

WEDNESDAY, MARCH 23, 2011
9:00 A.M.

NO. 1

#25621

DENNIS LINDSKOV and
AUTOMOTIVE COMPANY, INC.,
Plaintiffs and Appellants,

vs.

LES LINDSKOV and PREMIER
EQUIPMENT, L.L.C., d/b/a
PREMIER EQUIPMENT and d/b/a
K&A IMPLEMENT, L.L.C.,
Defendants and Appellees.

Mr. Ronald A. Parsons, Jr.
Mr. Steven M. Johnson
Mr. Shannon R. Falon
Ms. Pamela R. Bollweg
Johnson, Heidepriem &
Abdallah, LLP
Attorneys at Law
PO Box 2348
Sioux Falls SD 57101
Ph: 338-4304

(FOR APPELLANTS)

Mr. John W. Burke
Attorney at Law
Thomas, Braun, Bernard
& Burke LLP
4200 Beach Drive, Suite 1
Rapid City SD 57702
Ph: 348-7516

(FOR APPELLEES)

The Honorable Tony Portra
Fifth Judicial Circuit
Walworth County

(CIV 08-145)

STATEMENT OF THE ISSUES

- I. One partner sold his interest in a business to the other partner in a dissolution agreement.

Does a covenant in the agreement prohibiting the selling partner from engaging "in any form of conduct" that would "harm" the other party's "goodwill or commercial interests" prohibit the selling partner from immediately establishing a similar business to directly compete with the buying partner and solicit his customers?

The trial court construed the dissolution agreement as not prohibiting such conduct by the defendants and accordingly granted summary judgment on the breach of contract claim as a matter of law.

- *Public Opinion Publishing Co. v. Ransom*, 148 N.W. 838 (S.D. 1914)
- *Franklin v. Forever Venture, Inc.*, 2005 SD 53, 696 N.W.2d 545
- *Gary's Implement, Inc. v. Bridgeport Tractor Parts, Inc.*, 702 N.W.2d 355 (Neb. 2005)
- SDCL § 53-9-9

- II. The selling partner admitted that he intended all along to immediately establish a competing business in the same geographical area, but did not disclose those intentions to his business partner prior to the sale. The buying partner would never have entered into the dissolution agreement had the selling partner's true intentions been disclosed.

Does this state a claim for fraud and deceit?

The trial court held that the buying partner had no legal duty to disclose his intentions and granted the defendants' motion for summary judgment on the fraud and deceit claim as a matter of law.

- SDCL § 20-10-2(3)
- *Ducheneaux v. Miller*, 488 N.W.2d 902 (S.D. 1992)
- Restatement (Second) Torts, Section 551