MINN. STAT. § 504B.321 AND LEWIS v. STEELE REQUIRE THE COMPLAINT IN AN EVICTION ACTION TO DEFINITIVELY DESCRIBE THE PREMISES ON THE FACE OF THE COMPLAINT.

MINN. STAT. § 504B.321 REQUIRES AN EVICTION-ACTION COMPLAINT TO DESCRIBE THE PREMISES

An Eviction Action, what used to be called an Unlawful Detainer Action, is well named. It is a lawsuit designed to remove a person, a household, or a business from a place. Logically, the Complaint that starts the case should say what the place in question is. In fact, the relevant statute, Minn. Stat. § 504B.321(a), does exactly that. It says:

> (a) To bring an eviction action, the person complaining shall file a complaint with the court, stating the full name and date of birth of the person against whom the complaint is made, unless it is not known, describing the premises of which possession is claimed, stating the facts which authorize the recovery of possession, and asking for recovery thereof. [emphasis added]

How specific must the description be? What is the consequence if the plaintiff does not meet the requirement?

HENNEPIN AND RAMSEY HOUSING COURTS REQUIRE THE DESCRIPTION TO INCLUDE A STREET ADDRESS

In Hennepin and Ramsey counties, residential-tenant eviction actions are heard in "Housing Court" and are governed not only by Minn. Stat. § 504B.321 but also by the Minnesota Rules of General Practice 600-612.[1] Minn.R.Gen.Prac. 604(a)(1) states:

> **(a) Contents of Complaint**. The plaintiff in an eviction action case shall file with the court administrator a complaint containing the following:
>
> (1) A description of the premises including a street address

(emphasis added). Thus, in those two counties the description must contain a street address if the defendant is a residential tenant and the plaintiff his landlord.[2] Since those two counties have very few non-urban areas and fewer yet non-urban residential areas, all or nearly all residential tenants sued for eviction will have a street address.

---

[1] Minn.Gen.R.Prac. 601.

[2] Evictions not involving tenancies (e.g. those involving mortgage foreclosures) and evictions involving commercial tenants are not heard in Housing Court. *County of Hennepin v. 6131 Colfax Lane*, 907 N.W.2d 257 (Minn. App. 2018).

Two Hennepin County trial court cases ruling for the tenant because the complaint gave only the main apartment building address and not the individual apartment number

I am unaware of any appellate decisions interpreting Rule 604(a)(1). Lawrence McDonough's treatise, *Residential Eviction Defense and Tenant Claims in Minnesota*, identifies two such trial court rulings, *Glenwood Financial LLC v. Samantha Zelinski and Shane Zelinski*, No. 27-CV-HC-14-5721 Minn. Dist. Ct. 4th Dist. Nov. 25, 2014) and *Twin City Development Co. v. Veronica Salto and Luis Salto*, No. 27-CV-HC-14-4804 (Minn. Dist. Ct. 4th Dist. Sep. 23, 2014).

In Glenwood Financial, the Complaint listed the premises as 2226 University Avenue NE, Minneapolis, MN. On its face, this looks like a street address. However, this building was a duplex and so effectively the address was not a street address. Based on two reasons – no street address plus incorrect service of process -- the court found the tenants had a defense to the case.

In Twin City Development, the plaintiff sued Veronica Salto and Luis Salto in one case. Twin City listed the premises as 2922 Portland Avenue South, Apartment 1AB, Minneapolis, MN 55407. On its face, this looks like a street address. However, this building had several apartments, Veronica had her own lease for Apartment 1A, and Luis had his own lease for Apartment 1B. Effectively the address was not a street address. Based on Rule 604 and Minn. Stat. § 504B.321 the trial court dismissed the case.

In one 1852 Minnesota appellate case, decided during the Territorial era, the court ruled for the tenant because the complaint on its face did not specify the boundaries of the premises

There has been one Minnesota appellate case deciding what a landlord must state when identifying the premises, *Lewis vs Steele*, 1 Minn. 88, 1 Gil. 67 (Minn. Terr. Sup. Ct. 1852) . The complaint described the premises as, "lands, tenements, and other possessions of the complainants, on Hennepin Island, so called, at the Falls of St. Anthony." 1 Minn. at 90. The court ruled that this was insufficient and dismissed the case, stating:

> the complaint should "*particularly* describe the premises so entered and detained." The propriety of this requirement will suggest itself at once. It is necessary as a guide to the Justices whose duty it is made to lay before the jury the cause of complaint, and to issue to the proper officer final process of restitution in the event of a verdict for the complainants. Such an officer has no other guide but the precept placed in his hands, and, if that be vague and indefinite, to whom shall he go for information, or how is he to know with any certainty what the premises are which he is to deliver to the party entitled? Surely no one will contend that he should go beyond, or without the execution for his direction.

Id. (italics in original).

Note that it did not matter that the defendant could be found on Hennepin Island. Mr. Lewis had

been found because he got served and appeared at the initial hearing. *Id.* at 89. Not stated in the case, but surely known to the court, Hennepin Island was a small community of probably fewer than 100 occupants.[3] By gathering evidence after the trial or even during the trial, surely the sheriff could have decided the boundaries of the premises set out in Mr. Lewis' lease. This did not matter. What mattered was that the complaint was insufficient on its face to allow the sheriff, when executing the Writ of Restitution, to know what area he was supposed to remove Mr. Lewis from.

Based on this case, the Complaint must *on its face* particularly describe the premises.

TWO ISSUES REMAIN

The discerning reader will have noticed that I have avoided two issues. First, the 1851 Eviction Action/Unlawful Detainer statutes are not identical to the 2023 statutes. Second, the Lewis v. Steele case was decided by the Minnesota Territorial Supreme Court, not the State of Minnesota Supreme Court. These two matters are discussed below.

THE 1851 STATUTE DID NOT ITSELF REQUIRE A DESCRIPTION OF THE PREMISES BUT SUBSEQUENTLY THAT REQUIREMENT WAS INCORPORATED INTO THE STATUTE, APPARENTLY BASED ON LEWIS v. STEELE RATHER THAN ON A NEW SESSION LAW.

The history of Minn. Stat. § 504B.321 is summarized in West's Minnesota Statutes Annotatedas follows (colors added):[4]

Laws 2007, c. 13, art. 3
Laws 1999, c. 199, art. 1, § 44
St. 1998, § 566.05
Laws 1997, c. 239, art. 12, § 5
Laws 1996, c. 328, § 7
Laws 1994, c. 502, § 4
Laws 1981, c. 168, § 3
Laws 1973, c. 611, § 8
St. 1927, § 9151
Gen. St. 1923, § 9151
Gen. St. 1913, § 7660
Rev. Laws 1905, § 4040
Gen. St. 1894, §§ 6110, 6127
Gen. St. 1878, c. 84, §§ 3,20
Gen. St. 1866, c. 84, §§3,20
Gen. 1858, c. 84, §§ 3,24
Rev. St. (Terr.) [1851], c. 87, §§ 3,24

Prior to 1905 the sections in yellow above (§20, §24, §6127) stated the language of the

[3]A photograph of the island taken in 1857 shows a few dozen houses on the small island (about ten acres, see Figure 21 here). In the election of 1848, Mr. Lewis was one of only 42 voters casting a ballot in his precinct. See PDF pp 341-344 at https://memory.loc.gov/service/gdc/lhbum/0866e/0866e.pdf

[4]A highlighted copy of M.S.A. § 504B.321(2022) is available at https://birnberglegalwebsite.files.wordpress.com/2023/02/msa-504b.321-highlighted-2022.pdf

Summons, the Writ of Restitution (now Writ of Recovery and Order to Vacate) and the Form of Verdict. The sections in red above (§3, §6110) included the language about the requirements of the Complaint.

The language of §3 in the Minnesota Territorial Statute, was as follows:

> [Chapter 87] SEC. 3. When any complaint shall be made in writing, to any justice of the peace, of any such unlawful or forcible entry or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the same county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the said justice on a day in such summons named, which shall not be less than six, nor more than ten days from the day of issuing such summons, and at the place therein mentioned.[5]

The 1858 statute was exactly the same as the 1851 statute.[6] The 1866, 1878, and 1894 versions of the Complaint statute were nearly identical to the 1858 statute with only very minor changes.[7]

The 1901 legislature created a commission to recodify the entire statute books minus the tax statutes. It later told the commission to do those as well. PREFACE TO THE REVISED LAWS MINNESOTA 1905. The commission wasn't supposed to change the law. The Preface says:

> While the commission was authorized to "codify" the general laws no attempt was made to write a new and complete code of laws. The following laws are not a new body of laws but a rearrangement and restatement of the previously existing general statutory laws of the state, with such amendments as the commission and legislature deemed advisable.

Id. at 3, last five lines. It took the commission a few years to do its job. The legislature enacted the entire new code in 1905 as Rev. Laws 1905. It produced the following language, as Rev. Laws 1905, § 4040:

> **4040. Complaint and summons** – The person complaining shall file a complaint with a justice of the peace, *describing the premises of which possession is claimed, stating the facts which authorize the recovery*, and praying for restitution thereof. The justice shall

---

[5]Minnesota statutes from prior years are available at https://www.revisor.mn.gov/statutes/archive . Minnesota session laws are available at https://www.revisor.mn.gov/laws/

[6]Indeed, the entire Unlawful-Detainer chapter in the first state statutes -- written after the establishment of Minnesota as a state on May 11, 1858 – was copied word-for-word from the Minnesota Territorial Statutes See the Preface and Explanations to *Minnesota Statutes 1858* for why this is so.

[7]There were no new session laws on the subject so these changes probably were made by whoever was in charge of prepared the statute books.

> thereupon issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three nor more than ten days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached, and that the original has been filed.

(emphasis added). Despite the commission being charged with making no substantial changes, by comparing the 1905 law with the prior law, it is clear the commission made several material changes. These included the italicized language requiring a description of the premises plus a statement of facts. The likely reason for this is to incorporate the construction of the original statute by the Lewis v. Steele court..

The 1913, 1923 and 1927 printings of the statute essentially copied the 1905 Revised Laws statute. The changes made between 1973 and 1997 modified parts of the statute unrelated to the describing-the-premises issue.[8]

The 1999 law was the result of another recodification. In 1999 the landlord-tenant statutes were recodified by 1999 Minn. Laws ch. 199. This very long law rewrote (recodified) all the statutes in Minn. Stat. Chapters 504 and 566 into a new Minn. Stat. Chap. 504B. However, the purpose was not to change the substance of the law. The purpose was to modernize the language and make the statutes easier to read. As discussed in *Occhino v. Grover*, 640 N.W.2d 357,362 (Minn. Ct. App. 2002), the new statutes in chapter 504B and the old statutes in chapters 504/566 are meant to have the same meaning. Indeed, the relevant parts of the new Minn. Stat. § 504B.321 (1999) and the old Minn. Stat. § 566.05 (1998) were nearly identical and materially the same.

Finally, the 2007 law was part of the Revisor's bill[9] and simply fixed a typo in subdivision 2(d). It was unrelated to the subject of this essay.

In conclusion, as it pertains to describing the premises, today's statute is materially the same as

---

[8]1973 Minn. Laws ch. 611 s. 8 modified parts of the law about the return date of the summons and thus was unrelated to the describing-the-premises issue. 1981 Minn. Laws ch. 168 s. 3 removed parts of the law about the roles of the sheriff's serving the summons and thus was unrelated to the describing-the-premises issue. 1994 Minn. Laws ch. 502 modified parts of the law about prioritizing complaints and thus was unrelated to the describing-the-premises issue. 1996 Minn. Laws ch. 328 s 7 modified parts of the law about the full name and birthdate and thus was unrelated the describing-the-premises issue. 1997 Minn. Laws ch. 239 art. 12 s. 5 modified parts of the law about scheduling complaints and thus was unrelated to the describing-the-premises issue. These session laws are available at https://www.revisor.mn.gov/laws/ .

[9]The Revisor's bill, was designed to correct "erroneous, ambiguous, and omitted text and obsolete references; eliminating certain redundant, conflicting, and superseded provisions; making miscellaneous technical corrections to statutes and other laws".

the 1905 statute. In turn, the 1905 statute incorporated the holding of Lewis v. Steele into the statutory language itself.

IS LEWIS v. STEELE, DECIDED BY THE TERRITORIAL COURT, BINDING PRECEDENT IN STATE COURTS?

Probably not:

It is well established that a holding of the Minnesota Supreme Court is binding precedent in state courts. *E.g*. *see State v. M.L.A.*, 785 N.W.2d 763,767 (Minn. App. 2010)*, review denied* (Minn. Sept. 21, 2010) ("The district court, like this court [of appeals], is bound by supreme court precedent and the published opinions of the court of appeals").

This rule does not cover cases decided by the Territorial court. As discussed below, the precise question of whether Territorial-court holdings are binding precedent in State courts does not seem to have been decided by State of Minnesota courts. That said, several factors suggest Territorial court rulings are not binding precedent in State courts.

The Minnesota Territory was not the same geographic area as the State of Minnesota

First, contrary to what is implied by the word "Minnesota", the State of Minnesota and the Territory of Minnesota are not the same area. The Territory was much larger. Here is a website with overlaying maps of the two places. This excellent article, Rhoda Gilman, "Territorial Imperative: How Minnesota Became the 32nd State", *Minnesota Historical Society, Winter 1998-1999* at 155-171, has a similar map.

Unlike Minnesota Supreme Court justices, the Territorial Supreme Court justices were named by the U.S. President, making the Territorial court akin to a colonial court.

Second, unlike the members of State of Minnesota Supreme Court, the members of the Territorial Supreme Court were selected by the U.S. President and tended to be removed and replaced when a new president was elected. Territorial justices were often from outside Minnesota. Basically, the Territory was treated like a colony when its justices were selected.[10]

Territorial Supreme Court Procedures were different than those of the State Supreme Court

[10]See History of the Minnesota Supreme Court; and Sheran, Robert J. and Baland, Timothy J. (1976) "The Law, Courts and Lawyers in the Frontier Days of Minnesota: An Informal Legal History of the Years 1835 to 1865," William Mitchell Law Review: Vol. 2: Iss. 1, Article 1 at 18 et seq.

Third, Territorial court procedures were very different from current ones. The most striking one was that the three justices of the Territorial Supreme Court were also district court judges for the Territory.[10] When a district court case was appealed, the man who heard the case in district court would join the other two judges/justices to decide the appeal. In Lewis v. Steele, the opinion reversing the district court was decided 3-0 with the district court judge voting to overrule his own trial-court ruling.

The Territorial courts didn't have the resources to establish or know clear precedents.

Fourth, the Territorial court literally did not have the resources to review precedents. They had no law library and were a sort of seat-of-the-pants operation. Sometimes they would rule on a case and cite with approval prior rulings on the same issue but not as if the original ruling was binding or that ignoring it meant overturning a precedent.[11]

State Supreme Court Cases imply that Territorial cases are not binding precedent

Lastly, post-statehood cases imply that Territorial cases are not binding precedent. I tried to find a State of Minnesota appellate case definitively ruling on the precedential value of a Territorial Supreme Court case. Using Google Scholar and the Harvard Caselaw Project databases, I reviewed every case (about 85) in which a Territorial Supreme Court case was cited.[12] Three are particularly instructive.

In *Kern v. Von Phul, Waters & Co.*, 7 Minn. 426, 430 (1862), the court stated:

> When we succeeded the Supreme Court of the Territory of Minnesota, we found three decisions of that Court upon the records adopting the general current of decision. (1 *Minn*. R., 369, 380, 383.) We followed the precedent in several cases, and think it should now be regarded as the settled law of the State. 2 *Minn*. R., 139, 147.

Therefore, the State court in Kern did not view the Territorial cases as binding by themselves.

In *Willard v. Finnegan*, 42 Minn. 476,478 (1890), the court stated:

> As early as *Tillman v. Jackson*, 1 Minn. 157, (183,) it was held that a similar provision as to sales on execution was only directory, and that a violation of it by the sheriff would not invalidate the sale. This case, having stood apparently unquestioned for 23 years, was followed and recognized as having become a rule of property in *Lamberton v. Merchants'*

[11]See Sheran and Baland's article (prior footnote) at 34.

[12]Volume 1 of Minnesota Reports and Volume 1 of Gilfillan Reports contain all the Territorial Supreme Court cases and only such cases. Thus, a search for "1 Minn." in the Harvard database or "1 Gil." in Google Scholar (modern courts tend to use parallel cites) produced the needed references. Upon request, I can provide my notes.

> *Nat. Bank*, 24 Minn. 281, ... This decision was followed by the United States circuit court for the district of Minnesota, and the same rule applied in the case of a mortgage sale under a power. *Swenson v. Halberg*, 1 McCrary, 96, (1 Fed. Rep. 444.) If this doctrine had become a rule of property 13 years ago, it certainly is so yet, never having been, in the meantime, either overruled or questioned.

As before, the State court in Willard did not view the Territorial *Tillman* case as binding by itself.

In *Street v. Chicago, Milwaukee & St. Paul Railway Co.*, 124 Minn. 517,521(1914), the court stated:

> In the early case of United States v. Gideon, 1 Minn. 226 (292), it was held that a criminal offense should not be created by an uncertain and doubtful construction; and this rule has since been adhered to. See State v. Small, 29 Minn. 216, 218, 12 N. W. 703; State v. Finch, 37 Minn. 433, 34 N. W. 904.

Again, the State court in Street did not view the Territorial *Gideon* case as binding by itself.

There are also a considerable number of cases citing one Territorial case but also a State of Minnesota case or cases for a point of law, sometimes adding some out-of-Minnesota cases as well. So, while some State cases cite just a Territorial case for a rule of law, putting all the cases together leads to the conclusion that the Territorial cases are persuasive but not binding. They are, however, definitely persuasive; I found no case which discounted a Territorial case's holding.

However, a rule of statutory construction attaches the holding of Lewis v. Steele to the modern statute as does a similar holding by the Wisconsin Supreme Court

Adding to the inherent persuasive value of Lewis v. Steele is the rule of construction in Minn. Stat. § 645.17(4), "In ascertaining the intention of the legislature the courts may be guided by the following presumptions: ... (4) when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language." The Lewis v. Steele court was such a court.

Another such court was the Wisconsin court that decided *Cox v. Groshong*, 1 Pin. 307, 1 Bur. 150 (Wis. 1843). It construed a statute that was identical to the Minnesota Territorial statute and to the initial State of Minnesota statute. Indeed, the eviction statutes in all three jurisdictions were word-for-word identical.[13] The Cox court dealt with a complaint that described the property in question as, "certain range of lead ore, and a strip of land or piece on each side thereof, twenty-five yards

[13]The Minnesota Territorial Statutes were simply copied from Wisconsin. See the *Preface to the Minnesota Territorial Statutes, "commencing January 1, 1851"*, pp 1-2 .The Lewis v. Steele complaint was filed on July 5, 1851. The "Advertisement" in the Preface explains that because "Minnesota" had been part of the Wisconsin territory until Minnesota became a territory on March 3, 1849, in general the laws of Wisconsin carried over into Minnesota Territory unless modified by the Minnesota legislature.

wide on each side, running easterly and westerly across the land hereafter described, and the right of searching and digging for lead ore thereon, in section 17, township No. 4 north, of range No. 3 west, in said Grant county." The Cox court held that, "The complaint must describe the premises with reasonable certainty." Because the description did "not describe the land by any marks, description, or boundaries, nor does it even refer to its location in the section", the complaint was insufficient. The court went on to say that it is irrelevant that the tenant could undo any mistaken restitution by bring a new lawsuit to recover land seized by the sheriff by mistake. The complaint had to be sufficient on its face.

This sort of thinking is in accord with how eviction actions work. Such cases are summary proceedings, often tried on the day of the initial hearing and with no discovery allowed.[14] There is usually no opportunity, and certainly no requirement of such opportunity, for the plaintiff or the defendant or the court or (subsequently) the sheriff to figure out what land was leased. Therefore the rule of law set out in Lewis v. Steele and Cox is not only supported by Minn. Stat. § 645.17(4), it is a sensible rule.

CONCLUSION AND PRACTICE POINTERS

An eviction-action complaint must describe the premises on the face of the complaint specifically enough that if and when the Sheriff's deputy executes the Writ of Recovery and Order to Vacate she knows exactly what to recover. In addition, if the plaintiff is the landlord of a residential tenant in Hennepin or Ramsey counties, the street address must be given

In a city, giving the full postal address of the defendant should be sufficient. If the lease is for only an apartment, this will certainly be enough. If the lease includes a garage or other appurtenant structure, that should be identified. If there is some question about the extent of leased lawn space, that should be described. Just giving an apartment building address without the apartment number is not sufficient.

In a rural area, a legal description or something like it (a layman's precise description) might be required. The warning of the Cox court about the need to "describe the land by any marks, description, or boundaries" should be taken to heart.

If the lease gives a good description of the premises, attaching the lease to the complaint and referring to it should be a good way to describe the premises.

[14]The unlawful detainer (eviction) action is a summary proceeding, created by statute, which provides an alternative to the common law ejectment action. *Warnert v. MGM Properties*, 362 N.W.2d 364, 366-67 n.1 (Minn. Ct. App. 1985); Minn. Stat. §§ 504B.335-.341 (eviction actions can be heard at the initial hearing and in virtually all cases within six days of that date).