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**Case Comment**

Real Property: Cause of Action For Unjust Enrichment Upheld After Cancellation of Contract for Deed

Pursuant to a real estate contract, plaintiff vendee made payments to defendant vendors amounting to $500,000 of the $2,700,000 purchase price. Plaintiff defaulted and defendants cancelled the contract, pursuant to Minnesota Statutes section 559.21.¹ Plaintiff, claiming that the $500,000 exceeded defendants' actual damages, sued on the grounds of unjust enrichment.² The Court of Appeals for the Eighth Circuit held that Minnesota law allows a cause of action for unjust enrichment after a real estate contract has been effectively cancelled, but that the plaintiff had failed to prove that the defendants had been unjustly enriched. ³

The contract for deed in Minnesota has been likened to a "thirty day time bomb" due to the finality with which interests are cut off by its cancellation.⁴ It was created in 1897 to alleviate the harsh forfeitures which existed under Minnesota common law.⁵ The statute provides that no contract for the sale of real estate may be cancelled without notice to the vendee followed by a thirty day period in which the vendee may cure the default.⁶

Statutory cancellation of a land contract is not the vendor's

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¹ When default is made in the conditions of any contract for the conveyance of real estate or any interest therein, whereby the vendor has a right to terminate the same, he may do so by serving upon the purchaser, his personal representatives or assigns, either within or without the state, a notice specifying the conditions in which default has been made, and stating that such contract will terminate 30 days after the service of such notice unless prior thereto the purchaser shall comply with such conditions and pay the cost of service. . . .

MINN. STAT. § 559.21 (1967).

² The district court, in an unreported opinion, held that the plaintiff was not entitled to the return of any monies paid under the contract.

³ Northwest Hotel Corp. v. Henderson, 257 Minn. 87, 100 N.W.2d 493 (1959).

⁴ Ch. 223, [1897] Laws of Minn. 431.

⁵ At common law, contracts for the sale of real estate could be cancelled immediately upon the default of the vendee, without notice, providing there had been made of the essence. Grant v. Munch, 54 Minn. 111, 55 N.W. 902 (1893). If time was not of the essence, the vendor was required to give the vendee a reasonable time, after default, to make payment. Ballantine, *Forfeiture for Breach of Contract*, 5 MINN. L. REV. 329, 345 (1921); see Graceville State Bank v. Hofschild, 166 Minn. 58, 206 N.W. 948 (1926).

⁶ See note 1 supra.
sole remedy when the vendee defaults but it is the remedy most frequently used. The principal reason for the use of statutory cancellation is that the rights of the vendee are destroyed and all payments made under the contract are forfeited. The Minnesota Supreme Court has consistently held that a defaulting vendee, whose contract has been effectively cancelled, has no right to a refund of any payments made under the contract, either at law or equity, regardless of the hardships which occasioned the default. The only exception to this rule is where the contract was negotiated and procured through the vendor's fraud or misrepresentation. The vendee is then allowed to recover his payments if he could have obtained rescission prior to the cancellation proceedings.

In Zirinsky, the default was occasioned by plaintiff's inability to complete his financing arrangements. As is customary in Minnesota real estate practice, defendants then cancelled the contract pursuant to statute. The court easily concluded that the contract had been properly cancelled and that no cause of action could subsequently be based on the contract. The court then proceeded to hold that an action for unjust enrichment is not based on the contract and therefore is a valid cause of action under Minnesota law.

The court, in attempting to follow Minnesota law, has mis-

7. Other remedies which are available to the vendor include: specific performance, Henschke v. Young, 224 Minn. 338, 28 N.W.2d 766 (1947); Noyes v. Brown, 142 Minn. 211, 171 N.W. 803 (1919); action for the price, Noyes v. Brown, id.; foreclosure of vendor's lien, Robitshek v. Maetzold, 198 Minn. 586, 270 N.W. 579 (1936); and damages for breach of contract, Home Counsellors, Inc. v. Foltz, 246 Minn. 481, 75 N.W.2d 417 (1957), Wilson v. Hoy, 120 Minn. 451, 139 N.W. 817 (1913). However, once cancellation has been effected, the vendor may not elect an additional or alternative remedy. Olson v. Northern Pac. Ry., 126 Minn. 229, 148 N.W. 67 (1914); Smith v. Dristig, 176 Minn. 601, 224 N.W. 157 (1929).


10. Id.

11. Id. at 483.

12. Id. at 484.

13. Id. Zirinsky was in the federal courts by reason of diversity of citizenship. Therefore, it was the court's responsibility to decide the case under Minnesota law. Erie R.R. v. Tompkins, 304 U.S. 64 (1938).
apprehended the law as interpreted by the Minnesota Supreme Court. Not one of the authorities relied on in Zirinsky will support the court's position.14 The Zirinsky court apparently attempted to avoid the Minnesota rule by avoiding the cases ruling directly on the point and substituting reasoning from more general principles. First, the court pointed out that statutory cancellation destroys the contract and concluded that the vendor may not, therefore, justify the retention of payments by any liquidated damages clause.15 Having concluded that the contract cannot support a retention of payments, the court noted at some length that forfeiture of money paid in excess of damages is not a favored result in Minnesota.16 This is undoubtedly an accurate statement in the abstract but it ignores the view of the Minnesota court that a vendee who has thirty days after notice of termination in which to remove the default is not the victim of a harsh forfeiture provision.17 The Zirinsky court then noted that the action for unjust enrichment, when statutory cancellation has been effected, has precedent in Minnesota. However, while it did recognize that each of the cases cited for this proposition involved fraud by the vendor, it failed to note that fraud

14. The following are the cases on which the court relied for the proposition that Minnesota law will support an action for unjust enrichment. Following each case is the factor which removes it from the proposition which the court stated. Cady v. Bush, 283 Minn. 105, 166 N.W.2d 358 (1969). This case was an action for unjust enrichment resulting from the cancellation of a contract for the sale of real estate. The Minnesota Supreme Court found that since there was no actionable fraud a cause of action for unjust enrichment could not be maintained. Gabble v. Niles Holding Co., 209 Minn. 445, 296 N.W. 525 (1941). In this case the cause of action was allowed because of the fraud which had induced the vendee to enter into the contract. The court specifically noted that for an action predicated on unjust enrichment to be successful there must have been sufficient fraud to allow the vendee to rescind the contract, had he acted prior to the cancellation. Olson v. Northern Pac. Ry., 126 Minn. 229, 148 N.W. 67 (1914). The court said that money paid under a contract tainted by fraud might be recoverable by an action for money had and received.

15. It is interesting to note that, in a rather strange turnabout, the court later attempted to justify the action for unjust enrichment with cases involving a finding that a liquidated damages clause may constitute a penalty. 413 F.2d at 486–87.

16. Id.

17. Miller v. Snedeker, 257 Minn. 204, 101 N.W.2d 213 (1960); Nelson Real Estate Agency v. Seeman, 147 Minn. 354, 160 N.W. 227 (1920). That the forfeiture feature of the contract for deed is by design rather than by accident is shown by the fact that the legislature restricted the forfeiture feature during the depression and then later reinstated it. Compare Ch. 422 [1933] Laws of Minn. 796, with MNN. STAT. § 559.21 (1967).
is required for an exception to the general rule. The court finally concluded that there is an action for unjust enrichment when money is "wrongfully held" by the vendor.

The only explanation for the decision is that the court wished to express its disapproval of the forfeiture aspect of the contract for deed. Such a reaction would be completely understandable because of the often harsh consequences of allowing the vendor to retain all payments. Nevertheless, the law in Minnesota has always been that the vendor retains payments regardless of the hardship involved.

It is somewhat difficult to make firm conclusions about Zirinsky because of the strong tendency to be drawn into a discussion of the substantive merits of Minnesota contract for deed law. This is a complex and hotly contested question involving various conflicting interests. This question, however, was supposedly not at issue in Zirinsky. The court did not claim to change Minnesota law nor did it assert that the Minnesota Supreme Court would change the law if it were to reexamine the question. In holding that the vendee in a contract for deed may recover payments made in excess of the actual damages, the Zirinsky court is wrong, and the decision stands unsupported by Minnesota law.

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18. See note 9 supra. No mention was made by the court of any fraud on the part of the vendor or any other circumstance which could cause this case not to be covered by the general rule.

19. 413 F.2d at 490. A possible explanation of what the court meant by "wrongfully held" was not forthcoming.

20. The court was clearly not motivated to deviate from established state law by sympathy for the particular plaintiff in this case. This is made apparent by the fact that after ruling that the cause of action was valid, the court held that the plaintiff had not proven his damages and denied recovery.


23. It is quite obvious that by effecting a cancellation of a contract for deed the vendor of real estate is capable of reaping great financial benefits, as he retains the ownership of the land as well as payments made pursuant to the contract prior to cancellation. On the other hand the complete termination of all rights upon the effective cancellation of the contract adds a sense of certainty to contract for deed transactions. The vendee is protected by the thirty day period during which he is allowed to remove the default by merely paying the amount which is in default, if he can. See text accompanying note 17 supra. He is additionally protected by the rule which allows him to recover payments if the contract was procured by fraud on the part of the vendor. Note, supra note 8.
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