Commentary on *Quinn v. LMC*, -- a Case Holding It Was Illegal to Lockout a Long-Term Roommate of the Leaseholder Without a Court Order.

PART 1

Introduction

On April 4, 2022, the Minnesota Court of Appeals issued *Quinn v. LMC NE Minneapolis Holdings, LLC*, 972 N.W.2d 881 (Minn. Ct. App. 2022), rev. granted (June 29, 2022), rev. dismissed (Feb. 17, 2023). This precedential opinion construed the phrase "other regular occupants" in Minn. Stat. § 504B.001 as it applies to a lockout petition brought under Minn. Stat. § 504B.375. The court's relatively broad construction of "other regular occupant" protects the roommate of a tenant against lockout even after the tenant has vacated the apartment and left the (ex-) roommate to occupy the apartment alone. The court held that a no-other-occupants clause in the tenant's lease was just one factor in deciding if the roommate was an "other regular occupant."

The court's analysis was based on dictionary definitions of "regular" and on a 1946 hotel-guest-versus-boarder case. In this part, I analyze the same issue by reviewing the history of the 1970s session laws underlying section 504B.375. I do so because section 504B.375 derives from Minn. Stat. § 566.175, which was first enacted in 1975.

Facts

Briefly, here is what happened.[1] Kera Quinn lived continuously with Jamie Smith in a fancy Minneapolis apartment owned by LMC. It was Quinn's sole residence for more than two years. She used the building's facilities (e.g., the meeting room), received mail and visitors there, used the apartment's key fob (which she and Smith shared), walked by the concierge daily, and otherwise interacted with the building's staff. There was no proof that Quinn was a subtenant of Smith.[2]

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[1] Most of the facts are taken from the Court of Appeals' opinion. The others are available in the underlying district court decisions that were appealed.

[2] The court of appeals stated , "Quinn testified that she paid $400 per month to J.S. as rent under an oral agreement between the two of them", *Quinn*, 972 N.W.2d at 883, and affirmed as a finding of fact that "there was an oral agreement for Quinn to pay rent to J.S[mith]". *Id.* at 889 This was a bit imprecise. What the trial court found was, "[Paragraph] 12. Plaintiff credibly testified that she paid $400 per month to reside in the unit with Ms. Smith and had made her

Quinn was not on the lease with LMC; only Smith was. Smith's lease ran from October 8, 2020 to April 7, 2021. Smith gave proper notice to terminate the lease effective April 7. Smith moved out by April 7 although she apparently left behind some personal items.[3]

Smith's lease included these provisions:

> [Clause 2] No one else may occupy the apartment. Persons not listed above [on the lease] must not stay in the apartment for more than 14 consecutive days without our [LMC's] prior written consent, and no more than twice that many days in any one month….
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> [Clause 31] Replacing a resident, subletting, assignment, or granting a right or license to occupy is allowed only when we [LMC] expressly consent in writing….

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most recent payment in March 2021." … [Paragraph] 31. Plaintiff … had an oral agreement with Ms. Smith to pay $400 per month to occupy the unit."

Careful reading of the transcript indicates that Quinn proved an agreement for some sort of occupancy at $400 per month and payment of the $400. Calling this "rent" is a legal conclusion. "Rent" is payment under a lease or sublease. Probably Quinn's attorney did not prove that there was a true sublease between Quinn and Smith. There might have been one but the actual proof and seemingly the finding was that they had formed some sort of contract for occupancy at $400 per month. There was no proof of a specific part of the apartment possessed by Quinn nor of Quinn's having an undivided half interest in the entire apartment, and thus no full proof of a lease. *Minn. Sands, LLC v. Cnty. of Winona,* 940 N.W.2d 183,202 (Minn. 2020) (elements of a lease); *Seabloom v. Krier*, 219 Minn. 362,367, 18 N.W.2d 88,91(1945) (lease vs license). Indeed, as stated in footnote 1 of the appellate opinion, "Previously [in district court], Quinn also argued that she was a residential tenant under the first prong of the statute because she had an oral contract with J.S. that required the payment of money. Because Quinn did not advance her oral-contract argument as an alternative basis to affirm, we limit our review to whether Quinn was an 'other regular occupant' of the apartment." I.e., the court of appeals assumed that Quinn was not a subtenant of Smith; instead, she was a licensee or something similar who paid money to Smith in return for Smith allowing Quinn to live with her.

[3] The lease ("Exhibit 4") and the notice ("Exhibit 5") were obtained from the district court clerk and are made available here.

On April 8, 2021 -- the day after Smith left for good and the day after the end of Smith's lease -- LMC changed the locks on the apartment. This effectively locked out Quinn.[4]

Procedural history

Quinn filed a "lockout petition" under Minn. Stat. § 504B.375. Section 504B.375 allows a "residential tenant" to be restored to possession when the "landlord" locks her out without a court order. Quinn alleged that she was a "residential tenant" because she was an "other regular occupant" under Minn. Stat. § 504B.001, subd. 12, which reads:

> Subd. 12. **Residential tenant**. "Residential tenant" means a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park.

The trial court found that Quinn was an "other regular occupant" based on the totality of the facts (as outlined above) and therefore was eligible to file her lockout petition under Minn. Stat. § 504B.375. It ordered LMC to restore her to possession by reactivating the key fob.

LMC appealed this ruling, claiming Quinn was a "trespasser" and not a 'residential tenant". LMC's main argument was that Quinn was not a "regular" occupant because Smith's lease disallowed Quinn or anybody other than Smith to occupy the apartment without LMC's permission and no such permission had been given, and therefore, Quinn was "irregular".

The Court of Appeals affirmed the trial court and its use of totality of the facts to decide that Quinn was an "other regular occupant". It affirmed that the no-other-occupants clause in Smith's lease was just one of a number of the totality of facts to consider.

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[4] Quinn was in the apartment when the lock was changed electronically, but was effectively locked out because if she left the apartment she could not reenter. In this day of Internet deliveries and helpful friends, she managed to survive in this limbo for about twelve days before electronically filing her lockout petition. LMC did not contest that Quinn was locked out.

Analysis

Both the trial and appellate courts construed Minn. Stat. § 504B.375 and Minn. Stat. § 504B.001, subd. 12 primarily based on dictionary definitions of "regular" and by analogy to *Asseltyne v. Fay Hotel,* 222 Minn. 91, 23 N.W.2d 357 (1946) (using totality of acts analysis to decide whether a woman was a boarder or a hotel guest when she paid a monthly rate to live in a hotel room as her sole residence). No effort was made to review the original language of either statute or their legislative histories. I do that below.

> When Minn. Stat. § 504B.375's was enacted in 1975 the legislature selected the definition of "tenant" in the Tenant Remedies Act ("TRA") to govern which occupants the new law protected

Minn. Stat. § 504B.375 was originally enacted as Minn. Stat. § 566.175 (1975 Supp.) as part of 1975 Minn. Laws ch. 410. It has been amended since but not in any way material to this case.[5]

The original bill that became 1975 Minn. Laws ch. 410 had four substantive provisions.[6] Section 1 dealt with personal property a tenant leaves behind after vacating. The other three sections dealt with lockouts: section 2 made a lockout a crime, section 3 provided treble damages for illegally turning off utilities, and section 5 became Minn. Stat. § 566.175 (1975 Supp.), now Minn. Stat. § 504B.375. All simply referred to "tenants" without defining the term. This would have made the laws apply to both commercial and dwelling tenants. In committee, an amendment was introduced that defined "tenant" in sections 1,2,3 and 5 as a "tenant" within the meaning of Minn. Stat. § 566.18, subdivision 2 [1973 Supp.], which read:

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[5] A 1989 amendment expanded the definition of a lockout to include situations like Quinn's where she was physically inside the apartment but was effectively locked out. A 1992 amendment allowed certain mortgagees and vendees to file a petition under the law in addition to "[residential] tenants". Amendments in 1986, 1998 and 2005 were parts of Revisor's bills. The 1986 law made changes to render statutes gender neutral. The 1998 bill changed references to municipal court to district court since municipal courts were obsolete. The 2005 bill deleted references to constables and marshals as obsolete positions.

[6] The legislative history of this law is available at https://birnberglegalwebsite.files.wordpress.com/2023/02/legislative-history-of-1975-minn-laws-ch.-410-c.pdf

> Subd. 2. "Tenant" means any person who is occupying a dwelling in a building as defined in subdivision 7, under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys as rent for the use of the dwelling unit. and all other regular occupants of such dwelling unit.

As a result, commercial tenants were excluded from the protection of the new laws but both traditional dwelling tenants and "other regular [dwelling] occupants" were included. The committee amendments made it through the process and were enacted.

Had the 1975 legislature wanted to protect only traditional dwelling tenants, it could have used language like that in the security-deposit statute, Minn. Stat. § 504.20 (1973), 1973 Minn. Laws ch. 561, s. 1 ("Any deposit of money, the function of which is to secure the performance of a residential rental agreement … shall be governed by … this section [emphasis added]"). Instead, its new anti-lockout laws protected "other regular occupants" as well as traditional dwelling tenants.

When all the landlord-tenant statutes in chapters 504 and 566 were recodified in 1999, wherever a prior law used "tenant" within the meaning of Minn. Stat. § 566.18, subdivision 2 (1998), the new statute used the phrase "residential tenant' and a definition of "residential tenant" was put into the definitional statute, Minn. Stat. § 504B.001 (at subdivision 12).[7]

> The definition of "tenant" in the TRA was designed to help traditional tenants as well as licensee-type roommates with repair problems.

Minn. Stat. § 566.18 was the definitional section of a group of statutes, Minn. Stat. § 566.18-566.33, called the Tenant Remedies Act ("TRA"). The TRA was enacted as 1973 Minn. Laws ch. 611, s. 13-28. It provided a procedure dwelling occupants

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[7] "The purpose of that recodification law was to consolidate, clarify, and recodify the majority of Minnesota's housing statutes under one chapter … [and] it was made clear that no substantive changes to the current housing laws were intended." *Occhino v. Grover*, 640 N.W.2d 357,362 (Minn. App. 2002). Between 1973 and 1998, the definition of "tenant" in section 566.18, subd. 2 had been amended but not in a way material to the issue in *Quinn*. Residents of manufactured home parks were added as "tenants", 1982 Minn. Laws ch. 526, art. 2, s. 17, and the consideration by the main tenant was expanded by changing "moneys" to "money or exchange of services". 1993 Minn. Laws ch 317, s. 14.

could use to enforce their right to repair when the "owner" did not obey a city inspector's order to fix the unit up to the city's tenancy-repair code.

Why did the TRA use an expansive definition of "tenant"? Committee minutes shed no light on the issue and tape recordings of floor and committee debates have long since been destroyed. However, some history of the 1971 legislative session is instructive.

A package of three tenants' rights bills was introduced in 1971 – 1971 HF 1161, 1971 HF 1162, and 1971 HF 1163.[8] HF1161 became what is known as the Covenants of Habitability, now codified at Minn. Stat. § 504B.161. HF1162 became the statute protecting tenants against anti-retaliatory terminations of periodic leases, now codified at Minn. Stat. § 504B.285, subd. 2. HF1163 was the TRA in nearly the same form as the law passed in 1973.[9] The first two files made it through the process and were signed into law that May.[10] As discussed in this news article from the May 28, 1971 Minneapolis Star, HF1163 died due to horse-trading at the end of the legislative session.[11]

What is noteworthy about this package of bills is that both bills affording dwelling occupants repair rights – HF1161 and HF1163 -- protected more than traditional dwelling tenants. The original HF1161 bill[12] began as follows:

> [504.18] Subdivision 1. In every lease or license of residential premises, whether in writing or parol, the lessor or licensor covenants:
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> > (a) That the premises and all common areas are fit for the use intended by the parties.

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[8] See this Compiled 1971 Legislative History of TRA Bill, as well as this news article in the May 10, 1971 Minneapolis Star (second column).

[9] Compare the original HF 1163 (Endnote 1 in Compiled 1971 Legislative History of TRA Bill) to the TRA as enacted in 1973, 1973 Minn. Laws ch. 611, s. 18-28

[10] See the Compiled 1971 Legislative History of TRA Bill.

[11] See Endnote 5 in the Compiled 1971 Legislative History of TRA Bill for confirmation of the bill's death.

[12] See Detailed Legislative History of 1971 Minn. Laws ch. 219 at PDF page 3. The original bill was amended and the paragraph headings altered (as indicated by "[c]") but not in any way material to this essay. See pages 1-2,4 of the legislative history.

> (b) To keep the premises in reasonable repair during the term of the lease or license, and
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> [c] to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the willful, malicious, or irresponsible conduct of the lessee or licensee.

(emphasis added).

Unlike with a lease, with a license the occupant/licensee doesn't have full possession of a particular space. Instead, he has the right to use a space but not exclusively.[13] Therefore, the bill and eventual law protected not just traditional tenants but also occupants that could be moved around, such as in a boarding-house or invited-roommate situation.

Thus, this law, now codified at Minn. Stat. §504B.161, protected Ms. Quinn. Even though she was not a subtenant with a specific area that was hers alone (an area she could exclude Smith and others from), she was a licensee (she had the use of the apartment, paying $400 per month for this right).

The TRA (HF1163 and later the 1973 law) could not use the same exact language as HF1161. The TRA as written in 1971 and 1973 was a procedure to enforce subparagraph [c] above – compliance with rental codes. A traditional owner/licensee situation would not be relevant because that pairing involves no renter. Instead, the TRA defined a "tenant" (now "residential tenant") as "a person who is occupying a dwelling … under any agreement, lease, or contract, … which requires the payment of moneys as rent for the use of the dwelling unit" – i.e., a

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[13] *Seabloom v. Krier*, 219 Minn. 362,367, 18 N.W.2d 88,91(1945) explained that "the distinction between the rights of a lessee and those of a licensee [is that a] … tenant under a lease is one who has been given a possession of land which is exclusive even of the landlord except as the lease permits his entry, and saving always the landlord's right to enter to demand rent or to make repairs. A licensee is one who has a mere permission to use land, dominion over it remaining in the owner and no interest in or exclusive possession of it being given to the occupant. [internal quotes omitted]". The *Seabloom* definition was cited in BLACK'S LAW DICTIONARY 1070 (4th Ed. 1968) when defining "licensee".

A license can also be formed when the occupant pays nothing for his right of use or occupancy because a lease requires payment for the occupancy. *Minn. Sands, LLC v. Cnty. of Winona,* 940 N.W.2d 183,202 (Minn. 2020) (elements of a lease include payment of rent).

traditional tenant since "rent" is a term of art describing payment by a traditional tenant – **plus** possible second persons – "other regular occupants" who are also there, possibly living for free or possibly paying a fee for a license. This allowed the second person – a licensee of the main tenant – the ability to enforce her rights to code-required repairs against the main tenant (who might be collecting a license fee) as well as against the landlord of the main tenant.

Note that the TRA defined "owner' is a very broadly as follows:

> Subd. 3. "Owner" means the owner or owners of the freehold of the premises or lesser estate therein, contract vendee, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation directly or indirectly in control of a building subject to the provision of the act. [emphasis added]

1973 Minn. Laws ch. 611, s. 18, subd. 3 This is consistent with the idea that a main dwelling tenant could be an "owner". The current statute changed the word "owner" to "landlord" but kept the broad definition. Minn. Stat. § 504B.001, subd. 7, 1999 Minn. Laws. Ch. 199, art. 1, s. 1, subd. 7.

In summary, "other regular occupants" includes persons in the unit with the permission of the main tenant, like licensees (but not short-term guests, who would not be regular occupants.[14]) This made the TRA and the Covenants of Habitability parallel statutes. The status of "other regular occupant" cannot be denied by the main landlord (e.g., LMC) because [a] it is not that entity which gives the license; and [b] the rights of a "tenant" (now "residential tenant") cannot be waived because the TRA included the following non-waiver clause:

> Any provision, whether oral or written, of any lease or other agreement whereby any provision of this act is waived by a [residential] tenant shall be deemed contrary to public policy and void.

1973 Minn. Laws ch. 611, s. 27, now codified at Minn. Stat. § 504B.465.

It would stand the TRA on its head if either the main landlord or the main tenant could fail to fix the unit up to code and then defend a TRA action brought by the other regular occupant on the grounds that she did not have the right to be there.

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[14] See Lee v. Regents of Univ. of Minn., 672 N.W.2d 366, 373-374 (Minn. Ct. App. 2003)) for a good discussion of "guest" versus "licensee".

Broszko v. Principal Mutual Life Insurance Co. is consistent with the above discussion of the TRA.

A case invoked by LMC, *Broszko v. Principal Mutual Life Insurance Co.*, 533 N.W.2d 656 (Minn. App. 1995), *rev. denied* (Minn. Sept. 19, 1995), actually is consistent with the reasoning above. Tina Borgen defaulted on a house mortgage and the mortgage was foreclosed. Ms. Borgen allowed Denise Broszko to live in the house during the redemption period in return for $400 per month. Ms. Borgen did not live with Ms. Broszko. At the end of the redemption period, the lender filed an unlawful detainer (eviction) action against all the occupants.

Ms. Broszko raised several defenses, all of which depended on her being a "[residential] tenant"[15]. The *Broszko* court rejected all the defenses, holding, "A former owner (i.e., mortgagor) retains the right to possess the property until the end of the redemption period… [but] such former owners are not 'tenants' of the new owner within the meaning of the chapter 566." Id. at 659-660.[16] The court held that "other regular occupants" means "persons who live in a dwelling unit subject to a valid agreement, lease, or contract, *in addition to* the lessee or renter." Id. at 660 (emphasis in original). That is, the *Broszko* court followed the rule that an "other regular occupant" must be a licensee or similar sub-occupant of a traditional/main tenant. The *Quinn* court correctly distinguished *Broszko* because

[15] *Broszko* was decided four years before the 1999 recodification, and therefore the court construed "tenant" according to Minn. Stat. § 566.18, subd. 2 (1996). However, that meaning is materially the same as the current meaning of "residential tenant". See footnote 7 above.

[16] The legislature, at least indirectly, acquiesced in this holding in 2008. *Broszko* had effectively eviscerated the part of Minn. Stat. § 504B.285, subd. 1 (1995-2007) which was supposed to afford tenants of foreclosed and cancelled homeowners a one- or two-months grace period to vacate after the end of the redemption or cancellation period. The 2008 legislature amended subdivision 1 to restore this particular right but it did so without changing the holding of *Broszko* that a person does not become an "other regular occupant" unless she is allowed into the unit by a tenant renting that unit. 2008 Minn. Laws ch 177 s 3. Instead, the 2008 amendment clarified and amended the duty of the mortgagee or vendor to give notice to the occupant who has rented from the mortgagor or vendee. See 2008 Foreclosure Crisis Response: Renter Working Group Final Report at 5-6 (this report was submitted to the legislature which then enacted the proposals essentially intact). Subsequently, the federal Protecting Tenants at Foreclosure Act increased the notice period for tenants in foreclosure (without changing the rights of tenants in cancellation, whose protection still depends on the 2008 law).

unlike Ms. Borgen, Ms. Smith was a valid tenant when Ms. Quinn joined Ms. Smith's household. *Quinn*, 972 N.W.2d at 887.

Note that the *Broszko* court gave "children of lessees" as an example of "other regular occupants". *Broszko,* 533 N.W.2d at 659. When the TRA and the lockout laws were enacted in 1973-1975, a landlord could legally use a lease that denied its tenant the right to add the tenant's own children to his household.[17] Thus the *Broszko* court confirmed that the main landlord cannot undo an other-regular-occupant's rights (e.g., Quinn's rights) via a no-other-occupant clause in the lease (e.g., Smith's lease).

Conclusion

The history of the applicable session laws is consistent with the *Quinn* court's conclusion. The fact that Ms. Smith's lease forbad other occupants without LMC's consent did not prevent Ms. Quinn from being an "other regular occupant" in Ms. Smith's apartment.

PART 2

Procedural History[18]

On May 4, 2022, thirty days after the Court of Appeals issued its decision, LMC file a petition for review ("PFR"). On June 29, 2022 the petition was granted.

In the meantime, LMC had filed two eviction actions against Ms. Smith and Ms. Quinn, Henn. Cty. Dist. Ct. File Nos. 27-CV-HC-21-240 and 27-CV-HC-22-1174.[19] The first case has been expunged; the second case was filed on April 1,

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[17] The state Human Rights Act added "familial status" as a protected class in 1980. 1980 Minn. Laws ch. 531, s. 1,9 . The federal Fair Housing Act followed suit eight years later. Pub. L. 100-430, §5, Sept. 13, 1988, 102 Stat 1619,1922.

[18] The appellate docket is available by using https://macsnc.courts.state.mn.us/ctrack/publicLogin.jsp , entering case number A21-1062, and unchecking the Exclude Closed/Archived box. Aside from the briefs, the appellate pleadings themselves are also available via this same webpage. The briefs are available at https://mn.gov/law-library/search/?v%3Asources=mn-law-library-briefs&query=A21-1062+&citation=&qt=A21-1062&v=&p=# .

[19] See the motion to dismiss filed by Ms. Quinn with the supreme court.

2022.[20] The cases were settled on June 3, 2022. Ms. Smith had already moved out and Ms. Quinn agreed to vacate by July 15, 2022. When Quinn didn't vacate by July 15, a Writ of Recovery was issued and soon thereafter Quinn did vacate.[20]

LMC filed its supreme-court brief on July 29, 2022. On August 17, Quinn filed a motion to dismiss the supreme court case. The basis of the motion was that because Ms. Quinn had vacated, her lockout petition was moot.[20] Quinn then filed her supreme-court brief on August 29, and LMC filed its reply brief on September 16. On October 18 the supreme court ruled that oral argument would be scheduled and deferred ruling on the motion to dismiss. Oral argument was held on November 28, 2022.[21]

On February 23, 2023, the supreme court dismissed the case as moot. *Quinn v. LMC*, File No. A21-1062, Order to Dismiss (Minn. Feb. 23, 2023).

Supreme Court's Reasoning

The court reasoned that the case was presumptively moot since Quinn had been evicted by court process. It then reviewed the three mootness exceptions LMC had argued in opposing dismissal of the case -- [i] functionally justiciable, [ii] capable of repetition but evading review, and [iii] collateral consequences.[22] I summarize the court's analysis below.

[i] Functionally justiciable

A presumptively moot case is functionally justiciable if it has been adequately argued and is of statewide significance. It was adequately argued. However, "nothing in the record supports the broad claim that these parties' unique circumstances present a statewide issue affecting most landlord-tenant relationships." *Id.* at 5.The crux of the court's reasoning seems to depend on the fact that Ms. Quinn was locked out during an eviction moratorium as set out in footnote 4 of the order which read:

[20] Based on records from MNCIS, https://pa.courts.state.mn.us/default.aspx

[21] A recording of the argument is available at https://www.mncourts.gov/SupremeCourt/OralArgumentWebcasts/ArgumentDetail.aspx?vid=1582.

[22] See LMC's reply to the motion to dismiss.

> The context of this matter also occurred during an unprecedented time concerning landlord-tenant disputes: during the eviction moratorium imposed by the state because of a worldwide pandemic. *See* Emerg. Exec. Order No. 20-14, *Suspending Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* (Mar. 23, 2020). The moratorium has since ended, and landlords once again have the right immediately to file for evictions and writs of recovery under Chapter 504B. *See* Act of June 29, 2021, ch. 8, art. 5, §§ 2, 4, 2021 Minn. Laws 1825, 1849-50 (implementing an eviction moratorium phaseout plan so that on June 1, 2022, eviction proceedings could return to normal, pre-pandemic process).

Id..

[ii] Capable of repetition yet evading review

A presumptively moot case is reviewable "when the harm to the particular plaintiff is capable of repetition yet evading review." *Id.* at 6.This requires two things, one of which is that "there is a reasonable expectation that a complaining party would be subjected to the same action again, [emphasis added]". *Id.* at 6.The court reasoned that, "[f]or this case to recur, Quinn would have to move in with another person who has a lease in an LMC building and live there for an extended period before being discovered [emphasis added]", and that this was unlikely. *Id.* at 6-7.

[iii] Collateral consequences

A presumptively moot case is reviewable "when an appellant produces evidence that collateral consequences actually resulted from a judgment." *Id.* at 7.

LMC had argued that the amount of its claim for money damages against Ms. Quinn depended on whether she was a tenant or a trespasser: [a] if she was a tenant, her debt would be unpaid rent from April 2, 2021 through July 2022; [b] if she was a trespasser, her debt would be "the reasonable rental value of the premises for the time the wrongdoer retains such wrongful possession."[23]

Without reaching the merits of LMC's argument, the court noted that it had only. invoked the collateral-consequences doctrine in criminal cases. It held that, "LMC has failed to provide persuasive authority to explain why we should expand this exception here." *Id.* at 7.

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[23] LMC's argument is set out on pages 6-7 of its reply to the motion to dismiss.

Summary

The supreme court rejected LMC's arguments that the case was ripe and dismissed its appeal as moot. As a result, the Court of Appeals' precedential decision remains good law.

My Comments

[i] The case seemed functionally justiciable

When the supreme court granted review on June 29, 2022, the pandemic-based eviction moratorium had completely ended 28 days ago. Therefore, it seems odd for the court to invoke the uniqueness of the pandemic as a reason to decide the case was not of statewide significance.

Putting aside this internal inconsistency, the Quinn/Smith situation did not arise from the pandemic. Leaseholders inviting in a friend to live with them even though their lease forbids it is not that rare an occurrence. Sometimes this is because the leaseholder and invitee are lovers or spouses. Other times the leaseholder is a college student or group of students. As semesters pass, it is pretty common for one student to replace another without a change in the lease and eventually for the final occupants to be completely new occupants. Pandemic or no pandemic, landlords will face the holdover-invitee on a regular basis – not in a high percentage of tenancies but given the hundreds of thousands of tenancies in the state this situation will, in absolute numbers, not be that rare.[24]

In accord with this conclusion is that both pro-Quinn amici claimed the issue was of statewide significance. HOME Line and Housing Justice Center wrote, "Narrowing the definition of residential tenant to exclude those whose occupancy in their own homes is somehow deemed "irregular" will categorically exclude a significant number of people who deserve, and currently receive, legal protection offered under the language, structure, and purpose of Chapter 504B." HOME Line/HJC's Amicus Brief, September 2, 2022 at 16. Standpoint and Violence Free Minnesota wrote, "Resolution of the question presented in this case will have a statewide impact on people who reside at a property without a formal lease agreement and a statewide impact on their available legal protections and recourse

[24] Recent census data indicates that Minnesota has about 672,105 rental units (2,517,248 total units, 26.7% not owner occupied).

when issues over their housing arise." Standpoint/Violence Free Minnesota's Request for Leave to Appear as Amici Curiae at 2.

Therefore, while I think that the Court of Appeals' decision was correct and that the Supreme Court could well have approved it by simply denying review, it seems odd that at the end it decided the case was not of statewide significance.

[ii] The dispute between LMC and Quinn is highly unlikely to repeat

The supreme court dismissed LMC's second argument on the basis that LMC is unlikely to encounter the same problem with Ms. Quinn ever again. *Quinn*. Order to Dismiss at 6, citing *Snell v. Walz*, __ N.W.2d __, 2023 WL 1807743, at *7 (Minn. Feb. 8, 2023).[25] Factually, that seems right. The chance that Ms. Quinn herself will ever again live in one of LMC's apartments is very slim.

[iii] LMC's collateral-consequences argument seems weak but LMC seemingly missed a direct-consequences argument

It seems a bit unfair to categorically reject the use of this doctrine merely because a case is civil rather than criminal. This particular case aside, there certainly are civil cases with very serious collateral consequences.

That said, I don't think LMC actually established any collateral consequence. All that Ms. Quinn won was the right not to be locked out. There was no decision whether she was a "trespasser" or a "tenant". The courts simply concluded that she was an "other regular occupant" and that LMC needed a court order to remove her.

Furthermore, there was no contract between LMC and Quinn. LMC argued that vociferously and Ms. Quinn never claimed she had such a contract. Both were correct. Therefore, she never owed rent since rent is payment under a lease contract. When she held over past April 7, 2021 and did not pay LMC, certainly LMC was harmed. However, regardless her title – "trespasser", "tenant", "other regular occupant", or something else – LMC's harm was the forgone rent it might have collected from a new tenant + any damage Ms. Quinn did to the unit + its court costs in removing her. This would not change if the supreme court reversed the district court.

[25] The pinpoint cite in the slip opinion, available at https://mn.gov/law-library-stat/archive/supct/2023/OPA210626-020823.pdf , is page 16-17.

Interestingly, I think LMC failed to allege a direct (actual) consequence of losing the district court case. Had it won, it would have had claim for $205.50 for costs under Minn. Stat. §549.02 for winning the case on the merits plus a claim for its filing fee of $297 under Minn. Stat. §549.04 as the prevailing party. Either or both claims made the case not moot.

PART 3

Practical considerations for the landlord

Following the Court of Appeals' decision, when a landlord is confronted by a holding-over invitee and wants to oust him by the easiest but legal method, that landlord will have to decide whether the invitee is an "other regular occupant". Under the totality-of-the-facts rule the landlord doesn't have a bright line telling it if the invitee is an "other regular occupant". Confronted with such an invitee, the practical first step should be to ask him about his history in the unit and gather the sort of facts the *Quinn* court used in its analysis. In some cases, it might become clear that the invitee is surely not an other regular occupant. Also, in many cases the same conversation can lead to the invitee agreeing to move out.

If the gathered facts show that the invitee's status is a close call, the conservative approach is to use court process rather than self help to the oust the invitee. Otherwise, if the landlord turns out to be wrong, it will lose a resulting lockout-petition case under Minn. Stat. §504B.375.

LMC suggested that this places landlords in an untenable position. I disagree. It merely tells landlords to be cautious, spend a little extra money and time, and remove most invitees by court process. In the old days, prior to *Berg v. Wiley*, 264 N.W.2d 145 (Minn. 1978), landlords could legally remove tenants by locking them out. *Berg* ended that practice. The landlord-tenant industry has adjusted well to the *Berg* rule. It will adjust well to the rule from this case.

Practical considerations for the invitee

On the flip side, an invitee who has been in the unit for a good period of time and is thinking of staying has to make the opposite calculation. A landlord's lockout might survive a section 504B.375 petition. Even if there isn't a successful lockout, a properly filed eviction case will eventually oust the invitee, likely putting a bad mark on his tenant record. Thus, even if the invitee has no new place lined up, he has a strong motivation to negotiate a move-out date with the landlord.

Did Ms. Quinn herself make this sort of calculation? It seems unlikely. Obviously, she did not know the outcome of her own case. She did not have the legal background to do careful analysis of the meaning of "other regular occupant" (or maybe even know the issue existed). Perhaps she had a crude notion that she was a tenant, that locking out tenants was illegal, and that the eviction moratorium tied LMC's hands. The fact that twelve days passed between her being locked out and filing her lawsuit[26] indicates she didn't think that far ahead.

> The court's construction of "residential tenant" is consistent with the rest of Minn. Stat. Chap. 504B

One other concern is whether the construction of "residential tenant" in *Quinn* makes statutes in Minn. Stat. Chap. 504B other than Minn. Stat. §504B.375 unworkable or absurd. If it makes some other statutes unworkable that would make the *Quinn* rule a poor one on policy grounds. If it makes some other statutes absurd, that would suggest that by enacting such statutes post 1975 the legislature adjusted (amended) the meaning of "other regular occupants".

At oral argument, LMC's attorney pointed to two possible problematic statutes, Minn. Stat. §504B.111 and Minn. Stat. §504B.181. I don't think these statutes are the problems he claimed.

> Minn. Stat. §504B.111

In pertinent part, Minn. Stat. §504B.111 reads:

> A landlord of a residential building with 12 or more residential units must have a written lease for each unit rented to a residential tenant. The written lease must identify the specific unit the residential tenant will occupy before the residential tenant signs the lease.

Contrary to LMC's stated concern, this does not say that a landlord of a $\geq$ 12-unit building must have a written lease with an "other regular occupant" who is not a leaseholder. It says that it must have a written lease if it rents a unit. LMC rented only to Smith. It fulfilled its duty by using a written lease rather than an oral one when it contracted with Smith.

> Minn. Stat. §504B.181

In pertinent part, Minn. Stat. §504B.181 reads:

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[26] Quinn's lockout petition was filed on April 19, 2021.

> Subdivision 1. **Disclosure to tenant.** There shall be disclosed to the residential tenant either in the rental agreement or otherwise in writing prior to commencement of the tenancy the name and address of:
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> (1) the person authorized to manage the premises; and
>
> (2) the landlord of the premises or an agent authorized by the landlord to accept service of process and receive and give receipt for notices and demands.
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> Subd. 2. **Posting of notice.** A printed or typewritten notice containing the information which must be disclosed under subdivision 1 shall be placed in a conspicuous place on the premises.

LMC's concern is that if it doesn't know an invitee (e.g., Quinn) is present, how can it disclose to her the authorized manager and agent for service of process? A simple answer is that the posted notice described in subdivision 2 accomplishes this. If the concern is subdivision 1's requirement of disclosure prior to the commencement of the tenancy, when the invitee, as in Quinn's case, moves in later, there is no problem. Indeed, the invitee cannot be an "other regular occupant" at the start of the tenancy or before it starts because to be an other regular occupant some time must pass. There is no actual problem; the landlord simply makes the disclosure to the leaseholder when he signs the lease.

There are several other statutes in chapter 504B that include the phrase "residential tenant". They are discussed below.

TRA and related statutes

The TRA and the closely related Emergency Tenant Remedies Action and Rent Escrow Action -- Minn. Stat. §504B.185 and Minn. Stat. §504B.381 to Minn. Stat. §504B.471 -- obviously raise no concern as discussed at length in Part 1.

Tenant-screening/credit-bureau statutes

Minn. Stat. §§ 504B.235 to 504B.245 regulate how tenant-screening agencies (credit bureaus) must deal with applicants for leases. These agencies' reports depend on the credit records of the consumers, called "residential tenants" in the three statutes. Whether the consumer is or was a traditional tenant or an other regular occupant should pose no problem when the agency prepares its report.

Minn. Stat. §504B.205

Minn. Stat. §504B.205 prohibits landlords from punishing "residential tenants" who contact police and other emergency personal for help. Landlords will have no problem obeying this statute regardless the exact status of the person asking for help – just don't punish the person for making the contact.

Minn. Stat. §504B.211

Minn. Stat. §504B.211 says that landlord who wants to enter a tenant's unit for a valid, non-emergency business reason (e.g., repairs) must make "a good faith effort to give the residential tenant reasonable notice under the circumstances of the intent to enter." If the landlord doesn't know there is an invitee who is an other regular occupant, good faith requires no notice. If the landlord does know of such an invitee, the landlord can make such an effort just as it can with a traditional leaseholder. (In most cases, what landlords do is to put a note under or on the apartment door, meaning the status of the humans behind that door doesn't matter.)

Minn. Stat. §504B.215

Minn. Stat. §504B.215 uses the phrase "residential tenants" only once, in subdivision 3(e), which says,

> In a single-metered residential building, other residential tenants in the building may contribute payments to the utility company or municipality on the account of the tenant who is the customer of record under paragraph (b) or on the landlord's account under paragraph (c).

This poses no statutory-construction problem. If an invitee like Quinn wants to chip in on a delinquent bill she can do so.

Minn. Stat. §504B.315

In pertinent part, Minn. Stat. §504B.315 reads:

> No residential tenant of residential premises may be evicted, denied a continuing tenancy, or denied a renewal of a lease on the basis of familial status [children added to the household] commenced during the tenancy unless [certain notice- or breach-of lease conditions apply]….

This poses no statutory-construction problem. When a landlord like LMC wants to evict or terminate an invitee/other regular occupant like Quinn, it can do so unless it is motivated by her or others in the unit adding a child to the family.

In summary, the use of the phrase "residential tenant" in various parts of Minn. Stat. Chap. 504B poses neither practical or legal problems.

> Perhaps LMC should have tried to oust Quinn quickly with an injunctive action.

LMC noted that the COVID-19-related eviction moratorium made it difficult to evict Ms. Quinn by court process. It strikes me that this was a relatively minor problem compared to the much larger number of traditional tenants who had breached their lease or held over past the end of their lease and were protected by the moratorium. It seems as if LMC figured something like, "at least we can lockout Ms. Quinn, a small victory amidst a host of traditional tenants who should be ousted but whom we are stuck with during the moratorium."

One avenue LMC overlooked is that the moratorium, Emerg. Exec. Order No. 20-73 (June 5, 2020), only prohibited ouster via Minn. Stat. §§ 504B.285 and 504B.291.[27] While such court ousters – "eviction actions" -- are by far the most common ouster procedure used, there are other avenues available. As *Yager v. Thompson*, 352 N.W.2d 71,74 (Minn. App. 1984) held,

> The Thompsons [occupants] construe the language in *Berg* to mean that a landlord could obtain injunctive relief against waste to protect himself, but could not regain possession through use of those remedies. This argument is without merit. The Court in *Berg* anticipated that the forcible entry and unlawful detainer statutes would not be sufficient in every circumstance. Under appropriate circumstances, injunctive relief is available. It is not enough that there is a remedy at law; it must be as practical and efficient to the ends of justice and its prompt administration as the remedy in equity. Therefore, the statutory remedy for forcible entry and unlawful detainer [now called an eviction action] is not the exclusive remedy available for repossession of properties.

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[27] In pertinent part the order at paragraph 1 said, "Beginning no later than March 24, 2020 at 5:00 pm, and continuing for the duration of the peacetime emergency declared in Executive Order 20-01 or until this Executive Order is rescinded, for property owners, mortgage holders, or other persons entitled to recover residential premises after March 1, 2020 because a household remains in the property after a notice of termination of lease, after the termination of the redemption period for a residential foreclosure, after a residential lease has been breached, or after nonpayment of rent, the ability to file an eviction action under Minnesota Statutes 2019, section 504B.285 or 504B.291 is suspended [emphasis added]."

(emphasis added, internal citation omitted).

Were LMC to have filed for an injunction, the trial court would have balanced the equities in deciding whether to order Ms. Quinn's ouster. Since the executive order already allowed eviction actions under Minn. Stat. § 504B.301 – actions to remove squatters who entered a unit illegally – it would not have been a huge leap to allow ouster of Ms. Quinn by injunction. Ms. Quinn was not a squatter subject to Minn. Stat. § 504B.301 but she was somewhat similar – halfway between a squatter and a traditional tenant. If Ms. Quinn was such a problem – one that motivated LMC to litigate her lockout case all the way to the state supreme court – trying to use an injunction action seems as if it would have been a reasonable idea.