

Wednesday, August 26, 2009
9:00 A.M.

NO. 1

#25112, #25128

TATE D. SCHIPPOREIT and
SARAH E. SCHIPPOREIT,
Plaintiffs and Appellees,

vs.

GHAZANFAR KHAN,
Defendant and Appellant.

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(FOR APPELLANT)

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(FOR APPELLEES)

The Honorable Randall L. Macy
Fourth Judicial Circuit
Lawrence County

(CIV 07-300)

NOTICE OF REVIEW FILED JANUARY 26, 2009

20-20-10

STATEMENT OF ISSUES

ISSUE ONE: Whether the Trial Court Erred in Submitting Plaintiffs' Claim for Conversion to the Jury and Thereafter Erred in Denying Defendant's Motion for a New Trial and Motion for Judgment as a Matter of Law on the Claim for Conversion.

Over Defendant's objection the Trial Court instructed the jury on Plaintiff's claim for damages for conversion thereby submitting said claim to the jury. At the close of the Plaintiffs' case and again at the close of the evidence the Trial Court denied Defendant's Motions for Judgment as a Matter of Law as to the claim for conversion. Following the jury verdict in favor of Plaintiffs and against Defendant on the claim for conversion and the subsequent entry of the Judgment on Verdict and Order, Defendant filed a Motion for New Trial and Renewed Motion for Judgment as a Matter of Law directed, in relevant part, toward the claim for conversion. The Trial Court denied those motions.

LEGAL AUTHORITIES:

SDCL 21-3-3.

Chem-Age Indus., Inc. v. Glover, 2002 SD 122, ¶ 20, 652 N.W.2d 756, 766.

Fin-Ag, Inc. v. Pipestone Livestock Auction Market, Inc., 2008 SD 48 ¶34, 754 N.W.2d 29, 44.

ISSUE TWO: Whether the Trial Court Erred in Submitting Plaintiffs' Claim for Fraudulent Misrepresentation to the Jury and Thereafter Erred in Denying Defendant's Motion for a New Trial and Motion for Judgment as a Matter of Law on the Claim for Fraudulent Misrepresentation.

Over Defendant's objection the Trial Court instructed the jury on Plaintiff's claim for damages for fraudulent misrepresentation thereby submitting said claim to the jury. At the close of the Plaintiffs' case and again at the close of the evidence the Trial Court denied Defendant's Motion for Judgment as a Matter of Law as to the claim for fraudulent misrepresentation. Following the jury verdict in favor of Plaintiffs and against Defendant on the claim for fraudulent misrepresentation and the subsequent entry of the

Judgment on Verdict and Order, Defendant filed a Motion for New Trial and Renewed Motion for Judgment as a Matter of Law directed, in relevant part, to the claim for fraudulent misrepresentation. The Trial Court denied those motions.

LEGAL AUTHORITIES:

SDCL 20-10-1

Grynberg v. Citation Oil and Gas Corp., 1997 SD 121, ¶ 24, 573 N.W.2d 493, 502.

Kunkel v. United Security Ins. Co., 84 S.D. 116, 135, 168 N.W.2d 723, 733 (1969)

Sperry Corp., Sperry New Holland Div. V. Schaeffer, 394 N.W.2d 727, 730 (S.D. 1986.

ISSUE THREE: Whether the Trial Court Erred in Submitting Plaintiffs' Claim for Punitive Damages to the Jury and Thereafter Erred in Denying Defendant's Motion for a New Trial and Motion for Judgment as a Matter of Law on the Claim for Punitive Damage.

Over Defendant's objection the Trial Court instructed the jury on Plaintiff's claim for punitive damages thereby submitting said claim to the jury. At the close of the Plaintiffs' case and again at the close of the evidence the Trial Court denied Defendant's Motion for Judgment as a Matter of Law as to the claim for punitive damages. Following the jury verdict in favor of Plaintiffs and against Defendant on the claim for punitive damages and the subsequent entry of the Judgment on Verdict and Order, Defendant filed a Motion for New Trial and Renewed Motion for Judgment as a Matter of Law directed, in relevant part, to the claim for punitive damages. The Trial Court denied those motions.

LEGAL AUTHORITIES:

Flockhart v. Wyant, 467 N.W.2d 473, 479 (S.D.1991).

Hoffman v. Louis Dreyfus Corp., 435 N.W.2d 211, 214 (S.D.,1989).

STATEMENT OF ISSUES

Jurisdictional Issue

1. Whether the Supreme Court is without jurisdiction to hear Khan's appeal, so that it must be dismissed, as Khan failed to timely file the Notice of Appeal within the 30 days allowed by SDCL 15-26A-4 and 15-26A-6.

The Supreme Court denied Schipporeits' Motion to Dismiss.

SDCL 15-26A-4

SDCL 15-26A-6

Western States Land & Cattle Co., Inc. v. Lexington Ins. Co., 459 N.W.2d 429 (S.D. 1990)

Federal Land Bank of Omaha v. LeMars Mut. Ins. Co. of Sioux Falls, 272 N.W. 285 (S.D. 1937)