

Statement of the Issues

1. Did the Trial Court commit error when it refused to recuse itself after arranging a time and location and then meeting ex parte with the Trust's counsel at the law offices of an attorney representing the Trust without notifying to Defendants?

The Trial Court denied Defendants' Motion for Recusal.

- SDCL Ch. 16-2 app, Canon 3B (7)
- *Tri-State Ref. & Inv. Co. v. Apaloosa Co.*, 452 N.W.2d 104 (S.D. 1990)
- *O'Connor v. Leapley*, 488 N.W.2d 421, 423 (S.D.1992)
- *State v. Thorsby*, 2008 SD 100, 757 N.W.2d 300

2. Did the Trial Court commit error when it refused to give Defendants' proposed jury instruction on the defense of quasi-estoppel?

The Trial Court rejected Defendants' proposed jury instruction and did not instruct the jury on quasi-estoppel.

- *Fed. Land Bank of Omaha v. Houck*, 68 S.D. 449, 4 N.W.2d 213 (1942)
- *Amtrust Inc. v. Larson*, 388 F.3d 594, 601 (8th Cir. 2004)
- *State v. Beck*, 2010 SD 52, 785 N.W.2d 288

3. Did the Trial Court commit error when it refused to give Defendants' proposed jury instruction on the limited period for collecting taxes while presenting the issue of tax damages to the jury?

The Trial Court presented the Plaintiffs' claim for damages based upon potential tax damages which had never been sought by the IRS, or paid by the Defendants, to the jury while refusing to instruct the jury on the applicable statutes of limitation.

- SDCL § 21-3-1
- 26 U.S.C. § 6501
- *Olson v. Aldren*, 84 S.D. 292, 170 N.W.2d 891 (1969)
- *Peterson v. Hohm*, 2000 SD 27, 607 N.W.2d 8

4. Did the Trial Court commit error when it ruled that SDCL §§ 15-2-14.6 and 14.7 did not apply to bar the Plaintiffs' claims?

The Trial Court denied Defendants' Motion for Partial Summary Judgment based upon these sections and found that the continuous representation theory applied.

- SDCL § 55-1-4
- *Rest. 3d Trusts* § 15, cmt. b
- *Pierce v. City of Belle Fourche*, 2001 SD 41, 624 N.W.2d 353

5. Did the Trial Court commit error when it determined that Duling owed a duty to the Charitable Remainder Trust prior to the Trust's creation?

The Trial Court denied Defendants Motion for Partial Summary Judgment on the Trust's claims of negligence prior to December 9, 2002.

- SDCL § 15-2-14.6
- SDCL § 15-2-14.7
- *Williams v. Maulis*, 2003 SD 138, 672 N.W.2d 702

6. Did the Trial Court commit error when it admitted evidence of previous offers to purchase the Ranch?

The Trial Court allowed evidence of multiple oral offers to be presented to the jury.

- *Sharp v. United States*, 191 U.S. 341, 348 (1903)
- *Oliver-Mercer Elec. Co-op., Inc. v. Davis*, 696 N.W.2d 924, 927 (N.D. 2005).
- 27 Am. Jur. 2d Eminent Domain § 593