

TUESDAY, APRIL 27, 2010
11:00 A.M.

NO. 3

#25304

ADVANCED RECYCLING SYSTEMS,
LLC,
Plaintiff and Appellee,

vs.

SOUTHEAST PROPERTIES LIMITED
PARTNERSHIP,
Defendant and Appellant.

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(FOR APPELLANT)

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(FOR APPELLEE)

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(FOR APPELLEE)

The Honorable Kathleen K. Caldwell
Second Judicial Circuit
Minnehaha County

(CIV 07-60)

STATEMENT OF LEGAL ISSUES

1. **Whether the Trial Court erred in denying Southeast's Motion for Summary Judgment and granting Advanced partial summary judgment when Advanced's right of first refusal in its lease did not grant Advanced a right of first refusal to the whole 8th & Railroad Center development, Advanced's right of first refusal was not triggered by the sale of the whole development, and Advanced allowed its right of first refusal to expire by its term.**

The trial court denied Southeast's Motion for Summary Judgment and granted Advanced's partial motion for summary judgment, concluding Southeast had breached the expired right of first refusal and Advanced was entitled to monetary damages.

Chapman v. Mutual Life Insurance Co. of New York, 800 P.2d 1147 (Wyo. 1990)

Ollie v. Rainbolt, 669 P.2d 275 (Ok. 1983)

Tarallo v. Northstar Bank, 562 N.Y.S.2d 812 (N.Y. App. Div. 1990)

Crow-Spieker No. 23 v. Robert L. Helms Const. and Development Co., 731 P.2d 348 (Nev. 1987)

2. **Whether the Trial Court erred in its determination and award of damages to Advanced when it relied on expert testimony regarding appreciation of real estate and claimed losses that failed to consider the actual costs of ownership of real property, and was predicated upon an incorrect factual basis.**

The trial court apparently adopted the full amount of Advanced's expert's model and calculation in its award of damages.

Podio v. American Colloid Co., 83 SD 528, 162 N.W.2d 385 (1968)

Concord Boat Corp. v. Brunswick Corp., 207 F.3d 1039 (8th Cir. 2000)

Nebraska Plastics, Inc. v. Holland Colors Americas, Inc., 408 F.3d 410 (8th Cir. 2005)