

WEDNESDAY, FEBRUARY 16, 2011
11:00 A.M.

NO. 2

#25700, #25701

TERRY BROWN and SUSAN BROWN,
Plaintiffs and Appellees,

vs.

JAMES HANSON,
Defendant and Appellant.

Mr. Roger A. Tellinghuisen
Mr. Brad P. Gordon
Tellinghuisen & Gordon
Attorneys at Law
132 E Illinois
Spearfish SD 57783
Ph: 642-8080

(FOR APPELLANT)

Mr. Thomas E. Brady
Mr. Dylan A. Wilde
Attorney at Law
Brady & Pluimer
135 E Colorado Blvd
Spearfish SD 57783
Ph: 722-9000

(FOR APPELLEES)

The Honorable Jerome A. Eckrich, III
Fourth Judicial Circuit
Meade County

(CIV 06-479)

NOTICE OF REVIEW FILED AUGUST 3, 2010

20-20-10

STATEMENT AND LEGAL ISSUES

1. WHETHER HANSON IS LIABLE FOR SLANDER OF TITLE.

The Circuit Court determined that Hanson slandered Browns' title because he could not unilaterally rescind the Common Well and Road Easement Agreement as a matter of law and the document he filed with the Meade County, South Dakota, Register of Deeds, contained false statements and cloaked Hanson's real motivation.

Most relevant cases and statutory provisions.

- A. *Gregory's, Inc v. Haan*, 1996 S.D. 35, ¶9-15, 545 N.W.2d 488, 492-493.
- B. *Kensington Development Corp. v. Israel*, 142 Wis. 2d 894, 904, 419 N.W.2d 241, 245 (Wis. 1988).
- C. *Polygram Records, Inc v. Superior Court*, 170 Cal.App.3d 543, 547 (1985).
- D. *Horning v. Hardy*, 373 A.2d 1273 (Md.App. 1977).

2. WHETHER HANSON IS LIABLE FOR TORTIOUS INTERFERENCE WITH A BUSINESS CONTRACT.

The Circuit Court ruled that the Browns proved the elements of tortious interference with contract, and that a valid business relationship existed between the Browns and the Fords.

Most relevant cases and statutory provisions.

- A. *St Onge Livestock Co. v. Curtis*, 2002 S.D. 102, ¶11 650 N.W.2d 537, 540.
- B. *Dykstra v. Page Holding, Co.*, 2009 S.D. 38, ¶139, 766 N.W.2d 498.

C. *Gruhlke v. Sioux Empire Federal Credit Union*, S.D. 2008 S.D. 89, ¶16, 756 N.W.2d 399, p.408.

D. *International Ass'n of Machinists v. Southard*, 459 P.2d 570, 572 (Colo.App. 1969).

3. **WHETHER THE BROWNS WERE ENTITLED TO
ATTORNEY'S FEES FOR SLANDER OF TITLE
UNDER SDCL 43-30-9.**

The Circuit Court utilized SDCL 43-30-9 of South Dakota's Marketable Title Act to impose attorney's fees upon Hanson.

Most relevant cases and statutory provisions.

A. *Matter of Estate of O'Keffe*, 583 N.W.2d 138, 142 (S.D. 1998).

B. In *Schuldies v. Millar*, 1996 S.D. 120, ¶37 555 N.W.2d 90, 100.

C. SDCL 43-30-9.

D. SDCL 43-30-3.

4. **WHETHER THE BROWNS ARE ENTITLED TO
CLAIM A \$6,300 AGREED CREDIT TO THE
FORDS AGAINST REAL ESTATE PURCHASE AS
COMPENSATORY DAMAGES TO SUPPORT AN
AWARD OF PUNITIVE DAMAGES**

The Circuit Court included in its compensatory damage calculation \$6,300 which was an amount the Browns agreed to credit the Fords on their real estate purchase in exchange for the Fords release of all claims the Fords might have against the Browns resulting from the delay in closing.

Most relevant cases and statutory provisions.

A. *Wang v. Bekken*, 310 N.W.2d 166, 167 (S.D. 1981).

B. *Schaffer v. Edward D. Jones & Co.*, 521 N.W.2d 921, 928 (S.D. 1994).

C. *Grynberg v. Citation Oil & Gas Corp*, 1997 S.D. 121,
¶18573 N.W.2d 493, 500 (S.D. 1997).

D. *Schipporeit v. Kahn*, 2009 S.D. 96, ¶7 775 N.W.2d
503, 505 (S.D. 2009).

LEGAL ISSUES ON NOTICE OF REVIEW

I. Whether the trial court erred in only awarding Browns damages in the amount of \$3,965 in pecuniary damages on their slander of title and tortious interference with business contract claims.

The trial court only awarded Browns \$3,965 in pecuniary damages, exclusive of attorneys' fees and punitive damages.

Wagner v. Brownlee, 2006 SD 38, 713 NW2d 592
SDCL §21-1-13.1

II. Alternatively, whether the trial court erred in granting Judgment against Browns on their breach of contract claim.

The trial court granted Judgment against Browns on their breach of contract claim.

Guthmiller v. Deloitte & Touche LLP, 2005 SD 77, (SD 2005).
Weitzel v. Sioux Valley Heart Partners, 2006 SD 45, 714 NW2d 884