IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 19-0431

Upon the Petition of

NO BOUNDRY LLC,
Plaintiff-Appellee,

And Concerning

CORNELL HOOSMAN,
Defendant-Appellant

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE ANDREA DRYER, DISTRICT COURT JUDGE

APPELLANT'S FINAL REPLY BRIEF

Nathan Peters
Iowa Legal Aid
607 Sycamore Street, Suite 304
Waterloo, IA 50703
Phone: (319) 235-7008
Fax: (319) 235-7070
npeters@iowalaw.org
ATTORNEY FOR APPELLANT
CORNELL HOOSMAN

Alexander Vincent Kornya
Iowa Legal Aid
1111 9th St. Suite 230
Des Moines, IA 50314
Phone: (515)243-1193
Fax: (515) 244-4618
akornya@iowalaw.org
ATTORNEY FOR APPELLANT
CORNELL HOOSMAN

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

ISSUES PRESENTED FOR REVIEW

I. THE RIGHT TO REDEEM UNDER IOWA CODE 447.7 IS A VALID DEFENSE OR COUNTERCLAIM IN AN ACTION FOR RECOVERY OF REAL ESTATE

Cases

Detmers v. Russell, 237 N.W. 494 (Iowa 1931)

J.J. Smith Lumber Co. v. Scott County Garbage Reducing & Fuel Co., 128 N.W. 389, 393 (Iowa 1910)

Jensen v. Nolte, 10 N.W.2d 47 (Iowa 1943)

Keller v. Harrison, 116 N.W. 327 (Iowa 1908)

Larson v. Baker, 16 N.W.2d 262 (Iowa 1944)

Papillon v. Jones, 892 N.W.2d 763 (Iowa 2017)

Stoner v. Verhey, 335 N.W.2d 636 (Iowa Ct. App. 1983)

Statutes

Iowa Code 4.7

Iowa Code 447.7

Iowa Code 643.2

Iowa Code 646.1

Iowa Code 646.3

Iowa Code 812.3

II. CORNELL MET HIS BURDEN TO SET ASIDE THE DEFAULT

Cases

Langer v. Mull, 453 N.W.2d 644 (Iowa Ct. App. 1990)

Central Nat'l Insurance Co. of Omaha v. Insurance Co. of North America, 513 N.W.2d 750 (Iowa 1994)

Statutes

Iowa Code 812.3

Rules

Iowa R. Civ. P. 1.211

ARGUMENT

I. THE RIGHT TO REDEEM UNDER IOWA CODE 447.7 IS A VALID DEFENSE OR COUNTERCLAIM IN AN ACTION FOR RECOVERY OF REAL ESTATE

Iowa Code 447.7(3)(a) provides that persons under a legal disability have an extended period to redeem property conveyed via treasurer's deed. Such a person, if still remaining in possession of the parcel, has an explicit statutory right to bring a "counterclaim in [a] removal action asserting [their] redemption rights." *Id.* Appellee No Boundry does not attempt to distinguish or explain Iowa Code 447.7. Tellingly, No Boundry does not even cite this provision once in their brief. The right created by this statute, and the compelling reasons for it, provide for a valid good faith defense that Cornell can and will assert should the district court's default judgment be set aside.

A. Iowa Code 646.1 Allows for Joinder of Counterclaims "of Like Proceedings," i.e. Actions to Determine Possession

The general limitation of counterclaims in an ejectment action under Iowa Code Chapter 646 explicitly excepts counterclaims "of like proceedings[.]" Iowa Code 646.1. In other words, counterclaims to establish a competing claim for the right to possess are allowed, whereas ordinary counterclaims for monetary damages or other relief not directly related to possession are barred.

As an initial note, Iowa Courts have at least tacitly approved

counterclaims of this nature in ejectment actions. *See e.g. Keller v. Harrison*, 116 N.W. 327 (Iowa 1908). This is true even without a clear statutory right to counterclaim, as in the present case. However, the issue of what constitutes "like proceedings" in an ejectment action has never been squarely addressed by Iowa' appellate courts.

Similar provisions of Iowa's replevin statute have received more direct scrutiny. The relevant language provides that "there shall be no joinder of any cause of action not of the same kind, nor shall there be allowed any counterclaim" in a replevin action. Iowa Code 643.2. Otherwise "a creditor [could] forcibly seize the property of his debtor without process and then plead the indebtedness as an offset to an action to recover it back." *J.J. Smith Lumber Co. v. Scott County garbage Reducing & Fuel Co.*, 128 N.W. 389, 393 (Iowa 1910).

Nevertheless, while a counterclaim for monetary damages arising from unpaid automobile repair costs is disallowed in a replevin action, a defendant may assert the existence of an artisan's lien based on those same unpaid costs. *Stoner v. Verhey*, 335 N.W.2d 636 (Iowa Ct. App. 1983). The difference between these two claims, of course, is that the first is an ordinary claim for monetary damages, while the claim for an artisan's lien goes to the heart of the narrow issue of a replevin matter – i.e., the right to possess, which is an action "of the same kind."

The same is true of Cornell's counterclaim in the present case. This is not a situation where a defendant is attempting to raise claims giving rise to damages collateral to the right to possess in order to set-off some underlying debt. Rather, Cornell seeks to directly assert his right to possess, in the context of his continuing right of redemption. In other words, the counterclaim is an action "of like kind" as No Boundry's own action to establish the right to possess.

Under No Boundry's position, the filing of an action for possession would itself terminate the extended redemption period for someone with a legal disability. This conclusion can only be drawn by ignoring Iowa Code 447.7(2)(a), which provides explicitly to the contrary.

B. In the Alternative, Iowa Code 447.7 Can Be Construed As an Equitable Defense

Even though Iowa Code 447.7 clearly provides that Cornell can raise the extended redemption period as a counterclaim, in the alternative this claim may also be construed as an equitable defense. It is long established that "an equitable defense pleading facts that entitle a defendant in… an action [for ejectment] to retain the possession of the premises in controversy can properly be pleaded." *Detmers v. Russell*, 237 N.W. 494 (Iowa 1931).

C. If There Is a Conflict Between the General Limitation of Counterclaims in Iowa Code 646.1 and the Specific Provision of Iowa Code 447.7, It Should Be Resolved In Cornell's Favor Under the Canons of Statutory Construction

The canons of statutory construction, as codified in the Iowa Code, provide that "[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision." Iowa Code 4.7. Iowa Code 646.1 is a statute of a general nature, procedurally limiting the claims that can be raised in an ejectment action. Iowa Code 447.7, on the other hand, is a statute that addresses a very discrete and specific subset of defendants facing dispossession – i.e. people under a legal disability, still in possession of their property, who are still eligible to redeem under an extended redemption period only available to them.

If a conflict between statutes is asserted, a court's first task is to "attempt to harmonize them." *Papillon v. Jones*, 892 N.W.2d 763 (Iowa 2017) (internal citations omitted). "If statutes cannot be harmonized, the specific provision will 'prevail[ ] as an exception to [a] general provision.'" *Id*., *citing* Iowa Code 4.7.

Sections I-A and I-B of this brief discuss ways in which Iowa Code 646.1 and Iowa Code 447.7 can be reconciled so that effect can be given to both – i.e., that the counterclaim is "of like proceedings" in relation to action for possession under Iowa Code Chapter 646, or that the counterclaim can be alternatively construed as an equitable defense. However, if this Court determines that there is an irreconcilable conflict between the two, then the much more specific provision in Iowa Code 447.7 must prevail over the more general limitation under Iowa Code 646.1.

D. Title May Be Tried In An Action Under Iowa Code Chapter 646 If Necessary To Determine the Parties' Rights of Possession

No Boundry also asserts that language in the case of *Larson v. Baker* stands for the broad principle that "the right to possession and not the title [is] the subject matter of … an action [under Iowa Code Chapter 646]." *Larson v. Baker*, 16 N.W.2d 262, 265 (Iowa 1944). However, the quoted language does not support such a broad pronouncement. Title is properly and often at issue in an action under Iowa Code Chapter 646. *See e.g.* Iowa Code 646.3 ("[t]he plaintiff must recover on the strength of their own title.")

The language No Boundry cites from *Larson* addresses the narrow issue of whether a lessee can properly bring an ejectment action against a titleholder if they are wrongfully excluded from their leasehold. *Larson* at 265. The

defendant titleholder in *Larson* argued in that case that a mere lessee could not avail themselves of an ejectment action. *Id*. The same issue had been addressed in the prior year in the case of *Jenson v. Nolte*, cited by *Larson* Court. *Jensen v. Nolte*, 10 N.W.2d 47 (Iowa 1943). In ruling that a lessee could maintain an action in ejectment against a lessor, despite not having title, the *Jensen* Court explained that:

> **[t]he issue as to the right to possession might rest on the question of title**, but the subject matter of the action was not the title… **Although the action may, and frequently does, become the means of trying title**, it is essentially a possessory action and is ordinarily confined to cases where the claimant has the possessory title–that is, a right of entry upon the lands.

Jensen at 48 – 49 (emphasis added) (internal citations omitted).

The situation in the present case completely different, since unlike in *Jensen* or *Larson*, the right of either Cornell or No Boundry to possess the property depends upon the strength of their respective titles. Moreover, both cases actually provide support for the idea that title can and must be tried where it is necessary to determine the right to possess.

II. CORNELL MET HIS BURDEN TO SET ASIDE THE DEFAULT

Cornell was adjudged incompetent to stand trial in a criminal case not once, but twice in the last six years. App. 23. This means that he was "determine[d]… [to be] suffering a mental disorder which prevent[ed him] from appreciating the charge, understanding the proceedings, or assisting

effectively in [his] defense." Iowa Code 812.3.

Cornell has several impairments that may or may not be related to "intercranial surgery," before which he apparently functioned at a much higher level. App. 32. In a report prepared in connection with one of those proceedings, he "struggled with spelling his children's names and could only remember the age of 1 of 5 of his children." App 34. During the assessment, "Cornell repeatedly required directions to the bathroom despite having used it on multiple occasions." App. 35. He had "lapses in concentration and staring episodes during which time he was unresponsive to verbal stimulation[,]" leading the examiner to "suspect seizure activity." *Id*. "Cornell was unable to remember any of 3 unrelated words following a five minute delay." *Id*. The examiner determined his operation judgment to be impaired, and his insight limited. *Id*. Cornell "required [the] examiner to repeat many words to [him] after he started spelling the word secondary to losing track of what he was doing and forgetting what he was trying to spell." App. 37. The examiner suspected "organic confusion or delirium[.]" App. 38.

No Boundary is correct that an appellate court may uphold a "district court's ruling even when the court has made no findings of fact." *Central Nat'l Insurance Co. of Omaha v. Insurance Co. of North America*, 513 N.W.2d 750 (Iowa 1994). However, the decision to deny a motion to set aside a default must be based on substantial evidence. *Id*. When a district court declines to

make any findings of fact, as in the present case, an appellate court "may affirm the trial court if any proper ground appears in the record." *Langer v. Mull*, 453 N.W.2d 644 (Iowa Ct. App. 1990).

Admittedly, the record in the present case is almost non-existent. However, what information that is available unequivocally shows that Cornell has significant challenges to understanding simple instructions, struggles to remember basic information, and in general is not equipped to comprehend and navigate the legal system without assistance. He is not a sophisticated actor who is attempting to game the system, but rather the kind of person who the Iowa Rules of Civil Procedure recognizes needs additional help to realize the basic protections of the law. *See* Iowa R. Civ. P. 1.211. There is no substantial evidence in the record upon which the district court's denial of Cornell's motion to set aside could be justified. To allow this default to stand, obtained without Cornell receiving the assistance of counsel or a guardian ad litem, would be to turn our backs on the most vulnerable among us.

CONCLUSION

Cornell requests the Court reverse the district court's order denying his Motion to Set Aside the Default Judgment, allow him to file an answer and counterclaim, put him back in possession of his home and remand for further proceedings on the merits.

Respectfully submitted,

_____/S Nathan Peters_____
Nathan Peters
Iowa Legal Aid
607 Sycamore Street, Suite 304
Waterloo, IA 50703
Phone: (319) 235-7008
Fax: (319) 235-7070
npeters@iowalaw.org
ATTORNEY FOR APPELLANT
CORNELL HOOSMAN

_____/S/_Alex Kornya_____
Alexander Vincent Kornya
Iowa Legal Aid
1111 9th St. Suite 230
Des Moines, IA 50314
Phone: (515)243-1193
Fax: (515) 244-4618
akornya@iowalaw.org 333
ATTORNEY FOR APPELLANT
CORNELL HOOSMAN

CERTIFICATE OF SERVICE

I, Alex Kornya, hereby certify that the Appellant's Proof Brief was electronically filed on the 5th day of July, 2019, and was electronically served upon the Appellee's counsel via electronic mail / EDMS.

/s/ Alex Kornya
Alex Kornya AT#0009810

COST CERTIFICATE

Pursuant to Iowa R. App. P. 6.903(2)(j) the undersigned hereby certifies that the actual cost of reproducing the necessary copies of this document was $0.

/s/ Alex Kornya
Alex Kornya AT#0009810

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

   [X] This brief contains 1,886 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

   [ ] This brief uses a monospaced typeface and contains _____ lines of text excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) or the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

   [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 pt. Times New Roman or

   [ ] This brief has been prepared in a monospaced type face using _____ with _____.

/s/ Alex Kornya

Alex Kornya AT#0009810