

## **APPENDIX**

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**APPENDIX A**

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State of Minnesota

In Supreme Court

A19-1816

In re Jerald Hammann, Petitioner,

Jerald Hammann, Petitioner,

vs.

Wells Fargo Bank NA, Respondent.

**ORDER**

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Jerald Hammann for further review be, and the same is, denied.

Dated: February 18, 2020      BY THE COURT:

/s/ G. Barry Anderson  
G. Barry Anderson  
Associate Judge

**APPENDIX B**

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State of Minnesota

In Supreme Court

A19-1304

Jerald Hammann, Petitioner,

vs.

Wells Fargo Bank NA, Respondent.

**ORDER**

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Jerald Hammann for further review be, and the same is, denied.

Dated: May 19, 2020 BY THE COURT:

/s/ Lorie S. Gildea  
Lorie S. Gildea  
Chief Judge

## APPENDIX C

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STATE OF MINNESOTA  
IN COURT OF APPEALS

A19-1816

In re Jerald Hammann, Petitioner,  
Jerald Hammann, Petitioner,  
vs.  
Wells Fargo Bank NA, Respondent.

### ORDER

Considered and decided by Cleary, Chief Judge,  
Johnson, Judge; and Segal, Judge.

Based upon all the file, record, and proceedings, and for  
the following reasons:

Petitioner Jerald Hammann seeks a writ of prohibition,  
challenging the orders filed in the district court denying his  
motion to remove the assigned judge under Minn. R. Civ. P.  
63.03, denying reconsideration of that order, and denying a  
request to disqualify all judges from considering the  
underlying case or Hammann's request for recusal.

Prohibition may be an appropriate remedy when a party  
seeks to remove a judge as a matter of right. See *McClelland*  
*v Pierce*, 376, N.W.2d 217 (1985). But petitioner previously

removed a judge as a matter of right and that is not the basis for the relief sought in this case. Prohibition is an extraordinary remedy, although it may be appropriate upon a showing that the district court exceeded its jurisdiction or that the matter at issue would be decisive of the entire case, where there is a challenge to the production of information on the basis of privilege, or where there is an unsettled question of practice affecting all litigants. *Thermorama Inc. v. Shiller*, 135 N.W.2d 43, 46 (Minn. 1965); see also *Underdahl v. Comm'r of Pub. Safety (In re Comm'r of Pub. Safety)*, 735 N.W.2d 706, 710 (Minn. 2007). Petitioner Hammann has not established that any of these criteria have been satisfied. Nor has petitioner established that he lacks an ordinary remedy that would be adequate.

Petitioner Hammann has not established that the “facts and circumstances” on which he relies would cause a reasonable person to believe that all judges are unlikely to be neutral when considering petitioner’s claims. And petitioner has not established that he was entitled to a jury trial before dismissal of his claims under Minn. R. Civ. P. 5.04(a) or on his motion to vacate.

IT IS HEREBY ORDERED: The petition for prohibition is denied in its entirety.

Dated: December 17, 2019 BY THE COURT:

/s/ Edward J. Cleary  
Edward J. Cleary  
Chief Judge

## **APPENDIX D**

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State of Minnesota

In Court of Appeals

A19-1304

Jerald Hammann, Appellant,

vs.

Wells Fargo Bank NA, Respondent.

**Filed February 24, 2020 Affirmed in part and reversed in part Bjorkman, Judge**

Hennepin County District Court File No. 27-CV-HC-16-719

Jerald Hammann, Minneapolis, Minnesota (pro se appellant)  
Kristina Kaluza, Dykema Gossett PLLC, Minneapolis,  
Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge;  
Bjorkman, Judge; and Slieter, Judge.

### **UNPUBLISHED OPINION**

**BJORKMAN**, Judge

Appellant challenges orders that effectively dismissed his action seeking to assert claims related to a closed housing court matter and imposed sanctions. Because appellant did not timely file his action, we affirm its dismissal. But we

reverse, in part, because the law does not support the sanction awards.

## FACTS

Appellant Jerald Hammann entered into a lease for residential property in Hennepin County in 2010. The property owners defaulted on their mortgage later that year, and respondent Wells Fargo initiated foreclosure proceedings. After several years of litigation, Wells Fargo recovered possession of the property in December 2015. In February 2016, Hammann commenced a lockout action against Wells Fargo, asserting claims for ouster, unlawful exclusion or removal, and breach of landlord covenants. The district court dismissed the lockout action with prejudice, and this court affirmed that decision.

On April 23, 2018, Hammann served what he describes as a supplemental complaint in the lockout action on Wells Fargo. The supplemental complaint relates to personal property Hammann lost when Wells Fargo repossessed the residential property in December 2015. Hammann alleges that he was unable to remove thousands of dollars' worth of personal property (property) before the lockout and was unable to recover it from Wells Fargo, despite his attempts to contact the bank.

On approximately June 1, 2019, Hammann attempted to electronically file the supplemental complaint in the closed lockout file. The electronic filing system twice rejected the supplemental complaint. The district court administrator indicated that the supplemental complaint was rejected first because it should have been filed as a civil case instead of a housing court case, and second because it was an "existing case." On June 13, Hammann moved the district court to compel the district court administrator to accept the

supplemental complaint for filing pursuant to Minn. R. Civ. P. 5.04(c).

On June 19, the district court denied Hammann's motion as untimely and barred by res judicata. And the court deemed Hammann a frivolous litigant pursuant to Minn. R. Civ. P. 11.03(b), requiring him to pay \$300 as a sanction before he could file any further motions or pleadings relating to the property. Hammann paid the sanction and requested permission to seek reconsideration of the June 19 order. The court denied the request in a July 23 order.<sup>1</sup> The district court determined that Hammann was essentially challenging the judgment in the lockout action and had not shown why res judicata did not bar his claims. The district court imposed an additional \$500 in sanctions and stated that it may issue a show-cause order and restrict Hammann's access to district court services if he continued to make frivolous filings. Hammann appeals the two orders.<sup>2</sup>

## DECISION

### **I. The district court orders are appealable.**

As a preliminary matter, Wells Fargo argues that the challenged orders are not final and appealable under Minn. R. Civ. App. P. 103.03, so this court lacks jurisdiction over the appeal. The issue of appellate jurisdiction is a question of law that we review de novo. *Howard v. Svoboda*, 890 N.W.2d 111, 114 (Minn. 2017).

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<sup>1</sup> A housing court referee recommended the June 19 and July 23 orders. Both orders were approved by a district court judge pursuant to Minn. Stat. § 484.013, subd. 5 (2018).

<sup>2</sup> In their respective appellate briefs, the parties indicate that Hammann seeks recovery of his property in a new action filed in district court on June 20, 2019.

An appeal may be taken “from a final judgment.” Minn. R. Civ. App. P. 103.03(a). “An order dismissing all claims constitutes a final judgment because it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Woischke v. Stursberg & Fine, Inc.*, 920 N.W.2d 419, 422 (Minn. 2018). Here, the first district court order denied Hammann’s motion to compel filing of his supplemental complaint and imposed a \$300 sanction. The order ended the litigation on the merits because it dismissed all the claims in Hammann’s supplemental complaint. Accordingly, the first order is final and appealable, and this court has jurisdiction over the appeal.

An order denying a request to bring a motion for reconsideration is not appealable. *Buhl v. State*, 922 N.W.2d 435, 442 (Minn. 2019). But the July 23 order imposed a \$500 sanction on Hammann and conditioned his ability to seek further relief in court. Orders imposing sanctions are final and appealable. Minn. R. Gen. Prac. 9.05. Hammann’s appeal is properly before this court.

## **II. Hammann’s action is deemed dismissed with prejudice by operation of law.**

Minn. R. Civ. P. 3.01(a) provides that a civil action is commenced “when the summons is served upon [the] defendant.” But “[a]ny action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period.” Minn. R. Civ. P. 5.04(a). Neither the defendant nor the court needs to take any action to effectuate rule 5.04(a); an action is deemed dismissed with prejudice by operation of law once the one-year deadline passes. *Gams v. Houghton*, 884 N.W.2d 611, 617 (Minn. 2016).

The record reveals that Hammann served his supplemental complaint on Wells Fargo on April 23, 2018. Hammann identified April 23, 2018, as the service date in the civil cover sheet he attempted to file along with the supplemental complaint.<sup>3</sup> Wells Fargo agrees that the complaint was served on that date. Hammann did not attempt to file the complaint with the district court until well after one year had passed. There is no evidence in the record that the parties stipulated to extend the filing period.

Because Hammann did not timely file his supplemental complaint, his action was automatically dismissed with prejudice. The district court did not err in denying his motion to compel filing.<sup>4</sup>

### **III. The district court abused its discretion by sanctioning Hammann.**

By filing a pleading or written motion with a court, a self-represented litigant certifies that the pleading or motion is not being presented for an improper purpose, that the claims are warranted by existing law, and that the allegations and other factual contentions have evidentiary support. Minn. R. Civ. P. 11.02(a)-(c). A district court may sanction a litigant for violating rule 11.02. Minn. R. Civ. P. 11.03. We review a sanction award for abuse of discretion. *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *review denied* (Minn. Mar. 15, 2011). A district court

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<sup>3</sup> For the first time on appeal, Hammann denies that he served the supplemental complaint on that date and points out that he did not submit an affidavit of service. We are not persuaded by Hammann's effort to create an "issue" as to the service date based on his own failure to file an affidavit of service.

<sup>4</sup> Because rule 5.04 compels dismissal of Hammann's action, we need not address the district court's other ground for denying his motion to compel filing.

abuses its discretion when its decision is arbitrary, based on an erroneous view of the law, or against the facts in the record. *Kalensburg v. Klein*, 847 N.W.2d 34, 41 (Minn. App. 2014).

Hammann contends that the district court violated rule 11 by imposing sanctions without providing him notice and an opportunity to be heard. We agree. Rule 11.03 provides, “If, *after notice and a reasonable opportunity to respond*, the court determines that Rule 11.02 of these rules has been violated, the court may . . . impose an appropriate sanction upon the . . . parties that have violated Rule 11.02 or are responsible for the violation.” (Emphasis added.) Similarly, rule 9.01 of the General Rules of Practice for the District Courts, which addresses frivolous litigation, provides that a district court may, “on its own initiative and *after notice and hearing*,” impose preconditions on a frivolous litigant’s filing of new claims or motions. (Emphasis added.) Here, the district court twice imposed monetary sanctions and restrictions on Hammann’s litigation rights without providing Hammann notice that it was considering doing so or the opportunity to be heard. The district court’s failure to follow these required procedures constitutes abuse of discretion. *Cf. In re Rollins*, 738 N.W.2d 798, 804 (Minn. App. 2007) (citing rule 11.03 and reversing sanctions imposed under statute containing identical language when district court failed to follow the show-cause procedure). Accordingly, we reverse the portions of the challenged orders that impose monetary sanctions and limit Hammann’s future ability to seek relief in district court.

**Affirmed in part and reversed in part.**

## APPENDIX E

STATE OF MINNESOTA DISTRICT COURT  
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

## **Standing Order re Certain Real Property-Related Civil Cases**

WHEREAS, effective October 1, 2014, the Fourth Judicial District's practice regarding certain real property-related cases has been to assign these cases to referees designated to handle Housing Court cases, to-wit:

- (i) Hazardous buildings (Minn. Stat. §§ 463.15-463.24);
- (ii) Hazardous excavation/vacant buildings (Minn. Stat. §§ 463.25-463.27);
- (iii) Tenant remedies actions (Minn. Stat. §§ 504B.395-504B.471);
- (iv) Emergency tenant remedies actions (Minn. Stat. § 504B.381);
- (v) Municipal building/housing code enforcement cases under the Uniform Declaratory Judgment Act (Minn. Stat. §§ 555.01-555.16);
- (vi) Public nuisance enforcement (Minn. Stat. §§ 617.80-617.87);
- (vii) Commercial and other non-residential property evictions;
- (viii) Mortgage foreclosures; and
- (ix) Contract for deed cancellations.

WHEREAS, certain of these real property-related cases do not involve residential rental housing and as such are not

subject to the Fourth Judicial District's Housing Calendar Consolidation Program, and are not governed by Minn. Stat. § 484.013 (Housing Court Consolidation Program) or the Housing Court Rules incorporated into Title VII of the Minnesota General Rules of Practice; and

WHEREAS, the Minnesota Rules of Civil Procedure apply to real property-related cases that do not fall under the authority of the Housing Calendar Consolidation Program; and

WHEREAS, the hearing of these cases by referees familiar with real property-related issues including but not limited to those enumerated in the first WHEREAS clause above, allows for consistency and continuity in the disposition of such cases, and those referees have been hearing these types of cases as directed by the Chief Judge of Hennepin County District Court since October 1, 2014; and

WHEREAS, pursuant to Minn. Stat. § 484.70, "All referees are subject to the administrative authority and assignment power of the chief judge of the district ... and are not limited to assignment to family, probate, juvenile or special term"; and

WHEREAS, under Minn. Stat. § 484.70, the chief judge may assign to referees cases which do not fall under the authority of the Housing Court, including real property-related civil cases such as those above- described.

Now, Therefore, **IT IS HEREBY ORDERED:**

1. Referees currently assigned to hear Housing Court matters are hereby authorized to hear civil cases which are real property-related as described in the first WHEREAS clause above, but which do not involve residential rental housing.

2. Real property-related cases which do not involve residential rental housing shall be filed using the case type of Civil-Other (27-CV).
3. When a real property-related case not subject to Minnesota Statutes § 484.013 is filed with an "HC" designation, court administration is authorized to refile the case and designate it "Civil- Other" and the petitioner/plaintiff shall not incur an additional filing fee.
4. Court administration is authorized to assign these designated real property-related Civil-Other cases to referees of the Fourth Judicial District in accordance with established policies and procedures.

Dated: March 5, 2018 BY THE COURT:

/s/ Ivy S. Bernhardson  
Ivy S. Bernhardson  
Chief Judge  
Hennepin County District Court

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**APPENDIX F**

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**Cases in Which Wells Fargo is the First-Named Plaintiff**

January 1, 2014 - December 31, 2018

Case Type	Number of Cases
Civil Other/Misc.	1,041
Conciliation	1
Confession of Judgment	201
Consumer Credit Contract	507
Contract	183
Default Judgment	1,697
Employment	1
Eviction (UD)	853
Quiet Title	41
Receivership	3
Reduced Mortgage Redemption	42
Replevin	2
Restitution Judgment	11
Tax Court	18
Torrens	1
Transcript Judgment	4
Grand Total	4,606

The above table represents cases filed in Minnesota state courts from January 1, 2014 through December 31, 2018 in which Wells Fargo (in any of its corporate names), was the

first-named Plaintiff. The following case types are removed from this listing: Appointment of Trustee, Condemnation, Condemnation Appeal, Foreign Judgment, Forfeiture, Probate (all forms), Summary Administration, Transcript Judgment From Other Minnesota County, and Trust. These case types were removed because it is believed that Wells Fargo's role in these cases is either tangential to the action, represents an action not initiated in Minnesota, or is a duplicate of an action initiated in Minnesota.

Information obtained by Jerald Hammann from Minnesota Trial Court Public Access (MPA) Remote View from August 6-12, 2019.

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**APPENDIX G**

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**Cases in Which Wells Fargo is the First-Named Defendant**

January 1, 2014 - December 31, 2018

Case Type	Number of Cases
Civil Other/Misc.	67
Conciliation	48
Conciliation Appeal	6
Consumer Credit Contract	1
Contract	14
Default Judgment	1
Employment	2
Personal Injury	4
Quiet Title	13
Transcript Judgment	3
<b>Grand Total</b>	<b>159</b>

The above table represents cases filed in Minnesota state courts from January 1, 2014 through December 31, 2018 in which Wells Fargo (in any of its corporate names), was the first-named Defendant. The following case types are removed from this listing: Appointment of Trustee, Condemnation, Condemnation Appeal, Foreign Judgment, Forfeiture, Probate (all forms), Summary Administration, Transcript Judgment From Other Minnesota County, and Trust. These case types were removed because it is believed that Wells Fargo's role in these cases is either tangential to

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the action, represents an action not initiated in Minnesota, or  
is a duplicate of an action initiated in Minnesota.

Information obtained by Jerald Hammann from Minnesota  
Trial Court Public Access (MPA) Remote View from August  
6-12, 2019.

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## APPENDIX H

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### **Civil-Other Cases in Which Wells Fargo is the First-Named Defendant**

January 1, 2014 - December 31, 2018

Case Number	Notes from File Review
27-CV-14-1597	Removed to federal court
02-CV-14-763	Removed to federal court
82-CV-14-1337	Removed to federal court
08-CV-14-437	Settled
02-CV-14-3119	Settled
27-CV-14-9807	Default judgment on an attorney's lien on an airplane. Wells Fargo did not appear to contest.
18-CV-14-2745	Plaintiffs successfully sought title to a motor home they purchased.
82-CV-14-3551	Removed to federal court
10-CV-14-867	Removed to federal court
27-CV-14-15883	Settled
62-CV-14-7781	Removed to federal court
27-CV-14-19555	Settled
27-CV-14-19748	Wells Fargo did not oppose default judgment
05-CV-15-210	Focused on whether a transfer from Wells Fargo to Freddie Mac constituted a sale requiring a right of first refusal. Court ruled that it did not constitute a sale because Freddie Mac was never a third party.
27-CV-14-21010	See Appendix H paragraph 1.
27-CV-15-3909	Removed to federal court

27-CV-15-8676	Dismissal without prejudice
27-CV-15-8904	Wells Fargo obtained all of the assets of a company pursuant to a secured collateral surrender. Another creditor sued Wells Fargo for receiving more than the total amounts validly secured, when it had a \$25,097 receivable.
62-CV-15-4229	Wells Fargo was an intervening defendant in an action involving a family dispute involving inheritance.
18-CV-15-2685	Removed to federal court
27-CV-15-14683	Removed to federal court
62-CV-15-5044	Wells Fargo did not contest reduction of 6-month redemption period on primary mortgage to 5 weeks
27-CV-15-14998	Default judgment entered. HOA redemption only subject to Wells Fargo's first mortgage. All other mortgages eliminated.
27-CV-15-17809	Settled
02-CV-15-5095	Wells Fargo did not contest reduction redemption period to 5 weeks
66-CV-15-2686	Complaint filed by attorney, then attorney withdrew. Plaintiff did not continue to pursue claims and action was dismissed for failure to prosecute.
62-CV-15-6618	Removed to federal court
02-CV-16-426	Wells Fargo did not contest that a mortgage document in favor of Bank of America was lost, misplaced, or inadvertently not completed. Bank of America was entitled to the record satisfaction of the mortgage.
27-CV-HC-16-719	See Appendix H paragraph 3.
27-CV-16-4526	Removed to federal court
62-CV-16-2391	Settled
61-CV-16-212	Wells Fargo stipulated to annulment of sheriff's sale because of defects in Notice and service.
27-CV-16-7370	Removed to federal court

<b>55-CV-16-4203</b>	<b>See Appendix H paragraph 2.</b>
70-CV-16-18930	Removed to federal court
70-CV-16-21531	Removed to federal court
34-CV-16-558	Co-pending action. Plaintiff failed to properly serve Wells Fargo and case was closed administratively for inaction.
31-CV-17-29	Settled
82-CV-17-104	Removed to federal court
62-CV-17-1704	Removed to federal court
27-CV-17-5219	Settled
85-CV-17-808	Wells Fargo did not object to correction of a Transfer on Death Deed to correct an error that prevented its filing. Wells Fargo remained the primary mortgage on the property. All other claims were extinguished.
50-CV-17-1336	Dismissal without prejudice
70-CV-17-12018	Removed to federal court
02-CV-17-3767	Removed to federal court
27-CV-17-12834	Removed to federal court
02-CV-17-4768	Removed to federal court
62-CV-18-957	Removed to federal court
73-CV-18-3523	Plaintiff demanded that the Commissioner of Public Safety issue title for 15 motorcycles that represented collateral on a floor plan. Wells Fargo's is ultimately the seller of the motorcycles.
73-CV-18-3524	Same
73-CV-18-3525	Same
73-CV-18-3526	Same
73-CV-18-3527	Same
73-CV-18-3528	Same
73-CV-18-3529	Same

73-CV-18-3530	Same
73-CV-18-3531	Same
73-CV-18-3532	Same
73-CV-18-3533	Same
73-CV-18-3534	Same
73-CV-18-3535	Same
73-CV-18-3536	Same
73-CV-18-3537	Same
19HA-CV-18-2754	Settled
<b>02-CV-18-5291</b>	<b>See Appendix H paragraph 4.</b>
62-CV-18-6563	Removed to federal court
<b>27-CV-18-19611</b>	<b>See Appendix H paragraph 5.</b>
62-CV-18-8322	Settled

Information obtained by Jerald Hammann from Minnesota Trial Court Public Access (MPA) Remote View from August 6-14, 2019.

**APPENDIX I****Minnesota Appellate Cases involving Wells Fargo as a First-Named Party**

January 1, 2014 - December 31, 2018 (Opinion File Date)

Case No.	Original Decision Favors	Appellate Result	Appendix H Notes
A16-0737, A16-1161	Wells Fargo	Affirmed	Paragraph 6.
A16-1263	Wells Fargo	Affirmed	Paragraph 7.
A15-1819	Wells Fargo	Affirmed	Paragraph 8.
A15-0478	Wells Fargo	Affirmed	Paragraph 9.
A14-0868	Wells Fargo	Affirmed	Paragraph 10.
A15-0110	Wells Fargo	Affirmed	Paragraph 11.
A13-1418	Wells Fargo	Affirmed	Paragraph 7.
A15-1557	Wells Fargo	Affirmed	None. Court Trial
A13-1839	Wells Fargo	Affirmed	None. Trust Proceeding

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Case No.	Original Decision Favors	Appellate Result	Appendix H Notes
A13-1417	Wells Fargo	Affirmed	None. Release of Appeal Bond

Information obtained by Jerald Hammann from Minnesota  
State Law Library Opinion Archive from August 16-22,  
2019.

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## APPENDIX J

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### **Contested Minnesota State Court Cases Involving Wells Fargo as a First-Named Plaintiff or First-Named Defendant**

January 1, 2014 - December 31, 2018

1. **Case No. 27-CV-14-21010:** Plaintiff slipped and fell on an icy sidewalk near a Wells Fargo ATM machine. The jury concluded that Wells Fargo was 55% negligent for the plaintiff's fall and that the plaintiff was 45% negligent. As Minnesota is a comparative fault state, this would have resulted in Wells Fargo being 55% liable for the plaintiff's damages. However, the jury determined that neither party was the direct cause of the accident, presumably because they felt that the ice was the direct cause of the accident – a fact ascertainable from even the most basic knowledge of the properties of ice. 27-CV-14-21010 Index #66. Based on these jury findings, the district court judge dismissed the plaintiff's claims against Wells Fargo with prejudice, denying the plaintiff relief. Wells Fargo prevailed because the court asked the wrong question of the jury and further because the judge then elected to ignore the jury findings which accounted for the error in the question. Judgment against the plaintiff was entered for costs and disbursements totaling \$8,265.78. 27-CV-14-21010 Events & Orders of the Court.

2. **Case No. 55-CV-16-4203:** An unrepresented litigant claimed a breach of contract claim for Wells Fargo's failure to have a "face to face" interview with him before three mortgage payments were unpaid, and then subsequently

foreclosing on an FHA mortgage. 55-CV-16-4203 Index #2. His motion to proceed in forma pauperis was denied because the district court found that "[t]he action is frivolous." 55-CV-16-4203 Index #9. However, this cause of action has been recognized in numerous states, including Minnesota. See *Dan Harry v. PNC Bank, N.A.*, C.A. No. 17-136 WES, 2018 WL 1083581, at \*4 (D.R.I. Feb. 27, 2018), citing *Njema v. Wells Fargo Bank, N.A.*, 124 F. Supp. 3d 852 (D. Minn. 2015) (bank's failure to hold face-to-face meeting is a breach of the mortgage contract).

3. **Case No. 27-CV-HC-16-719:** Unrepresented litigant Hammann claimed Wells Fargo failed to provide him with a 90-day notice to vacate and improperly locked him out of the residential property. The district (and appellate) court refused to even acknowledge the existence of the 90-day notice right provided by the Protecting Tenants at Foreclosure Act of 2009 and by Minn. Stat. §504B.285(1a)(a). 27-CV-HC-16-719 Index #2 ¶7-13, #13, #22, #28. Acknowledging the existence of the 90-day notice requirement would have resulted in the plaintiff prevailing on his action. See *Mik v. Federal Home Loan Mortg. Corp.*, 743 F. 3d 149 (6th.Cir. 2014).

4. **Case No. 02-CV-18-5291:** A represented litigant claimed Wells Fargo's process server did not serve her personally, but instead left a foreclosure notice on her lawn. As the plaintiff filing the action, she had already invoked the jurisdiction of the court over herself and her claims and was affirmatively requesting that it determine the merits of her claims. Nonetheless, the district court erroneously applied a ruling relevant to a defendant's assertion of the affirmative defense of a court's lack of personal jurisdiction over them to find that the present plaintiff "waived her insufficient service of process claims by moving for summary judgment

on other grounds.” 02-CV-18-5291 Index #31, Conclusions ¶11-12.

5. **Case No. 02-CV-18-19611:** An unrepresented litigant sought to enjoin or set aside a sale pursuant to Minn. Stat. § 582.043 (Loss Mitigation; Mortgage Foreclosure Dual Tracking). Wells Fargo moved for dismissal of this claim, arguing as its sole basis for dismissal that plaintiff’s August 17, 2015, notice of “lis pendens was voided and is treated as not filed, which creates a conclusive presumption that Wells Fargo complied with Minn. Stat. § 582.043. See Minn. Stat. § 582.043, subd. 7(b).” 27-CV-18-19611 Index #11 at 10. Wells Fargo dismissal memorandum did not assert a res judicata or collateral estoppel affirmative defense which would normally mean that it had waived these affirmative defenses. *Id.* Further, its argument would have failed before an unbiased judiciary. A lis pendens is “recorded” without regard to whether it is later voided. Minn. Stat. §582.043(7)(b). Rendering something “void” does not mean it never came into existence. See *Borchardt v. Kulick*, 234 Minn. 308, 319, 48 N.W.2d 318, 325 (1951) (“the statute of frauds does not render a contract absolutely void in the sense that no contract ever comes into existence”). The district court completely ignored Wells Fargo’s sole argument for dismissal of this claim and instead dismissed the claim *sua sponte* on other grounds not presented by Wells Fargo. 27-CV-18-19611 Index #20. While it is unclear from the record whether the plaintiff was provided the opportunity to be heard on this new *sua sponte* argument, it is clear that the plaintiff was never provided with reasonable notice. See 27-CV-18-19611 Register of Actions.

6. **Case Nos. A16-0737 and A16-1161:** Consolidated cases are discussed above at ¶2 in relation to the 27-CV-HC-16-719 case.

7. **Case Nos. A16-1263 and A13-1418:** Both of these cases involve the same error. The fourth element of a proper eviction requires that a party seeking eviction must prove that . . . (4) the plaintiff is entitled to possession of the property. Minn. Stat. §504B.285(1). While a sheriff's certificate provides *prima facie* evidence that all the requirements of law have been met and that the purchaser has obtained title (see Minn. Stat. §§ 580.12, .19 (2016)), all the phrase "*prima facie*" means is "at first sight." Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. When a party opposing eviction raises a credible claim that a plaintiff is not entitled to possession of the property, the *prima facie* characteristic of the sheriff's certificate is no longer sufficient for the party seeking eviction to prevail, and the party seeking eviction must sustain its burden to fully-prove the fourth element. Therefore, affirming the district court rulings was erroneous.

8. **Case No. A15-1819:** Wells Fargo was initially denied summary judgment but was later granted summary judgment pursuant to a motion for reconsideration. Wells Fargo had paid a contractor to remediate problems with a house it obtained through foreclosure. Wells Fargo never monitored its agent's performance on the remediation efforts or verified that the problems were actually remediated (which they weren't). Wells Fargo also failed to disclose the remediation efforts to buyers, instead relying upon its "*as-is*" terms of contract to argue a lack of duty to disclose, despite the fact that disclosure of known material facts that could affect "an ordinary buyer's use and enjoyment of the property" is always required by Minnesota Law even for "*as-is*" contracts. Minn. Stat. §513.55 (as to Wells Fargo) and §82.68(3)(a) (as to Wells Fargo's real estate broker agents). The failure in disclosure in this case was not solely as to the "remaining problems" as characterized by the court of appeals, but instead as to the initial problems requiring

remediation, which reappeared after the home was sold. Therefore, affirming the district court ruling was erroneous.

9. **Case No. A15-0478:** This is another case involving the most basic knowledge of the properties of ice. In the late Winter and early Spring in Minnesota, outdoor moisture often goes through repeated freeze-thaw cycles, freezing to ice in the evening as temperatures drop and thawing back to water in the late morning as temperatures rise. This freeze-thaw cycle is perpetuated for days at a time during this time period by the melting of accumulated snow and ice. The court of appeals found that these facts – which are well within the common knowledge of the average Minnesota juror – are “so technical that [they] would require expert testimony. See Minn. R. Evid. 702.” This finding places even the most ordinary knowledge within the province of expert knowledge and correspondingly outside the province of the jury’s traditional fact-finding powers. Denying the right to a jury trial on this basis is constitutionally-impermissible. Therefore, affirming the district court ruling was erroneous.

10. **Case No. A14-0868:** The opposing party submitted into evidence a fax cover sheet and fax receipt confirmation as proof that he had submitted a loss-mitigation worksheet to Wells Fargo pursuant to Minn. Stat. §582.043. The court of appeals denied that the fax cover sheet and fax receipt confirmation sheet created a genuine issue of material fact regarding whether a loss-mitigation worksheet was submitted to Wells Fargo, instead claiming that only the submission into evidence of the loss-mitigation worksheet itself would create a genuine issue of material fact in dispute. However, the submission into evidence of the loss-mitigation worksheet, along with the fax cover sheet and confirmation sheet, would actually have removed this issue from the genuine issues of material fact in dispute in the case in a

manner favorable to the party opposing Wells Fargo. Without the loss-mitigation worksheet, a genuine issue of material fact remained and neither party was entitled to summary judgment relative to that argument.

11. **Case No. A15-0110:** This case, involving the same residential property and the claims of Hammann's landlord, focused on the meaning of Minn. Stat. §508.10. Without explanation, the court of appeals inferred that the phrase "application for registration" meant one specific form of registration – that of land. However, §508.04 (Titles which may be Registered) addresses registration of title and §508.58 (Registration After Foreclosure; New Certificate) addresses registration of title after foreclosure. It therefore appears that Wells Fargo's §508.58 application should have been subject to §508.10 because there is no evidence that the phrase "application for registration" does not – by its plain meaning – mean all registration applications. Under §508.10, the county district court has exclusive jurisdiction over all registration applications, meaning that the court's application res judicata based on the decision of a court without subject-matter jurisdiction was erroneous.

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## APPENDIX K

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**Contract and Other Civil Cases With A Jury Trial (Held)  
Event Code But With No Jury Verdict**

January 1, 2018 - December 31, 2018

Case No.	Jury Trial	File Notes
02CV17549	No	Settled 5 days before trial date.
09CV142363	No	No recorded verdict. Instead a Court Trial.
19HACV174412	No	Settled before trial.
02CV17467	No	Transcript shows 1-day trial, but no documents evidencing an actual trial. Judgment was summary.
11CV17991	No	
62CV154170	No	
71CV161213	No	
86CV174631	No	
64CV17404	Yes	Claimed 4 hours of testimony before settlement.
70CV17892	Yes	Judgment as a matter of law granted for insufficient evidence of harm to reputation. No jury verdict as a result.

Information obtained by Jerald Hammann from the Minnesota Judicial Branch through a public data request. It would not provide all 201 civil cases where a jury trial was reported in 2018, but did provide the 42 contract (26) and Other Civil (16) cases where a jury trial was reported.