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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0972**

Builders Development & Finance, Inc.,
Respondent,

Lake Ann, LLC,
Respondent,

vs.

Vern Reynolds Construction Company, Inc., et al.,
Appellants.

**Filed May 12, 2014
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CV-10-12552

Eric J. Magnuson, Robins, Kaplan, Miller & Ciresi, L.L.P., Minneapolis, Minnesota; and

Michael L. Brutlag, Matthew R. Doherty, Brutlag, Hartmann & Trucke, P.A.,
Minneapolis, Minnesota (for respondent Builders Development & Finance, Inc.)

Daniel R. Kelly, Jacob C. Hendricks, Lynn M. Mueller, Felhaber, Larson, Fenlon &
Vogt, P.A., Minneapolis, Minnesota (for respondent Lake Ann, LLC)

Kay Nord Hunt, Barry A. O'Neil, Lommen, Abdo, Cole, King & Stageberg, P.A.,
Minneapolis, Minnesota (for appellants)

Considered and decided by Ross, Presiding Judge; Hooten, Judge; and Randall, Judge.*

UNPUBLISHED OPINION

ROSS, Judge

This case involves the value of stock that secured a now-defaulted loan between two businesses. A construction company borrowed money from a lender and secured its loan with its share in another company. The construction company defaulted, the lender arranged to sell its security interest in the collateral company to a buyer company, and the district court declared the sale to be reasonable after the construction company failed to challenge it. The construction company and its principal sued to stop the sale, alleging that the lender and the buyer company fraudulently underestimated the collateral company's value and that the construction company's failure to challenge the sale was merely excusable neglect. The lender defended the district court's judgment declaring that the sale was reasonable and sought attorney fees for its effort. The district court agreed with the lender and refused to vacate its judgment, but it disagreed that the lender was entitled to attorney fees for defending the judgment. We affirm the district court's decision not to vacate its judgment because the construction company failed to prove either fraud or excusable neglect. But we reverse in part and remand for a calculation of attorney fees because the construction company's mortgage authorizes the lender to collect its attorney fees incurred defending the sale.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Vern Reynolds Construction Company, Inc. (VRCC), borrowed \$1.5 million from Builders Development and Finance, Inc. (BDF), in June 2007. VRCC gave BDF three things in exchange for the loan: a mortgage in its real property; a personal guarantee by VRCC owner Vern Reynolds; and the subject of this litigation—a lien on VRCC's ownership share of Hidden Oaks, LLC, a Minnesota limited liability land-development corporation co-owned in three equal parts by VRCC, Ramsay Development, Inc. (RDI), and Builders Development, Inc. (BDI). William Ramsay was president of both RDI and Hidden Oaks. William Keenan was the president of BDI and BDF.

VRCC defaulted on the loan, so in 2010 BDF sued, seeking a money judgment against Reynolds and VRCC and a declaratory judgment deeming reasonable BDF's proposed sale of VRCC's interest in Hidden Oaks. The parties stipulated that BDF was entitled to a money judgment of \$1,877,418.53, and the district court entered judgment accordingly.

BDF struggled to enforce the judgment. The district court issued a bench warrant for Reynolds after he twice failed to appear at scheduled depositions to document his and VRCC's assets. Despite various collection steps taken by BDF, by June 2012 Reynolds and VRCC still owed it more than \$1.3 million. BDF then turned to liquidating VRCC's interest in Hidden Oaks. BDF asked the district court to declare commercially reasonable its sale of the subject Hidden Oaks share for \$1 million to Lake Ann, LLC, under Minnesota Statutes section 336.9-627(c) (2010). It provided evidence that Keenan had solicited bids and secured the offer from Lake Ann contingent on court approval. Lake

Ann has three owners: B-T Ventures (a general partnership between Thomas Lowe, Jr., and Judith Briggs) owns 50%; BDI owns 49%; and Barbara Zadeh owns 1%. Lowe and Zadeh are Lake Ann officers. BDF sent notice of the proposed sale to Reynolds at his home address.

Ramsay, president of Hidden Oaks, did not object to Lake Ann purchasing VRCC's membership interest. According to Ramsay, Hidden Oaks managers valued each one-third share at \$994,416. Hidden Oaks owned two commercial lots and a small office building in Champlin, two development parcels in Brooklyn Park, and seventy-eight residential lots in Brooklyn Park. Ramsay offered real estate appraiser Jeffrey Johnson's assessment in support; Johnson had evaluated Hidden Oaks's valuation method (a cash flow projection and discounted cash flow capitalization method) and concluded that it was a common, acceptable method and that the \$994,416 valuation was reasonable.

The district court scheduled a hearing on BDF's motion for August 16, 2012. The day before the scheduled hearing, a different judge presiding over a dispute between Reynolds and his wife appointed a receiver for VRCC, Leslie Anderson. Anderson immediately contacted the district court judge assigned to decide the reasonableness of the proposed sale and asked her to postpone the August 16 hearing. The judge refused. She suspected that the sudden appointment of a receiver was an "end-run around" BDF's motion and contacted the judge who had appointed Anderson. That judge then vacated the appointment order the same day. Anderson nevertheless appeared at the August 16 hearing and contested the value of VRCC's interest in Hidden Oaks, claiming flaws and misrepresentations in Ramsay's affidavit. The district court found appropriate Ramsay's

valuation, Johnson's appraisal, and BDF's efforts to find a buyer. It issued an order declaring the sale to Lake Ann reasonable. It also awarded BDF \$129,202.13 in postjudgment attorney fees.

Anderson emailed BDF's counsel on August 24 indicating that Reynolds planned to appeal, prompting BDF and Lake Ann to delay closing on the sale. Anderson also informed BDF and Lake Ann that the sale would be unnecessary because Reynolds was arranging financing to satisfy the judgment. Anderson's representations proved empty; after three weeks Reynolds neither satisfied the judgment nor filed an appeal. BDF and Lake Ann closed the sale on September 20, and BDF applied the proceeds to the outstanding judgments against Reynolds. Anderson contacted BDF again on October 11, indicating that Reynolds would pay the judgment by October 19 and asking that the Hidden Oaks share be returned after this promised payment. BDF responded that the sale had closed and the share would not be returned.

Reynolds then tried to undo the sale in the district court. He moved the court to vacate its order and judgment authorizing the sale, relying on Rule 60.02 of the Minnesota Rules of Civil Procedure. He argued that the judgment had resulted from his excusable neglect in not challenging the sale and from alleged fraud by BDF. Lake Ann sought to intervene when it learned of Reynolds's motion to vacate.

The excusable neglect, Reynolds alleged, resulted from a mental health condition that recently rendered him incompetent to manage his business affairs, including opening or answering his mail. Affidavits from Ramsay, Keenan, and BDF's attorney contradicted the claim, however, saying that in all their interactions with Reynolds over the years

Reynolds was competent and that leaving mail unopened and bills unpaid was customary for him.

Reynolds offered affidavits from a real estate appraiser and a business-valuation expert criticizing the methods that Ramsay relied on, arguing that Ramsay had fraudulently understated the stock's value. These appraisers stated that Ramsay had failed to disclose that some lots had been sold at prices that were higher than the estimated lot prices that formed the basis of Ramsay's opinion, and they asserted that he overlooked the approval of the plat of a new subdivision. All of this, they asserted, had mischaracterized and undervalued Hidden Oaks as if the company was inventory in a "fire sale" rather than a healthy, going business concern. According to them, Ramsay had ignored the strength of the local real estate market and comparable sales. They also attacked Johnson's assessment of Ramsay's valuation and concluded that it was not based on the information appended to Ramsay's affidavit. In addition to accusing BDF and Ramsay of fraud, Reynolds also claimed that BDF and Lake Ann are related entities such that the sale negotiation was suspicious, not at arm's length. He argued that all of this together established fraud and undermined the conclusion that the sale was commercially reasonable.

BDF contested these allegations also by affidavits. Ramsay acknowledged that he had omitted from his initial affidavit part of the document on which Johnson based his assessment. But he said that it was inadvertent and that the omitted portion of the document, which valued Hidden Oaks using a different methodology, would have resulted in a slightly *lower* estimate. Ramsay contradicted the various allegations

questioning his accounting and appraisal methods. BDF offered the affidavit of appraiser Phillip Williams, who supported as reasonable Ramsay's estimates and Johnson's conclusion that Ramsay's appraisal was reasonable. BDF asked the district court not only to deny Reynolds's motion to vacate but to award it postjudgment costs and attorney fees that BDF incurred contesting Reynolds's motion.

The district court granted Lake Ann's motion to intervene but denied Reynolds's motion to vacate. It concluded that Reynolds did not provide clear and convincing evidence of fraud because, even assuming Ramsay's affidavit misrepresented facts and was fraudulent, Reynolds had proved at most that Ramsay undervalued the price of VRCC's share of Hidden Oaks; he had not proved that the sale was unreasonable. The district court observed that the statute does not require arm's length transactions, only commercially reasonable ones. It found no evidence persuading it that any improprieties existed between BDF, Hidden Oaks, and Lake Ann in the deal. It rejected Reynolds's excusable neglect argument as unsupported. The district court nevertheless denied BDF's motion for fees and costs to defend Reynolds's postjudgment motion, reasoning that BDF was not entitled to costs or fees that arose after the sale satisfied the debt.

Reynolds appeals from the district court's denial of his motion to vacate. BDF appeals from the district court's denial of its motion for costs and fees.

DECISION

Reynolds argues that the district court erroneously failed to grant his motion to vacate its judgment declaring the sale of VRCC's interest in Hidden Oaks commercially reasonable. The district court has discretion to grant or deny a motion to vacate judgment

under Rule 60.02, and we review its decision to deny for abuse of discretion. *Turner v. Suggs*, 653 N.W.2d 458, 465 (Minn. App. 2002). A district court abuses its discretion when it misapplies the law or reaches a decision contrary to the facts on the record. *Minneapolis Grand, LLC v. Galt Funding LLC*, 791 N.W.2d 549, 556 (Minn. App. 2010). Reynolds maintains specifically that the district court wrongly decided his claim of fraud and his claim of excusable neglect. BDF defends the district court's decision on Reynolds's motion to vacate but insists that the district court wrongly denied BDF's motion for attorney fees and costs incurred responding to Reynolds's rule 60 motion. BDF has the better argument on both points.

I

We see no error in the district court's answer to Reynolds's claim of fraud. The district court may vacate an order or judgment that is attributable to a party's fraud, misrepresentation, or misconduct. Minn. R. Civ. P. 60.02(c). The rule applies if a party defrauds the court or defrauds an opposing party by preventing the opposing party from presenting his case. *Id.*; see also *Johnson v. Johnson*, 243 Minn. 403, 407, 68 N.W.2d 398, 400 (1955) (recognizing Minnesota law eliminated substantive distinction between intrinsic and extrinsic fraud). Concealing a material fact is fraud on the court. See *In re Conservatorship of Bromley*, 359 N.W.2d 723, 724 (Minn. App. 1984), review denied (Minn. Mar. 21, 1985). And the moving party has the burden to prove fraud with clear and convincing evidence that the accused party (or a witness if the accused party knew about it) committed fraud that prevented him from fully and fairly presenting his case. See *Regents of Univ. of Minn. v. Med. Inc.*, 405 N.W.2d 474, 480 (Minn. App. 1987),

review denied (Minn. July 15, 1987). The district court finds facts, weighs evidence, and assesses credibility to decide whether fraud occurred. *J.L.B. v. T.E.B.*, 474 N.W.2d 599, 603 (Minn. App. 1991), *review denied* (Minn. Oct. 11, 1991). If fraud occurred, the district court should vacate the judgment only if the fraud affected the central issue rather than a collateral issue. *Turner*, 653 N.W.2d at 466.

Reynolds contends both that Ramsay's alleged misstatements are attributable to BDF and that those statements constitute clear and convincing evidence of fraud. The district court was not persuaded that any alleged misrepresentation by Ramsay could be attributable to BDF. Reynolds makes a strong case that, although Ramsay is an officer of Hidden Oaks rather than of BDF, the relationship between Ramsay and BDF is not so attenuated as to insulate BDF from any fraud Ramsay allegedly committed. The point is well taken; BDF co-owns Hidden Oaks, and BDF's attorney helped prepare Ramsay's affidavit. All three stand to benefit from the deal. But BDF is accountable for Ramsay's fraud only if Ramsay actually committed fraud.

The district court did not find clear and convincing evidence that Ramsay committed fraud and Reynolds fails to point us to uncontested evidence that would have required the finding. Reynolds emphasizes Ramsay's choice of a fire-sale valuation methodology, a 35% discount he applied to the minority interest, and the omission of actual property sales information that differed from his estimated sales calculations. These assertions do not render clearly erroneous the district court's conclusion that BDF did not commit fraud.

Various professional appraisers took different positions as to whether Ramsay's valuation was valid. Reynolds supported his accusations against Ramsay's accounting and valuation with affidavits of two appraisers who opined that Ramsay's approach was unreasonable. BDF defended Ramsay's accounting and valuation with Johnson's assessment, which deemed Ramsay's approach reasonable. And BDF obtained the opinion of yet another appraiser who testified that Ramsay and Johnson properly assessed the value of VRCC's share of Hidden Oaks. The contested evidence from this nearly evenly divided battle of experts might have convinced a fact finder that Ramsay's valuation of VRCC's interest in Hidden Oaks was wrong, and perhaps fraudulently so. But it might convince a reasonable fact finder that Ramsay's valuation was not only not fraudulent, but also correct, justifying judicial approval of the sale. This evidence includes a market-based explanation as to why the district court could reasonably accept a valuation estimate based on the "fire sale" methodology rather than on samples of actual sales: BDF was seeking to sell a minority share of a closely held real estate development company in a depressed and uncertain real estate market where actual prior sales do not necessarily or precisely indicate future prospects.

The district court was in the best position to weigh the conflicting evidence, and it did. The same district court judge who initially approved the sale saw and considered Reynolds's evidence of alleged fraud. Even after considering the allegation and acknowledgment that Ramsay had omitted an important attachment to his original affidavit, the district court found that the new information would not have affected its decision that the sale was reasonable. We are satisfied that the district court acted well

within its discretion when it weighed the evidence and arguments and concluded that Reynolds failed to produce clear and convincing evidence of fraud necessary to prevail on his Rule 60.02 motion.

II

We are also satisfied that the district court acted within its discretion when it concluded that Reynolds was not entitled to vacation of the judgment based on his alleged excusable neglect. A district court may vacate an order or judgment because of excusable neglect. Minn. R. Civ. P. 60.02(a). A party claiming that a judgment is the product of his excusable neglect is entitled to relief if he (a) has a reasonable defense on the merits, (b) has a reasonable excuse for failing to respond sooner, (c) exercised due diligence upon entry of the judgment, and (d) can show that vacating the judgment will not substantially prejudice the other party. *Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964). The party seeking to vacate the judgment bears the burden of proof and is entitled to relief if he establishes every factor, although we have held that relief may be available even to a party unable to satisfy all four. *Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 406 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008). This may be the result when some factors strongly favor granting a motion to vacate and compensate for another factor that only weakly supports the motion. *Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168, 174 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010). But a strong showing on one factor will not overcome weak showings on two factors and no showing on the last factor. *Black v. Rimmer*, 700 N.W.2d 521, 528–29 (Minn. App. 2005), *review dismissed* (Minn. Sept. 28,

2005). And the motion must fail if the movant fails to establish that he has a reasonable defense on the merits. *Hengel v. Hyatt*, 312 Minn. 317, 319, 252 N.W.2d 105, 106 (1977). We address each factor.

Reasonable Excuse

We consider the threshold question first: Did Reynolds provide a reasonable excuse? The district court found that he did not, and the finding is supported by the evidence. Reynolds offers two excuses why he failed to respond adequately to the valuation issue when it was first argued to the district court on the merits. He claims first that he received inadequate notice and second that his mental health prevented him from attending to business. Neither argument is convincing.

We do not consider Reynolds's claim that he never received notice of the proposed sale under the notice terms of the BDF–VRCC agreement, which required notice to be “addressed to the last known address of [the] party” served. It is true that BDF sent notice of its intent to sell to Reynolds at his home address in Grand Rapids, not to the Maple Grove address the agreement specifies for VRCC's service. But Reynolds did not raise any argument based on this fact to the district court, and we do not consider arguments presented for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Reynolds waived the argument. (We add that the argument would not have persuaded us in any event. Reynolds is the principal of VRCC, and without objection BDF had been sending all notices throughout the dispute to both Reynolds and VRCC at Reynolds's Grand Rapids address. Also, VRCC's extant registered address with the Minnesota Secretary of State was Reynolds's home address in Grand Rapids, and

Hennepin County property records indicate that the Maple Grove address is vacant land that was forfeited to the county in 2011. Reynolds does not attempt to explain how he would have received the notice had it been sent to the vacant address listed in the agreement rather than directly to him at the address where he received other correspondence on his own behalf as a party.)

The district court was not persuaded that Reynolds's alleged infirmities rendered him incapable of opening or answering his mail. He claims that his incapacity excuses his failure to respond to BDF's motion in August 2012. The argument is unpersuasive. BDF introduced the affidavit testimony of Ramsay, Keenan, and BDF's counsel that Reynolds's behavior remained consistent throughout their dealings with him over a lengthy period. They testified that Reynolds always had a tendency to ignore his mail, long before he claimed that a recent medical condition was the cause. The district court had a sufficient basis to infer that the true reason Reynolds did not respond adequately to the notice was simply that it was his custom not to open his mail or to respond to urgent business. We see nothing in the record that renders clearly erroneous the district court's conclusion that the excuse was not reasonable on account of any alleged newly acquired mental health condition (the existence of which Reynolds has never supported with medical evidence from a mental health professional). The district court implicitly disbelieved Reynolds's incompetency arguments, and it did not clearly err by doing so.

Lack of Prejudice

The district court also had a sufficient basis to hold that Reynolds failed to establish that granting his motion to vacate will not substantially prejudice BDF or Lake

Ann. Vacating a judgment will cause substantial prejudice when another party stands to lose a benefit it secured under the judgment. *Kubiszewski v. St. John*, 498 N.W.2d 490, 494 (Minn. App. 1993), *aff'd in part, rev'd in part*, 518 N.W.2d 4 (Minn. 1994). Reynolds insists that vacating the order will not automatically undo the sale of VRCC's share of Hidden Oaks because the order approved, but did not mandate, the sale. But the effect of vacating the order, as Reynolds concedes, would remove judicial approval from it. This would expose BDF and Lake Ann to a direct attack on the sale's legitimacy and risk its invalidation. Given Reynolds's repeated but unfulfilled promises to pay BDF to avoid the sale, the district court had no reason to suppose that BDF would have satisfied its judgment any other way. And Reynolds fails to offer a persuasive argument how Lake Ann would not be prejudiced by being divested of its ownership interest. That is the kind of meaningful prejudice to a third party the court acknowledged in *Kubiszewski*. See 498 N.W.2d at 494.

Because Reynolds failed to establish any reasonable excuse and fails to show how vacating the judgment would not substantially prejudice BDF and Lake Ann, we will only briefly touch on the other two elements.

Reasonable Defense on the Merits and Due Diligence

We touch on the final two elements lightly. We recognize that Reynolds had a reasonable argument on the merits to challenge the commercial reasonableness of the sale. As we have already indicated, Reynolds eventually presented his own appraisers to question the valuation methods and calculations that Ramsay relied on, and their arguments are not unreasonable even if they are not compelling. On that ground, a fact

finder weighing the positions offered by the competing experts de novo might have decided that the sale was *not* commercially reasonable. A secured party may dispose of collateral after the borrower defaults, provided that “[e]very aspect” of the disposition, including the “manner, time, place, and other terms,” is commercially reasonable. Minn. Stat. § 336.9-610(a)–(b) (2010). A disposition is commercially reasonable if it is made according to the current prices or practices of the relevant, recognized market. Minn. Stat. § 336.9-627(b) (2010). Although the fact that the collateral might have fetched a higher price under other circumstances does not render the disposition commercially unreasonable, Minn. Stat. § 336.9-627(a), a low price does suggest that the district court should give closer scrutiny to the sale, U.C.C. § 9-610 cmt. 10 (2002). On this record, it is not implausible that a district court looking at Reynolds’s valuation evidence (which he eventually introduced after the judgment to claim fraud) might have found Reynolds’s accounting and valuation evidence more persuasive than the contrary accounting and valuation evidence that BDF provided.

But this factor would only barely, if at all, favor vacating the judgment. This is because there was also plenty of evidence to support the finding that the sale was commercially reasonable, and the district court judge expressly stated in retrospect that even if she had received the underlying evidence that Reynolds says was unfairly withheld by Ramsay, the court would have come to the same conclusion that the sale was commercially reasonable.

The final factor—due diligence—also weighs only slightly in favor of vacating. Motions to vacate for excusable neglect “shall be made . . . not more than one year after

the judgment [or] order . . . was entered.” Minn. R. Civ. P. 60.02. The district court entered the order and judgment against Reynolds on August 17, 2012, and he filed his notice of motion to vacate on December 3, 2012, three and a half months later. Because Reynolds brought his motion within the one-year timeframe the rules prescribe, the district court decided that this factor favors Reynolds. But we do not believe that merely filing the motion within one year of the judgment necessarily demonstrates due diligence; although satisfying the one-year deadline avoids immediate dismissal for untimeliness, avoiding the deadline does not itself prove diligence. BDF contends that Reynolds did not exercise due diligence because he had adequate notice of the proceedings and he raised arguments at the initial hearing substantially similar to those he raises now, albeit without substantial evidentiary support. And BDF highlights Reynolds’s failure to redeem the security interest after the judgment despite promising that he would do so after learning that BDF and Lake Ann intended to close the sale. Despite BDF’s arguments, we believe that the district court acted within its discretion when it concluded that Reynolds was duly diligent in filing his motion to vacate less than four months after the judgment and long before the deadline.

Although the last two factors discussed tend to slightly favor granting the motion to vacate under rule 60.02, the first two factors clearly support the district court’s decision not to vacate and to leave its judgment intact.

III

BDF filed a related appeal to challenge the district court’s denial of its motion for postjudgment attorney fees and costs it incurred defending the district court’s declared

judgment that the sale was commercially reasonable. The district court has broad discretion when deciding whether to grant attorney fees, and we will not reverse its decision unless it abused its discretion. *WDSI, Inc. v. Cnty. of Steele*, 672 N.W.2d 617, 622 (Minn. App. 2003). A party may not be awarded attorney fees unless a statute or contract authorizes the award. *Schwickert, Inc. v. Winnebago Seniors, Ltd.*, 680 N.W.2d 79, 87 (Minn. 2004). BDF maintains that the mortgage note is the contract that entitles it to additional attorney fees for the cost of defending Reynolds's motion to vacate. The mortgage note is a contract, *see United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49, 55 (Minn. 2012), and contract interpretation presents a question of law that we review de novo, *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009).

BDF points to two passages in the note that authorize it to collect fees:

[VRCC] will pay [BDF], on demand, all out-of-pocket expenses incurred by [BDF] in connection with the Note, including without limitation, closing costs, recording fees, mortgage registry tax, state deed tax, title insurance premiums and attorneys' fees.

....

[VRCC] and each endorser agrees to pay all costs of collection, . . . including reasonable attorneys' fees, incurred in protecting or preserving the security for this Note. Such attorneys' fees shall be owed (i) whether suit is brought or not, and (ii) for any kind of an action, including, but not limited to, any bankruptcy, insolvency or similar proceedings and any probate or other proceedings.

The first passage has little relevance here because it addresses expenses arising from issuing and securing the note, not enforcing or collecting on it. But the second passage

applies. It covers the “costs of collection . . . incurred in protecting or preserving the security for [the] note,” including attorney fees. Loan contracts authorizing the recovery of all attorney fees associated with collecting on a debt have been interpreted broadly to make the creditor whole for efforts to collect on its debt, including recovery for attorney fees incurred while defending against a counterclaim brought by the debtor that would, if successful, impair or diminish the creditor’s ability to recover on its defaulted loan. *See, e.g., Duryea v. Third Nw. Bank of Minneapolis*, 606 F.2d 823, 826 (8th Cir. 1979); *Potter v. Am. Bean & Grain Corp.*, 388 N.W.2d 22, 25 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986).

The district court reasoned that BDF was not entitled to attorney fees incurred after the sale satisfied the debt. We think the reasoning is mostly sound but overlooks BDF’s need to expend attorney fees to respond to Reynolds’s indirect attack on the sale by his attacking its judicial endorsement. Although the sale largely satisfied the debt, Reynolds’s challenge to the judgment was one step in challenging the sale, putting in jeopardy BDF’s right to the sale’s debt-satisfying proceeds. We hold that the note authorizes BDF to collect from VRCC the attorney fees it incurred while defending this challenge to the sale of VRCC’s share of Hidden Oaks. We therefore reverse and remand to the district court for findings on the amount of attorney fees to which BDF is entitled.

Affirmed in part, reversed in part, and remanded.