

THURSDAY, NOVEMBER 19, 2009
10:00 A.M.

NO. 2

#25205, #25212

GREGG W. AND SHARON K.
SCHWARTZ,
Plaintiffs and Appellants,

vs.

SALLY R. MORGAN,
Defendant and Appellee.

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(FOR APPELLANTS)

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(FOR APPELLEE)

The Honorable Steven R. Jensen
First Circuit Court Judge
Union County

(CIV 05-171)

NOTICE OF REVIEW FILED APRIL 9, 2009

(20-20-10)

25205, 25212

ISSUES PRESENTED

1. Did the trial court err in granting Sally Morgan's ("Morgan") Motion for Judgment Notwithstanding the Verdict by finding that insufficient evidence was presented to create a jury question as to Morgan's duty to disclose the property encroachment issues?

The trial court held that the Schwartzes failed to present any evidence that Morgan knew of the property encroachment issues when she sold the property to the Schwartzes, and therefore, the Schwartzes did not properly establish Morgan's duty to disclose the encroachment issues. Consequently, the trial court granted the Motion for Judgment Notwithstanding the Verdict.

Most Relevant Authorities: Harn v. Continental Lumber Co., 506 N.W.2d 91 (S.D. 1993); LDL Cattle Co., Inc. v. Guetter, 1996 SD 22, 544 N.W.2d; SDCL § 20-10-1; SDCL § 20-10-2; SDCL § 43-4-38; SDCL § 43-4-44.

2. Did the trial court err in granting Morgan's Motion for New Trial on the issue of damages?

The trial court held that there was no evidence to support the amount of the jury's award of damages and consequently granted the Motion for New Trial solely on the issue of damages.

Most Relevant Authority: Gross v. Connecticut Mut. Life Ins. Co., 361 N.W.2d 259 (S.D. 1985).

Statement of the Issues

In addition to the issues presented by the Appellants the following issue;

1. Whether the trial court erred in not granting the Defendant a conditional new trial on all issues.

The trial court found that the jury received evidence of damages that should not have been presented and granted a conditional new trial on damages, but denied the Defendant's Motion for a New Trial on all issues, finding that the evidentiary arguments and newly discovered evidence did not warrant a new trial.

Most Relevant Authorities: Baddou v. Hall, 2008 SD 90, P12, 756 N.W.2d 554, 558 (S.D. 2008), Lord v. Hy-Vee Food Stores, 2006 SD 70, P31, 720 N.W.2d 443, 454 (S.D. 2006), Basin Elec. Power Coop. v. Gosch, 90 S.D. 222, 228, 240 N.W.2d 96 (S.D. 1976), SDCL 19-16-4, SDCL 19-12-2