

WEDNESDAY, MAY 21, 2008
9:00 A.M.

NO. 1

#24638, #24641

FIRST AMERICAN BANK & TRUST, N.A.,
Plaintiff and Appellee,

vs.

FARMERS STATE BANK OF CANTON,
Defendant and Appellee,

and

MIDWEST COPIER SOLUTIONS, INC. and
S.A. ENTERPRISES, INC.,
Intervenors and Appellants.

FIRST AMERICAN BANK & TRUST, N.A.,
Plaintiff, Defendant to
Complaint in Intervention,
and Third Party Plaintiff,

vs.

STUART HAMILTON and S.A.
ENTERPRISES, INC.,
Third Party Defendants,

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(FOR APPELLEE FARMERS STATE BANK OF CANTON)

The Honorable Bradley G. Zell
The Honorable Douglas Hoffman
Second Judicial Circuit
Lincoln County

(CIV 05-0399)

NOTICE OF REVIEW FILED SEPTEMBER 18, 2007

20-20-10

STATEMENT OF THE ISSUES

- I. WHETHER THE TRIAL COURT CORRECTLY HELD THAT FABT WAS NOT NEGLIGENT AS A MATTER OF LAW IN CREATING A DISPUTE OVER COPIER'S FIRST PERFECTED SECURITY INTEREST IN THE COMMUNICATIONS ASSETS BY MISAPPREHENDING AND MISREPRESENTING FABT'S POSITION IN THOSE ASSETS AND PURPORTING TO ASSIGN A FIRST PERFECTED SECURITY INTEREST TO FARMERS BANK WHEN FABT HAD NO SUCH POSITION TO ASSIGN.**

The trial court held that FABT owed no duty to Copier and granted FABT's motion for summary judgment on Copier's negligence claim.

- *Casillas v. Schubauer*, 2006 SD 42, 714 N.W.2d 84
- *Thompson v. Summers*, 1997 SD 103, 567 N.W.2d 387
- *First Western Bank v. Livestock Yards Co.*, 444 N.W.2d 387 (S.D. 1989)
- SDCL § 20-9-1

- II. WHETHER THE TRIAL COURT CORRECTLY HELD THAT FARMERS BANK WAS NOT NEGLIGENT AS A MATTER OF LAW IN CONTINUING TO ASSERT AN INVALID FIRST POSITION IN THE COMMUNICATIONS ASSETS AND REFUSING TO COOPERATE IN FILING A CORRECTION EVEN AFTER IT HAD BEEN EXPRESSLY INFORMED THAT COPIER HAD THE FIRST PERFECTED SECURITY INTEREST IN THOSE ASSETS.**

The trial court held that Farmers Bank owed no duty to Copier and granted FABT's motion for summary judgment on Copier's negligence claim.

- *Casillas v. Schubauer*, 2006 SD 42, 714 N.W.2d 84
- *Thompson v. Summers*, 1997 SD 103, 567 N.W.2d 387
- *Luke v. Deal*, 2005 SD 6, 692 N.W.2d 165
- SDCL § 20-9-1

- III. WHETHER THE TRIAL COURT CORRECTLY HELD THAT FARMERS BANK DID NOT "SERIOUSLY INTERFERE" WITH COPIER'S RIGHTS IN THE COMMUNICATIONS ASSETS AS A MATTER OF LAW SO AS TO SUPPORT A CONVERSION CLAIM.**

The trial court held that Farmers Bank's action did not seriously interfere with Copier's rights in the Communications assets and granted Farmers Bank's motion for summary judgment on Copier's conversion claim.

- *Chem-Age Industries, Inc. v. Glover*, 2002 SD 122, 652 N.W.2d 756
- *Ward v. Lange*, 1996 SD 113, 553 N.W.2d 246
- *Schuldies v. Millar*, 1996 SD 120, 555 N.W.2d 90

STATEMENT OF THE ISSUE

1. Whether the Circuit Court correctly determined that FABT owed no duty to Copier and properly granted FABT's motion for summary judgment on Copier's claim of negligence.

The Circuit Court held as a matter of law that FABT did not owe any common law or statutory duty to Copier and granted FABT's motion for summary judgment. App. 14.

SDCL 57A-1-103

Clausen v. Aberdeen Grain Inspection, 1999 SD 66, 594 NW2d 718

Bayer v. PAL Newcomb Partners, 2002 SD 40, 643 NW2d 409