

IN THE SUPREME COURT  
OF THE STATE OF SOUTH DAKOTA

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No. 29409

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**HEALY RANCH, INC.**

**Plaintiff and Appellant,**

**vs.**

**BRET HEALY, INDIVIDUALLY AND  
D/B/A HEALY RANCH PARTNERSHIP**

**Defendant and Appellee.**

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Appeal from the Circuit Court  
First Judicial Circuit  
Brule County, South Dakota

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HONORABLE PATRICK T. SMITH  
Presiding Judge

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**APPELLANT'S BRIEF**

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Notice of Appeal filed September 3, 2020

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## TABLE OF CONTENTS

Table of Authorities.....	ii
Preliminary Statement .....	1
Jurisdictional Statement .....	1
Statement of Legal Issues .....	2
Statement of the Case.....	3
Statement of the Facts.....	5
Standard of Review .....	12
Argument.....	12
Conclusion .....	23
Certificate of Compliance .....	24
Certificate of Service .....	24



## TABLE OF AUTHORITIES

### **CASES**

<i>American Family Ins. Group v. Robnik</i> , 2010 S.D. 69, 787 N.W.2d 768 .....	2, 3, 15
<i>Field v. Field</i> , 2020 S.D. 51, ---N.W.2d--- .....	12
<i>Gregory’s Inc. v. Haan</i> , 1996 S.D. 35, 545 N.W.2d 488 .....	2, 14, 18
<i>Harvieux v. Progressive Northern Ins. Co.</i> , 2018 S.D. 52, 915 N.W.2d 697 .....	12
<i>Healy v. Osborne</i> , 2019 S.D. 56, 934 N.W.2d 557 .....	1, 2, 3, 4, 7, 8, 9, 10
<i>Migra v. Warren City School Dist. Bd. Of Educ.</i> , 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984) .....	3, 15
<i>Piper v. Young</i> , 2019 S.D. 65, 936 N.W.2d 793 .....	15
<i>Sodak Distributing Co. v. Wayne</i> , 77 S.D. 496, 93 N.W.2d 791 (1958) .....	16
<i>Springer v. Cahoy</i> , 2013 S.D. 86, 841 N.W.2d 15 .....	2, 19, 20, 21
<i>State v. Delahoy</i> , 2019 S.D. 30, 929 N.W.2d 103 .....	12
<i>Stratmeyer v. Engberg</i> , 2002 S.D. 91, 649 N.W.2d 926 .....	6
<i>Zochert v. Protective Life Ins. Co.</i> , 2018 S.D. 84, 921 N.W.2d 479 .....	22

### **STATUTES**

SDCL 15-6-54 .....	14, 16
SDCL 15-26A-3 .....	2
SDCL 43-30-3 .....	2, 4, 18, 19, 20, 21, 23
SDCL 43-30-9 .....	2, 4, 5, 12, 13, 17



## **PRELIMINARY STATEMENT**

This litigation is a continuation of the Supreme Court decision in *Healy v. Osborne*, 2019 S.D. 56, 934 N.W.2d 557, and the assertion made by Bret Healy that Healy Ranch Partnership, not Healy Ranch, Inc., is the owner of the Healy Ranch Property. This assertion was determined by Judge Giles in the first case to be frivolous and malicious, resulting in attorneys' fees of \$83,295.42. Judge Giles' decision that Bret Healy's claim was frivolous and malicious was affirmed by this Court unanimously, and an additional award of attorneys' fees in the amount of \$18,479.25 was made in that appeal. This litigation is the same song, second verse.

Appellant Healy Ranch, Inc. will be referred to as "Healy Ranch, Inc." Appellee Bret Healy, Individually and d/b/a Healy Ranch Partnership as "Bret." References to the land that is the subject matter of this litigation will be referred to as "Healy Ranch Property." The Appendix for this brief will be referred to as "App." followed by the appropriate page number. The settled record will be referred to as "SR" followed by the appropriate page number. The first case between these parties, referenced above, that resulted in the Supreme Court decision in *Healy v. Osborne*, will be referred to as "Healy I". The second case between these parties, which is pending before this Court, will be referred to as "Healy II."

## **JURISDICTIONAL STATEMENT**

The Honorable Patrick T. Smith, in Brule County of the First Judicial Circuit, issued summary judgment granting Healy Ranch, Inc.'s Complaint



barring Bret's claim to the Healy Ranch Property on June 9, 2020 (App. 012-014), but subsequently denied Healy Ranch, Inc.'s [SDCL 43-30-9](#) petition for attorney's fees as costs in its August 27, 2020, Final Judgment Voiding January 25, 2018, Notice of Claim of Interest Filed by Bret Healy (App. 003-004). Notice of Entry of Final Judgment was served on September 2, 2020 (App. 001-002). Healy Ranch, Inc. filed its Notice of Appeal on September 3, 2020 (SR 1659-60). Bret filed a Notice of Review on September 16, 2020 (App. 015-020). This Court has jurisdiction over this matter pursuant to [SDCL 15-26A-3\(1\)](#).

## STATEMENT OF LEGAL ISSUES

- 1. Did Bret Healy file his January 25, 2018, Notice of Claim of Interest, claiming that Healy Ranch Partnership owned the Healy Ranch Property, for the purpose of slandering title to the Healy Ranch Property, so that he is liable for costs pursuant to [SDCL 43-30-9](#)?**

The trial court held that because it did not address the legitimacy of Bret's claim, there was insufficient evidence of Bret's motivation, and denied the claim for attorney's fees as costs.

[SDCL 43-30-9](#)

[Healy v. Osborne](#), 2019 S.D. 56, 934 N.W.2d 557

[American Family Ins. Group v. Robnik](#), 2010 S.D. 69, ¶ 15, 787 N.W.2d 768, 774

[Gregory's Inc. v. Haan](#), 1996 S.D. 35, ¶ 12, 545 N.W.2d 488, 493

- 2. Had the twenty-two-year statute of limitations under [SDCL 43-30-3](#) run on Bret Healy's claim, when he asserted in his January 25, 2018, Notice of Claim of Interest that Healy Ranch Partnership owned the Healy Ranch Property pursuant to deeds from November 21, 1968, and April 9, 1990?**

The trial court held that the twenty-two-year statute of limitations in [SDCL 43-30-3](#) barred Bret's claim, and that the twenty-three-year recording act provision required Bret to file his Notice of Claim of Interest by at least 2013.

[SDCL 43-30-3](#)

[Springer v. Cahoy](#), 2013 S.D. 86, 841 N.W.2d 15

[Healy v. Osborne](#), 2019 S.D. 56, 934 N.W.2d 557



3. **Is the Supreme Court holding in *Healy v. Osborne* res judicata as to Bret Healy's claim that Healy Ranch Partnership is the owner of the Healy Ranch Property?**

The trial court did not reach this alternative basis for granting summary judgment.

*Healy v. Osborne*, 2019 S.D. 56, 934 N.W.2d 557

*American Family Ins. Group v. Robnik*, 2010 S.D. 69, ¶ 15, 787 N.W.2d 768, 774

*Migra v. Warren City School Dist. Bd. Of Educ.*, 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984)

## **STATEMENT OF THE CASE**

The underlying litigation that came before this Court is a necessary part of the statement of the case in this proceeding.

### **Healy I**

In May of 2017, Bret filed a lawsuit against his mother, brothers, and the family businesses, Healy Partnership and Healy Ranch, Inc., as well as his former attorney (App. 066). On October 10, 2017, the Honorable Chris S. Giles dismissed Bret's Complaint, based upon the statute of limitations (App. 029-040).

Judge Giles announced his attorney fee decision in open court on October 27, 2017 (App. 041-048). He told the parties, with Bret present, that Bret's claim that the Healy Ranch Partnership, instead of Healy Ranch, Inc., owned the Healy Ranch Property was both frivolous and malicious, and asserted only as an attempt to cloud the title and prevent the sale of the Healy Ranch Property. (App. 041-048.)



On November 27, 2017, the Honorable Chris S. Giles entered a judgment against Bret for attorneys' fees, sales tax, and costs totaling \$83,295.42. (App. 068.)

On December 27, 2017, Bret filed a Notice of Appeal (App. 069).

On January 25, 2018, Bret filed a Notice of Claim of Interest against the Healy Ranch Property, asserting that Healy Ranch Partnership was the owner of the Healy Ranch Property, and not the corporation, Healy Ranch, Inc. (App. 021-028).

This Court handed down [Healy v. Osborne, 2019 S.D. 56, 934 N.W.2d 557](#), on September 25, 2019 (App. 061-079), which decision affirmed the Honorable Chris S. Giles. Particularly, the decision affirmed that Bret asserting the claim of the partnership ownership of the Healy Ranch Property, instead of the corporation, was malicious and frivolous and it was made only to prevent the sale of the Healy Ranch Property.

### **Healy II**

After the Supreme Court decision, Bret refused to release his Notice of Claim of Interest. (SR 1111-1112, 1114, 1116.)

On November 26, 2019, Healy Ranch, Inc. filed suit against Bret asking the Court to determine that Healy Ranch, Inc. had marketable title, and to void Bret's Notice of Claim of Interest, as well as seeking attorney's fees as costs, pursuant to [SDCL 43-30-9](#). (SR 2-5.)

On June 9, 2020, the Honorable Patrick T. Smith signed the Judgment Voiding January 25, 2018, Notice of Claim of Interest Filed by Bret Healy, finding that the Notice of Claim of Interest was barred by the statute of limitations, pursuant to [SDCL 43-30-3](#). (App. 012-014.)



On August 27, 2020, the Honorable Patrick T. Smith denied Healy Ranch, Inc.'s claim for attorney's fees as costs, pursuant to [SDCL 43-30-9](#). (App. 003-004.)

Notice of Entry of Judgment was filed on September 2, 2020. (App. 001-002.)

Notice of Appeal was filed by Healy Ranch, Inc. on September 3, 2020. (SR 1659-60.) Notice of Review was filed by Bret on September 16, 2020. (App. 015-020.)

## **STATEMENT OF THE FACTS**

Bret filed his Notice of Claim of Interest on January 25, 2018, asserting that a Healy Ranch Partnership owned the Healy Ranch Property, instead of Healy Ranch, Inc.

### **Judge Giles' Findings—10/27/17**

Three months prior to Bret filing his Notice of Claim of Interest, he appeared at a hearing before Judge Giles on October 27, 2017, and heard Judge Giles make the following statements on the record:

- “[N]o reasonable person could expect a favorable ruling” and the legal position is “so wholly without merit that it’s ridiculous.” (App. 043.)
- “[Y]our 1986 Healy Partnership never properly held title to any of the Healy Ranch land.” (App. 043.)
- “[T]here was never a legal document transferring title to your 1986 Healy Ranch Partnership.” (App. 043.)
- “[Y]ou didn’t take any action to assert your interest in that partnership for 30 years.” (App. 044.)



- For over twenty years the Healy Ranch Corporation controlled and managed the property while “you were a part of that corporation.” (App. 045.)
- “You had acquired a one-third interest in the corporation. You were a corporate officer. You were president, and for a large part of the time were the primary one doing the corporate business.” (App. 045.)
- Judge Giles relied on the malice definition from *Stratmeyer v. Engberg*, 2002 S.D. 91, 649 N.W.2d 926: “where his sole purpose was to deprive the defendant of a beneficial use of his property or to force a settlement having no relation to the merits of the claim.” (App. 045-046.)
- It was “clear that you brought this action with the intent of trying to prevent the sale of the Healy Ranch land by the corporation.” The Court went on to note that Bret admitted this in his deposition, and his attorney admitted it in his pleadings before the Court. (App. 046.)
- The Court admonished Bret for maliciously sending a letter to Wells Fargo and other banks “in an effort to prevent the corporation from obtaining financing and to further cloud the title.” (App. 046.)

A month later, on November 27, 2017, Judge Giles entered written Findings of Fact and Conclusions of Law (App. 049-060) that matched the admonitions he had given Bret in open court:

No. 31:           It is clear to the Court that Plaintiff brought this action with the intent of trying to prevent the sale of Healy Ranch by Healy Ranch, Inc. Plaintiff admitted this in his deposition, and Mr. Sandven admitted this in his responsive



pleadings regarding the motions seeking attorneys' fees.

- No. 32: Contemporaneously with filing a lawsuit, Plaintiff wrote the Healy Ranch, Inc., lender, Wells Fargo, and alleged that Healy Ranch, Inc., did not have good title to Healy Ranch, intentionally putting Healy Ranch, Inc., into default on its outstanding note and mortgage.
- No. 33: Plaintiff's letter to Wells Fargo and numerous other banks, which were sent two weeks prior to the commencement of the lawsuit, shows a malicious intent on the part of Plaintiff and his attorney, Steve Sandven, to cloud title to Healy Ranch. The letters were sent with an intent to interfere with the financing for a sale of Healy Ranch, Inc.
- No. 34: Even though Bret Healy's lawsuit does not seek recovery of real property, he and attorney Steve Sandven improperly filed a Notice of Lis Pendens, to cloud title to Healy Ranch for Healy Ranch, Inc., even though Bret Healy and attorney Steven Sandven knew they were only seeking money damages.
- No. 35: Contemporaneously with filing his lawsuit, Bret Healy published an ad in the Farm Forum, commonly known as the "Green Sheets," and an additional farm-oriented paper, advertising his claim that Healy Ranch, Inc., didn't have good title to Healy Ranch.

### **Healy I Decision—9/25/19**

On September 25, 2019, this Court affirmed Judge Giles' award of attorneys' fees on the grounds that Bret's actions were both frivolous and malicious. *Healy*, at ¶ 35 (App. 078). This Court disagreed with Bret's stories that the Partnership, and not Healy Ranch, Inc., owned the Healy Ranch Property, and said that there was "no evidence in the record to suggest that Bret had any reasonable basis to believe his claims were valid when he filed the lawsuit." *Id.* at ¶ 37 (App. 078). This Court also noted that "to the contrary...he



had actual knowledge that Healy Ranch, Inc. held title to Healy Ranch.” *Id.* (App. 078). This Supreme Court opined that Bret’s purpose was “preventing the sale of the property, not because he believed his partnership interest remained enforceable.” *Id.* (App. 079). The Supreme Court was referring to the frivolous and malicious nature of Bret even claiming that a partnership interest existed.

This Court found that Bret admitted that his motivation was to “prevent Healy Ranch, Inc. from selling the family land.” *Id.* at ¶ 36 (App. 078).

In reviewing the finding that Bret’s claim that a Healy Ranch Partnership owned the land instead of Healy Ranch, Inc., and the finding that this claim was both malicious and frivolous, the Court affirmed several facts:

- Bret served as president of Healy Ranch, Inc. for approximately seventeen years beginning in 1999. *Id.* at ¶¶ 7, 28 (App. 065, 074).
- In 2000, Bret and his brothers each purchased a one-third interest in Healy Ranch, Inc. on a Contract for Deed. *Id.* at ¶ 7 (App. 065).
- As president of Healy Ranch, Inc., Bret signed mortgages on behalf of the Corporation that represented Healy Ranch, Inc. was the sole owner of the property, in 1999, 2002, 2003, 2005, twice in 2008, and in 2014. *Id.* at ¶¶ 7, 25, 27, 28 (App. 065, 072-074).
- In 2007, Bret purchased land from the Corporation on which he built his house, without any indication that an interest in the property was owned by a partnership. *Id.* at ¶¶ 7, 26, 28 (App. 065, 073-074).
- In 2013, Bret commenced a lawsuit on behalf of Healy Ranch, Inc. against another party for damages to fences located on the ranch. *Id.* at ¶¶ 8, 28 (App. 065-066, 074).



- In discovery answers in the 2013 lawsuit, Bret alleged that the land and the fences belonged to Healy Ranch, Inc. *Id.* at ¶ 8 (App. 065-066).
- In March of 2017, Bret agreed to the sale of Healy Ranch, and the sale bill indicated that the owner of the land was Healy Ranch, Inc. *Id.* at ¶ 9 (App. 066).
- On March 2, 2017, Bret recognized Healy Ranch, Inc. as the owner of the property by signing an agreement that sought reimbursement from the Corporation for improvements made to the real property. *Id.* at ¶ 9 (App. 066).
- Bret took out several ads in farm journals publicizing his claim that Healy Ranch, Inc. lacked title, when he was attempting to stop the sale of the land. *Id.* at ¶ 12 (App. 067).
- Two weeks before starting the underlying lawsuit, Bret sent letters to Wells Fargo, First National Bank, Brule County Abstract, and the Brule County Register of Deeds alleging the Corporation didn't have good title to Healy Ranch. *Id.* (App. 067).
- Bret intentionally put the Corporation in default on its outstanding note and mortgage with Wells Fargo. *Id.* (App. 067).
- Even though he was only seeking money damages in the underlying suit, Bret clouded the title to Healy Ranch by filing a Notice of Lis Pendens. *Id.* (App. 067).
- This Court affirmed the circuit court's findings that Bret's letters to the banks, raising questions about the title, were part of his malicious intent to interfere with the sale of Healy Ranch. *Id.* at ¶ 16 (App. 068).



- This Court recognized that the May 2017, lawsuit was more than twenty-two years from the date upon which the underlying 1995 Warranty Deed conveyed the land to Healy Ranch, Inc. *Id.* at ¶ 23 (App. 071-072).
- Bret ignored the Partnership following the creation of Healy Ranch, Inc. *Id.* at ¶ 29 (App. 074-075).
- The Partnership didn't file any tax returns or pay any property taxes after 1995. *Id.* (App. 074-075).
- Bret prepared a financial statement in which he did not claim a partnership interest as an asset, but instead claimed his shares of stock in Healy Ranch, Inc. *Id.* (App. 074-075).
- Bret sent an email to his brother in June of 2016, where he admitted that he only had a one-third interest in the Corporation. *Id.* (App. 075).

*Healy*, 2019 S.D. 56 (App. 061-079).

### **Bret Healy's Conduct—Post Healy I**

After the Supreme Court decision in *Healy v. Osborne*, Bret continued to attempt to cloud the title and prevent the sale of the Healy Ranch Property. (SR 1111-1112, 1114, 1116.)

Bret was deposed on February 7, 2020 (SR 120-164), and the following statements are reflective of his continuing state of mind:

- The Notice of Claim of Interest says it was prepared “by Bret Healy,” and he admits it. (SR 124, lines 17-18.)
- He says that his grandmother's signature on the 1995 deed is meaningless. (SR 126.)



- He continues to disagree with the Supreme Court concerning his Partnership interests. (SR 127-128.)
- He continues to disagree with the Supreme Court that he ignored the Partnership after the creation of the Corporation. (SR 131-132.)
- He disagrees with the Supreme Court’s description of his financial statement not showing a Partnership interest. (SR 133.)
- He claims the Supreme Court and the trial court ignored the documents he presented. (SR 134.)
- He disagrees with the Supreme Court and the circuit court calling his actions frivolous and malicious. (SR 135.)
- He continues his claim that he is a general partner of Healy Ranch Partnership, and that he has been since January 25, 1986. (SR 138.)
- He admits knowing that he has not received a K-1 from his Partnership since 1986. (SR 141-142.)
- He continues to disagree with Judge Giles calling the claim “frivolous from its inception.” (SR 145.)
- He continues to disagree with Judge Giles’s statement that Bret’s position was “so wholly without merit that it’s ridiculous.” (SR 145-146.)
- He says he can prove the Supreme Court is wrong when they said he was president of the Corporation for seventeen years. (SR 148-149.)
- He believes the Supreme Court—all five Justices—and the circuit judge had the information and didn’t look at it. (SR 149-150.)
- He continues to disagree with the Supreme Court holding that he bought the land from the Corporation on which he built his house. (SR 154.)



Bret's state of mind continued right up to May of 2020, approximately two weeks before the hearing in which this current case was dismissed, when he emailed with the attorneys for the mortgage holder, Wells Fargo, and made allegations that when Healy Ranch, Inc. tore down a dilapidated barn, it had damaged Wells Fargo's collateral. (SR 1419-1421.)

## STANDARD OF REVIEW

The issue of costs, pursuant to [SDCL 43-30-9](#), is reviewed on an abuse of discretion standard, which is whether or not there was "a fundamental error of judgment, a choice outside the range of permissible choices, decision, which, on full consideration, is arbitrary or unreasonable." [State v. Delahoy, 2019 S.D. 30, ¶¶ 21-22, 929 N.W.2d 103, 108-109](#). But, an "error of law is never within the range of permissible choices and necessarily constitutes an abuse of discretion." [Field v. Field, 2020 S.D. 51, ¶ 15, ---N.W.2d---](#).

With respect to the summary judgment issues, the relevant facts are not in dispute, and questions of law are reviewed de novo. [Harvieux v. Progressive Northern Ins. Co., 2018 S.D. 52, ¶ 9, 915 N.W.2d 697, 700](#).

## ARGUMENT

- 1. Did Bret Healy file his January 25, 2018, Notice of Claim of Interest, claiming that Healy Ranch Partnership owned the Healy Ranch Property, for the purpose of slandering title to the Healy Ranch Property, so that he is liable for costs pursuant to [SDCL 43-30-9](#)?**

In Healy I, Judge Giles awarded attorneys' fees because Bret's claim that the Partnership, and not Healy Ranch, Inc., owned the Healy Ranch Property, was frivolous and malicious. On appeal, this Court affirmed Judge Giles' award of attorneys' fees, and specifically affirmed the frivolous and malicious nature of



Bret's claim that the Partnership, and not the Corporation, owned the Healy Ranch Property.

These holdings provided the trial court in Healy II with direct judgments as to the frivolous and malicious nature of Bret's partnership claim, which claim Bret had used as the sole basis for filing his Notice of Claim of Interest.

The trial court erred by treating the cost statute, pursuant to [SDCL 43-30-9](#) as a separate cause of action, and by failing to appreciate the issue preclusion established by this Court's ruling in Healy I.

**A. Applicable Law**

This is a dispute about how to apply [SDCL 43-30-9](#):

No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land and in any action brought for the purpose of quieting title to land, if the court shall find that any person has filed a claim for the purpose only of slandering title to such land, he shall award the plaintiff all the costs of such action, including attorney fees to be fixed and allowed to the plaintiff by the court, and all damages that plaintiff may have sustained as the result of such notice of claim having been filed for record.

**1. Procedural law for attorney's fees as costs, pursuant to [SDCL 43-30-9](#).**

The starting point for the procedural review is [SDCL 43-30-9](#), which provides that the Court "shall award the plaintiff all the costs of such action, including attorney fees" if the predicates in the statute are met (emphasis added). From a procedural perspective, the important distinction is that [SDCL 43-30-9](#) provides that the attorney fees are part of the costs, and that the decision is made by the Court.



SDCL 15-6-54(d)(2) establishes the very specific procedure for the Court's determination of attorney fees:

- a) The claim is made by motion. SDCL 15-6-54(d)(2)(A).
- b) There are certain requirements that the motion must meet. SDCL 15-6-54(d)(2)(B). When the Court reviews the motion filed in this matter, it meets each of the requirements, and the defendant has not objected and claimed that any of the requirements aren't met.
- c) The adverse party has an opportunity, upon request, to file "adversary submissions." SDCL 15-6-54(d)(2)(C).
- d) After receiving the submissions, the court determines the liability for fees, and enters findings of fact and conclusions of law. SDCL 15-6-54(d)(2)(C).

## **2. Slandering Title.**

The South Dakota Supreme Court laid out the rules and elements with respect to slander of title in *Gregory's Inc. v. Haan*, 1996 S.D. 35, 545 N.W.2d 488. Only the first element of disparagement of title is at issue under the trial court's ruling:

To establish disparagement of title, it must be shown that publication of the falsehood: (1) was derogatory to the title to plaintiff's property, its quality, or plaintiff's business in general, calculated to prevent others from dealing with plaintiff or to interfere with plaintiff's relations with others to plaintiff's disadvantage (often stated as malice); (emphasis added)

*Id.* at ¶ 12.



### 3. Res Judicata.

The law in issue preclusion is set forth by this Court in [American Family Ins. Group v. Robnik](#), 2010 S.D. 69, ¶ 15, 787 N.W.2d 768, 774, which language has been cited favorably by this Court as recently as [Piper v. Young](#), 2019 S.D. 65, ¶ 22, 936 N.W.2d 793, 804:

Res judicata consist of two preclusion concepts: issue preclusion and claim preclusion.

*American Family*, at ¶ 15 (citations omitted).

In *American Family*, the South Dakota Supreme Court favorably provides the following quotation from the U.S. Supreme Court to clarify the often-confusing collection of issues described as “res judicata:”

The preclusive effects of former adjudication are discussed in varying and, at times, seemingly conflicting terminology, attributable to the evolution of preclusion concepts over the years. These effects are referred to collectively by most commentators as the doctrine of “res judicata.” See Restatement (Second) of Judgments, Introductory Note before ch. 3 (1982); [18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4402 \(1981\)](#). Res judicata is often analyzed further to consist of two preclusion concepts: “issue preclusion” and “claim preclusion.” Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided. See Restatement, *supra*, § 27. This effect also is referred to as direct or collateral estoppel. Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit.....

*Id.* (quoting [Migra v. Warren City School Dist. Bd. of Educ.](#), 465 U.S. 75, 77 n. 1, 104 S.Ct. 894).

Res judicata applies to “a point which was actually and directly in issue in a former action and was there judicially passed upon and determined by a



domestic court of competent jurisdiction.” *Sodak Distributing Co. v. Wayne*, 77 S.D. 496, 93 N.W.2d 791, 794 (1958). In that situation, the point “cannot be drawn in question in any future action between the same parties or their privies whether the cause of action in the two actions be identical or different.” *Id.*

## **B. Analysis**

From a procedural perspective, Healy Ranch, Inc. made all of the necessary submissions required by SDCL 15-6-54(d), and there were no adverse submissions that disputed any of the relevant facts.

The trial court’s error is in applying the law with respect to issue preclusion. Recasting Bret’s arguments removes some of the confusion.

The Supreme Court has already held that Bret’s claim that his Partnership owned the Healy Ranch Property, instead of Healy Ranch, Inc., is both frivolous and malicious. To make it clear what can’t be disputed, remove the confusion by using this description:

Bret claims Mickey Mouse owns the Healy Ranch Property, and not Healy Ranch, Inc. The Court has told Bret that it is malicious and ridiculous for Bret to claim that Mickey Mouse owns the Healy Ranch Property. Can Bret file a new document, a Notice of Claim of Interest, asserting that Mickey Mouse owns the Healy Ranch Property, and not be held to have slandered title?

The issue is not whether Bret filed on time. The issue is that he’s still claiming Mickey Mouse owns the property! While this Court in Healy I said that it was not deciding ownership of the Healy Ranch Property (App. 070) (there could be boundary claims or title claims by others, for example), it did make one ownership claim clear. Bret’s assertion that his Partnership owned the Healy



Ranch Property, and not Healy Ranch, Inc., is both frivolous and malicious.

(App. 078-079.)

In that context, consider the trial court's error in applying the law.

First, the trial court felt that it had only decided the statute of limitations issue, so therefore, it hadn't decided whether title had been slandered. (App. 009.) The trial court mistakenly treated the cost statute in the quiet title action under [SDCL 43-30-9](#) as necessarily requiring the decision of a separate cause of action for slander of title. Careful review of [SDCL 43-30-9](#), reveals that this is not the case. If the court grants the quiet title action, then the slander question is part of the cost analysis under the statute. There is no statutory requirement for a separate cause of action for slander of title in order to be awarded costs pursuant to [SDCL 43-30-9](#). The trial court seemed confused in the hearing on that point (SR 1628), and that confusion is reflected in Conclusion of Law No. 3 (App. 009).

Secondly, the trial court erred in ignoring that Bret's position had already been determined to be malicious and frivolous. In Healy I, the Supreme Court said that it wasn't deciding Bret's claim of ownership, when it discussed the statute of limitations in issue number one. (App. 070.) But, in the second part of Healy I, the Court did address one specific claim of ownership that being a claim by Bret that his Partnership, and not Healy Ranch, Inc., owned the Healy Ranch Property. That particular claim the Supreme Court affirmed, as set forth above, as both frivolous and malicious. As to that claim, issue preclusion requires that the trial court honor the prior ruling and find that a claim by Bret that his Partnership, and not Healy Ranch, Inc., is the owner of the Healy Ranch Property is a frivolous and malicious claim.



Instead of applying issue preclusion, the trial court attempted to distinguish an indistinguishable reality in Conclusion of Law Nos. 4 & 5. (App. 006.)

Bret's entire Notice of Claim of Interest is based upon a substantive claim that Judge Giles and a unanimous South Dakota Supreme Court have determined to be both frivolous and malicious. The holding that the claim was "malicious" is the exact same element that's required in the one disputed issue with respect to slandering the title. *Gregory*, at ¶ 12.

Judge Smith is a fine jurist and a truly enjoyable jurist to appear before. But, his Conclusions of Law are diametrically opposed to the established body of law on issue preclusion and the effect of both Judge Giles' and this Court's unanimous ruling in Healy I.

**2. The twenty-two-year statute of limitations under [SDCL 43-30-3](#) bars Bret Healy's claim of ownership made in his Notice of Claim of Interest that alleges Healy Ranch Partnership owns the Healy Ranch Property under deeds from November 21, 1968, and April 9, 1990.**

The trial court did not error when it granted Healy Ranch, Inc.'s Motion for Summary Judgment regarding Bret's claim of ownership asserted in his Notice of Claim of Interest. Under [SDCL 43-30-3](#), any claim against Healy Ranch, Inc.'s title of the Healy Ranch Property must be made within twenty-two years from the date Healy Ranch, Inc. acquired the Healy Ranch Property by deed. It is undisputed that Bret did not assert a claim within twenty-two years of Healy Ranch, Inc.'s deed to the Healy Ranch Property.

The recording act portion (the twenty-three-year provision) of [SDCL 43-30-3](#) is not applicable to Bret's Notice of Claim of Interest because he did not assert his Notice of Claim of Interest within twenty-three years of the deeds of



conveyance under which he claims the Healy Ranch Partnership owns the Healy Ranch Property.

**A. Applicable Law**

[SDCL 43-30-3](#) states:

Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of all interest, claims, and charges whatever, the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred **twenty-two years or more prior thereto, whether such claim or charge be evidenced by a recorded instrument or otherwise, and all such interest, claims, and charges affecting such interest in real property shall be barred and not enforceable at law or equity**, unless any person making such claim or asserting such interest or charge shall, on or before twenty-three years from the date of recording of deed of conveyance under which title is claimed, or on or before July 1, 1958, whichever event is the latest in point of time, file for record a notice in writing, duly verified by oath, setting forth the nature of his claim, interest, or charge; and no disability nor lack of knowledge of any kind on the part of anyone shall operate to extend his time for filing such claim after the expiration of twenty-three years from the recording of such deed of conveyance or one year after July 1, 1957, whichever event is the latest in point of time. (emphasis added)

Recently, in *Springer v. Cahoy*, the South Dakota Supreme Court explained that SDCL Chapter 43-30 comprises South Dakota's Marketable Title Act, and the Court further explained:

The stated legislative purpose of SDMTA is to simplif[y] and facilitat[e] land title transactions by allowing persons to deal with the record title owner. [SDCL 43-30-10](#). SDMTA furthers that purpose by extinguish[ing] ancient title claims and defects [.] (citations omitted) Collectively, SDMTA functions as a curative act, a recording act, **and as a statute of limitations**. (citations omitted) (emphasis added)

[2013 S.D. 86, ¶ 11, 841 N.W.2d 15, 19.](#)



In *Springer*, the Court specifically analyzed [SDCL 43-30-3](#) and affirmed that the statute of limitations regarding claims against marketable title is twenty-two years:

According to [SDCL 43-30-3](#), marketable record title is free from claims that exist upon any act that occurred **twenty-two or more years** prior to the claim against marketable record title. (emphasis added)

*Springer*, at ¶ 15, 841 N.W.2d at 20.

### **B. Analysis**

It is undisputed that Bret did not assert a claim until after twenty-two years passed from the recording of Healy Ranch, Inc.’s deed to the Healy Ranch Property. Healy Ranch, Inc.’s deed to the Healy Ranch Property was recorded on March 13, 1995. (App. 081.) Bret asserted a claim of ownership to the Healy Ranch Property in his Counterclaim on January 10, 2020 (App. 082), and Bret filed a “Notice of Claim of Interest” on January 25, 2018 (App. 081), both of which are more than twenty-two years from the recording of Healy Ranch, Inc.’s deed to the Healy Ranch Property. Bret even admitted that he failed to file his Notice of Claim of Interest within twenty-two years from the recording of Healy Ranch, Inc.’s deed to the Healy Ranch Property. (App. 081.) Lastly, in Healy I, this Court expressly identified that Bret failed to bring his lawsuit in Healy I within twenty-two years of the execution of the deed conveying the Healy Ranch Property to Healy Ranch, Inc. (App. 071-072.) Thus, the twenty-two-year statute of limitations described in [SDCL 43-30-3](#), and applied in *Springer*, bars Bret’s claim of ownership to the Healy Ranch Property.



Because Bret failed to bring any claim against the marketable title of the Healy Ranch Property within twenty-two years, Bret attempts to manipulate [SDCL 43-30-3](#) to provide a statute of limitations of twenty-three years. However, *Springer* and [SDCL 43-30-3](#), expressly address that the twenty-three-year term acts as a recording act, and it is only applicable if a notice of claim is recorded within twenty-three years “from the date of recording of deed of conveyance under which title is claimed.” [SDCL 43-30-3](#); *Springer*, at ¶ 17. Bret does not dispute that he is claiming title to the Healy Ranch Property under deeds recorded in 1968 and 1990. (SR 204.) Therefore, for Bret to benefit from the recording act portion of [SDCL 43-30-3](#), his Notice of Claim of Interest needed to be recorded within twenty-three years of those deeds—which required Bret to have filed his Notice of Claim of Interest by 1991 and 2013.

At the summary judgment hearing, Judge Smith analyzed [SDCL 43-30-3](#), and brought more clarity to why Bret needed to bring his Notice of Claim of Interest within twenty-three years of the deeds in which he claimed ownership to the Healy Ranch Property. (App. 1030-1034.) The trial court directed the parties to the inclusion of the dates July 1, 1958, and July 1, 1957, in [SDCL 43-30-3](#), where the statute allowed anyone to bring such a notice of claim before July 1, 1958—regardless of whether that claim was more than twenty-three years from the date of the deed under which the ownership interest was claimed. In essence, the statute gave a claimant the opportunity to file notice of their claim for one year—regardless of the time between the notice of the claim and the deed under which they are making the claim—but then after the one year, claimants to property were required to bring notice of their claim within twenty-three years from the date of their deed that they claim gave them ownership of the property.



Judge Smith summarized this logical interpretation at the summary judgment hearing:

Basically, when the legislature did this, they said "get your old deeds noticed." And that to me is a clear indicator as to where this starts. These facts are not contested. That means that the very latest that the 23 years would have started was 1990, and that wasn't met and therefore the claim fails. And if that's the case, we don't need to get to any of the other issues.

(SR 1033.)

**3. The doctrine of res judicata bars Bret Healy's claim that Healy Ranch Partnership owns the Healy Ranch Property.**

The trial court did not reach the question of res judicata as to Healy Ranch, Inc.'s Motion for Summary Judgment, because the Court granted the Motion for Summary Judgment on the basis that Bret's claim was barred by the statute of limitations. However, "[i]f there exists any basis which supports the ruling of the trial court, affirmance of a summary judgment is proper." [\*Zochert v. Protective Life Ins. Co.\*, 2018 S.D. 84, ¶¶ 18-19, 921 N.W.2d 479, 486](#). Therefore, the doctrine of res judicata provides another basis which supports summary judgment to Bret's sole claim in his Notice of Claim of Interest—that his Partnership, and not Healy Ranch, Inc., owned the Healy Ranch Property.

In Healy I, as previously described in this brief, this Court affirmed Judge Giles' award of attorneys' fees, in which Judge Giles issued Findings of Fact and Conclusions of Law as to the frivolous and malicious nature of Bret's claim that his Partnership owned the Healy Ranch Property. Bret's claim under his Notice of Claim of Interest would require relitigating the same alleged ownership interest that this Court affirmed as frivolous and malicious.



Bret's own deposition testimony further supports that issue preclusion bars his partnership claim to the Healy Ranch Property. Bret continually stated that he disagreed with the Supreme Court's and Judge Giles' decisions in Healy I, and that the Supreme Court and Judge Giles ignored documents that supported his partnership claim to the Healy Ranch Property. (SR 127-135, 149-150.) While Bret is within his right to disagree with a ruling, the doctrine of res judicata precludes him from continuing to subject his family, and Healy Ranch, Inc., to the same frivolous claim in different legal forums.

## **CONCLUSION**

The substance of Bret Healy's claim, that the Partnership owns the Healy Ranch Property, was decided by Judge Giles and this Supreme Court in Healy I. Bret knew his claim was frivolous and malicious when he asserted it, and he persisted in that assertion through the current litigation. The costs statute in [SDCL 43-30-3](#) is to stop this type of behavior.

DATED this 16<sup>th</sup> day of October, 2020.

Respectfully submitted,

SCHOENBECK LAW, PC

By:     /s/ Lee Schoenbeck      
LEE SCHOENBECK  
JOE ERICKSON  
*Attorneys for Appellant*  
P.O. Box 1325  
Watertown, SD 57201  
(605) 886-0010  
lee@schoenbecklaw.com  
joe@schoenbecklaw.com



## **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the requirements set forth in [SDCL 15-26A-66\(b\)\(4\)](#). This brief was prepared using Microsoft Word 2013, with 12 point Georgia font. This brief contains 5,551 words, excluding table of contents, table of authorities, jurisdictional statement, statement of legal issues, and certificate of counsel. I relied on the word count feature in Microsoft Word 2013 to prepare this certificate.

DATED this 16<sup>th</sup> day of October, 2020.

SCHOENBECK LAW, PC

\_\_\_\_\_/s/ Lee Schoenbeck\_\_\_\_\_  
LEE SCHOENBECK  
JOE ERICKSON  
*Attorneys for Appellant*  
P.O. Box 1325  
Watertown, SD 57201  
(605) 886-0010  
lee@schoenbecklaw.com

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on October 16, 2020, I electronically served a true and correct copy of the foregoing *Appellant's Brief* via email on the following:

Angie J. Schneiderman  
Moore, Corbett, Heffernan, Moeller & Meis, LLP  
P.O. Box 3207  
Sioux City, IA 51102  
*Attorney for Appellee*

\_\_\_\_\_/s/ Lee Schoenbeck\_\_\_\_\_  
LEE SCHOENBECK  
Attorney for Appellant



**APPENDIX  
TABLE OF CONTENTS**

TAB	DOCUMENT	APPENDIX NUMBER	SETTLED RECORD NUMBER
1.	Notice of Entry of Final Judgment (9/2/20)	APP. 001-002	SR 1655-1656
2.	Final Judgment Voiding January 25, 2018, Notice of Claim of Interest filed by Bret Healy (8/27/20)	APP. 003-004	SR 1657-1658
3.	Findings of Fact and Conclusions of Law (8/18/20)	APP. 005-011	SR 1593-1599
4.	Judgment Voiding January 25, 2018, Notice of Claim of Interest filed by Bret Healy (6/9/20)	APP. 012-014	SR 1007-1009
5.	Notice of Review and Docketing Statement (9/16/20)	APP. 015-020	SR ---
6.	Notice of Claim of Interest (1/25/18)	APP. 021-028	SR 210-217
7.	Judge Giles' Memorandum Decision and Order on Defendant's Motions for Summary Judgment (10/10/17)	APP. 029-040	SR 91-102
8.	Transcript: Judge Giles' Ruling Attorney Fee Hearing (10/27/17)	APP. 041-048	SR 1089-1096
9.	Judge Giles' Findings of Fact and Conclusions of Law (11/27/17)	APP. 049-060	SR 104-115
10.	<i>Healy v. Osborne</i> , 2019 S.D. 56, 934 N.W.2d 557	APP. 061-079	SR 1069-1087
11.	Plaintiff's Statement of Undisputed Material Facts (3/17/20)	APP. 080-085	SR 54-59



STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT
<hr/>		
HEALY RANCH, INC.,	)	
	)	
Plaintiff,	)	07CIV. 19-71
	)	
v.	)	NOTICE OF ENTRY OF
	)	FINAL JUDGMENT
BRET HEALY, Individually and d/b/a	)	
HEALY RANCH PARTNERSHIP,	)	
	)	
Defendant.	)	
<hr/>		

TO: DEFENDANT ABOVE-NAMED, AND HIS ATTORNEY, ANGIE J. SCHNEIDERMAN

NOTICE IS HEREBY GIVEN that attached hereto is a copy of the *Final Judgment Voiding January 25, 2018, Notice of Claim of Interest Filed by Bret Healy* in the above-entitled action, the original of which was filed in the office of the Clerk of the Circuit Court of Brule County, Chamberlain, South Dakota, on the 27<sup>th</sup> day of August, 2020.

Dated this 2<sup>nd</sup> day of September, 2020.

SCHOENBECK LAW, PC

By: /s/ Lee Schoenbeck  
Lee Schoenbeck  
*Attorney for Plaintiff*  
P.O. Box 1325  
Watertown, SD 57201  
(605) 886-0010

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I have served a true and correct copy of the foregoing *Notice of Entry of Final Judgment*, along with a copy of the *Final Judgment*



*Voiding January 25, 2018, Notice of Claim of Interest Filed by Bret Healy on the following:*

Angie J. Schneiderman  
Moore, Corbett, Heffernan, Moeller & Meis, LLP  
P.O. Box 3207  
Sioux City, IA 51102  
*Attorney for Defendant*

via electronic service this 2<sup>nd</sup> day of September, 2020.

/s/ Lee Schoenbeck  
LEE SCHOENBECK



STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT

HEALY RANCH, INC.,	)	
	)	
Plaintiff,	)	07CIV. 19-71
	)	
v.	)	FINAL JUDGMENT VOIDING
	)	JANUARY 25, 2018, NOTICE
BRET HEALY, Individually and d/b/a	)	OF CLAIM OF INTEREST FILED
HEALY RANCH PARTNERSHIP,	)	BY BRET HEALY
	)	
Defendant.	)	
	)	

The Court having entered a summary judgment in this matter on June 9, 2020, and subsequently having the parties argument on attorney's fees costs, pursuant to SDCL 43-30-9, and having received a Stipulation to Dismiss the count entitled "Defendant's Slander of Title," and this having completed all of the matters pending before the Court on this matter, it is now hereby

ORDERED, ADJUDGED, AND DECREED that the summary judgment signed on June 9, 2020, is incorporated by this reference, barring Defendant's claim to the property at issue, which is legally described below, based upon the statute of limitations under SDCL 43-30, and the Defendant having failed to record a Notice of Claim of Interest within twenty-three years from the date of recording of the deed of conveyance, under which the Defendant claims title to the property at issue; it is further

ORDERED, ADJUDGED, AND DECREED that this Judgment shall be recorded in the Register of Deeds office for Brule County, South Dakota against the real estate set forth below, as proof that the Notice of Claim of Interest of January 25, 2018, filed by Bret Healy against this real property is void;

The Northwest Quarter; the Northeast Quarter; and the Southeast Quarter of Section Twenty-Nine;

Lots One, Two, Three, Four and Five and the South Half of the Northeast Quarter; the North Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter of Section Seventeen except a parcel of land located in the Southeast Quarter of the Northeast Quarter and the



Northeast Quarter of the Southeast Quarter of Section  
Seventeen as recorded in Warranty Deed recorded by  
Microfilm No. 93-291;

The East Half of Section Twenty except Lots Three and Four;

Lots Three, Four and Five and the Northwest Quarter except  
Lot RH 1 and except Lot RH-2 in Section Twenty-Three;

Lots One, Two Three; and the East Half of the Northeast  
Quarter; the Northwest Quarter of the Northeast Quarter  
and the Northeast Quarter of the Northwest Quarter, Section  
Twenty-Two;

All of that part of the Northwest Quarter lying North of the  
right-of-way of the Chicago, Milwaukee, and St. Paul  
Railroad in Section Twenty-Six;

All located in Township One Hundred Four North, Range  
Seventy, West of the Fifth P.M., Brule County, South Dakota  
(less rights of way of record);

it is further

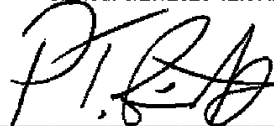
ORDERED, ADJUDGED, AND DECREED, based upon the Stipulation of the  
parties, that the count in Plaintiff's Complaint for Slander of Title is dismissed without  
prejudice; it is further

ORDERED, ADJUDGED, AND DECREED that the attorney's fees requested in  
Plaintiff's Motion for Costs Pursuant to SDCL 43-30-9 are denied; it is further

ORDERED, ADJUDGED, AND DECREED that costs should be taxed against Bret  
Healy, and to the prevailing party, Healy Ranch, Inc., in the amount of  
\$ 1209.73.

BY THE COURT:

Signed: 8/27/2020 12:57:22 PM



Hon. Patrick T. Smith  
Circuit Court Judge

Attest:

Sparks, Denise  
Clerk/Deputy





**FILED**

AUG 19 2020

STATE OF SOUTH DAKOTA )  
COUNTY OF BRULE )  
CLERK OF COURTS IN CIRCUIT COURT  
: SS BRULE & BUFFALO COUNTIES  
FIRST JUDICIAL CIRCUIT COURT OF SD.  
FIRST JUDICIAL CIRCUIT

\* \* \* \* \*

HEALY RANCH, INC.,  
Plaintiff,  
vs.  
BRET HEALY, Individually and  
d/b/a HEALY RANCH PARTNERSHIP,  
Defendant.

CIV. 12-50  
**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

\* \* \* \* \*

On August 3, 2020 this Brule County matter came before the Court for hearing at the Davison County Courthouse, on Plaintiff's Motion for Attorney Fees, the Honorable Patrick T. Smith presiding. Plaintiff was represented by Lee Schoenbeck, Defendant represented by Angie Schneiderman. The Court, having presided over the hearing, heard the testimony, and reviewed the parties' written submissions, issued its decision from the bench and now issues its Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Plaintiff brought this action to quiet title on a certain parcel of land described in Plaintiff's Complaint on file herein, after Defendant, on January 15, 2018, recorded a "Notice of Claim of Interest" to said land, potentially clouding Plaintiff's title.



2. Plaintiff claimed title to said land by Warranty Deed recorded on March 13, 1995.
3. Defendant claimed an interest in said land as set forth in the Notice of Claim of Interest on file herein, attached to the complaint as Exhibit B.
4. The parties have previously litigated various issues regarding this land, and the court takes judicial notice of 07CIV17-000023, including the Supreme Court decision therein, *Bret Healy v. Mary Ann Osborne, Bryce Healy, Barry Healy, Healy Ranch Partnership, Healy Ranch, Inc., and Albert Steven Fox*, 2018 S.D. 27.
5. Ultimately that prior matter, 07CIV17-000023, was resolved by a finding by Judge Chris Giles, upheld by the South Dakota Supreme Court, that the applicable statute of limitations as to each claim therein: conversion, breach of contract, fraud, unjust enrichment, breach of fiduciary duties, and negligence, had run and the claims thus barred.
6. Defendant's Notice of Claim of Interest relies on an alleged 1986 agreement that he claims invalidates the 1995 Deed upon which Plaintiff claims ownership of the land in question. Further, it is undisputed that Defendant claims title under deeds from 1968 and 1990.
7. Plaintiff filed a Motion for Summary Judgment alleging Defendant's claim is time barred. Defendant's claim is



subject to the limitation imposed by SDCL 43-30-3.

Defendant interprets that statute to provide him with 23 years to file a Notice of Claim of Interest "from the date of recording of deed of conveyance under which title is claimed" with said time limitation commencing from when **Plaintiff** makes his claim via deed, March 13, 1995.

8. After hearing, this court ruled that the limitation imposed by SDCL 43-30-3, starts "from the date of recording of deed of conveyance under which title is claimed" with said time limitation commencing from the date of the deed that is the basis of **Defendant's** claim, which in every circumstance is beyond the limitation period. Accordingly, this court granted Plaintiff's motion and entered its order granting summary judgment and voiding Defendant's Notice of Claim of Interest.

9. Plaintiff then filed a claim for costs, inclusive of attorney fees, pursuant to SDCL 43-30-9, which provides for such costs and attorney fees against a party who files a claim on land for the purpose only of slandering title.

10. In support of its motion under SDCL 43-30-9, Plaintiff relies on the findings of Judge Giles, upheld by the South Dakota Supreme Court in 07CIV17-000023. Particularly, Judge Giles ruled that Defendant's conduct in that matter was "so wholly without merit that it is ridiculous" and held the



prior action was both malicious and frivolous. Judge Giles then awarded attorney fees and costs in the prior action pursuant to SDCL 15-17-51.

11. This is an action to quiet title in response to a filing of a Notice of Claim of Interest, and not an action for conversion, breach of contract, fraud, unjust enrichment, breach of fiduciary duties, or negligence.

12. Judge Giles made some findings that overlap the issue herein when he determined attorney fees were appropriate in the prior action. In this case the question is whether Plaintiff filed his Notice of Claim of Interest with the purpose of slandering title and for no legitimate purpose. Judge Giles ultimately ruled that his prior claims could not prevail and were frivolous and malicious. While addressing his motives for filing in the prior case, Judge Giles did not address Defendant's current motives, as the Notice of Claim of Interest was not yet filed.

#### CONCLUSIONS OF LAW

1. The standards for awarding attorney fees under SDCL 15-17-51, frivolity and maliciousness, are different than the standard applied in awarding attorney fees under SDCL 43-30-9, slander of title.
2. A finding that an action for conversion, breach of contract, fraud, unjust enrichment, breach of fiduciary



duties, or negligence is malicious, frivolous, and ridiculous is not the same as a finding that a filing was made for the purpose of slandering title only.

3. This court made no ruling on whether Defendant's filing of his Notice of Claim of Interest was for the purpose of slandering title only, ruling only that it was invalid as in violation of the timing requirements of SDCL 43-30-3, when it granted summary judgment.

4. This court now rules that Judge Giles' findings are on separate issues in a wholly different proceeding and are insufficient on their own to support finding Defendant's filing of his Notice of Claim of Interest was for the purpose of slandering title only.

5. That while the Supreme Court upheld Judge Giles, it specifically held, in *Healy v Osborne*, that:

We decline to address [Defendant's] claim of ownership because the threshold issue in this case centers on the timeliness of Bret's claims for conversion, breach of contract, fraud, conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence. Each of these causes of action are subject to the six-year statute of limitations under SDCL 15-2-13. Therefore, even if [Defendant] retained an ownership interest in Healy Ranch through the 1986 partnership, he must nonetheless timely commence suit within the applicable statute of limitations.

*Id.* The Supreme Court specifically declined to rule on the legitimacy of Defendant's claim under the 1986 partnership, the very basis for the filing of the Notice of Claim of Interest in



the pending matter, noting that Judge Giles did as well,  
finding:

Here, the court [Judge Giles] founded its decision on the statute of limitations and concluded that even if [Defendant] once owned a portion of Healy Ranch via his partnership interest, he had notice of the defendants' alleged tortious conduct many years before filing the lawsuit.

Thus, they upheld Judge Giles' determination that Defendant's claim was time barred. *Id.*<sup>1</sup>

6. The Notice of Claim of Interest was pursued as an avenue for Defendant to litigate his claim of ownership through the 1986 partnership referenced by the Supreme Court, a claim that both the Supreme Court and Judge Giles found unnecessary to rule on. This is not changed by the fact that Judge Giles found the basis for the claims Defendant sought to litigate in the earlier proceeding: conversion, breach of contract, fraud, unjust enrichment, breach of fiduciary duties, and negligence, wholly without merit, frivolous and malicious.

---

<sup>1</sup> Admittedly, this is not perfectly clear in the opinion of the Supreme Court. While declining to address Defendant's claim of ownership, they did state, regarding Judge Giles, that he concluded Defendant "brought this action with the intent of trying to prevent the sale of Healy Ranch" and regarding Defendant, that he "filed the lawsuit for the purpose of preventing the sale of the property, not because he believed his partnership interest remained enforceable." *Healy v Osborne*. Ultimately, this court is persuaded by the fact that in making such proclamations inconsistent with its holdings, the Supreme Court, and Judge Giles, were addressing different issues, the malicious and frivolous basis for claims of conversion, breach of contract, fraud, unjust enrichment, breach of fiduciary duties, and negligence, and not the issue of filing a claim to slander title currently before this court.

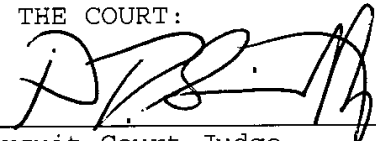


7. This court also found it unnecessary to rule on the legitimacy of the Notice of Claim of Interest, and finds it lacks sufficient evidence to do so now on the record before it. An award of attorney fees under SDCL 43-30-9 must be supported by a showing that Defendant was motivated solely by intent to slander title, and that the action otherwise is wholly without merit. The evidence presented is insufficient for such a finding.

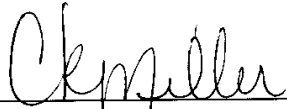
It is thereby ORDERED that the Motion for costs, inclusive of Attorney fees, is DENIED.

Dated this 18 day of August, 2020.

BY THE COURT:

  
Circuit Court Judge

ATTEST:  
Clerk of Courts

By   
Deputy





STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT
<hr/>		
HEALY RANCH, INC.,	)	
	)	
Plaintiff,	)	07CIV. 19-71
	)	
v.	)	JUDGMENT VOIDING JANUARY 25,
	)	2018, NOTICE OF CLAIM OF
BRET HEALY, Individually and d/b/a	)	INTEREST FILED BY BRET HEALY
HEALY RANCH PARTNERSHIP,	)	
	)	
Defendant.	)	
	)	
<hr/>		

The Plaintiff’s Motion for Summary Judgment, having come on for hearing before the Court on the 4<sup>th</sup> day of June, 2020, in the third floor courtroom of the Davison County Courthouse, Mitchell, South Dakota, before the Honorable Patrick Smith, and Plaintiff Healy Ranch, Inc., having appeared through its attorneys, Lee Schoenbeck and Joe Erickson; and the Defendant Bret Healy, individually and d/b/a Healy Ranch Partnership, having appeared individually and with counsel, Angie J. Schneiderman, of Sioux City, Iowa; and the Court having listened to the argument of the parties and reviewed the filings with respect to Plaintiff’s Motion for Summary Judgment, and Defendant’s Motion to Join or Dismiss, it is now hereby

ORDERED, ADJUDGED, AND DECREED that summary judgment shall be granted for the Plaintiff Healy Ranch, Inc. because Defendant’s claim to the property at issue, which is legally described herein, is barred by the statute of limitations under SDCL 43-30-3, and Defendant failed to record a Notice of Claim of Interest within twenty-three years from the date of recording of the deed of conveyance under which Defendant claims title to the property at issue;



it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be recorded in the Register of Deeds' office for Brule County, South Dakota against the real estate set forth below, as proof that the Notice of Claim of Interest of January 25, 2018, filed by Bret Healy against this real property is void:

The Northwest Quarter; the Northeast Quarter; and the Southeast Quarter of Section Twenty-Nine;

Lots One, Two, Three, Four and Five and the South Half of the Northeast Quarter; the North Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter of Section Seventeen except a parcel of land located in the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Seventeen as recorded in Warranty Deed recorded by Microfilm No. 93-291;

The East Half of Section Twenty except Lots Three and Four;

Lots Three, Four and Five and the Northwest Quarter except Lot RH 1 and except Lot RH-2 in Section Twenty-Three;

Lots One, Two Three; and the East Half of the Northeast Quarter; the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section Twenty-Two;

All of that part of the Northwest Quarter lying North of the right-of-way of the Chicago, Milwaukee, and St. Paul Railroad in Section Twenty-Six;

All located in Township One Hundred Four North, Range Seventy, West of the Fifth P.M., Brule County, South Dakota (less rights of way of record).

it is further



ORDERED, ADJUDGED, AND DECREED that costs should be taxed at the  
amount of \$\_\_\_\_\_.

Attest:  
Miller, Charlene  
Clerk/Deputy



BY THE COURT:

Signed: 6/9/2020 12:13:39 PM

A handwritten signature in black ink, appearing to read "P.T. Smith", is written over a horizontal line.

Hon. Patrick T. Smith  
Circuit Court Judge



IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

HEALY RANCH, INC,  Plaintiff,  v.  BRET HEALY, Individually and d/b/a HEALY RANCH PARTNERSHIP  Defendants.	CASE NO. _____    <b>NOTICE OF REVIEW</b>
---	---

TO: LEE SCHOENBECK and JOE ERICKSON, Attorneys for  
Plaintiff, HEALY RANCH, INC.

Please take notice that the Defendant-Appellee, Bret Healy d/b/a Healy Ranch Partnership, will seek review of the order of the circuit court entered on the 9<sup>th</sup> day of June, 2020 captioned "Judgment Voiding January 25, 2018, Notice of Claim of Interest Filed by Bret Healy," granting Plaintiff's Motion for Summary Judgment.

DATED this 16<sup>th</sup> day of September, 2020.

MOORE, CORBETT, HEFFERNAN,  
MOELLER & MEIS, L.L.P.

By: Angie J. Schneiderman

Angie J. Schneiderman # 3363

300 U.S. Bank Building

501 Pierce Street

P.O. Box 3207

Sioux City, Iowa 51102

PHONE: 712/252-0020

FAX: 712/252-0656

ATTORNEY FOR DEFENDANT/APPELLEE



**CERTIFICATE OF SERVICE**

The undersigned attorney, Angie J. Schneiderman, hereby certifies that on this the 16<sup>th</sup> day of September, 2020, she served a true and correct copy of the foregoing Notice of Review on the following.

Lee Schoenbeck  
Joseph Erickson  
PO Box 1325  
Watertown, SD 57201

Michelle R. Gudwin



IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

HEALY RANCH, INC,  Plaintiff,  v.  BRET HEALY, Individually and d/b/a HEALY RANCH PARTNERSHIP  Defendants.	CASE NO. _____  DEFENDANT/APPELLEE'S DOCKETING STATEMENT
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**TIMELINESS OF APPEAL**

1. The date the judgment or order appealed from was signed and filed by the trial court: August 27, 2020
2. The date notice of entry of the judgment or order was served on each party: September 2, 2020
3. State whether either of the following motions was made:
  - a. Motion for judgment n.o.v., SDCL 15-6-50(b) No
  - b. Motion for new trial, SDCL 15-6-59: No

**NATURE AND DISPOSITION OF CLAIMS**

4. State the nature of each party's separate claims, counterclaims or cross-claims and the trial court's disposition of each claim (e.g. court trial, jury verdict, summary judgment, agency decision, affirmed/reversed, etc.)
  - A. Plaintiff's Claims:
    1. Quiet Title – Plaintiff claimed Quiet Title under a Warranty Deed dated March 12, 1995 under the theories of 1) Res Judicata, 2) that Defendant had filed a false "Notice of Claim of Interest" on January 25, 2018, pursuant to the South Dakota Marketable Title Act contained in SDCL 43-30-1, et. seq., and 3) that the "Notice of



Claim of Interest” was filed outside the statute of limitations in the South Dakota Marketable Title Act. Plaintiff filed a motion for summary judgment, which was granted finding the “Notice of Claim of Interest” filed pursuant to the South Dakota Marketable Title Act was untimely filed.

2. Slander of Title – Plaintiff asserted a claim for Slander of Title. This claim was disposed of by a stipulated dismissal of both Plaintiff and Defendant.
3. Attorney’s Fees – Plaintiff filed a Motion for Costs pursuant to the SDCL 15-6-54(d)(2) and SDCL 43-30-9 claiming attorney’s fees and costs. The Circuit Court denied Plaintiff’s claim for attorney’s fees, entering Findings of Fact and Conclusions of Law on August 19, 2020.

B. Defendant’s Claims:

1. Defendant asserted to join Healy Ranch Partnership (the “Partnership”) as a party to the action. It did so in its Answer, Affirmative Defenses and Counterclaims as Defendant claims the Notice of Claim of Interest, while executed by Defendant Bret Healy, was done in his position as a Partner of Healy Ranch Partnership, a wholly separate legal entity. In addition, Defendant filed a Motion to Join or Dismiss the Partnership as a party to the suit. The issue of adding the Partnership to the suit was not determined by the Circuit Court as it determined that by granting the partial motion for summary judgment on the timeliness of the “Notice of Claim of Interest” the issue had become moot.
2. Defendant asserted a counterclaim for Quiet Title on behalf of the Partnership, claiming the Notice of Claim of Interest preserved Defendant’s and the Partnership’s claim as it was filed within the 23-year period contained in SDCL 43-30-3, thus preserving the Partnership’s interest in the real estate. This issue was dismissed pursuant to the Circuit Court’s ruling on Plaintiff’s Motion for Summary Judgment.
3. Defendant asserted a counterclaim for Slander of Title on behalf of the Partnership based on the March 12, 1995 deed. This claim was dismissed pursuant to the Circuit Court’s ruling on Plaintiff’s Motion for Summary Judgment.



4. Defendant asserted various affirmative defenses to the claims in Plaintiff's Complaint. These affirmative defenses were dismissed on the basis that the "Notice of Claim of Interest" was not timely filed pursuant to the time limitations set forth in the South Dakota Marketable Title Act.
5. Appeals of right may be taken only from final, appealable orders. See SDCL 15-26A-3 and 4.
  - a. Did the trial court enter a final judgment or order that resolves each party's individual claims, counterclaims, or cross claims? Yes
  - b. If the trial court **did not** enter a final judgment or order as to each party's individual claims, counterclaims, or cross-claims, did the trial court make a determination and direct entry of judgment pursuant to SDCL 15-6-54(b)?
6. State each issue intended to be presented for review. (Parties will not be bound by these statements.)
  - a. Whether the Circuit Court erred in ruling the Defendant's "Notice of Claim of Interest" was not timely filed.
  - b. Whether the Circuit Court should have added Healy Ranch Partnership as a Co-Defendant.
  - c. Assuming the "Notice of Claim of Interest" was timely filed, that Plaintiff was not entitled to summary judgment.

Attached are copies of the following:

- *Judgment Voiding January 25, 2018, Notice of Claim of Interest Filed by Bret Healy*
- *Final Judgment Voiding January 25, 2018, Notice of Claim of Interest Filed by Bret Healy*
- *Findings of Fact and Conclusions of Law*
- 

Dated this 16<sup>th</sup> day of September, 2020.



MOORE, CORBETT, HEFFERNAN,  
MOELLER & MEIS, L.L.P.

By: Angie J. Schneiderman

Angie J. Schneiderman # 3363  
300 U.S. Bank Building  
501 Pierce Street  
P.O. Box 3207  
Sioux City, Iowa 51102  
PHONE: 712/252-0020  
FAX: 712/252-0656

ATTORNEY FOR DEFENDANT/APPELLEE

**CERTIFICATE OF SERVICE**

The undersigned attorney, Angie J. Schneiderman, hereby certifies that on this the 16<sup>th</sup> day of September, 2020, she served a true and correct copy of the foregoing Appellant's Docketing Statement on the following:

Lee Schoenbeck  
Joseph Erickson  
PO Box 1325  
Watertown, SD 57201

Michelle R. Gaudin



Prepared by:  
Bret Healy  
PO Box 731  
Chamberlain, SD 57325  
605-216-1825

Filed in - Brule County SD  
Recorded on 1/25/2018 2:45 PM  
Transaction # 1027790  
Document # 2018-0068  
Book 2018  
Page 0068 (8 pages) Rec. Fee \$30.00  
*Elaine Reimer*  
Elaine Reimer, Register of Deeds



**NOTICE OF CLAIM OF INTEREST**

STATE OF SOUTH DAKOTA )  
                                  ) SS  
COUNTY OF BRULE       )

BRET HEALY, being first sworn on oath, deposes and states:

1. That he has full knowledge of all facts stated herein.
2. That he makes this Notice of Claim of Interest pursuant to and in conformity with SDCL § 43-30-5.
3. The land affected by this Notice of Claim of Interest is as follows:

The Northwest Quarter; the Northeast Quarter; and the Southeast Quarter of Section Twenty-Nine;

Lots One, Two, Three, Four and Five and the South Half of the Northeast Quarter; the North Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter of Section Seventeen except a parcel of land located in the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Seventeen as recorded in Warranty Deed recorded by Microfilm No. 93-291;

The East Half of Section Twenty except Lots Three and Four;

Lots Three, Four and Five and the Northwest Quarter except Lot RH 1 and except Lot RH-2 in Section Twenty-Three;

Lots One, Two Three; and the East Half of the Northeast Quarter; the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section Twenty-Two;

All of that part of the Northwest Quarter lying North of the right-of-way of the Chicago, Milwaukee, and St. Paul Railroad in Section Twenty-Six;

All located in Township One Hundred Four North, Range Seventy, West of the Fifth P.M., Brule County, South Dakota (less rights of way of record).

4. The nature of the claim is that a certain Warranty Deed dated March 12, 1995 and recorded with the Brule County Register of Deeds on March 13, 1995 by Microfilm No. 95-173 is not valid. Pursuant to the January 25, 1986 Agreement, which is attached hereto, Delonde Healy transferred all her interest in the Healy

**EXHIBIT**  
**A**



Ranch partnership to Bret Healy. Thus, at the time of the Warranty Deed was signed and filed, Bret Healy was a partner in the partnership and DeLonde Healy was not a partner. Said Warranty Deed is not part of the ordinary course of the partnership business and was not authorized by the other partners of the partnership. Additionally, the transfer of the property described above was not given for value and the transferee knew DeLonde Healy lacked authority to bind the partnership.

Dated this 25 day of January, 2018.

By: Bret Healy  
Bret Healy

STATE OF SOUTH DAKOTA     )  
  ss.  
COUNTY OF BRULE            )

On this the 25<sup>th</sup> day of January, 2018, before me, the undersigned officer, a Notary Public, personally appeared Bret Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Paul O. Goodland  
Notary Public, South Dakota  
My commission expires: 7-11-2018



AGREEMENT

This is an agreement between Delonde Healy and Mary Ann Healy, the remaining partners of Healy Ranch Partnership and Bret J. Healy.

WHEREFORE, Robert Healy recently passed away, leaving all that he had to his wife Mary Ann Healy, which would include any interest in the partnership, and

WHEREAS, all parties wish to terminate any and all previous partnership agreements, and

WHEREAS, all parties wish to take action that would help preserve the Healy Ranch as an entity so that it may be passed on to future generations of the Healy Family; and

THEREFORE, it is the desire of Delonde Healy, Mary Ann Healy and Bret Healy to make the following agreement.

I.

All parties acknowledge that they have had the opportunity to obtain independent legal counsel and/or to consult with whom-ever they desire concerning this agreement and that they enter into this agreement with the intent that it bind not only themselves, but also their heirs and assigns and that this agreement terminates any and all previous partnership agreements.

II.

As a full and complete liquidation of her 25% interest in Healy Ranch Partnership and any amounts owed her individually by Robert Healy or Mary Ann Healy, Delonde Healy shall receive the



following benefits for ten years.

- a) \$300.00 per month.
- b) The right to live at no cost on the Healy Ranch in a home which she currently occupies. All major upkeep on the home will be the responsibility of the Healy Ranch entity. If Delonde Healy's children unanimously agree that she is no longer able to care for herself, then such rights shall terminate.
- c) Insurance, (including auto, premises liability and property but excluding health insurance), utilities (which are to be limited to fuel oil, water and electricity), and such produce or meat as she shall need and as shall be produced on the farm.

III.

In return for the above set out benefits, Delonde Healy shall release all title and interest she has to the Partnership assets as of December 31, 1985, this being a complete writing of a prior oral agreement between the parties.

IV.

As soon as is possible all parties will sign any and all documents to implement this agreement and to remove Delonde Healy from the Partnership loans. It is the intent of this agreement and the parties that Delonde Healy no longer be liable for any debts of the partnership from the date of this agreement. Healy farm operations, Mary Ann Healy and Bret Healy, agree to hold Delonde Healy harmless and indemnify her on all partnership debts, claims and liabilities regardless of whether such debts, claims and liabilities are now known, including claims against Delonde Healy based upon her own fault or negligence.



V.

If at any time, Delonde Healy should move from the farmstead, she will lose whatever benefits she would have received from living on the farmstead including the insurance, utilities and like benefits as set out in Section II b & c above, although the cash payment as set out in Section II a. shall continue.

VI.

The payments and the right to live on the farm free and receive the other benefits as otherwise set out herein shall exist for a maximum of ten years and ten years only from this date. At the end of that period if the parties can agree, arrangements for use of the home and other such benefits to Delonde can be made at whatever terms the parties agree to.

The cash payment due Delonde Healy shall be paid by the Healy Farm operation as long as it shall exist whether as a partnership, corporation or other legal entity. If a majority of the assets of the Healy farm operation through whatever legal entity it operates, are transferred or sold, then an amount shall be placed in escrow sufficient to fund the remaining amounts owing under Section II a). at a financial institution approved by Delonde Healy. If the farm operation shall cease to exist in such a way as the amounts owing Delonde Healy under II a) cannot be paid then such cash payments as shall remain will be paid by Mary Ann Healy personally.

The right to live in the home, and the other benefits as set out in Section II b & c above shall exist for ten years unless



the Healy farm operation whether a partnership, corporation, or any other legal entity shall cease to exist at which time such benefits will terminate.

VII.

Delonde Healy agrees that in the case of her death, the payments to her, the use of the home and all the other benefits shall terminate immediately. Delonde Healy's interest, if any, in the farm partnership and any debt owed Delonde Healy by Robert Healy or Mary Ann Healy shall terminate upon Delonde Healy's death.

VIII.

It is the intent of all the parties that any interest of Delonde Healy in the Healy Ranch partnership by the terms of this agreement be completely transferred directly to Bret Healy effective with the date of this agreement because he shall be the person responsible for the operation of the business and the payment of all the benefits hereunder as long as the operation exists.

IX.

All parties admit to having received a full and complete disclosure of the assets and the debts of the Healy Farm Partnership as of the date of Robert Healy's death, November 11, 1985.

X.

All parties agree that this is a full and complete agreement between them and that this supersedes and terminates any and all prior partnership agreements. If any agreement to



modify this should ever be made, it must be done in writing and signed by both parties.

Dated this 25<sup>th</sup> day of January, 1986.

Delonde Healy  
Delonde Healy  
Mary Ann Healy  
Mary Ann Healy  
Bret J. Healy  
Bret J. Healy

State of South Dakota:  
:ss  
County of Brule :

On this the 25<sup>th</sup> day of January, 1986, before me, the undersigned officer, personally appeared Delonde Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

(Notary Seal)

[Signature]  
Notary Public, South Dakota  
My commission expires 9-25-87


State of South Dakota:  
:ss  
County of Brule :

On this the 25<sup>th</sup> day of January, 1986, before me, the undersigned officer, personally appeared Mary Ann Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.



(Notary Seal)

  
Notary Public, South Dakota  
My commission expires 7-22-87

State of South Dakota: :SS  
County of Brule :

On this the 17th day of January, 1986, before me, the undersigned officer, personally appeared Bret J. Realy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

(Notary Seal)

  
Notary Public, South Dakota  
My commission expires 8-2-87



STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT

BRET HEALY,  
Plaintiff,

v.

MARY ANN OSBORNE, BRYCE HEALY,  
BARRY HEALY, HEALY RANCH  
PARTNERSHIP, HEALY RANCH INC., and  
ALBERT STEVEN FOX,  
Defendants.

CIV. 17-023

MEMORANDUM DECISION  
AND ORDER ON  
DEFENDANTS' MOTIONS FOR  
SUMMARY JUDGMENT

### FACTS AND PROCEDURE

A Hearing was held on the Motions for Summary Judgment in this matter on September 22, 2017 at the Brule County Courthouse. Plaintiff, Bret Healy, appeared by and through his counsel, Steven Sandven. Defendants, Mary Ann Osborne and Healy Partnership; Bryce Healy, Barry Healy, and Healy Ranch Inc.; and Albert Steven Fox appeared through their counsel, Jack Hieb; Lee Schoenbeck; and Kara Semmler.

The following facts are undisputed:

1. The legal description of the land in dispute is legally described as follows:

The Northwest Quarter, the Northeast Quarter, and the Southeast Quarter of Section Twenty-Nine;

Lots One, Two, Three, Four and Five and the South Half of the Northeast Quarter, the North Half of the Southeast Quarter, the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter of the Section Seventeen except a parcel of land located in the



Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Seventeen as recorded in Warranty Deed recorded by microfilm No. 93-291.

The East Half of Section Twenty except Lots Three and Four;

Lots Three, Four and Five and the Northwest Quarter except Lot RH1 and except Lot RH-2 in Section Twenty-Three;

Lots One, Two, Three; and the East half of the Northeast Quarter; the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section Twenty-Two;

All of that part of the Northwest Quarter lying North of the right-of-way of the Chicago,

Milwaukee, and St. Paul Railroad in Section Twenty-Six;

All located in Township One Hundred Four North, Range Seventy, West of the Fifth P.M., Brule County, South Dakota.

2. Parts of the Ranch have been in the Healy family since 1887. (Recorded Deed; Plaintiff Complaint Ex. 1).
3. In 1972, a General Warranty Deed was recorded providing, "Robert E. Healy and Mary Ann Healy, husband and wife, and Grandmother DeLonde deeded property to 'The Healy Ranch,' a partnership consisting of Robert E. Healy and Mary Ann Healy, jointly, and DeLonde Healy." (Plaintiff's Complaint, Warranty Deed Record, Ex. 12).
4. On January 26, 1986, DeLonde Healy, Bret Healy, and Mary Ann Osborne entered into an agreement to create a new, Healy Ranch Partnership. (Plaintiff's Complaint, Ex. 13).
5. Grandma DeLonde was given a First Right of Refusal for the original three quarter sections of land that were purchased from the steps of the Brule County Courthouse in 1938. (Plaintiff's Complaint, Ex. 14).



6. On January 31, 1989, Grandmother DeLonde deeded her remaining interest in the land to Bret Healy, although this deed was never recorded. (Plaintiff's Complaint, Ex. 17).
7. In July of 1994, Mary Ann Osborne executed IRS form 2553, stating she was 100% owner of Healy Ranch, Inc. (Plaintiff's Complaint, Ex. 20).
8. On August 1, 1994, Healy Ranch, Inc. was incorporated in the State of South Dakota. (Plaintiff's Complaint, Ex. 21).
9. Title Insurance in December of 1994 showed that all of the land covered in this action was owned in a partnership consisting of Robert E. Healy, Mary Ann Osborne and DeLonde Healy. (Plaintiff's Complaint, Ex. 22).
10. On March 13, 1995, Mary Ann Osborne executed a deed transferring the land from Healy Ranch Partnership to Healy Ranch, Inc. (Plaintiff's Complaint, Ex. 30).
11. Also on March 13, 1995, Security Union Title Insurance Company issued title insurance with Tri-County State Bank as the insured. (Plaintiff's Complaint, Ex. 31).
12. Bret Healy, on behalf of Healy Ranch, Inc., saw and signed the 1999 Mortgage to Marquette Bank (Bret's depo. pp. 71:15-17; Bret's depo. Ex. 9; Ex. G to Aff. of Schoenbeck).
13. In the 1999 Assignment of the Rents to Marquette Bank, Bret, on behalf of Healy Ranch Inc., signed the document where Healy Ranch Inc. assigned the rents from the Healy Ranch land to Marquette Bank. (Bret's depo. pp. 73:16-21; Bret's depo. Ex 10; Ex. H to Aff. of Schoenbeck).
14. In February of 2000, Bret purchased a one-third interest in Healy Ranch Inc. (Bret's depo. pp. 41:8-11; Bret's depo. Ex. 2).



15. On the 2002 Mortgage to Dakota State Bank, Bret signed, on behalf of Healy Ranch, Inc., placing a mortgage over the Healy Ranch land. (Bret's depo. pp. 74:24-75:11; Bret's depo. Ex. 11; Ex. I to Aff. of Schoenbeck).
16. On the 2003 Mortgage to Dakota State Bank, Bret, on behalf of Healy Ranch, Inc., signed placing a mortgage over the Healy Ranch land. (Bret's depo. pp. 77:12-22; Bret's depo. Ex. 13; Ex. K to Aff. of Schoenbeck).
17. On a 2005 Mortgage to Wells Fargo Bank, Bret, on behalf of Healy Ranch, Inc., signed a mortgage to Wells Fargo as President of Healy Ranch, Inc. In this document he gave all the Healy Ranch land as collateral. (Bret's depo. pp. 80:4-17; Bret's depo. Ex. 14; Ex. L to Aff. of Schoenbeck).
18. Plaintiff Bret Healy purchased real estate from Healy Ranch, Inc., on which to build his house in 2007. (2007 Warranty Deed; Bret's depo. Ex. 18; Bret's depo. pp. 86:12-21; Exs. O and R to Aff. of Schoenbeck).
19. In a 2007 easement from Healy Ranch, Inc., Bret Healy knew he was getting an easement from Healy Ranch Inc., when he built his house in 2007. (Bret depo. pp. 94:24-95:2; Ex. P to Aff. of Schoenbeck).
20. The September 5, 2007, Easement identifies Healy Ranch, Inc. as granting the encumbrance, and it was filed for public record on October 3, 2007. (Bret's depo. Ex. 24; Ex. P to Aff. of Schoenbeck).
21. On a 2008 mortgage to Farm Credit Services, Bret, on behalf of Healy Ranch Inc., signed as President of Healy Ranch Inc., mortgaging all of the Healy Ranch property. (Bret's depo. pp. 82:6-15; Bret's depo. Ex. 15; Ex. M to Aff. of Schoenbeck).



22. On a 2008 mortgage to Wells Fargo Bank, Bret, on behalf of Healy Ranch, Inc., signed as president of Healy Ranch, Inc., mortgaging all of Healy Ranch land. (Bret's depo. pp. 83:7-19; Bret's depo. Ex. 16; Ex. N to Aff. of Schoenbeck).
23. Defendant Fox is an attorney. (Undisputed by all of the parties).
24. Fox represented the named business entities in 1995. (Bret's Aff. 1-296).
25. Fox represented various members of the Healy family in 1995, including Bret. (Bret's Aff. 1-296).
26. In 2013, Bret Healy and Healy Ranch, Inc., retained Plaintiff's current counsel, Steven Sandven, in Brule County civil case 13-66, to represent him personally and to represent Healy Ranch Inc. in a matter which involved the land at issue in this lawsuit. (*Bret Healy and Healy Ranch, Inc. v. Larry Eugene Mines*, 07CIV13-66).
27. In *Bret Healy and Healy Ranch, Inc. v. Larry Eugene Mines*, Plaintiff's discovery responses on behalf of Bret Healy, individually, and Healy Ranch, Inc. indicated that the fencing which was destroyed and the land where the damages took place were both owned by Healy Ranch, Inc. (Ex. A and Ex. B to Supplemental Affidavit of Lee Schoenbeck dated 9/20/17; Found in Interrogatory Answers 9 and 11 for both Healy Ranch, Inc. and Bret Healy).

Bret commenced the present action on May 11, 2017. Following discovery, Defendants Bryce Healy, Barry Healy, and Healy Ranch, Inc. filed a Motion for Summary Judgment on September 1, 2017. Defendants Mary Ann Osborne and Healy Ranch Partnership filed a Motion for Summary Judgment on September 6, 2017. Defendant Albert Fox joined in Bryce Healy, Barry Healy, and Healy Ranch Incorporation's Motion for Summary Judgment on September 7,



2017. A hearing was held on September 22, 2017, on the Defendants' Motions for Summary Judgment.

### SUMMARY JUDGMENT STANDARD

Summary judgment must be entered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SDCL § 15-6-56(c). When addressing a motion for summary judgment:

1) the court must view the evidence most favorably to the non-moving party; 2) the burden of proof is on the moving party to show clearly that there are no genuine issues of material fact; 3) summary judgment is not a substitute for trial; 4) summary judgment is not appropriately granted just because the court believes the non-moving party will not prevail at trial; 5) summary judgment is an extreme remedy and should be awarded only on a clear showing of the necessary elements; and 6) where there are no genuine issues of material fact, summary judgment is looked upon with favor as particularly adaptable to expose sham claims and defenses.

*Wulf v. Senst*, 2003 SD 105, ¶ 17 (citing *Production Credit Ass'n v. Wynne*, 474 N.W.2d 735 (S.D. 1991); *Klatt v. Continental Ins. Co.*, 409 N.W.2d 366 (S.D. 1987); *Wilson v. Great Northern Railway Company*, 157 N.W.2d 19 (S.D. 1968)). In light of viewing evidence most favorably to the non-moving party "[a]ll reasonable inferences drawn from the facts must be viewed in favor of the non-moving party." *DAF Dairy Financing Services, L.P. v. Lawson Special Trust*, 2010 SD 34, ¶ 16 (quoting *Discovery Bank v. Stanley*, 2008 SD 111, ¶ 16).

Even though the burden is on the moving party to show an absence of genuine issues of material fact, "the non-moving party cannot merely rest on the pleading[s], but must present specific facts by way of affidavits or as otherwise provided in SDCL § 15-6-56, [and] SDCL § 15-



6-56(e), setting forth specific facts showing the existence of genuine issues of material fact.” *Wulf*, 2003 SD 105, ¶ 18 (citing *State Farm Mut. Auto. Ins. Co. v. Ragatz*, 1997 SD 123). “Mere general allegations or denials will not prevent the issuance of summary judgment.” *Id.* (citing *Weiszhaar Farms v. Live Stock State Bank*, 467 N.W.2d 752 (S.D. 1991)). Ultimately, “[i]f undisputed facts fail to establish each required element in a cause of action, summary judgment is proper.” *McKie v. Huntley*, 2000 SD 160, ¶ 17 (citing *Groseth Int’l, Inc. v. Tenneco Inc.*, 410 N.W.2d 159, 169 (S.D. 1987)). “[T]he party challenging summary judgment must substantiate his allegations with sufficient probative evidence that would permit a finding in his favor on more than mere speculation, conjecture, or fantasy.” *Tolle v. Lev*, 804 N.W. 2d 440, 444 (S.D. 2011).

## ANALYSIS

### A. Plaintiff’s claims are barred by the statute of limitations

The important policy behind a statute of limitations is that it stops exposure to outdated lawsuits. *Strassburg v. Citizen State Bank*, 581 N.W.2d 510, 514 (S.D. 1998). The counts in Plaintiff’s complaint, against the Defendants Mary Ann Osborne, Bryce Healy, Barry Healy, Healy Ranch Partnership, Healy Ranch, Inc., and Albert Steven Fox, allege conversion, breach of contract and the implied duty of good faith, fraud and conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence, all of which fall within the six-year statute of limitations set forth in SDCL § 15-2-13, which requires that the action be commenced within six years of the cause of action accruing. Plaintiff alleges fraud, so the causes of action accrue upon the Plaintiff either discovering the facts or having “actual or constructive knowledge” of the facts that constitute fraud. SDCL § 15-2-3.



Constructive notice is imputed by law to a person not having actual notice. SDCL § 17-1-

3. Constructive notice is defined as a:

person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence.

SDCL § 17-1-4. Also see *Strassburg*, at 515; *One Star v. Sisters of St. Francis*, 752 N.W.2d 668, 682 (S.D. 2008); and *Zephier v. Catholic Diocese*, 752 N.W.2d 658, 665 (S.D. 2008).

When a document has been recorded at the register of deeds' office, the document is "constructive notice of the execution of such instrument to all purchasers or encumbrancers subsequent to the recording." SDCL § 43-28-15. The recordation of an instrument serves as constructive notice of what the instrument actually contains. *Aasland v. Yankton County*, 280 N.W.2d 666, 668 (S.D. 1979). The constructive notice recordation statute applies to a statute of limitations defense, if the Plaintiff is a purchaser or encumbrancer of the property. *Hoffman v. Johnson*, 374 N.W.2d 117 (S.D. 1985).

Public records are the equivalent of actual knowledge of the facts in the public record, *Stianson v. Stianson*, 40 S.D. 322, 240 (1918), especially if the party with the challenged interest has been in open possession of the property. *Hoffman*, 374 N.W.2d 117. The South Dakota Supreme Court has also provided:

Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.

*Betts v. Letcher*, 1 S.D. 182, 196 (1890).

Starting in 1999, the Plaintiff executed a series of documents and participated in a number of transactions on behalf of Healy Ranch, Inc., that should have given the Plaintiff actual



knowledge that Healy Ranch, Inc. was claiming an interest in the real estate at issue in this action. Certainly and clearly, those transactions gave the Plaintiff constructive notice that Healy Ranch, Inc. was claiming an interest in the land at issue. The circumstances surrounding these transactions would put a prudent man on notice to make an inquiry into this situation. Bret Healy failed to do so. The Plaintiff executed Mortgages and Assignments that contained the legal description for all of the property that had been deeded to Healy Ranch, Inc.; these include the 1999 Mortgage to Marquette Bank, the 1999 Assignment of Rents to Marquette Bank, the 2002 Mortgage to Dakota State Bank, the 2003 Mortgage to Dakota State Bank, and the 2005 Mortgage to the Wells Fargo Bank. (Bret's depo. pp. 71:15-17; 73:16-21; 74:24-75:11; 77:12-22; 80:4-17). With the 1999 Mortgage to Marquette Bank Plaintiff testified under oath that all of the Healy Ranch land was being pledged by the Healy Ranch, Inc. as collateral. (Bret's depo. pp. 73:2-6). Again, in 2005, with the 2005 Mortgage to Wells Fargo Bank, Bret Healy testified that he signed the mortgage pledging all of the Healy Ranch land as collateral. (Bret's depo. pp. 80:4-17).

In 2007, Bret Healy purchased real estate from Healy Ranch, Inc. for the purposes of building his house. (2007 Warranty Deed; Bret's depo. Ex. 18; Bret's depo. pp. 86:12-21; Exs. O and R to Aff. of Schoenbeck). In 2007, he also purchased an easement from Healy Ranch, Inc. in conjunction with building his house. (Bret depo. pp. 94:24-95:2; Ex. P to Aff. of Schoenbeck). These actions in 2007 make it very clear to the Court that Bret Healy had constructive notice, if not actual notice, that Healy Ranch, Inc. owned the real estate at issue.

After 2007, Bret Healy continued to act in conformity with having constructive notice, if not actual notice, that Healy Ranch, Inc. owned the Healy Ranch land. In 2008, Bret executed a mortgage to Farm Credit Services on behalf of Healy Ranch, Inc., mortgaging all of the Healy



Ranch property. (Bret's depo. pp. 82:6-15; Bret's depo. Ex. 15; Ex. M to Aff. of Schoenbeck). In 2008, Bret also executed a mortgage to Wells Fargo Bank on behalf of Healy Ranch, Inc., mortgaging all of the Healy Ranch property. (Bret's depo. pp. 83:7-19; Bret's depo. Ex. 16; Ex. N to Aff. of Schoenbeck).

In 2013, the Plaintiff continued to act in conformity with having constructive notice, if not actual notice, that the Healy Ranch land was owned by Healy Ranch, Inc. That year, Bret Healy and Healy Ranch Inc., retained Plaintiff's current counsel, Steven Sandven, in Brule County civil case 13-66, to represent him personally and to represent Healy Ranch Inc. in a matter which involved the land at issue in this lawsuit. (*Bret Healy and Healy Ranch, Inc. v. Larry Eugene Mines*, 07CIV13-66). In that case, Plaintiff's discovery responses on behalf of Bret Healy, individually, and Healy Ranch Inc. indicated that the fencing which was destroyed and the land where the damages took place were both owned by Healy Ranch Inc. (Ex. A and Ex. B to Supplemental Affidavit of Lee Schoenbeck dated 9/20/17; Found in Interrogatory Answers 9 and 11 for both Healy Ranch, Inc. and Bret Healy).

In a statute of limitations situation, once the defendant shows that the case has been brought outside of the statute, the burden shifts to the plaintiff to show that there are material questions of fact for a jury to decide. *Strassburg* at 513. The Defendants have clearly shown that this action has been brought outside of statute of limitations. The Plaintiff did not establish that there are material questions of fact for a jury to decide. As to the relevant undisputed material facts listed earlier, Plaintiff attempts to argue their importance, but does not properly dispute whether these things took place. Plaintiff attempts to argue and interpret the meaning of those facts, but never properly disputes them. In particular, when addressing whether or not he executed the documents described above, the Plaintiff does not deny that he signed them. Rather,



the Plaintiff argues whether or not he was President of the Corporation when he signed the documents and raises irregularities with how the Corporation's business was conducted.

**B. Plaintiff's claims as to Defendant Fox are barred by a three-year statute of limitations**

Defendant Fox is an attorney which was undisputed by all the parties. Fox represented the named business entities in 1995. (Bret's Aff. 1-296). Fox represented various members of the Healy family in 1995, including Bret. (Bret's Aff. 1-296). In addition to the previous six-year statute of limitations that applies to this case, any legal malpractice claim against Fox would be governed by the three-year statute of limitations as found in SDCL § 15-2-14.2. Plaintiff's current counsel represented Bret and Healy Ranch, Inc. in 2013. It was clear from the record presented that Defendant Fox's professional relationship with the Plaintiff ended more than three years prior to the commencement of this action. Therefore, any claims by the Plaintiff against the Defendant Fox are time barred.

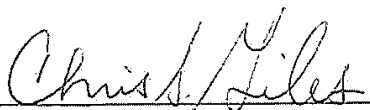
**CONCLUSION**

There are no disputed material facts which would toll the six-year statute of limitations, thus, the Plaintiff's claims are time barred. Furthermore, a three-year statute of limitations would apply to any claims against Defendant Fox and therefore the claims against him are barred as well. The Defendants' Motions for Summary Judgment are granted. ORDERS consistent with this DECISION shall be prepared by the prevailing parties and submitted to the Court.

Dated this 10<sup>th</sup> day of October, 2017.

BY THE COURT:



  
Hon. Chris S. Giles  
Circuit Judge

ATTEST: \_\_\_\_\_  
CHARLENE MILLER, Clerk

By: \_\_\_\_\_  
(Deputy)



1     STATE OF SOUTH DAKOTA     )                             IN CIRCUIT COURT  
2                                     :SS  
3     COUNTY OF BRULE             )                             FIRST JUDICIAL CIRCUIT  
4     \* \* \* \* \*  
5     Bret Healy,                     \*                     07CIV17-23  
6                                     \*  
7                                     \*                     MOTION HEARING  
8                                     \*                     October 27, 2017  
9                                     \*                     Transcript of  
10                                    \*                    Court's Ruling  
11                                    \*  
12                                    \*                    Defendants.  
13     \* \* \* \* \*  
14     BEFORE:                     The Honorable Chris S. Giles  
15                                     Judge of the Circuit Court for the  
16                                     First Judicial Circuit  
17                                     Salem, South Dakota  
18     APPEARANCES:               Mr. Steven D. Sandven  
19                                     Steven D. Sandven Law Office PC  
20                                     Beresford, South Dakota  
21                                     Attorney for the Plaintiff.  
22                                     Mr. Jack H. Hieb  
23                                     Richardson, Wyly, Wise, Sauck & Hieb  
24                                     Aberdeen, South Dakota  
25                                     Attorney for Defendants Mary Ann Osborne  
                                   and Healy Ranch Partnership.  
                                   Mr. Lee Schoenbeck  
                                   Schoenbeck Law, PC  
                                   Watertown, South Dakota  
                                   Attorney for Defendants Bryce Healy,  
                                   Barry Healy and Healy Ranch, Inc.  
                                   Ms. Kara Semmler  
                                   May, Adam, Gerdes & Thompson LLP  
                                   Pierre, South Dakota  
                                   Attorney for Defendant Albert Steven Fox.

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1 PROCEEDINGS: The above-entitled matter came on for  
2 hearing on the 27th day of October, 2017,  
3 commencing at the approximate hour of  
4 10:40 a.m. in the Courtroom of the Brule  
County Courthouse, Chamberlain,  
South Dakota.

5 \* \* \* \* \*

6 (The following is a partial transcript in the  
7 above-entitled matter consisting of the Court's Ruling.)  
8 THE COURT: In this matter, SDCL 15-17-51 sets forth the  
9 standard dealing with whether attorney's fees should be  
10 awarded and whether the Court determines that they were  
11 frivolous or brought for malicious purposes.

12 In this matter the Court is going to grant the  
13 motion for attorney's fees from all three defendants, in  
14 part, for the reasons argued today, but also for the  
15 reasons the Court is going to outline in further detail  
16 here.

17 The Court's summary judgment decision was based on  
18 the constructive notice issue. As the parties may  
19 recall, the Court had some concern with real estate  
20 title and raised questions of the parties concerning the  
21 transactions involved and how title had been held and  
22 how we got to where we were procedurally. The Court  
23 believes those concerns are applicable and relevant to a  
24 decision in determining frivolousness and maliciousness  
25 in connection with this.

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1           The standard as far as frivolousness, the Court is  
2 looking at the *Citibank v. Hauff*, H-A-U-F-F, that's 668  
3 N.W.2d 528, at Page 537. That's a South Dakota 2003  
4 case. The cite from that is: "A frivolous action  
5 exists when the proponent can present no rational  
6 argument based on the evidence or law in support of the  
7 claim. To fall to the level of frivolousness there must  
8 be such a deficiency in fact or law that no reasonable  
9 person could expect a favorable judicial ruling.  
10 Frivolousness connotes an improper motive or a legal  
11 position so wholly without merit as to be ridiculous."

12           This Court believes that there was deficiency in  
13 fact that no reasonable person could expect a favorable  
14 ruling and the legal position is so wholly without merit  
15 that it's ridiculous, and I will address that in several  
16 aspects.

17           First, as far as the real estate and the title to  
18 this Healy Ranch land, Mr. Healy, your 1986 Healy  
19 Partnership never properly held title to any of the  
20 Healy Ranch land. You entered into a partnership  
21 agreement with your mother and your grandmother, but  
22 title to that Healy Ranch Partnership was never put in  
23 place. There was never a legal document transferring  
24 title to your 1986 Healy Ranch Partnership. The only  
25 Healy Ranch Partnership that held title to land was the

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1 partnership between your parents and your grandmother.

2 There was a 1972 partnership agreement that was  
3 not signed. Now, even though that was not signed, the  
4 1972 deed specifically transferred property into that  
5 Healy Ranch Partnership, and in that deed it  
6 specifically lists the partners in that partnership were  
7 your parents and your grandmother. And you pointed out  
8 the deed to me during the argument when I asked how  
9 title was transferred or how it came to be pursuant to  
10 your 1986 agreement, and you pointed the Court to that  
11 deed from 1972. That is the only deed at that time or  
12 during the formation of your partnership that was  
13 present.

14 Now, second, you entered into a partnership  
15 agreement in 1986. It appears to be a valid agreement  
16 between your grandmother and you. Yet, you didn't take  
17 any action to assert your interest in that partnership  
18 for 30 years. Statute of limitations on contract  
19 actions is six years. Any rights you had to enforce the  
20 1986 partnership agreement against your mother and your  
21 grandmother would have expired in 1992 or 1993, a couple  
22 of years before the Healy Ranch corporation was ever  
23 formed.

24 When the corporation was formed and the land was  
25 transferred into it in 1995, the record titleholders to

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1 the real estate were your mother and your grandmother.  
2 Your 1986 partnership did not have any title to any real  
3 estate. At that point they had the ability to transfer  
4 all 1700 acres, because it was held in one name or the  
5 other by your mother and grandmother, and they could  
6 transfer it into the Healy Ranch corporation. Yes,  
7 there's a 1989 deed. It was not properly recorded and  
8 title did not properly transfer to you pursuant to those  
9 deeds.

10 The third part that the Court -- why the Court  
11 feels this action is frivolous is that for over 20 years  
12 the Healy Ranch corporation controlled and managed this  
13 property. During this time that the Healy Ranch  
14 corporation was in existence, you were a part of that  
15 corporation. You had acquired a one-third interest in  
16 that corporation. You were a corporate officer. You  
17 were president, and for a large part of the time were  
18 the primary one doing the corporate business. You  
19 signed documents on behalf of the corporation; many of  
20 which were cited in the Court's decision granting the  
21 summary judgment.

22 For those reasons, the Court feels this was very  
23 frivolous.

24 Now, as far as the malice part goes, the Court is  
25 looking at *Stratmeyer, S-T-R-A-T-M-E-Y-E-R, v. Engberg,*

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1       649 N.W.2d 926. That's a South Dakota 2002 case. "An  
2       action is malicious if it is begun in malice, and  
3       without probable cause to believe it can succeed, and  
4       which finally ends in failure."

5               Malice is further defined later in that same case,  
6       and the part that the Court takes note of is "... where  
7       his sole purpose was to deprive the defendant of a  
8       beneficial use of his property or to force a settlement  
9       having no relation to the merits of the claim."

10              In this matter, Mr. Healy, it's clear that you  
11       brought this action with the intent of trying to prevent  
12       the sale of the Healy Ranch land by the corporation.  
13       You admitted this in your deposition. Mr. Sandven  
14       admitted this in his responsive pleadings for the  
15       hearing today. That's improper, according to the malice  
16       standard.

17              Furthermore, your letter to Wells Fargo that you  
18       sent prior to the commencement -- two weeks prior to the  
19       commencement of the lawsuit, the Court believes shows  
20       malice on your part to cloud title to the real estate  
21       held by the corporation. And not only did you send it  
22       to the Wells Fargo Bank, you sent it to numerous other  
23       banks around the State of South Dakota in an effort to  
24       prevent the corporation from obtaining financing and to  
25       further cloud the title.

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1           Now, for those reasons the Court is awarding the  
2           attorney's fees as requested in the motions and awarding  
3           the attorney's fees, costs and disbursements in full.

4           The request from Mr. Schoenbeck concerning the  
5           Wells Fargo attorney's fees and interest is not proper.  
6           It's not properly before the Court, and I don't think  
7           it's a proper matter for this hearing today. That would  
8           be a matter subject to either a separate action or,  
9           perhaps, as a part of the counterclaims that are  
10          pending, because in relation to those matters it would  
11          appear that the corporation and the other shareholders  
12          may have a cause of action against you for your actions  
13          this spring in regard to the letter and other things you  
14          did that were against the duties you owed to the  
15          corporation.

16          So for those reasons, the attorney's fees will be  
17          granted in full. The defendants are directed to prepare  
18          orders consistent with their motions.

19          The Court will be in recess.

20          MR. SCHOENBECK: Thank you, Your Honor.

21                 (Proceedings adjourned at 10:41 a.m.)  
22  
23  
24  
25

Carol Johnson, Official Court Reporter, RPR



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C E R T I F I C A T E

STATE OF SOUTH DAKOTA    )  
                                      : ss  
COUNTY OF McCOOK         )

THIS IS TO CERTIFY that I, Carol Johnson, Official Court Reporter for the Circuit Court, First Judicial Circuit, Salem, McCook County, South Dakota, took the proceedings of the foregoing case, and the foregoing pages 1 - 7 inclusive, are a true and correct transcript of my stenotype notes.

Dated at Salem, South Dakota, this 2nd day of November, 2017.

/s/Carol Johnson  
\_\_\_\_\_  
Carol Johnson, Official Court Reporter, RPR

Carol Johnson, Official Court Reporter, RPR



STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
: SS.	
COUNTY OF BRULE)	FIRST JUDICIAL CIRCUIT
* * * * *	
BRET HEALY,	07 CIV 17-23
Plaintiff,	
-vs-	
MARY ANN OSBORNE, BRYCE	<b>FINDINGS OF FACT AND CONCLUSIONS</b>
HEALY, BARRY HEALY, HEALY	<b>OF LAW REGARDING DEFENDANTS'</b>
RANCH PARTNERSHIP, HEALY	<b>MOTIONS FOR ATTORNEYS' FEES</b>
RANCH, INC. and ALBERT STEVEN	<b>UNDER SDCL 15-17-51</b>
FOX,	
Defendants.	
* * * * *	

Following the entry of the Court's Memorandum Decision and Order on Defendants' Motions for Summary Judgment, motions for attorneys' fees under SDCL 15-17-51 were filed by: Defendants Bryce Healy, Barry Healy, and Healy Ranch, Inc.; Defendant Mary Ann Osborne; and Defendant Albert Steven Fox. Those motions came on for hearing before the Court, the Honorable Chris S. Giles presiding, on October 27, 2017. The Plaintiff appeared personally with his attorney, Steven Sandven. Defendants Bryce Healy, Barry Healy, and Healy Ranch, Inc., appeared through their attorney, Lee Schoenbeck. Defendants Mary Anne Osborne and Healy Ranch Partnership appeared through their attorney, Jack Hieb. Defendant Albert Steven Fox appeared personally and with his attorney, Kara Semmler.

The Court having reviewed the evidence, which has been made a part of the record, having considered the arguments of counsel, and having announced its decision and the grounds supporting it on the record at the October 27, 2017 hearing, the Court now makes and enters the following:



FINDINGS OF FACT

1. In this case, Plaintiff has maintained that until April 2017, he always believed that he owned 25% of a partnership that owned all of the land plus 33% of Healy Ranch, Inc., which owned the other 75% of the partnership.

2. In this case, Plaintiff has maintained that until April 2017, he did not know that any of the Healy Ranch was owned by the Corporation.

3. The land in dispute in this action is approximately 1,700 acres and is legally described as follows:

The Northwest Quarter, the Northeast Quarter, and the Southeast Quarter of Section Twenty - Nine;

Lots One, Two, Three, Four and Five and the South Half of the Northeast Quarter, the North Half of the Southeast Quarter, the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter of Section Seventeen except a parcel of land located in the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Seventeen as recorded in Warranty Deed recorded by microfilm No. 93-291.

The East Half of Section Twenty except Lots Three and Four;

Lots Three, Four and Five and the Northwest Quarter except Lot RH1 and except Lot RH-2 in Section Twenty-Three;

Lots One, Two, Three; and the East half of the Northeast Quarter; the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section Twenty-Two;



All of that part of the Northwest Quarter lying North of the right-of-way of the Chicago, Milwaukee, and St. Paul Railroad in Section Twenty-Six;

All located in Township One Hundred Four North, Range Seventy, West of the Fifth P.M., Brule County, South Dakota.

("Healy Ranch")

4. The only Healy Ranch Partnership that ever held title to Healy Ranch was the partnership between Plaintiff's parents, Robert E. Healy and Mary Ann Healy (Osborne), and grandmother, DeLonde Healy.

5. On January 26, 1986, Plaintiff entered into a partnership agreement with his mother, Mary Anne Healy (Osborne), and grandmother, DeLonde Healy, in order to create a new Healy Ranch Partnership ("1986 Healy Ranch Partnership").

6. There was never a legal document transferring title to Healy Ranch to that 1986 Healy Ranch Partnership. The 1986 Healy Ranch Partnership never properly held title to any of Healy Ranch.

7. Although Plaintiff entered into a partnership agreement in 1986, he did not take any action to assert his interest in that partnership for 30 years.

8. On January 31, 1989, DeLonde Healy deeded her remaining interest in the land to Plaintiff, but the 1989 deed from DeLonde Healy to Plaintiff was never recorded.

9. On March 12, 1995, Mary Ann Osborne and DeLonde Healy executed a deed transferring their interest in the partnership property to Healy Ranch, Inc.



10. When Healy Ranch, Inc., was formed and Healy Ranch was transferred into it in 1995, the record titleholders to Healy Ranch were Mary Ann Healy (Osborne) and DeLonde Healy.

11. For over 20 years, Healy Ranch, Inc., has controlled and managed Healy Ranch.

12. During this 20-year time frame that Healy Ranch, Inc., has been in existence, Plaintiff has been a part of the corporation.

13. Plaintiff was a corporate officer in Healy Ranch, Inc. In fact, he was president, and for a significant period of time was the primary individual doing the corporate business.

14. In February 2000, Plaintiff purchased a one-third interest in Healy Ranch, Inc.

15. During Plaintiff's deposition, he was shown a financial statement he filled out for a bank in 2001. Plaintiff confirmed that he filled out the statement and signed it.

16. The second page of the 2001 statement shows Plaintiff's own valuation of the real estate he claimed he owned at that time. In his own handwriting, Plaintiff admitted he only owned 1/3 of Healy Ranch, which is comprised of 1,700 acres.

17. Plaintiff signed numerous documents on behalf of Healy Ranch, Inc., all of which make his claim that he did not know that Healy Ranch, Inc., owned Healy Ranch until April 2017 utterly frivolous.



18. In 1999, on behalf of Healy Ranch, Inc., Plaintiff signed a Mortgage and Assignment of Rents to Marquette Bank.

19. Plaintiff signed mortgages in 2002 and 2003 to Dakota State Bank on behalf of Healy Ranch, Inc.

20. In 2005, as president of Healy Ranch, Inc., Plaintiff signed a Mortgage to Wells Fargo.

21. Plaintiff purchased real estate from Healy Ranch, Inc., on which to build his home in 2007.

22. Plaintiff maintained that Steve Fox handled that transaction and Plaintiff trusted him to handle it correctly. However, in that 2007 real estate transaction, Plaintiff signed the Warranty Deed as President of Healy Ranch, Inc., conveying to himself the very real estate that he claimed that he didn't know (for another 10 years) that Healy Ranch, Inc., owned.

23. Plaintiff obtained an easement from Healy Ranch, Inc., in 2007, and that September 5, 2007, easement identifies Healy Ranch, Inc., as the party granting the encumbrance. Plaintiff knew he was getting an easement from Healy Ranch, Inc.

24. In 2008, as president of Healy Ranch, Inc., Plaintiff signed a Mortgage to Farm Credit Services, mortgaging all of the Real Estate.

25. In 2008, as president of Healy Ranch, Inc., Plaintiff signed a Mortgage to Wells Fargo Bank, mortgaging all of Healy Ranch.



26. In 2013, Plaintiff retained his current counsel, Steven Sandven, to represent him personally and to represent Healy Ranch Inc., in a matter which involved damage to Healy Ranch, which is captioned Bret Healy and Healy Ranch, Inc. v. Larry Eugene Mines, 07CIV 13-66 ("Mines Lawsuit").

27. In the Mines Lawsuit, the discovery responses on behalf of Bret Healy, individually, and Healy Ranch, Inc., and signed by Attorney Sandven, indicated that the fencing, which was destroyed, and the land, Healy Ranch, where the damages took place, were both owned by Healy Ranch, Inc.

28. From the Mines Lawsuit, it is clear that Bret Healy and his attorney Steve Sanden knew that the current lawsuit claiming that Healy Ranch, Inc., did not own Healy Ranch was frivolous from its inception.

29. In March of 2017, Bret Healy agreed to the sale of the Healy Ranch land by the owner, identified on the sale bill, as Healy Ranch, Inc.

30. In an Agreement Bret Healy signed with Healy Ranch, Inc., on March 2, 2017, he recognized Healy Ranch, Inc., as the owner of Healy Ranch, and identified certain improvements to the property for which he needed to be reimbursed by the corporation.

31. It is clear to the Court that Plaintiff brought this action with the intent of trying to prevent the sale of Healy Ranch by Healy Ranch, Inc. Plaintiff admitted this in his deposition, and Mr. Sandven admitted this in his responsive pleadings regarding the motions seeking attorneys' fees.



32. Contemporaneously with filing a lawsuit, Plaintiff wrote the Healy Ranch, Inc., lender, Wells Fargo, and alleged that Healy Ranch, Inc., did not have good title to Healy Ranch, intentionally putting Healy Ranch, Inc., into default on its outstanding note and mortgage.

33. Plaintiff's letter to Wells Fargo and numerous other banks, which were sent two weeks prior to the commencement of the lawsuit, shows a malicious intent on the part of Plaintiff and his attorney, Steve Sandven, to cloud title to Healy Ranch. The letters were sent with an intent to interfere with the financing for a sale of Healy Ranch, Inc..

34. Even though Bret Healy's lawsuit does not seek recovery of real property, he and attorney Steve Sandven improperly filed a Notice of Lis Pendens, to cloud title to Healy Ranch for Healy Ranch, Inc., even though Bret Healy and attorney Steven Sandven knew they were only seeking money damages.

35. Contemporaneously with filing his lawsuit, Bret Healy published an ad in the Farm Forum, commonly known as the "Green Sheets," and an additional farm-oriented paper, advertising his claim that Healy Ranch, Inc., didn't have good title to Healy Ranch.

36. In the five short months of this litigation, Bret Healy and attorney Steve Sandven sent discovery requests that totaled 2,304, in 31 different sets, to 6 different Defendants.



37. The Court has reviewed the affidavits filed by Attorneys Lee Schoenbeck, Jack Hieb, and Kara Semmler, as well as the itemized billing statements provided at the hearing on October 27, 2017.

38. Healy Ranch, Inc., Bryce Healy, and Barry Healy incurred attorney's fees, sales tax, and costs of \$38,283.88 in defending this litigation, not including costs associated with preparing the Motion for Attorney's Fees or attending the hearing regarding the same.

39. Mary Ann Osborne incurred attorney's fees, sales tax, and costs of \$32,606.54 in defending this litigation, not including costs associated with preparing the Motion for Attorney's Fees or attending the hearing regarding the same.

40. Albert Steven Fox incurred attorney's fees, sales tax and costs of \$12,405 in defending this litigation, not including costs associated with preparing the Motion for Attorney's Fees or attending the hearing regarding the same.

41. Any other oral pronouncements by the Court at the hearing on October 27, 2017, are incorporated herein by this reference.

**CONCLUSIONS OF LAW**

1. Any of the foregoing Findings of Fact that contain Conclusions of Law or are a mixture of fact and law are by this reference incorporated herein.

2. This Court has jurisdiction of the subject matter and of the parties.



3. Defendants' claims for attorneys' fees are brought pursuant to SDCL 15-17-51 which states:

If a civil action, including an action for appeal of a zoning decision, or special proceeding is dismissed or requested relief is denied and if the court determines that it was frivolous or brought for malicious purposes, the court shall order the party whose claim, cause of action, or defense was dismissed or denied to pay part or all expenses incurred by the party defending the matter, including reasonable attorneys' fees.

4. Frivolous or malicious are terms used in the alternative and the statute is interpreted that way. Johnson v. Miller, 818 N.W.2d 804, 807 (S.D. 2012) ("[t]he terms 'frivolous' and 'malicious' are stated in the alternative. To recover attorney's fees, the applicant must prove at least one of these conditions.") In this instance, the Court finds that Defendants have proven both conditions exist and Plaintiff should be ordered to pay the reasonable expenses incurred by the Defendants, including reasonable attorneys' fees.

5. "'A frivolous action exists when 'the proponent can present no rational argument based on the evidence or law in support of the claim'. . . . To fall to the level of frivolousness there must be such a deficiency in fact or law that no reasonable person could expect a favorable judicial ruling. . . . Frivolousness 'connotes an improper motive or [a] legal position so wholly without merit as to be ridiculous.'" Citibank (S.D.), N.A. v. Hauff, 2003 S.D. 99, ¶ 31, 668 N.W.2d 528, 537 (quoting Ridley v. Lawrence County Comm'n, 2000 S.D. 143, ¶ 14, 619 N.W.2d 254, 259 (further citations omitted)).



6. As more particularly set forth in the Court's Memorandum Decision and Order on Defendants' Motions for Summary Judgment, incorporated by this reference, Plaintiff's claims in this lawsuit were clearly barred by the applicable statute of limitations and, accordingly, were dismissed.

7. The Court finds there was deficiency in fact such that neither Plaintiff nor Attorney Sandven could expect a favorable ruling. Plaintiff's legal position is so wholly without merit that it is ridiculous.

8. An action is malicious if it "is begun in malice, and without probable cause to believe it can succeed, and which finally ends in failure.'" Stratmeyer v. Engberg, 2002 S.D. 91, ¶ 20, 649 N.W.2d 921, 926 (quoting Michlitsch v. Meyer, 1999 S.D. 69, ¶ 19, 594 N.W.2d 731, 735 (further citations omitted)).

9. Additionally, malice exists when the proceedings are instituted primarily for an improper purpose. Id. at ¶ 20, 649 N.W.2d at 926. "An improper purpose occurs in situations where 'the plaintiff in the original action was actuated by any unjustifiable motive, as where he did not believe his claim would be held valid, or where his primary motive was hostility or ill will, or where his sole purpose was to deprive the defendant of a beneficial use of his property or to force a settlement having no relation to the merits of the claim.'" Id. (quoting Manuel v. Wilka, 2000 S.D. 61, ¶ 39, 610 N.W.2d 458, 465 (internal citations omitted)).

10. Plaintiff pursued this action with an improper purpose, namely, preventing Healy Ranch, Inc., from selling Healy Ranch.



11. Plaintiff also improperly pursued this action in order to cloud the title to Healy Ranch.

12. Although the Court determines that attorneys' fees should be awarded to Defendants, it declines to award the balance of the expenses sought by Defendants Healy Ranch, Inc., Bryce Healy, and Barry Healy in their Supplement to Motion for Attorney's Fees Pursuant to SDCL 15-17-51, filed on October 16, 2017; these items should be pursued in a separate action, and not under this statute.

13. The factors for consideration in determining reasonable attorney fees in a civil case include: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. In re S.D. Microsoft Antitrust Litig., 2005 S.D. 113, ¶ 29, 707 N.W.2d 85, 98-99. The fee should not be determined by any single factor, but rather all of the factors should be taken into consideration in determining a reasonable fee. Id.



14. The documentation provided to the Court by defense counsels shows that counsels expended a reasonable number of hours defending the litigation, and that they moved expeditiously to successfully seek dispositive relief. They charged hourly rates that are customarily charged in this area. Given the extensive written discovery undertaken by Plaintiff and the complexity of the legal issues raised herein, the Court finds that the recorded time was necessarily expended and makes no adjustments to the amounts sought.

15. A Judgment consistent with these findings and conclusions shall be entered.

Attest:  
Miller, Charlene  
Clerk/Deputy



BY THE COURT  
Signed: 11/27/2017 8:33:59 AM

*Chris S. Giles*

Circuit Court Judge



#28491-a-JMK  
2019 S.D. 56

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

BRET HEALY,

Plaintiff and Appellant,

v.

MARY ANN OSBORNE, BRYCE HEALY,  
BARRY HEALY, HEALY RANCH  
PARTNERSHIP, HEALY RANCH, INC.,  
and ALBERT STEVEN FOX,

Defendants and Appellees.

\* \* \* \*

APPEAL FROM THE CIRCUIT COURT OF  
THE FIRST JUDICIAL CIRCUIT  
BRULE COUNTY, SOUTH DAKOTA

\* \* \* \*

THE HONORABLE CHRIS S. GILES

Judge

\* \* \* \*

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and appellant.

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Ranch, Inc., Barry Healy and  
Bryce Healy.

\* \* \* \*

CONSIDERED ON BRIEFS  
ON NOVEMBER 12, 2018  
OPINION FILED 09/25/19



KARA C. SEMMLER of  
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and Thompson, LLP  
Pierre, South Dakota

Attorneys for appellee  
Albert Steven Fox.



#28491

KERN, Justice

[¶1.] Bret Healy sued his mother, brothers, former attorney, and two business entities for monetary relief, claiming he was financially damaged by their fraud and conspiracy and deprived of control over the family ranch. The court granted summary judgment to the defendants, dismissing Bret's lawsuit based on the statute of limitations. It awarded attorney fees to the defendants. We affirm.

### **Facts and Procedural History**

[¶2.] This appeal arises out of a bitter family dispute over ownership and control of the Healy family's ranch (Healy Ranch). Bret is the oldest son of Mary Osborne (Mary) and the late Robert Healy. He sued his mother along with his two younger brothers, Bryce and Barry. He also sued the Healy family's attorney, Steven Fox (Fox), and two business entities, Healy Ranch Partnership and Healy Ranch, Inc. (collectively, the defendants). Bret asserted a variety of tort and contract claims and sought compensatory damages. According to Bret, he owns at least 50% of Healy Ranch pursuant to his interests in the two entities involved in the suit.

[¶3.] The Healy family has owned or occupied Healy Ranch since 1887. Bret's grandfather, Emmett Healy, farmed the land with his wife, DeLonde, until his death in 1969. Prior to his death, Emmett created a partnership in which he equally divided ownership of Healy Ranch between himself and Robert, Bret's father. When Emmett passed away, his wife, DeLonde, inherited his half of the Healy Ranch partnership, and Robert retained his 50% interest.



#28491

[¶4.] Three years after Emmett's death, Robert and DeLonde created another partnership (the 1972 partnership) in which Robert agreed to share his one-half interest with his wife, Mary, jointly. DeLonde owned the remaining half. While the parties never signed the partnership agreement, they executed and recorded a deed transferring Healy Ranch into the partnership. The agreement between Mary, Robert, and DeLonde continued until Robert died in a tractor accident on November 11, 1985, leaving Mary as the sole owner of Robert's 50% share.

[¶5.] Not long after Robert's unexpected death, the Healy family met to discuss the future of Healy Ranch. They decided to pass some responsibility onto Robert's oldest son, Bret. Consequently, on January 25, 1986, DeLonde, Bret, and Mary executed an agreement to create a third Healy Ranch partnership (the 1986 partnership). This agreement granted Bret 25% and Mary 75% ownership interest in Healy Ranch. DeLonde relinquished all control over the ranch in exchange for various benefits and a right of first refusal to purchase a portion of the ranch if it was offered for sale. The parties signed a general warranty deed to effectuate the agreement in 1989. In that deed, DeLonde transferred her entire interest in the land to Bret. Originally, DeLonde held a 50% interest in the 1972 Healy Ranch partnership. However, pursuant to the terms of the 1986 partnership agreement, Bret received her entire interest, which was listed as only 25%. Mary received 75%. This instrument was never recorded.

[¶6.] Approximately nine years later, on March 12, 1995, Mary and DeLonde executed another warranty deed purporting to transfer Healy Ranch from



#28491

the terminated 1972 partnership to Healy Ranch, Inc., a corporation exclusively owned by Mary.<sup>1</sup> Fox prepared the 1995 deed and on March 13, 1995, it was filed with the Register of Deeds in Brule County. Fox represented the corporation from 1995 until 2013 when his license to practice law was temporarily suspended.

[¶7.] Bret served as president of Healy Ranch, Inc. for approximately seventeen years, beginning in 1999. In 2000, Bret, Bryce, and Barry each purchased a one-third interest in Healy Ranch, Inc. from Mary pursuant to a contract for deed. In addition, the brothers participated in managing the corporation as directors. Bret also engaged in several transactions and activities involving the corporation. As president of Healy Ranch, Inc., he signed mortgages on behalf of the corporation in 1999, 2002, 2003, 2005, twice in 2008, and in 2014. Each of the mortgages represent that Healy Ranch, Inc. is the sole owner of the property. In 2007, he also purchased land from the corporation on which he built his house without indicating the partnership owned any portion of the property. Fox advised Bret throughout this transaction.

[¶8.] In 2013, Bret hired a different attorney and commenced a lawsuit on behalf of Healy Ranch, Inc. against another party to recover for damage to fences located on the ranch. Bret did not name the partnership as a party. In his

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1. Bret also alleged that Mary, with the assistance of Fox, fraudulently transferred two lots—RH-1 and RH-2—out of the partnership property in 1988 and 1992. He alleged that the 1986 partnership owned both RH-1 and RH-2, and that Mary signed two warranty deeds in her individual capacity and as executrix of the Robert E. Healy Estate to unlawfully transfer the lots to other individuals.



#28491

discovery responses in that lawsuit, Bret alleged that the land and the fences involved belonged to Healy Ranch, Inc.

[¶9.] In 2016, Bret, Bryce, and Barry discussed the possibility of selling Healy Ranch. At a special meeting held on October 27, 2016, Barry moved to sell all the real property owned by the corporation if a gross sale price of \$5 million was achieved. Pursuant to his motion, the property would not be sold for at least seven years if a buyer did not match their price. Bryce and Barry voted in favor of the conditions. Although Bret voted against the sale and the conditions thereto, in March 2017, he agreed to the sale of Healy Ranch. A bill of sale, which was introduced into evidence, referred to the owner of the land as Healy Ranch, Inc. Additionally, on March 2, 2017, Bret recognized Healy Ranch, Inc. as the owner of the property by signing an agreement requesting reimbursement from the corporation for improvements made to the property.

[¶10.] On April 3, 2017, Bret met with an attorney to advise him regarding his interests in Healy Ranch. Bret claimed that during this meeting, he learned for the first time of the deed recorded in March 1995 transferring Healy Ranch to Mary's corporation. Bret alleged that upon further investigation, he discovered Fox, Mary, and Bryce had created "false corporate resolutions, false title information, and sixteen forgeries of [his] signature on corporate minutes." He asserted Fox was responsible for forging his signature on corporate minutes from 2000 to 2008.

[¶11.] Bret filed the present action on May 11, 2017, charging all of the defendants with conversion, fraud, and conspiracy to commit fraud. In addition, he sued Mary for breach of contract, breach of the implied covenant of good faith and



#28491

fair dealing, breach of fiduciary duties, and negligence. He also alleged Mary, Bryce, Barry, Healy Ranch, Inc., and the Healy Ranch partnership were unjustly enriched and requested that the court pierce the corporate veil of Healy Ranch, Inc. In his complaint, he requested punitive and compensatory damages.

[¶12.] Contemporaneous with this filing, Bret took out several ads in farm-related journals publicizing his claim that Healy Ranch, Inc. lacked clear title to Healy Ranch. Two weeks prior to initiating the present action, Bret sent letters to Wells Fargo, First National Bank, Brule County Abstract, and the Brule County Register of Deeds, alleging that the corporation did not have good title to Healy Ranch. This placed the corporation in default on its outstanding note and mortgage with Wells Fargo. Even though Bret sought only money damages in his lawsuit and not the recovery of real property, he filed a notice of lis pendens to cloud the title of Healy Ranch.

[¶13.] At a special meeting on May 19, 2017, Bryce and Barry voted to remove Bret as president of the corporation. Bret attended, casting the sole vote against his removal. The brothers also voted to rescind the conditions for sale of Healy Ranch that they had agreed upon on October 27, 2016.

[¶14.] On September 1, 2017, Healy Ranch, Inc., Bryce, and Barry moved for summary judgment based upon the statute of limitations. Fox joined this motion. Mary and the Healy Ranch Partnership also moved for summary judgment on September 6, 2017, alleging Bret's claims were time barred and that he failed to make a sufficient showing to establish damages caused by Mary or Healy Ranch Partnership.



#28491

[¶15.] The circuit court issued a memorandum decision on October 13, 2017, granting the defendants' motions for summary judgment on all claims, holding the six-year statute of limitations in SDCL 15-2-13 and the three-year statute of limitations governing malpractice claims against attorneys in SDCL 15-2-14.2 had expired. In reaching this conclusion, the court determined that starting in 1999, Bret "executed a series of documents and participated in a number of transactions on behalf of Healy Ranch, Inc., that should have given [Bret] actual knowledge that Healy Ranch, Inc. was claiming an interest in the real estate at issue in this action." The court further held that even if Bret did not have actual knowledge, he had at least constructive notice that Healy Ranch, Inc. was claiming an interest in the land sufficient to put a "prudent man on notice to make an inquiry into this situation[.]" an inquiry Bret failed to make.

[¶16.] Following the circuit court's decision, the defendants moved for attorney fees pursuant to SDCL 15-17-51. The circuit court granted their respective motions, awarding attorney fees, sales tax and costs in the total amount of \$83,295.42 (Mary \$32,606.54; Bryce, Barry, and Healy Ranch, Inc. \$38,283.88; and Fox \$12,405). The circuit court entered detailed findings of fact and conclusions of law setting forth its reasons for concluding that Bret's lawsuit was frivolous and malicious. In one such finding, the court determined that the letters Bret and his attorney sent to the banks indicating Healy Ranch, Inc. did not have good title to the property established Bret's malicious "intent to interfere with the financing for a sale of Healy Ranch, Inc." In another finding, the court characterized Bret's action as "utterly frivolous."



#28491

[¶17.] Bret appeals, raising numerous issues for our review, which we restate and consolidate as follows:

1. Whether the circuit court erred by granting summary judgment in favor of the defendants on all claims.
2. Whether the circuit court utilized the proper procedure when granting the defendants' motions for summary judgment.
3. Whether the circuit court erred by awarding attorney fees to defendants.

#### **Standard of Review**

[¶18.] In assessing summary judgment on appeal, “we must determine whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law . . . .” *Strassburg v. Citizens State Bank*, 1998 S.D. 72, ¶ 5, 581 N.W.2d 510, 513. “The evidence must be viewed most favorably to the nonmoving party and reasonable doubts should be resolved against the moving party.” *Id.* However, “[t]he nonmoving party must present specific facts which demonstrate a genuine, material issue for trial.” *Specialty Mills, Inc. v. Citizens State Bank*, 1997 S.D. 7, ¶ 27, 558 N.W.2d 617, 625.

[¶19.] “In response to a summary judgment motion where the defendant asserts the statute of limitations as a bar to the action and presumptively establishes the defense by showing the case was brought beyond the statutory period, the burden then shifts to the plaintiff to establish the existence of material facts in avoidance of the statute of limitations, e.g., fraud or fraudulent concealment.” *Strassburg*, 1998 S.D. 72, ¶ 5, 581 N.W.2d at 513.



#28491

### Analysis and Decision

[¶20.] Before we address whether summary judgment was properly granted, we briefly examine Bret's claim that the circuit court was first required to resolve his ownership claim to Healy Ranch. According to Bret, he retains an interest in Healy Ranch through his ownership interest in the 1986 partnership irrespective of any attempt by Mary to fraudulently transfer Healy Ranch into her corporation by executing the 1995 deed. To support this argument, Bret relies on *Estate of Henderson v. Estate of Henderson*, 2012 S.D. 80, 823 N.W.2d 363.<sup>2</sup>

[¶21.] We decline to address Bret's claim of ownership because the threshold issue in this case centers on the timeliness of Bret's claims for conversion, breach of contract, fraud, conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence. Each of these causes of action are subject to the six-year statute of limitations under SDCL 15-2-13. Therefore, even if Bret retained an

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2. In *Henderson*, Walter Henderson brought a quiet title action requesting that the court determine ownership of his property interest in mineral rights. He obtained the mineral rights through a valid agreement that he recorded which was then reflected on the property's chain of title. Walter presented evidence to the circuit court that he consistently asserted his rights over the minerals by negotiating oil and gas leases. He also received bonus payments following execution of those leases. *Id.* ¶ 18, 823 N.W.2d at 369. We concluded that the circuit court did not err when it determined Walter's ownership interest. We further concluded that the statute of limitations did not bar Walter's quiet title action.

*Henderson* is both legally and factually distinguishable. Bret did not bring a quiet title action challenging ownership to Healy Ranch. Additionally, contrary to the situation in *Henderson* where the owner filed documents reflecting his 30% mineral interest and regularly asserted his ownership, Bret consistently represented that Healy Ranch, Inc. owned the land.

-8-



#28491

ownership interest in Healy Ranch through the 1986 partnership, he must nonetheless timely commence suit within the applicable statute of limitations.

**I. Whether the circuit court erred by granting summary judgment in favor of defendants on all claims.**

[¶22.] All of Bret's tort and contract claims are governed by the six-year statute of limitations in SDCL 15-2-13. With respect to his claims against Fox, Bret argues the circuit court erred by applying the shorter attorney malpractice statutory period in SDCL 15-2-14.2 to his fraud and conversion claims because these claims properly fall within the provisions of SDCL 15-2-13 and its six-year statute of limitations. Bret's assertion of error on this basis is perplexing because the circuit court dismissed Bret's claims against Fox as untimely under *both* SDCL 15-2-13 and SDCL 15-2-14.2.<sup>3</sup>

[¶23.] Because the circuit court dismissed all claims as time barred under SDCL 15-2-13, we must examine whether Mary, Bryce, Barry, Healy Ranch, Inc., Healy Ranch partnership, and Fox (defendants) have "presumptively establishe[d] the [statute of limitations] defense by showing the case was instituted beyond the statutory period[.]" *Kurylas, Inc. v. Bradsky*, 452 N.W.2d 111, 117 (S.D. 1990). It is undisputed that Bret commenced suit against these defendants in May 2017. It is further undisputed that May 2017 is more than twenty-two years from the date Mary and DeLonde executed the 1995 warranty deed conveying the ranch property

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3. SDCL 15-2-14.2 provides: "An action against a licensed attorney, his agent or employee, for malpractice, error, mistake, or omission, whether based upon contract or tort, can be commenced only within three years after the alleged malpractice, error, mistake, or omission shall have occurred. This section shall be prospective in application."



#28491

to Healy Ranch, Inc. Having met their presumption, Bret now carries the burden of “establish[ing] the existence of material facts in avoidance of the statute of limitations[.]” *Id.*

[¶24.] Bret claims the defendants’ fraud tolls the running of the statute of limitations.<sup>4</sup> While fraudulent concealment sometimes warrants tolling the statutory period, it “will not toll the statute of limitations, no matter the nature of the concealment, if a plaintiff is already on notice of a cause of action.” *Gades v. Meyer Modernizing Co., Inc.*, 2015 S.D. 42, ¶ 13, 865 N.W.2d 155, 160. “Actual notice consists in express information of a fact.” SDCL 17-1-2. “Constructive notice is notice imputed by the law to a person not having actual notice.” SDCL 17-1-3. “One having actual notice of circumstances sufficient to put a prudent person on inquiry about ‘a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.” *Strassburg*, 1998 S.D. 72, ¶ 10, 581 N.W.2d at 514 (quoting SDCL 17-1-4).

[¶25.] Bret admits that he authorized several mortgages on behalf of the corporation representing that Healy Ranch, Inc. was the sole owner of the property.

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4. Bret also contends that fraud eliminates the applicability of the statute of limitations to this case because even if he failed to timely file his claims, “[t]he perpetrator of the fraud cannot avoid his acts by a showing that the person upon whom the fraud was committed was negligent.” *Hauck v. Crawford*, 75 S.D. 202, 204, 62 N.W.2d 92, 93 (1953). But *Hauck* is distinguishable on two grounds. First, the defendants in *Hauck* did not raise the statute of limitations defense. Second, the case was decided on the principle of equitable estoppel. Although, on appeal, Bret asserts several new theories of equitable relief, including estoppel, reformation, and nullification of the 1995 deed, we decline to “address issues raised for the first time on appeal[.]” *Kreislers Inc. v. First Dakota Title Ltd. P’ship*, 2014 S.D. 56, ¶ 46, 852 N.W.2d 413, 425.



#28491

Yet, he claims the mortgage documents did not “excite any suspicion . . .” in him.<sup>5</sup>

Rather than focusing on Bret’s execution of the mortgages, Bret claims the circuit court should have focused on “the defendants’ fiduciary duties” towards him.<sup>6</sup>

[¶26.] Bret also acknowledges that he signed a warranty deed when he purchased land from Healy Ranch, Inc. in 2007 on which to build his house without indicating he believed he already owned a portion of the property due to his interest in the 1986 partnership. But because Fox reviewed the documents, Bret claims he was entitled to rely on Fox, as his attorney, to protect his interests. Although Bret acknowledges that Healy Ranch, Inc. was listed as the only grantor on the deed, in Bret’s view, this was insufficient to notify him that the partnership no longer held an ownership interest.

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5. Bret argues he was not “bound to search records under [SDCL 43-28-15]” because he did not encumber the property with the 1995 deed. He also maintains that the defendants should not be permitted to use “th[e] statute to shield themselves from their victims” when the deed they filed was fraudulent.
  6. Bret argues that the statute is tolled by his continuing fiduciary relationship with Mary. Bret claims Mary retained 20.89% of the corporation because she only conveyed 162,000 shares to her sons pursuant to the 2000 contract for deed rather than the entire 299,348 shares she began with. Thus, he alleges he remains in a fiduciary relationship with her because she maintains her status as one of the majority shareholders in a closely-held corporation. This argument is without merit.

No evidence exists suggesting Mary intended to retain any managerial or financial stake in the corporation. On the contrary, all parties acted as though Bret, Bryce, and Barry had exclusive control over the ranch after 2000. Mary neither voted nor held corporate offices after executing the contract. Because Mary’s fiduciary relationship with Bret terminated in 2000, any claims that Mary breached fiduciary duties are barred by the statute of limitations.



#28491

[¶27.] Based on our review of the record, Bret's allegation that a material issue of fact exists regarding whether Bret had notice that Mary executed the 1995 warranty deed is unsupported. The record establishes that Bret had either actual or constructive notice of Mary's 1995 warranty deed by, at the latest, 1999 when, as president of Healy Ranch, Inc., he signed a mortgage with Marquette Bank representing that the corporation had "good and marketable title of record" to Healy Ranch. The mortgage made no mention that the 1986 partnership owned any part of Healy Ranch. It contained only the legal descriptions for the property held by Healy Ranch, Inc.

[¶28.] Moreover, the only reasonable inference we can draw from the undisputed material facts contained in this record is that Bret was keenly aware of the preeminence of the corporation having purchased, along with his two brothers, a one-third interest in the corporation in 2000 by contract for deed. He served for many years as the corporation's president with access to corporate records. He signed seven mortgage agreements on behalf of the corporation. When he individually purchased a parcel of the ranch for his home in 2007, he bought the land from the corporation. He brought a civil action in the sole name of the corporation against a third party seeking to recover for damage to ranch fencing without naming the partnership as a plaintiff.

[¶29.] Although Bret contends his interest in the partnership remained intact, his actions did not reflect this belief. Until shortly before he initiated this action, Bret ignored the partnership following the creation of Healy Ranch, Inc. He did not record the 1986 partnership agreement or the 1989 deed. The partnership



#28491

did not file a partnership return or pay property taxes after 1995, and Bret represented that his shares of Healy Ranch, Inc. stock were his only asset on an individual financial statement in November 2001. Bret's comment to Barry in a June 2016 e-mail is also telling. In that correspondence, Bret acknowledged: "I *owned* 25% of the place – mom insisted on 1/3 to everyone – so yes I did put all my chips back in for 8% . . . ." (Emphasis added).

[¶30.] Bret has failed to present any evidence that he could not have discovered the 1995 warranty deed within the statutory period by exercising reasonable diligence. *See Gades*, 2015 S.D. 42, ¶ 9, 865 N.W.2d at 159. To the contrary, by his own admissions, Bret has established that he had actual knowledge. Thus, the circuit court did not err by rejecting Bret's argument that the statute of limitations in SDCL 15-2-13 should be tolled.<sup>7</sup>

[¶31.] We next address the timeliness of any legal malpractice claims Bret's complaint raises against Fox. Like his claims under the six-year statute of limitations provided in SDCL 15-2-13, Bret's cause of action also fails when applied to the shorter statutory period provided by SDCL 15-2-14.2. It is unnecessary to decide whether SDCL 15-2-14.2 is a statute of repose or a statute of limitations with its attendant tolling defenses because the record does not support tolling the

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7. Bret also had at least constructive notice of Mary's warranty deeds transferring RH-1 and RH-2 in 1999 when he signed the mortgage with Marquette Bank. In executing that document, Bret signed below the legal description included in "Exhibit A," which listed RH-1 and RH-2 as exceptions to the property owned by Healy Ranch, Inc. Thus, his claims with respect to Mary's sale of RH-1 to Ronald and Velma Scott and sale of RH-2 to Raymond and Evelyn Sharping have also expired.



#28491

statutory periods for Bret's causes of action under any theory. *Cf. Pitt-Hart v. Sanford USD Med. Ctr.*, 2016 S.D. 33, 878 N.W.2d 406.

[¶32.] Bret's actual or constructive notice precludes him from using fraudulent concealment to extend the statutory period. Likewise, Bret cannot use continuous representation to toll the statutory period of the legal malpractice claim because it requires an ongoing professional relationship. *See Kurylas*, 452 N.W.2d at 115. Bret did not have a continuous attorney–client relationship with Fox between 2013 and 2016 because Fox's license to practice law was suspended. Additionally, aside from providing Bret with records for this lawsuit, Fox completed no relevant work for Bret that would extend the statutory period. Bret's argument that Fox's March 2016 letter asking Bret to update the corporate minutes is evidence of a continuing relationship is unpersuasive because Fox sent the correspondence in his capacity as the corporation's lawyer. Similarly, the work Fox completed on a water easement for Bret's property did not involve the "professional services from which the alleged malpractice stems." *Id.* at 115. The circuit court did not err by concluding that any malpractice claim Bret may have had against Fox has expired.

**II. Whether the circuit court utilized the proper procedure when granting the defendants' motions for summary judgment.**

[¶33.] Bret also argues that the circuit court erred when it granted summary judgment because in its memorandum decision it identified undisputed material facts that "were new or different facts in whole or part than those timely presented by defendants." According to Bret, summary judgment must be reversed because the court denied him "the opportunity provided by statute to answer, dispute, and



#28491

brief the [c]ourt” on these new facts. We disagree. “If there exists any basis which supports the ruling of the [circuit] court, affirmance of a summary judgment is proper.” *Klein v. Sanford USD Med. Ctr.*, 2015 S.D. 95, ¶ 20, 872 N.W.2d 802, 808. Here, the court founded its decision on the statute of limitations and concluded that even if Bret once owned a portion of Healy Ranch via his partnership interest, he had notice of the defendants’ alleged tortious conduct many years before filing the lawsuit. Because the circuit court properly concluded that Bret’s suit was time barred, we affirm summary judgment in favor of the defendants.

**III. Whether the circuit court erred by awarding attorney fees to defendants.**

[¶34.] The circuit court has authority to award attorney fees if it finds the lawsuit was frivolous or malicious. “To determine whether sanctions are appropriate . . . it is necessary to determine whether there was a reasonable basis to believe that the facts supporting the claim were true *at the time the lawsuit was filed.*” *Johnson*, 2012 S.D. 61 ¶ 14, 818 N.W.2d at 808. “A frivolous action exists when the proponent can present no rational argument based on the evidence or law in support of the claim . . . .” *Ridley v. Lawrence Cty Comm’n*, 2000 S.D. 143, ¶ 14, 619 N.W.2d 254, 259 (internal quotation marks omitted). Malice, on the other hand,

exists when the proceedings are instituted primarily for an improper purpose. An improper purpose occurs in situations where[] the plaintiff in the original action was actuated by any unjustifiable motive, . . . [such] as where his primary motive was hostility or ill will, or where his sole purpose was to deprive the defendant of a beneficial use of his property . . . .



#28491

*Stratmeyer*, 2002 S.D. 91, ¶ 20, 649 N.W.2d at 926. We review a trial court's ruling on the allowance or disallowance of costs and attorney fees under an abuse of discretion standard." *Stratmeyer v. Engberg*, 2002 S.D. 91, ¶ 12, 649 N.W.2d 921, 925.

[¶35.] Although litigants need only show that a lawsuit was either frivolous or malicious to recover attorney fees, the circuit court found that Bret's lawsuit was both. *See Johnson v. Miller*, 2012 S.D. 61, ¶ 8, 818 N.W.2d 804, 807. The circuit court concluded that it was "clear . . . [Bret] brought this action with the intent of trying to prevent the sale of Healy Ranch . . . ." because both Bret and his attorney admitted that was their purpose.

[¶36.] Bret appeals this conclusion, arguing the circuit court abused its discretion. He admits that his motivation for the lawsuit was to prevent Healy Ranch, Inc., from selling the family land. However, he submits that his preventative actions honor the purpose of the 1986 partnership agreement with DeLonde "to preserve the Healy Ranch . . . so that it may be passed on to future generations . . . ." Thus, according to Bret, the circuit court abused its discretion when it found that his claims were frivolous and malicious.

[¶37.] We disagree. Even viewed in the light most favorable to Bret, there is no evidence in the record to suggest that Bret had any reasonable basis to believe his claims were valid when he filed the lawsuit or that they could survive the statute of limitations defenses. To the contrary, Bret's e-mail to Barry in June 2016 demonstrates that he had actual knowledge that Healy Ranch, Inc. held title to Healy Ranch. As soon as Bret began to disagree with his brothers, he made a



#28491

conscious effort to maintain his control over the ranch and stop the sale. Bret wrote letters to various banks and journals asserting that the corporation did not have good title, which caused Healy Ranch, Inc. to default on its mortgage. During the short time this litigation was in discovery, Bret sent a total of 2,304 discovery requests to six different defendants. Bret filed the lawsuit for the purpose of preventing the sale of the property, not because he believed his partnership interest remained enforceable. The circuit court did not abuse its discretion by awarding attorney fees to the defendants.

[¶38.] As a final matter, all of the parties request appellate attorney fees, costs, and sales tax. Bryce, Barry, and Healy Ranch, Inc. request \$7,759, Mary requests \$13,858.33, and Fox requests \$3,450. In response, Bret seeks fees totaling \$89,127.19. We award \$7,500 to Bryce, Barry and Healy Ranch, Inc., \$7,500 to Mary, and \$3,450 to Fox. Bret's motion for attorney fees is denied. We affirm.

[¶39.] GILBERTSON, Chief Justice, SALTER, Justice, and SOGN, Circuit Court Judge, concur.

[¶40.] SOGN, Circuit Court Judge, sitting for JENSEN, Justice, disqualified.



STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT
<hr/>		
HEALY RANCH, INC.,	)	
	)	
Plaintiff,	)	07CIV. 19-71
	)	
v.	)	PLAINTIFF'S STATEMENT OF
	)	UNDISPUTED MATERIAL FACTS
BRET HEALY, Individually and d/b/a	)	
HEALY RANCH PARTNERSHIP,	)	
	)	
Defendants.	)	
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The Plaintiff, Healy Ranch, Inc., respectfully submits this statement of undisputed material facts in support of its Motion for Summary Judgment. Exhibits referenced herein are attached to the *Affidavit of Joe Erickson* filed in support of Plaintiff's Motion.

**Background and Statute of Limitations**

1. The real property (herein after referred to as the "Property") at issue in this action is legally described as:

The Northwest Quarter; the Northeast Quarter; and the Southeast Quarter of Section Twenty-Nine;

Lots One, Two, Three, Four and Five and the South Half of the Northeast Quarter; the North Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter of Section Seventeen except a parcel of land located in the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Seventeen as recorded in Warranty Deed recorded by Microfilm No. 93-291;

The East Half of Section Twenty except Lots Three and Four;



Lots Three, Four, and Five and the Northwest Quarter except Lot RH 1 and except Lot RH-2 in Section Twenty-Three; Lots One, Two Three; and the East Half of the Northeast Quarter; the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section Twenty-Two;

All of that part of the Northwest Quarter lying North of the right-of-way of the Chicago, Milwaukee, and St. Paul Railroad in Section Twenty-Six;

All located in Township One Hundred Four North, Range Seventy, West of the Fifth P.M., Brule County, South Dakota (less rights of way of record).

(Notice of Claim of Interest, Depo. Ex. 1.)

2. On March 12, 1995, the Healy Ranch Partnership transferred the Property to Healy Ranch, Inc. , and on March 13, 1995, the deed was recorded. (1995 Warranty Deed, Depo. Ex. 2.)

3. Bret Healy recorded a "Notice of Claim of Interest" on January 25, 2018. (Notice of Claim of Interest, Depo. Ex. 1.)

4. Bret Healy admitted that he did not record his Notice of Claim of Interest within 22 years of the recording of the 1995 Warranty Deed that granted title to Healy Ranch, Inc. (Bret Healy's Depo. pp. 40:4-41:5.)

5. The Notice of Claim of Interest claims that the deed transferring the Property to Healy Ranch, Inc. in 1995 is void. (Notice of Claim of Interest, Depo. Ex. 1.)

6. The Notice of Claim of Interest claims the 1995 deed transferring the Property is void because one of the transferors, DeLonde Healy, did not have authority to execute the deed under Bret Healy's described "Healy Ranch Partnership." (Notice of Claim of Interest, Depo. Ex. 1.)



7. The Healy Ranch Partnership acquired title to the Property through two deeds in 1968 and 1990. (Exhibits A & B to Defendant's Counterclaim.)

8. Bret Healy's alleged "Healy Ranch Partnership" alleges ownership to the Property because of the 1968 and 1990 deeds. (Defendant's Counterclaim, ¶ 6.)

9. On January 10, 2020, Bret Healy asserted a Counterclaim and raised affirmative defenses alleging that Bret Healy and his described "Healy Ranch Partnership" have a claim of ownership to the Property based on the 1968 and 1990 deeds, and that Healy Ranch, Inc.'s 1995 Warranty Deed is void. (Defendant's Counterclaim—affirmative defenses pp. 4-6, and counterclaims pp. 7-10.)

**Res Judicata**

10. On May 11, 2017, Bret Healy filed a lawsuit containing allegations of conversion, fraud, and conspiracy to commit fraud against Healy Ranch, Inc., Healy Ranch Partnership, his mother, his brothers, and his former attorney. (SD Supreme Court Opinion, Depo. Ex. 3.)

11. The Honorable Judge Giles issued a Memorandum Decision granting summary judgment on all of Bret Healy's claims in the 2017 lawsuit. (Memorandum Decision, Depo. Ex. 5.)

12. In his Memorandum Decision, the Honorable Judge Giles held that it was an undisputed fact that: "On March 13, 1995, Mary Ann Osborne executed a deed transferring the land from Healy Ranch Partnership to Healy Ranch, Inc." (Memorandum Decision, ¶ 10, Depo. Ex. 5.)

13. The Memorandum Decision issued by Judge Giles also included an Order dismissing all of Bret Healy's claims, and the Judge signed the order on October 10, 2017. (Memorandum Decision, Depo. Ex. 5.)



14. The Honorable Judge Giles also entered Findings of Fact and Conclusions of Law when he granted attorneys' fees for the Defendants. (Findings and Conclusions, Depo. Ex. 6.)

15. The Honorable Judge Giles made the following Findings of Fact:

- The only Healy Ranch Partnership that ever held title to Healy Ranch was the partnership between Plaintiff's parents, Robert E. Healy and Mary Ann Healy (Osborne), and grandmother, DeLonde Healy. (Finding No. 4.)
- On January 26, 1986, Plaintiff entered into a partnership agreement with his mother, Mary Ann Healy (Osborne), and grandmother, DeLonde Healy, in order to create a new Healy Ranch Partnership ("1986 Healy Ranch Partnership"). (Finding No. 5.)
- There was never a legal document transferring title to Healy Ranch to that 1986 Healy Ranch Partnership. The 1986 Healy Ranch Partnership never properly held title to any of Healy Ranch. (Finding No. 6.)
- Although Plaintiff entered into a partnership agreement in 1986, he did not take any action to assert his interest in that partnership for 30 years. (Finding No. 7.)
- On January 31, 1989, DeLonde Healy deeded her remaining interest in the land to Plaintiff, but the 1989 deed from DeLonde Healy to Plaintiff was never recorded. (Finding No. 8.)
- On March 12, 1995, Mary Ann Osborne and DeLonde Healy executed a deed transferring their interest in the partnership property to Healy Ranch, Inc. (Finding No. 9.)

(Findings and Conclusions, Depo. Ex. 6.)

16. The Honorable Judge Giles further entered Conclusions of Law finding that Bret Healy's lawsuit was frivolous and malicious. (Findings and Conclusions, Depo. Ex. 6.)



17. Bret Healy appealed the Trial Court's granting of summary judgment and granting of attorney's fees to the South Dakota Supreme Court. (SD Supreme Court Opinion, Depo. Ex. 3.)

18. The South Dakota Supreme Court unanimously affirmed the Trial Court's dismissal of Bret Healy's lawsuit and the awarding of attorneys' fees to the Defendants. (SD Supreme Court Opinion, Depo. Ex. 3.)

19. The South Dakota Supreme Court noted that it is undisputed that Bret Healy initiated his lawsuit "more than 22 years from the date Mary and DeLonde executed the 1995 Warranty Deed [to Healy Ranch, Inc.]." (SD Supreme Court Opinion, ¶ 23, Depo. Ex. 3.)

20. The South Dakota Supreme Court further noted that:

Although Bret contends his interest in the partnership remained intact, his actions did not reflect this belief. Until shortly after he initiated this action, Bret ignored the partnership following the creation of Healy Ranch, Inc.

(SD Supreme Court Opinion, ¶ 29, Depo. Ex. 3.)

21. The South Dakota Supreme Court affirmed the Trial Court's ruling, despite the "voluminous" documents that Bret Healy alleges support his described "Healy Ranch Partnership." (Bret Healy's Depo. pp. 12:2-13:4.)

22. Bret Healy disagrees with the South Dakota Supreme Court and the Trial Court because Bret alleges that they both "ignored" documents submitted by him. (Bret Healy's Depo. p. 15:6-12.)

23. Bret Healy further disagrees with the Trial Court where the Trial Court held in its Findings of Fact and Conclusions of Law that Bret Healy's claim that Healy



Ranch, Inc. did not own the Property was frivolous from its inception. (Findings and Conclusions, Depo. Ex. 6; Bret Healy's Depo. p. 26:14-22.)

24. Bret Healy further disagrees with the South Dakota Supreme Court's decision where it stated that Bret Healy acted as the Healy Ranch, Inc. president for 17 years, because Bret Healy alleges that the South Dakota Supreme Court ignored the record evidence and relied on a demonstratively false document. (Bret Healy's Depo. pp. 30:22-31:7.)

Dated this 17<sup>th</sup> day of March, 2020.

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IN THE SUPREME COURT  
OF THE STATE OF SOUTH DAKOTA

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No. 29409

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**HEALY RANCH, INC.**

**Plaintiff and Appellant**

vs.

**BRET HEALY, INDIVIDUALLY AND  
D/B/A HEALY RANCH PARTNERSHIP**

**Defendant and Appellee.**

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Appeal from the Circuit Court  
First Judicial Circuit  
Brule County, South Dakota

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HONORABLE PATRICK T. SMITH  
Presiding Judge

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**APPELLEE'S BRIEF**

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Notice of Appeal filed September 3, 2020

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## TABLE OF CONTENTS

Table of Authorities .....	ii
Secondary Sources .....	iv
Table of Cases .....	iv
Jurisdictional Statement .....	1
Request for Oral Argument.....	1
Statement of Legal Issues and Authorities.....	1
Statement of Case .....	2
Statement of Facts .....	4
Standard of Review .....	9
Argument .....	11
Conclusion .....	35
Certificate of Compliance .....	36
Certificate of Service .....	36



## TABLE OF AUTHORITIES

### CASES

<i>Argus Leader v. Hagen</i> 739 N.W.2d 475, 484 (SD 2007) .....	14
<i>BAC Home Loans Servicing, LP v. Trancynger</i> 2014 S.D. 22, 847 N.W.2d 137, 140 .....	10
<i>Berry v. Howard</i> 33 S.D. 447, 146 NW. 577 (1914) .....	33
<i>Biegler v. Kraft</i> 924 F. Supp.2d 1074, (2013) .....	2,30,32,33
<i>Brown v. Hanson</i> 2011, S.D. 21, 789 N.W.2d 422.....	2,32
<i>Busselman v. Egge</i> 2015 S.D.38, 864 N.W.2d 786.....	2,35
<i>Chapman v. Chapman</i> 2006 S.D.36, 713 N.W.2d 572.....	1,21
<i>Citibank, N.A. v. S. Dakota Dep’t of Revenue</i> 868 N.W.2d 381,387 (SD 2015) .....	14
<i>Cone v. Ballard</i> 68 S.D. 593, 5 N.W.2d 46 (1942) .....	33
<i>Dakota, Minnesota &amp; Eastern Railroad Corp v. Acuity</i> 720 N.W.2d 655,661 (SD 2006) .....	21
<i>De novo. Id</i> 645 N.W.2d 260, 262 .....	9,10,34
<i>Estate of Henderson v. Estate of Henderson</i> 2012 S.D.80, 823 N.W.2d 363, 367 .....	10,11
<i>Gregory’s Inc. v. Haan</i> 1996 SD 35, 545 N.W.2d 488, 493.....	32



<i>Grigsby v. Wopschall</i> 25 S.D. 564, 127 N.W. 605 (1910) .....	33
<i>Bret Healy v. Mary Ann Osborne, Bryce Healy, Barry Healy Ranch Partnership, Healy Ranch, Inc., and Albert Steven Fox</i> 2018 S.D. 27 .....	2,8
<i>Healy v. Osborne</i> 2019 S.D. 56, 934 N.W.2d 557 .....	1,3,22
<i>Jade, Inc. v. Bendewald</i> 468 N.W.2d 138, 142-143 (S.D. 1991) .....	28
<i>Kapp v. Hansen</i> 76 S.D. 279, 285-86, 111 N.W.2d 333, 336-337 (1961) .....	2,10,35
<i>Lammers v. State by &amp; through Dep't of Game, Fish &amp; Parks</i> 2019 S.D. 44 932 N.W.2d 129 132-33 .....	9
<i>Larimer v. Am. Family Mut. Ins. Co.</i> 2019 S.D. 21 926 N.W.2d 472, 475 .....	10
<i>Lippold v. Meade County Board of Commissions</i> 2018 S.D. 7, 906 N.W.2d 917 .....	1,21
<i>Mobbs v. City of Lehigh</i> 655 547, 550-51 (Okla. 1982) .....	12,14
<i>Roth v. Haag</i> 2013 S.D. 48 834 N.W.2d 337, 340 .....	10
<i>Ryken v. State</i> 305 N.W.2d 393 396 (1981) .....	2,33,35
<i>Schaefer v. Sioux Spine &amp; Sport, Prof. LLC</i> 2018 S.D.5, 906 N.W.2d 427, 431 .....	10
<i>Sherburn</i> 1999 SD 47, 593 N.W.2d 416 .....	10
<i>Smith v. Albrecht</i> 361 N.W.2d 626, 628 (1985) .....	10,34
<i>Springer v. Cahoy</i> 2013 S.D. 86, N.W.2d. 15 .....	1,12,14,18,19,20



<i>State Auto Ins. Cos. v. B.N.C.</i>	
2005 S.D. 89 702 N.W.2d 329, 382.....	10
<i>Thieman v. Bohman</i>	
2002 SD 52, 645 N.W.2d 260, 262.....	10,34
<i>Titus v. Chapman</i>	
2004 S.D. 106, 687 N.W.2d 918, 923-24 .....	11
<i>Tvedt v. Bork</i>	
414 N.W.2d 11 (1987) .....	1,17
<b>SECONDARY SOURCES</b>	
50 C.J.S. <u>Judgments</u> § 1018 (Mar. 2020 update) .....	24
50 C.J.S. <u>Judgments</u> § 1040 (Mar. 2020 update) .....	21
50 C.J.S. <u>Judgments</u> § 1064 (Mar. 2020 update) .....	24
<u>Bar of encumbrance by laches, statues of limitation, &amp; Marketable</u> <u>Title Acts</u> , 3 Patton and Palomar on Lant Titles § 563 (3d ed.) .....	12
<b>STATUTES</b>	
SDCL 15-6-19(a) .....	10,34,35
SDCL 15-26A-66(b)(4) .....	36
SDCL 21-41-1.....	11
SDCL 21-41-14.....	11
SDCL 43-30-1.....	13,15,16,18
SDCL 43-30-2.....	16
SDCL 43-30-3.....	1,4,8,11,13,14,15,16,19,20
SDCL 43-30-5.....	16,17,18
SDCL 43-30-7.....	15,17,18
SDCL 43-30-9.....	2,3,4,6,9,29,32,33
SDCL 43-30-10.....	1,15,17,18
SDCL 48-7A-201(a) .....	11,34



SDCL 48-7A-203.....	34
SDCL 48-7A-301(1) .....	11
SDCL 48-7A-501.....	28
SDCL 48-7A-502.....	11,27

## **JURISDICTIONAL STATEMENT**

Appellee concurs and agrees with the Jurisdictional Statement set forth in the Appellant’s Brief. Appellant’s Brief at 1.

## **REQUEST FOR ORAL ARGUMENT**

Appellee respectfully requests the privilege of appearing before this Court for oral argument.

## **STATEMENT OF LEGAL ISSUES AND AUTHORITIES**

### **1. Did the Notice of Claim of Interest preserve Healy Ranch Partnership’s claimed interest in the Healy Ranch Property?**

The trial court held that Bret Healy’s claim to the Healy Ranch Property was barred by the statute of limitations under SDL 43-30-3 and the Notice of Claim of Interest was void because it was not recorded within 23 years from the date of the recording of deeds of conveyance under which Healy Ranch Partnership claimed title to the property.

[SDCL 43-30-3](#)

[SDCL 43-30-10](#)

[Springer v. Cahoy](#), 2013 S.D. 86, 841 N.W.2d 15

[Tvedt v. Bork](#), 414 N.W.2d 11 (S.D. 1987)

### **2. Does res judicata arise from the holding in [Healy v. Osborne](#) to bar the Healy Ranch Partnership from asserting its claimed interest in the Healy Ranch Property?**

The trial court held it need not address this issue because it determined the Notice of Claim of Interest was not timely filed.

[Lippold v. Meade County Board of Commisioners](#), 2018 S.D. 7, 906 N.W.2d 917, ¶ 28

[Chapman v. Chapman](#), 2006 S.D. 36, 713 N.W.2d 572, ¶ 13

[Healy v. Osborne](#), 2019 S.D. 56, 934 N.W.2d 557



**3. Did Healy Ranch, Inc. provide sufficient evidence to carry its burden of showing the Notice of Claim of Interest was filed only for the purpose of slandering title to the Healy Ranch Property?**

The trial court held that an award of attorney fees under [SDCL 43-30-9](#) must be supported by a showing that Bret Healy was motivated solely by intent to slander title, that the action is otherwise wholly without merit, and that the evidence presented was insufficient for such a finding.

[SDCL 43-30-9](#)

[Biegler v. Kraft](#), 924 F.Supp.2d 1074, 1092-93 (D.S.D. 2013)

[Brown v. Hanson](#), 2011 S.D. 21, ¶ 19, 789 N.W.2d 422

**4. Should Healy Ranch Partnership have been joined as an indispensable party to the litigation?**

The trial court held that, because it determined the Notice of Claim of Interest was not timely filed, it need not determine whether Healy Ranch Partnership should be added as a party to the litigation.

[Ryken v. State](#), 305 N.W.2d 393, 396 (S.D. 1981)

[Busselman v. Egge](#), 2015 S.D. 38, ¶ 6, 864 N.W.2d 786

[Kapp v. Hansen](#), 76 S.D. 279, 285-86, 111 N.W.2d 333, 336-37 (1961)

## **STATEMENT OF THE CASE**

Healy Ranch, Inc. filed this suit on November 26, 2019, claiming marketable title based on a Warranty Deed executed by Mary Ann (Healy) Osborne and DeLonde Healy on March 12, 1995, and filed for record on March 13, 1995, (hereafter the “1995 Warranty Deed”). (App. 230-231; SR 65-66.)

### **Healy I**

This case follows on the heels of earlier litigation filed by Bret Healy in May 2017 involving a portion of the same parties. That suit asserted claims of fraud, conspiracy to commit fraud, and conversion<sup>1</sup> against Healy Ranch, Inc., which is the Plaintiff in this current action. [Healy Ranch, Inc. v. Osborne](#), 2019 S.D. 56, 934 N.W.2d

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<sup>1</sup> In Healy I, Bret Healy also pursued claims of unjust enrichment, breach of fiduciary duties, and negligence against the additional co-Defendants.



557. While Bret Healy claimed Healy Ranch, Inc. conspired and participated in a fraudulent conveyance of land pursuant to the 1995 Warranty Deed, the merits of his allegations were never adjudged because the Circuit Court, and subsequently this Court, determined those claims were barred pursuant to the applicable six-year statute of limitations for claims of fraud, civil conspiracy, and conversion. As part of his appeal, Bret Healy also challenged the decision of the Circuit Court to award attorney fees on the basis of malicious prosecution. Ultimately, this Court affirmed that attorney fee award; however, at no point was the ownership or title to real estate determined by the Circuit Court or this Court. In fact, in its decision, this Court specifically stated it was not addressing “Bret’s claim of ownership because the threshold issue in this case centers on the timeliness of Bret’s claims for conversion, breach of contract, fraud, conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence.” [Healy v. Osborne](#), 2019 S.D. 56, ¶21, 934 N.W.2d at 563 (S.D. 2019).

## **Healy II**

Prior to this Court rendering its decision from the appeal of [Healy I](#), Bret Healy on behalf of the Healy Ranch Partnership, after consulting with an attorney, caused to be filed a Notice of Claim of Interest on January 25, 2018. (App. 021-028.) On November 26, 2019, the Healy Ranch, Inc. filed the current action requesting a ruling that the Healy Ranch, Inc. has marketable title and voiding the Notice of Claim of Interest. It also requested an award of attorney fees pursuant to [SDCL 43-30-9](#). (SR 2-5.) Bret Healy counterclaimed, asserting, in part, that because the 1995 Warranty Deed is outside the chain of title and void, the Healy Ranch Partnership should be deemed to have legal title pursuant to two deeds from 1968 and 1990 and quieting title in the same. (SR 15-28.)



Pursuant to a Motion for Summary Judgment filed by Healy Ranch, Inc., the Honorable Patrick T. Smith signed a Judgment Voiding January 25, 2018, Notice of Claim of Interest Filed by Bret Healy on behalf of Healy Ranch Partnership, finding the claim was barred by the statute of limitations under [SDCL 43-30-3](#) because the Notice of Claim of Interest was not filed within twenty-three years from the recording of the deed of conveyance under which Healy Ranch Partnership claims title to the property at issue. (App. 012-014; SR 1007-1009.) Bret Healy's Motion to Join or Dismiss, requesting Healy Ranch Partnership be added as a party, was heard at the time same as the Motion for Summary Judgment, with the Circuit Court determining that a ruling was not necessary on the Motion to Join or Dismiss due to its findings with regard to the Motion for Summary Judgment (SR 1034-1035.)

On August 19, 2020, the Honorable Patrick T. Smith denied Healy Ranch, Inc.'s claim for attorneys fees pursuant to [SDCL 43-30-9](#) (App. 012-014; SR 1007-1009.)

Notice of Entry of Judgment was filed on September 2, 2020 (App. 001-002; SR 1655-1656.)

Notice of Appeal was filed by Healy Ranch, Inc. on September 3, 2020. (SR 1659-60.) Notice of Review was filed by Bret Healy on September 16, 2020. (App 015-020.)

## **STATEMENT OF FACTS**

### **I. Facts related to the Notice of Claim of Interest**

Healy Ranch, Inc. brought this suit claiming marketable title in reliance of the 1995 Warranty Deed being its root of title and having been on file for at least twenty-two years. (SR 2-11.) The 1995 Warranty Deed purports to come from Healy Ranch, a



partnership. (App. 081, ¶2, 086, ¶2; SR 55, ¶2; 203, ¶2.) Healy Ranch Partnership acquired title to the Property through two deeds in 1968 and 1990, facts both parties agree with. (App. 082, ¶7; SR 56, ¶7; 204, ¶7.) On January 25, 2018, within twenty-three (23) years of the filing of the 1995 Warranty Deed, Bret Healy, on behalf of Healy Ranch Partnership, filed an eight page Notice of Claim of Interest with the Brule County Register of Deeds detailing the Healy Ranch Partnership’s interest in the Property, which included an Agreement entered into between DeLonde Healy, Mary Ann Healy, and Bret Healy (hereafter “Agreement”). (App. 081, ¶4, 087, ¶4; SR 55, ¶4; 204, ¶4.) Pursuant to that Agreement, DeLonde Healy “release[d] all title and interest she has to the Partnership assets as of December 31, 1985.” (App. 024, ¶11; SR 213, ¶11.) The Agreement further states: “It is the intent of all the parties that any interest of DeLonde Healy in the Healy Ranch partnership...be completely transferred directly to Bret Healy effective with the date of this agreement.” (App. 026, ¶VIII; SR 215, ¶VIII.) In addition to the Agreement, DeLonde Healy executed a Bill of Sale in 1989 conveying to Bret Healy “[a]ny and all interest first party has if any, in the machinery, crops, cattle, equipment and any and all other Healy Farm operation or Healy Farm partnership or Healy Ranch partnership or any other like entity whether a partnership, corporation, or other legal entity.” (App. 102-103; SR 227-228.) The Notice of Claim of Interest claims the 1995 Warranty Deed is outside the chain of title and void because one of the transferors, DeLonde Healy, did not have authority to execute the deed on behalf of the Healy Ranch Partnership, there is no evidence the 1995 Warranty Deed was authorized by the partners of the Healy Ranch Partnership, the transfer of the Property was not given



for value<sup>2</sup>, and Healy Ranch, Inc. knew DeLonde Healy lacked authority to bind Healy Ranch Partnership.

## II. Facts related to Healy Ranch, Inc.’s Claim for Attorney Fees

While the parties to this case were also involved in prior litigation, no additional facts were developed during the course of this litigation that would lend credence to the argument that the Notice of Claim of Interest was meant to slander title to the Property, as described in [SDCL 43-30-9](#). Healy Ranch, Inc. relies heavily on issues discussed in Healy I that related to its separate claim of malicious prosecution as those facts related to claims that were extinguished by a six-year statute of limitations. Important to the analysis related to attorney fees is the timeline of events as they developed in Healy I. Those pertinent dates include: 1) the entry of Judge Giles ruling on Motion for Summary Judgment on October 10, 2017; 2) Judge Giles subsequent decision awarding attorney fees on November 17, 2017; 3) Bret Healy’s prompt Notice of Appeal in Healy I filed on December 27, 2017 (App. 069.); and this Court’s ruling on September 25, 2019. (App. 061-079.) The Notice of Claim of Interest in this matter was filed on January 25, 2018. (App. 021-028; SR 210-217.)

At no point in time has there ever been a statement of partnership authority, recorded or unrecorded, granting Mary Ann Healy or DeLonde Healy authority to execute the 1995 Warranty Deed. (App. 093-101; SR 218-226, ¶19.) Additionally, there has never been any Affidavit of Possession executed by Healy Ranch, Inc. (App. 093-101; SR 218-226, ¶20.) Healy Ranch, Inc. admits facts that go to show the 1995

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<sup>2</sup> The 1995 Warranty Deed claims to be exempt from transfer fees pursuant to [SDCL 43-4-22\(18\)](#) (“for which no consideration was given”). (App. 230-231; SR 65-66.) Assuming the 1995 Warranty Deed comes from Healy Ranch Partnership, it is also problematic that the deed represents that Healy Ranch Partnership owns a majority of the capital stock in Healy Ranch, Inc. [SDCL 43-44-22\(11\)](#).



Warranty Deed was not validly executed, going so far as asserting that there no partners in Healy Ranch Partnership on March 12, 1995, when the 1995 Warranty Deed was executed, and that the partnership has not existed since 1985. (App. 093-101; SR 218-226, ¶7.) Healy Ranch, Inc. further admitted in Healy I that Mary Ann Osborne, Bret Healy, and DeLonde Healy executed a Partnership Agreement in 1986, in which the main partnership asset was the family ranch and acreage (aka the Healy Ranch Property), part of which had been in the Healy family for several generations. (App. 126; SR 1465, ¶2.) Healy Ranch, Inc.’s officers and board members Barry and Bryce Healy acknowledged in a 2008 settlement agreement and lease that the owner of the Healy Ranch Property was the Healy Ranch Partnership with Bret Healy as the general partner and Barry and Bryce Healy as additional partners. (App. 127-128; SR 1466-1467, ¶5.) In addition, other family members acknowledge that DeLonde Healy was not a partner in any partnership known as Healy Ranch Partnership after December 31, 1985, and that the Healy Ranch Partnership’s balance sheet reflected both ownership of the Healy Ranch Property and debt associated with it. (App. 113-125; SR 626-664, ¶¶4, 6, 7, and 13.) Bret Healy also put forth expert testimony of CPA Nina Braun who determined from her review of numerous documents that the Healy Ranch Partnership had continuing business operations between 1986 and 1997, and that those business operations were all conducted under the same federal tax identification number that had been assigned to Healy Ranch partnership since 1961. (App. 105-112, ¶¶6-11; SR 230-625 at 234-235, ¶¶6-11.)

Prior to filing the Notice of Claim of Interest, Bret Healy consulted with attorney Patrick Glover of Meierhenry Sargent, LLP, as to the propriety of filing such a notice. (App. 005-011 and 006, ¶4; SR 1465-1467, ¶6 and 1547-1568)



Judge Smith’s Findings of Fact and Conclusions of Law on August 19, 2020, included the following pertinent facts with regard to his determination to not award attorney fees:

- The Circuit Court took judicial notice of the prior litigation between the parties including Brule County Case No. 07CIV17-000023, and the Supreme Court decision therein, [Bret Healy v. Mary Ann Osborne, Bryce Healy, Barry Healy, Healy Ranch Partnership, Healy Ranch, Inc., and Albert Steven Fox, 2018 S.D. 27.](#) (App. 005-011, 006, ¶4; SR 1593-1599, 1594, ¶4.)
- The prior litigation was resolved by a finding by Judge Chris Giles, upheld by the South Dakota supreme Court, that the applicable statute of limitations of the claims asserted in the prior litigation had run and the claims were time barred. (App. 006, ¶5; SR 1594, ¶ 5.)
- Bret Healy’s interpretation of [SDCL 43-30-3](#) allowed him 23 years to file a Notice of Claim of Interest “from the date of recording of deed of conveyance under which title is claimed” which said time limitation commencing from when Healy Ranch, Inc. makes its claim via deed, March 13, 1995. (App. 006-007, ¶7; SR 1594-1595, ¶7.)
- The Court granted Healy Ranch, Inc.’s motion for summary judgment, finding the limitations period commenced running from the date of the deed that is the basis of Healy Ranch Partnership’s claim. (App. 007, ¶8; SR 1595, ¶8.)



- In support of its motion under [SDCL 43-30-9](#), Healy Ranch, Inc. relied on the findings of Judge Giles. (App. 007-008, ¶10; SR 1595-1596, ¶10.)
- The current action is to quiet title in response to a filing of a Notice of Claim of Interest, not an action for conversion, breach of contract, fraud, unjust enrichment, breach of fiduciary duties, or negligence. (App. 008, ¶11; SR 1596, ¶11.)
- The question in awarding fees in this case is whether Bret Healy filed the Notice of Claim of Interest with the purpose of slandering title and for no legitimate purpose. Judge Giles did not address Bret Healy's current motives, as the Notice of Claim of Interest had not yet been filed. (App. 009, ¶12; SR 1596, ¶12.)
- Judge Smith determined it was unnecessary to rule on the legitimacy of the Notice of Claim of Interest and found the court lacked sufficient evidence on the record to make a ruling. (App. 011, ¶7; SR 1599, ¶7.)

### **STANDARD OF REVIEW**

This appeal addresses three types of issues: 1) the circuit court's grant of Healy Ranch, Inc.'s motion for summary judgment; 2) the circuit court's denial of attorney's fees; and, 3) the joinder of Healy Ranch Partnership as an indispensable party to this litigation.

A circuit court's entry of summary judgment is reviewed under a de novo standard. [Lammers v. State by & through Dep't of Game, Fish & Parks](#), 2019 S.D. 44, ¶ 9, 932 N.W.2d 129, 132–33.



“When conducting a de novo review, we give no deference to the circuit court’s decision to grant summary judgment. When reviewing a circuit court’s grant of summary judgment, this Court only decides whether genuine issues of material fact exist and whether the law was correctly applied.” *Larimer v. Am. Family Mut. Ins. Co.*, 2019 S.D. 21, ¶ 6, 926 N.W.2d 472, 475. “We view the evidence most favorably to the nonmoving party and resolve reasonable doubts against the moving party.” *State Auto Ins. Cos. v. B.N.C.*, 2005 S.D. 89, ¶ 6, 702 N.W.2d 379, 382. The party resisting summary judgment must present “sufficient probative evidence that would permit a finding in her favor on more than mere speculation, conjecture, or fantasy.” *Schaefer v. Sioux Spine & Sport, Prof. LLC*, 2018 S.D. 5, ¶ 9, 906 N.W.2d 427, 431.

Id. In addition, the construction and application of a statute of limitations presents a legal question that is reviewed de novo. *Estate of Henderson v. Estate of Henderson*, 2012 S.D. 80, ¶ 9, 823 N.W.2d 563.

An award, or refusal to award, attorney fees is reviewed under an abuse of discretion standard. “An abuse of discretion is a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.” *Roth v. Haag*, 2013 S.D. 48, ¶ 11, 834 N.W.2d 337, 340 (citation omitted).” *BAC Home Loans Servicing, LP v. Trancynger*, 2014 S.D. 22, ¶ 8, 847 N.W.2d 137, 140.

As it relates to Bret Healy’s Motion to Join or Dismiss, the issue is reviewed under a de novo standard.

A party's status as an indispensable party is a conclusion of law. See *Thieman v. Bohman*, 2002 SD 52, ¶ 14, 645 N.W.2d 260, 262. As such, a trial judge has no discretion whether to join an indispensable party, as the language of SDCL 15–6–19(a) is mandatory. *Smith v. Albrecht*, 361 N.W.2d 626, 628 (S.D.1985) (citing *Kapp v. Hansen*, 79 S.D. 279, 286, 111 N.W.2d 333, 337 (S.D.1961)). As a conclusion of law it is reviewed by this Court de novo, giving no deference to the circuit court. *Sherburn*, 1999 SD 47, ¶ 4, 593 N.W.2d at 416 (citations omitted).



[Titus v. Chapman](#), 2004 S.D. 106, ¶ 15, 687 N.W.2d 918, 923–24

## ARGUMENT

### INTRODUCTION – QUIET TITLE

Healy Ranch, Inc. brought this quiet title action against only one Defendant – Bret Healy, an individual, who it alleges is also doing business as Healy Ranch Partnership. While Bret Healy has never claimed an individual interest in the Property, he did file a Notice of Claim of Interest describing the ongoing interest Healy Ranch Partnership claims in the Property<sup>3</sup>. Under South Dakota law, partnerships are legal entities wholly separate and apart from their individual partners. [SDCL 48-7A-201\(a\)](#). Each partner is an agent of the partnership for the purpose of its business. [SDCL 48-7A-301\(1\)](#).

[A] quiet title action permits an individual who has an estate or interest in real property, “whether in or out of possession [of the property] and whether such property is vacant or occupied [,]” to test the validity of any adverse claims of ownership of the real property for the purpose of quieting title to the real property. [SDCL 21–41–1](#).

[Estate of Henderson v. Estate of Henderson](#), 2012 S.D. 80, ¶¶ 13-14, 823 N.W.2d 363, 367. In answering a quiet title action, a defendant “must set forth fully and particularly the origin, nature, and extent of his claim to the property; and may set forth his rights in the property as a counterclaim and demand affirmative relief.” [SDCL 21–41–14](#).

Healy Ranch, Inc. is asserting it has marketable title based on the 1995 Warranty Deed, a deed that has been on record for longer than 22 years. [SDCL 43-30-3](#). However, Bret Healy, on behalf of Healy Ranch Partnership, filed a Notice of Claim of Interest, as contemplated by [SDCL 43-30-3](#), within 23 years of the 1995 Warranty Deed. In doing

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<sup>3</sup> The 1986 Agreement never required recording as it was a conveyance of a personal property interest – any and all partnership interests DeLonde Healy may have had. [See SDCL 48-7A-502](#).



so, he asserted the Healy Ranch Partnership's continuing claim of ownership to the Property, despite the void or wild deed purporting to come from the Healy Ranch Partnership in 1995, thereby preserving the partnership's claim to ownership of the Property and allowing it to assert that claim to ownership in its counterclaim.

## **I. PLAINTIFF WAS NOT ENTITLED TO SUMMARY JUDGMENT**

### **A. BRET HEALY FILED THE NOTICE OF CLAIM OF INTEREST ON BEHALF OF HEALY RANCH PARTNERSHIP PROPERLY AND TIMELY, THEREBY PRESERVING HEALY RANCH PARTNERSHIP'S INTEREST IN THE PROPERTY.**

Marketable Title Acts combine the features of curative acts and statutes of limitations. Bar of encumbrance by laches, statutes of limitation, & Marketable Title Acts, 3 Patton and Palomar on Land Titles § 563 (3d ed.)

The idea behind marketable title acts is that when one person has had a record title to land for a significant period of time, old claims or interests that are inconsistent should be extinguished. Marketable title acts are like statutes of limitation in that they bar a claim not recorded within the designated period. And, they are in the nature of curative acts because they are ... remedial in character and may be relied upon as a cure or remedy for such imperfections of title as fall within their scope. They extinguish old title defects automatically with the passage of time. The Oklahoma Supreme Court described the state's Marketable Record Title Act as more than a statute of limitations. The Court stated that, unlike a statute of limitations which bars the *remedy*, the Marketable Record Title Act extinguishes the *property right* itself.

Id. (footnotes omitted) (citing Mobbs v. City of Lehigh, 655 P.2d 547, 550-51 (Okla.1982)). “SDMTA also functions much like a statute of limitations requiring stale demands to be asserted within an SDMTA-defined period.” Springer v. Cahoy, 2013 S.D. 86, ¶ 19, 841 N.W.2d 15, 21. “SDMTA also functions as a recording act in that it



provides a method by which an owner may preserve their claim or interest. SDCL 43–30–3 preserves a claim or interest if notice is recorded ‘on or before twenty-three years from the date of recording of deed of conveyance under which title is claimed[.]’” *Id.* at 20, ¶ 17.

Any person having the legal capacity to own land in this state, who has an unbroken chain of title to any interest in land by himself and his immediate or remote grantors for a period of twenty-two years or longer, and is in possession of such land, shall be deemed to have a marketable record title to such interest, *subject only to such claims thereto and defects of title as are not extinguished or barred by the application of the provisions of this chapter*, instruments which have been recorded less than twenty-two years, and any encumbrances of record not barred by the statute of limitations.

SDCL 43-30-1 (emphasis added). The SDMTA goes on to provide,

Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of all interest, claims, and charges whatever, the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred twenty-two years or more prior thereto, whether such claim or charge be evidenced by a recorded instrument or otherwise, *and all such interest, claims, and charges affecting such interest in real property shall be barred and not enforceable at law or equity, unless any person making such claim or asserting such interest or charge shall, on or before twenty-three years from the date of recording of deed of conveyance under which title is claimed, or on or before July 1, 1958, whichever event is the latest in point of time, file for record a notice in writing, duly verified by oath, setting forth the nature of his claim, interest, or charge*; and no disability nor lack of knowledge of any kind on the part of anyone shall operate to extend his time for filing such claim after the expiration of twenty-three years from the recording of such deed of conveyance or one year after July 1, 1957, whichever event is the latest in point of time.



[SDCL 43-30-3](#) (emphasis added). Under the SDMTA, it is the 23-year-period described in the statute that is the statute of limitations and recording deadline, with the 22-year-period being the curative portion of the statute, which would allow the Healy Ranch, Inc. to have marketable title in the event no claims were recorded within the 23 years following the recording of its deed. [Springer at 20, ¶ 17](#). As such, when a party files a notice claiming an interest in property, as happened with the Notice of Claim of Interest here, their interest in the real estate is preserved, rather than extinguished by the SDMTA.<sup>4 5</sup>

This construction is in accord with the applicable rules of statutory construction. “When engaging in statutory interpretation, we give words their plain meaning and effect, and read statutes as a whole, as well as enactments relating to the same subject. When the language in a statute is clear, certain, and unambiguous, there is no reason for construction, and this Court's only function is to declare the meaning of the statute as clearly expressed.” [Citibank, N.A. v. S. Dakota Dep't of Revenue](#), 2015 S.D. 67, ¶ 12, [868 N.W.2d 381, 387](#). “Where statutes appear to be contradictory, it is the duty of the court to reconcile them and to give effect, if possible, to all provisions under consideration, construing them together to make them harmonious and workable.” [Id.](#) at

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<sup>4</sup> By way of comparison, the Oklahoma Supreme Court stated in regard to the marketable title act in Oklahoma, “Marketable title legislation, on the other hand, has for its target the *right* itself. It operates to extinguish any claim or interest, vested or contingent, present or future, unless the claimant preserves his claim by filing a notice within a thirty-year period. If a notice is not filed, the claim is lost. Interests are thus extinguished because claimants failed to record, *not because they failed to sue*.” [Mobbs v. City of Lehigh](#), 655 P.2d 547, 551 (Okla.1982).

<sup>5</sup> Under the Appellant’s theory, “any claim against Healy Ranch, Inc.’s title of the Healy Ranch Property must be made within twenty-two years from the date Healy Ranch, Inc. acquired the Healy Ranch Property by deed. It is undisputed that Bret Healy did not assert a claim within twenty-two years of Healy Ranch, Inc.’s deed to Healy Ranch Property.” Appellant’s Brief at 18. In other words, Appellant’s theory is that property owners must file duplicative claims of ownership to property to preserve their right to ownership or title (first a deed, then a notice of claim of interest). If no claim of interest is filed within 23 years of



388–89. “We should not adopt an interpretation of a statute that renders the statute meaningless when the [l]egislature obviously passed it for a reason.” [Argus Leader v. Hagen](#), 2007 S.D. 96, ¶ 31, 739 N.W.2d 475, 484. By reading SDCL 43-30-3 as having a 23-year statute of limitations for recording 6a notice of a claim of interest, full effect is given to SDCL 43-30-1 as well, where it states:

Any person having the legal capacity to own land in this state, who has an unbroken chain of title to any interest in land by himself and his immediate or remote grantors for a period of twenty-two years or longer, and is in possession of such land, shall be deemed to have a marketable record title to such interest, *subject only to such claims thereto and defects of title as are not extinguished or barred by the application of the provisions of this chapter*, instruments which have been recorded less than twenty-two years, and any encumbrances of record not barred by the statute of limitations.

SDCL 43-30-1 (emphasis added). Further, SDCL 43-30-10 provides:

This chapter shall be construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to deal with the record title owner as defined herein; to rely upon the record title covering a period twenty-three years *prior to the date of an affidavit of possession made and recorded as prescribed by § 43-30-7*, and to that end to bar all claims that affect or may affect the interest thus dealt with, the existence of which claim arises out of or depends upon any act, transaction, event, or omission antedating a period twenty-two years prior to the date of an affidavit made and recorded as prescribed by § 43-30-7, *unless a notice of such claim, as provided in § 43-30-5, shall have been duly filed for record*.

[Id.](#) (emphasis added). Healy Ranch, Inc. may have marketable title as to all others claiming an interest in the Property, except the Healy Ranch Partnership, because Healy

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taking title to property by deed, the only relief a property owner may be entitled to is to file suit against an intervening interest holder and nothing more can be recorded to preserve the owner’s rights.



Ranch Inc.’s marketable title would be “subject only to such claims thereto and defects of title as are not extinguished or barred by the application of the provisions of [the SDMTA]”. [SDCL 43-30-1](#).

The Circuit Court erred, as a matter of law, when it determined that the 23 year statute of limitation/recording period began to run in 1968, when the Healy Ranch Partnership took title to a portion of the Property, and again in 1990 when the Healy Ranch Partnership took title to the other portion of the Property. The Act requires the Notice of Claim of Interest be filed within twenty-three years “from the date of recording of deed of conveyance under which title is claim[ed].” [SDCL 43-30-3](#). In the context of this case, the Act is referring to the deed under which Healy Ranch, Inc. is claiming title because it is the one attempting to quiet and clear title based on a “root of title” or deed that has been on record for longer than 22 years.

A person shall be deemed to have the unbroken chain of title to an interest in land as such terms are used in this chapter if the official public records of the county wherein such land is situated disclose a conveyance or other title transaction dated and recorded twenty-two years or more prior thereto, which conveyance or other title transaction purports to create such interest in such person or his immediate or remote grantors, with nothing appearing of record purporting to divest such person and his immediate or remote grantors of such purported interest.

[SDCL 43-30-2](#). Once 23 years passed, Healy Ranch, Inc. could have filed an affidavit of possession to prove the fact of possession as required by [SDCL 43-30-1](#), so long as no notice of claim of interest was filed before the expiration of 23 years from the date its deed was recorded. [SDCL 43-30-7](#) (“No such affidavits of possession may be filed as to any lands before the expiration of twenty-three years from recording of deed of conveyance or other instrument of conveyance under which title is claimed, or before one



year after July 1, 1957, whichever event is the latest in point in time, to any land as to which claim under the provisions of §43-30-5 has been filed.”). This point has been previously recognized by this Court.

Marketable title acts with provisions similar to South Dakota's protect record title holders from ancient title claims or defects if the record title holder has an unbroken chain of title starting with some “root of title”... *The twenty-three years is measured from the date of recording of this conveyance before an affidavit of possession pursuant to sections –7, –8, and –8.1 can take effect.*

[Tvedt v. Bork](#), 414 N.W.2d 11, 13 (S.D. 1987) (internal citations omitted) (emphasis added). As Healy Ranch, Inc. is claiming marketable title pursuant to the SDMTA based on the 1995 Warranty Deed, the 23-year recording period would have commenced on March 13, 1995, when the deed was recorded. In the event no notice of a claim of interest was filed, Healy Ranch, Inc. could have then filed an affidavit of possession, thereby solidifying its claim of marketable title under the SDMTA. However, because the Notice of Claim of Interest was timely filed by Bret Healy, on behalf of Healy Ranch Partnership, within 23 years of the recording of the 1995 Warranty Deed, the partnership’s claim of ownership was preserved, and Healy Ranch, Inc. is not entitled to title being quieted in its name until the validity of the 1995 Warranty Deed is determined.

This interpretation is in accord with [SDCL 43-30-10](#), which provides,

This chapter shall be construed to effect the legislative purpose of simplifying and facilitating land title transactions *by allowing persons to deal with the record title owner as defined herein; to rely upon the record title covering a period twenty-three years prior to the date of an affidavit of possession made and recorded as prescribed by § 43-30-7, and to that end to bar all claims that affect or may affect the interest thus dealt with, the existence of which claim arises out of or depends upon any act, transaction, event, or omission antedating a period twenty-*



*two years prior to the date of an affidavit made and recorded as prescribed by § 43-30-7, unless a notice of such claim, as provided in § 43-30-5, shall have been duly filed for record.*

[SDCL 43-30-10](#) (emphasis added). This portion of the SDMTA clearly illustrates how a title examiner or title insurance company would review the title to the Property to determine whether Healy Ranch, Inc. could convey marketable title to another owner. “First, [SDCL 43-30-1](#) specifies who is entitled to have marketable record title: Any person having the legal capacity to own land in this state, who has an unbroken chain of title to any interest in land by himself and his immediate or remote grantors for a period of twenty-two years or longer, and is in possession of such land, shall be deemed to have a marketable record title to such interest...” [Springer v. Cahoy, 2013 S.D. 86, ¶11, 841 NW.2d 15, 19](#). For Healy Ranch, Inc. to show marketable title under the SDMTA, they must file an affidavit of possession at some point 23 or more years after the 1995 Warranty Deed was recorded (i.e. March 13, 2018 or later). That affidavit of possession (as per [SDCL 43-30-7](#)) would signal to an examiner that they could rely on the instrument (i.e. the “root of title”) vesting title in a record title holder that held title for the 23 years preceding the filing of the affidavit of possession, *unless* a notice of claim of interest shows up in the records within 23 years of the root of title being recorded.

Adopting a construction of the SDMTA that requires a Notice of Claim of Interest to be filed within 23 years of the same instrument a party is basing its ownership claim on would not make sense. Requiring a property owner having an unbroken chain of title to record a notice of claim of interest against their own real estate title would be superfluous and duplicative. If this were required in order to retain an interest in real estate or even claim marketable title in real estate, most owners of real estate would not be able to claim



marketable title to their property for lack of such a notice. By way of example, in the event a long-standing owner of real estate, say a church, university, or rancher/farmer failed to file a notice of claim of interest within 23 years of receiving a deed to their real estate, a stranger to the real estate could file a deed claiming ownership to that property, with only the risk of a shorter statute of limitations for a claim such as fraud or undue influence, to set aside the wild deed or deed outside the chain of title. The more sensical approach to the interpretation of the SDMTA would be to allow a property owner 23 years from an act impacting their interest in the property to file a Notice of Claim of Interest in order to preserve their interest in the property<sup>6</sup>. This not only allows a property owner to benefit from the claim preservation aspects of the SDMTA, but also allows a property owner to defend and preserve their interest in property without the immediate need for costly litigation. If a property owner fails to file a notice of claim of interest within those 23 years, an affidavit of possession may then be filed allowing the newer title holder to have marketable title in the property.

Springer is in accord with Bret Healy’s interpretation. While Springer differs in its fact pattern in that no notice of claim of interest was filed, this Court did describe how the SDMTA would allow an owner to preserve their claim or interest.

[SDCL 43–30–3](#) preserves a claim or interest if notice is recorded “on or before twenty-three years from the date of

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<sup>6</sup> Healy Ranch, Inc. acknowledges in its brief that “a claim” should have been filed after Healy Ranch, Inc. acquire the property by deed. “Under [SDCL 43-30-3](#), any claim against Healy Ranch, Inc.’s title of the Healy Ranch Property must be made within twenty-two years from the date Healy Ranch, Inc. acquired the Healy ranch Property by deed.” Appellant’s Brief at 18. However, this would be problematic as Healy Ranch Partnership would be limited as to the types of claims it could litigate to effectively address the 1995 Warranty Deed. See, e.g. [SDCL 15-2-13](#) (6-year statute of limitations for fraud, etc.). The SDMTA deals with questions of marketable title. The 1995 Warranty Deed is a wild deed, outside the chain of title. Therefore, it would make sense that Healy Ranch Partnership would have 23 years to record a notice of claim of interest in order to notifying anyone examining the title that the 1995 Warranty Deed is a wild deed, outside the chain of title, thereby preserving its claim of ownership (as opposed to preserving a claim for fraud).



recording of deed of conveyance under which title is claimed[.]” In this case, Springers claim title under a common law theory of implied easement by necessity. The 1967 warranty deed that created the landlocked parcel created the claimed necessity. Therefore, the 1967 warranty deed is the “deed of conveyance under which title is claimed.” See [SDCL 43–30–3](#). The 1967 warranty deed’s “date of recording” is February 26, 1975. See *id.* So, Springers or their predecessors were required to record a notice in writing setting forth the nature of their claim on or before twenty-three years from February 26, 1975. Springers, however, have provided no evidence of a recorded notice satisfying those requirements. The notice provision of [SDCL 43–30–3](#), therefore, did not preserve Springers’ claim.

[Springer](#), ¶ 17, 841 N.W.2d at 21. [Springer](#) describes the scenario which triggered the need to file a notice of claim under the SDMTA in order to preserve an owner’s interest.

Lester Harrington severed his parcel of land into two separate parcels in 1967. The severance left the east parcel without an access to a public right of way. Springers, with no public access, eventually claimed a common law implied easement by necessity over Cahoy’s west parcel. Springers’ initiated their claim in 2009. But their claim’s existence depends on an act that occurred in 1967—*the severance and conveyance of land that created the alleged necessity.*

[Id.](#) at 20, ¶ 15. Similarly, the filing of the 1995 Warranty Deed is the event which severed Healy Ranch Partnership’s title to the property, creating the claim on which a notice of claim of interest could be filed. Consistent with [Springer](#), the deadline for recording would have started on March 13, 1995, and the Notice of Claim of Interest filed by Bret Healy on behalf of Healy Ranch Partnership is timely as it was filed less than 23 years from the recording of the 1995 Warranty Deed.

The existence of the Notice of Claim of Interest, because it was properly and timely filed as contemplated by the SDMTA, not only preserves the Healy Ranch



Partnership's claim of ownership to the Property as asserted by Bret Healy, but also raises genuine issues of material fact as to the legitimacy of the 1995 Warranty Deed. For this reason, as well as the lack of any affidavit of possession or statement of partnership authority to execute the 1995 Warranty Deed, Healy Ranch, Inc. cannot claim marketable title under the SDMTA and its Motion for Summary Judgment should have been denied.

**B. RES JUDICATA DID NOT ARISE FROM HEALY I AS TO HEALY RANCH PARTNERSHIP'S CLAIMED INTEREST IN THE PROPERTY**

The doctrine of res judicata bars litigants from pursuing claims they “pursued and litigated in prior proceedings.” [Chapman v. Chapman](#), 2006 S.D. 36, ¶ 13, 713 N.W.2d 572, 576-77. Although courts will construe the “doctrine liberally, unrestricted by technicalities . . . because the doctrine bars any subsequent litigation, it should not be used to defeat the ends of justice.” [Lippold v. Meade County Board of Commissioners](#), 2018 S.D. 7, ¶ 28, 906 N.W.2d 917, 925. This Court has recognized four elements that must be satisfied before application of res judicata. They are:

(1) a final judgment on the merits in an earlier action; (2) the question decided in the former action is the same as the one decided in the present action; (3) the parties are the same; and (4) there was a full and fair opportunity to litigate the issues in the prior proceeding.

[Id.](#) at 926; see also [Dakota, Minnesota & Eastern Railroad Corp. v. Acuity](#), 2006 S.D. 72, ¶17, 720 N.W.2d 655, 661 (S.D. 2006).

1. **The four elements for application of res judicata are not satisfied.**

a. **There was no final judgment on the merits in the earlier action.**

“An adjudication is deemed on the merits when it determines the parties’ respective rights and liabilities based on the facts before the court.” 50 C.J.S. [Judgments](#) § 1040 (Mar. 2020 update). A “judgment on the merits is one rendered after argument



and investigation, when it is determined which party is in the right, as distinguished from a judgment rendered upon some preliminary or merely technical point.” [Id.](#)

In the 2017 action, Bret Healy pursued damages against Healy Ranch, Inc. for fraud, conspiracy to commit fraud, and conversion<sup>7</sup>. Bret Healy claimed Healy Ranch, Inc. conspired and participated in the fraudulent conveyance of the land in 1995. The merits of his allegations, however, were not adjudged because the trial court determined the claims were barred pursuant to the applicable six-year statute of limitations.

Although recognizing the 1995 conveyance occurred, the court never considered the claim of whether the conveyance was fraudulent. It found Bret Healy had actual and constructive notice of the transfer, which triggered the running of the limitations period.

This Court agreed. In doing so, however, this Court made clear it was not addressing

“Bret’s claim of ownership because the threshold issue in this case centers on the timeliness of Bret’s claims for conversion, breach of contract, fraud, conspiracy to

commit fraud, unjust enrichment, breach of fiduciary duties, and negligence.” [Healy v.](#)

[Osborne](#), 2019 S.D. 56, ¶ 21, 934 N.W.2d 557, 563. Therefore, because the 2017 matter

was decided on limitations grounds, and not the actual merits of the claim, the first

element for application of res judicata is missing. There was no final judgment on the

merits<sup>8</sup>.

b. **The question decided in the former action is not the same as the claims pursued in the present action.**

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<sup>7</sup> See FN 1.

<sup>8</sup> Judge Smith noted during the June 4, 2020, hearing that Healy Ranch, Inc.’s counsel had stipulated that the prior decision by Judge Giles “was [based on] a violation of [the] 6-year statute of limitation as opposed to a determination on the merits.” (SR 1026, lines 19-24.)



The current cause of action involves Healy Ranch, Inc.'s attempt to quiet title in its favor. In response, Bret Healy has raised affirmative defenses of fraud; duress; unclean hands; and void deed resulting from lack of consideration, lack of authority to convey, lack of possession, and failure by Healy Ranch, Inc. to obtain the land via a purchase in good faith. Bret Healy further raises counterclaims for quieting title in Healy Ranch Partnership's favor and slander of title by Healy Ranch, Inc. in accepting and filing the fraudulent 1995 deed.

The question decided in the 2017 action was whether the six-year limitations period for fraud applied to bar Bret Healy's pursuit of damages on his fraud claim. The posture of this case is different. It is a quiet title action and invokes the limitations period and claim preservation rights under the SDMTA. The limitations/claims preservation analysis is different, and the claims and ensuing remedy arising under the SDMTA/quiet title action are different. Whether the 1995 deed is outside the chain of title and void is paramount to determining whether Healy Ranch, Inc. in fact holds marketable title. Those issues were not presented in the prior action and, more importantly, the present issues were not decided.

**c. The parties are the same.**

Bret Healy agrees the parties present in this cause of action were also involved in the 2017 action. However, as previously asserted in Bret Healy's Motion to Join or Dismiss, it is still asserted that the Healy Ranch Partnership should be included as an indispensable party in this matter.

**d. There was not a full and fair opportunity to litigate the issues in the prior proceeding.**



“The doctrine of issue preclusion[, a component of res judicata,] may not be invoked if the party against whom the earlier decision is interposed did not have a full and fair opportunity to litigate the critical issue in the previous case.” [50 C.J.S. Judgments § 1064 \(Mar. 2020 update\)](#). If a party “was unable to present critical evidence in the initial proceeding” they did not have a full and fair opportunity to litigate the issue. [Id.](#) Although res judicata does apply to the litigation of defenses, it does not apply “to defenses which were not within the scope of the issue litigated in the former action, and which, therefore, were not considered or decided therein.” [50 C.J.S. Judgments § 1018 \(Mar. 2020 update\)](#).

The issues presented by Bret Healy on behalf of Healy Ranch Partnership in this matter were not fully litigated in the prior proceeding. The court determined it could not hear the issues because of the limitations period and adjudged the matter accordingly before giving Bret Healy opportunity to litigate the fraud alleged. Furthermore, Bret Healy/Healy Ranch Partnership’s claims and defenses in this matter are different than the issues in the prior litigation given the posture and nature of this case and the need to determine proper ownership of the land before quieting title. The fourth element for application of the res judicata doctrine is similarly lacking.

## **2. The prior action did not address the claims raised by Bret Healy.**

Healy Ranch, Inc. refers to several findings that Judge Giles makes in his decision to award attorney fees as grounds for granting its motion for summary judgment. First, those findings went only to the issue of whether an award of attorney fees was appropriate and not to the underlying merit issues in the case of conversion, fraud, etc. Further, those findings relate purely to facts generally undisputed by Bret Healy, i.e., that



a 1986 partnership was created, that the 1989 deed from DeLonde Healy to Defendant Bret Healy was never recorded, and that DeLonde Healy and Mary Ann Osborne executed a 1995 deed transferring the land to Healy Ranch, Inc. None of those facts are disputed nor do they relate to Bret Healy's contest in this matter.

Healy Ranch, Inc. transitions to this Court's decision in the 2017 conversion/fraud case claiming it also supports a claim of res judicata. As stated earlier, however, this Court made a point to clarify it was declining to "address Bret's claim of ownership because the threshold issue in this case centers on the timeliness of Bret's claims for conversion, breach of contract, fraud, conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence." [Healy, 934 N.W.2d at 563 \(2019\)](#). Healy Ranch, Inc. is claiming this Court's decision, which specifically did *not* address Bret's ownership, operates as an adjudication on the merits and prevents, via the principle of res judicata, his contest now as to proper ownership. Healy Ranch, Inc. further suggests that this Court's reference to there being twenty-two years between the filing of the 2017 suit and execution of the 1995 deed is somehow an indication that this Court decided the limitations period under the marketable title act. (SR 127). The issue before this Court in [Healy I](#) was whether Bret Healy brought his various tort and contract claims within the applicable six-year limitations period. In mentioning the twenty-two-year period, the court was simply stating that the deed was executed in 1995 and the case was filed in 2017. There was nothing "conspicuous" about it. To suggest this Court was making a finding on the marketable title act is a stretch, particularly considering that neither this Court, nor Judge Giles, mentions the marketable title act, and Healy I was an action for damages under tort and contract theories, not for quiet title.



Before applying the principle of res judicata, this Court must conclude that all four elements are present. While only one missing element is enough to preclude application of the doctrine, Bret Healy suggests three of the four elements are lacking and, therefore, Healy Ranch Inc.'s motion for summary judgment would have been properly denied under this theory<sup>9</sup>.

**3. Ample disputes of material fact should also preclude the grant of summary judgment in favor of Healy Ranch, Inc.**

Not only should have Healy Ranch, Inc.'s motion for summary judgment been denied as a matter of law, there are several disputed issues of material fact. Many of the statements cited to from the Findings of Fact and Conclusions of Law filed by the Honorable Judge Giles in ruling on an award of attorney's fees in the 2017 litigation do not resolve the issues in this case. By way of example Judge Giles states:

- The only Healy Ranch Partnership that ever held title to Healy Ranch was the partnership between Plaintiff's [Bret Healy's] parents, Robert E. Healy and Mary Ann Healy (Osborne), and grandmother, DeLonde Healy. (App. 049-060 at 051, ¶4; SR 104-115 at 106, ¶ 4.)
- On January 26, 1986, Plaintiff [Bret Healy] entered into a partnership agreement with his mother, Mary Ann Healy (Osborne), and grandmother, DeLonde Healy, in order to create a new Healy Ranch Partnership ("1986 Healy Ranch Partnership"). (App. 051, ¶5; SR 106, ¶ 5.)

However, if this Court reviews the full and complete Notice of Claim of Interest, a factual dispute becomes obvious. Pertinent portions of the 1986 Agreement attached to the Notice of Claim of Interest include:

- This is an agreement between DeLonde Healy and Mary Ann Healy, the remaining partners of Healy Ranch Partnership and Bret J. Healy.

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<sup>9</sup> For purposes of discussing this point in light of the standard review, it should be noted that Judge Smith noted at the June 4, 2020 hearing on the Motion for Summary Judgment, "I'm going to withhold ruling on the res judicata issue, although if I were included to rule on it, I would think it's not there. I would that – put that in the category of valiant effort, but I don't think it's quite there." (SR 1012-1036 at 1034, lines 1-4.)



WHEREFORE, Robert Healy recently passed away, leaving all that he had to his wife Mary Ann Healy, which would include any interest in the partnership...(App. 021-028 at 023; SR 210-217 at 212.)

- III. In return for the above set out benefits, DeLonde Healy shall release all title and interest she has to the Partnership assets as of December 31, 1985, this being a complete writing of a prior oral agreement between the parties. (App. 024; SR 213.)
- VIII. It is the intent of all the parties that any interest of DeLonde Healy in the Healy Ranch partnership by the terms of this agreement be completely transferred directly to Bret Healy effective with the date of this agreement because he shall be the person responsible for the operation of the business and the payment of all benefits hereunder as long as the operation exists. (App. 026; SR 215.)
- IX. All parties admit to having received a full and complete disclosure of the assets and the debts of Healy Ranch Partnership as of the date of Robert Healy's death, November 11, 1985. (App. 026, 113-125 at 114, ¶4, 122-125; SR 215, 626-664 at 627, ¶4; 646-649.)

In the 2017 litigation, neither the trial court nor the Supreme Court addressed the substantive effect of the 1986 Agreement, because the case was dismissed summarily on the basis of a six-year statute of limitations. If the merits of the 1986 Partnership Agreement are evaluated, along with the Bill of Sale executed by DeLonde Healy in 1989 (App. 102-103; SR 227-228) and a letter from DeLonde Healy to Farm Credit Services in 1993 disclaiming any ownership in the real estate or Healy Ranch (App. 104; SR 229), an issue of material fact is generated as to whether DeLonde Healy had authority on behalf of the Healy Ranch Partnership to execute the 1995 Warranty Deed. (App. 086-092 at 90, ¶¶29-30; SR 203-209 at 207, ¶¶ 29-30.) A partnership interest is personal property. [SDCL 48-7A-502](#). When DeLonde Healy divested herself of her partnership interest(s), she divested herself of authority to sign a deed on behalf of the partnership(s).<sup>10</sup> (App. 90, ¶28; SR 207, ¶ 28.) Additionally, the interest of each partner in specific partnership

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<sup>10</sup> Note these documents (the 1986 Agreement and the 1989 Bill of Sale) were broad enough to transfer any and all partnership interests from Delonde Healy to Bret Healy. Even Judge Giles discussion of the 1972



property is non-assignable. [Jade, Inc. v. Bendewald](#), 468 N.W.2d 138, 142-43 (S.D. 1991); SDCL 48-7A-501.

The parties dispute whether there had been any operations of Healy Ranch Partnership following December 31, 1985. Healy Ranch, Inc. asserts there has been no Healy Ranch Partnership since 1985 and that there were no partners on March 12, 1995. (App. 090-091, ¶¶32-33; SR 207-208, ¶¶ 32-33). However, other evidence indicates that there were continuing business activities by the partnership after 1985 under the same taxpayer [id](#) used by the partnership since 1961, including a bankruptcy, an application for agricultural benefits, crop insurance coverage, and a continued debt to the Small Business Administration, and a settlement agreement and lease executed on behalf of Healy Ranch Partnership by the three brothers. (App. 091, ¶34, 127-128, ¶5, 202-206; SR 208, ¶ 34; 1466-67, ¶ 5, 1541-1545).

Both, or either, the 1986 Agreement or the Bill of Sale would have been effective to transfer the entirety of DeLonde Healy's partnership interest, in any Healy Ranch partnership, to Bret Healy. Further, by virtue of the assignment of her partnership interest(s), DeLonde Healy divested herself of any authority to sign partnership documents. As such, genuine issues of material fact exist as to the validity of the 1995 Warranty Deed and summary judgment would be inappropriate.

This Court affirmed the dismissal of Healy I on the basis that the claims asserted were time-barred. The issues of ownership of real estate and partnership interests was never determined. As a matter of law, Healy Ranch, Inc. should not be granted summary judgment on the basis of res judicata. Healy I does not address the claims in this case nor

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deed in Healy I points to facts which would show Bret Healy was the missing signor on the 1995 Warranty Deed. (App. 045, lines 2-13; SR 1092, lines 2-13.)



are the facts settled in such a way to support summary judgment in favor of Healy Ranch, Inc.

## **II. THE NOTICE OF CLAIM OF INTEREST WAS NOT FILED FOR PURPOSE OF SLANDERING TITLE**

### **A. HEALY RANCH, INC.'S CLAIM FOR ATTORNEY FEES DOES NOT SATISFY THE REQUIREMENTS OF [SDCL 43-30-9](#).**

#### **1. HEALY RANCH INC. FAILS TO SHOW THE REQUISITE INTENT REQUIRED TO AWARD ATTORNEY FEES UNDER [SDCL 43-30-9](#)**

Healy Ranch, Inc. asserts that attorney's fees as a cost are assumed in a quiet title action under the SDMTA. If this were the case, [SDCL 43-30-9](#) would have clearly stated so. What the statute does require is additional findings of fact beyond quieting title. The SDMTA sets a higher bar for the award of attorney's fees than a common law claim for attorney fees. Not only must the elements of slander of title be proven, but a party requesting fees must show that the filing of a notice of claim of interest was done for the exclusive and sole purpose of slandering title.

No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land and in any action brought for the purpose of quieting title to land, *if the court shall find that any person has filed a claim for the purpose only of slandering title to such land*, he shall award the plaintiff all the costs of such action, including attorney fees to be fixed and allowed to the plaintiff by the court, and all damages that plaintiff may have sustained as the result of such notice of claim having been filed for record.

[SDCL 43-30-9](#) (emphasis added). Based on the facts in the record, there is no possibility the Circuit Court could have found the filing of the notice was done for the exclusive purpose of slandering title to the Property. At the time of the hearing on Healy Ranch, Inc.'s Motion for Costs, the only substantive decision that had been made by the Circuit Court was that the Notice of Claim of Interest was not timely filed. Slander of title, even



as a cost claim or item of special damages, requires fact findings as to elements that were never addressed by the Circuit Court in the motion for summary judgment. See, Biegler v. Kraft, 924 F. Supp. 2d 1074, 1092–93 (D.S.D. 2013). In addition, there was insufficient evidence for the Circuit Court to find that Bret Healy filed the Notice of Claim of Interest on behalf of Healy Ranch Partnership with the exclusive purpose or intent of slandering title. Healy Ranch, Inc. puts forth virtually no new facts, relying almost exclusively on the pleadings and prior proceedings from Healy I that took place before the Notice of Claim of Interest was either drafted or recorded. Further, other family members acknowledge that DeLonde Healy was not a partner in any partnership known as Healy Ranch Partnership after December 31, 1985. (App. 113-125 at 115-116, ¶¶ 6, 7, 13; SR 626-664, at 628-629, ¶¶ 6, 7, 13.) Bret Healy also put forth expert testimony of CPA Nina Braun who determined from her review of numerous documents that the Healy Ranch partnership had continuing business operations between 1986 and 1997 and that those business operations were all conducted under the same federal tax identification number that had been assigned to Healy Ranch partnership since 1961. (App. 105-112 at 107-112; SR 230-429, at 233-237.)

The new facts in the record regarding Bret Healy’s intent at the time the Notice of Claim of Interest was filed are generally set forth from Bret Healy in his affidavit and illustrate a legitimate intent to preserve Healy Ranch Partnership’s claim by means authorized by law. (App. 126-229; SR 1465-1568). His affidavit reflects consultation with attorney Patrick Glover regarding the propriety of a notice of claim of interest. Mr. Glover’s billing statement indicates he participated in drafting the Notice of Claim of



Interest. (App. 229; SR 1568). Further, no ruling had been issued by this Court when the Notice of Claim of Interest was drafted or recorded.

There are also various facts over which Healy Ranch, Inc. had control over that lend legitimacy and credence to the contents of the Notice of Claim of Interest. For example, Healy Ranch, Inc. admits that at no point in time has there ever been a statement of partnership authority, recorded or unrecorded, granting Mary Ann Healy or DeLonde Healy authority to execute the 1995 Warranty Deed. (App. 098, ¶ 19; SR 223, ¶ 19.) Healy Ranch, Inc. also admits facts that go to show that the 1995 Warranty Deed was not validly executed, going so far as asserting that there no partners in Healy Ranch Partnership on March 12, 1995 when the 1995 Warranty Deed was executed and that the partnership has not existed since 1985. (App. 095, ¶7; SR 220, ¶ 7).

The only new fact Healy Ranch, Inc. complains of is that, during the pendency of this case, Bret Healy contacted attorneys for Wells Fargo relating to the razing of a barn that his brothers, Bryce and Barry, arranged. What Healy Ranch, Inc. fails to disclose is that Bret Healy's attorney contacted counsel for Healy Ranch, Inc. to attempt to address the issue. (SR 1416-1417.) What is not acknowledged by Healy Ranch, Inc. is that the inquiry came in the context of a request for information related to concerns that the decision to raze the barn could result in default of the corporation's financing. Bret Healy requested from the bank only that information that he had previously requested from the corporation. (SR 1419-1421.) Healy I was clear in that Bret Healy is, and was, an active participant in Healy Ranch, Inc. operations. The razing of a barn has nothing to do with title to the Property. Rather, it addresses a concern regarding the status of the financing of Healy Ranch, Inc. While it is understandable that emotions run high when



there is a dispute among family members, the continuing reality whether the brothers like it or not is that they are still in business together as Healy Ranch, Inc.

## **2. HEALY RANCH INC. FAILS TO SHOW THE REQUISITE ELEMENTS OF SLANDER OF TITLE**

In addition to the issue of exclusive purpose, Healy Ranch, Inc. is incapable of even getting past the threshold question needed to find slander of title exists. There was never any finding that the contents of the Notice of Claim of Interest contained false statements.

The first nineteen words of [SDCL § 43–30–9](#) and case law in South Dakota recognize a slander of title claim apart from a quiet title action. The elements of such a claim in South Dakota are that the party claiming slander of title must show that:

*[T]he publication was false and that the publication “(1) was derogatory to the title to [the] property, its quality, or [the property owner's] business in general, calculated to prevent others from dealing with [the property owner] or to interfere with [the property owner's] relations with others to [the property owner's] disadvantage (often stated as malice); (2) was communicated to a third party; (3) materially or substantially induced others not to deal with [the property owner]; (4) resulted in special damage.”* [Brown](#), 2011 S.D. 21, ¶ 19, 798 N.W.2d at 428 (quoting *Gregory's, Inc. v. Haan*, 1996 SD 35, ¶ 12, 545 N.W.2d 488, 493). *The threshold question, therefore, is whether the lis pendens contained false statements. Id.*

[Biegler v. Kraft](#), 924 F. Supp. 2d 1074, 1092–93 (D.S.D. 2013) (emphasis added). Not only is there no finding in the record that the statements in the Notice of Claim of Interest were false, but no evidence was presented to show that the Notice of Claim of Interest “materially or substantially induced others not to deal with [the property owner]”. [Id.](#)

Finally, it should be noted that Healy Ranch, Inc. has withdrawn its claim of Slander of Title. (SR 1592.) Based on the factual record, Judge Smith’s determination to



deny attorney's fees is supported by reason and evidence and was not an abuse of discretion.

**B. ATTORNEY FEES ARE NOT AWARDABLE PURSUANT TO [SDCL 43-30-9](#) UNDER THE DOCTRINE OF RES JUDICATA**

For the reasons set forth in Section 1B of Appellee's Brief, the Doctrine of Res Judicata would not justify the award of attorney's fees. While, admittedly, the prior proceedings in Healy I do create a layer of facts and circumstances that may be relevant in some respects to these proceedings, they do not stand on their own to satisfy all of the necessary findings to award attorney's fees under [SDCL 43-30-9](#) and South Dakota case law. [Biegler](#), 924 F.Supp.2d at 1092-93.

**III. HEALY RANCH PARTNERSHIP SHOULD HAVE BEEN ADDED AS AN INDISPENSIBLE PARTY**

**1. Due diligence requires all interested parties be included in this Quiet Title Action.**

Due diligence is applicable to quiet title actions. [Ryken v. State](#), 305 N.W.2d 393, 396 (S.D. 1981) (citing [Berry v. Howard](#), 33 S.D. 447, 146 N.W. 577 (1914); [Grigsby v. Wopschall](#), 25 S.D. 564, 127 N.W. 605 (1910)). Whether a party has exhausted all reasonable means available for locating interested parties must be determined by the circumstances of each particular case. [Id.](#) (citing [Cone v. Ballard](#), 68 S.D. 593, 5 N.W.2d 46 (1942)).

On March 18, 2020, the undersigned caused to be filed in this matter a Motion to Join or Dismiss. (SR 179-182). Plaintiff has captioned this case in a manner which only brings this Quiet Title action against Bret Healy, an individual, based on its assertion that the Notice of Claim was filed in Bret Healy's individual capacity. (App. 080-085, ¶26; SR 54-59, ¶ 26). In the Defendant's Motion to Join or Dismiss, the undersigned



requested Healy Ranch, a partnership, be added as it is a wholly separate and distinct legal entity and, without its participation in this case, a full and complete judgment cannot be rendered quieting title.<sup>11</sup> Further, with minimal diligence, the Healy Ranch, Inc. should know that it is the Healy Ranch Partnership that is claiming an interest in the Property.

An indispensable party is one ‘whose interest is such that a final decree cannot be entered without affecting that interest or in whose absence the controversy cannot be terminated.’” *Thieman v. Bohman*, 2002 S.D. 52, ¶ 13, 645 N.W.2d 260, 262 (quoting *Smith v. Albrecht*, 361 N.W.2d 626, 628 (S.D.1985)). SDCL 15–6–19(a) more specifically addresses the indispensable parties who must be joined. A person who is subject to service of process shall be joined as a party in the action if:

- (1) In his absence complete relief cannot be accorded among those already parties; or
- (2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

SDCL 15–6–19(a). “ ‘While the inclusion of necessary parties is up to the [circuit] court's discretion, there is no discretion as to the inclusion of indispensable parties.’ ” *Thieman*, 2002 S.D. 52, ¶ 13, 645 N.W.2d at 262–63 (quoting *Smith*, 361 N.W.2d at 628). The indispensable party issue is a question of law that we review *de novo*. *Id.* ¶ 10, 645 N.W.2d 260, 262. “ ‘Accordingly, the issue[ ] is fully reviewable and we afford no deference to the conclusion[ ] reached by the [circuit] court.’ ” See *id.*

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<sup>11</sup> Partnerships are legal entities wholly separate and apart from their individual partners. SDCL 48-7A-201(a). Property acquired by a partnership is property of the partnership and not of the partners individually. SDCL 48-7A-203.



[Busselman v. Egge](#), 2015 S.D. 38, ¶ 6, 864 N.W.2d 786, 788. While Healy Ranch, Inc. asserts that the Notice of Claim of Interest was filed on behalf of an individual, Bret Healy dba Healy Ranch Partnership, legally Bret Healy may file documents such as the Notice of Claim of Interest as a partner acting on behalf of the Healy Ranch Partnership. (App. 080-085, ¶31; SR 54-59, ¶ 31). Due to the partnership's claimed interest in the property, it should be added as an indispensable party. See [Ryken](#), 305 N.W.2d at 393 (remanding an uncontested judgment for failure to include a defendant who claimed an interest in property by virtue of an unrecorded tax deed, which was reflected in the public records of the county treasurer's office); [Kapp v. Hansen](#), 79 S.D. 279, 285-86, 111 N.W.2d 333, 336-337 (1961) (properties adjoining a meandering line along a body of water were indispensable parties due to their potential accretion rights and water rights).

### CONCLUSION

Healy Ranch, Inc.'s motion for summary judgment cannot be affirmed as a matter of law, and the existence of Healy I is not adequate for applying any aspect as res judicata to the matters that arise in this case. Further, the facts under both Healy I and as supplemented in this matter, are not sufficient to support an award of attorney fees. As such, the undersigned respectfully requests this Court reverse the circuit courts grant of summary judgment, remanding this matter for further proceedings, affirm the circuit court's refusal to award attorney fees, and further instruct that Healy Ranch Partnership be joined in this matter as an indispensable party.

Dated this 30<sup>th</sup> day of November, 2020.



## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements set forth in [SDCL 15-26A-66\(b\)\(4\)](#). This brief was prepared using Microsoft Word 365, with 12 point Times New Roman font. This brief contains 10,400 words, excluding table of contents, table of authorities, jurisdictional statement, statement of legal issues and certificate of counsel. I relied on the word count feature in Microsoft Word 365 to prepare this certificate.

Dated this 30<sup>th</sup> day of November, 2020

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## CERTIFICATE OF SERVICE

The undersigned hereby certified that on November 30, 2020, I electronically served a true and correct copy of the foregoing Appellee's Brief via email on the following:

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/s/Angie J. Schneiderman

Angie J. Schneiderman

Attorney for Appellee



IN THE SUPREME COURT  
OF THE STATE OF SOUTH DAKOTA

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No. 29409

---

**HEALY RANCH, INC.**

**Plaintiff and Appellant**

vs.

**BRET HEALY, INDIVIDUALLY AND  
D/B/A HEALY RANCH PARTNERSHIP**

**Defendant and Appellee.**

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Appeal from the Circuit Court  
First Judicial Circuit  
Brule County, South Dakota

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HONORABLE PATRICK T. SMITH  
Presiding Judge

---

**APPELLEE’S AMENDED CERTIFICATE OF COMPLIANCE**

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Notice of Appeal filed September 3, 2020

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### AMENDED CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements set forth in [SDCL 15-26A-66\(b\)\(4\)](#). This brief was prepared using Microsoft Word 365, with 12 point Times New Roman font. This brief contains 11,145 words, excluding table of contents, table of authorities, jurisdictional statement, statement of legal issues and certificate of counsel. I relied on the word count feature in Microsoft Word 365 to prepare this certificate.

Dated this 1<sup>st</sup> day of December, 2020

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### CERTIFICATE OF SERVICE

The undersigned hereby certified that on December 1, 2020, I electronically served a true and correct copy of the foregoing Appellee's Brief via email on the following:

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**SUPPLEMENTAL APPENDIX  
TABLE OF CONTENTS  
No. 29409**

**Healy Ranch, Inc. v. Bret Healy, individually and d/b/a/ Healy Ranch Partnership**

TAB	DOCUMENT	APPENDIX NUMBER	SETTLED RECORD NUMBER
12.	Defendant's Response to Plaintiff's Statement of Undisputed Facts ("DRPSUF")	App. 086 - 092	SR 203 - 209
13.	Exhibit B to DRPSUF – Answers to Defendants' Interrogatories and Request for Production of Documents	App. 093-101	SR 218 - 226
14.	Exhibit C to DRPSUF – Bill of Sale	App. 102-103	SR 227 - 228
15.	Exhibit D to DRPSUF – Letter to Farm Credit Services	App. 104	SR 229
16.	Exhibit E to DRPSUF – Affidavit of Nina Braun, C.P.A. with Exhibit A and B	App. 105-112	SR 230 – 237
17.	Exhibit F to DRPSUF – Affidavit of John Healy with Exhibit 3 and 4	App. 113 - 125	SR 626 - 632, 644 - 649
18.	Affidavit of Bret Healy with Exhibits	App. 126-229	SR 1465 – 1568
19.	1995 Warranty Deed	App. 230-231	SR 65 -66



STATE OF SOUTH DAKOTA : IN CIRCUIT COURT  
: ss  
COUNTY OF BRULE : FIRST JUDICIAL CIRCUIT

HEALY RANCH, INC,

Plaintiff/Counterclaim  
Defendant,

v.

BRET HEALY, Individually and d/b/a  
HEALY RANCH PARTNERSHIP and  
HEALY RANCH PARTNERSHIP,

Defendants/  
Counterclaim-Plaintiffs.

NO. 07 CIV 19-71

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S STATEMENT OF  
UNDISPUTED FACTS**

COMES NOW, the co-Defendants Bret Healy d/b/a Healy Ranch Partnership and Healy Ranch Partnership and respectfully submits this Response to Plaintiff's Statement of Undisputed Facts in support of their Resistance to Plaintiff's Motion for Summary Judgment. Exhibits referenced herein are attached either to the Affidavit of Joe Erickson filed in support of Plaintiff's Motion or attached to this Response to Plaintiff's Statement of Undisputed Facts.

1. Defendants admit the allegations contained within Paragraph 1 of Plaintiff's Statement of Undisputed Material Facts.

2. Defendants deny the allegations contained within Paragraph 2 of Plaintiff's Statement of Undisputed Material Facts based upon facts further set out in this pleading at Paragraphs 28, 29, and 30. Defendants do not deny that the 1995 Warranty Deed was recorded on March 13, 1995.



3. Defendants admit the allegations contained within Paragraph 3 of Plaintiff's Statement of Undisputed Material Facts; however, the document included as Depo. Exhibit 1 is an incomplete document. (Bret Healy Depo 5:9-6:7) A complete copy of Exhibit 1 is included as Defendant's Exhibit A.

4. Defendants do not dispute that the Notice of Claim of Interest was filed on January 25, 2018; however, the document included as Depo. Exhibit 1 is an incomplete document. (Bret Healy Depo 5:9-6:7) A complete copy of Exhibit 1 is included as Defendant's Exhibit A.

5. Defendants admit the allegation contained within Paragraph 5; however, the document included as Depo. Exhibit 1 is an incomplete document. (Bret Healy Depo 5:9-6:7) A complete copy of Exhibit 1 is included as Defendant's Exhibit A.

6. Defendants admit the allegation contained within Paragraph 6; however, the document included as Depo. Exhibit 1 is an incomplete document. (Bret Healy Depo 5:9-6:7) A complete copy of Exhibit 1 is included as Defendant's Exhibit A.

7. Defendants admit the allegations of Paragraph 7.

8. Defendants admit that the source of title in the Healy Ranch Partnership stems from the 1968 and 1990 deeds; the filing of the 1995 Warranty Deed was an intervening act which would have disturbed the Partnership's title to the Property.

9. Defendants admit the allegations of Paragraph 9.



### RES JUDICATA

10. Defendants admit the allegations of Paragraph 10.

11. Defendants admit the allegations of Paragraph 11. The Memorandum Decision did not adjudicate the merits of Bret Healy's allegations because the court determined the claims were barred pursuant to the applicable six-year statute of limitations. (Memorandum Decision, Depo. Ex. 5.)

12. Defendants admit the allegations of Paragraph 12.

13. Defendants admit the allegations of Paragraph 13. The Memorandum Decision did not adjudicate the merits of Bret Healy's allegations because the court determined the claims were barred pursuant to the applicable six-year statute of limitations. (Memorandum Decision, Depo. Ex. 5.)

14. Defendants admit the allegations of Paragraph 14.

15. Defendants admit the allegations of Paragraph 15.

16. Defendants admit the allegations of Paragraph 16.

17. Defendants admit the allegations of Paragraph 17.

18. Defendants admit the allegations of Paragraph 18.

19. Defendants admit the allegations of Paragraph 19.

20. Defendants admit the allegations of Paragraph 20.

21. Defendants admit the South Dakota Supreme Court affirmed the Trial Court's ruling. The remainder of Plaintiff's Paragraph 21 misstates Bret Healy's deposition testimony. (Bret Healy's Depo. 8:20-14:5) Whether Bret Healy agrees with the Memorandum Decision issued by Judge Giles, the



Findings of Fact and Conclusions of Law, or the South Dakota Supreme Court's Opinion is irrelevant, a lay person's opinion, and not a fact.

22. Defendants admit the allegations of Paragraph 22. Whether Bret Healy agrees with the Memorandum Decision issued by Judge Giles, the Findings of Fact and Conclusions of Law, or the South Dakota Supreme Court's Opinion is irrelevant, a lay person's opinion, and not a fact.

23. Defendants admit the allegations of Paragraph 23. Whether Bret Healy agrees with the Memorandum Decision issued by Judge Giles, the Findings of Fact and Conclusions of Law, or the South Dakota Supreme Court's Opinion is irrelevant, a lay person's opinion, and not a fact.

24. Defendants deny the allegations of Paragraph 24 as it mis-states Bret Healy's deposition testimony. (Bret Healy's Depo. 30:22-33:21)

#### **ADDITIONAL MATERIAL FACTS**

25. The South Dakota Supreme Court made clear in its decision, it was not addressing "Bret's claim of ownership because the threshold issue in this case centers on the timeliness of Bret's claims for conversion, breach of contract, fraud, conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence." Healy v. Osborne, 934 N.W.2d 557, 563 (S.D. 2019).

26. Plaintiff has asserted that the Notice of Claim of Interest was prepared by Bret Healy in his capacity as an individual. (Exhibit B, Answers to Defendants' Interrogatories and Request for Production of Documents to Plaintiff, Interrogatory 6.)



27. Not the Plaintiff, nor anyone on its behalf, has caused to be recorded any Affidavit of Possession. (Exhibit B, Answers to Defendants' Interrogatories and Request for Production of Documents to Plaintiff, Interrogatory 20.)

28. At no point after December 31, 1985 was DeLonde Healy a partner in any partnership known as Healy Ranch Partnership. (Exhibit A, Notice of Claim of Interest, Pages 4 at Paragraph III, Page 6 at Paragraph VIII; Exhibit F, Affidavit of John Healy, Paragraphs 6,7, and 13.)

29. DeLonde Healy executed a Bill of Sale in 1989 conveying to Bret Healy "[a]ny and all interest first party has if any, in the machinery, crops, cattle, equipment and any and all other Healy Farm operation or Healy Farm partnership or Healy Ranch partnership or any other like entity whether a partnership, corporation or other legal entity. (Exhibit C, Deposition Exhibit 29, Bill of Sale.)

30. DeLonde Healy represented to Farm Credit Services on April 28, 1993 that she had no interest in the real property or other property of Healy Ranch. (Exhibit D, Deposition Exhibit 31, Letter to Farm Credit Services.)

31. Bret Healy testified the Healy Ranch Partnership should be party to this suit because the partnership has an interest in, or holds title to the Property. (Bret Healy Depo 3:15-4:4)

32. Plaintiff asserts that there were no partners in Healy Ranch Partnership on March 12, 1995 or that it existed on that date. (Exhibit B,



Answers to Defendants' Interrogatories and Request for Production of Documents to Plaintiff, Interrogatory 7.)

33. Plaintiff asserts that Healy Ranch Partnership has not existed since 1985. Exhibit B, Answers to Defendants' Interrogatories and Request for Production of Documents to Plaintiff, Interrogatory 7.)

34. Nina Braun, a CPA licensed in the State of South Dakota reviewed various documents relating the Healy Ranch Partnership, Healy Ranch, Inc. and its various partners and shareholders. In the documents she reviewed, she found no evidence of a liquidating distribution of the Healy Ranch Partnership. In addition, she found evidence that Healy Ranch had continuing business operations between 1986 and 1997, all under the same tax id number assigned to the Healy Ranch Partnership since 1961. (Exhibit E, Affidavit of Nina Braun, Exhibit B, Paragraphs 2 and 6).

Dated this 27th day of May, 2020.

MOORE, CORBETT, HEFFERNAN,  
MOELLER & MEIS, L.L.P.

By: /s/Angie J. Schneiderman

Angie J. Schneiderman # 3363  
300 U.S. Bank Building  
501 Pierce Street  
P.O. Box 3207  
Sioux City, Iowa 51102  
PHONE: 712/252-0020  
FAX: 712/252-0656

ATTORNEY FOR DEFENDANTS



**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 27th day of May, 2020, a true and correct copy of the foregoing documents were electronically filed with the Clerk of Court using the South Dakota Odyssey System, which will send notification of electronic filing to the following opposing counsel and constitutes service of the document for purposes of the South Dakota Rules of Civil Procedure.

Lee Schoenbeck  
Joseph Erickson  
PO Box 1325  
Watertown, SD 57201

/s/Angie J. Schneiderman  
Angie J. Schneiderman



STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT
<hr/>		
HEALY RANCH, INC.,	)	
	)	
Plaintiff,	)	07CIV. 19-71
	)	
v.	)	ANSWERS TO DEFENDANTS'
	)	INTERROGATORIES AND REQUEST
BRET HEALY, Individually and d/b/a	)	FOR PRODUCTION OF DOCUMENTS
HEALY RANCH PARTNERSHIP,	)	TO PLAINTIFF
	)	
Defendants.	)	
<hr/>		
TO:		BRET HEALY, INDIVIDUALLY AND D/B/A HEALY RANCH PARTNERSHIP,
		DEFENDANTS, AND THEIR ATTORNEY OF RECORD, ANGIE J.
		SCHNEIDERMAN

COMES NOW the Plaintiff, Healy Ranch, Inc., and makes these Answers to Defendants' Interrogatories and Request for Production of Documents to Plaintiff:

**OBJECTION**

Plaintiff objects to Defendants' automatic demand for production of documents identified in answer to Interrogatories, as Defendants have all the documents identified in these Answers, pursuant to previous litigation, and asking Plaintiff to reproduce those documents in the pending litigation is burdensome and unnecessary.

**ANSWERS**

1. Identify by full name, address, telephone number, and occupation all individuals who answered, assisted in answering, or provided information for Plaintiff's Answers to these Interrogatories and Requests for Production of Documents.

**ANSWER**

- Bryce Healy, 3108 West Cinnamon Street, Sioux Falls, South Dakota 57108, 605-261-3672, Executive Director of the Associated General Contractors of South Dakota.
- Barry Healy, 24839 348<sup>th</sup> Avenue, Pukwana, South Dakota 57370, 605-295-0514, Farm Manager.

**EXHIBIT  
B**

- 1 -



- Plaintiff's attorney.
2. Please identify by full name, address, and telephone number all individuals known to you, your attorneys, and agents who have knowledge of the facts and circumstances surrounding the allegations and/or representations in Plaintiff's Complaint or any and all matters and things that are in any way relevant or material to any of the controverted issues herein. For each person summarize the facts to which you believe he or she will testify.

**ANSWER**

- Mary Ann Healy fka Mary Ann Osborne—signed the 1995 Deed.
  - Bret Healy—signed the Notice of Claim of Interest, and would know that the Healy Ranch Partnership hasn't existed for many years.
  - Barry Healy and Bryce Healy—would know that Healy Ranch, Inc. has owned the Healy Ranch real property since 1995.
  - Steve Fox—he prepared the 1995 Deed.
  - Honorable Chris Giles, and the five members of the South Dakota Supreme Court—they heard these issues in the litigation from 2017 through 2019, and made findings and issued orders and opinions on the issues.
3. Please identify by full name, address, and telephone number every person from whom you have taken a written or recorded statement regarding this litigation.

**ANSWER**

The only document that would potentially satisfy this answer would be the deposition of Bret Healy that was taken on July 31, 2017, and marked as Deposition Exhibit 9 in this litigation.

4. Please state in complete detail the identify of each person whom you expect to call as an expert witness at the time of trial. As to each person, state with reasonable particularity:
- a. The person's address and a description of the person's specialty;
  - b. The subject matter on which the expert is expected to testify;
  - c. The substance of the facts and opinions to which the expert is expected to testify;
  - d. A summary of the grounds for each opinion; and,
  - e. Any reports supplied to or created by each person.



**ANSWER**

No decisions have been made as to expert witnesses at this time. This answer will be supplemented pursuant to pretrial deadlines.

5. Please state and identify whether Defendants, through its agents and/or employees, have made any statement(s) that Plaintiff contends (1) constitutes an admission or (2) contradicts any of the statements or allegations in Defendants' Answer, Affirmative Defenses and Counterclaims.

**ANSWER**

See the Defendant's Deposition, Affidavits, and filings in the 2017 litigation, as well as the deposition the Defendant has given in this litigation.

6. Please identify any facts you claim support the assertion that Bret Healy, as an individual, was acting or operating under the name or d/b/a Healy Ranch Partnership.

**ANSWER**

There is no Healy Ranch Partnership currently in existence that the Plaintiff is aware of, and there has not been a Healy Ranch Partnership in existence with respect to the real property owned by Healy Ranch, Inc. for many years. The South Dakota Supreme Court reaffirmed that reality in Paragraph 29 of their decision in *Healy v. Osborne*, 934 N.W.2d 557 (S.D. 2019).

Additionally, Deposition Exhibit 1, Notice of Claim of Interest, indicates it was prepared by "Bret Healy," and indicates no capacity other than as an individual. Similarly, page 2 of the Notice of Claim of Interest is signed by Bret Healy, and indicates no capacity other than as an individual.

7. Please identify who you believe were the partners of Healy Ranch Partnership on March 12, 1995.

**ANSWER**

Plaintiff does not believe there were any partners in Healy Ranch Partnership on March 12, 1995, or that it existed on that date.

8. Please identify any facts or documents you claim support your answer to Interrogatory No. 7.



**ANSWER**

Bret Healy had left the Healy Ranch in 1989. The Corporation was created in 1994, and our mother, Mary Ann Healy fka Mary Ann Osborne, said her sons were to each own one-third.

9. Please identify who you believe the partners of Healy Ranch Partnership were on November 26, 2019.

**ANSWER**

We do not believe Healy Ranch Partnership existed on November 26, 2019.

10. Please identify any facts or documents you claim support your answer to Interrogatory No. 9.

**ANSWER**

There are no facts or documents to support the existence of Healy Ranch Partnership, and the Supreme Court Decision referenced above affirms that reality.

11. Please identify under what authority Healy Ranch, Inc. has brought this lawsuit.

**ANSWER**

The Corporate officers made the decision to take the actions necessary to remove the cloud on the Corporation's real estate, after the Supreme Court handed down its decision on September 25, 2019.

12. Please identify any corporation meetings at which this lawsuit was discussed, including the date of the meeting, the attendees of the meeting, and the matters discussed.

**ANSWER**

A special litigation committee was created in May of 2017, which meeting was attended by all of the shareholders of the Corporation, and the Corporation agreed that the special litigation committee would handle any litigation with respect to Healy Ranch. See Minutes at HEALY RANCH, INC. 1-9.

13. Please identify any facts or proof you claim shows a winding up or dissolution of Healy Ranch Partnership.



**ANSWER**

Historically, there was more than one Healy Ranch Partnership. No Healy Ranch Partnership has been in existence since 1985. Previously, Bret Healy testified that the final tax return for Healy Ranch Partnership was filed in 1985.

14. Please identify the aspects of the Notice of Claim, attached to your Complaint as Exhibit B, you claim are false.

**ANSWER**

Paragraph 4 is incorrect when it describes the 1995 Deed as “not valid.” The 1986 Agreement that is referenced, and the Warranty Deed referred to, were not recorded.

There was consideration given for the Warranty Deed, as the Corporation assumed a \$77,000 Federal Land Bank note and mortgage.

The assertion that the Partnership still owns the real estate, due to the 1995 Deed allegedly being invalid, is also false.

15. Please identify all leases on the real estate described in your Complaint that have existed at any point between 1992 and today.

**ANSWER**

1992-1994 Crop ground sharecropped with Maynard Jensen as agent.  
1992-1994 Pasture and facilities rented to Rocky Knippling.  
1995-2007 David and James Swanson rented all of Healy Ranch, Inc.  
2008-2015 Barry Healy and Bret Healy rented all of Healy Ranch, Inc. with a verbal agreement.  
2016 No leases. Healy Ranch, Inc. farmed as a corporation.  
2017-2019 Leases with Paul Giedd, Pazour Family Feeders, Spreckels Farms, Thompson Family Farms, and Barry Healy.

16. Please identify what consideration was exchanged for the March 12, 1995 deed to the real estate described in your Complaint.

**ANSWER**

There was a Federal Land Bank mortgage that was assumed by the Corporation, and the Defendant admitted that fact in his deposition.

17. Please identify the Directors, Officers, Shareholders of Healy Ranch, Inc. as of March 11, 1995.



**ANSWER**

Directors: Mary Ann Osborne, Bryce Healy, Barry Healy, Bret Healy.

Officers: President, Mary Ann Osborne; Vice-President, Bret Healy;  
Secretary/Treasurer, Bryce Healy

18. Please identify any changes to the Shareholders of Healy Ranch, Inc. at any point after March 11, 1995, the date of the change, the number of shares held, and the consideration exchanged for each Shareholder's shares.

**ANSWER**

As of March 11, 1995:

- Mary Ann Osborne 224,511
- Bryce Healy 24,946
- Bret Healy 24,946
- Barry Healy 24,945

As of February 11, 2000, pursuant to the Contract for Deed:

- Mary Ann Osborne 0
- Barry Healy 99,762.66
- Bryce Healy 99,762.67
- Bret Healy 99,762.67

President, Bret Healy, failed to act administratively to officially transfer shares after final payment was made in 2014. We are currently working on officially transferring these shares out of escrow.

19. Please identify any statements of Partnership authority for Healy Ranch Partnership relating to the real estate described in your Complaint.

**ANSWER**

None that we have.

20. Please identify any Affidavits of Possession that have been executed since 1995 regarding the real estate described in your Complaint.

**ANSWER**

None.



21. Identify any requests Healy Ranch, Inc. has made for a Quit Claim Deed to the real estate described in your Complaint.

**ANSWER**

None.

22. Identify any demands for derivative action that have been made on Healy Ranch, Inc. since 1995.

**ANSWER**

None that we're aware of.

23. Please identify any damages you are claiming in your Complaint.

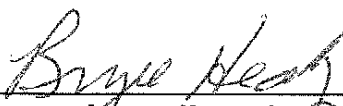
**ANSWER**

This answer will be supplemented.

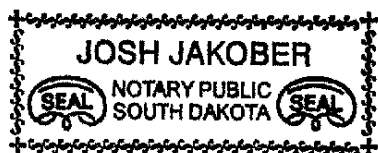
24. Please identify any and all materials referred to by you in preparing your Answers to these Interrogatories and Request for Production of Documents.

**ANSWER**

Deposition Exhibits 1, 2, and 9, and the Corporate minute books and Corporate shareholder records.

  
Bryce Healy, as officer of Healy Ranch, Inc.

Subscribed and sworn to before me this 19<sup>th</sup> day of February, 2020.



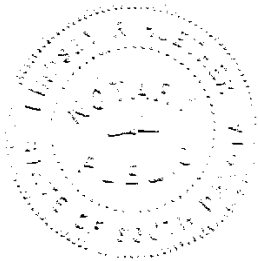
  
Notary Public – South Dakota  
My Commission Expires August 9, 2022

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Barry J. Healy  
Barry Healy, as officer of Healy Ranch, Inc.

Subscribed and sworn to before me this 20<sup>th</sup> day of February, 2020.



Lindsey R. Huether  
Notary Public – South Dakota  
My Commission Expires Sept 15 2025

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Dated this 21<sup>st</sup> day of February, 2020.

SCHOENBECK LAW, PC

/s/ Lee Schoenbeck

Lee Schoenbeck

*Attorney for Plaintiff*

P.O. Box 1325

Watertown, SD 57201

(605) 886-0010

**OBJECTION**

The undersigned makes the foregoing objection on the grounds and for the reasons stated therein.

Dated this 21<sup>st</sup> day of February, 2020.

/s/ Lee Schoenbeck

Lee Schoenbeck

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I have served a true and correct copy of the foregoing *Answers to Defendants' Interrogatories and Request for Production of Documents to Plaintiff* upon the following:

Angie J. Schneiderman

Moore, Corbett, Heffernan, Moeller & Meis, LLP

P.O. Box 3207

Sioux City, IA 51102

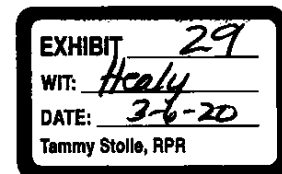
*Attorney for Defendants*

via electronic service this 21<sup>st</sup> day of February, 2020.

/s/ Lee Schoenbeck

LEE SCHOENBECK





BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That Delonde Healy of the County of Brule, and State of South Dakota, party of the first part, for and in consideration of the sum of One Dollar and other good and valuable consideration, in hand paid, at or before the delivery of these presents, by Bret Healy of Pukwana, Brule County, South Dakota, and party of the second part the receipt whereof is hereby acknowledged, had bargained, sold, granted and conveyed, and by these presents does bargain, sell and convey unto the said parties of the second part, their executors, administrators and assigns the following described personal property, namely:

Any and all interest first party has if any, in the machinery, crops, cattle, equipment and any and all other Healy Farm operation or Healy Farm partnership or Healy Ranch partnership of any other like entity whether a partnership, corporation or other legal entity.

TO HAVE AND TO HOLD the same unto the said party, his executors and administrators and assigns, forever. And the party of the first part does for himself and his heirs, executors and administrators, covenant and agree to and with the said party of the second part, to warrant and defend the said property hereby sold unto the said party of the second part, his executors, administrators and assigns, against all and every persons whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand the 3/5 day of January, 1989.

Delonde Healy  
Delonde Healy

State of South Dakota:

County of Brule

On this the 3/5 day of January, 1989, before me, the undersigned officer, personally appeared Delonde Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

Larson, Sundell, Larson, Scheub & Fox, P.C.  
Bill of Sale  
Page 1

SR 75-76



Filed: 5/11/2017 11:41:26 AM CST Brule County, South Dakota 07CIV17-000023

EXHIBIT

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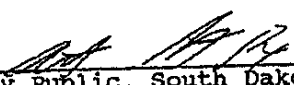
Page 1 of 2 App. 208

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In Witness Whereof I hereunto set my hand and official seal.

(Notary Seal)

  
Notary Public, South Dakota  
My commission expires 9-25-95

Larson, Sundell, Larson, Schaub & Fox, P.C.  
Bill of Sale  
Page 2

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EXHIBIT 31  
WIT: Healy  
DATE: 3-6-20  
Tammy Stolle, RPR

David of Brest - J. Hasky - Stan 7 - Page 21 of 44

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 220. **PRINT STATE** \_\_\_\_\_

PO BOX 547  
CHANDLER AZ 85225  
PHN 724-8515

HENRY C. SUNDALL  
P.O. BOX 107  
KIDDERING, MD 27524-0107  
(301) 686-2329

OF COUNSEL,  
JOHN W. LARSON.

**SEALED  
CALL FOR MAIL**

THE UNIVERSITY OF CHICAGO PRESS

Marlin Norling  
123 W. Missouri  
Pierre, SD 57501

Dear Sir:

**THE UNIVERSITY OF CHICAGO**

... nor do I believe any of the obligations of the ranch should be attributed to me. After my son, Robert Healy passed away, and during the bankruptcy proceedings, I sold all of my interest in the property, both real and personal, to my son-in-law.

Date of Birth of 1907, 1903.

*Handwritten signature*

STATE OF SOUTH DAKOTA :  
:SS  
COUNTY OF BRULE :

On this the 11<sup>th</sup> day of April, 1993, before me, the undersigned officer personally appeared [redacted] known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

- (Notary Seal)

Notary Public, South Dakota  
My Comm. Exp. 2-1-77

000000

\_\_\_\_\_

Exhibit 49

**Filed: 9/15/2017 6:01:18 PM CST Brule County, South Dakota 07CIV17-000023**

Page 3224

App.123

# EXHIBIT

D

Filed: 5/27/2020 5:50 PM CST Brule County, South Dakota 07CIV19-000071

APP. 104



STATE OF SOUTH DAKOTA : IN CIRCUIT COURT  
: ss  
COUNTY OF BRULE : FIRST JUDICIAL CIRCUIT

HEALY RANCH, INC,

Plaintiff/Counterclaim  
Defendant,

v.

BRET HEALY, Individually and d/b/a  
HEALY RANCH PARTNERSHIP and  
HEALY RANCH PARTNERSHIP,

Defendants/  
Counterclaim-Plaintiffs.

NO. 07 CIV 19-71

**AFFIDAVIT OF  
NINA BRAUN, C.P.A.**

STATE OF SOUTH DAKOTA )  
 ) ss:  
COUNTY OF PENNINGTON )

I, Nina Braun, being duly sworn states:

1. My name is Nina Braun. I am a licensed Certified Public

Accountant in the State of South Dakota. Attached as Exhibit A to this Affidavit is  
a true and correct copy of my curriculum vitae.

2. I have been hired as an expert witness in this matter by Moore,  
Corbett, Heffernan, Moeller & Meis, L.L.P. to review various documents and tax  
returns relating to the Healy Ranch Partnership, Healy Ranch, Inc., and the  
associated shareholders and partners of the entities.

3. Based upon my review of documents that have been provided to  
me, I have compiled a report, dated May 27, 2020, a true and correct copy of

**EXHIBIT  
E**

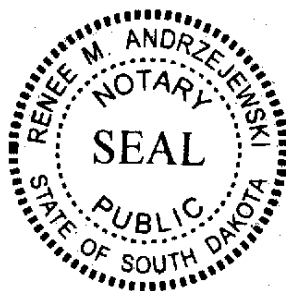


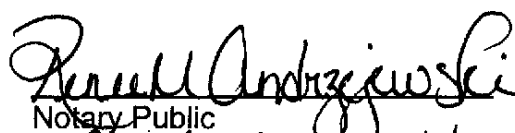
which is attached hereto as Exhibit B. Included with this report as Exhibits 1 through 17 are copies of the documents I reviewed in order to prepare this report.

Further affiant sayeth not.

  
\_\_\_\_\_  
Nina Braun

Subscribed and sworn to before me this 27<sup>th</sup> day of May, 2020.



  
Notary Public  
My Commission Expires 12/11/22

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 27<sup>th</sup> day of May, 2020, a true and correct copy of the foregoing documents were electronically filed with the Clerk of Court using the South Dakota Odyssey System, which will send notification of electronic filing to the following opposing counsel and constitutes service of the document for purposes of the South Dakota Rules of Civil Procedure.

Lee Schoenbeck  
Joseph Erickson  
PO Box 1325  
Watertown, SD 57201

/s/Angie J. Schneiderman  
Angie J. Schneiderman



Ketel Thorstenson, LLP  
810 Quincy St.  
Rapid City, SD 57701  
Phone: 605-342-5630 | Fax: 605-342-2172  
ninab@ktllp.com

## NINA BRAUN, CPA, CFE

EDUCATION Bachelor of Science, Finance – **Georgetown University, Washington, DC**  
Master of Science, Accounting – **University of Southern California, Los Angeles, CA**

---

PROFESSIONAL EXPERIENCE **2000 TO 2005 - PRICEWATERHOUSECOOPERS – WASHINGTON, DC AND NEW YORK METRO AREAS**

Responsibilities included: manager in charge of large public company audits and Sarbanes-Oxley Act implementation projects.

**2005 TO PRESENT – KETEL THORSENTON, LLP – RAPID CITY, SD**

Joined Ketel Thorstenson, LLP in October 2005.

Promoted to Partner in January 2011.

Industry focus includes: gaming, manufacturing, construction, retailing, employee benefit plans, and hospitality.

Specialties include: internal control assessment and testing of the control environment, fraud prevention and investigation, litigation support, and tax consulting and preparation.

As a certified fraud examiner, I provide expert witness testimony and litigation support services.

Responsibilities also include recruiting new staff and interns for the firm.

---

PROFESSIONAL AND COMMUNITY INVOLVEMENT American Institute of CPAs  
South Dakota CPA Society  
Leadership Rapid City Class of 2007, Founding Team of Rapid City Summer Nights  
Women's Networking of Rapid City, Past-President  
Board Member SD CEO

---

TRIAL EXPERIENCE 2018 – Excel Underground, Inc. vs. Brant Lake Sanitary District  
2017 - Rohrich vs. Rohrich  
2016 - State of South Dakota vs. Victoria Howard  
2015 - Atmosphere Hospitality Management vs. Shiba Investments, Inc. and Karim Merali

EXHIBIT  
A





# Ketel Thorstenson, LLP

Certified Public Accountants/Business & Personal Consultants

810 Quincy Street • PO Box 3140, Rapid City, South Dakota 57709

Telephone (605) 342-5630 • FAX (605) 342-2172 • email: info@ktllp.com • ktllp.com

Members American Institute of Certified Public Accountants and AICPA Division of Firms for Quality Control

May 27, 2020

Moore Corbett  
Attention: Angie Schneiderman  
501 Pierce Street, Suite 300  
Sioux City, IA 51101

Re: Bret Healy, Healy Ranch Partnership

Dear Ms. Schneiderman:

Per your request I have reviewed documents provided by you regarding the litigation between Bret Healy, individually and d/b/a Healy Ranch Partnership vs Healy Ranch, Inc. My analysis is documented in the subsequent paragraphs.

You provided and I reviewed the following documents which were useful in drafting my report:

- Exhibit 1: Form 1065 U.S. Partnership Return for 1985 for Healy Ranch EIN 46-0288373, certain pages
- Exhibit 2: Chapter 12 Bankruptcy Healy Ranch, Debtor
- Exhibit 3: 1986 Healy Ranch Partnership Agreement and balance sheet Healy Ranch Partnership as of November 11, 1985
- Exhibit 4: US Small Business Administration Document Set, Including Munger Contract for Deed Assignments, Mortgages, Releases Brule County Register of Deeds
- Exhibit 5: Emmett Healy Estate Documents.
- Exhibit 6: Maynard Jensen as agent, Crop Insurance Documents, 1992 Crop insurance policy #40-056-048383, 1993 Crop Growers Insurance Application
- Exhibit 7: Federal Land Bank of Omaha mortgage, adjustments, release
- Exhibit 8: USDA Farmers Home Administration mortgage, subordination, release at order of bankruptcy court.
- Exhibit 9: Formation documents Healy Ranch, Inc. Articles of Incorporation, Healy Ranch, Inc.
- Exhibit 10: Form 1120S U.S. Income Tax Return for an S Corporation Healy Ranch, Inc. 1995
- Exhibit 11: Portions of Bryce Healy and Barry Healy's March 6, 2020 deposition testimony
- Exhibit 12: Snow Heuther Production pages 1-30
- Exhibit 13: Form 1120S U.S. Income Tax Return for an S Corporation Healy Ranch, Inc. 1996
- Exhibit 14: Healy Ranch, Inc. Annual report to SD Secretary of State
- Exhibit 15: Form 1120S U.S. Income Tax Return for an S Corporation Healy Ranch, Inc. 2007
- Exhibit 16: Healy Ranch, Inc. Family Farm Qualification Report
- Exhibit 17: Form 2553 Election by a Small Business Corporation Healy Ranch, Inc. filed July 19, 1994.

## Discussion

You asked me to summarize my opinion and answer certain questions as provided by you. I have listed each of your questions below with my response.

EXHIBIT

B

Page 1 of 393

Filed: 5/27/2020 5:50 PM CST Brule County, South Dakota 07CIV19-000071 APP. 108

### Partners

Rex P. Vigoren  
CPA, PFS

Paul J. Thorstenson, CPA, PC  
d/b/a Paul J. Thorstenson  
CPA/ABV, CVA

Brent E. Siekman  
MST, CPA, CGMA

Stephen M. Schacht  
CPA

Denise M. Webster  
CPA, PFS

Jean M. Smith  
CPA

Clark J. Kraemer  
CPA

Joel D. DeVries  
CPA

Nina Braun  
CPA, CFE

Douglas A. Kenoyer  
CPA

Jennifer L. Konvalin  
CPA

Kevin D. Sickels  
CPA

Traci M. Hanson  
CPA

Michelle M. Minnerath  
CPA

Todd Hoese, CPA, LLC  
d/b/a Todd Hoese  
CPA

Jess R. Weaver  
CPA

Jackie L. Maguire  
CPA

### Of Counsel

Peter Bergman  
CPA

Michael H. Finnegan  
CPA

Merle G. Karen  
CPA



Moore Corbett  
Page 2

1. Question: Does the filing of a partnership tax return marked as final terminate an entity from legal existence?

Response: The Healy Ranch Partnership filed a partnership return for the year ended December 31, 1985. The return was marked final. A final tax return does not terminate an entity from legal existence.

2. Question: Did the 1985 partnership return report any distribution of real property or of personal property to partners? Does the tax return show a distribution of property to DeLonde Healy?

Response: On page 1 of the return item N was checked Yes. Item N reads: "Was there a distribution of property or a transfer of partnership interest during the tax year?" There was a transfer of partnership interest from Robert Healy to the estate of Robert Healy. On the pages of the tax return that I was presented with, I did not see a liquidating distribution.

3. Question: What does the 1985 Partnership tax return show for partner share of liabilities?

Response: The schedule K-1s included with the tax return is marked as having each partner liability for 100% of the non-recourse and recourse debt.

4. Question: Was DeLonde Healy a general partner in the partnership?

Response: Her K-1 is marked as yes on the general partner question.

5. Question: What date is indicated on the 1985 as the date the Healy Ranch partnership started?

Response: 1961

6. Question: Is there documentary evidence in the records you have reviewed of business activity by Healy Ranch Partnership, EIN # 46-0288373, spanning from 1961 through January 1997? What is this evidence?

Response: In 1986, Healy Ranch Partnership files for Chapter 12 bankruptcy. Mary Ann Healy is listed as a partner. Certain assets and liabilities listed on the November 11, 1985 balance sheet of Healy Ranch Partnership are included in the Chapter 12 plan adopted by the court. Certain equipment as itemized on the 1985 tax depreciation schedule is included in the itemized equipment list with the Chapter 12 plan. Certain equipment both on the bankruptcy schedule and the depreciation schedule were on the listing of equipment from the Emmett Healy estate. The reorganized Small Business Administration bankruptcy debt was subsequently discharged on January 9, 1997. The mortgage borrower was recorded as Healy Ranch until the release in 1997.

The Employer Identification Number (EIN) for the Healy Ranch Partnership, 46-0288373, appears on an application for agricultural benefits dated April 14, 1992 signed by Mary Ann Healy Osborne. This evidences the existence of the partnership filing for federal benefits at this date. I was provided evidence of payments from the USDA agriculture program under this agreement to Healy Ranch.

The EIN number was also listed on a schedule of crop insurance processed September 1, 1992 and on a Crop Growers Insurance application for the 1993 crop year.

7. Question: Was there SBA mortgage debt and the contract for deed between Healy Ranch Partnership and Sheldon Munger itemized in the Chapter 12 Bankruptcy?

Response: Yes, both SBA mortgage debt and notes with Sheldon J. Munger are included in Exhibit A of the bankruptcy plan dated August 1987.

8. Question: Was there Federal Land Bank debt itemized in the Chapter 12 Bankruptcy Plan?

Response: Yes, the Federal Land Bank note is included in Exhibit A of the bankruptcy plan dated August 1987. The mortgage was adjusted to \$145,000 in the bankruptcy settlement on May 5, 1987.



Moore Corbett  
Page 3

9. Question: After bankruptcy was the Federal Land bank note referenced in the previous question, modified?

Response: There is a Loan Agreement Amendment from the Federal Land Bank dated April 28, 1993 referencing the Federal Land Bank note included in the Chapter 12 bankruptcy plan for 1987. The amortization and the due date of the payment were changed in the amendment. DeLonde Healy was released from her personal obligation in the amendment.

10. Question: Was there USDA Farmers Home Administration Debt itemized in the Chapter Bankruptcy Plan?

Response: Yes. The debt was released in the Chapter 12 plan filed with the court.

11. Question: When was the Chapter 12 bankruptcy case referenced above closed?

Response: May 12, 1993.

12. Question: Based upon the Corporation Articles of Incorporation, the signed Form 2553, the application for taxpayer ID number, and stock certificate 1, when was stock first issued?

Response: The stock certification, EIN application, and Articles of Incorporation report the date of business commencement as August 1, 1994. An S election was filed on January 1, 1995. The Form 2553 filed to request S Corporation status shows Mary Ann Osborne as the sole shareholder.

13. Question: Based upon the stated assets of the corporation at the beginning of (1995 federal tax return), had anything of value been exchanged for the shares issued on August 1, 1994?

Response: The articles of incorporation filed August 1994 do not indicate any contributions or exchanges at inception. Based on the documents I reviewed, nothing was exchanged for those shares in 1994.

14. Question: Based on the 1995 corporation tax return, did the corporation have any assets on January 1, 1995?

Response: The beginning balance sheet at January 1, 1995 of the 1995 Form 1120S shows a beginning balance of \$0 assets and liabilities.

15. Question: The deposition testimony of Bryce Healy and Barry Healy state that Healy Ranch, Inc. gave consideration of \$77,000 (in other words, the sale price) by assuming the Federal Land Bank debt owed by the Partnership for the Healy Ranch real property. Does their claim of a \$77,000 assumption of Federal Land Bank debt match the Snow Huether tax working papers (page 1) amount of Federal Land Bank debt pay-off?

Response: The Snow Huether workpapers provided to me show a transaction journal at December 31, 1995. There is a transaction titled payoff federal land bank and a journal entry adjusts the account for \$91,654.48

16. Question: What is the stated capital stock of the corporation on the 1995 and 1996 corporation tax return?

Response: The S Corporation tax returns from 1995 and 1996 includes capital stock of \$194,520.

17. Question: What is stated capital of Healy Ranch, Inc. on the 1999 Annual Report?

Response: \$299,348

18. Question: What is the stated valuation of the real property on the 1995 federal return?

Response: The land is listed as valued at \$299,348.

19. Question: What is the stated valuation of the real property on the 1996 federal tax return?

Response: The land is listed as valued at \$209,348 and buildings at \$94,096.



Moore Corbett  
Page 4

20. Question: Can you ascertain the difference between the land valuation on the 1995 and 1996 corporation tax return, if any? Do the Snow Huether tax working papers (pg 3 and 4) indicate what accounts for the differential?

Response: In 1996, \$90,000 was transferred from the land account to the building account. The Snow Heuther tax working papers indicate a \$90,000 adjustment with a description of "to remove buildings from land."

21. Question: What does the Snow Huether tax working papers (page 28) state as the value at year-end 1996 for the real property?

Response: The value is indicated as \$600,000.

22. Question: Upon review of the 2007 form 1120S corporation tax return, what is the per acre basis of 20 acres reported as sold?

Response: From Schedule D of the 2007 of the 1120S the basis of the land sold is listed as \$5,654 for 20 acres of land or \$282.70 per acre.

23. Question: The deposition testimony reports the sale of the 1,720 acres sold as \$77,000. Can you compare this to the other per acre values?

Response: The following is a summary of the valuations noted in the information provided to me.

\$70,000	637.83	\$109.75	2/4/1973	Munger Contract for Deed
\$145,000	1209	\$119.93	8/26/1987	Chapter 12 Bankruptcy Plan as adopted
\$47,000	630	\$74.60	8/26/1987	Chapter 12 Bankruptcy Plan as adopted
\$77,000	1720	\$44.77	3/12/1995	Deposition Testimony by Corporation
\$299,348	1720	\$174.04	3/12/1995	1995 Corporation Tax Return
\$209,348	1720	\$121.71	12/31/1996	1996 Corporation Tax Return, without buildings
				1996 basis claimed on 2007 Healy Ranch, Inc. 1120S
\$5,654	20	\$282.70	1/1/1996	Tax Return Schedule D
\$600,000	1720	\$348.84	12/31/1996	1996 Snow Huether Tax Working Papers

24. Question: Is there a required step-up in basis when land is transferred between entities? Who pays the tax on the step up?

Response: Assets, such as land, transferred between entities, should be subject to a "step-up" to fair market value. The land would be revalued at fair market value at date of transfer. These transactions may be subject to tax on gain on the step-up from reported value to fair market value. The transferring entity pays the tax on the step up in basis.

25. Question: Can a Partnership be a shareholder in an S Corporation?

Response: S Corporations cannot be owned by Partnerships. A Partnership owning an interest in an S Corp would have caused a technical termination of the S Corporation status and the Corporation would have filed a Form 1120 rather than a Form 1120S for tax purposes.

26. Question: Can an entity elect Subchapter S status without the consent of all shareholders?

Response: No.



Moore Corbett  
Page 5

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27. Question: In the Family Farm Qualification report signed December 31, 1994, how many shareholders were represented?

Response: 4

28. Question: Did the 4 shareholders listed on the Family Farm Qualification report sign the Form 2553 consenting to elect Subchapter S status?

Response: No

### Overall Conclusion

If additional data or evidence is made available to me, please understand that I would need to review it and possibly revise my report. I reserve the right to supplement this report if and when additional information becomes available.

The opinions in this report are mine, and our fees are not contingent the results of my report, our opinions, or any actions as a result of my report. I have not been provided with any significant assistance from anyone inside my firm in the preparation of this report, other than proofing by my associate.

I appreciate the opportunity to be of service to you. Please contact me with questions/concerns.

Sincerely,



KETEL THORSTENSON, LLP

Nina Braun, CPA



**AFFIDAVIT OF JOHN J. HEALY**

CITY OF WASHINGTON     )  
  ) ss.  
DISTRICT OF COLUMBIA    )

COMES NOW, John J. Healy, having been first duly sworn upon his oath,  
deposes and states as true and correct under penalty of perjury as follows:

1. My name is John J. Healy. I am the youngest biological son of Emmett and DeLonde Healy. I am an uncle to Bret Healy, Barry Healy and Bryce Healy.
2. Along with my sisters Elizabeth A. Widman and Mary C. Williams, and my brother Jim P. Healy (collectively my “siblings”), I was, on behalf of my mother DeLonde Healy, and at her request, involved in the negotiation of the 1986 Healy Ranch Partnership Agreement, starting with a late December, 1985, family meeting at Paul and Elizabeth Widman’s home in Mitchell, South Dakota and culminating in the written 1986 Healy Ranch Partnership Agreement (attached as Exhibit 1) signed on January 25, 1986, by DeLonde Healy, Mary Ann (Healy) Osborne, and Bret Healy.
3. Along with my siblings, I was, on behalf of my mother DeLonde Healy, and at her request, also involved in the negotiation of a Right of First Refusal (attached as Exhibit 2) granted to my mother by Mary Ann (Healy) Osborne and Bret Healy for three quarters in Section 29, known as “the home place”, that were purchased back from the Federal Land Bank of Omaha by my

**EXHIBIT  
F**

1



father Emmett Healy and my mother in 1944. This Right of First Refusal, signed by DeLonde Healy on January 22, 1986, signed by Bret Healy and Mary Ann (Healy) Osborne on January 25, 1986, and recorded on January 30, 1986, was negotiated in concert with the terms in the 1986 Healy Ranch Partnership Agreement with the Agreement of the combined transactions being struck verbally on a December 31, 1985, teleconference attended by Attorney Albert Steven Fox and reduced to writing by January 2, 1986. Joining me on the December 31, 1985, teleconference was my sister Mary C. Williams.

4. Attached to the January 2, 1986, memorandum addressed to me from Attorney Fox was the Healy Ranch Partnership balance sheet dated November 11, 1985, the date of my brother Robert E. Healy's tragic death as a result of a tractor rollover. This balance sheet was the document referenced in Section IX of the 1986 Healy Ranch Partnership Agreement. I sent a copy of the balance sheet with notes pointing out the numerous math errors in the November 11, 1985 balance sheet on January 17, 1986, to Attorney Fox. I have attached both the January 2, 1986, memorandum from Attorney Fox and my handwritten note with my copy of the November 11, 1985 Healy Ranch Partnership balance sheet attached as Exhibits 3 and 4.



5. According to both my father Emmett Healy's Last Will and Testament and my brother Robert Healy's Last Will and Testament, both my brother Jim and I had rights to come into the Healy Partnership. I have attached copies of both of these wills, signed in 1967, as Exhibits 5 and 6.
6. The 1986 Healy Ranch Partnership Agreement and accompanying First Right of Refusal, with our mother DeLonde Healy's signature, was intended to transfer her complete interest in the Healy Ranch Partnership to her grandson, and our nephew, Bret Healy consistent with her clearly stated wishes at the referenced family meeting in late December, 1985.
7. The 1986 Healy Ranch Partnership Agreement and 1986 First Right of Refusal fully implemented our mother DeLonde Healy's wishes and intent regarding her partnership interest in Healy Ranch Partnership.
8. As part of the negotiation, my brother Jim and I voluntarily gave up our rights to come into the Partnership that had been granted to us in the Healy Partnership Agreement referenced in the 1967 Last Will and Testament of our father Emmett Healy, also confirmed in the 1967 Last Will and Testament of my brother Robert Healy.
9. My mother, my nephew Bret Healy, Mary Ann (Healy) Osborne, my siblings, and I, all agreed to the documents executed in 1986 with the intent of continuing the Healy Ranch Partnership, to implement DeLonde's



specific request and desire to keep the Healy Ranch real property in the Healy family, and to designate Bret Healy as the managing partner of the continuing Healy Ranch Partnership.

10. As part of these arrangements, Bret Healy indemnified my mother for approximately \$1,000,000 in liability that she had as a partner in Healy Ranch Partnership. It was our (DeLonde Healy, my siblings Mary Williams, Jim Healy, and Elizabeth Widman) intent and expectation that Bret Healy, as the managing partner in charge of all ranch operations, would do everything in his power and use his best efforts to save the family ranch and bring it out of insolvency.
11. Bret Healy did assume the duties of managing partner of Healy Ranch Partnership and succeeded in bringing the Partnership out of insolvency.
12. All terms in the 1986 Healy Ranch Partnership Agreement were fully met by Bret Healy.
13. I have reviewed the attached warranty deed recorded on March 13, 1995, that was signed by my mother on March 9, 1995, attached as Exhibit 7. As a result of the 1986 agreements, I know that my mother did not have any authority to act on behalf of Healy Ranch Partnership because she no longer owned a partnership interest, nor did she own any individual interest in the



Healy Ranch real property following her signature on the 1986 Healy Ranch Partnership Agreement and 1986 First Right of Refusal.

14. My siblings and I initiated discussions as to whether or not our mother could continue to care for herself beginning in late January, 1995, due to her rapidly declining cognitive abilities. Our family discussions were finalized in April, 1995. By June 1, 1995, we had moved our mother out of the Healy Ranch home on Section 29 that she had been living in for 59 years from the date of her marriage (June 10, 1936) to our father Emmett Healy.

15. During the same time period our mother signed the 1995 deed, my siblings and I were aware that she was suffering declined cognitive abilities and the onset of dementia and potentially Alzheimer's. I have attached my handwritten notes from Spring, 1995, attached as Exhibit 8, outlining the discussions via conference calls that my siblings and I were having in regard to our mother and to finalize the decision we had made to move her off the ranch to safety due to her steep cognitive decline.

16. I know my mother did not have the capacity to sign the March, 1995 deed on March 9, 1995, because her confusion and declining cognitive abilities were well known by her friends and neighbors who had periodic contact with her throughout Brule County as we discovered when we were making calls to these friends and neighbors starting in January, 1995. They reported



episodes of lost medication; confusion as to where she was at when they would see her out and about; repeatedly forgetting her purse at various locations; their decisions to no longer have her continue to baby sit various families' children as she had been doing for decades due to their worries about her ability to safely look after the children due to confusion; reports of her mail collecting in her mailbox for days even though she was at home; concerns about her declined cognitive abilities as witnessed by her brother Berwyn Svoboda and his wife Mildred, who was a nurse, when they would stop to see her as they passed through the area and they in turn would call me to report their concerns; and reports from the Sheriff's office when we set her up for a daily check in call to her; and further reports congruent with those listed above. In calls between my mother and I, she was confused about her need to take her medicine and could not remember the doctor's visits that she had done earlier that day claiming to me that she no longer needed to see a doctor.

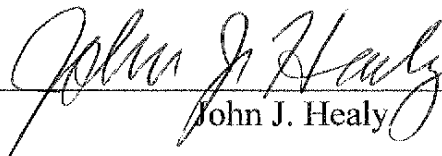
17. Mary Ann (Healy) Osborne would have known about my mother's cognitive decline because my siblings and I had contacted her in Spring, 1995, and made Mary Ann aware of our discussions to move our mother off the Healy Ranch and our reasons for doing so, centered on our mother's continuing cognitive decline. As noted in my handwritten notes, we had



asked Mary Ann to make one telephone call per week to check in with our mother.

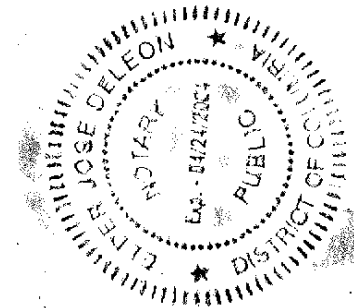
18. I, and my siblings, first learned of the existence of the March 9, 1995 Warranty Deed after April 5, 2017.

FURTHER YOUR AFFIANT SAITH NOT.

  
John J. Healy

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of March, 2020.

  
Eddy Jose DeLeon





## Exhibit 3

### Memorandum from Attorney Fox to John Healy

Dated January 2, 1986



LARSON, SUNDALL, LARSON, SCHAUB & FOX, P.C.

LAWYERS AND COUNSELORS

M.Q. SHARPE (1897-1983)

DAVID J. LARSON  
ROBERT R. SCHAUB  
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SOUTH DAKOTA 57325  
(605) 734-5515

HERB C. SUNDALL  
P.O. BOX 187  
KENNEBEC  
SOUTH DAKOTA 57544  
(605) 889-2233

OF COUNSEL:  
JOHN W. LARSON

January 2, 1986

Mr. John Healy  
3009 Park Avenue S. #3  
Minneapolis, Minnesota 55407

Dear John:

Enclosed is the redrafted agreement. I hope that I have included everything that we had talked about on the phone. I talked with Mary Ann and Bret and it is acceptable to them as written. If you have any further changes, feel free to call me.

I am preparing separately the option or first right of refusal on the home three quarters. It will simply state that if Bret or Mary Ann Healy decide to sell the property other than to each other at any time in the future during Delonde Healy's life, she shall have the right to meet any bona fide offer from a non-related party. There certainly could be some transfers between Mary Ann and Bret concerning that land in the future which I would not want to be subject to an option to buy.

May you have the best of the new year.

Sincerely yours,

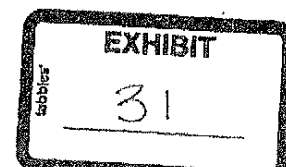
Albert Steven Fox

asf/mj  
enclosure

cc: Jim Healy  
Betty Widman  
Mary Williams  
Delonde Healy  
Mary Ann Healy

2592

000758





## Exhibit 4

Handwritten Note from John Healy  
to Attorney Fox dated January 17, 1986

Includes November 11, 1985  
Healy Ranch Partnership Balance Sheet

Dated January 2, 1986





**Grain Elevator and Processing Society**

P.O. Box 150296  
Commerce Station  
Minneapolis, MN 55415  
612/339-4625

1/17/86

Steve -

Here's the info on the  
balance sheet as discussed. The  
handwritten numbers are the  
ones that don't match. Let me  
know the solution so I can get  
this circulated to Mom & back  
with the agreement as provided  
in section II.

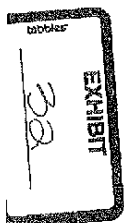
Look forward to meeting you  
on one of my trips home.

It's been a pleasure to work  
with you.

John Nealy

000882

2596



SCAUB 1395



BALANCE SHEET  
HEALY RANCH PARTNERSHIP  
AS OF NOVEMBER 11, 1985

Current Assets

					Market Value
Notes & accounts receivable (good)					\$20,000.00
Livestock to be sold					
Kind	No.	Avg. Wt.	\$/Unit	Value	
Swine	50	175-200	75	3750	
Swine	100	100-175	50	5000	
Swine	100	50-100	40	4000	
Horses	13	—	100	1300	
Calves	60	—	325	19500	
Calves	80	—	325	26000	
Crops and Feed					59,550.00
Item	Quant.	Unit	\$/ Unit	Value	
Silage	2000	Ton	20	40000	
Wet Corn	10000	bu	2.25	22500	
Corn	20000	bu	2.35	47000	
Hay	1000	Ton	30	30000	
Beans	—	—	—	7500	
Prepaid Expenses (semen)					147,000.00
					2,500.00
Total Current Assets					\$228,500.00

Intermediate Assets

Machinery, equipment, trucks	\$200,000.00
Breeding Stock	57,250.00
Cash value of life insurance	3,000.00
Personal & recreational vehicles	2,000.00
Household goods & personal effects	10,000.00
Contract for deed	10,000.00
Total Intermediate Assets	\$282,250.00

Fixed Assets

Farm Real Estate	\$480,850.00
Federal Land Bank Stock	10,000.00
Total Fixed Assets	\$490,850.00

Total Assets \$1,001,600.00

Current Liabilities

Accounts Payable		
Repairs	\$14,000	
Pumping	9,000	
Insurance	8,000	
Feed & Seed	20,000	
Fert & Chemical	10,000	
Fuel & Oil	5,000	
Machine Hire	2,000	\$ 80,000.00
Illegal entry		5,000.00
FHA		115,000.00
Principle portion of longer term debts due within 12 months		27,305.00
Estimated accrued interest on long term liabilities		46,615.00
Accrued rents & lease payments		22,000.00
Total Current Liabilities		\$310,920.00

Intermediate Liabilities

Notes Payable (Machinery)	\$100,000.00
Sales contracts (Machinery & UBC)	40,000.00

(over)

000883

SCHAUB 1396

2597



Intermediate Liabilities (cont)  
H. Lucas

\$ 16,000.00  
Total Intermediate Liabilities \$156,000.00

Long Term Liabilities  
Mortgage on Farm Real Estate

\$543,177.00  
Total Long Term Liabilities \$543,177.00

Total Liabilities \$1,010,097.00 983,097.00

Net Worth \$ -8,497.00 19,503.00

Total Liabilities & Net Worth \$ 1,001,600.00 1,002,600.00

2598

000884

SCHAUB 1397



STATE OF SOUTH DAKOTA : IN CIRCUIT COURT  
 : ss  
 COUNTY OF BRULE : FIRST JUDICIAL CIRCUIT

HEALY RANCH, INC,	NO. 07 CIV 19-71
Plaintiff/Counterclaim Defendant,	
v.	
BRET HEALY, Individually and d/b/a HEALY RANCH PARTNERSHIP and HEALY RANCH PARTNERSHIP,	<b>AFFIDAVIT OF BRET J. HEALY</b>
Defendants/ Counterclaim-Plaintiffs.	

COUNTY OF BRULE )  
 ) ss.  
 STATE OF SOUTH DAKOTA )

COMES NOW, Bret J. Healy, having been first duly sworn upon his oath,  
 deposes and states as true and correct under penalty of perjury as follows:

To prepare and file the Notice of Claim of Interest [Exhibit 1], I, in good faith  
 relied upon:

1. My personal knowledge.
2. The answers by Healy Ranch, Inc., Barry Healy, Bryce Healy, and Mary Ann Osborne in SD Civ 17-023 to allegation number 1 in my complaint [Exhibit 2]. Allegation number 1 stated ***"Defendant Mary Ann Osborne, Plaintiff and Plaintiff's Grandmother executed a Partnership Agreement in 1986 ("1986 Agreement") whereby the main partnership asset was the family ranch and acreage, part of which that had been in the Healy family for several generations."***

Mary Ann Osborne [Exhibit 3], Healy Ranch, Inc., Barry Healy, and Bryce Healy [Exhibit 4] all admit this in their answers to allegation number 1.



3. The assertion by Mary Ann Osborne in her answer in SD CIV 17-023 to allegation number 96 in my complaint. Allegation 96 stated **"On January 31, 1989, Grandmother DeLonde deeded her interest in the land to Plaintiff. (See Warranty Deed dated January 31, 1989, attached hereto as "Exhibit 17").** Plaintiff's Complaint Exhibit 17 from SD CIV 17-023 is attached as [Exhibit 5].

Mary Ann Osborne's answer to allegation 96 stated:

***"As to the allegations set forth in Paragraph 96:***

- a. Admits that Exhibit 17 to the Complaint is a deed from grandmother DeLonde to the plaintiff dated January 31, 1989, ostensibly deeding whatever interest grandmother DeLonde possessed in the property at that time to the plaintiff;***
- b. Asserts that grandmother DeLonde's individual interest in the property at the time would have been nothing given that the partnership previously referenced in the Plaintiff's Complaint and this Answer owned the property on the date of the deed."***

4. The answers by Healy Ranch, Inc., Barry Healy, Bryce Healy, and Mary Ann Osborne in SD Civ 17-023, to allegation numbers 207, 211, and 217 in my complaint. Allegations 207, 211, and 217 stated ***"As set forth herein, on or about January 25, 1986, Defendant Osborne, Plaintiff, and Grandmother DeLonde entered into a written and legally binding partnership agreement."***

Mary Ann Osborne and Healy Ranch, Inc., Barry Healy, and Bryce Healy all admit this in their answers to allegation numbers 207, 211, and 217.

5. The 2008 Settlement and lease [Exhibit 6] between Healy Ranch Partnership and James and David Swanson - signed twice by Bret Healy as general partner and a partner on January 4, 2008, signed by Bryce Healy as a partner on January 2, 2008, and signed by Barry Healy as a partner on January 4, 2008.

The agreement states the owners are Healy Ranch, a partnership, Bret Healy, Barry Healy, and Bryce Healy and the tenants are James Swanson and David Swanson.

Recital number 1 states "Owners are the owners of the real estate described on Exhibit "A" attached and incorporated herein by this reference."

Recital number 2 states "Tenants separately rented the agricultural ground, and the house and buildings located on the above described property."

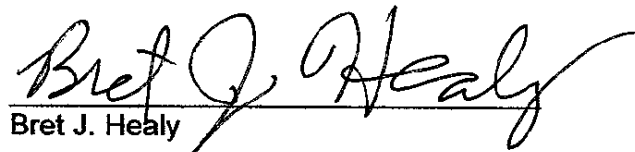


Recital number 3 states "Owners have given notice of their intent to terminate the lease and resume possession under their own operation."

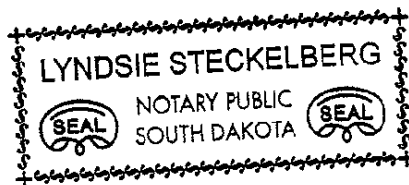
The document terminated possession of agricultural land by tenants as of midnight, December 31, 2007 and increased rent for the house to \$400 per month for January, February, and March of 2008.

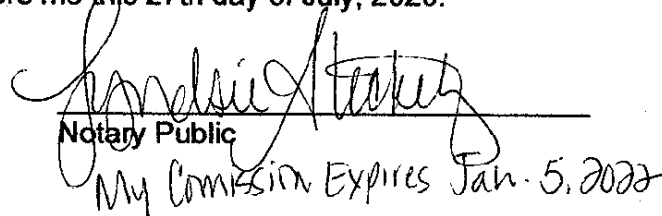
6. Legal advice from Patrick Glover, an attorney at Meierhenry Sargent, LLP. Attached as Exhibit 7 are correspondence, work product, and a billing statement from Meierhenry Sargent, LLP.

FURTHER YOUR AFFIANT SAITH NOT.

  
Bret J. Healy

Subscribed and sworn to before me this 27th day of July, 2020.



  
Notary Public  
My Commission Expires Jan. 5, 2022

### CERTIFICATE OF SERVICE

The undersigned certifies that on the 27th day of July, 2020, a true and correct copy of the foregoing documents were electronically filed with the Clerk of Court using the South Dakota Odyssey System, which will send notification of electronic filing to the following opposing counsel and constitutes service of the document for purposes of the South Dakota Rules of Civil Procedure.

Lee Schoenbeck  
Joseph Erickson  
PO Box 1325  
Watertown, SD 57201

/s/Angie J. Schneiderman  
Angie J. Schneiderman



# Exhibit 1







Ranch partnership to Bret Healy. Thus, at the time of the Warranty Deed was signed and filed, Bret Healy was a partner in the partnership and DeLonde Healy was not a partner. Said Warranty Deed is not part of the ordinary course of the partnership business and was not authorized by the other partners of the partnership. Additionally, the transfer of the property described above was not given for value and the transferee knew Delonde Healy lacked authority to bind the partnership.

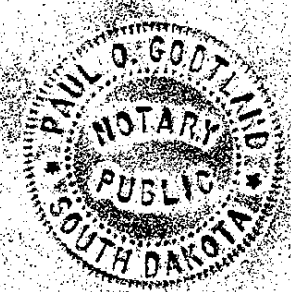
Dated this 25 day of January, 2018.

By: Bret Healy  
Bret Healy

STATE OF SOUTH DAKOTA     )  
  ss  
COUNTY OF BRULE         )

On this the 25<sup>th</sup> day of January, 2018, before me, the undersigned officer, a Notary Public, personally appeared Bret Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Paul O. Goodland  
Notary Public, South Dakota  
My commission expires: 7-11-2018



#### AGREEMENT

This is an agreement between Delonda Healy and Mary Ann Healy, the remaining partners of Healy Ranch Partnership and Bret J. Healy.

WHEREFORE, Robert Healy recently passed away, leaving all that he had to his wife Mary Ann Healy, which would include any interest in the partnership, and

WHEREAS, all parties wish to terminate any and all previous partnership agreements, and

WHEREAS, all parties wish to take action that would help preserve the Healy Ranch as an entity so that it may be passed on to future generations of the Healy Family; and

THEREFORE, it is the desire of Delonda Healy, Mary Ann Healy and Bret Healy to make the following agreement.

#### I.

All parties acknowledge that they have had the opportunity to obtain independent legal counsel and/or to consult with whom-ever they desire concerning this agreement and that they enter into this agreement with the intent that it bind not only themselves, but also their heirs and assigns and that this agreement terminates any and all previous partnership agreements.

#### II.

As a full and complete liquidation of her 25% interest in Healy Ranch Partnership and any amounts owed her individually by Robert Healy or Mary Ann Healy, Delonda Healy shall receive the



following benefits for ten years.

- a) \$300.00 per month.
- b) The right to live at no cost on the Healy Ranch in a home which she currently occupies. All major upkeep on the home will be the responsibility of the Healy Ranch entity. If Delonde Healy's children unanimously agree that she is no longer able to care for herself, then such rights shall terminate.
- c) Insurance; (including auto, premises liability and property but excluding health insurance), utilities (which are to be limited to fuel oil, water and electricity), and such produce or meat as she shall need and as shall be produced on the farm.

III.

In return for the above set out benefits, Delonde Healy shall release all title and interest she has to the Partnership assets as of December 31, 1985, this being a complete writing of a prior oral agreement between the parties.

IV.

As soon as is possible all parties will sign any and all documents to implement this agreement and to remove Delonde Healy from the Partnership loans. It is the intent of this agreement and the parties that Delonde Healy no longer be liable for any debts of the partnership from the date of this agreement. Healy farm operations. Mary Ann Healy and Bret Healy, agree to hold Delonde Healy harmless and indemnify her on all partnership debts, claims and liabilities regardless of whether such debts, claims and liabilities are now known, including claims against Delonde Healy based upon her own fault or negligence.



V.

If at any time, Delonde Healy should move from the farmstead, she will lose whatever benefits she would have received from living on the farmstead including the insurance, utilities and like benefits as set out in Section II b & c above, although the cash payment as set out in Section II a. shall continue.

VI.

The payments and the right to live on the farm free and receive the other benefits as otherwise set out herein shall exist for a maximum of ten years and ten years only from this date. At the end of that period if the parties can agree, arrangements for use of the home and other such benefits to Delonde can be made at whatever terms the parties agree to.

The cash payment due Delonde Healy shall be paid by the Healy Farm operation as long as it shall exist whether as a partnership, corporation or other legal entity. If a majority of the assets of the Healy farm operation through whatever legal entity it operates, are transferred or sold, then an amount shall be placed in escrow sufficient to fund the remaining amounts owing under Section II a). at a financial institution approved by Delonde Healy. If the farm operation shall cease to exist in such a way as the amounts owing Delonde Healy under II a) cannot be paid then such cash payments as shall remain will be paid by Mary Ann Healy personally.

The right to live in the home, and the other benefits as set out in Section II b & c above shall exist for ten years unless



the Healy farm operation whether a partnership, corporation, or any other legal entity shall cease to exist at which time such benefits will terminate.

VII.

Delonde Healy agrees that in the case of her death, the payments to her, the use of the home and all the other benefits shall terminate immediately. Delonde Healy's interest, if any, in the farm partnership and any debt owed Delonde Healy by Robert Healy or Mary Ann Healy shall terminate upon Delonde Healy's death.

VIII.

It is the intent of all the parties that any interest of Delonde Healy in the Healy Ranch partnership by the terms of this agreement be completely transferred directly to Bret Healy effective with the date of this agreement because he shall be the person responsible for the operation of the business and the payment of all the benefits hereunder as long as the operation exists.

IX.

All parties admit to having received a full and complete disclosure of the assets and the debts of the Healy Farm Partnership as of the date of Robert Healy's death, November 11, 1985.

X.

All parties agree that this is a full and complete agreement between them and that this supersedes and terminates any and all prior partnership agreements. If any agreement to



modify this should ever be made, it must be done in writing and signed by both parties.

Dated this 25<sup>th</sup> day of January, 1986.

Delonde Healy  
Delonde Healy  
Mary Ann Healy  
Mary Ann Healy  
Bret J. Healy  
Bret J. Healy

State of South Dakota:  
:ss  
County of Brule :

On this the 25<sup>th</sup> day of January, 1986, before me, the undersigned officer, personally appeared Delonde Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

(Notary Seal)

[Signature]  
Notary Public, South Dakota  
My commission expires 8-25-87


State of South Dakota:  
:ss  
County of Brule :

On this the 25<sup>th</sup> day of January, 1986, before me, the undersigned officer, personally appeared Mary Ann Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.



(Notary Seal)

  
Notary Public, South Dakota

My commission expires 7-22-87

State of South Dakota:

:ss

County of Brule :

On this the 25th day of January, 1986, before me, the undersigned officer, personally appeared Bret J. Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

(Notary Seal)

  
Notary Public, South Dakota

My commission expires 7-22-87



# Exhibit 2



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 1 of 33

STATE OF SOUTH DAKOTA  
COUNTY OF BRULE

IN CIRCUIT COURT  
FIRST JUDICIAL CIRCUIT

BRET HEALY,

CIV No. 17-\_\_\_\_

jPlaintiff,

VERIFIED COMPLAINT  
AND  
DEMAND FOR JURY TRIAL

vs.

MARY ANN OSBORNE, BRYCE HEALY,  
BARRY HEALY, HEALY RANCH  
PARTNERSHIP, HEALY RANCH, INC. and  
ALBERT STEVEN FOX

Defendants.

Comes now, Plaintiff, Bret Healy (hereinafter the "Plaintiff"), by and through his attorney of record, Steven D. Sandven, and submits this Complaint against Mary Ann Osborne, Bryce Healy, Barry Healy, Healy Ranch Partnership, Healy Ranch, Inc. and Albert Steven Fox (hereinafter the "Defendants"), and would state as follows:

**NATURE OF THE ACTION**

1. Defendant Mary Ann Osborne, Plaintiff and Plaintiff's Grandmother executed a Partnership Agreement in 1986 ("1986 Agreement") whereby the main partnership asset was the family ranch and acreage, part of which that had been in the Healy family for several generations.

2. Pursuant to the 1986 Agreement, Defendant Osborne owned 75% of the interest in Healy Ranch Partnership and Plaintiff owned the remaining 25%.

3. The purpose of creating the 1986 Agreement was to stave off foreclosure and a forced auction of the family ranch and to protect DeLonde Healy, Plaintiff's grandmother and former partner in Healy Ranch Partnership ("Grandmother DeLonde"), from economic ruin and



**COMPLAINT: Complaint and Affidavit of Bret Healy – Scan 1 – Page 2 of 33**

to allow Grandmother DeLonde to remain in the home where she and the Plaintiff's Grandfather Emmett Healy ("Grandfather Emmett") had raised all five of their children and in which she and Grandfather Emmett had lived ever since their marriage in 1936.<sup>1</sup>

4. Plaintiff was actively involved in all facets of managing, providing labor, and keeping the ranch from financial ruin.

5. On August 1, 1994, Defendant Osborne incorporated an entity – separate from the Healy Ranch Partnership – and called it "Healy Ranch, Inc." At the time, she owned 100% of Healy Ranch, Inc.

6. On March 13, 1995, Defendant Osborne conveyed ALL the Healy Ranch Partnership assets to Healy Ranch, Inc. in a Warranty Deed ("1995 Deed").

7. Despite owning 25% of the Healy Ranch Partnership, Plaintiff was not made aware of this 1995 Deed, and in fact, only recently came to have knowledge of the transfer.

8. Defendant Osborne and Defendant Bryce Healy never asked Plaintiff to sign the 1995 Deed.

9. Defendant Fox, Defendant Osborne and Defendant Bryce Healy asked Defendant Osborne's 81 year old mother-in-law and Defendant Bryce Healy's 81 year old grandmother – Grandmother DeLonde – to sign the 1995 Deed.

10. Grandmother DeLonde no longer held any interest in the Healy Ranch Partnership or the acreage, and therefore, had no right to convey Healy Ranch Partnership assets at the time of signing the 1995 Deed.

11. The transfer was completed with the assistance of the remaining Defendants.<sup>2</sup>

12. Plaintiff did not discover the 1995 Deed until April 3, 2017.

---

<sup>1</sup> Grandmother DeLonde remained in the home from 1936 until June 1, 1995. Grandfather Emmett passed from cancer in 1969.

<sup>2</sup> The 1995 Deed was drafted by Defendant Fox.



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 3 of 33

**JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction over this case pursuant to SDCL 15-7-2 subsections (1), (3) and (6), because Plaintiff and Defendants are citizens and residents of the State of South Dakota, own and maintain property in South Dakota, transact business in South Dakota, and act as directors of a corporation organized under the laws of, or having its principal place of business in the State of South Dakota.

14. Defendant Healy Ranch, Inc. is a corporation organized and existing under the laws of the State of South Dakota with its principal place of business in South Dakota.

15. Defendant Healy Ranch Partnership conducted and still conducts business solely in the State of South Dakota.

16. Defendant Fox is an attorney currently licensed to practice in the State of South Dakota and provided legal services to Healy Ranch Partnership, Healy Ranch, Inc., and all the named parties in their personal capacities.

17. Plaintiff owns one-third of the shares in Healy Ranch, Inc. and 25% of Healy Ranch Partnership.

**THE PARTIES**

18. Plaintiff Bret Healy is a natural person who is, and was at all times relevant hereto, a resident of Brule County. Plaintiff resides at 34754 248<sup>th</sup> Street, Chamberlain, South Dakota 57325.

19. Defendant Healy Ranch, Inc. is a corporation organized under South Dakota law.

20. Defendant Healy Ranch Partnership is an organization established pursuant to a duly executed Partnership Agreement whereby Defendant Osborne owned 75% of the entity and Plaintiff owned the remaining 25%.



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 4 of 33**

21. Defendant Mary Ann Osborne is a natural person who currently resides at 13498 Minnehaha Road, Wilmot, South Dakota 57279 on the shores of Big Stone Lake. Defendant Osborne is Plaintiff's mother. She remarried after the death of Plaintiff's father.

22. Defendant Barry Healy is a natural person who is, and was at all times relevant hereto, a resident of Brule County. Defendant resides at 24839 348<sup>th</sup> Avenue, Pukwana, South Dakota 57370. Defendant Barry Healy is Plaintiff's brother.

23. Defendant Bryce Healy is a natural person who is, and was at all times relevant hereto, a resident of Brule County. Defendant currently resides at 3108 West Cinnamon Street, Sioux Falls, SD 57108. Defendant Bryce Healy is Plaintiff's brother.

24. Defendant Albert Steven Fox is a natural person and an attorney with a principal place of business located at 131 South Main Street, P.O. Box 131, Chamberlain, South Dakota 57325.

**DUTIES OF DEFENDANT OSBORNE**

25. Each partner owes the remaining partners the fiduciary duty of loyalty. SDCL 48-7A-404.

26. Each partner has the duty to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity. *Id.*

27. Each partner has the duty to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership. *Id.*

28. Each partner has a duty of care to the partnership and the other partners in the



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 5 of 33**

conduct and winding up of the partnership business. *Id.*

29. Each partner must exercise any rights consistently with the obligation of good faith and fair dealing. *Id.*

30. Defendant Osborne was able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

31. The conduct of Defendant Osborne involves a knowing and culpable violation of her partnership obligations, the absence of good faith on her part, and a reckless disregard for her duties to Plaintiff that Defendant Osborne was aware or should have been aware posed a risk of serious injury to the financial interests of the Plaintiff.

**CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

32. In committing the alleged acts alleged herein, the individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their common plan or design.

33. During all times relevant hereto, the individual Defendants collectively and individually initiated a course of conduct that was designed to and did: (i) conceal the fact all of the partnership property had been transferred to the corporate entity; and (ii) deceive the Plaintiff regarding the extent of his ownership of the property in question.

34. The purpose and effect of the individual Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise Defendant Osborne's breach of fiduciary duties and her transfer of partnership property to the remaining Healy Defendants.

35. Each of the individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 6 of 33**

commission of the wrongdoing complained of herein, each individual Defendant acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of their overall contribution to and furtherance of the wrongdoing.

**FACTS COMMON TO ALL COUNTS**

**Healy Ranch History**

36. The property subject of this dispute is legally described as follows:

The Northwest Quarter, the Northeast Quarter, and the Southeast Quarter of Section Twenty-Nine;

Lots One, Two Three, Four and Five and the South Half of the Northeast Quarter, the North Half of the Southeast Quarter, the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter of Section Seventeen except a parcel of land located in the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Seventeen as recorded in Warranty Deed recorded by microfilm No. 93-291.

The East Half of Section Twenty except Lots Three and Four;

Lots Three, Four and Five and the Northwest Quarter except Lot RH 1 and except Lot RH-2 in Section Twenty-Three;

Lots One, Two, Three; and the East half of the Northeast Quarter; the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section Twenty-Two;

All of that part of the Northwest Quarter lying North of the right-of-way of the Chicago, Milwaukee, and St. Paul Railroad in Section Twenty-Six;

All located in Township One Hundred Four North, Range Seventy, West of the Fifth P.M., Brule County, South Dakota (less rights of way of record).

37. On September 29, 1887, John J. Healy was deeded what would later become the Healy Ranch homesite ("NE 1/4 of Section 29"). (See Deed Record dated September 29, 1887, attached hereto as Exhibit "1").

38. On November 14, 1901, Peter Healy purchased "All of the North West Quarter of Section twenty nine, Township One Hundred Four North of Range Seventy West of 5<sup>th</sup> P.M."



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 7 of 33

("NW 1/4 of Section 29"). (See Deed Record dated November 14, 1901, attached hereto as "Exhibit 2".)

39. On August 16, 1902, John J. Healy transferred the northeast 1/4 of Section 29 to Peter Healy. (See Quitclaim Deed dated August 16, 1902, attached hereto as "Exhibit 3".)

40. On August 24, 1916, Peter Healy purchased the southeast 1/4 of Section 29. (See QuitClaim Deed Record dated August 24, 1916, attached hereto as "Exhibit 4".)

41. On September 16, 1938, a Sheriff's deed was executed for the property due to an action against Peter Healy, his wife, Ellen Healy, and their son, Emmett J. Healy (Plaintiff's Grandfather). (See Deed Record No. 49 dated September 16, 1938, attached hereto as "Exhibit 5".)

42. Plaintiff's grandparents were tenant ranchers for nearly 6 years, without an ownership interest in the land. *Id.*

43. The Federal Land Bank of Omaha owned the land during this time. *Id.*

44. On May 18, 1944, Grandfather, Emmett purchased 478.94 acres of land located in Brule County from the Federal Land Bank of Omaha for \$6,385.00. (See Deed dated May 18, 1944, attached hereto as "Exhibit 6".)

45. On July 12, 1962, Plaintiff's grandparents purchased 730 acres of adjacent land to the north bringing the family's total acreage to over 1200 acres. (See Warranty Deed Record No. 55 dated July 12, 1962, attached hereto as "Exhibit 7".)

46. The land was held in the name of "Emmett Healy and DeLonde, as joint tenants with right of survivorship." *Id.*

47. On July 12, 1962, the Healy land purchased in 1944 from the Federal Land Bank of Omaha was deeded from "Emmett J. Healy a/k/a Emmett Healy and DeLonde, husband and



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 8 of 33**

wife" to "Emmett Healy and DeLonde, as joint tenants with right of survivorship." (See Deed dated July 12, 1962, attached hereto as "Exhibit 8".)

48. On November 21, 1968, "Emmett Healey and DeLonde, husband and wife" deeded the parcel which contained their residence and the north section of their land into "Healey Partnership, which partnership consists of Emmett Healey and Robert Healey." (See Warranty Deed Record dated November 21, 1968, attached hereto as "Exhibit 9".)

49. Plaintiff Bret Healy is the eldest grandson of Emmett and DeLonde and the eldest son of Robert Emmett Healy. (See Affidavit of Bret Healy (hereinafter "Healy Aff.")).

50. Prior to November 21, 1968, the Healy Ranch Partnership owned no land.

51. On December 22, 1971, this Court issued a Final Decree of Distribution in the Matter of the Estate of Emmett J. Healy". (See Final Decree of Distribution, Case No. Pro. 69-37 attached hereto as Exhibit 10.)

52. Grandmother DeLonde was the sole heir to Emmett Healy's 50% interest in the property. *Id.*

53. Accordingly, at this point, the property was owned by Healy Ranch Partnership wherein Grandmother DeLonde and her son, Robert Emmett Healy, owned the interest as equal partners.

54. Grandmother DeLonde never re-married after Emmett's death on August 23, 1969. (See Healy Aff. ¶ 1).

55. In 1971, a contract for deed was executed to purchase an additional 640 acres known as the Munger place. *Id.*



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 9 of 33

56. In or about 1972, Plaintiff's parents Robert Emmett Healy and his wife, Defendant Osborne, and Grandmother DeLonde entered into a Partnership Agreement. (See Unsigned Partnership Agreement, attached hereto as "Exhibit 11".)

57. Thereunder, Plaintiff's father and Defendant Osborne would originally own 50% of the interest in "The Healy Ranch" partnership and Grandmother DeLonde would retain the remaining 50%. *Id.*

58. The Parties agreed that Grandmother DeLonde would vest 10% of her original capital contributions to Plaintiff's parents at the end of each of the first 5 calendar years of the operation of the partnership. *Id.*

59. Grandmother DeLonde gave up this interest for the management provided by Robert Healy even though he also secured a salary from the partnership. *Id.*

60. Grandmother DeLonde intended that at the end of the Agreement's term she would own 25% of the partnership and Plaintiff's parents would own the majority interest at 75%. *Id.*

61. In 1972, the Healy Ranch Partnership provided the funds to construct a new modern home for Plaintiff's parents and their three children, Plaintiff Bret Healy and Defendants Barry Healy and Bryce Healy.

62. On June 13, 1972, "Robert E. Healy and Mary Ann Healy, husband and wife, and Grandmother DeLonde deeded property to "The Healy Ranch, a partnership consisting of Robert E. Healy and Mary Ann Healy, jointly, and DeLonde Healy." (See Warranty Deed Record dated June 13, 1972, attached hereto as "Exhibit 12".)

63. This instrument recorded the new Healy Ranch Partnership land assets. *Id.*



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 10 of 33

64. It is unclear from the chain of title maintained by the Brule County Register of Deeds how Defendant Osborne originally came in possession of any of the Healy land.

65. Plaintiff's Father was killed in a tractor rollover on November 11, 1985. (*See* Healy Aff. ¶ 1).

**1986 Agreement**

66. In late 1985, a family meeting was called at Betty Ann (Healy) Widman's home in Mitchell, South Dakota to discuss Grandmother DeLonde's interest in the Healy Ranch Partnership after the death of Plaintiff's Father. Healy Aff. ¶ 1.

67. Plaintiff, Defendant Osborne, Grandmother DeLonde and her four surviving adult children Betty Ann (Healy)Widman, James Healy, Mary (Healy) Williams, and John Healy were in attendance. *Id.*

68. A verbal agreement was completed where Grandmother DeLonde, in return for the items delineated in the 1986 Healy Ranch Partnership agreement, agreed to transfer to Plaintiff her 25% interest in Healy Ranch Partnership, including her interest in all land ever owned by Plaintiff's grandparents and parents. *Id.*

69. Defendant Osborne insisted that the money loaned by Grandmother DeLonde to her son and Defendant Osborne be discharged and forgiven as part of the agreement. *Id.*

70. This amount of the loan forgiveness was in excess of \$50,000. *Id.*

71. On January 25, 1986, Grandmother DeLonde, Plaintiff, and Defendant Osborne, executed the 1986 Agreement. (*See* Agreement dated January 25, 1986, attached hereto as "Exhibit 13".)



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 11 of 33

72. Grandmother DeLonde's children Betty Ann (Healy) Widman, James Healy, Mary Cecile (Healy) Williams, and John Healy actively participated in the negotiation of the 1985 oral agreement memorialized in the 1986 Agreement. Healy Aff. ¶ 1.

73. The oral agreement mentioned in the 1986 agreement was agreed upon at the family meeting held at Betty Ann (Healy) Widman's home and through later communications with the family. *Id.*

74. The 1986 Agreement "terminated[d] any and all previous partnership agreements." *See* Exhibit 13.

75. The purpose of the 1986 Agreement was to "preserve the Healy Ranch as an entity so that it may be passed on to future generations of the Healy family." *Id.*

76. The 1986 Agreement bound "heirs and assigns." *Id.*

77. Grandmother DeLonde's 25% interest was liquidated in exchange for indemnification of Healy Ranch Partnership debts, monthly payments of \$300.00 for 10 years, payment of utilities and insurance for 10 years, and the right to live at no cost in the ranch home for 10 years or until such time as her children deemed she could no longer care for herself. *Id.*

78. In addition to transferring her interest in the partnership to Plaintiff, Grandmother DeLonde also agreed to discharge all debts owed to Grandmother DeLonde by her son, Robert Emmett Healy, and Defendant Osborne. *Id.*

79. The 1986 Agreement transferred all of Grandmother DeLonde's 25% interest in the Healy Ranch Partnership to Plaintiff. *Id.*

80. Defendant Osborne gave up none of her interest in the 1986 Agreement. *Id.*

81. Plaintiff, Grandmother DeLonde and Defendant Osborne were signatories to the 1986 Agreement. *Id.*



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 12 of 33**

82. The 1986 Partnership Agreement was drafted by Defendant Fox.

83. Defendant Fox notarized all three signatures that were required to fully execute the 1986 Agreement. *Id.*

84. Grandmother DeLonde was given a right of first refusal on January 25, 1986 in the event Plaintiff and Defendant Osborne ever decided to sell the land in Section 29. (See Right of First Refusal dated January 25, 1986, attached hereto as "Exhibit 14".)

85. The right of first refusal was for the original three quarter sections that were sold on the front steps of the Brule County Courthouse in 1938. *Id.*

86. Defendant Fox prepared the right of first refusal. (See Billing Statement of Larson, Sundall, Larson, Schaub, and Fox, P.C. dated February 21, 1986, attached hereto as "Exhibit 41".)

87. Defendant Fox notarized the signatures of Plaintiff, Grandmother DeLonde and Defendant Osborne in the right of first refusal.

88. The right of first refusal was caused to be recorded by Defendant Fox but the 1986 Agreement was not recorded. *Id.*

89. Defendant Osborne acknowledged the existence of the 1986 Agreement as recently as April 12, 2017:

I am not denying that the document that Grandma and I signed giving you 25% exists. It was put in place because of concern that [the] ranch might go into foreclosure. Did not want her involved."

(See Text Messages between Plaintiff and Defendant Osborne, attached hereto as "Exhibit 15".)

**Plaintiff's Operation of Healy Ranch Partnership**

90. Plaintiff began full time management of the Healy Ranch on November 12, 1985. Healy Aff. ¶ 1.



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 13 of 33

91. Plaintiff provided full time labor on the Healy Ranch upon his graduation from South Dakota State University in May, 1986. *Id.*

92. On December 22, 1986, Healy Ranch Partnership filed for Chapter 12 bankruptcy.

93. On April 6, 1987, Defendant Osborne filed for Chapter 12 bankruptcy in her personal capacity.

94. On August 25, 1987, by order of the court, the two cases were consolidated. (*See* Docket for Case No. 87-30062 attached hereto as "Exhibit 16".)

95. Both Defendant Osborne and Healy Ranch Partnership were represented by Defendant Fox in their bankruptcies. *Id.*

96. On January 31, 1989, Grandmother DeLonde deeded her interest in the land to Plaintiff. (*See* Warranty Deed dated January 31, 1989, attached hereto as "Exhibit 17".)

97. The interest was transferred directly to Plaintiff and not to the Healy Ranch Partnership. *Id.*

98. Defendant Fox notarized Grandmother DeLonde's signature. *Id.*

99. Upon information and belief, Defendant Fox failed to file the warranty deed at the Brule County Courthouse.

100. On March 10, 1989, Defendant Fox provided Grandmother DeLonde a copy of the "instruments [she] signed recently." (*See* Memorandum from Defendant Fox to Grandmother DeLonde dated March 10, 1989, attached hereto as "Exhibit 18".)

101. On January 31, 1989, Grandmother DeLonde executed a Bill of Sale in favor of Plaintiff covering all of her interest in the machinery, crops, cattle, equipment and "any and all other Healy Farm operation or Healy Farm partnership or Healy Ranch partnership of any other



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 14 of 33

like entity whether a partnership, corporation or other legal entity.” (See Bill of Sale dated January 31, 1989, attached hereto as “Exhibit 19”.)

102. The Bill of Sale was notarized by Defendant Fox. *Id.*

103. Starting in January 1989, Plaintiff planned an equipment sale, liquidated the swine herd, liquidated the cattle owned by the Healy Ranch Partnership, solicited and found a tenant for the cropland, solicited and found a tenant for the 1972 home, facilities and pasture, and secured a partner to take in the Plaintiff’s cowherd. Healy Aff. ¶ 2.

104. Plaintiff took the described action in paragraph 103 to generate sufficient cash flow to continue to make the Healy Ranch Partnership Chapter 12 re-organization payments to creditors. *Id.*

105. On November 8, 1991, Plaintiff successfully brought Healy Ranch Partnership out from Chapter 12 bankruptcy. *Id.*

106. Plaintiff offered Defendant Osborne \$100,000 and a 7% coupon and assumption of all Healy Ranch Partnership debt (at the time approximately \$185,000) for her 75% share of Healy Ranch Partnership. *Id.*

107. Plaintiff’s offer represented full value for Defendant Osborne’s share of Healy Ranch Partnership. *Id.*

108. Defendant Osborne refused Plaintiff’s offer and stated that she would only sell her 75% share if her interest in Healy Ranch Partnership was sold equally to all three of her children. *Id.*

109. On January 1, 1992, the 7% annual coupon begins to accumulate on a simple interest basis to the benefit of Defendant Osborne. *Id.*



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 15 of 33

110. No written instrument regarding Defendant Osborne's shares was executed until February 11, 2000 when Defendant Fox completed same. *Id.*

**Fraudulent March 1995 Warranty Deed**

111. On July 19, 1994, Defendant Osborne executed IRS Form 2553 – Election by a Small Business Corporation wherein she stated she was 100% owner of Healy Ranch, Inc. (*See* Internal Revenue Service Form 2553 dated July 19, 1994, attached hereto as "Exhibit 20".)

112. Defendant Osborne represented she had 100% ownership interest in Healy Ranch, Inc. *Id.*

113. Healy Ranch, Inc. was not incorporated by the State of South Dakota at the time of Defendant Osborne's representation of ownership. *Id.*

114. Defendant Fox was listed as the person to contact for further information. *Id.*

115. On August 1, 1994, Healy Ranch, Inc. was incorporated by the South Dakota Secretary of State per the request of Defendant Osborne. (*See* Articles of Incorporation for Healy Ranch, Inc. dated August 1, 1994, attached hereto as "Exhibit 21".)

116. Defendant Osborne was the registered agent and the sole director. *Id.*

117. Upon information and belief, Defendant Fox drafted the formation documents for Healy Ranch, Inc.

118. The Articles of Incorporation were filed upon the request of Defendant Fox's law firm. *Id.*

119. On December 9, 1994, title insurance was ordered in response to Defendant Osborne and Defendant Bryce Healy's request for a loan from Tri County State Bank. (*See* Title Insurance Order from Brule County Abstract Company, Inc. dated December 9, 1994, attached hereto as "Exhibit 22".)



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 16 of 33

120. The Commitment for Title Insurance covered all the land subject to this action. *Id.*

121. It was declared that the land was held by a partnership consisting of Plaintiff's parents and Grandmother DeLonde. *Id.*

122. Per Schedule B of the Commitment, Defendant Osborne and Defendant Bryce Healy were to provide "a certified copy of the partnership agreement and any amendments thereto." *Id.*

123. On December 31, 1994, Defendant Osborne signed a Family Farm waiver application to the South Dakota Secretary of State claiming that 25% of Healy Ranch, Inc. was owned by her three children. (*See* Qualification for Family Farm Corporation and Authorized Farm Corporation form dated December 31, 1994, attached hereto as "Exhibit 23".)

124. The exhibit attached to the application claimed that all of the Healy Ranch Partnership land belonged to Defendant Osborne alone. *Id.*

125. In the Family Farm Waiver Defendant Osborne stated that she was President and Defendant Bryce Healy was the Secretary and Treasurer of Healy Ranch, Inc. *Id.*

126. Plaintiff was listed as Vice-President. *Id.*

127. On January 2, 1995, the first meeting of the shareholders was held. (*See* Minutes of the Organizational Meeting of the Stockholders of Healy Ranch, Inc. dated January 2, 1995, attached hereto as "Exhibit 24".)

128. The meeting was held at Defendant Fox's law firm.

129. Upon information and belief, the meeting was attended only by Defendants Osborne, Bryce Healy and Fox. *Id.*

130. The meeting minutes were prepared by Defendant Fox's law firm. *Id.*

131. The minutes were not signed by Defendant Osborne. *Id.*



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 17 of 33

132. Defendant Osborne was the sole director and shareholder. *Id.*

133. SDCL 47-1A-706 provides that a shareholder may waive any notice required by the South Dakota Business Corporation Act.

134. A waiver was not signed by Defendant Osborne. (See Unsigned Waiver of Notice of the Organizational Meeting of the Board of Directors of Healy Ranch, Inc. attached hereto as "Exhibit 25".)

135. On January 2, 1995, Defendant Osborne held a Board of Directors meeting with herself, adopted a borrowing resolution and appointed Defendant Bryce Healy as an authorized signature to borrow and conduct banking business on his signature alone. (See Minutes of the First Meeting of the Board of Directors of Healy Ranch, Inc. attached hereto as "Exhibit 26".)

136. Defendant Bryce Healy was not a shareholder.

137. The minutes were prepared by Defendant Fox. *Id.*; See Exhibit 41.

138. Defendant Osborne appointed herself as both President and Secretary/Treasurer of Healy Ranch, Inc. *Id.*

139. A resolution was attached to the minutes that stated Defendant Osborne intended to transfer certain property to the corporation in exchange for corporate shares of Healy Ranch, Inc. *Id.*

140. At this meeting, Defendant Osborne represented that she was the sole stockholder of Healy Ranch, Inc. *Id.*

141. Defendant Osborne's claim was three days after claiming in an application to the South Dakota Secretary of State that she had already given up a 25% interest.

142. At that same meeting, Bylaws for Healy Ranch, Inc. were adopted. (See By-Laws of Healy Ranch, Inc. dated January 2, 1995, attached hereto as "Exhibit 27".)



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 18 of 33

143. The Bylaws for Healy Ranch, Inc. were drafted by Defendant Fox. *Id.*; See Exhibit 41.

144. The Bylaws allowed "a majority of the Board of Directors [to] transact any business by unanimous vote at any time, or at any place, and may do so without a meeting if authorized in writing by a majority of the Directors in the manner authorized by law." *Id.*

145. On January 9, 1995, a meeting was held by the Healy Ranch, Inc. stockholders that included Defendant Osborne and her three sons. (See Minutes of the Annual Stockholders Meeting of Healy Ranch, Inc. dated January 9, 1995, attached hereto as "Exhibit 28".)

146. The minutes claimed that Defendant Osborne and her three sons attended this meeting. *Id.*

147. Plaintiff did not receive notice of the January 9, 1995 meeting. Healy Aff. ¶ 3.

148. Plaintiff did not attend the January 9, 1995 meeting. *Id.*

149. Defendant Bryce Healy signed the stockholder minutes as "secretary" even though he had not yet been elected to that position. *Id.*

150. On January 9, 1995, immediately following the adjournment of the shareholders meeting, the Board of Directors convened. (See Minutes of the Annual Meeting of the Board of Directors of Healy Ranch, Inc. dated January 9, 1995, attached hereto as "Exhibit 29".)

151. The minutes claimed a legal waiver of notice was signed by Defendant Osborne and her three sons. *Id.*

152. Defendant Osborne was nominated as President, Plaintiff as Vice-President, and Defendant Bryce Healy as Secretary/Treasurer. *Id.*



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 19 of 33

153. On March 13, 1995, Defendant Osborne executed the 1995 Deed transferring the property from Healy Ranch Partnership to Healy Ranch, Inc. (See Warranty Deed dated March 13, 1995, attached hereto as "Exhibit 30".)

154. Defendant Fox notarized the signature of Defendant Osborne in Roberts County on March 12, 1995.

155. Grandmother DeLonde signed the 1995 Deed on March 9, 1995.

156. Defendant Fox notarized the signature of Grandmother DeLonde in Brule County on March 9, 1995.

157. Plaintiff was not provided notice of the transfer of all Healy Ranch Partnership property to Healy Ranch, Inc.

158. Plaintiff did not consent to the transfer of all Healy Ranch Partnership property to Healy Ranch, Inc.

159. Healy Ranch Inc. was controlled by Defendants Osborne (President of Healy Ranch, Inc.) and Bryce Healy (Secretary Treasurer of Healy Ranch, Inc.) at the time the 1995 Deed was executed.

160. Defendant Fox prepared the 1995 Deed. (See Exhibit 41)

161. None of Grandmother DeLonde's children were consulted when she executed the 1995 Deed. Healy Aff. ¶ 3.

162. None of Grandmother DeLonde's children were present when she executed the 1995 Deed. *Id.*

163. Grandmother DeLonde's children were not aware that she had executed the March 13, 1995 Deed until 2017. *Id.*



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 20 of 33

164. Grandmother DeLonde was diagnosed with Alzheimer's shortly after signing the 1995 Deed. *Id.*

165. Defendant Osborne and Defendant Bryce Healy with the assistance of Defendant Fox were attempting to obtain a loan from Tri County State Bank in 1994, prior to the organizational meeting of stockholders of Healy Ranch, Inc. *Id.*

166. In December 1994, the Title Company requested a certified copy of the partnership agreement. *See* Exhibit 22.

167. Defendants did not provide the title company with a copy of the 1986 Agreement. Healy Aff. ¶ 3.

168. Defendants provided the title company with rescinded 1972 partnership agreement. *Id.*

169. On the same day after the 1995 Deed was executed, Security Union Title Insurance Company issued title insurance with Tri-County State Bank as the insured. (*See* Schedule A from Security Union Title Insurance Company dated March 13, 1995, attached hereto as "Exhibit 31".)

170. The Title Commitment showed the Healy Ranch land was held by Healy Ranch, Inc. on March 13, 1995. *Id.*

171. Defendants Osborne and Bryce Healy executed a mortgage dated March 13, 1995, and an assignment of rents to Tri County State Bank. *Id.*

172. Defendants Osborne and Bryce Healy agreed to the mortgage in exchange for a loan in the amount of \$130,000.00 to pay off Farm Credit Services of the Midlands. *Id.*



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 21 of 33

173. Farm Credit Services of the Midlands had a mortgage on the land that Grandfather Emmett and Grandmother DeLonde had placed into Healy Ranch Partnership in 1968. *Id.*

174. Approximately two and one-half months after Grandmother DeLonde signed the 1995 Deed, her children after months of reflection determined she could no longer take care of herself on the ranch in the home she had lived in for 59 years and moved her into an apartment in Chamberlain, South Dakota. Healy Aff. ¶ 3.

175. On September 25, 1995, Defendant Fox sent a memorandum to Defendant Osborne which stated:

My understanding of what you wish to do with the stock is to have part of it sold to the boys at 7% interest with the sale agreement to have started in 1992 but with payments to actually begin at the time the final payment is made to FCS about the year 2000 or 2002.

(See Memorandum dated September 25, 1995, attached hereto as "Exhibit 32".)

176. Under the proposed Agreement, it was declared that Defendant Osborne owned 100,000 shares of stock in Healy Ranch, Inc. (See Draft Agreement attached hereto as "Exhibit 33".)

177. The proposed Agreement made special note that "there is insufficient cash flow in the Corporation at this time and we be until the Federal Land Bank debt or Farm Credit Service debt is paid off..." *Id.*

178. On October 27, 1995, Grandmother DeLonde's children obtained a Power of Attorney over her financial affairs with the Power of Attorney being delegated to Mary Williams. Healy Aff. ¶ 3.

179. Defendant Fox assisted the family in preparing the Power of Attorney. *Id.*



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 22 of 33**

180. On April 2, 1996, Defendant Fox sent a facsimile to Snow and Huether that contained the following notation: "Division of Shares of Stock: Mary Ann Osborne – 75% or 224,511 shares, Bret Healy 8.333% or 24,946 shares, Bryce Healy 8.333% or 24,946 shares, and Barry Healy 8.333% or 24,945 shares. (See Fax Cover from Steve Fox dated April 1, 1996, attached hereto as "Exhibit 34".)

181. On October 28, 1999, Defendant Fox sent a memorandum to Defendant Bryce Healy wherein he attached a proposed contract for the sale of stock. (See Memorandum from Defendant Fox to Defendant Bryce Healy dated October 28, 1999, attached hereto as "Exhibit 35".)

182. Defendant Fox noted "[n]ow in order to make the payment clause work we claim that the sale happened a year ago and that the first payment then due is set out in the contract."

*Id.*

183. The draft Contract for Deed provided that the Healy sons would purchase 162,000 of Defendant Osborne's shares of stock in Healy Ranch, Inc. for \$162,000.00. (See Draft Contract for Deed attached hereto as "Exhibit 36".)

#### **Defendants' Conduct Since the 1995 Deed**

184. On February 11, 2000, Defendant Osborne sold 162,000 shares in Healy Ranch, Inc., at \$1.00 per share to Plaintiff and Defendants Bryce and Barry Healy. (See Contract for Deed executed on February 11, 2000, attached hereto as "Exhibit 37".)

185. Payment was to be made in installments with a balloon payment of \$107,180.68 due by November 1, 2013. *Id.*



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 23 of 33

186. As part of the Agreement, Defendant Osborne resigned from her position on the Board and transferred 1/3 of her voting shares equally to the Plaintiff and the Defendants Barry and Bryce Healy. *Id.*

187. On June 15, 2005, Defendant Fox sent a memorandum to Defendant Bryce Healy wherein he states that minutes for the last several years needed to be completed. (*See* Memorandum from Defendant Fox to Defendant Bryce Healy dated June 15, 2005, attached hereto as "Exhibit 38".)

188. Defendant Fox noted that annual Healy Ranch, Inc. stockholder and board of directors minutes had not been completed since 1996. (*See* Memorandum from Defendant Fox to Plaintiff dated January 30, 2007, attached hereto as "Exhibit 39".)

189. Defendants failed to maintain annual stockholder and board of director meeting minutes for Healy Ranch, Inc. for 12 years. Healy Aff. ¶ 4.

190. Defendants signed Plaintiff's signature on Healy Ranch, Inc. corporate records. *Id.*

191. Defendants backdated Healy Ranch, Inc. shareholder and board of director meeting minutes. *Id.*

192. The 2000-08 Healy Ranch, Inc. board of director and shareholder minutes were not drafted until 2008. *Id.*

193. The 2000-08 Healy Ranch, Inc. shareholder meeting minutes were not executed until 2008. *Id.*

194. On March 21, 2008, Defendant Fox sent a memorandum to Defendant Bryce Healy wherein he states:

Sometimes the corporation doesn't quite do all its paperwork on time. I did minutes for the last number of years and had Bret sign them because the Federal Land Bank wanted



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 24 of 33

the current minutes showing you guys were still officers and directors. The other thing that should be in the books is a Waiver of Notice of those meetings. I am sending you copies those waivers from 2000 to 2008. I am also sending you a return envelope. When I get them back I am going to get Barry and Bret to sign them and put them in your corporate book so that it looks appropriate for your lending agencies like Federal Land Bank and the IRS in case anybody ever takes too hard of a look at you.

(See Memorandum from Defendant Fox to Defendant Bryce Healy dated March 21, 2008, attached hereto as "Exhibit 40".)

195. There were no Healy Ranch, Inc. waivers of notice for any of the annual meetings. Healy Aff. ¶ 4.

196. Healy Ranch, Inc. minutes and waivers were eventually drafted for 2000 through 2016. *Id.*

197. Defendant Barry Healy did not sign any Healy Ranch, Inc. waivers of notice for any stockholder or board of director meetings. *Id.*

198. Defendants Osborne and Bryce Healy refused to produce Healy Ranch, Inc. financial and business records as requested by Plaintiff. *Id.*

199. Defendant Fox refused to produce billing statements for legal services and work product for Healy Ranch, Inc. as requested by Plaintiff. *Id.*

200. Defendant Fox refused to produce billing statements for legal services and work product provided to Healy Ranch Partnership as requested by Plaintiff. *Id.*

201. All Healy Ranch, Inc. shareholder meeting minutes indicate shareholders were in attendance. However, a shareholder did not attend any of the of the Healy Ranch, Inc. annual shareholder meeting since formation of Healy Ranch, Inc. *Id.*

**Claims for Relief**

**COUNT I – CONVERSION**

**(All Defendants)**



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 25 of 33**

202. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

203. Healy Ranch, Inc. is in the possession of certain real property belonging to Healy Ranch Partnership.

204. Defendant Mary Ann Osborne fraudulently conveyed all of the assets of Healy Ranch Partnership to a corporate entity created by Defendant Osborne with the assistance of the remaining Defendants but without the knowledge of Plaintiff – the only other partner in Healy Ranch Partnership.

205. As a direct and proximate result of Defendants' unauthorized assertion of dominion and control over the partnership property, Plaintiff has suffered, and continues to suffer, damages in an amount to be determined at trial.

**COUNT II – BREACH OF CONTRACT**

**(Defendant Osborne)**

206. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

207. As set forth herein, on or about January 25, 1986, Defendant Osborne, Plaintiff, and Grandmother DeLonde entered into a written and legally binding partnership agreement.

208. Defendant Osborne breached the Agreement by transferring all of the partnership assets, without the knowledge of Plaintiff, to a newly-created corporate entity to which, at that time, she solely primarily controlled and with the assistance of the remaining Defendants.

209. As a direct and proximate result of Defendant Osborne's material breaches of the Agreement, Plaintiff has suffered, and continues to suffer, damages in an amount to be determined at trial.



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 26 of 33

**COUNT III – BREACH OF IMPLIED COVENANT OF GOOD FAITH  
AND FAIR DEALING**

**(Defendant Osborne)**

210. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

211. As set forth herein, on or about January 25, 1986, Defendant Osborne, Plaintiff, and Grandmother DeLonde entered into a written and legally binding partnership agreement.

212. Inherent in every agreement is the implied covenant of good faith and fair dealing.

213. Defendant Osborne directly breached the covenant of good faith and fair dealing by (a) transferring all of the partnership assets to a corporate entity created by Defendant Osborne; (b) asking Grandmother DeLonde to sign the warranty deed which transferred all the partnership property to the corporate entity with complete knowledge that the Grandmother no longer held any interest in the partnership; and (c) failing to disclose the transfer to the sole remaining partner.

214. The acts and omissions set forth herein are alleged to have been taken to enrich Defendant Osborne and the remaining Healy Defendants to the detriment of the Plaintiff. As such, these acts and omissions were taken in bad faith and without regard for the best interests of the partnership and, accordingly, constituted bad faith violations of the implied covenant of good faith and fair dealing.

215. As a direct and proximate result of Defendant Osborne's breach of the covenant of good faith and fair dealing, Plaintiff has suffered harm, including, but not limited to, monetary damages, in an amount to be determined at trial.

**COUNT IV – FRAUD**

**(All Defendants)**



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 27 of 33**

216. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

217. As set forth herein, on or about January 25, 1986, Defendant Osborne, Plaintiff, and Grandmother DeLonde entered into a written and legally binding partnership agreement.

218. Defendant Osborne falsely and fraudulently failed to disclose to the Plaintiff that she had conveyed all the partnership assets to a corporate entity. In fact, Defendant Osborne filed a warranty deed signed by an individual she knew had no authority to transfer partnership assets.

219. Defendant Osborne, Defendant Bryce Healy, Defendant Barry Healy and Defendant Fox concealed the true facts for the purpose of defrauding Plaintiff.

220. Defendants made the above-referenced concealments and non-disclosures with knowledge of the misrepresentations, intending to induce Plaintiff's reliance, which the unsuspecting Plaintiff justifiably relied upon, resulting in general and special damages as well as the loss of the partnership property. Plaintiff was unaware of the true facts.

221. As a result of Defendants' fraudulent conduct, Plaintiff has suffered compensatory, general and special damages in an amount to be determined at trial. Additionally, Defendants acted with malice, fraud and/or oppression and, thus, Plaintiff is entitled to an award of punitive damages.

**COUNT V – UNJUST ENRICHMENT**

**(All Healy Defendants)**

222. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

223. Since 1995, Defendants have been profiting from the use of partnership assets that do not belong to their corporate entity.



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 28 of 33

224. As a result, Defendants have been unjustly enriched and have benefited at the direct expense of the Plaintiff.

**COUNT VI – BREACH OF FIDUCIARY DUTIES**

**(Defendant Osborne)**

225. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

226. At all times relevant herein, Defendant Osborne owed Plaintiff a fiduciary duty not to appropriate partnership assets.

227. Defendant Osborne's fiduciary duties required her to devote herself to the affairs of the partnership with a view to promote the common interests of all partners and not just her own.

228. Defendant Osborne had a further duty not to engage in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the law.

229. Defendant Osborne has failed to exercise all her fiduciary duties in transferring all partnership property to a corporation she solely controlled at the time.

230. At no time did the Plaintiff approve the transfer of all partnership property made by Defendant Osborne.

231. Defendant Osborne has knowingly and intentionally breached and failed to perform her respective fiduciary duties by, inter alia, subjecting Plaintiff to oppressive, arbitrary, unreasonable, unfair, and wanton actions undertaken in contravention of her respective fiduciary duties.



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 29 of 33**

232. As a direct and proximate result of Defendant's breach of fiduciary duties, the Plaintiff has suffered and will continue to suffer compensatory and consequential damages, in an amount to be proven at trial.

**COUNT VII - NEGLIGENCE**

**(Defendant Osborne)**

233. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

234. Defendant had fiduciary duties to manage the affairs of the partnership with reasonable skill, ordinary diligence and in good faith.

235. The actions of Defendant were negligent, directly and proximately causing foreseeable damages to Plaintiffs in an amount to be determined at trial.

**COUNT VIII - PUNITIVE DAMAGES**

**(All Defendants)**

236. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

237. Plaintiff respectfully submits that the conduct of Defendants as outlined in this Complaint was willful, wanton, and outrageous and committed because of Defendants' reckless indifference to the rights of the Plaintiff, and was intentionally calculated by Defendants to exploit the Plaintiff and impose great hardship on him, and that Defendants had no justification for this conduct other than for selfish pecuniary gain and that this is an appropriate case for the imposition of punitive damages in an amount that would deter these Defendants from committing further acts in violation of the rights of the Plaintiff.

**COUNT IX - PIERCING THE CORPORATE VEIL**



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 30 of 33

(All Healy Defendants)

238. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

239. Upon information and belief, piercing the corporate veil of Healy Ranch, Inc. is warranted for at least the following reasons:

- (a) At all relevant times, no officer or director other than the Healy Defendants, the dominant officers and/or directors of Healy Ranch, Inc., actually functioned in the business decision-making of Healy Ranch, Inc.
- (b) At all relevant times, the Healy Defendants used their control over the assets and business decisions of Healy Ranch, Inc. to further their personal interests as the ultimate owners of Healy Ranch, Inc.
- (c) At all relevant times, Healy Ranch, Inc. failed to observe corporate formalities.
- (d) At all relevant times, Healy Ranch, Inc. failed to keep appropriate and timely corporate records.
- (e) At all relevant times, when taking into account its obligations, Healy Ranch, Inc. was undercapitalized and functioned essentially as a corporate shell.

240. Upon information and belief, the Healy Defendants for personal gain, orchestrated the actions of Healy Ranch, Inc. to conceal and benefit from the fraudulent transfer of all the assets of Healy Ranch Partnership.

241. Upon information and belief, the Healy Defendants exercised their control over Healy Ranch, Inc., to the detriment of the Plaintiff to insulate themselves from any liability that might arise from their concealment and conspiracy to personally benefit from the fraudulent transfer of the assets of Healy Ranch Partnership.

242. Upon information and belief, as the majority shareholders of Healy Ranch, Inc., the Healy Defendants controlled the business decisions at all relevant times in a manner that rendered its corporate form a sham and a façade for their personal benefits.



**COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 31 of 33**

243. By virtue of, *inter alia*, the Healy Defendants' domination and control over the business decisions and assets of Healy Ranch, Inc., they are the alter egos of this entity.

244. Given the facts and circumstances stated herein, justice and public policy demand piercing the corporate veil of Healy Ranch, Inc.

**COUNT X - CONSPIRACY TO COMMIT FRAUD**

**(All Defendants)**

245. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

246. Plaintiff is informed and believes that, at all times herein mentioned, each of the Defendants was the agent and employee of each of the remaining Defendants and was at all times acting within the purpose and scope of such agency and employment.

247. Defendants conspired to transfer all of the partnership property to a corporate entity to which they controlled. The conspiracy continued as they acted in concert to conceal the transfer of partnership property from the Plaintiff.

248. Defendants did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracy.

**PRAYER OF RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants and for the Court to enter an Order as follows:

- A. Awarding damages to the Plaintiff in an amount to be determined at trial.
- B. Awarding legal fees and costs, including attorneys' fees to Plaintiff;
- C. Freezing all corporate expenditures outside the normal operating costs;
- D. Awarding pre- and post-judgment interest; and

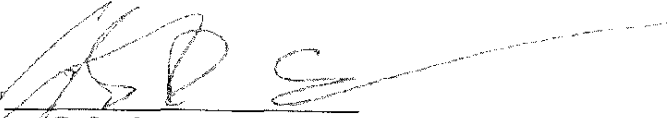


COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 32 of 33

E. Awarding such other relief as this Court deems just and proper.

Dated: May 10, 2017

STEVEN D. SANDVEN LAW OFFICE PC

By   
Steven D. Sandven  
116 East Main Street  
Beresford SD 57005  
Telephone: 605-763-2015  
Facsimile: 605-763-2016  
[ssandvenlaw@aol.com](mailto:ssandvenlaw@aol.com)


ATTORNEY FOR PLAINTIFF

Request for Jury Trial

Plaintiff hereby formally requests a trial by jury on all claims, defenses and issues herein  
that are so triable.

Dated: May 10, 2017

STEVEN D. SANDVEN LAW OFFICE PC

By   
Steven D. Sandven  
116 East Main Street  
Beresford SD 57005  
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ATTORNEY FOR PLAINTIFF



COMPLAINT: Complaint and Affidavit of Bret Healy - Scan 1 - Page 33 of 33

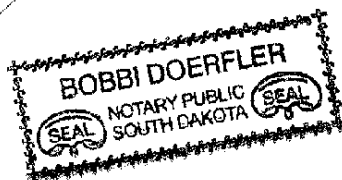
STATE OF SOUTH DAKOTA     )  
  ) ss.  
COUNTY OF LINCOLN         )

I, Bret Healy, having been duly sworn upon oath, under the penalty of perjury hereby states: I am the Plaintiff in the foregoing proceeding. I have read the hereto attached Verified Complaint, and the same is true and correct of my own knowledge, except as to matters therein stated on information and belief, and as to such, I verily believe it to be true.

Bret Healy  
Bret Healy

Subscribed and sworn to before me  
this 10th day of May 10, 2017.

Bobbi Doerfler  
Notary Public





# Exhibit 3



STATE OF SOUTH DAKOTA)		IN CIRCUIT COURT
	:	SS.
COUNTY OF BRULE)		FIRST JUDICIAL CIRCUIT
* * * * *		
BRET HEALY,	*	07 CIV 17-23
	*	
Plaintiff,	*	
	*	
-vs-	*	
	*	
MARY ANN OSBORNE, BRYCE	*	SEPARATE ANSWER OF
HEALY, BARRY HEALY, HEALY	*	DEFENDANT MARY ANN OSBORNE
RANCH PARTNERSHIP, HEALY	*	AND COUNTERCLAIM
RANCH, INC., and ALBERT	*	
STEVEN FOX,	*	
	*	
Defendants.	*	
* * * * *		

Defendant, Mary Ann Osborne, for her answer and responsive pleading to the Plaintiff's Complaint states:

**FIRST DEFENSE**

Denies each and every matter, allegation and thing set out in the Complaint, except such matters hereinafter expressly admitted.

**SECOND DEFENSE**

Answering the specific allegations of the Complaint, this defendant:

1. Admits the allegations set forth in Paragraph 1.
2. Admits the allegations set forth in Paragraph 2.
3. Admits that one of the purposes of creating the 1986 agreement was to protect DeLonde Healy but asserts that Paragraph 3 does not set forth an accurate summary of the obligations undertaken by Bret Healy nor his failure to provide the consideration promised in association with the agreement.
4. As to the allegations set forth in Paragraph 4, asserts that the plaintiff had some involvement in managing, providing labor, and keeping the ranch from financial ruin; but that his efforts were not to the



exclusion of efforts put forth by others; and that he did not fulfill his obligations that were agreed to at the time he received DeLonde Healy's share of the partnership.

5. As to the allegations set forth in Paragraph 5:
  - a. Admits this defendant caused a corporation called Healy Ranch, Inc. to be incorporated after being advised by her attorney this would be the easiest way to divide the ranch equally between her three sons; and
  - b. Asserts that Plaintiff knew about such incorporation and agreed to allow all of the assets previously held by the Healy Ranch Partnership to become assets of Healy Ranch, Inc.
6. As to the allegation set forth in Paragraph 6:
  - a. Admits that all of the real property owned by Healy Ranch Partnership was eventually transferred to Healy Ranch, Inc. via a warranty deed; and
  - b. Asserts that the conveyance required more than this defendant's actions.
7. Denies the allegations set forth in Paragraph 7.
8. Admits the allegations set forth in Paragraph 8.
9. Denies that this defendant "asked" grandmother DeLonde to sign the 1995 deed.
10. Denies the allegations set forth in Paragraph 10.
11. Denies the allegations set forth in Paragraph 11.
12. Denies the allegations set forth in Paragraph 12.
13. Denies the allegations set forth in Paragraph 13.
14. Admits the allegations set forth in Paragraph 14.
15. Denies the allegations set forth in Paragraph 15.



16. This defendant is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 16.
17. Denies the allegations set forth in Paragraph 17.
18. Admits the allegations set forth in Paragraph 18.
19. Admits the allegations set forth in Paragraph 19.
20. Denies the allegations set forth in Paragraph 20.
21. Admits the allegations set forth in Paragraph 21.
22. Admits the allegations set forth in Paragraph 22.
23. Admits the allegations set forth in Paragraph 23.
24. Admits the allegations set forth in Paragraph 24.
25. Asserts that the allegations set forth in Paragraph 25 are statements of law and improperly pled.
26. Asserts that the allegations set forth in Paragraph 26 are statements of law and improperly pled.
27. Asserts that the allegations set forth in Paragraph 27 are statements of law and improperly pled.
28. Asserts that the allegations set forth in Paragraph 28 are statements of law and improperly pled.
29. Asserts that the allegations set forth in Paragraph 29 are statements of law and improperly pled.
30. Denies the allegations set forth in Paragraph 30.
31. Denies the allegations set forth in Paragraph 31.
32. Denies the allegations set forth in Paragraph 32.
33. Denies the allegations set forth in Paragraph 33.
34. Denies the allegations set forth in Paragraph 34.
35. Denies the allegations set forth in Paragraph 35.
36. Admits the allegations set forth in Paragraph 36.



37. Admits the allegations set forth in Paragraph 37.
38. Admits the allegations set forth in Paragraph 38.
39. Admits the allegations set forth in Paragraph 39.
40. Admits the allegations set forth in Paragraph 40.
41. Admits the allegations set forth in Paragraph 41.
42. Admits the allegations set forth in Paragraph 42.
43. Admits the allegations set forth in Paragraph 43.
44. Admits the allegations set forth in Paragraph 44.
45. Admits the allegations set forth in Paragraph 45.
46. Admits the allegations set forth in Paragraph 46.
47. Admits the allegations set forth in Paragraph 47.
48. Admits the allegations set forth in Paragraph 48.
49. As to the allegations set forth in Paragraph 49, admits that Bret Healy is the eldest son of Robert Healy and asserts that Bret also has a mother who is this defendant.
50. Admits the allegations set forth in Paragraph 50.
51. Admits the allegations set forth in Paragraph 51.
52. Admits the allegations set forth in Paragraph 52.
53. As to the allegations set forth in Paragraph 53, this defendant is unsure what the plaintiff means when he states "at this point," and as such, denies the allegation.
54. Admits the allegations set forth in Paragraph 54.
55. Admits the allegations set forth in Paragraph 55.
56. Admits the allegations set forth in Paragraph 56.
57. Admits the allegations set forth in Paragraph 57.
58. Admits the allegations set forth in Paragraph 58.



59. As to the allegations set forth in Paragraph 59:

- a. Admits that grandmother Delonde agreed to transfer the interest referred to in exchange for the labor and management provide by Robert Healy; and
- b. Denies that Robert Healy received a salary from the partnership during that time.

60. Admits the allegations set forth in Paragraph 60.

61. Admits the allegations set forth in Paragraph 61.

62. Admits the allegations set forth in Paragraph 62.

63. Denies the allegations set forth in Paragraph 63.

64. Denies the allegations set forth in Paragraph 64.

65. Admits the allegations set forth in Paragraph 65.

66. Admits the allegations set forth in Paragraph 66.

67. Admits the allegations set forth in Paragraph 67.

68. Denies the allegations set forth in Paragraph 68.

69. Denies the allegations set forth in Paragraph 69.

70. Denies the allegations set forth in Paragraph 70.

71. Admits the allegations set forth in Paragraph 71.

72. Denies the allegations set forth in Paragraph 72.

73. Denies the allegations set forth in Paragraph 73.

74. Admits the allegations set forth in Paragraph 74.

75. Admits the allegations set forth in Paragraph 75.

76. Admits the allegations set forth in Paragraph 76.

77. Denies the allegations set forth in Paragraph 77.

78. Denies the allegations set forth in Paragraph 78.



79. Admits the allegations set forth in Paragraph 79.
80. Admits the allegations set forth in Paragraph 80.
81. Admits the allegations set forth in Paragraph 81.
82. Admits the allegations set forth in Paragraph 82.
83. Admits the allegations set forth in Paragraph 83.
84. Admits the allegations set forth in Paragraph 84.
85. Is without sufficient information to admit or deny the allegations set forth in Paragraph 85.
86. Admits the allegations set forth in Paragraph 86.
87. Admits the allegations set forth in Paragraph 87.
88. Admits the allegations set forth in Paragraph 88.
89. As to the allegations set forth in Paragraph 89:
  - a. Admits that this defendant provided the information stated in that paragraph to the plaintiff; and
  - b. Denies that the information contained in that paragraph constitutes the entire exchange between the parties or that it, read in isolation, constitutes the basis for grandmother DeLonde's agreement to provide the plaintiff with her twenty-five percent interest in the former partnership.
90. Denies the allegations set forth in Paragraph 90.
91. Admits the allegations set forth in Paragraph 91.
92. Admits the allegations set forth in Paragraph 92.
93. Admits the allegations set forth in Paragraph 93.
94. Admits the allegations set forth in Paragraph 94.
95. Denies the allegations set forth in Paragraph 95.
96. As to the allegations set forth in Paragraph 96:



- a. Admits that Exhibit 17 to the Complaint is a deed from grandmother DeLonde to the plaintiff dated January 31, 1989, ostensibly deeding whatever interest grandmother DeLonde possessed in the property at that time to the plaintiff;
  - b. Asserts that grandmother DeLonde's individual interest in the property at the time would have been nothing given that the partnership previously referenced in the Plaintiff's Complaint and this Answer owned the property on the date of the deed.
97. As to the allegations set forth in Paragraph 97:
- a. Admits that the deed indicates that grandmother DeLonde transferred her interest in the property at that time directly to the plaintiff; and
  - b. Asserts that the interest transferred would have been nothing since the Healy Ranch Partnership already owned all of the interest in that property at the time the deed was issued.
98. Admits the allegations set forth in Paragraph 98.
99. Is without sufficient information to admit or deny the allegations set forth in Paragraph 99.
100. Is without sufficient information to admit or deny the allegations set forth in Paragraph 100.
101. Is without sufficient information to admit or deny the allegations set forth in Paragraph 101.
102. Admits the allegations set forth in Paragraph 102.
103. As to the allegations set forth in Paragraph 103, admits that Bret Healy participated in the activities identified in Paragraph 103 but asserts that others, including this defendant, also provided significant efforts in assistance with the activities set forth in that paragraph.
104. As to the allegations set forth in Paragraph 104, admits that Bret Healy participated in the activities identified in Paragraph 104 but asserts that others, including this defendant, also provided significant



efforts in assistance with the activities set forth in that paragraph.

105. As to the allegations set forth in Paragraph 105, denies that the Healy Ranch Partnership was brought "out of chapter 12 bankruptcy" by the "plaintiff."
106. Is without sufficient information to admit or deny the allegations set forth in Paragraph 106.
107. Is without sufficient information to admit or deny the allegations set forth in Paragraph 107.
108. As to the allegations set forth in Paragraph 108, this defendant does not recall making the offer identified in Paragraphs 106-108 and asserts that if such an offer were made, she would have refused to accept the offer.
109. Denies the allegations set forth in Paragraph 109.
110. Denies the allegations set forth in Paragraph 110.
111. Admits the allegations set forth in Paragraph 111.
112. Admits the allegations set forth in Paragraph 112.
113. Admits the allegations set forth in Paragraph 113.
114. Admits the allegations set forth in Paragraph 114.
115. As to the allegations set forth in Paragraph 115, admits that this defendant took the steps necessary to create Healy Ranch, Inc. and did so on the advice of attorney A. Steven Fox who indicated it would be the most effective way for her to divide the Healy Ranch property equally between her three sons.
116. Admits the allegations set forth in Paragraph 116.
117. Admits the allegations set forth in Paragraph 117.
118. Admits the allegations set forth in Paragraph 118.
119. Admits the allegations set forth in Paragraph 119.
120. Admits the allegations set forth in Paragraph 120.



121. As to the allegations set forth in Paragraph 121, this defendant is unsure what the plaintiff means by "it was declared," as a result, the allegations are ambiguous and this defendant denies the same.
122. Admits the allegations set forth in Paragraph 122.
123. Admits the allegations set forth in Paragraph 123.
124. Denies the allegations set forth in Paragraph 124.
125. Admits the allegations set forth in Paragraph 125.
126. Admits the allegations set forth in Paragraph 126.
127. Admits the allegations set forth in Paragraph 127.
128. Admits the allegations set forth in Paragraph 128.
129. Is without sufficient information to admit or deny the allegations set forth in Paragraph 129.
130. Admits the allegations set forth in Paragraph 130.
131. Admits the allegations set forth in Paragraph 131.
132. Admits the allegations set forth in Paragraph 132.
133. Admits the allegations set forth in Paragraph 133.
134. Admits the allegations set forth in Paragraph 134.
135. Admits the allegations set forth in Paragraph 135.
136. Admits the allegations set forth in Paragraph 136.
137. Admits that minutes were prepared by Defendant Fox.
138. Admits that Osborne was initially appointed as both president and secretary/treasurer of Healy Ranch, Inc.
139. Admits the allegations set forth in Paragraph 139.
140. As to the allegations set forth in Paragraph 140, asserts she was the sole stockholder of Healy Ranch, Inc. at the time of the meeting referenced in the Complaint.



141. As to the allegations set forth in Paragraph 141, asserts that the document referenced was prepared by A. Steven Fox and was not inconsistent with the actions taken.
142. Admits the allegations set forth in Paragraph 142.
143. Admits the allegations set forth in Paragraph 143.
144. Admits the allegations set forth in Paragraph 144.
145. As to the allegations set forth in Paragraph 145, denies that her three sons were stockholders in Healy Ranch, Inc. as of the date set forth in that paragraph.
146. Admits the allegations set forth in Paragraph 146.
147. Is without sufficient information to admit or deny the allegations set forth in Paragraph 147.
148. As to the allegations set forth in Paragraph 148, admits that the plaintiff did not attend a meeting on that date and asserts that neither this defendant nor anyone else attended the meeting on January 9, 1995.
149. Denies the allegations set forth in Paragraph 149.
150. Admits the allegations set forth in Paragraph 150.
151. Admits the allegations set forth in Paragraph 151.
152. Admits the allegations set forth in Paragraph 152.
153. Admits the allegations set forth in Paragraph 153.
154. Admits the allegations set forth in Paragraph 154.
155. Admits the allegations set forth in Paragraph 155.
156. Admits the allegations set forth in Paragraph 156.
157. Denies the allegations set forth in Paragraph 157.
158. Denies the allegations set forth in Paragraph 158.
159. Denies the allegations set forth in Paragraph 159.
160. Admits the allegations set forth in Paragraph 160.



- 161. Is without sufficient information to admit or deny the allegations set forth in Paragraph 161.
- 162. Is without sufficient information to admit or deny the allegations set forth in Paragraph 162.
- 163. Denies the allegations set forth in Paragraph 163.
- 164. Is without sufficient information to admit or deny the allegations set forth in Paragraph 164.
- 165. Admits the allegations set forth in Paragraph 165.
- 166. Admits the allegations set forth in Paragraph 166.
- 167. Is without sufficient information to admit or deny the allegations set forth in Paragraph 167.
- 168. Denies the allegations set forth in Paragraph 168.
- 169. Admits the allegations set forth in Paragraph 169.
- 170. Admits the allegations set forth in Paragraph 170.
- 171. Admits the allegations set forth in Paragraph 171.
- 172. Admits the allegations set forth in Paragraph 172.
- 173. Admits the allegations set forth in Paragraph 173.
- 174. Is without sufficient information to admit or deny the allegations set forth in Paragraph 174.
- 175. Admits the allegations set forth in Paragraph 175.
- 176. Admits the allegations set forth in Paragraph 176.
- 177. Admits the allegations set forth in Paragraph 177.
- 178. Is without sufficient information to admit or deny the allegations set forth in Paragraph 178.
- 179. Is without sufficient information to admit or deny the allegations set forth in Paragraph 179.
- 180. Admits the allegations set forth in Paragraph 180.
- 181. Admits the allegations set forth in Paragraph 181.



- 182. Admits the allegations set forth in Paragraph 182.
- 183. Admits the allegations set forth in Paragraph 183.
- 184. Admits the allegations set forth in Paragraph 184.
- 185. Admits the allegations set forth in Paragraph 185.
- 186. Admits the allegations set forth in Paragraph 186.
- 187. Admits the allegations set forth in Paragraph 187.
- 188. Admits the allegations set forth in Paragraph 188.
- 189. As to the allegations set forth in Paragraph 189, admits that this defendant initially failed to maintain annual stockholder or board of director meeting minutes and asserts that the plaintiff also failed in that regard.
- 190. Denies the allegations set forth in Paragraph 190.
- 191. As to the allegations set forth in Paragraph 191, admits that certain shareholder and board of director meeting minutes were back-dated and asserts that plaintiff assisted in such back-dating.
- 192. Admits the allegations set forth in Paragraph 192.
- 193. Admits the allegations set forth in Paragraph 193.
- 194. Admits the allegations set forth in Paragraph 194.
- 195. Denies the allegations set forth in Paragraph 195.
- 196. Admits the allegations set forth in Paragraph 196.
- 197. Denies the allegations set forth in Paragraph 197.
- 198. Denies the allegations set forth in Paragraph 198.
- 199. Is without sufficient information to admit or deny the allegations set forth in Paragraph 199.
- 200. Is without sufficient information to admit or deny the allegations set forth in Paragraph 200.
- 201. Denies the allegations set forth in Paragraph 201.



202. Due to the nature of the allegations set forth in Paragraph 202, no responsive pleading is necessary.
203. Denies the allegations set forth in Paragraph 203.
204. Denies the allegations set forth in Paragraph 204.
205. Denies the allegations set forth in Paragraph 205.
206. Due to the nature of the allegations set forth in Paragraph 206, no responsive pleading is necessary.
207. Admits the allegations set forth in Paragraph 207.
208. Denies the allegations set forth in Paragraph 208.
209. Denies the allegations set forth in Paragraph 209.
210. Is without sufficient information to admit or deny the allegations set forth in Paragraph 210.
211. Admits the allegations set forth in Paragraph 211.
212. As to the allegations set forth in Paragraph 212:
- a. Admits that every agreement has an implied covenant of good faith and fair dealing; and
  - b. Denies that an independent cause of action exists to complain of a breach of such covenant as pled in Count III of the plaintiff's Complaint.
213. Denies the allegations set forth in Paragraph 213.
214. Denies the allegations set forth in Paragraph 214.
215. Denies the allegations set forth in Paragraph 215.
216. Due to the nature of the allegation set forth in Paragraph 216, no responsive pleading is necessary.
217. Admits the allegations set forth in Paragraph 217.
218. Denies the allegations set forth in Paragraph 218.
219. Denies the allegations set forth in Paragraph 219.
220. Denies the allegations set forth in Paragraph 220.



- 221. Denies the allegations set forth in Paragraph 221.
- 222. Due to the nature of the allegation sets forth in Paragraph 222, no responsive pleading is necessary.
- 223. Denies the allegations set forth in Paragraph 223.
- 224. Denies the allegations set forth in Paragraph 224.
- 225. Due to the nature of the allegations set forth in Paragraph 225, no responsive pleading is necessary.
- 226. Admits the allegations set forth in Paragraph 226.
- 227. Admits the allegations set forth in Paragraph 227.
- 228. Admits the allegations set forth in Paragraph 228.
- 229. Denies the allegations set forth in Paragraph 229.
- 230. Denies the allegations set forth in Paragraph 230.
- 231. Denies the allegations set forth in Paragraph 231.
- 232. Denies the allegations set forth in Paragraph 232.
- 233. Due to the nature of the allegations set forth in Paragraph 233, no responsive pleading is necessary.
- 234. Denies the allegations set forth in Paragraph 234.
- 235. Denies the allegations set forth in Paragraph 235.
- 236. Due to the nature of the allegations set forth in Paragraph 236, no responsive pleading is necessary.
- 237. Denies the allegations set forth in Paragraph 237.
- 238. Due to the nature of the allegations set forth in Paragraph 238, no responsive pleading is necessary.
- 239. Denies the allegations set forth in Paragraph 239.
- 240. Denies the allegations set forth in Paragraph 240.
- 241. Denies the allegations set forth in Paragraph 241.
- 242. Denies the allegations set forth in Paragraph 242.



243. Denies the allegations set forth in Paragraph 243.

244. Denies the allegations set forth in Paragraph 244.

245. Due to the nature of the allegations set forth in Paragraph 245, no responsive pleading is necessary.

246. Denies the allegations set forth in Paragraph 246.

247. Denies the allegations set forth in Paragraph 247.

248. Denies the allegations set forth in Paragraph 248.

### **THIRD DEFENSE**

Affirmative alleges that plaintiff's Complaint fails to state a claim against this defendant upon which relief can be granted.

### **FOURTH DEFENSE**

Affirmatively alleges estoppel; waiver; accord and satisfaction; failure to mitigate damages; failure of consideration; and novation as defenses.

### **FIFTH DEFENSE**

Affirmative alleges the statute of limitations has expired with respect to all of the causes of actions set forth by the plaintiff and bars any action by the plaintiff contained in his Complaint.

### **COUNTERCLAIM**

COMES NOW this defendant and for her counterclaim, states and alleges as follows:

1. This defendant reasserts as if fully set forth herein all of the facts admitted to in her Answer and those affirmatively alleged by her within the same.
2. Bret Healy did obtain a twenty-five percent interest in the Healy Ranch Partnership.
3. That interest was obtained based upon his promise to take over the active operation of the Healy Ranch Partnership assets upon his graduation with an undergraduate degree from South Dakota State University.



4. After graduating from South Dakota State University in 1986, Bret Healy did return to Healy Ranch and operated it for a short period of time.
5. Unfortunately, the marriage Bret entered into shortly after returning to the ranch did not last long, and following Bret's divorce, he left the ranch to pursue further education at Kansas State University.
6. Even after completing his studies at Kansas State University, Bret did not return to the ranch but instead moved to Washington, D.C. to work for Senator Tim Johnson.
7. Eventually, Bret returned to South Dakota but, once again, did not return to the ranch and instead lived in Frederick, South Dakota while continuing to work for Senator Johnson.
8. Bret did not return to the ranch until 2005 or 2006 and, by that time, he had already agreed to give up his twenty-five percent interest in the partnership and to allow Mary Ann Osborne to consolidate all of the partnership's assets into a corporation known as Healy Ranch, Inc., in which he agreed to purchase a one-third interest in by entering into an agreement between Mary Ann Osborne, Bryce Healy, and Barry Healy.
9. The allegations Bret Healy has made in his Complaint about Healy Ranch Partnership being an ongoing entity are false.
10. The allegations made by Bret Healy about Healy Ranch, Inc. being incorporated without his knowledge and consent are false.
11. During the time Healy Ranch Partnership existed, Bret Healy had sole control of the assets and income associated with that partnership and wholly failed to account to Mary Ann Osborne for any of it.
12. Mary Ann Osborne received no funds or income from any of the assets which eventually became owned by Healy, Ranch, Inc., even though she owned a seventy-five percent interest in the partnership that held those assets until 1995 when it was agreed those assets would be placed in Healy Ranch, Inc.



COUNT I  
BARRATRY

13. The claims made by Bret Healy that he did not agree to terminate the Healy Ranch Partnership and also his twenty-five percent interest in the partnership to allow Healy Ranch, Inc. to be created are false.
14. The claims made by Bret Healy that he did not know that the land currently owned by Healy Ranch, Inc. had been transferred into the corporation in or around 1995 are false.
15. The allegations made by Bret Healy in his Complaint are frivolous and/or malicious and are made in bad faith.
16. As a result of Bret Healy's frivolous and/or malicious claims, this defendant has suffered damage.

COUNT II  
ABUSE OF PROCESS

17. The action commenced by Bret Healy has been commenced for a purpose other than to obtain damages from this defendant.
18. Bret Healy has commenced this action in an effort to keep Healy Ranch, Inc. from conducting business and from selling property it owns.
19. As a result of Bret Healy's abuse of process, this defendant has suffered damage.

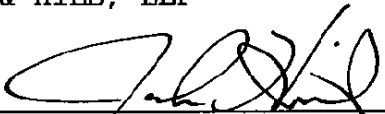
Wherefore, this defendant prays that the Plaintiff's Complaint be dismissed on her merits and with prejudice; that this defendant be awarded judgment on her counterclaim in an amount sufficient to compensate her for the damages caused by Plaintiff; that this defendant recover her costs and disbursements in this matter, and, in particular, her attorney's fees pursuant to 15-17-51; and that the Court grant such other and further relief it deems just and proper under the circumstances.

Defendant Mary Ann Osborne demands trial by jury.



Dated this 23<sup>rd</sup> day of June, 2017.

RICHARDSON, WYLY, WISE, SAUCK  
& HIEB, LLP

By   
Attorneys for Defendant  
Mary Ann Osborne

One Court Street  
Post Office Box 1030  
Aberdeen, SD 57402-1030  
Telephone No. (605) 225-6310  
E-mail: JHieb@rwwsh.com



# Exhibit 4



**AMENDED ANSWER: AND COUNTERCLAIM ON BEHALF OF DEFENDANTS BRYCE HEALY, BARRY HEALY, AND HEALY RANCH, INC. Page 1 of 6**

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	ss:	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT

BRET HEALY,	)	07CIV. 17-23
Plaintiff,	)	
	)	
vs.	)	AMENDED ANSWER AND
	)	COUNTERCLAIM ON BEHALF OF
MARY ANN OSBORNE, BRYCE HEALY,	)	DEFENDANTS BRYCE HEALY,
BARRY HEALY, HEALY RANCH	)	BARRY HEALY, AND HEALY
PARTNERSHIP, HEALY RANCH, INC.,	)	RANCH, INC.
and ALBERT STEVEN FOX.	)	
Defendants.	)	

COMES NOW the Defendants, Bryce Healy, Barry Healy, and Healy Ranch, Inc., by and through their attorney, Lee Schoenbeck, and make the following Amended Answer and Counterclaim:

**Amended Answer**

1. Each and every matter in the *Verified Complaint and Demand for Jury Trial* is denied, unless admitted herein.
2. The following paragraphs are Admitted: 1, 2, 8, 13-14, 18-19, 21-24, 36-51, 54-58, 60-62, 65-67, 71, 74-76, 86-88, 91-94, 98, 102, 111-120, 122-123, 125-128, 130-140, 142-144, 146, 148, 150-156, 160, 165-166, 169-173, 175-177, 180-188, 192-194, 196, 207, 211, 217, and 226-228.
3. The following paragraphs are Denied: 7, 10-12, 15, 17, 20, 30-35, 53, 63-64, 68-70, 72-73, 77, 78-84, 90, 95, 109-110, 124, 149, 157-159, 168, 190, 195, 197-198, 201, 203-205, 208-209, 212-215, 218-221, 223-224, 229-232, 234-235, 237, 239-244, and 246-248.



**AMENDED ANSWER: AND COUNTERCLAIM ON BEHALF OF DEFENDANTS BRYCE HEALY, BARRY HEALY, AND HEALY RANCH, INC. Page 2 of 6**

4. Defendants are without knowledge to admit or deny the following paragraphs: 16, 85, 89, 96-97, 99-101, 106-108, 129, 147, 161-164, 167, 174, 178-179, and 199-200.

5. With respect to paragraph 3, it recites some of the purposes for which the 1986 Agreement was entered into.

6. With respect to paragraph 4, Defendants make a qualified admission, as they and others worked with the Plaintiff to perform those functions set forth therein.

7. With respect to paragraphs 5 and 6, Defendants make a qualified admission, as they believe others were involved with their mother, Defendant Osborne, in the acts set forth in paragraphs 5 and 6.

8. With respect to paragraph 9, Defendant Bryce Healy denies the allegations, and the other Defendants would be without knowledge to admit or deny this allegation.

9. The allegations set forth in the following paragraphs are statements of law and improperly plead: 25-29.

10. With respect to paragraph 52, Defendants make a qualified admission, as Grandmother DeLonde was the sole heir to all of Emmett J. Healy's property, whether within or without the Partnership.

11. With respect to paragraph 59, Defendants admit the allegations therein, except the allegation that Robert Healy also received a salary.

12. With respect to paragraphs 103-105, it's inaccurate when it says that the Plaintiff did this, as the Plaintiff was just one of the people that took this action.

13. With respect to paragraph 121, Defendants believe that nothing is



**AMENDED ANSWER: AND COUNTERCLAIM ON BEHALF OF DEFENDANTS BRYCE HEALY, BARRY HEALY, AND HEALY RANCH, INC. Page 3 of 6**

“declared,” but it is probably “indicated.”

14. With respect to paragraph 141, Defendants believe that was a document prepared by attorney Fox.

15. With respect to paragraph 145, Defendants would deny that three sons were shareholders at this point in time.

16. With respect to paragraph 189 and 191, Defendants admit that they and the Plaintiff both failed to maintain the meeting Minutes, and when they did, backdated them to bring the records current.

17. No response is necessary to the following paragraphs: 202, 206, 210, 216, 222, 225, 233, 236, 238, and 245.

**Affirmative Defenses**

1. Plaintiff failed to state a claim upon which relief can be granted.
2. These Defendants assert the following affirmative defenses: accord and satisfaction, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, statute of frauds, statute of limitations, and waiver.

**Counterclaims**

1. These Defendants incorporate by this reference all of the answers and facts referenced above.
2. That Plaintiff, Bret Healy, did publish and make disparaging comments about these Defendants, and about the Healy Ranch, Inc.'s title to its real property.
3. Plaintiff contacted Defendant Healy Ranch, Inc.'s corporation, and intentionally put the Corporation in default with its lender, at a time when the Plaintiff



**AMENDED ANSWER: AND COUNTERCLAIM ON BEHALF OF DEFENDANTS BRYCE HEALY, BARRY HEALY,  
AND HEALY RANCH, INC. Page 4 of 6**

was an officer, director, and shareholder of the Corporation.

4. As a result of the Plaintiff's conduct, the Defendant Healy Ranch, Inc.'s interest rate was raised to the default interest rate on their outstanding mortgage.

5. The Plaintiff breached his fiduciary duty to the Corporation, and its shareholders, by causing the Corporation's loan to go into default.

6. The Plaintiff breached his fiduciary duty he owed to the Corporation and its shareholders, when he published and spoke disparagingly about the Corporation, the Defendants, and the Corporation's interest in the real property that is titled in its name.

7. The Plaintiff interfered with the business expectancy and business relationship the Defendants have with the banks and other entities that the Defendants do business with, and with prospective buyers that Defendant Corporation would be selling its real property to.

8. Plaintiff intentionally disparaged the land title of the Healy Ranch, Inc. corporation.

9. Plaintiff has not accounted to the Corporation and shareholders for the funds Plaintiff received during the many years the Plaintiff controlled the Corporate assets.

**Prayer for Relief**

WHEREFORE, Defendants Bryce Healy, Barry Healy, and Healy Ranch, Inc., move the Court to:

1. Dismiss Plaintiff's Complaint for naught;
2. Require the Plaintiff to make an accounting for all Corporate funds for all years that he was in control of the Corporation, and to return to the



**AMENDED ANSWER: AND COUNTERCLAIM ON BEHALF OF DEFENDANTS BRYCE HEALY, BARRY HEALY, AND HEALY RANCH, INC. Page 5 of 6**

Corporation any funds he may have converted.

3. Award Defendants money damages in an amount to be determined by a jury, on the Counterclaims the Defendants have asserted against the Plaintiff; and
4. Award attorney's fees to these Defendants, and all other damages appropriate for the Court to award, pursuant to SDCL 15-17-51.

Dated this 6<sup>th</sup> day of July, 2017.

SCHOENBECK LAW, PC

/s/ Lee Schoenbeck

Lee Schoenbeck  
*Attorney for Defendants Bryce Healy,  
Barry Healy, and Healy Ranch, Inc.*  
P.O. Box 1325  
Watertown, SD 57201  
(605) 886-0010

**DEFENDANTS HEREBY DEMAND A TRIAL BY JURY ON ALL ISSUES.**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I have served a true and correct copy of *Amended Answer and Counterclaim on Behalf of Defendants Bryce Healy, Barry Healy, and Healy Ranch, Inc.*, on the following:

Steven D. Sandven  
116 East May Street  
Beresford, SD 57005  
*Attorney for Plaintiff*

Jack H. Hieb  
Richardson, Wyly, Wise, Sauck & Hieb  
P.O. Box 1030  
Aberdeen, SD 57402  
*Attorney for Defendants Osborne and Healy Partnership*



AMENDED ANSWER: AND COUNTERCLAIM ON BEHALF OF DEFENDANTS BRYCE HEALY, BARRY HEALY,  
AND HEALY RANCH, INC. Page 6 of 6

Kara C. Semmler  
May, Adam, Gerdes & Thompson LLP  
P.O. Box 160  
Pierre, SD 57501-0160  
*Attorney for Defendant Fox*

via Odyssey this 6<sup>th</sup> day of July, 2017.

SCHOENBECK LAW, PC

/s/ Lee Schoenbeck  
Lee Schoenbeck  
*Attorney for Defendants, Bryce Healy,  
Barry Healy, and Healy Ranch, Inc.*  
P.O. Box 1325  
Watertown, SD 57201



# Exhibit 5



WARRANTY DEED

Delonde Healy, a single person, of Pukwana, Brule County, State of South Dakota, for and in consideration of other good and valuable consideration and the sum of ONE Dollars, GRANT(S), CONVEY(S), AND WARRANT(S) TO: Bret Healy, of RR #1 Box 151, Pukwana, South Dakota 57370, P.O., the following described real estate in the County of Brule in the State of South Dakota:

See attached Exhibit for description.

Exempt from Transfer Fee

Dated this 31st day of January , 1989.

Delonde Healy  
Delonde Healy

State of South Dakota:

:ss

County of Brule :

On this the 31st day of January , 1989, before me, the undersigned officer, personally appeared, Delonde Healy, a single person, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

[Signature]  
Notary Public, South Dakota  
My comm. exp. 9-25-95

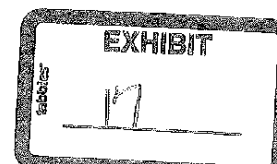




EXHIBIT TO WARRANTY DEED

Lots One, Two, and Three and the East Half of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section Twenty-Two; Lots Two, Three, Four and Five and the Northwest Quarter of Section Twenty-Three; all that part of the Northwest Quarter lying north of the right-of-way of the Chicago, Milwaukee & St. Paul Railroad in Section Twenty-Six; all in Township One Hundred Four North, Range Seventy, West of the 5th P.M., Brule county, South Dakota, containing 637.83 acres more or less according to government survey;

Lots One, Two, Three, Four and Five; and the South Half of the Northeast Quarter; the North Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter all in Section Seventeen; and the East Half of Section Twenty; and the North Half and the Southeast Quarter of Section Twenty-Nine all in Township One Hundred Four North, Range Seventy, West of the Fifth P.M., Brule County, South Dakota.



# Exhibit 6



LARSON, SUNDALL, LARSON, SCHAUB & FOX, P.C.

Lawyers and Counselors

ROBERT R. SCHAUB  
ALBERT STEVEN FOX

P.O. BOX 547  
CHAMBERLAIN, SD 57325  
(605) 734-6515

HERE C. SUNDALL  
P.O. BOX 187  
KENNEBEC, SD 57544  
(605) 869-2233

Founded 1914  
M.Q. Sharpe 1888-1962  
JOHN W. LARSON, Rd.

CALL FOR FAX

January 15, 2008

BRET HEALY  
PO BOX 167  
PUKWANA SD 57370-0167

BRYCE HEALY  
819 CHERRY DR.  
PIERRE SD 57501

Dear Bret & Bryce:

re: Swanson

Enclosed is a copy of the Agreement with Swanson and a copy of the letter I got from Dave Larson. I was told they have sent the check to Bryce. I am going to presume that happened unless Bryce or Bret call me and says it did not happen.

If you have questions about this or want me to follow up, please call.

Sincerely yours,



Albert Steven Fox

ASF/pll

Enclosed:  
Copy of Agreement  
Copy of Dave Larson Letter



David J. Larson  
Lawyer & Counselor

Larson Law PC 

131 S. Main — P.O. Box 131  
Chamberlain, SD 57325  
Phone 605.234.2222  
Fax 605.234.2221  
email [dlarson@wcnenet.com](mailto:dlarson@wcnenet.com)

14 January, 2008

Mr. Albert Steven Fox  
PO Box 547  
Chamberlain, SD 57325

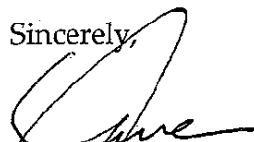
**re: Healy / Swanson**

Dear Steve:

Enclosed is a copy of the signed agreement.

James told me that he sent the checks directly to the Healys for the weed control and rent.

Sincerely,



David J. Larson  
DJL/jmf

Enc:  
Agreement Copy

Copy:  
James Swanson



## AGREEMENT

### *Parties:*

Healy Ranch, a partnership                      Owners  
Brett Healy  
Barry Healy  
Bryce Healy  
PO Box 167  
Pukwana SD 57370

James Swanson                                      Tenants  
David Swanson  
24839 346<sup>th</sup> Avenue  
Pukwana SD 57370

### *Recitals:*

1. Owners are the owners of the real estate described on Exhibit "A" attached and incorporated herein by this reference.
2. Tenants separately rented the agricultural ground, and the house and buildings located on the above described property.
3. Owners have given notice of their intent to terminate the lease and resume possession under their own operation.
4. The parties acknowledge that certain issues and disputes have arisen between them which the parties desire to resolve and settle in an amicable manner according to the terms set forth in this agreement.

### *Consideration:*

The consideration for this agreement is the party's mutual covenants and agreements set forth herein.

COPY



*Items of Agreement:*

1. Tenants shall be permitted to remain in peaceful possession of the agricultural land until midnight, December 31, 2007, at which time they shall peacefully surrender the same. It is agreed that the rent has been paid in full to that date.
2. Tenants shall be permitted to remain in peaceful possession of the house and building site until completion of the house being built by James Swanson but no later than April 1, 2008, at which time tenants will peacefully surrender possession of the same. Rent for the house and building site has been paid to the date of January 1, 2008, after that date the rent shall be increased to \$400 per month.
3. Tenants agree to return possession of the house in the condition it was at the commencement of the lease ordinary wear and aging excepted.
4. Tenants agree to reimburse Owners in the amount of \$3,811.73 for weed spraying performed by the Owners during Tenants occupancy of the property.
5. Each party will pay their own attorneys fees.
6. THE PARTIES EACH MUTUALLY AGREE TO RELEASE THE OTHER FROM ANY ALL CLAIMS, OF WHATEVER TYPE OR NATURE, IN ANY MANNER ARISING PRIOR TO THE PARTIES EXECUTION OF THIS AGREEMENT, WHETHER KNOWN OR UNKNOWN, DISCLOSED OR UNDISCLOSED, IT BEING THE PARTIES' INTENTION TO FULLY AND FOREVER RESOLVE ALL ISSUES BETWEEN THEM BY THIS AGREEMENT AND EACH EXPRESSLY AGREES NOT TO BRING SUIT OR ACTION AGAINST THE OTHER FOR ANY SUCH CLAIMS.

*Owners*

HEALY RANCH

Date: 1/4/08 By Bret Healy  
General Partner  
Date: 1/4/08 Bret Healy  
Bret Healy



JAN-03-2008 13:48 FROM:SDEA

605 224 5810

TO:605 734 5669

P.1/1

01/03/2008 14:35 605-734-5669

LARSON LAW OFFICE

PAGE 05/05

Date: 1-4-08 Barry Healy  
Barry Healy

Date: 1-2-08 Bryce Healy  
Bryce Healy

*Tenants*

Date: 1-11-2008 James A. Swanson  
James Swanson

Date: 1-11-2008 David Swanson  
David Swanson



# Exhibit 7



# Meierhenry Sargent LLP

ATTORNEYS AT LAW

PATRICK J. GLOVER  
*patrick@meierhenrylaw.com*

Mark V. Meierhenry  
Todd V. Meierhenry  
Clint Sargent  
Patrick J. Glover  
Raleigh Hansman  
Christopher J. Healy

Sabrina Meierhenry  
*Of Counsel*

January 5, 2018

Bret Healy  
PO Box 731  
Chamberlain, SD 57701

*RE: 1995 Deed*

Dear Mr. Healy:

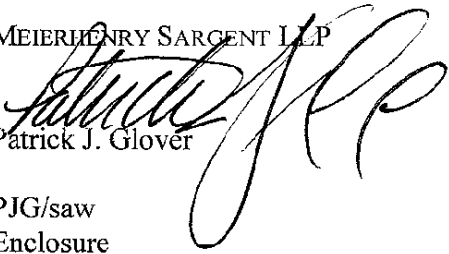
I did some research on statute of limitations as to the 1995 deed issue. I have enclosed a 2013 South Dakota Supreme Court case that deals with the statute of limitations concerning marketable title to property. While the enclosed case deals with easements, the highlighted language on timing for barring claims should hold through to your matter.

If I'm reading this case correctly, you have until March 13, 2018 to file your notice of claim of interest under SDCL Chap 43-30. It will need to be signed by you, under oath, and filed for record with the Brule County Register of Deeds before the end 23 years has run. I will put together a proper notice of claim of interest for you.

Let me know if you have any questions.

Sincerely yours,

MEIERHENRY SARGENT LLP

  
Patrick J. Glover

PJG/saw  
Enclosure

315 South Phillips Avenue, Sioux Falls, South Dakota 57104  
(tel) 605•336•3075 (fax) 605•336•2593  
[www.meierhenrylaw.com](http://www.meierhenrylaw.com)

*with attorneys licensed in South Dakota, North Dakota, Nebraska, Minnesota, and Iowa.*



#26583-a-GAS  
2013 S.D. 86

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA  
\* \* \* \*

DALE E. SPRINGER, DOROTHY  
M. SPRINGER, ROGER A. SPRINGER  
and DANIEL L. SPRINGER,

Plaintiffs and Appellants,

v.

ANDY CAHOY,

Defendant and Appellee,

and

DONALD L. MCCLUNG, as Trustee of the  
Donald L. McClung Trust, LEONARD M.  
MCCLUNG, as Trustee of the Leonard M.  
McClung Trust and ALL OTHER PERSONS  
UNKNOWN CLAIMING ANY RIGHT, TITLE,  
ESTATE, LIEN OR INTEREST IN THE  
COMPLAINT ADVERSE TO PLAINTIFFS'  
OWNERSHIP OR ANY CLOUD ON  
PLAINTIFF'S TITLE,

Defendants.

\* \* \* \*  
APPEAL FROM THE CIRCUIT COURT OF  
THE THIRD JUDICIAL CIRCUIT  
CLARK COUNTY, SOUTH DAKOTA  
\* \* \* \*

THE HONORABLE RONALD K. ROEHR  
Judge  
\* \* \* \*

GARY W. SCHUMACHER  
Wilkinson & Wilkinson  
DeSmet, South Dakota

Attorneys for plaintiffs  
and appellants.

GORDON P. NIELSEN  
DAVID A. GEYER of  
Delaney, Nielsen & Sannes, PC  
Sisseton, South Dakota

Attorneys for defendant  
and appellee.

\* \* \* \*

CONSIDERED ON BRIEFS  
ON AUGUST 27, 2013  
OPINION FILED **12/04/13**



#26583

SEVERSON, Justice

[¶1.] Dale Springer, Dorothy Springer, Roger Springer, and Daniel Springer (Springers) own a landlocked parcel of land and have brought suit claiming an implied easement over Andy Cahoy's land. On June 24, 2011, the Third Circuit Court concluded that an easement implied from prior use existed. We disagreed, *Springer v. Cahoy*, 2012 S.D. 32, ¶ 11, 814 N.W.2d 131, 135, holding that "Springers failed to present clear and convincing evidence of an easement implied from prior use." *Id.* We reversed and remanded. *Id.* On remand, Springers argued for a common law implied easement by necessity. On November 26, 2012, the circuit court found the requirements for an implied easement by necessity were not met. And even if the requirements were met, the circuit court found relief must be denied based on South Dakota's Marketable Title Act (SDMTA) and Springers having an adequate remedy at law. We affirm the circuit court on the ground that SDMTA bars Springers' common law implied easement by necessity claim.

### Background

[¶2.] Springers and Cahoy own adjacent forty-acre parcels of land in Clark County, South Dakota. Lester Harrington owned these parcels in their unity as an eighty-acre parcel from 1947 to 1967. On October 13, 1967, Harrington split the parcel into two by deeding the east forty acres to his son George Harrington and the west forty acres to his daughter Lylia McClung. In 1989, George Harrington conveyed his east parcel to Marilyn Swanson, who subsequently conveyed the land to Springers on May 29, 2008. In 2004, Lylia McClung conveyed her west parcel to



#26583

Donald and Leonard McClung, who subsequently conveyed the land to Cahoy on November 26, 2007.

[¶3.] From 1967 until 2007, the two parcels were owned separately but rented by one person and operated as a unit. The land is primarily agricultural in nature, bordered by Game, Fish and Parks land to the north (currently underwater as a part of Swan Lake) and private land to the east and south. Cahoy's west parcel has access to a public road, while Springer's east parcel does not. As a result, starting in 2008, Springers crossed Cahoy's west parcel in order to access their land.

[¶4.] There is no written document, either recorded or unrecorded, granting the east parcel an easement across the west parcel. Further, there were no established paths through Cahoy's property. In an attempt to stop Springers from crossing his property, Cahoy put up no trespassing signs in the spring of 2008. Then in 2009, Cahoy locked the gates that provided access to his west parcel, effectively blocking Springers from entry. Now barred from entry, Springers commenced a quiet title action on December 21, 2009, claiming an implied easement on Cahoy's parcel.

[¶5.] First, Springers argued for an implied easement from prior use. The circuit court found that an easement implied from prior use existed but limited the use to agricultural ingress and egress during the spring and fall by seventy horsepower equipment or less using "flotation" tires. The easement route, proposed by Springers, meandered through Cahoy's land. Both parties appealed. We reversed the circuit court's decision on the dispositive issue of whether there was an easement implied from prior use. *Springer*, 2012 S.D. 32, ¶ 11, 814 N.W.2d at 135.



#26583

Because the circuit court “did not find that there was a historical use of Springer’s proposed trail that was so continuous, obvious, and visible to make it an apparently permanent easement at the time of severance[,]” we held that “Springers failed to present clear and convincing evidence of an easement implied from prior use.” *Id.* ¶¶ 10-11. We remanded the case to the circuit court. *Id.* ¶ 11.

[¶6.] On remand, Springers argued for a common law implied easement by necessity. The circuit court found three separate grounds that prevented Springers from being entitled to an implied easement by necessity: (1) the original grantor did not retain ownership of any land bordering the east parcel, thus the requirements for an implied easement by necessity were not met, (2) an adequate remedy at law barred equitable relief, and (3) SDMTA barred the action because the severance occurred in 1967, outside the Act’s twenty-two year provision. Springers appeal.

### Standard of Review

[¶7.] We review the circuit court’s conclusions of law under the de novo standard and findings of fact under the clearly erroneous standard. *Eagle Ridge Estates Homeowners Ass’n, v. Anderson*, 2013 S.D. 21, ¶¶ 12-13, 827 N.W.2d 859, 864-65 (citations omitted). A finding is clearly erroneous when, after reviewing the entire record, we are left with a “definite and firm conviction that a mistake has been committed. The credibility of the witnesses, the import to be accorded their testimony, and the weight of the evidence must be determined by the trial court, and we give due regard to the trial court’s opportunity to observe the witnesses and examine the evidence.” *Id.* (internal quotation marks and citations omitted).



#26583

**Analysis**

[¶8.] “The common law recognizes two types of implied easements: easements by necessity and easements implied from prior use.” *Thompson v. E.I.G. Palace Mall, LLC*, 2003 S.D. 12, ¶ 11, 657 N.W.2d 300, 304. Springers seek a common law implied easement by necessity after failing to obtain an easement implied from prior use. An implied easement by necessity “can occur when a grantor conveys to another an inner portion of land surrounded by lands owned by the grantor or the grantor and others. Unless a contrary intent is manifest, the landlocked grantee will be entitled to have a right-of-way across the retained land of the grantor for ingress and egress.” *Id.* The necessity for access over the grantor’s land must have arisen at the time of severance, in addition to a present necessity. *Magnuson v. Cossette*, 707 N.W.2d 738, 746 (Minn. Ct. App. 2006); *Cobb v. Daugherty*, 693 S.E.2d 800, 808-09 (W. Va. 2010); *see Thompson*, 2003 S.D. 12, ¶ 13, 657 N.W.2d at 305. *See generally* 25 Am. Jur. 2d *Easements and Licenses* § 35 (2013).

[¶9.] In order to determine whether there was a necessity at the time of severance, the circuit court found that it must trace back to the date of the unitary parcel’s severance. The circuit court concluded that because it had to trace back more than twenty-two years to the land severance in 1967, any claim created by that severance would be barred by SDCL chapter 43-30, also known as South Dakota’s Marketable Record Title Act (SDMTA). We agree.

[¶10.] ***South Dakota’s Marketable Title Act***



#26583

[¶11.] The South Dakota Legislature instituted SDMTA in 1947. Currently, SDCL chapter 43-30 encompasses SDMTA. The stated legislative purpose of SDMTA is to “simplif[y] and facilitat[e] land title transactions by allowing persons to deal with the record title owner[.]” SDCL 43-30-10. SDMTA furthers that purpose by “extinguish[ing] ancient title claims and defects[.]” *Tvedt v. Bork*, 414 N.W.2d 11, 13 (S.D. 1987). Collectively, SDMTA functions as a curative act, a recording act, and as a statute of limitations. *See Wichelman v. Messner*, 83 N.W.2d 800, 816 (Minn. 1957).

[¶12.] When interpreting the statutory language of SDMTA, “we begin with the plain language and structure of the statute.” *Magellan Pipeline Co., LP v. S.D. Dep’t of Revenue & Regulation*, 2013 S.D. 68, ¶ 9, 837 N.W.2d 402, 404 (quoting *In re Pooled Advocate Trust*, 2012 S.D. 24, ¶ 32, 813 N.W.2d 130, 141). “When the language in a statute is clear, certain, and unambiguous, there is no reason for construction, and this Court’s only function is to declare the meaning of the statute as clearly expressed.” *Id.* (citation omitted).

[¶13.] First, SDCL 43-30-1 specifies who is entitled to have marketable record title:

Any person having the legal capacity to own land in this state, who has an unbroken chain of title to any interest in land by himself and his immediate or remote grantors for a period of twenty-two years or longer, and is in possession of such land, shall be deemed to have a marketable record title to such interest, . . . .

Springers have not disputed Cahoy’s chain of title or his possession of the west parcel. Also, Springer’s have not raised Cahoy’s chain of title or possession as an issue. Therefore, Cahoy’s marketable record title of the west parcel is not disputed.



#26583

[¶14.] Then, SDCL 43-30-3 limits the interests, claims, or charges that may be brought against that marketable record title:

Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of all interest, claims, and charges whatever, the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred twenty-two years or more prior thereto, whether such claim or charge be evidenced by a recorded instrument or otherwise, and all such interest, claims, and charges affecting such interest in real property shall be barred and not enforceable at law or equity, unless any person making such claim or asserting such interest or charge shall, on or before twenty-three years from the date of recording of deed of conveyance under which title is claimed, or on or before July 1, 1958, whichever event is the latest in point of time, file for record a notice in writing, duly verified by oath, setting forth the nature of his claim, interest, or charge; and no disability nor lack of knowledge of any kind on the part of anyone shall operate to extend his time for filing such claim after the expiration of twenty-three years from the recording of such deed of conveyance or one year after July 1, 1957, whichever event is the latest in point of time.

[¶15.] In this case, Lester Harrington severed his parcel of land into two separate parcels in 1967. The severance left the east parcel without an access to a public right of way. Springers, with no public access, eventually claimed a common law implied easement by necessity over Cahoy's west parcel.<sup>1</sup> Springers' initiated their claim in 2009. But their claim's existence depends on an act that occurred in

---

1. Springer's claim of an implied easement by necessity is within the expansive definition of the "claims barred" by SDMTA stated in SDCL 43-30-11:

The claims hereby barred shall mean any and all interests of any nature whatever, however denominated, whether such claims are asserted by a person sui juris or under disability, whether such person is, or has been within or without the state, and whether such person is natural or corporate or private or governmental.



#26583

1967—the severance and conveyance of land that created the alleged necessity.

Forty-two years separate the act in 1967 that created the alleged necessity and Springers’ claim in 2009. According to SDCL 43-30-3, marketable record title is free from claims that exist upon any act that occurred twenty-two or more years prior to the claim against marketable record title. Consequently, Cahoy’s marketable record title in the west parcel is free from Springers’ common law implied easement by necessity claim.

[¶16.] Springers argue that their claim is not barred because their transactions that acquired the east parcel occurred within twenty-two years. But their argument misinterprets and misapplies SDMTA. SDMTA applies to any claim based in “*whole or in part upon any act . . . that occurred twenty-two years or more prior thereto[.]*” SDCL 43-30-3 (emphasis added). Because Springers’ claim depends upon the initial severance and conveyance that occurred in 1967, which is outside of the twenty-two years provision, SDMTA bars their claim.

[¶17.] SDMTA also functions as a recording act in that it provides a method by which an owner may preserve their claim or interest. SDCL 43-30-3 preserves a claim or interest if notice is recorded “on or before twenty-three years from the date of recording of deed of conveyance under which title is claimed[.]” In this case, Springers claim title under a common law theory of implied easement by necessity. The 1967 warranty deed that created the landlocked parcel created the claimed necessity. Therefore, the 1967 warranty deed is the “deed of conveyance under which title is claimed.” See SDCL 43-30-3. The 1967 warranty deed’s “date of recording” is February 26, 1975. See *id.* So, Springers or their predecessors were



#26583

required to record a notice in writing setting forth the nature of their claim on or before twenty-three years from February 26, 1975. Springers, however, have provided no evidence of a recorded notice satisfying those requirements. The notice provision of SDCL 43-30-3, therefore, did not preserve Springers' claim.

[¶18.] The Florida Supreme Court faced a similar issue in *H & F Land, Inc. v. Panama City-Bay Cnty. Airport & Indus. Dist.*, 736 So. 2d 1167 (Fla. 1999). There, a conveyance in 1940 caused a small piece of land to become both water- and landlocked. In 1992, H & F acquired the small piece of land. In 1996, H & F filed a lawsuit asserting a common law way of necessity. Fifty-six years separated the creation of the way of necessity in 1940 and the lawsuit in 1996. The Florida Supreme Court stated Florida's Marketable Record Title to Real Property Act (FLMTA) functions much like a statute of limitations requiring "stale demands to be asserted within a reasonable time after a cause of action accrued." *Id.* at 1176 (citation omitted). In other words, a claimant of an easement or their predecessors had to file a claim for a common law easement of necessity within the prescribed period in order to preserve the easement from extinguishing under FLMTA. *Id.* The Florida Court found that no easement was recorded, so FLMTA extinguished H & F's claim of a common-law way of necessity. *Id.*

[¶19.] We agree with the Florida Court, in that SDMTA also functions much like a statute of limitations requiring stale demands to be asserted within an SDMTA-defined period. In this case, like in *H & F Land*, no easement or claim was filed for notice within SDMTA's statutory period. Therefore, SDMTA effectively



#26583

extinguished Springers' claim of a common law implied easement by necessity.<sup>2</sup> See 3 Patton & Palomar on Land Titles § 563 (2013) (stating Marketable Record Title Acts may extinguish common law ways of necessity); *Larson v. Hammonasset Fishing Ass'n., Inc.*, 1996 WL 156014, at \*3 (Conn. Super. Ct. 1996) (stating that the Marketable Record Title Act would have extinguished the plaintiffs' right of way because the plaintiffs and their predecessors had failed to file a notice pursuant to the provisions of the Act), *aff'd*, 688 A.2d 373 (Conn. App. Ct. 1997).

### Conclusion

[¶20.] We hold that SDMTA bars Springers' claim of a common law implied easement by necessity because it depends in whole or in part upon the initial severance of the land that occurred twenty-two years or more prior to Springers' claim on Cahoy's marketable title. Also, Springers or their predecessors in interest did not preserve their claim by recording it within SDMTA's statutory period. Accordingly, we affirm the circuit court on the ground that SDMTA bars Springers' action. Because this holding disposes of the ultimate issue of whether Springer's are entitled to an implied easement by necessity, we need not address the other issues.

[¶21.] GILBERTSON, Chief Justice, and KONENKAMP, ZINTER, and WILBUR, Justices, concur.

---

2. The record shows that Springers did not seek a remedy under SDCL chapter 31-22, which provides a right to access from an isolated tract to a highway. Since the issue has not been raised, we do not address the potential applicability of this remedy. See *Blanton v. City of Pinellas Park*, 887 So. 2d 1224 (Fla. 2004) (holding that FLMTA does not apply to extinguish a valid claim to a statutory way of necessity).



# Meierhenry Sargent LLP

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Christopher J. Healy

Sabrina Meierhenry  
*Of Counsel*

January 19, 2018

**Sent via electronic mail only**

Bret Healy  
PO Box 731  
Chamberlain, SD 57325

*RE: 1995 Deed*

Dear Mr. Healy:

Pursuant to our phone conversation yesterday, a conflict of interest with Dakota Homestead Title Insurance Company will arise in this matter. Given the extremely short period of time that you have to file your Notice of Claim of Interest for the affected property, I have drafted the same and enclosed it with this letter.

To be clear, our office will not be filing the Notice of Claim of Interest on your behalf. It is highly recommended that you have your new attorney review the Notice of Claim of Interest prior to filing the same. Additionally, our firm will not be representing you in any action following the filing of the Notice of Claim of Interest.

I would recommend contacting new counsel as soon as possible to continue this action. Here are some names of property lawyers in this area that might be able to help:

Eric Kerkvliet  
Lynn, Jackson, Shultz & Lebrun, P.C.  
110 N. Minnesota Avenue, Ste. 400  
PO Box 2700  
Sioux Falls, SD 57101  
605.332.5999

David Rezac  
Davenport, Evans, Hurwitz & Smith LLP  
206 W. 14<sup>th</sup> Street  
PO Box 1030  
Sioux Falls, SD 57101-1030  
605.336.2880

Let me know if you have any questions.

315 South Phillips Avenue, Sioux Falls, South Dakota 57104  
(tel) 605•336•3075 (fax) 605•336•2593  
[www.meierhenrylaw.com](http://www.meierhenrylaw.com)

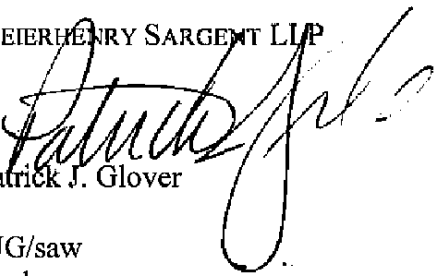
*with attorneys licensed in South Dakota, North Dakota, Nebraska, Minnesota, and Iowa*

Filed: 7/27/2020 6:39 PM CST Brule County, South Dakota 07CIV19-000071 APP. 219



Sincerely yours,

MEIERHENRY SARGENT LLP

  
Patrick J. Glover

PJG/saw  
Enclosure



**NOTICE OF CLAIM OF INTEREST**

STATE OF SOUTH DAKOTA     )  
                                      : SS  
COUNTY OF BRULE            )

BRET HEALY, being first sworn on oath, deposes and states:

1. That he has full knowledge of all facts stated herein.
2. That he makes this Notice of Claim of Interest pursuant to and in conformity with SDCL § 43-30-5.
3. The land affected by this Notice of Claim of Interest is as follows:

**The Northwest Quarter; the Northeast Quarter; and the Southeast Quarter of Section Twenty-Nine;**

**Lots One, Two, Three, Four and Five and the South Half of the Northeast Quarter; the North Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter of Section Seventeen except a parcel of land located in the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Seventeen as recorded in Warranty Deed recorded by Microfilm No. 93-291;**

**The East Half of Section Twenty except Lots Three and Four;**

**Lots Three, Four and Five and the Northwest Quarter except Lot RH 1 and except Lot RH-2 in Section Twenty-Three;**

**Lots One, Two Three; and the East Half of the Northeast Quarter; the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section Twenty-Two;**

**All of that part of the Northwest Quarter lying North of the right-of-way of the Chicago, Milwaukee, and St. Paul Railroad in Section Twenty-Six;**

**All located in Township One Hundred Four North, Range Seventy, West of the Fifth P.M., Brule County, South Dakota (less rights of way of record).**

4. The nature of the claim is that a certain Warranty Deed dated March 12, 1995 and recorded with the Brule County Register of Deeds on March 13, 1995 by Microfilm No. 95-173 is not valid. Pursuant to the January 25, 1986 Agreement, which is attached hereto, Delonde Healy transferred all her interest in the Healy



Ranch partnership to Bret Healy. Thus, at the time of the Warranty Deed was signed and filed, Bret Healy was a partner in the partnership and DeLonde Healy was not a partner. Said Warranty Deed is not part of the ordinary course of the partnership business and was not authorized by the other partners of the partnership. Additionally, the transfer of the property described above was not given for value and the transferee knew Delonde Healy lacked authority to bind the partnership.

Dated this \_\_\_\_\_ day of January, 2018.

By: \_\_\_\_\_  
Bret Healy

STATE OF SOUTH DAKOTA     )  
  :SS  
COUNTY OF BRULE            )

On this the \_\_\_\_\_ day of January, 2018, before me, the undersigned officer, a Notary Public, personally appeared Bret Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota  
My commission expires:



AGREEMENT

This is an agreement between Delonde Healy and Mary Ann Healy, the remaining partners of Healy Ranch Partnership and Bret J. Healy.

WHEREFORE, Robert Healy recently passed away, leaving all that he had to his wife Mary Ann Healy, which would include any interest in the partnership, and

WHEREAS, all parties wish to terminate any and all previous partnership agreements, and

WHEREAS, all parties wish to take action that would help preserve the Healy Ranch as an entity so that it may be passed on to future generations of the Healy Family; and

THEREFORE, it is the desire of Delonde Healy, Mary Ann Healy and Bret Healy to make the following agreement.

I.

All parties acknowledge that they have had the opportunity to obtain independent legal counsel and/or to consult with whom-ever they desire concerning this agreement and that they enter into this agreement with the intent that it bind not only themselves, but also their heirs and assigns and that this agreement terminates any and all previous partnership agreements.

II.

As a full and complete liquidation of her 25% interest in Healy Ranch Partnership and any amounts owed her individually by Robert Healy or Mary Ann Healy, Delonde Healy shall receive the



following benefits for ten years.

- a) \$300.00 per month.
- b) The right to live at no cost on the Healy Ranch in a home which she currently occupies. All major upkeep on the home will be the responsibility of the Healy Ranch entity. If Delonde Healy's children unanimously agree that she is no longer able to care for herself, then such rights shall terminate.
- c) Insurance, (including auto, premises liability and property but excluding health insurance), utilities (which are to be limited to fuel oil, water and electricity), and such produce or meat as she shall need and as shall be produced on the farm.

III.

In return for the above set out benefits, Delonde Healy shall release all title and interest she has to the Partnership assets as of December 31, 1985, this being a complete writing of a prior oral agreement between the parties.

IV.

As soon as is possible all parties will sign any and all documents to implement this agreement and to remove Delonde Healy from the Partnership loans. It is the intent of this agreement and the parties that Delonde Healy no longer be liable for any debts of the partnership from the date of this agreement. Healy farm operations, Mary Ann Healy and Bret Healy, agree to hold Delonde Healy harmless and indemnify her on all partnership debts, claims and liabilities regardless of whether such debts, claims and liabilities are now known, including claims against Delonde Healy based upon her own fault or negligence.



V.

If at any time, Delonde Healy should move from the farmstead, she will lose whatever benefits she would have received from living on the farmstead including the insurance, utilities and like benefits as set out in Section II b & c above, although the cash payment as set out in Section II a. shall continue.

VI.

The payments and the right to live on the farm free and receive the other benefits as otherwise set out herein shall exist for a maximum of ten years and ten years only from this date. At the end of that period if the parties can agree, arrangements for use of the home and other such benefits to Delonde can be made at whatever terms the parties agree to.

The cash payment due Delonde Healy shall be paid by the Healy Farm operation as long as it shall exist whether as a partnership, corporation or other legal entity. If a majority of the assets of the Healy farm operation through whatever legal entity it operates, are transferred or sold, then an amount shall be placed in escrow sufficient to fund the remaining amounts owing under Section II a). at a financial institution approved by Delonde Healy. If the farm operation shall cease to exist in such a way as the amounts owing Delonde Healy under II a) cannot be paid then such cash payments as shall remain will be paid by Mary Ann Healy personally.

The right to live in the home, and the other benefits as set out in Section II b & c above shall exist for ten years unless



the Healy farm operation whether a partnership, corporation, or any other legal entity shall cease to exist at which time such benefits will terminate.

VII.

Delonde Healy agrees that in the case of her death, the payments to her, the use of the home and all the other benefits shall terminate immediately. Delonde Healy's interest, if any, in the farm partnership and any debt owed Delonde Healy by Robert Healy or Mary Ann Healy shall terminate upon Delonde Healy's death.

VIII.

It is the intent of all the parties that any interest of Delonde Healy in the Healy Ranch partnership by the terms of this agreement be completely transferred directly to Bret Healy effective with the date of this agreement because he shall be the person responsible for the operation of the business and the payment of all the benefits hereunder as long as the operation exists.

IX.

All parties admit to having received a full and complete disclosure of the assets and the debts of the Healy Farm Partnership as of the date of Robert Healy's death, November 11, 1985.

X.

All parties agree that this is a full and complete agreement between them and that this supersedes and terminates any and all prior partnership agreements. If any agreement to



modify this should ever be made, it must be done in writing and signed by both parties.

Dated this 25<sup>th</sup> day of January, 1986.

Delonde Healy  
Delonde Healy  
Mary Ann Healy  
Mary Ann Healy  
Bret J. Healy  
Bret J. Healy

State of South Dakota:  
:ss  
County of Brule :

On this the 25<sup>th</sup> day of January, 1986, before me, the undersigned officer, personally appeared Delonde Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

(Notary Seal)

[Signature]  
Notary Public, South Dakota  
My commission expires 9-25-87


State of South Dakota:  
:ss  
County of Brule :

On this the 25<sup>th</sup> day of January, 1986, before me, the undersigned officer, personally appeared Mary Ann Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.



(Notary Seal)

  
Notary Public, South Dakota  
My commission expires 7-12-17

State of South Dakota:

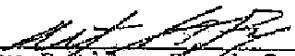
:ss

County of Brule :

On this the 25<sup>th</sup> day of January, 1986, before me, the undersigned officer, personally appeared Bret J. Healy, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

(Notary Seal)

  
Notary Public, South Dakota  
My commission expires 7-12-17



# Meierhenry Sargent LLP

ATTORNEYS AT LAW

315 South Phillips Avenue, Sioux Falls, South Dakota 57104  
(tel) 605.336.3075 (fax) 605.336.2593  
www.meierhenrylaw.com

**Bret Healy**  
P.O. Box 731  
Chamberlain, SD 57325

**Date:** 2/8/2018  
**Re:** Healy, Bret  
**Invoice:** 5636

<u>Date</u>	<u>Initials</u>	<u>Description of Service</u>	<u>Hours</u>	<u>Amount</u>
01/05/2018	PG	Meet with client; research quiet title/declaratory action statute of limitations; letter to client	2.20	550.00
01/17/2018	PG	Meet with client	2.00	500.00
01/18/2018	PG	Email correspondence with client; call to client	0.30	75.00
01/19/2018	PG	Call from client; draft affidavit of notice	0.70	175.00
		Total Fees	5.20	\$1,300.00
		State Tax	58.50	
		City Tax	26.00	
		Subtotal Attorney's Fees and Taxes		\$1,384.50

Time Summary			
<u>Initials</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
PG	250.00	5.20	1,300.00

## STATEMENT OF ACCOUNT

Prior Balance	532.50
Current Fees	1,300.00
Current Taxes	84.50
<b>AMOUNT DUE AND OWING TO DATE</b>	<b>\$1,917.00</b>



## WARRANTY DEED

EXEMPT FROM TRANSFER FEE

HEALY RANCH, a partnership, of Wilmot, Roberts County, State of South Dakota, for and in consideration of Other good and valuable consideration and One Dollar(s), GRANT(S), CONVEY(S), AND WARRANT(S) TO: HEALY RANCH, INC., of P. O. Box 277, Wilmot, South Dakota 57279, P.O., the following described real estate in the County of Brule in the State of South Dakota: See Attached

EXEMPT FROM TRANSFER FEE SDCL 43-4-22(11) &amp; (18)

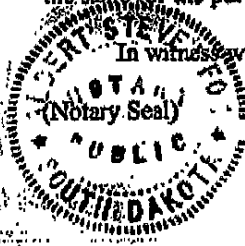
Dated this 12<sup>th</sup> day of March, 1995.

Mary Ann Osborne  
Mary Ann Healy, now known as Mary Ann Osborne  
Delonde Healy  
Delonde Healy

State of South Dakota :  
:SS  
County of Roberts :

On this the 12<sup>th</sup> day of March, 1995, before me, the undersigned officer, personally appeared Mary Ann Healy now known as Mary Ann Osborne, known to me or satisfactorily proven to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



[Signature]  
Notary Public, South Dakota  
My comm. Exp. 9-25-95

State of South Dakota :  
:SS  
County of Brule :

On this the 12<sup>th</sup> day of March, 1995, before me, the undersigned officer, personally appeared Delonde Healy, known to me or satisfactorily proven to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



[Signature]  
Notary Public, South Dakota

Larson Sundall, Larson, Schaub & Fox  
P.O. Box 547  
Chamberlain, SD 57325  
605-734-8818





**EXHIBIT "A"**  
**REAL ESTATE**  
**DESCRIPTION**

The Northwest Quarter; the Northeast Quarter; and the Southeast Quarter of Section Twenty-Nine;

Lots One, Two, Three, Four and Five and the South Half of the Northeast Quarter; the North Half of the Southeast Quarter; the Southeast Quarter of the Southeast Quarter; and the Southeast Quarter of the Northwest Quarter of Section Seventeen except a parcel of land located in the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Seventeen as recorded in Warranty Deed recorded by Microfilm No. 93-291;

The East Half of Section Twenty except Lots Three and Four;

Lots Three, Four and Five and the Northwest Quarter except Lot RH 1 and except Lot RH-2 in Section Twenty-Three;

Lots One, Two, Three; and the East Half of the Northeast Quarter; the Northwest Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter, Section Twenty-Two;

All of that part of the Northwest Quarter lying North of the right-of-way of the Chicago, Milwaukee, and St. Paul Railroad in Section Twenty-Six;

All located in Township One Hundred Four North, Range Seventy, West of the Fifth P.M., Brule County, South Dakota (less rights of way of record):



<b>FILED FOR RECORD</b>	
STATE OF SOUTH DAKOTA	BRULE COUNTY
13 day of March, 1995 at 4:00 P.M.	
RECORDED BY MICROFILM NO. 95-173	
Judy Brunck REGISTER OF DEEDS	

Micro	<input checked="" type="checkbox"/>
Indexed	<input checked="" type="checkbox"/>
Grantor	<input checked="" type="checkbox"/>
Grantee	<input checked="" type="checkbox"/>
Transfer	<input checked="" type="checkbox"/>
Fees	7.00



IN THE SUPREME COURT  
OF THE STATE OF SOUTH DAKOTA

---

No. 29409

---

**HEALY RANCH, INC.**

**Plaintiff and Appellant,**

**vs.**

**BRET HEALY, INDIVIDUALLY AND  
D/B/A HEALY RANCH PARTNERSHIP**

**Defendant and Appellee.**

---

Appeal from the Circuit Court  
First Judicial Circuit  
Brule County, South Dakota

---

HONORABLE PATRICK T. SMITH  
Presiding Judge

---

**APPELLANT'S REPLY BRIEF**

---

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*Attorney for Appellee*

---

Notice of Appeal filed September 3, 2020

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## TABLE OF CONTENTS

Table of Authorities.....	ii
Introduction .....	1
Argument.....	2
Conclusion.....	7
Certificate of Compliance.....	9
Certificate of Service .....	9



## TABLE OF AUTHORITIES

### ***CASES***

<i>Healy v. Osborne</i> , 2019 S.D. 56, 934 N.W.2d 557 .....	2
<i>Springer v. Cahoy</i> , 2013 S.D. 86, 841 N.W.2d 15 .....	1, 4, 5, 8
<i>Tvedt v. Bork</i> , 414 N.W.2d 11 (S.D. 1987) .....	4

### ***STATUTES***

SDCL 15-6-54 .....	1, 2, 7
SDCL 43-30-1 .....	3
SDCL 43-30-2 .....	3
SDCL 43-30-3 .....	1, 3, 4, 5, 6, 7, 8
SDCL 43-30-7 .....	3
SDCL 43-30-9 .....	1, 2, 7
SDCL 43-30-10 .....	4



## INTRODUCTION

Judge Smith's ruling on Healy Ranch, Inc.'s attorneys' fees motion is in error because the trial court did not follow proper legal procedure described in SDCL 15-6-54(d)(2). Contrary to the trial court's ruling, SDCL 43-30-9 states that attorneys' fees are costs, and the granting of those costs are determined by the trial court.

A plain reading of SDCL 43-30-3 affirms Judge Smith's decision to grant summary judgment in favor of Healy Ranch, Inc. In *Springer v. Cahoy*, this Court analyzed SDCL 43-30-3 in a two-step process: (1) a twenty-two-year statute of limitations that begins when an event creates the claim against the marketable title; and (2) a recording act period of twenty-three years that preserves a claim, if the person making the claim does so within twenty-three years from the date of recording of deed of conveyance under which that person claims title. 2013 S.D. 86, 841 N.W.2d 15. Bret Healy did not bring a claim within twenty-two years, and his Notice of Claim of Interest was not filed within twenty-three years of the dates of recording of the deeds under which he claims title. In addition to the Court's holding in *Springer*, and a plain reading of SDCL 43-30-3, Judge Smith's ruling adheres to the purpose and statutory construction of the South Dakota Marketable Title Act (hereinafter "SDMTA").

In the alternative, res judicata prevents Bret Healy from his purported Healy Ranch Partnership claim—when, in Healy I, Judge Giles awarded attorneys' fees after investigation and massive amounts of discovery, and held that Bret Healy's Healy Ranch Partnership claim was "wholly without merit that it's ridiculous." (Appellant's App. 43.)



## ARGUMENT

### **I. The legal procedure described in SDCL 15-6-54(d)(2) provides the statutory framework for the Court to decide whether to award attorneys' fees.**

Healy Ranch, Inc. made all of the necessary submissions required by SDCL 15-6-54(d). (SR 1037-8, 1050-1454.) There were no adverse submissions disputing any of the facts, filed by Bret, as required by SDCL 15-6-54(d)(2)(C).

Healy Ranch's Appellant Brief set forth the substantial record established and affirmed unanimously by this Court, that Bret's claim that Healy Ranch Partnership, and not Healy Ranch, Inc., owned Healy Ranch was both "frivolous and malicious." *Healy v. Osborne*, 2019 S.D. 56, ¶¶ 34-37, 934 N.W.2d 557, 566-7. Bret's Brief on pages 29-33, is a continuation of his repudiated claim, that the Partnership owns Healy Ranch. For example, on page 31, he repeats his repudiated story from the underlying case that his mother and his grandmother didn't have "authority to execute the 1995 Warranty Deed."<sup>1</sup> (Appellee Brief, p. 31.)

The only other argument made by Bret is that SDCL 43-30-9 is not the awarding of "costs of such action, including attorney fees," in spite of the statute specifically providing so.

Beyond that, Healy Ranch, Inc. stands on its Appellant Brief.

---

<sup>1</sup> For further clarification, Bret Healy has never held an interest in the Healy Ranch Partnership that sold the property to Healy Ranch, Inc. (See Judge Giles' findings in Healy I, "[Y]our 1986 Healy Partnership never properly held title to any of the Healy Ranch land." Appellant's App. 43.)



**II. Under SDCL 43-30-3, the twenty-two-year statute of limitations bars Bret Healy’s claim, and his Notice of Claim of Interest did not preserve his claim.**

**1. Judge Smith’s ruling fits within the SDMTA statutory framework and fulfills its purpose.**

The SDMTA unambiguously provides a twenty-two-year statute of limitations for claims against marketable title. At the outset of the chapter, the SDMTA explicitly provides a statute of limitations of twenty-two years in SDCL 43-30-1 and SDCL 43-30-2.

Bret’s argument does not accept that the statute of limitations is twenty-two years. Rather, Bret attempts to direct this Court to the affidavit-of-possession statutes within the chapter to support a twenty-three-year statute of limitations—see pages 16-18 of Bret’s Brief. Bret’s theory regarding the power of the affidavit-of-possession statutes to create a different statute of limitations—twenty-three years—requires a reading that does not give plain meaning to SDCL 43-30-1, SDCL 43-30-2, and SDCL 43-30-3. An affidavit of possession is a written document that is recorded by a record title owner to claim possession of the property for the last twenty-three years. SDCL 43-30-7. An affidavit of possession is a document normally utilized by a seller of property to provide prima facie evidence of possession of the property, but its recording does not operate as a required step in order for the statute of limitations to run on claims against marketable title of the property.<sup>2</sup>

---

<sup>2</sup> Contrary to Bret’s argument, an affidavit of possession could have been filed by Healy Ranch, Inc. long before twenty-three years from the date of its 1995 deed. The “root of title” is a term used when describing factual scenarios when a deed



The purpose of SDMTA is to simplify land title transactions “by allowing persons to deal with the record title owner,” and that purpose is furthered by “extinguishing ancient title claims and defects.” SDCL 43-30-10; *Tvedt v. Bork*, 414 N.W.2d 11, 13 (S.D. 1987). The trial court’s adherence to *Springer* and SDCL 43-30-3 fulfills SDMTA’s function of extinguishing “ancient title claims.”

Bret Healy’s claim of title relies on deeds from 1968 and 1990. Bret Healy had twenty-two years under the statute of limitations to bring a claim against the 1995 Healy Ranch deed, and failed to do so. For Bret Healy to get the benefit of the “extra year” provided by the recording act portion of SDCL 43-30-3, Bret’s claim of title needed to be founded upon more recent deeds. Although a simple statement, it goes right to the heart of SDMTA’s function to rid record title holders of claims based upon ancient deeds.

**2. *Springer v. Cahoy* affirms that Bret Healy’s Notice of Claim of Interest was untimely filed.**

In *Springer*, this Court walked through a two-part analysis of SDCL 43-30-3. Bret’s argument selectively chooses pieces of the *Springer* analysis, while ignoring the Court’s two-part process, in an attempt to support his position that the recording act portion of the statute began when Healy Ranch, Inc. recorded its deed in 1995. In contrast, Judge Smith’s ruling followed *Springer*’s two-step analysis and correctly held that the recording act period in SDCL 43-30-3 began on the date of recording of the deeds under which Bret claims title.

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creates a separate property interest that did not exist before that deed, such as a mineral interest. *Tvedt v. Bork*, 414 N.W.2d 11, 13 (S.D. 1987). In this case, the “root of title” would require an examination of the deeds going all the way back to the original conveyances that created the property that Healy Ranch, Inc.’s deed contains—for the sake of this Brief and this record, it is clear that the “root of title” would go back to at least the 1968 and 1990 deeds of the Partnership.



*Springer* provides the analysis for how a statute of limitations begins to run, holding that the statute bars any claim that depends on an act “in whole or in part” that occurred twenty-two years or more prior thereto. *Springer*, at ¶¶ 15-16. Healy Ranch, Inc. agrees with Bret Healy that the 1995 Warranty Deed is the event which “severed” Healy Ranch Partnership’s title to the property. As described in *Springer*, the event that creates the claim only triggers the statute of limitations time-period. Bret’s argument attempts to transpose the Court’s analysis of the statute of limitations into Bret’s analysis for the recording act portion of the statute. (Appellee’s Brief, p. 20.)

After explaining the statute of limitations, *Springer* went on to describe the recording act portion of SDCL 43-30-3. In that analysis, this Court held the deed that created *Springer*’s claim of title operated as the “deed of conveyance under which title is claimed.” The Court did not look to the event that created *Springer*’s alleged claim, but instead looked to the recording date of the deed that created *Springer*’s claim for title. Similarly, instead of looking at the event that began the statute of limitations, Judge Smith followed *Springer* and held that the two deeds that Bret Healy claims created his claim of title control when the recording act time period began. Bret Healy needed to file his Notice of Claim of Interest within twenty-three years of those deeds under which he claimed title, which required Bret to file his Notice of Claim of Interest by 1991 and 2013.

*Springer v. Cahoy* does not support Bret Healy’s interpretation of SDCL 43-30-3. The analysis in *Springer* provides the framework for SDCL 43-30-3 that gives plain meaning to the entire statute.



### **3. Get your old deeds noticed.**

In Judge Smith's oral ruling, his analysis of SDCL 43-30-3 included analyzing the dates used within the statutes to support that Bret Healy's twenty-three-year period to file a Notice of Claim of Interest began in 1968 and 1990. (SR 1030-1033.) In short, Judge Smith pointed out that before July 1, 1958, an individual with a claim against title could file a notice of their claim even if it were thirty years old or more. However, if you did not file your notice of claim of interest by July 1, 1958, and your notice of claim was based upon deeds older than twenty-three years old, your claim was barred. Contrary to Bret's position, Judge Smith's ruling gives plain meaning to the entirety of SDCL 43-30-3—including the statute's inclusion of the date of July 1, 1958.

### **4. Judge Giles' Findings in Healy I bar Bret's claim.**

Bret's response to the doctrine of res judicata barring his claim relies on a finding that Judge Giles' award of attorneys' fees is not a final judgment on the merits. Based on the law described in Bret's Brief, Judge Giles' Findings in support of his award of attorneys' fees is a judgment on the merits of Bret's claim. (A "judgment on the merits is one rendered after argument and investigation, when it is determined which party is in the right, as distinguished from a judgment rendered upon some preliminary or merely technical point." Appellee's Brief, pp. 21-22.) It is true that the trial court dismissed Bret's claim in Healy I due to the statute of limitations, but the trial court also awarded attorneys' fees after an examination of evidence and argument presented by both parties. An award of attorneys' fees is not based on a mere technical point—it required Judge Giles to examine a massive amount of evidence and make findings on the merits of Bret's claim.



Additionally, Bret claims that the question in Healy I is different than the question within Bret's Notice of Claim of Interest. Healy Ranch, Inc. agrees with Bret's position that the **posture** of this case is different—it is a quiet title action—but does not agree that the question is different. A review of the Findings by Judge Giles, and Bret's own deposition, make it clear that the question is the same as what Judge Giles found to be frivolous in Healy I.

Lastly, Bret had full opportunity to litigate his claim that the Partnership owned the land in the prior proceeding, because he had the opportunity, and took it to provide Judge Giles with an abundant amount of evidence and argument against the award of attorney's fees. The statute for attorneys' fees provides a full and fair opportunity to present evidence to the trial court in regard to the issues pertaining to the frivolous or malicious nature of Bret's claim.

### **III. Bret's claim that Healy Ranch Partnership is an indispensable party is moot.**

As mentioned in Judge Smith's ruling, the Healy Ranch Partnership's claim would be based upon the same deeds that Bret Healy makes his claim—the 1968 and 1990 deeds. (SR 1034.) Therefore, the analysis would be the same under SDCL 43-30-3, and Healy Ranch Partnership's claim of title would be barred by the statute of limitations.

## **CONCLUSION**

Healy Ranch, Inc. satisfied all the statutory requirements for the trial court to award attorneys' fees under SDCL 43-30-9 and SDCL 15-6-54(d)(2). Healy Ranch, Inc. asks the Court to reverse the trial court's ruling on its attorneys' fee motion, and award Healy Ranch, Inc. its trial court attorneys' fees of \$28,960.19.



Judge Smith's decision to grant summary judgment in favor of Healy Ranch, Inc. gives meaning to the plain language in SDCL 43-30-3, and upholds this Court's ruling in *Springer*. Therefore, Healy Ranch, Inc. asks the Court to affirm Judge Smith's decision to grant summary judgment in favor of Healy Ranch, Inc.

DATED this 21<sup>st</sup> day of January, 2021.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the requirements set forth in SDCL 15-26A-66(b)(4). This brief was prepared using Microsoft Word 2013, with 12-point Georgia font. This brief contains 2082 words, excluding table of contents, table of authorities, jurisdictional statement, statement of legal issues, and certificate of counsel. I relied on the word count feature in Microsoft Word 2013 to prepare this certificate.

DATED this 21<sup>st</sup> day of January, 2021.

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on January 21, 2021, I electronically served a true and correct copy of the foregoing *Appellant's Reply Brief* via email on the following:

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