

**IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA**

First International Bank & Trust,)	
)	
Plaintiff,)	
)	
and)	
)	
Village Homes at Harwood Groves, LLC a/k/a)	
Village Homes at Harwood Groves)	Supreme Court No:
Condominium Association, et al.)	20100280
)	Dist. Ct. No.:
Intervener Plaintiffs and Appellees,)	09-2009-C-1802
)	
v.)	
)	
D. Duane Peterson, MID AM Group, LLC,)	
a North Dakota Limited Liability Company,)	
and MID AM Group Realty,)	
)	
Defendants and Appellants.)	
)	

BRIEF OF APPELLEES

**APPEAL FROM THE CASS COUNTY DISTRICT
COURT'S SUMMARY JUDGMENT
IN FAVOR OF INTERVENER PLAINTIFFS**

THE HONORABLE JOHN C. IRBY PRESIDING

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¶1 STATEMENT OF THE ISSUES

¶2 1. Whether the district court erred in concluding that Village Homes at Harwood Groves, LLC a/k/a Village Homes at Harwood Groves Condominium Association (“Association”) is entitled to the insurance proceeds representing damages to the Village Homes at Harwood Groves Condominiums (“Village Homes”).

¶3 2. Whether the district court erred in concluding that the Association and Village Homes’ unit owners (“Unit Owners”) have standing to enforce the Declaration, Bylaws and Covenants and Restrictions (“Condominium Documents”) for Village Homes.

¶4 3. Whether the district court erred in releasing the attorney’s lien.

¶5 STATEMENT OF THE CASE

¶6 This is an appeal from a grant of summary judgment, awarding the Association and its Unit Owners insurance proceeds in the amount of \$215,503.22 for damages to Village Homes as a result of a hail storm that occurred on September 12, 2007 (App. 93-94) (R. 123). First International Bank and Trust (“First International”) brought this action requesting a declaratory judgment that it was entitled to the insurance proceeds. (App. 7-11) (R. 1). Auto-Owners Insurance Company was originally a defendant in the action but was dismissed after depositing the insurance proceeds with the district court. (App. 10, ¶ 23, App. 57-58 and App. 78-79) (R. 1, 44 and 69). First International argued it was entitled to the insurance proceeds as a mortgagee or loss payee. (App. 7-11) (R. 1). D. Duane Peterson (“Peterson”), Mid Am Group, LLC (“Mid Am”) and Mid Am Group Realty submitted an answer, arguing that they were entitled to the insurance proceeds as the named insured and that First International had been made whole through a foreclosure sale. (App. 37-44) (R. 16).

¶7 First International filed a motion for summary judgment. (R. 7). The district court entered an order on August 25, 2009, determining that First International was not entitled to the insurance proceeds as a loss payee or by virtue of its mortgage. (App. 52-62) (R. 44). The district court also invited the Unit Owners at the time of the hail storm to intervene. Id. The district court concluded that the Unit Owners were the real parties in interest by virtue of their ownership interest in the condominium and that the condominium Bylaws and Declarations arguably provided the Unit Owners with a basis for a claim to the insurance proceeds. Id.

¶8 The Association and all past and current Unit Owners filed a motion to intervene on October 1, 2009, arguing they were entitled to the insurance proceeds by virtue of the Condominium Documents. (App. 63-72) (R. 51). Peterson and Mid Am opposed the motion, arguing that the Association and Unit Owners did not have standing to intervene. (R. 56). On November 2, 2009, the attorney for Mid Am filed a Notice of Attorney's Lien claiming a lien on the insurance proceeds. (App. 73) (R. 60). On November 9, 2009, the Association and Unit Owners filed an objection to the attorney's lien. (Supp. App. 50-52) (R. 62). The district court entered an order on November 19, 2009, allowing the Association and all Unit Owners to intervene and ordered the parties to submit cross-motions for summary judgment. (App. 75-76) (R. 64). On the same day, the Association and Unit Owners filed a Summons and Interveners' Complaint. (App. 65-72) (R. 65 and 66). An Amended Interveners' Complaint was filed on March 5, 2010. (Supp. App. 53-60) (R. 81).

¶9 The parties submitted cross-motions for summary judgment, asking the district court to determine entitlement to the insurance proceeds. (App. 79-84) (R. 83 and 88). The district court heard motions on April 30, 2010. Peterson and Mid Am argued that the Unit Owners who acquired an interest through the bank and the Unit Owners at the time of the hail storm had no claim to the insurance proceeds. (R. 89). The Association and Unit Owners argued that Mid Am had contractual and fiduciary duties to apply the insurance proceeds to repair the condominium roof, that the Association and Unit Owners had an interest in enforcing Mid Am's contractual and fiduciary obligations, and that the

facts of the case required the insurance proceeds be used to fix the roof or otherwise benefit the Unit Owners. (R. 86).

¶10 On June 25, 2010, the district court entered its Findings of Fact, Conclusions of Law and Order for Judgment determining that the Association was entitled to the insurance proceeds. (App. 85-92) (R. 122). The Judgment was entered on June 29, 2010. (App. 93-94) (R. 123). The Association and Unit Owners filed a Notice of Entry of Order and Judgment on July 1, 2010 (App. 95-96) (R. 125). Mid Am filed its Notice of Appeal on August 27, 2010. (App. 99) (R. 127).

¶11 The district court found: (1) that Mid Am obtained insurance for Village Homes that included coverage for hail damage; (2) that Mid Am was the de facto Board of Managers for Village Homes at the time the insurance was purchased; and (3) that Mid Am was acting on behalf of the Unit Owners when purchasing insurance. The district court concluded: (1) that the Condominium Documents require Mid Am, as de facto Board of Managers, to purchase insurance; (2) that Mid Am, as developer and de facto Board of Managers, had fiduciary duties to act in good faith and in furtherance of the legitimate interests of the Unit Owners; (3) that the Unit Owners had an expectation under the Condominium Documents that the insurance proceeds would be applied to make roof or other repairs or to otherwise maintain Village Homes; (4) that the Unit Owners had a right to rely on the Village Homes' Condominium Documents; (5) that Mid Am would be unjustly enriched if allowed to collect any portion of the insurance proceeds; and (6) that the Association was entitled to the insurance proceeds that were on deposit with the district court. The district court also found the Condominium

Documents provided the Association or Unit Owners the right to enforce the documents and concluded the Association and Unit Owners had standing to enforce the Condominium Documents. The district court further concluded that the attorney's lien filed was of no effect and was released. (App. 85-92) (R. 122). Peterson and Mid Am argue that the district court erred in awarding the insurance proceeds to the Association and in releasing the attorney's lien.

¶12 STATEMENT OF THE FACTS

¶13 Appellants' Statement of the Facts sufficiently set forth the background pertaining to the development of Village Homes, the financing that was obtained from First International and First International's foreclosure of some of the Village Homes' condominium units. Appellants' Statement of the Facts also sufficiently sets forth the ownership interests of the individual condominium units during the respective time periods that are relevant to this proceeding with a few exceptions. The unit stated to be owned by Park West II Investments is owned by West Park II Investments. Additionally, Gerald and Jane Hendricks were not new unit purchasers and John and Molly Volkerding purchased another unit subsequent to First International's foreclosure sale. (App. 85-92) (R. 122).

¶14 The Village Homes' Bylaws provide that the affairs of Village Homes are to be governed by a Board of Managers. (App. 85-92) (R. 122) (Supp. App. 26-37, Art. II, Sec. 1) (R. 25). The Bylaws further provided that the powers and duties to be exercised by the Board of Managers include, among other things, (1) the upkeep and maintenance of the common elements and common areas; (2) obtaining insurance for the

condominium property; and (3) making repairs, additions and improvements to or alterations of the condominium property and repairs to and restoration of the property after damage or destruction by fire or other casualty. (App. 85-92) (R. 122) (Supp. App. 26-37, Art. II, Sec. 2) (R. 25). Under the Bylaws, the Board of Managers is required to make all maintenance, repair and replacements to the common elements. (App. 85-92) (R. 122) (Supp. App. 26-37, Art. V, Sec. 4(b)) (R. 25). The Bylaws also provide that the Board of Managers is to be elected at the first annual meeting of the Unit Owners, which is to be held within 30 days after 75 percent of the condominium units have been sold. (App. 85-92) (R. 122) (Supp. App. 26-37, Art. III, Sec. 1) (R. 25). At the time of the hail storm that caused roof damage to Village Homes, 75 percent of the condominium units had not been sold, a Board of Managers had not been elected and Mid Am was acting as the de facto Board of Managers. (App. 85-92) (R. 122). Mid Am, as the developer and de facto Board of Managers, was acting on behalf of the Unit Owners when it purchased insurance for Village Homes. (Id.) The Unit Owners who owned their units at the time of the hail storm understood that Mid Am had purchased insurance for the building and that insurance proceeds were to be utilized to make repairs, including repairs to the roof damage. (R. 96-102).

¶15 The first annual meeting of the Unit Owners did not take place until September 17, 2009, at which time a Board of Managers was elected and an unincorporated association was formed. (App. 85-92) (R. 53, ¶ 6 and R. 122). The Association subsequently organized an LLC, Village Homes at Harwood Groves, LLC a/k/a Village Homes at Harwood Groves Condominium Association and assumed management of

Village Homes. According to the North Dakota Secretary of State, the LLC was established on October 16, 2009. (App. 85-92) (R. 122). The Village Homes' Declaration provides that the Association or Unit Owners have the right to enforce the Declaration, Bylaws and Covenants. (Supp. App. 01-25, ¶ 13) (R. 25) (App. 85-92) (R. 122).

¶16 The Unit Owners asked the Association to represent its interests in enforcing the Bylaws and asserted that they were entitled to the insurance proceeds under the Condominium Documents and that such proceeds should be used to repair the roof damage. (App. 85-92) (R. 53, ¶ 17 and R. 122).

¶17 ARGUMENT

¶18 **A. The district court correctly concluded the Association was entitled to the insurance proceeds representing damages to Village Homes.**

¶19 Peterson and Mid Am argue that the Unit Owners who took through First International are not entitled to any of the insurance proceeds. This argument focuses on the district court's conclusion that First International was not entitled to the insurance proceeds as a mortgagee or loss payee. This argument ignores the underlying basis for the district court's decision, (1) that the Condominium Documents require the insurance proceeds to be applied to repair the condominium roof or to otherwise improve or maintain Village Homes; (2) that Mid Am's fiduciary obligations require the insurance proceeds be applied to repair the condominium roof or to otherwise improve or maintain Village Homes; and (3) that equity requires that the insurance proceeds be used to fix the roof or otherwise benefit the Unit Owners.

¶20 1. The Condominium Documents require the insurance proceeds to be applied to repair the condominium roof or to otherwise improve or maintain Village Homes.

¶21 In Agassiz West Condo. Ass'n v. Solum, 527 N.W.2d 244 (N.D. 1995), this Court described the character of condominium ownership of real property:

Under North Dakota law, a parcel of real property is submitted to a condominium project by recording a declaration in the office of the register of deeds. N.D.C.C. §§ 47-04.1-02, 47-04.1-03. The resulting "condominium" is "an estate in real property consisting of an undivided interest or interests in common in a portion of a parcel of real property together with a separate interest or interests in space in a structure, on such real property." N.D.C.C. § 47-04.1-01(1). A condominium combines two distinct forms of ownership of real property: (1) exclusive ownership of an individual unit of a multi-unit condominium project, and (2) ownership as a tenant in common of the common areas of the project, in proportion to each unit's interest in the total project. N.D.C.C. §§ 47-04.1-01(3), 47-04.1-01(4), and 47-04.1-06. The "common areas" include portions of the building outside the interior surfaces of the perimeter walls, bearing walls, floors, ceilings, windows and doors of the individual units. N.D.C.C. § 47-04.1-06. The condominium form of ownership is thus based upon the principle of shared ownership and shared responsibility. Because of the manner in which ownership in a condominium is structured, each unit owner, in choosing to purchase a unit, must give up certain rights and privileges which normally accompany fee ownership of property and agree to subordinate those rights and privileges to the group's interest. A condominium project functions as a quasi-government, and under N.D.C.C. § 47-04.1-07(1), its unit owners are responsible for its administration. Section 47-04.1-07(1), N.D.C.C., authorizes the unit owners, or the administrative body established by the unit owners, to provide for bylaws for "the maintenance of common elements, limited common elements where applicable, assessment of expenses, payment of losses, division of profits, disposition of hazard insurance proceeds, and similar matters." When there has been a failure to comply with the condominium's bylaws, N.D.C.C. § 47-04.1-08 authorizes "an action to recover sums due for damages, injunctive relief or such other relief as a court of proper jurisdiction may provide by the administrative body or in a proper case, by an aggrieved unit owner."

Id. at 246.

¶22 Under Village Homes' Declaration, all present and future owners, tenants, and occupants are subject to, and must comply, with the provisions of the Condominium Documents. (Supp. App. 01-25, ¶ 12) (R. 25).

¶23 According to the Village Homes' Bylaws, the affairs of Village Homes are to be governed by a Board of Managers, who are responsible for, among other things, (1) the upkeep and maintenance of the common elements and common areas; (2) obtaining insurance for the condominium property; and (3) making repairs, additions and improvements to or alterations of, the condominium property, and repairs to and restoration of the property after damage or destruction by fire or other casualty. (Supp. App. 26-37, Art. II, Sec. 2) (R. 25). Under the Bylaws, the Board of Managers is to be elected at the first annual meeting of the Unit Owners to be held within 30 days after 75 percent of the condominium units have been sold. (Id. at Art. III, Sec. 1).

¶24 The Covenants specifically state that they are for the purpose of protecting the value and desirability of, and shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. (Supp. App. 38) (R. 86).

¶25 The condominium declaration, bylaws and covenants are required to be recorded in the office of the register of deeds in the county where the property is located. N.D.C.C. §§ 47-04.1-02, 04 and 07. The purpose of requiring condominium documents to be recorded is to put perspective purchasers and owners on notice as to the bylaws,

covenants and restrictions which affect their interest in the property. Breene v. Plaza Tower Ass'n, 310 N.W.2d 730, 733 (N.D. 1981).

¶26 All of the Unit Owners took title with the understanding that the condominium building would be in good condition with no damage to the roof or other disrepair. (R. 53, ¶ 11). Furthermore, the Unit Owners took title with the understanding that the common areas would be repaired and maintained according to the recorded Condominium Documents. (R. 53, ¶ 12).

¶27 At the time of the hail storm that caused damage to Village Homes, no Board of Managers had been elected. The district court found that Mid Am, as the developer, was acting as the de facto Board of Managers at the time of the hail storm and when it purchased insurance. Mid Am acknowledged that it was acting as the Board of Managers at the time of the hail storm. Although this Court has not addressed the issue, other jurisdictions have held the rights, powers, privileges, duties and obligations of the Board of Managers are to be performed by the developer until the election of the initial Board of Managers. Glickman v. Teglia, 902 N.E.2d 1256, 1260-1261 (Ill. App. Ct. 2009); Port Liberte Homeowners Ass'n, Inc. v. Sordoni Const. Co., 924 A.2d 592, 598 (N.J. Super. Ct. App. Div. 2007); Seashore Club of Atl. City v. Seashore Club Condo. Ass'n, Inc., 180 N.J. Super. 81, 433 A.2d 819, 823 (N.J. Super. Ct. Ch. Div. 1981).

¶28 Therefore, the district court correctly determined that Mid Am, as the developer and acting Board of Managers, was required to comply with the Condominium Documents by purchasing insurance for Village Homes and applying the proceeds to repair damage to Village Homes. Allowing Mid Am to take a percentage of the insurance

proceeds would be contrary to the provisions of the Condominium Documents that govern the rights of the Unit Owners.

¶29 2. Mid Am's fiduciary obligations require the insurance proceeds to be applied to repair the condominium roof or to otherwise improve or maintain Village Homes.

¶30 Mid Am owed a duty to the Unit Owners to act with the utmost good faith and loyalty in managing Village Homes and was prohibited from self-dealing at the expense of the Unit Owners.

¶31 This Court has held that a condominium board's actions will be reviewed under the business-judgment rule. See Buckingham v. Weston Village Homeowners Ass'n, 1997 ND 237, ¶ 9, 571 N.W.2d 842; Agassiz, 527 N.W.2d at 248. Under the business-judgment rule, actions of a condominium board must be taken in good faith and in furtherance of the legitimate interests of the condominium and may not involve fraud, self dealing, unconscionability or other misconduct. Buckingham, at ¶ 9.

¶32 Courts in other jurisdictions have found that a developer or declarant of a condominium project has a fiduciary duty to its unit owners. See Munder v. Circle One Condo., Inc., 596 So.2d 144, 145 (Fla. Dist. Ct. App. 1992); Bd. of Managers of Weathersfield Condo. Ass'n v. Schaumburg Ltd. P'ship, 717 N.E.2d 429, 436-37 (Ill. App. Ct. 1999); Concerned Dunes West Residents, Inc. v. Georgia-Pac. Corp., 562 S.E.2d 633, 637 (S.C. 2002); Port Liberte Homeowners Ass'n, Inc. v. Sordoni Const. Co., 924 A.2d 592, 598-99 (N.J. Super. Ct. App. Div. 2007); Raven's Cove Townhomes, Inc. v. Knuppe Dev. Co., 171 Cal. Rptr. 334, 342-44 (Cal. Ct. App. 1981); Richard Gill Co. v. Jackson's Landing Owners' Ass'n, 758 S.W.2d 921, 924 (Tex. App. 1988); see also

Maercker Point Villas Condo. Ass'n v. Szymiski, 655 N.E.2d 1192, 1193-95 (Ill. App. Ct. 1995).

¶33 At the time of the hail storm, Mid Am was the developer and declarant and was acting as the Board of Managers. As such, Mid Am was required to act in good faith and in furtherance of the legitimate interests of the Unit Owners to the detriment of its own interests. To the extent that Mid Am had any interest in the insurance proceeds as a named insured, it agreed to subordinate those rights and privileges to the condominium's interest because of the manner in which ownership in a condominium is structured and because of the obligations imposed as the Board of Managers. Agassiz, 527 N.W.2d at 246.

¶34 The district court, therefore, properly concluded that Mid Am as developer and de facto Board of Managers had fiduciary duties to act in good faith and in furtherance of the legitimate interests of the Unit Owners. The district court also properly concluded the Association was entitled to the insurance proceeds.

¶35 3. Equity requires that the insurance proceeds be used to fix the condominium roof or otherwise benefit the Unit Owners.

¶36 If this Court concludes that the Bylaws do not contemplate how the insurance proceeds are to be utilized or that the Association is not entitled to the proceeds because of the fiduciary duties Mid Am owes to the Unit Owners, then equity requires that a contract be implied by law to prevent unjust enrichment to Peterson and Mid Am.

¶37 “Unjust enrichment is an equitable doctrine based upon a quasi or constructive contract implied by law to prevent a person from being unjustly enriched at the expense

of another. The doctrine serves as a basis for requiring restitution of benefits conferred ‘in the absence of an expressed or implied in fact contract.’” Lord & Stevens, Inc. v. 3D Printing, Inc., 2008 ND 189, ¶ 9, 756 N.W.2d 789 (citations omitted). “A contract implied in law or a claim of unjust enrichment is a fiction of law adopted to achieve justice where no true contract exists.” Id. (citations omitted).

¶38 If the insurance proceeds are awarded to Peterson and Mid Am in this action, they will walk away with money that was intended to benefit the Unit Owners and intended to repair the roof of Village Homes. Awarding Mid Am and Peterson the insurance proceeds would leave the Unit Owners to bear the burden of replacing the roof. Therefore, equity requires that the insurance proceeds be awarded to the Association to be used to repair the roof or to otherwise improve or maintain Village Homes.

¶39 **B. The district court correctly concluded the Association and Unit Owners have standing to enforce the Condominium Documents.**

¶40 The district court found that the Condominium Documents provided the Association or Unit Owners with the right to enforce the Condominium Documents and concluded that the Association and Unit Owners had standing to enforce the Condominium Documents.

¶41 Peterson and Mid Am contend the Association does not have standing to assert entitlement to the insurance proceeds because it did not formally exist at the time of the hail storm and because the Association has no ownership in the common elements of the condominium. Peterson and Mid Am also contend that any claim by the Association or Unit Owners to the insurance proceeds should have been brought in a separate lawsuit.

¶42 Under N.D.C.C. § 47-04.1-07(1), condominium owners are responsible for the condominium's administration. This statute also authorizes the unit owners or the administrative body established by the unit owners to adopt bylaws. Where there has been a failure to comply with the condominium bylaws, N.D.C.C. § 47-04.1-08 allows an action for damages by the governing body or aggrieved unit owner. Agassiz, 527 N.W.2d at 216. On September 17, 2010, the Association was formed and assumed the management responsibilities of Village Homes. (App. 85-92) (R.122). Under the Village Homes' Declaration, the Association or Unit Owner has the right to enforce the Declaration, Bylaws and Covenants. (Supp. App. 01-25, ¶ 13) (R. 25). The Association's right to bring an action as the governing body to enforce the Bylaws is not restricted by the Condominium Documents or caselaw.

¶43 Mid Am purchased insurance for Village Homes as required under the Condominium Documents but now asserts it is entitled to the insurance proceeds without having to also pay for repairs to Village Homes. This is contrary to the Condominium Documents which require the proceeds to be used to repair the roof or to otherwise benefit Village Homes. As such, the Association, as the representative of the Unit Owners and as the governing body, of Village Homes, has a right to ensure that the insurance proceeds will be applied to fix the damage to the roof as required by the Bylaws and other Condominium Documents. Peterson and Mid Am cite no authority for its position that the Association's right to bring an action is restricted based upon the date the Association came into existence. But see Port Liberte Homeowners Ass'n, Inc. v. Sordoni Const. Co., 924 A.2d 592, 597-98 (N.J. Super. Ct. App. Div. 2007) (finding that

an association had standing regardless of whether it formally existed at the particular time in which the claim arose).

¶44 Mid Am relies on Jablonsky v. Klemm, 377 N.W.2d 560 (N.D. 1985) to support its position that the Association lacks standing because it does not have an ownership interest in the common elements. In Jablonsky, the condominium association brought a negligence and breach of warranty action against the developer for a failed retaining wall, which was a common element. This Court found that the individual unit owners, rather than the condominium association, were the real parties in interest because the association did not have an ownership interest in the common elements. Jablonsky, at 569. The claim did not involve enforcement of the bylaws or a dispute over insurance proceeds. Id. This case on the other hand, involves enforcement of Village Homes' Bylaws and entitlement to insurance proceeds that were purchased for the benefit of and on behalf of the Unit Owners by its Board of Managers as provided for by the Bylaws. Therefore, this case is distinguishable from Jablonsky.

¶45 Furthermore, courts favor intervention and joinder of all parties in one action. Fetch v. Quam, 530 N.W.2d 337, 338 (N.D. 1995). In North Dakota, intervention has historically been liberally granted. Eichhorn v. Waldo Tp. Bd. of Sup's, County of Richland, 2006 ND 214, ¶ 13, 723 N.W.2d 112 (N.D. 2006) (citing Braatlien v. Burns, 74 ND 29, 19 N.W.2d 827 (N.D. 1945)). Several reasons support liberally allowing intervention, including the interests of justice, avoidance of multiple litigation and to conserve judicial time and resources. Fetch, at 338. The fact that this dispute involves insurance proceeds also favors allowing intervention. Other courts have found that

intervention should be permitted where there is an interest in a specific fund of insurance proceeds for a specific purpose as compared to a generalized interest in a fund to satisfy a judgment. Triton Realty Ltd. P'ship v. Almeida, No. CIV.A. 04-2335, 2005 WL 1984454, *5 (R.I. Super. Aug. 17, 2005) (holding that where proposed interveners had an interest in a specific fund of insurance proceeds rather than merely a generalized interest that intervention should be permitted).

¶46 The Condominium Documents provide that the Association, as the managing body, is the entity that would ultimately have responsibility for carrying out the operation and maintenance of the condominium property, including maintenance to the common areas. It logically follows that this would be the same entity that should assume ownership of the insurance proceeds to pay for the repairs to the roof. Although Mid Am is alleging entitlement to the insurance proceeds, it is not the intended beneficiary.

¶47 Therefore, the district court correctly concluded that the insurance proceeds should be awarded to the Association for the benefit of the Unit Owners to repair the roof. Even if this Court determines that the Association did not have standing to sue, each of the individual Unit Owners were also parties to the lawsuit and are entitled to the benefits of the insurance proceeds.

¶48 **C. The district court correctly released the attorney's lien.**

¶49 The attorney's lien statute in North Dakota specifically provides that an attorney has a lien for compensation for any case when there is money due to the attorney's client in the hands of the adverse party. N.D.C.C. § 35-20-08. In this case, the district court concluded that no money was due to Mid Am. Nonetheless, Mid Am claims that but for

its attorney's actions, the money would have gone to the bank and nobody else. This contention inaccurately states the record. First International has asserted throughout this lawsuit that it intended to utilize the insurance proceeds to benefit the Unit Owners. (R. 22, ¶ 3). Furthermore, the attorney's lien statute does not provide for a lien when the money is due to another attorney's client. The district court correctly concluded that the attorney's lien filed by Mid Am's attorney was of no effect and was released.

¶50 CONCLUSION

¶51 For the reasons stated above, the district court's decision should be affirmed.

Dated this 2nd day of November, 2010.

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