Said v. Old Home Management: Wrong on the Language of Minn. Stat. § 504B.271, subd. 2. However, the statute needs to be fixed.

I. INTRODUCTION

The facts in *Yusar Said v. Old Home Management*, File No. A21-1676 (Minn. Ct. App. Dec. 19, 2022) (nonprecedential) are set out in Part II below. Then the conciliation-court and district-court events are discussed in Parts III-IV, followed by legal analysis of the Court of Appeals' decision in Part V. In Part VI I review several improvements Minn. Stat. § 504B.271 needs, starting with the policy glitch highlighted in this case, plus what seems like a serious typo ("last" instead of "first" in section 504B.271).

II. FACTS[1]

Yusar Said rented an apartment in Minneapolis from Old Home on a periodic lease On June 5, 2019, Said gave written notice to Old Home that she would be moving out "at the end of June 2019." The manager accepted the notice as good contingent on Said finding a replacement tenant, which Said did do. Said's native language was Oromo. She was illiterate in English but spoke it at an elementary-school level.

Said boxed and labeled most of her personal property inside her apartment. On June 24, 2019, Said's bilingual daughter spoke with Old Home and asked if she could leave an unwanted box spring by the dumpster. Old Home told Said's daughter she could leave unwanted large items in the apartment, and Old Home's cleaning crew would get rid of them. The district court found that "based on the June 24 phone call" with Said's daughter, Old Home had the "mistaken belief that Ms. Said planned to move out before the end of June" and "had given permission for anything remaining in the apartment to be thrown away." The district court found this belief "unreasonable because it was contrary to the [parties'] agreement."

On the morning of June 25, Said locked and left her apartment to babysit her grandchildren overnight in Burnsville. Later that day, Old Home's manager told its cleaning crew that Said's apartment should be turned. The crew arrived, saw Said's

[1] Most of the facts are taken from the Court of Appeals decision. The rest are from the District Court trial transcript and the District Court's Findings of Fact, Conclusions of Law, and Order for Judgment.

apartment was quite full and looked occupied, and called management. The managers instructed the crew that everything was garbage and should be thrown away. The cleaning crew emptied the apartment of everything but a camera hanging on a wall, hauling six vanloads of furniture and boxes to dumpsters at three different apartment buildings (needing more dumpsters than were adjacent to Said's apartment building.)

Said returned to her apartment on the evening of June 26 to find her apartment empty, cleaned. and with newly painted walls. The next morning, Said's daughter spoke with Old Home's manager, who confirmed what had been done. The cleaning crew leader drove Said and her daughter to various dumpsters to see if any of her property could be recovered. Most of the dumpsters had been emptied. They found only a pot and a few personal photos. Old Home apologized and offered Said $100.

When the case eventually was tried in district court, Said alleged that a dresser that was dumped and not recovered had contained a small satchel containing dozens of pieces of gold jewelry with replacement values totaling more than $50,000. After trial, the district court found the jewelry claim to be true but found that Said had not proved the value of the jewelry to be more than its gold-melt value. The judge found the melt value to be $46,417.

Prior to filing a complaint in conciliation court, Said never complained in writing about the dumping of her personalty. Also, even including her court complaints, she never made a written demand that Old Home return her personalty.

III. CONCILIATION COURT

Said first sued for $8,000 on July 2.

On July 2, 2019 Said filed a claim in conciliation court asking for $8000 in damages. Her daughter wrote it but Said signed it. The Statement of Claim said,

> The Defendant owes me <u>*$8000*</u>, plus filing fee and costs in the amount of $70, so my total claim is for <u>*$8070*</u> … because in <u>*6/26/2019*</u> … the following happened …:
>
> *Yusar Said was set to move out by the end of the month on*[2] *June. She has put her 30 day notice in May. Jenni, who is the property manage [sic]*

[2] The handwriting is a bit hard to read. The word could be *in* rather than *on*.

> *instructed painters to throw everything out the apartment on June 26th before receiving keys, notifying Yusar.*

(italics handwritten, non italics printed on the form by the court administrator).

> **On July 30, Said dismissed the July 2 complaint and filed a new claim for $15,000.**

On July 30, 2019, again with her daughter writing but Said signing the pleadings, Said voluntarily dismissed the July 2 conciliation court complaint. She then immediately filed another conciliation court complaint. Its Statement of Claim said,

> The Defendant owes me *$15,000*, plus filing fee and costs in the amount of $70, so my total claim is for *$15,070* … because in *6/26/2019* … the following happened …:
>
> *Yusar Said was set to move out at the end of June as agreed upon the 30 day notice that was given to Jenny of Old Home Management LLC. On June the 26th, landlord threw out everything from her apartment without notice.*

(italics handwritten, non italics printed on the form by the court administrator).

> **Said won the conciliation court case and was awarded the full $15,000.**

The conciliation court found for Said in the full amount pled of $15,000 plus costs.

IV. DISTRICT COURT

> **Old Home appealed to district court and Said amended her complaint alleging damages in excess of $50,000.**

Old Home removed the case to district court.

No longer pro se, Said filed an amended complaint, alleging unlawful ouster under Minn. Stat. § 504B.231, unlawful disposal of tenant property (personalty) under Minn. Stat. § 504B.271, and common-law conversion. All claims were for money damages. No replevin claim was made nor was a demand for return of property

included. The total claim was for actual damages in excess of $50,000, punitive damages and attorney fees[3] per the statutes, and costs & disbursements.

The district court awarded Said actual damages of $58,668 plus attorney fees and punitive damages of another $58,668 under Minn. Stat. § 504B.271.

After a non-jury trial, the district court found as follows:

> [1] Said incurred actual damages of $58,668 (jewelry valued at $46,417 plus the other items valued at $12,251).
>
> [2] Old Home had unlawfully converted Said's property and thus owed her actual damages of $58,668. Said had never moved for punitive damages on the conversion claim per Minn. Stat. § 549.20, so the total conversion claim was for the $58,668.
>
> [3] Old Home had unlawfully ousted Said but had not done so in bad faith within the meaning of Minn. Stat. § 504B.231. Therefore, Said's claim under section 504B.231 was for the same actual damages of $58,668.
>
> [4] Old Home violated Minn. Stat. § 504B.271, subd. 1 by its unlawful handling of Said's personalty. Furthermore, Said had a claim for punitive damages and attorney fees under subdivision 2 of Minn. Stat. § 504B.271. The district court determined that punitive damages of (another) $58,668 was an appropriate amount. In a separate order it awarded Said her attorney fees.

Therefore, the district court awarded Said her attorney fees plus total damages of $117,336 ($58,668 + $58,668).

V. LEGAL ANALYSIS

Old Home appealed the award of punitive damages.

Old Home only appealed one issue to the Court of Appeals: Did the district court have the authority to impose punitive damages and attorney fees under subdivision 2 of Minn. Stat. § 504B.271?

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[3] Said's lease followed the American Rule and did not provide for contractual attorney fees. Lease at ¶17.

The statute.

In pertinent part, Minn. Stat. § 504B.271 reads:

504B.271 TENANT'S PERSONAL PROPERTY REMAINING IN PREMISES.

Subdivision 1. **Abandoned property**. (a) If a tenant abandons rented premises, the landlord may take possession of the tenant's personal property remaining on the premises, and shall store and care for the property. The landlord has a claim against the tenant for reasonable costs and expenses incurred in removing the tenant's property and in storing and caring for the property.

(b) The landlord may sell or otherwise dispose of the property 28 days after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last.

(c) The landlord may apply a reasonable amount of the proceeds of a sale to the removal, care, and storage costs and expenses or to any claims authorized pursuant to section 504B.178, subdivision 3, paragraphs (a) and (b). Any remaining proceeds of any sale shall be paid to the tenant upon written demand.

….

Subd. 2**. Landlord's punitive damages.** If a landlord, an agent, or other person acting under the landlord's direction or control, in possession of a tenant's personal property, fails to allow the tenant to retake possession of the property within 24 hours after written demand by the tenant or the tenant's duly authorized representative or within 48 hours, exclusive of weekends and holidays, after written demand by the tenant or a duly authorized representative when the landlord, the landlord's agent or person acting under the landlord's direction or control has removed and stored the personal property in accordance with subdivision 1 in a location other than the premises, the tenant shall recover from the landlord punitive damages in an amount not to exceed twice the actual damages or $1,000, whichever is greater, in addition to actual damages and reasonable attorney's fees.

In determining the amount of punitive damages the court shall consider [the following four factors] ….

The provisions of this subdivision do not apply to personal property which has been sold or otherwise disposed of by the landlord in accordance with subdivision 1, or to landlords who are housing authorities … in possession of a tenant's personal property, except that housing authorities must allow the tenant to retake possession of the property in accordance with this subdivision.

….

Subd. 4. **Remedies additional.** The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants.

The trial court's reasoning

Old Home argued that subdivision 2 requires the tenant to make a written demand for return of personalty to be eligible for punitive damages. The district court rejected this argument, reasoning as follows:

> Although the penalty statute says that the tenant must make a written demand for the property to retake possession, the court finds that in this instance, where the property was already gone, there was no need for Ms. Said to go through the pretense of making a written demand for the return of the property after she had immediately called and asked about the property and was told that it had been thrown away. The purpose of a written demand is to be sure that the tenant in fact wanted the property back, but here there is no doubt that Ms. Said did not want her whole apartment thrown away. Nor is it reasonable to interpret the statute as only applying if the landlord still has possession and won't relinquish it. The penalty provision in the statute by its own terms in subdivision 2 applies unless the provisions of subdivision 1 (holding the property for 28 days) has been followed. A complete failure to honor the statute by simply tossing everything in the garbage cannot be a basis for avoiding the law or the punitive damages provision.

Findings of Fact, Conclusions of Law, and Order for Judgment at footnote 21.

The Court of Appeals rejected the trial court's reasoning but ruled for Said based on her July 30 conciliation court complaint's demand for money damages.

The Court of Appeals ruled for Ms. Said but rejected both arguments. Reaching a sort of compromise, it held that a written demand of some sort is required but that the July 30 conciliation court complaint was sufficient. That complaint was for money only and not for return of personalty.

The Court of Appeals' reasoning incorrectly construes Minn. Stat. § 504B.271, subd. 2.

This ruling strikes me as wrong. The Court of Appeals reasoned that it could not ignore the phrase "written demand" completely and thus rejected Said/s contention that "written demand" means "written demand unless the landlord no longer has possession of the property."[4] However, it then held that "written demand" does not mean what Old Home contended, i.e. "written demand for return of the property".

What the Court of Appeals' reasoning ignores is that under its holding there is nothing that says what the written demand must say, i.e., what must be demanded. Section 504B.271 does not define "written demand". Therefore, the court should have followed the rule of construction that a "statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant" and the statute should be "read … as a whole." *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

Reading subdivision 2 as a whole, the phrase "written demand" directly follows the phrase, "fails to allow the tenant to retake possession of the property within 24 hours or … within 48 hours [depending on where the property is stored] after written demand by the tenant". Interpreting the subdivision as a whole, the "written demand" is one for return of the personalty

[4] In her appellate brief at 8 Said argued that "the decision in *Bass [v. Equity Residential Holdings, LLC*, 849 N.W.2d 87 (Minn. Ct. App. 2014)] could be fairly interpreted one of two ways: either no written demand is required for an award of punitive damages where the landlord disposes of a tenant's property in violation of Minn. Stat. §504B.271, subd. 1 before the tenant has actually abandoned the property … or the lock-out petition itself satisfies the written demand requirement." This argument fails because Ms. Bass had made a written demand for return of her personalty prior to filing suit. See the Referee's Trial Court Order in *Bass*, Minn. Dist. Ct. File No. 27-CV-HC-13-2097 (Apr. 18, 2013) at 2, ¶18.

Instead of following the *Schroedl* rule, the court held that a demand for money is sufficient and implied that any demand, such as a demand for an apology, would be sufficient. The problem with this holding is that it renders the phrase "fails to allow the tenant to retake possession of the property within 24 hours after written demand … or within 48 hours, exclusive of weekends and holidays, after written demand by the tenant" superfluous. A demand for money – or indeed for anything but return of property -- has nothing to do with a 24-hour or 48-hour period to retake possession. The Court of Appeals has written this part of the statute out of the statute. It may not do that. Similarly, Said's argument fails both for ignoring the phrase the Court of Appeals ignored and for ignoring the written-demand phrase as well.

Finally, reading section 504B.271 as a whole, the requirement to hold personalty for 28 days is in subdivision 1 and the requirement to return it within 24-48 hours is in subdivision 2. The punitive-damages clause is only in subdivision 2. Had the legislature wanted to impose punitive damages for the single act of disposing personalty before Day 28, it would have put the punitive-damages clause in a separate subdivision governing both subdivisions 1 and 2 (or, less elegantly, it could have put a punitive-damages clause in subdivision 1 as well as in subdivision 2).

In conclusion, the only logical meaning of "written demand" is a written demand for return of personalty.

Requiring a written demand to earn punitive damages is not absurd.

Contrary to the district court's reasoning, it is odd but not absurd to require the tenant to demand return of her personalty in order to obtain punitive damages even when the tenant thinks the landlord disposed of the personalty.[5]

First, the legislature gets to pick which bad acts merit punitive as well as actual damages. There is logic to its choice here. If a landlord intentionally disposes of the tenant's personalty before Day 28, the tenant has a conversion claim for actual damages plus a claim for punitive damages under Minn. Stat. § 549.20. On the other hand, if the landlord simply delays return for a few days or a week, it is unlikely that the tenant could obtain punitive damages under Minn. Stat. § 549.20 and her actual damages would probably be pretty small (loss of use for a few

[5] Courts "should construe statutes to avoid absurd results." Am. Family Ins. Group, 616 N.W.2d at 278.

days). A hammer is needed to induce prompt return of personalty that has not been disposed of. The punitive-damages clause for ignoring a written demand for return in Minn. Stat. § 504B.271 is that hammer.

Second, there is always the possibility that some personalty can be recovered. For example, in the instant case when Said orally demanded return (or at least an explanation), the landlord located and returned a few things – a pot and some personal photos.

Given that a demand requirement is not absurd, a written-demand requirement is not absurd. As discussed in Part VI below, the statute merits improvement regarding cases where the landlord discarded all or some of the property prior to 28 days, but that does not make the current statute absurd.

I note that while section 504B.271, subdivision 2 should not have been applied to Said's case, the rest of the statute did help her. As the district court held, if there was a question of whether Said had abandoned her apartment or personalty, the landlord still had a 28-day storage obligation. The exception for housing authorities in subdivision 2 illustrates the point. Housing authorities must obey the 28-day rule and are subject to a replevin or conversion claim if they don't.

A complaint cannot bootstrap itself into a demand for return of personalty in the same case.

The Court of Appeals held that the conciliation-court complaint constituted the predicate demand for the district-court case. Even assuming for the sake of argument that Said's conciliation court complaint included a claim for return of personalty, this holding should be limited to the unusual procedural history of this case. The conciliation-court complaint and conciliation-court case was followed by a new case (the district court "appeal" was a *de novo* case)[6]. None of the cases cited by the Court of Appeals involved a statute where the demand also provides a time window to comply (e.g., 24-48 hours in section 504B.271). Even if it had included a replevin claim, the conciliation-court complaint would not have been an adequate predicate "written demand" in the same conciliation-court case.

[6] The "appeal from the decision of the conciliation court by removal to the district court [is] for a trial de novo". Minn. Stat. § 491A.02, subd. 6.

The legislative history shines no light on the issue.

Although the plain-language analysis above is definitive, I did look at the history of Minn. Stat. § 504B.271, subd. 2.

Appendix 2 shows all versions of Minn. Stat. § 504B.271 from its initial enactment in 1975 through today along with each session law amending the statute. Subdivision 2 was in the original law and was amended only once, in 2010. The detailed legislative history of the 1975 law is given in Appendix 3. The detailed legislative history of the 2010 amendments is given in Appendix 4.

Because all recordings of committee hearings and floor debates in the Minnesota legislature prior to 1991 have been discarded, Appendix 3 only includes the written record.

The reader is obviously free to draw her own conclusions, but I see nothing in these histories that shed light on the issue in *Said v. Old Home*.

VI. GAPS IN THE STATUTE

The trial court's Order for Judgment was carefully reasoned. Even though I think that its footnote 21 is incorrect, the footnote does suggest a gap or oddity in the statute. In fact, it is only one of several problems I see in the statute. Below I outline parts of section 504B.271 I would improve.

[1] As Judge Siegesmund's footnote 21 suggests, if the landlord disposes or sells the tenant's personalty before the end of the 28-day period, that should by itself make the landlord subject to punitive damages.

Comparing the instant case with the decision in *Bass v. Equity Residential Holdings* case also illustrates that the current law is a trap for the unwary. Ms. Bass was represented by an attorney and her attorney saw to it that a demand for return of property was made, even though all her personalty might have been dumped. Conversely, Ms. Said, unfamiliar with the details of section 504B.271, simply made an oral demand to Old Home to deal with the disposal of her property.

Thus, I agree with the policy viewpoint of footnote 21. Section 504B.271 be amended accordingly.

[2] The 24-hour and 48-hour periods should be changed to a single amount of time. Once the tenant has left, how can he know where his personalty is kept? I also

think that 48 hours, <u>including</u> weekends and holidays, is plenty of time; 48 hours <u>exclusive</u> of weekends and holidays can be the better part of a week.

[3] The statute is unclear what the landlord may do if the tenant's demand is near the end of the 28-day period. If the tenant gives a 48-hour demand on Day 27, may the landlord dispose of the personalty at 12:01 am on Day 29? The statute should clarify this issue.

[4] If the landlord does not actually dispose of the personalty on Day 29 and the tenant then makes a demand before the landlord gets around to disposing of the personalty, does the landlord have to honor the demand? The statute should clarify this issue.

[5] Does the amount of time between the demand and the date the tenant asks to retrieve the property matter? For example, can the tenant serve the demand on Day 27 saying he will get the property on Day 50? The statute should clarify this issue.

[6] If a landlord announces a sale of the personalty for a date after Day 28, can he deny return of the property between Day 29 and the date of the sale? For example, if the landlord gives a 14-day notice of sale on Day 27 for Day 43, and the tenant demands return during that period (e.g. on Day 30 he demands return on Day 33), does the landlord have to honor the demand? The statute should clarify this issue.

[7] Finally, there appears to be a sort of typo in the statute in subdivision 1(b), which reads,

> The landlord may sell or otherwise dispose of the property 28 days after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs **<u>last</u>**.

(emphasis added).

Suppose the tenant just skips out without saying anything or turning in the key. Within a few days this probably will make it "appear[] to the landlord that the tenant has abandoned the premises". However, this would not start the 28-day clock because that the landlord has not "receive[d] actual notice of the abandonment." The landlord probably will never receive actual notice. Given the

word “last”, the landlord has to wait forever to start the clock and has to store the personalty forever.

This is absurd. It seems likely that “last” should be (changed to) “first”. It is fair to start the clock as soon as the tenant says, “I’m gone” or turns in the keys or as soon as it is clear that the tenant has skipped out (which probably is a few days after he skipped out, affording him a few more days than the 28 days he would have received if he’d handed in the keys and then taken off.