. No objections were filed to this exemption.

13. On June 8, 2004, the Court entered an Order for Discharge of Debtor in this bankruptcy case.

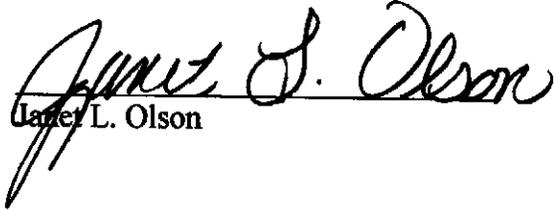
---

<sup>2</sup> Exhibit A, page 7.



**VERIFICATION**

I, Janet L. Olson, formerly known as Janet L. Gross, declare under penalty that the facts set forth in the foregoing NOTICE OF HEARING AND MOTION FOR ORDER AVOIDING JUDICIAL LIEN IMPAIRING EXEMPTION are true and correct to the best of my knowledge, information and belief.

  
Janet L. Olson

Dated: August 24, 2004

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

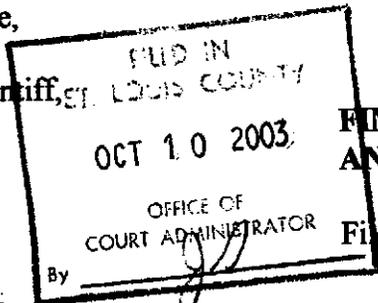
Michael T. Poupore,

Plaintiff,

vs.

Janet L. Gross,

Defendant.



**FINDINGS OF FACT, ORDER,  
AND MEMORANDUM OF LAW**

File No. C6-02-602368

The above-entitled matter came before the Court for Court Trial on Plaintiff's Claim for Unjust Enrichment, and Defendant's Counterclaim. Trial was held from July 16<sup>th</sup>-18<sup>th</sup>, 2003. The Parties were given time to submit written briefs to the Court. The record was deemed closed on October 3, 2003, upon the submission of Plaintiff's Reply Brief.

Based upon the testimony, evidence, and arguments of the Parties, the Court makes the following:

#### **Findings of Fact**

1. The Parties met in May of 1994 as the result of a personal ad, which resulted in an intimate romantic relationship. The couple split up in October of 2001 after being together for over seven years.
2. At the time that the couple began dating, Defendant was renting a home in Proctor, Minnesota located at 120 3<sup>rd</sup> Street. After the relationship began, Defendant, without any financial assistance from Plaintiff, purchased the home.
3. At the time the Proctor property was purchased by Defendant, Plaintiff owned a home on Oxford Street in Duluth. Plaintiff lived at both his home on Oxford and

also at Defendant's residence in Proctor for a period of approximately three years. The Oxford street home was sold in 1998 and Plaintiff moved in to live with Defendant at 120 3<sup>rd</sup> St., Proctor full time. During the time Defendant owned the Proctor property, Plaintiff assisted Defendant in making repairs to and in the remodeling of the Proctor residence. Plaintiff is a licensed building contractor and has experience in the remodeling and renovation of homes.

4. During the years 1994-1999, the Parties shared household duties and expenses and became an integrated familial unit.

5. On December 18, 1998, Plaintiff applied for a marriage license on behalf of the Parties. The license was renewed on July 21, 1999. The Parties never married.

6. Plaintiff testified that he contributed 70% of the 830 hours of renovation completed on the Proctor project, which equates to 581 hours, which at his lowest contractor rate of \$30.00 per hour, equals \$17,430.00. Plaintiff also contributed materials in the amount of \$8,547.90, for a total contribution of \$25,977.90 towards the value of the Proctor home. Defendant made some payments to Plaintiff for the labor expended and for materials used on the Proctor renovation. Defendant also contributed the down payment for the purchase of the Proctor home and made all the first and second mortgage payments on the debt underlying the Proctor property.

7. During months of June and July 1999, the Parties began researching the purchase of a residence. The subject property is located at 4931 Fish Lake Road. On June 22, 1999, Plaintiff paid \$500.00 Earnest Money towards the purchase (Exh. 6) of that home. This amount was not reimbursed by Defendant. Plaintiff testified that he considered the house at 4931 Fish Lake Road to be an investment for the couple.

Defendant sold her home in Proctor to finance the purchase of the Fish Lake property and used a portion of the equity from the Proctor home as a down payment (Exhs. 61-63). The title to the Fish Lake property is solely in Defendant's name.

8. The Parties obtained a well water inspection report regarding the well at 4931 Fish Lake Road. The report was paid for by Plaintiff, sent to 120 3<sup>rd</sup> Street, Proctor, and addressed to Plaintiff (Exh. 7).

9. Loan applications for mortgage loans were submitted by Defendant to various mortgage lenders (Exh. 8 and 9). In each application, Plaintiff's income, or a portion thereof, was used by Defendant to support her application. In Exh. 9, an application to Discovery Mortgage, Plaintiff's status is listed as that of a "fiancé".

10. Plaintiff verified his participation in the household and his contributions to the familial unit in Exhibit 10, a letter submitted with Defendant's applications to the various lenders.

11. The Parties obtained homeowner's coverage in both of their names for the personal property located at 4931 Fish Lake Rd. (Exhs. 11 and 12).

12. A real estate appraisal completed by Filipovich and Associates regarding 4931 Fish Lake Road for Discover Mortgage found that the fair market value of the home was \$110,000.00. (Exh. 25) as of 8/11/99.

13. Upon moving into the Fish Lake property, extensive rehabilitation and renovation of the property was completed by the Parties. The couple contributed their own labor and that of friends and relatives to essentially reconstruct the dwelling. Plaintiff testified that the project involved approximately 842 hours of labor and that he contributed 70% of the labor or 589.40 hours. Using the lowest labor rate charged

by Plaintiff on remodeling jobs, this equates to a contribution of \$17,682.00 towards the value of the Fish Lake property (Exh. 13).

14. Plaintiff testified that he also contributed \$9,429.14 in materials to the Fish Lake renovation project, making his total contribution \$27,111.14.

15. Defendant paid all of the mortgage payments and real estate taxes due and payable for the Fish Lake property until Plaintiff left the premises in October of 2001. Defendant also contributed some of the hourly labor contained in the 30% figure set forth above.

16. Plaintiff and Defendant, as they had done at the Proctor residence, shared the groceries, household chores, minor maintenance, minor expenses, and the living and storage space at the Fish Lake property as members of an integrated family.

17. There is no legal or factual basis for either Party to claim reimbursement for services or rent regarding their shared living arrangement in Proctor or at 4931 Fish Lake Road. These contributions and expenditures were made in contemplation of a quasi-marital relationship and are not actionable. Neither Party contemplated payment of such expenses when they lived together and Defendant has provided no legal or factual support for her counterclaim based upon such expenses and/or services.

18. The Parties exchanged wedding rings in anticipation of marriage but no marriage took place (Exh. 17).

19. Appraisals done after the commencement of this action indicate that the fair market value of the Fish Lake property is \$175,000.00 (Exhs. 24 and 66). The equity in the property is approximately \$87,000.00. (Exhs. 64 and 65). This is arrived at by

taking the present fair market value of \$175,000.00 and deducting the remaining principal mortgage balance of \$87,994.30 due as of October 1, 2003.

20. Plaintiff's labor and materials contributed to the vastly increased value of the Fish Lake property. Plaintiff clearly viewed his contribution of labor and material to the Fish Lake property as an investment. There is no credible evidence to dispute that contention and all circumstantial evidence as to the conduct of the Parties is consistent with that understanding. The Court finds that Plaintiff is entitled to share in the increased value of the Fish Lake home up to the level of the labor and material he contributed.

21. All of the financial and "in kind" contributions made by the Parties to the Proctor home, with some minor exceptions, were incorporated in the equity that accumulated in that home. This equity was used to purchase the Fish Lake home and also to purchase materials to improve the Fish Lake home (Exhs. 50, 51, 52, 53, 54, 55, and 59). Plaintiff is not entitled to a separate valuation for his contribution towards the Proctor property since that amount was "rolled over" into the Fish Lake property as were Defendant's financial and "in kind" contributions (including her down payment on the Proctor residence).

22. Plaintiff has failed to prove, by a preponderance of the evidence, that he is entitled to any of the items of personal property sought in his Complaint. The evidence as to ownership is conflicting, and as such, he has failed to meet his burden of proof on all items of personal property except the wedding rings.

23. The Court finds that Plaintiff is entitled to judgment against Defendant for his reasonable contributions of labor and materials with reference to the real property

owned by Defendant and located at 4931 Fish Lake Road in the amount of \$27,111.14.

### ORDER

1. Judgment shall be entered in favor of Plaintiff and against Defendant, as for Plaintiff's claim for unjust enrichment damages, in the amount of \$27,111.14.

2. Judgment shall be entered but levy and execution on the judgment shall be stayed for six months. Defendant shall, within six months of the date of the Judgment entered herein, pay the sum of \$27,111.14, together with interest at the judgment rate, to Plaintiff in satisfaction of said judgment. If payment is not made within said timeframe, Plaintiff may bring a motion before the Court to have the property located at 4931 Fish Lake Road sold and any equity applied to satisfy the judgment herein.

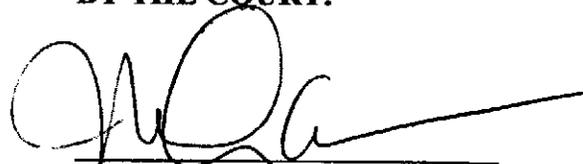
3. The Parties shall immediately return the wedding rings purchased in anticipation of marriage to their respective attorneys. The attorneys shall then arrange the exchange of said rings.

4. Plaintiff's claim for the return of itemized personal property shall be, and is herewith, DENIED.

5. All other claims and/or counterclaims by either Party are, and hereby shall be, DENIED.

So Ordered this 16<sup>th</sup> day of October, 2003.

BY THE COURT:



Mark A. Munger  
Judge of District Court

**30 DAY STAY  
PER RULE 125**

**ORDER FOR JUDGMENT:**

**Let Judgment be entered accordingly.**

**Dated this** 10<sup>th</sup> **November** ~~day of October~~, 2003.

**Susan Byrnes  
Court Administrator**

**By:** Jan Swanum  
**Deputy**

## Memorandum of Law

As a general statement, Minnesota law precludes the bringing of so-called “palimony” lawsuit unless the requisites of Minn. Stat. 513.075 and 513.076 are complied with. The statutes require that unmarried couples living together enter into a written agreement if they wish to have their claims regarding property rights arising out of such arrangements decided in court. However, the Minnesota Supreme Court, in the cases of *In Re: Eriksen*, 337 NW 2d 674 (Minn. 1983) and *In Re: Palmén*, 588 NW2d 493 (Minn. 1999) has carved out notable exceptions to these statutory requirements.

Here, the Parties lived together in contemplation of marriage. They were intimate. Their daily expenses and acquisitions of personal property are subject to the statutory requirement that any claims involving such expenditures or personal property acquired during the union must be referenced by a written agreement. For example, if Plaintiff in the instant case claimed that he had a titular right to the Fish Lake property, such standing could only be acquired by written agreement. But that is not what Plaintiff is claiming. He is claiming, after dissection of his Complaint by this Court, that he contributed labor and materials to the improvement of two parcels of real property and that, upon the break up of his relationship with Defendant, he is entitled to recompense for that contribution to prevent unjust enrichment.

This case, whether analyzed under *Eriksen* or *Palmén*, is a classic example of the niche exception carved out by the Minnesota Supreme Court. Plaintiff provided credible testimony as to the time, effort, and value of materials he contributed to the projects and he is entitled to a judgment against Defendant in an amount that fairly recognizes this contribution.

With respect to the personal property, there being no clear testimony as to the actual ownership of the property at issue, and it being Plaintiff's burden to prove entitlement, which he failed to do, the Court will not order the return of any personal property by Defendant to Plaintiff, with one exception.

Engagement rings given in contemplation of marriage are conditional gifts, returnable to the purchaser if the marriage doesn't take place. *Beanssi v. Back and Neck Pain Clinic* 629 NW 2d 475 (Minn. App. 2001). Minnesota has adopted a no-fault position on dissolutions of marriage and applied the same logic to the return of engagement rings (*Ibid*, p. 486). Defendant must return the ring Plaintiff purchased to him and Plaintiff must reciprocate by returning the ring Defendant purchased for him.

MAM

STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

DISTRICT COURT  
SIXTH JUDICIAL DISTRICT

**Michael T. Poupore,**

File No.: C6-02-802368

Plaintiff,

vs.

**Janet L. Gross,**

Defendant.



**ORDER AND  
MEMORANDUM OF LAW**

The above-entitled matter came before the Court on May 14, 2003 pursuant to a hearing on Defendant's Motion for partial summary judgment. Plaintiff appeared and was represented by his attorney, Ms. Karen Olson. Defendant appeared and was represented by her attorney, Mr. Mark Jennings. Based upon the pleadings and arguments of counsel, the Court makes the following:

**ORDER**

1. Defendant's Motion to Dismiss with prejudice the portion of Plaintiff's Complaint requesting a constructive trust be placed on the property known as 4931 Fish Lake Road (Fish Lake property) is granted. Said portion of Plaintiff's Complaint is hereby dismissed with prejudice.
2. Defendant's Motion to Dismiss with prejudice the portion of Plaintiff's Complaint requesting an order requiring the sale of the Fish Lake property is granted. Said portion of Plaintiff's Complaint is hereby dismissed with prejudice.
3. Defendant's Motion for an order declaring the mechanic's lien, filed by Plaintiff on April 3, 2002 as document number 00851172, null and void is granted. Said mechanic's lien is hereby ordered null and void and no longer an encumbrance on the Fish Lake property.
4. Defendant's Motion for an order declaring the notice of Lis Pendens, filed by Plaintiff on September 12, 2002 as document

number 00868553, null and void is granted. Said notice of Lis Pendens is hereby ordered null and void and no longer an encumbrance on the Fish Lake property.

5. Defendant's Motion to set the matter for court trial is granted. This matter shall be heard by the Court on the trial date already scheduled.
6. Defendant's Motion for an Order granting summary judgment on all issues of unjust enrichment is denied. The Court finds genuine issues of material fact exist as to whether the parties' sexual relations were the sole consideration for any contract between them and whether Plaintiff seeks to preserve his own property or seeks to acquire Defendant's earnings or property.
7. Defendant's Motion for an Order granting her costs, disbursements, and attorney fees is denied.
8. All other requests for relief are hereby denied.

So Ordered this 16<sup>th</sup> day of May, 2003.

BY THE COURT:



Mark A. Munger  
Judge of District Court

## MEMORANDUM

### 1. Summary Judgment

Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. The Minnesota Supreme Court has set forth the meaning and purpose of summary judgment in *Sauter v. Sauter*, 70 N.W.2d 351, 353 (1955). In order to be successful on a summary judgment motion, the party moving for summary judgment must demonstrate that no genuine issues of material fact exist. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). When the moving party makes out a prima facie case, the burden of producing facts that raise a genuine issue shifts to the opposing party. *Id.* A material fact is one that will affect the result or outcome of the case. *Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641, 646 (Minn. 1974).

Plaintiff requests relief under the theory of unjust enrichment. Defendant argues Plaintiff's claim is barred by Minn. Stat. §§ 513.075 and 513.076. Defendant requests partial summary judgment in favor of Defendant and against Plaintiff on all issues of unjust enrichment.

Minn. Stat. §513.075 (2002), cohabitation; property and financial agreements, states:

If sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if:

- (1) the contract is written and signed by the parties, and
- (2) enforcement is sought after termination of the relationship.

Minn. Stat. §513.076 (2002), necessity of contract, states:

Unless the individuals have executed a contract complying with the provisions of section 513.075, the courts of this state are without jurisdiction to hear and shall dismiss as contrary to public policy any claim by an individual to the earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations and out of wedlock within or without this state.

The Minnesota Supreme Court interpreted and applied these statutes in the seminal case *In re Estate of Eriksen*, 337 N.W.2d 671 (Minn. 1983). Although the parties had no written agreement, the court affirmed the imposition of a constructive trust for the benefit of the surviving cohabitor in property legally owned by the estate of the deceased cohabitor. *Eriksen*, 337 N.W.2d at 674. The court concluded that §§513.075 and 513.076 were not intended to apply where the claimant does not seek to assert any rights in the property of a cohabitant, but to preserve and protect her own property, which she acquired for cash consideration wholly independent of any service contract related to cohabitation. *Id.* at 673-64. The court stated the statutes "apply only where the sole consideration for a contract between cohabiting parties is their 'contemplation of sexual relations \* \* \* out of wedlock.'" *Id.* at 674.

In cases emanating from the court of appeals since *Eriksen*, the court has distinguished *Eriksen* or declined to apply *Eriksen's* interpretation of the statutes. *Obert v. Dahl*, 574 N.W.2d at 749-750 (citing *Roatch v. Puera*, 534 N.W.2d 560, 564 (Minn. Ct. App. 1995) (without written agreement or "understanding" of joint ownership, cohabitor had no interest in house, car, or business where legal title to property was in other party's name and cohabitor made only minimal

contributions to household and business); *Mechura v. McQuillan*, 419 N.W.2d 855, 858-859 (Minn. Ct. App. 1988) (without written agreement, cohabitor had no claim to real property where other party provided entire payment); *Tourville v. Kowarsch*, 365 N.W.2d 298, 300 (Minn. Ct. App. 1985) (without written agreement, cohabitor could not recover labor and material costs for home improvements when house in other party's name and trial court accepted other party's testimony that he and cohabitor had no agreement); *Hollom v. Carey*, 343 N.W.2d 701, 704 (Minn. Ct. App. 1984) (without written agreement, cohabitor had no interest in property where property not purchased jointly and trial court found no clear understanding of joint ownership).

However, the Minnesota Supreme Court again addressed this issue in *In re Estate of Palmen*, reversing the lower court's decision. 588 N.W.2d 493. In *Palmen*, the deceased's cohabitor, Ms. Schneider, filed an action under unjust enrichment to recover \$48,051.03 from the estate for cash she allegedly expended, goods and services she allegedly provided and improvements she allegedly made to a log cabin retirement home she and the deceased were building. *Id.* at 494.

Schneider and Palmen were not married but lived together for over ten years. 588 N.W.2d at 494. The two agreed to build a log cabin together, and according to Schneider, the cabin's construction was a joint effort in which she and Palmen shared in the expense and labor. *Id.* at 495. Schneider claims that Palmen promised her that if their relationship ended, he would reimburse her for her labor as well as material and supplies she contributed to the cabin's

construction. *Id.* The two never reduced the financial arrangement to writing. *Id.* After a disagreement, Schneider and Palmén separated on August 3, 1996; Palmén committed suicide on September 30, 1996. *Id.*

Based on its reading of the two statutes, as interpreted by the court's decision in *Eriksen*, the court reversed and remanded. 588 N.W.2d at 495. In discussing *Eriksen* and §§513.075 and 513.076, the court stated:

Under the plain language of the two statutes, a contract between a man and woman living together in this state out of wedlock in contemplation of sexual relations is not enforceable unless the contract is written and signed by the parties and the parties seek to enforce it after the relationship has terminated. Further, absent a written contract, Minnesota courts are without jurisdiction to hear such claims. In contrast, a claim by an individual to recover, preserve, or protect his or her own property, which he or she acquired "independent of any service contract related to cohabitation," is enforceable in this state. Indeed, in *In re Eriksen*, we explicitly held that the jurisdictional bar imposed by sections 513.075 and 513.076 applies only when the "sole consideration for a contract between cohabiting parties is their contemplation of sexual relations \* \* \* out of wedlock." We also made it clear that the statutory bar does not apply where one party is merely seeking to "preserve and protect [his or] her own property" and is not "seek [ing] to assert any rights in the property of a cohabitant."

*Palmén*, 588 N.W.2d at 495 (footnotes omitted). The court further stated:

It is true that under Minn. Stat. §§ 513.075 and 513.076, unless a signed written contract exists, any claim by an individual to the earnings or property of another individual is precluded if the claim is based on the fact that the individuals lived together in "contemplation of sexual relations \* \* \* out of wedlock." That does not mean, however, that as a matter of law, enforcement of all unwritten agreements between individuals living together in contemplation of sexual relations out of wedlock are barred. If the claimant can establish that his or her claim is based on an agreement supported by consideration independent of the couple's "living together in contemplation of sexual relations \* \* \* out of wedlock" or that he or she is seeking to "protect [his or] her own property" and is not "seek[ing] to assert any rights in the property of a cohabitant," the statutes do not operate to bar the claim.

*Id.* at 496 (footnotes omitted).

The court concluded Schneider's claim was to recover her own contributions to the cabin's construction and not based solely on the fact that she and Palmen lived together in contemplation of sexual relations out of wedlock. *Id.* Therefore, the court held the statutes did not bar her claim and Schneider was in the same position as any other individual seeking to recover on the theory of unjust enrichment. *Id.* at 497.

After analyzing Minn. Stat. §§ 513.075 and 513.076, *Erksen and Palmen*, and reviewing the pleadings and arguments of counsel, the Court finds genuine issues of material fact exist as to whether the parties' sexual relations were the sole consideration for any contract between them and whether Plaintiff seeks to preserve his own property or to acquire Defendant's earnings or property. The Court finds Defendant is not entitled to judgment as a matter of law on all issues of unjust enrichment, and therefore, summary judgment is not appropriate.

## **2. Mechanic's Lien and Notice of Lis Pendens**

The Court finds the mechanic's lien and notice of Lis Pendens are not appropriate to this action, contain fatal errors, and are not valid. Said documents are deemed null and void and should be removed as encumbrances to the Fish Lake property.

## **3. Jury Trial**

"Generally speaking, our state constitution guarantees a jury trial for causes of action recognized as common law actions when our constitution was adopted." *Tyroll v. Private Label Chemicals, Inc.*, 505 N.W.2d 54, 57 (Minn.

1993) (citing *Breimhorst v. Beckman*, 35 N.W.2d 719, 734 (Minn. 1949); *Morton Brick & Tile Co. v. Sodergren*, 153 N.W. 527, 528 (Minn. 1915)). Whether there is a right to a jury trial is determined by "the nature and character of the controversy, determined from all of the pleadings." *Tyroll*, 505 N.W.2d at 57 (citing *Landgraf v. Ellsworth*, 126 N.W.2d 766, 768 (Minn. 1964)).

This is a case seeking equitable determination of the respective rights of the parties. The fact that, ultimately, Plaintiff's sole remedy is an award of a monetary judgment against Defendant, does not alter the nature of the action from equitable to one at law. Further, Plaintiff has specifically sought replevin as to his personal property allegedly held by Defendant. As such, this action is equitable in nature. Therefore, Plaintiff is not entitled to a jury trial. This matter shall therefore be tried to the Court on the trial date already scheduled.

MAM

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re: )  
) Chapter 7  
Janet Lenora Olson, fka Janet Lenora Gross, )  
) Case No. 04-50231 GFK  
Debtor. )  
) **MEMORANDUM OF LAW IN SUPPORT OF**  
) **MOTION FOR ORDER AVOIDING JUDICIAL**  
) **LIEN IMPAIRING EXEMPTION**  
)  
)

---

**STATEMENT OF FACTS**

On October 10, 2003, the Honorable Mark A. Munger, District Court Judge, Sixth Judicial District, St. Louis County, State of Minnesota, entered Findings of Fact, as well as an Order and Memorandum of Law, in that state District Court case entitled Michael T. Poupore v. Janet L. Gross, NKA Janet L. Olson, District Court File Number C6-02-602368 (hereinafter “the State Action”). Judge Munger’s October 2003 Order directed the entry of Judgment in favor of plaintiff Poupore and against the Debtor in the amount of \$27,111.14 on Poupore’s claim for unjust enrichment. Specifically, Judge Munger found that, during the period of the parties’ cohabitation, Poupore had contributed \$17,682 in labor and \$9,429.14 in materials toward the improvement of the Debtor’s homestead located at 4931 Fish Lake Road in Duluth, Minnesota.<sup>1</sup> Judgment for \$27,111.14 was entered in favor of plaintiff Poupore and against the Debtor on

---

<sup>1</sup> Earlier in the State Action, specifically by Order and Memorandum of Law dated and filed May 16, 2003, Judge Munger granted the Debtor’s motion for summary judgment (1) dismissing with prejudice plaintiff’s claim seeking establishment and enforcement of a Mechanics Lien under Minn Stat. §514 et seq., (2) dismissing with prejudice plaintiff’s claim for declaration of a constructive trust, (3) dismissing with prejudice plaintiff’s request for an order requiring the sale of the Debtor’s homestead, and (4) declaring the plaintiff’s Notice of Lis Pendens null and void. A true and accurate copy of Judge Munger’s Order and Memorandum of Law dated and filed May 16, 2003, is attached as Exhibit B to the Debtor’s NOTICE OF HEARING AND MOTION FOR ORDER AVOIDING JUDICIAL LIEN IMPAIRING EXEMPTION.

November 10, 2003. The State Court Judgment was docketed in St. Louis County, Minnesota on March 2, 2004 (hereinafter “the State Court Judgment”). This Chapter 7 case was filed the following day, March 3, 2004.

On October 10, 2003, and at all times since that date, the Debtor resided at 4931 Fish Lake Road, Duluth, St. Louis County, Minnesota, 55803, which she has during that period solely owned and occupied as her homestead along with her husband, Michael Olson, her two children and her husband’s three children. This real property is more fully described as the South ½ of the Southwest ¼ of the Southeast ¼ of the Northeast ¼, Section 23, Township 52, Range 15 (hereinafter “the Real Property”). The approximate fair market value of the Real Property was on October 10, 2003, and has since that date been, approximately \$175,000. The Real Property is currently subject to and encumbered by a first priority real estate mortgage lien executed in favor of Bank of America (hereinafter “the First Mortgage”). The current balance of the First Mortgage debt is approximately \$88,000.

Schedule F filed by the Debtor in connection with this bankruptcy case listed plaintiff Michael T. Poupore as a creditor with an address of 3953 E. Calvary Road, Duluth, MN, as well as c/o the plaintiff’s attorney, Ms. Karen Olson, at 2002 West Superior Street, Duluth, MN 55816. Schedule C filed by the Debtor in connection with this bankruptcy case listed the Real Property as exempt pursuant to Minn. Stat. §510.01 and §510.02. No objections have were filed to this exemption. On June 8, 2004, the Court entered an Order for Discharge of Debtor in this bankruptcy case.

## ARGUMENT

As of the date of the commencement of this bankruptcy case, the State Court Judgment constituted a judicial lien which impairs the Debtor's exemption of her homestead under Minn. Stat. §510.01 and §510.02, and should therefore be avoided pursuant to 11 U.S.C. §522(f). Section §522(f) provides, in relevant part,

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is--

(A) a judicial lien,

A "judicial lien" is defined in 11 U.S.C. §101(36) as "a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." The courts of this District have consistently held that the docketing of a simple money judgment representing a claim for labor and/or materials contributed to the improvement of a Minnesota homestead creates a "judicial lien" which can be avoided under 11 U.S.C. §522(f). In re Croce, 190 B.R. 106 (Bankr. D. Minn. 1995); In re Farnsworth, 1986 WL 311163 (Bankr.D.Minn.1986); In re Builders and Remodelers, Inc., 20 B.R. 440 (Bankr.D.Minn.1982). In Farnsworth, the creditor requested relief from the automatic stay in order to pursue a judgment against the debtor for the value of materials incorporated into the debtor's homestead. The Court denied that motion for lift stay opening, in footnote 6 of the decision, that:

One other plausible reason for the denial of the motion [for relief from stay] is that its grant would only allow Movant to create and perfect a judicial lien which Debtors could then avoid under 11 U.S.C. § 522(f). See Builders and Remodelers, Inc. v. Hanson, at 442. Movant argues that Builders and Remodelers is no longer good law, (apparently) in view of the intervening decision in Boyd v. Robinson, 741 F.2d 1112 (8th Cir.1984). This Court refuses to analogize Movant's pre-petition rights with those of the holder of a marriage dissolution lien involved in Boyd v. Robinson. The Eighth Circuit recognized that the lienholder there had held a pre-dissolution, pre-petition property right in the homestead

involved, and that the lien created in the dissolution decree only transmuted that title/ownership interest into another form of property interest. 741 F.2d at 1114-5. Here, there is no question that entry of judgment would effect a more basic--and impermissible--transmutation of the rights of an unsecured creditor into those of a secured creditor. This is precisely the situation which Congress addressed in enacting §522(f). *See In re Hahn*, 60 Bankr. 69, 76 (Bankr.D.Minn.1986). A Minnesota "constitutional lien" is plainly a "judicial lien" within the meaning of 11 U.S.C. § 101(30), subject to avoidance under §522(f). Allowing Movant relief from stay to create one would be a futile and pointless act.

1986 WL at 311163 (*bracketed material supplied*).

In the present case the Debtor's homestead is worth approximately \$175,000 and is subject to a first mortgage lien of approximately \$88,000. This leaves the Debtor with only \$87,000 in equity in her homestead *before* consideration of the State Court Judgment, whereas the homestead exemption available under Minn. Stat. §510.01 and §510.02 equals up to \$200,000 in equity. If left in place, the judicial lien represented by the State Court Judgment would therefore impair the homestead exemption otherwise available to the Debtor. Accordingly, Debtor respectfully requests an order from this Court avoiding the judicial lien represented by the docketing of the State Court Judgment pursuant to 11 U.S.C. § 522(f), and for such other and further relief as the court deems appropriate under the circumstances.

Dated: August 24, 2004.

HANFT FRIDE,  
A Professional Association

By \_\_\_\_\_ /S/  
Frederick A. Dudderar, Jr.  
Attorney Registration No. 129070  
Attorneys for Debtor  
130 West Superior Street  
Duluth, Minnesota 55802-2094  
(218) 722-4766

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re: )  
) Chapter 7  
Janet Lenora Olson, fka Janet Lenora Gross, )  
) Case No. 04-50231 GFK  
Debtor. )  
) **ORDER AVOIDING JUDICIAL LIEN**  
) **IMPAIRING EXEMPTION**  
)  
)  
)

---

Debtor's Motion For Order Avoiding Judicial Lien Impairing Exemption came on before the Court on October 6, 2004. Appearances, if any, were as noted on the record. It is hereby ORDERED AND ADJUDGED that:

1. Debtor's Motion For Order Avoiding Judicial Lien Impairing Exemption should be and hereby is GRANTED.

2. The lien upon the Debtor's real property, specifically described as the South ½ of the Southwest ¼ of the Southeast ¼ of the Northeast ¼, Section 23, Township 52, Range 15, St. Louis County, Minnesota, which lien was created by that judgment entered in the Minnesota District Court case entitled Michael T. Poupore v. Janet L. Gross, NKA Janet L. Olson, District Court File Number C6-02-602368, in favor of plaintiff Michael Poupore and against the Debtor Janet L. Olson, formerly Janet L. Gross, in the amount of \$27,111.14, docketed in St. Louis County, Minnesota on March 2, 2004, is hereby avoided and extinguished pursuant to 11 U.S.C. § 522(f).

Dated: \_\_\_\_\_, 2004

---

Gregory F. Kishel  
United States Bankruptcy Judge