

31430

SUPREME COURT
STATE OF SOUTH DAKOTA
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APPELLANT'S BRIEF

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31430

GLENN AMBORT,

Plaintiff and Appellant,

v.

GREAT PLAINS BANK,

Defendant and Appellee

APPEAL FROM THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT
BROWN COUNTY, SOUTH DAKOTA

THE HONORABLE TONY L. PORTRA
THE HONORABLE JULIA M. DVORAK

Circuit Court Judges

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PRELIMINARY STATEMENT

Citations to the circuit court indexes will be referred to as “CR” followed by the page number. The Defendant-Appellee will be referred to as “GPB” (Great Plains Bank).

JURISDICTIONAL STATEMENT

This is an appeal from the JUDGMENT OF DISMISSAL rendered below on the 10th day of March 2026. (CR 524.) Appellant, Glenn Ambort, *pro se*, filed his Notice of Appeal of the circuit court’s Judgment of Dismissal on March 31, 2026. (CR 528.) This appeal is timely because the notice of appeal was filed within thirty days after service of notice of entry of the judgment, as required by SDCL 15-26A-6.

The circuit court’s Order granting Great Plains Bank’s Motion for Partial Summary Judgment dismisses all of Ambort’s claims in the Complaint “with prejudice.” (CR 350.) Under SDCL 15-6-41(b), an involuntary dismissal—other than for lack of jurisdiction or improper venue—operates as an adjudication upon the merits. This Court has held that such a dismissal “is an adjudication upon the merits which should be accorded res judicata effect.” *Allan v. Sheesley*, 447 N.W.2d 361, 363 (S.D. 1989). A summary-judgment dismissal with prejudice is no less a merits determination than a dismissal under Rule 41(b) or Rule 12(b)(5). It therefore constitutes a final adjudication on the merits that carries res judicata effect and precludes further litigation of Ambort’s claims, conferring appellate jurisdiction under SDCL 15-26A-3(1).

STATEMENT OF ISSUES

- I. Must a known leasehold assignee be joined as a person “having an interest in the mortgaged property” under SDCL 21-49-15?**

Most relevant case: *Harding County v. Land Users Ass’n*, 486 N.W.2d 263, 265 (S.D. 1992) (leasehold is a “partial interest in real property”).

Peters v. Great Western Bank, Inc., 2015 S.D. 4, ¶6, 859 N.W.2d 618, 621

(construing SDCL 21-49-15's requirement to join persons with an "interest in ... the mortgaged property".)

Most relevant statute: SDCL 21-49-15.

II. Did Great Plains Bank's failure to join Ambort as a known leasehold interest-holder violate due process and leave his leasehold unextinguished, making quiet title under SDCL 21-41-1 proper?

Most relevant case: *Peters v. Great Western Bank, Inc.*, 2015 S.D. 4, ¶ 10, 859

N.W.2d 618, 623 (applying *Mullane v. Central Hanover Bank & Trust Co.*, 339

U.S. 306, 314 (1950); due process requires notice reasonably calculated to apprise interested parties of foreclosure).

Most relevant statute: SDCL 21-41-1

III. Did the circuit court abuse its discretion in awarding attorney's fees under SDCL 15-17-51 by finding Ambort's action frivolous?

Most relevant case: *Johnson v. Miller*, 2012 S.D. 61, 818 N.W.2d 804 (defining "frivolous action" under SDCL 15-17-51 as one with no rational argument in law or fact and no expectation of a favorable judicial ruling.)

Stratmeyer v. Engberg, 2002 S.D. 91, 649 N.W.2d 921 (a claim may be without merit yet not frivolous).

Most relevant statute: SDCL 15-17-51

IV. Did the circuit court abuse its discretion in awarding attorney's fees under SDCL 15-17-51 when the record does not support any finding that Ambort brought this action for malicious purposes?

Most relevant case: *Stratmeyer v. Engberg*, 2002 S.D. 91, 649 N.W.2d 921

(explaining that maliciousness requires an action begun in malice and without probable cause to believe it can succeed.)

Most relevant statute: SDCL 15-17-51

SUMMARY OF ARGUMENT

Great Plains Bank violated SDCL 21-49-15 by failing to join Glenn Ambort, a known leasehold interest-holder, in its 2022 foreclosure action despite having actual knowledge of his interest since early 2019. Because Ambort was never made a party, the foreclosure judgment did not extinguish his leasehold, which runs through February 29, 2032. His quiet-title claim under SDCL 21-41-1 was therefore a proper means of determining the scope and priority of that surviving interest.

The circuit court erred by granting summary judgment without addressing SDCL 21-49-15 or *Peters v. Great Western Bank, Inc.*, dismissing Count 2 with prejudice, and awarding attorney's fees under SDCL 15-17-51 after ignoring Ambort's independent leasehold theory and refusing to hear argument on it. No malice finding was made. This Court should reverse the Judgment of Dismissal, vacate the \$12,874.41 fee award, hold that Ambort's leasehold survived the foreclosure, and remand for further proceedings on his quiet-title claim.

STATEMENT OF THE CASE

On September 27, 2023, the circuit court (Hon. Tony L. Portra) held a hearing on GPB's Motion for Partial Summary Judgment and Ambort's Motion to Amend Complaint. At the outset of the hearing, the court stated that it was "not entertaining further argument at this time" and ruled from the bench without hearing from Ambort. (Hearing Tr. 2:12-13, CR 434.) The proceeding lasted approximately six minutes. (Hearing Tr. 4:13, CR 436.) When Ambort attempted to respond to the ruling, the court stated: "I'm only asking if you didn't understand what I said. Not to agree with me."

(Hearing Tr. 4:7–8, CR 436.)

From the bench, the court denied Ambort’s motion to amend and granted GPB’s motion for partial summary judgment, stating that granting relief would require “contradict[ing] two previous rulings of the Court, both in Spink and Brown County,” which it described as “the law of this case.” (Hearing Tr. 2:19–25; 3:6–11, CR 434–435.) The court did not address SDCL 21-49-15, *Peters v. Great Western Bank, Inc.*, or the effect of GPB’s failure to join Ambort as a known leasehold interest-holder in the 2022 foreclosure action. On October 2, 2023, the court entered its written order denying Ambort’s motion to amend, granting GPB’s motion for partial summary judgment, and dismissing all of Ambort’s claims with prejudice. (CR 350.)

The day following the hearing—September 28, 2023—Ambort filed a Motion to Reconsider, his first available opportunity to present his SDCL 21-49-15 argument to the circuit court. (CR 348.) Judge Portra responded by email the same day: “I will not reconsider my ruling.” (CR 347.) The court’s written Findings of Fact and Conclusions of Law likewise did not address SDCL 21-49-15 or Ambort’s omitted-party theory.

The court later granted GPB’s motion for attorney’s fees under SDCL 15-17-51, entering judgment against Ambort for \$12,874.41 (CR 442), even though Ambort had again asserted the SDCL 21-49-15 theory in his opposition to the fee motion. (CR 377–379, 386.) Upon Judge Portra’s retirement, Judge Dvorak was assigned and entered the final Judgment of Dismissal on March 10, 2026. (CR 524.) Ambort filed his Notice of Appeal on March 31, 2026, appealing the Judgment of Dismissal, the summary-judgment order, and the attorney’s-fee award. (CR 528.) On April 23, 2026, the Clerk of this Court extended the deadline for Ambort’s opening brief to June 1, 2026.

STATEMENT OF FACTS

On March 29, 2017, WIPT, Inc. and BRIT, Inc. executed a “Real Estate Lease and Personal Guarantees” covering the commercial property located at 1702 6th Avenue SW, Aberdeen, South Dakota, legally described as “Lot 1, Swanson Electric Addition to the City of Aberdeen, according to the plat thereof of record, Brown County, South Dakota.” The lease term runs through February 29, 2032. (CR 2, Ex. 1.)

On October 17, 2017, WIPT conveyed to Ambort “all its right, title and interest, under, in and to the Lease and the Lease Document.” (CR 2, ¶ 8 & Ex. 2.) Based on that assignment, Ambort alleged he held “an interest in the undisturbed enjoyment of the premises until February 29, 2032.” (CR 2, ¶ 9.)

Ambort also alleged that GPB “holds a mortgage on the premises” securing promissory notes of Crossroads Truck & Trailer, LLC and/or Crossroads Real Estate, LLC. (CR 2, ¶¶ 10–11 & Ex. 3.) In Count 2 (Quiet Title) of his Complaint, he alleged that he had “the right to exclusive possession and use of the premises until February 29, 2032,” that GPB “by virtue of the CRE mortgage ... is claiming an interest in the premises adverse to Glenn,” and that he was entitled to a judgment quieting title in his favor until February 29, 2032. (CR 3, ¶¶ 23–25 & Prayer B.)

GPB filed a foreclosure action on the same property in *Brown County, Great Plains Bank v. Crossroads Real Estate, LLC, et al.*, No. 06CIV22-206. It obtained a foreclosure decree and order for sheriff’s sale, and recorded a Sheriff’s Deed to itself on July 12, 2023, in Book 310 of Deeds, Page 189. (CR 108, 123, 125.) Ambort was not named as a party in the foreclosure action. (CR 284, 290, 293, 296, 298.)

On June 28, 2023, Ambort sent an email to Judge Sommers on behalf of

Crossroads Real Estate, LLC requesting a continuance of the foreclosure proceedings due to the stroke suffered by its attorney, Paul J. Andrews. (Aff. of Z. Peterson, CR 167, Ex. I; CR 213, Ex. A; CR 220.)

On September 28, 2023, Ambort filed a Motion to Reconsider in which he expressly cited SDCL 21-49-15 and *Peters v. Great Western Bank, Inc.* (CR 348.) Judge Portra denied reconsideration the same day by email. (CR 347.)

ARGUMENT

Standard of Review

This Court reviews *de novo* the circuit court's October 2, 2023, order granting summary judgment, viewing the evidence in the light most favorable to Ambort to determine whether any genuine issues of material fact exist and whether GPB was entitled to judgment as a matter of law. *State by & through Dep't of Transp. v. Legacy Land Co., LLC*, 2023 S.D. 58, ¶ 17, 998 N.W.2d 94, 100.

Appeal Overview

This appeal turns on a fundamental question of due process and statutory compliance: Can a mortgagee with actual knowledge of a leasehold interest intentionally or negligently omit the interest-holder from a foreclosure action, obtain a judgment, and then insist that the leasehold has been extinguished? The answer is no.

SDCL 21-49-15 requires that “[a]ll persons having an interest in, or lien on, the mortgaged property as of the date of filing the action shall be named as defendants.” A leasehold is a “partial interest in real property.” *Harding County v. Land Users Ass’n*, 486 N.W.2d 263, 265 (S.D. 1992). The record establishes three undisputed facts: (1) Ambort held an assigned leasehold interest in the Crossroads property extending through

February 29, 2032; (2) Great Plains Bank and its counsel had actual knowledge of that interest no later than early 2019; and (3) GPB nevertheless failed to name Ambort as a defendant in its 2022 foreclosure action on the same property. While GPB may rely on common-law privity or the general language of SDCL 21-47-24 to argue that foreclosure of the original lessor binds its assignee, SDCL 21-49-15 reflects the Legislature's deliberate rejection of that shortcut in favor of mandatory joinder that must be satisfied before any preclusive effect can attach.

Under *Peters v. Great Western Bank, Inc.*, 2015 S.D. 4, ¶ 10, 859 N.W.2d 618, 623, due process prohibits extinguishing a known property interest in a proceeding to which the interest-holder was never joined (*quoting Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Because Ambort's leasehold survived the foreclosure, his quiet-title claim under SDCL 21-41-1 was a rational, statute-based means of resolving the competing interests. The circuit court's contrary rulings should be reversed.

I. Because Great Plains Bank failed to join Ambort as a known leasehold interest-holder under SDCL 21-49-15, the foreclosure judgment did not extinguish his leasehold interest.

Great Plains Bank's primary defense is that Ambort's leasehold interest was extinguished because the WIPT/BRIT lease was recorded after the CRE mortgage and was therefore subordinate to it. GPB contends that when it obtained the Sheriff's Deed, it received "the same estate that was vested in the mortgagor at the time of the execution and delivery of the mortgage" under SDCL 21-47-24 and *L&L Partnership v. Rock Creek Farms*, 2014 S.D. 9, ¶ 13, 843 N.W.2d 697, 702. Because that estate did not include the

later-recorded lease, GPB argues the lease (and Ambort's rights as assignee of WIPT) was extinguished. GPB further relies on the foreclosure judgment's language barring "all persons claiming under, by or through" the named defendants. (GPB Br. at 13-14, CR 132-133.)

This argument overlooks the relationship between SDCL 21-47-24 and SDCL 21-49-15. These are companion statutes that were intended to operate in sequence. SDCL 21-47-24 describes the effect of a foreclosure judgment that was properly obtained after all necessary parties were joined under SDCL 21-49-15. It does not authorize a mortgagee to violate the mandatory joinder requirement of SDCL 21-49-15 and then claim the full preclusive effect of the resulting judgment against the omitted interest-holder.

A. SDCL 21-49-15 must be satisfied before SDCL 21-47-24's preclusive effect can attach.

South Dakota's reception statutes make clear that the common law yields to statutes. SDCL 1-1-24 provides that common-law rules remain in force "except where they conflict with the will of the sovereign power," and SDCL 1-1-23 confirms that the Legislature expresses that will through statutes. This Court has long held that when the Legislature enacts a specific statutory scheme, it displaces any contrary common-law rule or general statutory provision. *Wildeboer v. S. Dakota Junior Chamber of Com., Inc.*, 1997 S.D. 33, ¶ 23, 561 N.W.2d 666, 670; *Jensen v. Turner County Bd. of Adjustment*, 2007 S.D. 28, ¶ 11, 730 N.W.2d 411, 415.

Great Plains Bank contends that Ambort's leasehold interest was extinguished under SDCL 21-47-24 and the foreclosure judgment's language barring "all persons

claiming under, by or through” the named defendants. (GPB Br. at 13-14, CR 132-133.) That argument overlooks the relationship between the two statutes. SDCL 21-47-24 and SDCL 21-49-15 are companion statutes that were intended to operate in sequence. SDCL 21-49-15 imposes a mandatory joinder requirement that must be satisfied before the preclusive effect of SDCL 21-47-24 can attach.

Because Great Plains Bank failed to join Ambort as required by SDCL 21-49-15 — despite having actual knowledge of his leasehold interest — the foreclosure judgment never acquired preclusive effect as to him under SDCL 21-47-24. The two statutes must be read together: the preclusive bar of SDCL 21-47-24 applies only after the mandatory joinder command of SDCL 21-49-15 has been honored. A foreclosing mortgagee cannot omit a known interest-holder in violation of SDCL 21-49-15 and then claim that the resulting judgment nevertheless extinguished that interest.

B. The undisputed facts supporting Ambort’s omitted-party theory were squarely presented below, and this Court may apply SDCL 21-49-15 on *de novo* review.

Although Ambort did not cite SDCL 21-49-15 by statute number in his Complaint, he squarely presented the factual and legal substance of the omitted-party / leasehold-survival theory at multiple stages of the proceedings below. In his Brief Opposing GPB’s Motion for Partial Summary Judgment, he argued that GPB “knowingly, deliberately, or with reckless disregard failed to name him as a foreclosure defendant, thereby denying him access to the foreclosure court to litigate the issues.” (CR 289–290, 296, 298.)

At the September 27, 2023, hearing on GPB’s motion for partial summary

judgment, the circuit court declined to hear oral argument, stating at the outset that it was “not entertaining further argument at this time.” (Hearing Tr. 2:12–13, CR 434.) The hearing lasted approximately six minutes, and when Ambort attempted to respond, the court stated: “I’m only asking if you didn’t understand what I said. Not to agree with me.” (Hearing Tr. 4:7–8, CR 436.) Ambort was therefore given no opportunity to present his SDCL 21-49-15 argument orally to the circuit court.

The day following the hearing—September 28, 2023—Ambort filed a Motion to Reconsider, his first available opportunity to present that argument. (CR 348.) In that motion he explicitly cited SDCL 21-49-15 by number, invoked *Peters v. Great Western Bank, Inc.* for the proposition that persons with interests in mortgaged property must be joined as defendants, and grounded his argument in the South Dakota Constitution’s access-to-courts guarantee, S.D. Const. Art. VI, §§ 2, 20. (CR 348, Motion to Reconsider at 1–2.) The circuit court received that argument and summarily declined to engage with it the same day: “I will not reconsider my ruling.” (CR 347, Judge Portra email, Sep. 28, 2023.) Ambort then developed the theory further in his Brief Opposing GPB’s Motion for Attorney’s Fees. (CR 377–382.)

This Court’s *de novo* review of summary judgment empowers it to apply the correct law to the undisputed facts in the record. *Yankton County. v. McAllister*, 2022 S.D. 37, ¶ 15, 977 N.W.2d 327, 334; *Abata v. Pennington Cnty. Bd. of Comm’rs*, 2019 S.D. 39, ¶ 8, 931 N.W.2d 714, 718. Because the facts supporting the omitted-party theory were fairly presented at every available stage—in Ambort’s summary-judgment opposition, his Motion to Reconsider, and his fee opposition—and GPB had full notice of the issue throughout, this Court may now determine whether the foreclosure statutes were

correctly applied, including whether SDCL 21-49-15 required GPB to join Ambort and what legal effect its failure to do so had on his property interest.

By the time of his post-judgment fee briefing—and earlier in his Motion to Reconsider filed the day after the hearing—Ambort had made explicit what the summary-judgment record already implied: an assignee of a lessor’s interest—a person with a known interest in the mortgaged property—is a person “having an interest in ... the mortgaged property” under SDCL 21-49-15, and GPB’s failure to join him left his leasehold interest unadjudicated and unextinguished as to him. (CR 348; CR 376–386.) Summary judgment is proper only if there is no genuine issue of material fact and “the law was correctly applied.” *Yankton County*, 2022 S.D. 37, ¶ 15, 977 N.W.2d at 334; *Lammers v. State by & through Dep’t of Game, Fish & Parks*, 2019 S.D. 44, ¶ 9, 932 N.W.2d 129, 132. The circuit court’s refusal to consider the effect of GPB’s omission of a known leasehold interest-holder—at the hearing, on reconsideration, and in its Findings of Fact and Conclusions of Law—reflects a misapplication of the foreclosure statutes and *Peters*.

C. SDCL 21-47-24’s preclusive effect never attached because Great Plains Bank violated the mandatory joinder requirement of SDCL 21-49-15.

As a threshold matter, SDCL 21-47-24’s preclusive bar cannot constitutionally reach Ambort because the foreclosure court never acquired personal jurisdiction over him. Personal jurisdiction over a defendant requires service of summons. SDCL 15-2-30; *Wagner v. Truesdell*, 1998 S.D. 9, ¶ 8, 574 N.W.2d 627, 629. GPB neither named nor served Ambort as a defendant. A judgment cannot bind a person whom SDCL 21-49-15 required to be named and SDCL 15-2-30 required to be served — and who was neither.

Boilerplate language purporting to bar “all persons claiming under” the named defendants cannot manufacture the jurisdiction that proper naming and service alone would have conferred.

First, *L&L Partnership v. Rock Creek Farms*, 2014 S.D. 9, ¶ 13, 843 N.W.2d 697, 702, and the “same estate as the mortgagor” language of SDCL 21-47-24, do not support the breadth of GPB’s argument. Those authorities addressed what title passes to a foreclosure purchaser as against parties who were before the court — they did not address, and cannot control, the rights of a person who was never named or served and over whom the foreclosure court therefore never acquired jurisdiction. To extend that language to bar the claims of an unserved, non-party interest-holder would require reading both the case and the statute far beyond their facts and purpose.

Second, GPB may argue that under common-law principles of privity, foreclosure of the original lessor (WIPT) necessarily binds any assignee of the lessor’s interest, even if the assignee was never named in the foreclosure action. Even assuming that common-law proposition, it is precisely this type of shortcut that the South Dakota Legislature rejected when it enacted SDCL 21-49-15. The statute’s mandatory joinder requirement for all persons “having an interest in, or lien on, the mortgaged property” was designed to ensure that known interest-holders receive personal notice and an opportunity to defend — rather than being extinguished by operation of common-law privity or boilerplate foreclosure language. GPB cannot evade the Legislature’s clear command by relying on the very common-law rule the statute was enacted to supersede.

Third, and as established in Section I.A above, SDCL 21-47-24 and SDCL 21-49-15 must be read together as companion statutes intended to operate in sequence. The

preclusive bar of SDCL 21-47-24 applies only after the mandatory joinder command of SDCL 21-49-15 has been honored. GPB cannot invoke the general preclusive consequence of SDCL 21-47-24 to cure its violation of the specific mandatory joinder requirement of SDCL 21-49-15.

D. GPB's lien-priority argument does not defeat Ambort's right to be joined and heard.

Great Plains Bank has argued that even if Ambort had been joined in the foreclosure action, his leasehold would still have been extinguished because the WIPT/BRIT lease was executed and recorded after the CRE mortgage, making GPB's lien senior under SDCL 44-2-1. (GPB Resp. to Mot. to Reconsider at 1-2, CR 342-343.) This argument conflates two distinct questions: (1) whether Ambort was entitled to be joined and heard before his property interest was adjudicated, and (2) whether his leasehold would ultimately have been found subordinate on the merits.

The first question is governed by SDCL 21-49-15 and due process. SDCL 21-49-15 requires that "[a]ll persons having an interest in, or lien on, the mortgaged property as of the date of filing the action shall be named as defendants in the action." That command is mandatory, not conditional. Nothing in the statute allows a foreclosing mortgagee to bypass joinder simply because it unilaterally concludes that an omitted interest-holder's claim is junior or likely to fail. To the contrary, the statute requires joinder precisely so the court — not the foreclosing plaintiff — can determine the nature, priority, and effect of competing interests with all necessary parties present.

GPB's priority argument therefore proves too much. If accepted, it would allow a mortgagee with actual knowledge of another person's property interest to omit that

person from the action, obtain judgment in their absence, and later defend the omission by claiming the omitted party would have lost anyway. That approach would reduce SDCL 21-49-15 to a discretionary notice rule and nullify the statute's protection for known interest-holders. It would also invert basic due-process principles: a person's right to notice and an opportunity to be heard does not depend on whether the opposing party predicts they will lose on the merits.

Nor does lien priority itself establish extinguishment. Priority determines which interest is superior once competing claims are properly before the court. Extinguishment determines whether a particular party's rights have actually been adjudicated and cut off. A junior interest may be extinguished through foreclosure only if its holder is brought before the court in the manner the statute requires. Here, no court ever adjudicated the effect of the foreclosure on Ambort's rights because, despite GPB's actual knowledge of his leasehold, Ambort was never joined as a defendant as SDCL 21-49-15 required.

GPB's reliance on boilerplate foreclosure language barring persons claiming "under, by, or through" WIPT and BRIT does not solve the problem. Standard judgment language cannot substitute for compliance with a statute that expressly requires joinder of all persons having an interest in the mortgaged property. Judicial form language cannot override legislative command.

The same is true of GPB's invocation of SDCL 21-47-24 and authorities describing the estate conveyed by a sheriff's deed. Those provisions describe the effect of foreclosure as to parties bound by the judgment; they do not eliminate the antecedent requirement that persons with known interests be made parties in the first place.

At minimum, GPB's senior-lien theory shows only what GPB contends the result

should have been if joinder had occurred. It does not establish that joinder was unnecessary. Because SDCL 21-49-15 required GPB to name Ambort as a defendant, GPB's belief that its mortgage was senior did not excuse non-joinder or authorize extinguishment of Ambort's leasehold by default. The foreclosure judgment therefore cannot be sustained against Ambort on the theory that he would have lost had he been joined — the statutory and constitutional error is that he was never given the chance to be heard at all.

E. The circuit court's "law of the case" rationale for granting summary judgment was legal error.

The circuit court did not ground its summary-judgment ruling in SDCL 21-49-15, *Peters*, or any analysis of whether GPB was required to join Ambort as a known leasehold interest-holder. Instead, it ruled from the bench that granting relief would require "contradict[ing] two previous rulings of the Court, both in Spink and Brown County," which it described as "the law of this case." (Hearing Tr. 2:19–25, CR 434; 3:6–11, CR 435.) That rationale reflects a misapplication of the law-of-the-case doctrine and provides an independent ground for reversal.

The law-of-the-case doctrine provides that a court's prior ruling on a legal issue governs the same issue in subsequent proceedings within the same action. *In re Pooled Advocate Trust*, 2012 S.D. 24, ¶ 24, 813 N.W.2d 130, 139. The doctrine is limited to issues actually decided in the same case; it does not extend to rulings made in collateral proceedings involving different parties or different issues.

Here, the circuit court's application of the doctrine was erroneous for three reasons. First, the prior rulings it relied upon were made in separate Spink and Brown

County cases—not in the present action (06CIV23-264). Second, none of those prior rulings addressed the specific question whether GPB was required to join Ambort as a known leasehold interest-holder under SDCL 21-49-15. A prior ruling cannot constitute “the law of the case” on an issue it never decided. Third, Ambort was not a party to the foreclosure proceeding (06CIV22-206) whose rulings the circuit court treated as binding. A judgment cannot be “the law of the case” as to a person who was never before the court.

Because the circuit court’s stated rationale rested on a misapplication of the law-of-the-case doctrine—and because it never addressed the correct legal framework under SDCL 21-49-15 and *Peters*—its grant of summary judgment reflects a failure to correctly apply the law. On *de novo* review, this Court may therefore apply the proper statutory analysis and reverse.

II. Great Plains Bank’s failure to join Ambort as a known leasehold interest-holder left his leasehold unextinguished, and his quiet-title claim under SDCL 21-41-1 was therefore proper.

Having established in Part I that Great Plains Bank violated the mandatory joinder requirement of SDCL 21-49-15 by failing to name Ambort — a known leasehold interest-holder — as a defendant in its 2022 foreclosure action, and that SDCL 21-47-24’s preclusive effect therefore never attached, the question becomes whether Ambort may bring a quiet-title action under SDCL 21-41-1 to determine the scope and priority of his surviving leasehold interest. The answer is yes.

A. SDCL 21-41-1 authorizes quiet-title actions by holders of leasehold interests against adverse claimants.

SDCL 21-41-1 authorizes “[a]n action ... by any person or persons having or claiming to have an estate or interest in or lien or encumbrance upon any real property ... against any person or persons claiming an estate or interest in or lien or encumbrance upon the same ... for the purpose of determining such adverse interest, estate, lien, or encumbrance.” South Dakota courts treat the quiet-title remedy as broad in scope. An action to quiet title “may be maintained by any person having an estate or interest in land, either legal or equitable.” *Bryant v. Bryant*, 2026 S.D. 13, ¶ 13, 32 N.W.3d 700, 705 (quoting *Swaby v. N. Hills Reg’l R.R. Auth.*, 2009 S.D. 57, ¶ 43, 769 N.W.2d 798, 816).

A leasehold qualifies as a protected “estate or interest” in real property. *Harding County v. Land Users Ass’n*, 486 N.W.2d 263, 265 (S.D. 1992) (recognizing a leasehold as “a partial interest in real property”). Although *Harding County* arose in the context of taxation of school land leases, the characterization is broadly applicable to property interests and controls here. As the assignee of the lessor’s interest under a long-term lease running through February 29, 2032, Ambort holds a substantial, ongoing property interest in the Crossroads real estate.

B. Ambort’s Complaint alleged a leasehold interest and an adverse claim, satisfying SDCL 21-41-1.

In Count 2 of his Complaint, Ambort alleged that WIPT and BRIT executed a “Real Estate Lease And Personal Guarantees” for the Crossroads property on March 29, 2017 (CR 1 ¶ 5), that on October 17, 2017 WIPT assigned to him “all its right, title and interest, under, in and to the Lease and the Lease Document” (CR 2 ¶ 8), and that he had

“the right to exclusive possession and use of the premises until February 29, 2032” (CR 3 ¶ 23). He further alleged that GPB, “by virtue of the CRE mortgage,” claimed an adverse interest in the same premises (CR 3 ¶ 24) and asked the court to quiet title in his favor “until February 29, 2032” and declare “any adverse claim by GPB to be extinguished” (CR 3, Prayer B).

These allegations track the text of SDCL 21-41-1: Ambort claimed an estate or interest in the property, identified GPB’s adverse recorded claim, and asked the court to determine the relationship between them. Because his leasehold interest survived the foreclosure (Part I, *supra*), there was a live controversy suitable for quiet-title adjudication.

C. The circuit court erred in dismissing Count 2 with prejudice.

The circuit court’s dismissal with prejudice (CR 350) effectively treated Count 2 as if quiet title were unavailable to an assignee of a lessor’s interest whose property interest survived a foreclosure in which he was never joined as required by SDCL 21-49-15. That conclusion is inconsistent with the broad text of SDCL 21-41-1, *Harding County’s* recognition of leaseholds as interests in land, and this Court’s holding in *Peters v. Great Western Bank, Inc.* that due process requires notice and joinder of known interest-holders in foreclosure proceedings. 2015 S.D. 4, ¶ 10, 859 N.W.2d at 623 (*applying Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Because Ambort’s leasehold interest was never extinguished — precisely because SDCL 21-49-15 was not satisfied — his quiet-title action under SDCL 21-41-1 is a proper and straightforward means of determining the scope and priority of his surviving interest. Count 2 alleged a recognized property interest, an identified adverse claim, and a

request for judicial determination — all that SDCL 21-41-1 requires.

The circuit court's dismissal of Count 2 with prejudice was therefore error, and its subsequent finding that the action was frivolous or malicious under SDCL 15-17-51 cannot be sustained.

III. In light of Ambort's leasehold-based and omitted-party arguments, the circuit court abused its discretion in finding this action "frivolous" and awarding attorney's fees under SDCL 15-17-51.

SDCL 15-17-51 permits a fee award only if the action "was frivolous or brought for malicious purposes." In *Johnson v. Miller*, this Court held that "[a] frivolous action exists when the proponent can present no rational argument based on the evidence or law in support of the claim," and that to reach frivolousness there must be such a deficiency "that no reasonable person could expect a favorable judicial ruling." 2012 S.D. 61, ¶ 12, 818 N.W.2d at 808. This standard is narrow and applies only to actions lacking any arguable basis in law or fact—not merely to claims that ultimately fail on the merits. *Id.*

The frivolousness finding is further undermined by the procedural posture of the summary-judgment hearing. The circuit court declined to hear oral argument, ruling from the bench in a proceeding lasting approximately six minutes without allowing Ambort to present his position on Count 2 or his leasehold-based arguments. (Hearing Tr. 2:12–13; 4:7–8, 4:13, CR 434, 436.) A finding that an action was so lacking in merit as to be "frivolous" under *Johnson* sits uneasily alongside a record showing that the court never permitted the plaintiff to argue his case.

Here, the circuit court's fee findings focused almost exclusively on Count 1 of Ambort's action—his theory that misconduct involving Betty's trust land affected the

CRTT notes and CRE mortgage—and declared that “idea ... completely without merit,” that he “offered no persuasive authority,” and that his “legal position is wholly without merit.” (CR 443 ¶¶1–4; CR 445 ¶¶ 10–12, 14; CR 447 ¶ 7.) The court found that “plaintiff’s action is frivolous” under SDCL 15-17-51 and *Johnson*. (CR 446 ¶¶ 5–6.)

Ambort’s Count 2 leasehold-based and omitted-party arguments stand independently of his separate Count 1 “Betty trust” theory. Count 2’s quiet-title claim is grounded in SDCL 21-41-1, SDCL 21-49-15, and cases such as *Harding County*, *Peters*, and *Johnson*, and is supported by record evidence that GPB had actual knowledge of his leasehold years before foreclosure. By treating Ambort’s entire action as if it rose or fell solely on the Count 1 trust-related theory, the circuit court improperly collapsed distinct legal theories into a single “idea” it found unpersuasive and then labeled the whole case “frivolous,” contrary to SDCL 15-17-51’s narrow standard.

By the time of summary judgment and the fee motion, Ambort had presented substantial, authority-based arguments grounded in his leasehold interest and his omitted-party status:

- He relied on SDCL 21-41-1 and *Harding County* to show that his assigned leasehold gave him an “interest in real property” sufficient to bring quiet title. (CR 285–286.)
- He cited the undisputed record showing GPB’s knowledge of his lease assignment years before foreclosure. (CR 289–291, 293, 296, 299, 337, 339, 377–378.)
- He argued that, as a non-party to the foreclosure judgment, he was not within the classes barred by SDCL 21-47-24. (CR 289–290.)

- He invoked SDCL 21-49-15 and *Peters* to argue that a person with a known interest in the mortgaged property must be joined in the foreclosure action, and that failure to do so leaves that person's rights unaffected. (CR 377, 380.)
- He raised his SDCL 21-49-15 argument explicitly in his Motion to Reconsider filed September 28, 2023—his first available opportunity after the circuit court declined to hear oral argument at the hearing—and the circuit court summarily declined to engage with it. (CR 348, Motion to Reconsider at 1–2; CR 347, Judge Portra email, Sep. 28, 2023.)

These theories, developed on the undisputed record in his opposition to GPB's Motion for Partial Summary Judgment, his Motion to Reconsider, and his fee opposition, are rooted in statutory text and South Dakota precedent. Even if this Court ultimately rejects them, they clearly amount to "rational argument[s] based on the evidence or law" in support of his quiet-title claim and his position that his leasehold survived the foreclosure. *Johnson*, 2012 S.D. 61, ¶ 12, 818 N.W.2d at 808.

Moreover, "[a]ny doubt about whether or not a legal position is frivolous or taken in bad faith must be resolved in favor of the party whose legal position is in question." *Johnson*, 2012 S.D. 61, ¶ 18, 818 N.W.2d at 809. Here, Ambort's leasehold and omitted-party arguments are grounded in SDCL 21-41-1, SDCL 21-49-15, *Harding County*, and *Peters*—mainstream authority applied to undisputed facts. Any doubt must be resolved in his favor, precluding a frivolousness finding.

Under *Johnson*'s definition, the presence of such rational, good-faith arguments precludes a finding that Ambort's action—particularly Count 2's quiet-title claim—is frivolous. By ignoring these leasehold-based arguments, declining to hear oral argument,

refusing to reconsider, and collapsing Ambort's entire case into a single "idea" it found unpersuasive, the circuit court misapplied SDCL 15-17-51 and abused its discretion in awarding fees. The attorney's-fee judgment for \$12,874.41 should be reversed and vacated.

IV. The record does not support any finding that Ambort brought this action for "malicious purposes" under SDCL 15-17-51.

SDCL 15-17-51 authorizes attorney fees only if the action "was frivolous or brought for malicious purposes." South Dakota courts construe "malicious" narrowly: an action is malicious if it "is begun in malice, and without probable cause to believe it can succeed," and if the proceedings are instituted primarily for an improper purpose—such as hostility, harassment, or depriving the defendant of the beneficial use of property—rather than to adjudicate a colorable claim. *Stratmeyer v. Engberg*, 2002 S.D. 91, ¶ 20, 649 N.W.2d 921, 926; *Michlitsch v. Meyer*, 1999 S.D. 69, ¶ 19, 594 N.W.2d 731, 735. In *Healy v. Osborne*, this Court affirmed a malice finding where the plaintiff admitted he filed suit solely to prevent a ranch sale, sent letters to lenders attacking the seller's title, lacked any genuine belief in his claimed interest, and had a history of baseless filings. 2019 S.D. 56, ¶¶ 34–37, 934 N.W.2d 557, 566–67. By contrast, *Johnson v. Miller* emphasizes that fee awards under SDCL 15-17-51 are disfavored and that doubts about bad faith must be resolved in favor of the party whose position is challenged. 2012 S.D. 61, ¶¶ 12, 18, 818 N.W.2d at 808–09.

A. The circuit court made no finding of malice.

As a threshold matter, the circuit court did not find that Ambort's action was "brought for malicious purposes." In its Findings of Fact and Conclusions of Law, the

court confined its analysis to the “frivolous” prong, quoted *Johnson’s* “no rational argument” standard, and concluded only that “plaintiff’s action is frivolous” under SDCL 15-17-51. (CR 443 ¶¶ 1–14; CR 446 ¶¶ 5–7.) The court never used the word “malicious,” never cited *Stratmeyer* or *Healy*, and never found that Ambort lacked probable cause to believe his claims could succeed or that his primary purpose was to injure GPB rather than to vindicate a claimed property interest. Notably, the circuit court also declined to hear oral argument at the September 27, 2023, hearing, ruling from the bench in approximately six minutes without allowing Ambort to present his leasehold-based position. (Hearing Tr. 2:12–13; 4:7–8, CR 434, 436.) Likewise, it refused to engage with Ambort’s Motion to Reconsider based explicitly on SDCL 21-49-15. A court that never heard argument on the statutory theory underlying Count 2 was not in a position to find — and did not find — that the theory was pursued for malicious purposes. A court that never heard argument on the statutory theory underlying Count 2 was not in a position to find—and did not find—that the theory was pursued for malicious purposes. For that reason alone, the fee award cannot be affirmed on a malice theory.

B. Even if considered on appeal, the record does not satisfy the malice standard.

Even if this Court considers malice on the existing record, GPB’s showing falls far short of *Stratmeyer* and *Healy*. GPB points to Ambort’s persistence in Count 2, his prior litigation involving related entities, the timing of the complaint and lis pendens, and the June 28, 2023, email in the foreclosure case requesting a continuance for redemption. But those circumstances are at least as consistent with a litigant attempting—perhaps aggressively—to protect what he believed was a surviving leasehold interest, which does

not satisfy the requirement that the action be “begun in malice, and without probable cause to believe it can succeed.” *Stratmeyer*, 2002 S.D. 91, ¶ 20, 649 N.W.2d at 926.

First, Ambort’s Count 2 theory—that his assigned leasehold interest survived the foreclosure because he was a known but omitted party under SDCL 21-49-15—was rational and authority-based. He relied on SDCL 21-41-1 and *Harding County* to show that his leasehold was an “estate or interest in real property” sufficient for quiet title, and on SDCL 21-49-15 and *Peters v. Great Western Bank* to argue that persons with known interests in mortgaged property must be joined and are not bound by a foreclosure judgment if omitted. (CR 299 ¶ 4, 337, 339.) Pursuing a cognizable quiet-title theory to clear a cloud on that leasehold is evidence of probable cause, not its absence, and filing a *lis pendens* to give notice of the pending action is a conventional step in property litigation rather than proof of an improper primary purpose.

Second, the June 28, 2023, email (Aff. of Z. Peterson, CR 167, Ex. I (Objection to Request for Continuance of Hearing on Motion to Shorten Redemption Period), CR 213, Ex. A (June 28, 2023, email), CR 220.) requesting a continuance for CRE to pursue redemption does not transform the June 30 complaint into a malicious act. The email was sent in the foreclosure action, on behalf of CRE, during a documented medical emergency, and sought more time; it was not a binding admission by Ambort personally that he lacked an independent leasehold claim. The complaint filed two days later asserted Ambort’s own claimed property interest, and any tension between positions taken by different entities in different proceedings does not show that this suit was instituted primarily to injure GPB rather than to litigate a colorable rights dispute. *Healy* involved explicit admissions that the plaintiff’s objective was to stop a sale, plus letters to

third-party lenders undermining financing; nothing comparable appears in this record.

Third, the prior litigation history cited by GPB does not establish malicious abuse. Those cases ended in stipulated dismissals with prejudice and no fee awards, which does not show a pattern of suits filed without probable cause. GPB's references to "lesson learned" and "shell entities" are arguments, not findings or evidence that this particular action was filed solely to prevent a sale or force a non-merits settlement. Under *Johnson's* definition, repeated or contentious litigation is not itself grounds for sanctions; SDCL 15-17-51 is not a tool to punish a party who advances good-faith legal theories that ultimately fail. 2012 S.D. 61, ¶ 12, 818 N.W.2d at 808.

C. The circuit court's own findings confirm the fee award was not based on malice.

The circuit court's findings focus on the perceived weakness of Ambort's Betty-trust / POA theory, calling that "idea ... completely without merit," noting the absence of "persuasive authority," and emphasizing persistence after an adverse ruling in *First Dakota National Bank v. Clemensen and Ambort*. (CR 445 ¶¶ 10–12.) Those findings may go to the court's view of merit, but they do not establish the elements of malice under *Stratmeyer* and *Healy*: lack of probable cause and an improper primary purpose. Nor did the circuit court grapple with Ambort's independent leasehold-and-omitted-party theory grounded in SDCL 21-41-1, SDCL 21-49-15, and SDCL 21-47-24—a theory the court never heard argued and never addressed in its findings—which further shows that the fee award rested on a mischaracterization of the action rather than a valid finding of "malicious purposes."

Because the circuit court made no malice finding and the record cannot support

one, the attorney-fee award cannot be sustained on a malice theory and must be reversed.

V. CONCLUSION AND PRAYER FOR RELIEF

Great Plains Bank extinguished Glenn Ambort's known leasehold interest—running through February 29, 2032—without ever joining him as a party in its 2022 foreclosure action. That omission violated the mandatory joinder command of SDCL 21-49-15. Because SDCL 21-49-15 was never satisfied, SDCL 21-47-24's preclusive effect never attached to Ambort. The circuit court further erred by granting summary judgment on "law of the case" grounds without ever addressing the controlling statute or precedent, dismissing a viable quiet-title claim with prejudice, and imposing \$12,874.41 in attorney's fees after refusing to hear oral argument on Ambort's central theory.

Due process guarantees every person with a known property interest the right to notice and an opportunity to be heard before that interest is extinguished — a guarantee that GPB's omission and the circuit court's summary ruling denied Ambort entirely.

For the foregoing reasons, Appellant Ambort respectfully requests that this Court:

- A. Reverse the circuit court's October 2, 2023, Order and the March 10, 2026, Judgment of Dismissal;
- B. Vacate the attorney's-fee award in its entirety;
- C. Hold that Ambort's leasehold interest was not extinguished by the foreclosure judgment;
- D. Remand this case for further proceedings on Ambort's quiet-title claim consistent with this Court's opinion; and
- E. Grant such other and further relief as this Court deems just and proper.

Dated: June 1, 2026,

Respectfully submitted,

/s/ Glenn Ambort

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of June 2026, a true and correct copy of the foregoing Appellant's Brief was served upon the Clerk of the Supreme Court and upon counsel for Appellee by electronic filing as shown below; and a single copy by United States Postal Service, postage prepaid, was mailed to the Clerk at the address below:

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CERTIFICATE OF COMPLIANCE

I certify that, in accordance with the type-volume limitation set forth in SDCL § 15-26A-66(b)(2), this Appellant's Brief is proportionately spaced, has a typeface of 12-point, Times New Roman, contains 7,280 words, and was prepared using Microsoft Office Word. Headings, footnotes, and quotations were counted.

/s/ Glenn Ambort

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

GLENN AMBORT,
Appellant,

vs.

GREAT PLAINS BANK,
Appellee

Appeal No. 31430

APPEAL FROM THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT
BROWN COUNTY, SOUTH DAKOTA

THE HONORABLE TONY L. PORTRA
THE HONORABLE JULIA M. DVORAK
CIRCUIT COURT JUDGES

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PRELIMINARY STATEMENT

In this brief, the Appellant, Glenn Ambort, will be referred to as “Ambort.” The Appellee, Great Plains Bank, will be referred to as “GPB.” The Brown County Clerk of Courts’ record will be referred to by the initials “CR” and the corresponding page numbers.

JURISDICTIONAL STATEMENT

Ambort appeals following the Judgment of Dismissal, entered on March 9, 2026, and noticed on March 11, 2026. (CR 524, 525-527.) Ambort’s Notice of Appeal was filed on March 31, 2026. (CR 528.) GPB agrees this Court may exercise jurisdiction pursuant to SDCL 15-26A-3.

QUESTIONS PRESENTED

- I. Whether Ambort, who has neither argued the Circuit Court’s denial of his Motion to Amend nor argued an entitlement to relief under SDCL 15-6-60(b), can collaterally attack valid circuit court judgments through this declaratory judgment and quiet title action.**

The Circuit Court concluded that, to grant Ambort’s requested relief by voiding the mortgage and promissory notes and quieting title in Ambort’s favor, it would need to set aside previous judgments. It refused to do so, and dismissed Ambort’s claims on summary judgment.

Peterson v. Safway Steel Scaffolds Co., 400 N.W.2d 909 (S.D. 1987).

Dunham v. First Nat’l Bank, 86 S.D. 727, 201 N.W.2d 227 (1972).

SDCL 15-6-60(b).

- II. Whether the Circuit Court correctly quieted title in favor of GPB.**

The Circuit Court granted summary judgment on Count 1 of GPB's counterclaim and ordered Ambort's alleged adverse interest should be extinguished and title to the real estate quieted in favor of GPB.

Healy Ranch, Inc. v. Healy, 2022 S.D. 43, 978 N.W.2d 786.

Heinzman v. Howard, 348 N.W.2d 147 (S.D. 1984).

SDCL 21-41-1.

SDCL 44-2-1.

III. Whether the leasehold interest relied upon by Ambort was extinguished by the summary judgment and sheriff's sale in the Foreclosure Lawsuit.

The Circuit Court granted summary judgment on Count 1 of GPB's counterclaim and ordered Ambort's alleged adverse interest should be extinguished and title to the real estate quieted in favor of GPB.

L&L P'ship v. Rock Creek Farms, 2014 S.D. 9, 843 N.W.2d 697.

SDCL 21-47-24

IV. Whether Ambort can rely upon an unrecorded conveyance as the source of an alleged property interest.

The Circuit Court granted summary judgment on Count 1 of GPB's counterclaim and ordered Ambort's alleged adverse interest should be extinguished and title to the real estate quieted in favor of GPB.

The Schleuter Co. v. Sevigny, 1997 S.D. 68, 564 N.W.2d 309.

SDCL 43-28-17.

V. Whether the Circuit Court correctly granted GPB's Motion for Attorney's Fees.

The Circuit Court concluded Ambort's action was frivolous and awarded GPB its attorney's fees.

Johnson v. Miller, 818 N.W.2d 804 (S.D. 2012).

SDCL 15-17-51.

STATEMENT OF THE CASE

Ambort filed this action on June 30, 2023. (CR 1.) He contemporaneously filed a Notice of Lis Pendens with the Brown County Register of Deeds. (CR 144, 264.) After GPB answered and counterclaimed, Ambort moved to amend his Complaint and furnished a copy of his proposed Amended Complaint. (CR 107, 111-116.) Both pleadings raised claims that two promissory notes and a mortgage delivered to GPB were void or invalid, despite prior circuit court rulings confirming their validity.

On August 30, 2023, GPB moved for partial summary judgment on Ambort's claims for relief, whether pled in the Complaint or the Amended Complaint. (CR 117-119.) Additionally, GPB sought summary judgment on Count 1 of its counterclaim, quieting title in the real estate at issue, declaring Ambort's alleged adverse interest extinguished, and ordering Ambort's Notice of Lis Pendens be immediately released and stricken. (CR 117.)

Ambort's Motion to Amend and GPB's Motion for Partial Summary Judgment came on for hearing before the Circuit Court, the Honorable Tony Portra, presiding, on September 27, 2023. Judge Portra denied the Motion to Amend and granted the Motion for Partial Summary Judgment. (CR 350-351.)

GPB then moved for attorney's fees under SDCL 15-17-51. (CR 363.) Judge Portra issued a Memorandum Decision on November 17, 2023, concluding that Ambort's lawsuit was frivolous. (CR 438-440.) Ambort was

served with the proposed Findings of Fact and Conclusions of Law Regarding Defendant's Motion for Attorney's Fees, but he did not file any objections. (CR 441.) GPB was awarded attorney's fees and costs totaling \$12,874.41. (CR 442, 443-448.)

Since GPB obtained an award of the attorney's fees it spent defending the case and was able to sell the real estate at issue once the Notice of Lis Pendens was removed, GPB stipulated to the dismissal of the balance of the claims pled in the counterclaim. (CR 520-521.) The Honorable Julia Dvorak entered final judgment on March 9, 2026. (CR 524.)

STATEMENT OF FACTS

While Ambort now tries to characterize his lawsuit as a mere quiet title action concerning a leasehold interest, his pleadings tell a much different story. Through this lawsuit, whether by his original Complaint or his proposed Amended Complaint, Ambort sought to void two promissory notes and a mortgage granted to GPB, which would require the Circuit Court to overturn rulings in two separate judgments from Spink and Brown County. He simultaneously encumbered GPB's real estate by filing a Notice of Lis Pendens, so that the real estate was tied up until GPB could obtain relief from the Circuit Court. All this was done on the back of a legal theory lacking any appreciable merit. And Ambort knew it had no merit just a few weeks into this case, but persisted nonetheless.

A. GPB made loans to Crossroads Truck & Trailer, LLC, which were secured by a mortgage granted by Crossroads Real Estate, LLC.

This dispute between Ambort and GPB relates to a lending relationship between the bank and two limited liability companies previously owned and controlled by Ron Clemensen and Steven Grandpre: Crossroads Truck & Trailer, LLC (“CT&T”) and Crossroads Real Estate, LLC (“CRE”). Clemensen and Grandpre operated a semi-truck and trailer sales and repair shop at 1702 Sixth Avenue Southwest, Aberdeen, South Dakota. Ambort later seized control of these companies, long after they sunk into dire financial straits.¹

On November 16, 2015, CT&T executed and delivered to GPB a Promissory Note in the principal sum of \$500,000.00. (CR 146, 149-150.) On January 12, 2016, CT&T executed and delivered to GPB a second Promissory Note in the principal sum of \$1,100,000.00. (CR 146, 151-152.) To secure the payments referred to in the promissory notes, on January 12, 2016, CRE executed and delivered to GPB a Collateral Real Estate Mortgage covering the Aberdeen real estate where CT&T operated, which is legally described as:

¹ Presumably, Ambort’s ownership interest in the LLCs arose out of his \$178,000 judgment against these entities. *See Ambort v. Crossroads Real Estate, LLC, and Crossroads Truck & Trailer, LLC*, 71CIV18-000089. Although the entities have been long defunct, Ambort has used the LLCs in recent years as a vehicle for frivolous litigation against GPB. *See Crossroads Real Estate, LLC v. Great Plains Bank*, 06CIV22-000055; *Crossroads Truck & Trailer, LLC v. Great Plains Bank*, 71CIV22-000015.

Lot One (1), Swanson Electric Addition to the City of Aberdeen, Brown County, South Dakota, according to the plat thereof of record (“Real Estate”).

(CR 146-147, 153-165.)

The mortgage was filed for record in the office of the Register of Deeds of Brown County, South Dakota, on January 15, 2016. (CR 147, 153.)

In 2017, Ambort was affiliated with WIPT, Inc., a corporation based in Redfield, South Dakota, and he was listed on its Annual Report as WIPT’s Vice President and Secretary.² Through a convoluted document entitled “Real Estate Settlement Agreement,” WIPT became the titled owner of the Real Estate on February 24, 2017, taking the Real Estate subject to GPB’s Mortgage. (CR 140, 171-180, 262.) On March 29, 2017, WIPT, as lessor, leased the Real Estate to a new Ron Clemensen entity, BRIT, Inc. (CR 181-188.) This WIPT/BRIT lease, which was obviously recorded after GPB’s mortgage, is the instrument under which Ambort claims a “leasehold” right, as an assignee of WIPT.³

B. CT&T’s defaults on the promissory notes are reduced to judgment.

CT&T quickly defaulted on the two promissory notes. GPB pursued a cross-claim against CT&T in an already-pending action entitled *Brock*

²

<https://sosenterprise.sd.gov/BusinessServices/Business/ImageDownload.aspx?id=095064158209092066087216115052061123240048115246>

³ This assignment was likely carried out so that Ambort could sue BRIT without WIPT having to hire an attorney, which he did in November 2017. *See Ambort v. BRIT, Inc.*, 71CIV17-70.

Klapperich, as Personal Representative of the Estate of Betty Clemensen vs. Ronald P. Clemensen, et al., 71CIV17-000077 (“Klapperich Lawsuit”). GPB obtained a judgment against CT&T in the net principal amount of \$963,102.16, plus accrued interest as of November 16, 2020, in the amount of \$401,269.18, plus late fees in the amount of \$550.00, and plus post-judgment interest. (CR 193-194.)

On June 24, 2023, the Circuit Court entered a Judgment of Dismissal in the Klapperich Lawsuit, which stated: “. . . this case is dismissed on its merits, with prejudice and without taxation of costs, and that Judgment of Dismissal hereby enters under Rules 54 and 58 of the South Dakota Rules of Civil Procedure.” (CR 198.) Notice of Entry of Judgment of Dismissal was served on July 11, 2023. (CR 196-197.) No party appealed. Thus, GPB’s judgment on the promissory notes against CT&T became final.

C. GPB forecloses its mortgage.

In June 2022, GPB commenced an action in Brown County, *Great Plains Bank v. Crossroads Real Estate, LLC, et al.*, 06CIV22-206 (“Foreclosure Lawsuit”), to foreclose the CRE mortgage. Both parties to the March 29, 2017 lease were joined as parties. WIPT appeared and defended against the Foreclosure Lawsuit. BRIT was served with the Summons and Complaint, but did not appear or defend.

On October 19, 2022, the Honorable Richard A. Sommers entered an Order Granting Plaintiff’s Motion for Partial Summary Judgment, which

authorized a public sale of the Real Estate. (CR 200-202.) The Summary Judgment makes clear that “defendants, and *all persons claiming under, by or through them . . .* are forever barred and foreclosed of all right, title, interest and equity of redemption in and to the above-described Real Estate. . . .” (Id.) (Emphasis added.)

The sheriff’s sale was conducted on May 3, 2023. (CR 205.) GPB was the prevailing bidder. (Id.) The Return of Sale was filed the same day. (Id.) On May 31, 2023, the Order Confirming Sale was entered, as no objections to the Return of Sale were timely filed. (CR 211-212.)

In the Foreclosure Lawsuit, Ambort, as a member and registered agent for both CT&T and CRE, was served with the pleadings that initiated the case. (CR 239-240.) He was also served documents throughout the case. (CR 142, 263.) Neither CT&T nor CRE made an appearance or filed pleadings in the Foreclosure Lawsuit. (Id.) However, on June 28, 2023, on the eve of the hearing on GPB’s motion to shorten the redemption period to 60 days based on CRE’s abandonment of the property, Ambort sent an email to the Court and counsel saying that CRE wanted to pay off the debt and redeem:

Meanwhile, after reviewing the attached Reply Brief by Great Plains Bank, **Crossroads Real Estate, LLC, by and through its Counsel, Paul Andrews, desires to redeem the property at issue for the amount due during the 180-day redemption period.** However, because of the unforeseen medical emergency, CRE will be unable to make efforts to accomplish the redemption until Paul recovers and is able to perform as CRE's Counsel.

Mr. Andrews is a one-lawyer law firm and has no partner to substitute for him during his recovery.

Meanwhile, I respectfully ask the Court to continue the hearing and decision on shortening the redemption period until Paul's medical condition and recovery time become better known.

(CR 220.) (Emphasis added.)

GPB resisted Ambort's request for continuance. (CR 213-219.)

Ambort's request for continuance was denied on June 28, 2023. (CR 225.)

Judge Sommers then granted GPB's motion to shorten the redemption period. (CR 229-230.) On July 10, 2023, the Brown County Sheriff executed a Sheriff's Deed conveying the Real Estate to GPB. (CR 231-233.) The Sheriff's Deed was recorded with the Brown County Register of Deeds on July 12, 2023. (Id.)

Despite requesting more time to "redeem the property at issue for the amount due" just two days earlier, Ambort asserted in the June 30, 2023 Complaint in this case that the CT&T promissory notes and CRE mortgage were void. (CR 4.) He also filed a Notice of Lis Pendens with the Brown County Register of Deeds on June 30, 2023. (CR 144, 264.) He continued to make assertions about the two promissory notes and mortgage being void in his proposed Amended Complaint and in response to GPB's summary judgment motion. (CR 111-116, 265-298.)

D. Ambort's frivolous legal theory is rejected.

Ambort's legal theory appears in both his Complaint and Amended Complaint. His theory springs from the Circuit Court's prior conclusion in

the Klapperich Lawsuit that Ron Clemensen lacked authority as power of attorney for Betty Clemensen to pledge real estate owned by her trust as collateral. By signing as “Ron Clemensen POA,” Ron Clemensen pledged certain of Betty Clemensen’s trust’s real estate to secure the CT&T promissory notes. (CR 48-58.) However, Ron Clemensen and Steven Grandre signed the separate CRE mortgage as members of the LLC; Ron Clemensen *did not* sign it as Betty Clemensen’s power of attorney. (CR 153-165.) Nonetheless, Ambort somehow deduced that Clemensen’s invalid pledge of trust real estate also rendered the CT&T promissory notes and the CRE mortgage void. (CR 3-4, 113-116.)

On or soon after August 23, 2023, Ambort received a Memorandum Decision in *First Dakota National Bank v. Clemensen and Ambort*, 71CIV22-65. In that case, Ambort had spun same legal theory – that Clemensen’s pledge of Betty Clemensen trust real estate invalidates all other security and promissory notes he signed in favor of the lender – and tried to amend his answer accordingly. Circuit Court Judge Tony Portra was unconvinced:

I am denying Ambort’s motion to amend his answer because I find that it would be futile to do so. The decision upon which Ambort relies is inapplicable to the dispute between these parties. **My previous ruling that Clemensen did not have the power to encumber the property of the Betty Clemensen Trust has no bearing on his ability to incur his own debt and pledge his own property as security for that debt.**

(CR 252.) (Emphasis added.)⁴

Despite being aware of this ruling, Ambort persisted with the same legal theory, requiring GBP to seek dispositive relief from the same Circuit Court Judge who had already made clear to Ambort that his theory was baseless.

Once summary judgment was granted and the Notice of Lis Pendens was removed, GPB marketed and sold the Real Estate to a third-party. (CR 520.)

ARGUMENT

A. Ambort raises no issue and makes no argument concerning the Circuit Court's denial of his motion to amend.

While Ambort's original Complaint attacked the GPB promissory notes and mortgage, it included no claim that prior judgments should be set aside. (CR 2-4.) Conversely, his proposed Amended Complaint included assertions that he was entitled to relief under SDCL 15-6-60(b). (CR 111-112.) Judge Portra denied leave to amend, concluding that the proposed amendments were futile. (CR 350, 434.)

The Appellant's Brief does not raise the denial of amendment as an issue, and there is no argument explaining why the Circuit Court erred by denying leave to amend. Having failed to raise any argument or authority to challenge the Circuit Court's denial of amendment, Ambort has abandoned

⁴ Ambort later appealed to this Court. The Court summarily affirmed. *See First Dakota National Bank v. Clemensen*, Appeal Nos. 30571, 30572.

any appeal on that issue. See Peterson v. Safway Steel Scaffolds Co., 400 N.W.2d 909, 911 (S.D. 1987). “SDCL 15-26A-60(4) and (6) require that appellant's brief contain a concise statement of the legal issues, related argument and citation of authorities supporting the argument . . . Appellant's failure to comply with SDCL 15-26A-60 is a waiver of all issues not raised, briefed and argued.” Id. at 911-12 (quoting Graham v. State, 328 N.W.2d 254 (S.D. 1982)).

The significance of this waiver is that Ambort has asserted no claim that the summary judgment in the Foreclosure Lawsuit should be vacated, and Ambort does not challenge via argument the Circuit Court’s ruling denying leave to assert such a claim. His original Complaint seeks relief that runs directly contrary to the summary judgment granted in the Foreclosure Lawsuit, which makes clear that “defendants, and *all persons claiming under, by or through them*, after commencement of this action, shall be, and the same hereby are, forever barred and foreclosed of all right, title, interest and equity of redemption in and to the above-described Real Estate. . . .” (CR 202.)

Without the vacation of the summary judgment in the Foreclosure Lawsuit, Ambort’s claim to an interest in the Real Estate cannot advance. Ambort cannot simply use a quiet title claim or this appeal to collaterally attack the Foreclosure Lawsuit. See Novotny v. Tripp Cnty., No. CIV 08-3020, 2010 U.S. Dist. LEXIS 122609, at *8 (D.S.D. Nov. 18, 2010) (in general,

a collateral attack in a civil case cannot be launched against orders issued by state court judges).

B. Ambort raises no issue and makes no argument that the prior judgments should be vacated, and there is no basis to vacate prior judgments under SDCL 15-6-60(b).

Even if the Court gives the Appellant's Brief the broadest possible construction and finds Ambort has not waived the right to argue about denial of leave to amend, Ambort also fails to assert any argument that the judgment in the Foreclosure Lawsuit should be set aside. This issue is similarly waived. Peterson, 400 N.W.2d at 911-12.

Ambort fails in his attempt to collaterally attack prior judgments for a separate reason: there is absolutely no basis which could support the vacation of the prior judgments. This Court has stated: "An independent action under the provisions of SDCL 15-6-60(b) is not a proceeding to be routinely considered by a trial court." Dunham v. First Nat'l Bank, 86 S.D. 727, 733, 201 N.W.2d 227, 230 (1972). The Court also stated:

"An independent action to set aside a judgment may not be maintained under ordinary circumstances. Resort may be had to it but rarely, and then only under unusual and exceptional circumstances. Generally, a final judgment is not subject to review except in the action in which it was rendered. Interest reipublicae ut sit finis litium."

Id. at 734, 201 N.W.2d at 230-31 (quoting 3 Barron and Holtzoff, Federal Practice & Procedure (Wright Edition) § 1331, p. 433).

In Dunham, the Court described the test for evaluating a Rule 60(b) claim for relief:

[T]he criteria to be applied by the court in testing the sufficiency of the claim for relief, are as follows: (1) A judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law.

Dunham, 86 S.D. at 734, 201 N.W.2d at 231.

Ambort cannot begin to satisfy these criteria, as to either prior lawsuit.

In the Klapperich Lawsuit, the Circuit Court concluded CT&T had no meritorious defense. (CR 237-238.) It further concluded that GPB was entitled to a judgment because it loaned money to CT&T which was not repaid. (Id.) No one can seriously argue that fact. The judgment was entered due to CT&T's neglect. (Id. ("Crossroads attempts to avoid a default judgment, claiming that the failure to answer was due to excusable neglect and that it has a meritorious defense to the action by Great Plains. The Court finds neither to be true.")). Plus, Ambort flatly ignored his remedy at law. If Ambort disagreed with the Court's findings concerning CT&T's default, he could have hired counsel for CT&T and asked the South Dakota Supreme Court to review it. No appeal was filed.

Likewise, in the Foreclosure Lawsuit, there is no question that CRE executed the mortgage and that it was valid. (CR 153-166.) No valid defenses were presented by WIPT, BRIT, CRE, or any party to the Foreclosure Lawsuit. No valid defense is presented now. At the sole point when Ambort engaged in the Foreclosure Lawsuit, he expressed CRE's desire

to “redeem the property at issue for the amount due during the 180-day redemption period,” tacitly acknowledging the validity of the mortgage. (CR 227.)

It is surprising that Ambort asserts a deprivation of due process rights vis-à-vis his supposed leasehold interest in the Real Estate. In addition to litigating the leasehold interest here, he was fully aware of the proceedings in the Foreclosure Lawsuit from beginning to end. The Summons and Complaint were served on Ambort, as CT&T and CRE’s registered agent, on June 23, 2022. (CR 239-240.) Each of GPB’s filings in the Foreclosure Lawsuit were mailed to Ambort. (CR 142.) Ambort was obviously aware of what was being filed; he acknowledged reviewing filings in his own email to the Circuit Court. (CR 220.) Despite copying Ambort throughout the case, neither CRE, CT&T, nor Ambort did a single thing until GPB was about to obtain a sheriff’s deed. This is the very conduct this Court cautioned against sanctioning. “Nothing said here should be construed as in any way suggesting that a litigant may sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome at the original trial.” Dunham, 86 S.D. at 736, 201 N.W.2d at 232.

Ambort and his LLCs’ conduct in the Klapperich Lawsuit and the Foreclosure Lawsuit is the very definition of “fault or negligence on the part of the defendant[s].” An independent action “should not be made the vehicle for relitigation of issues.” Dunham, 86 S.D. at 736, 201 N.W.2d at 232. Even

if Ambort has not waived the issue, relief under Rule 60(b) is clearly unavailable.

C. Ambort raises no issue and makes no argument that the Circuit Court erred by granting summary judgment on Count 1 of the counterclaim and quieting title in favor of GPB.

Even if Ambort is correct that he should have been named as a defendant in the Foreclosure Lawsuit, which GPB disputes for the reasons in Sections D. and E. of this Argument, the issue regarding the validity of his supposed leasehold interest was raised and correctly decided in *this lawsuit where Ambort is a party*. Notably, Ambort does not raise an issue concerning error made by the Circuit Court in granting summary judgment on Count 1 of GPB's counterclaim. Nor does he argue in the Appellant's Brief that there was error in that ruling or some issue of disputed fact that precluded summary judgment on Count 1 of GPB's counterclaim. He simply argues, repeatedly, that he should have been a party in the Foreclosure Lawsuit under SDCL 21-49-15. Any issue concerning the Circuit Court's grant of summary judgment on Count 1 of the counterclaim is waived. Peterson, 400 N.W.2d at 911-12.

Whether Ambort was or was not joined in the Foreclosure Lawsuit is immaterial at this point. The Circuit Court met the issue of Ambort's claimed interest in the Real Estate head-on in this case, and it ruled in favor of GPB on the merits. Quiet title actions exist to determine the status of adverse interests like Ambort's claimed leasehold rights. SDCL 21-41-1

provides a fee owner like GPB the right to pursue an action “against any person . . . claiming an estate or interest in or lien or encumbrance upon the same [real property] or any part thereof for the purpose of determining such adverse interest, estate, lien, or encumbrance.” “[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.” Healy Ranch, Inc. v. Healy, 2022 S.D. 43, ¶ 38, 978 N.W.2d 786, 798 (quoting Estate of Henderson, 2012 S.D. 80, ¶ 13, 823 N.W.2d 363, 367).

Here, GPB did not simply defend against Ambort’s quiet title action and win. It sought affirmative relief and won. Ambort’s Complaint asserted a surviving leasehold interest in the Real Estate. (CR 4.) This prompted Count 1 of GPB’s Counterclaim, in which it asked the Circuit Court to extinguish the leasehold interest and quiet title in favor of GPB. (CR 101.) GPB moved for summary judgment on Count 1 of the Counterclaim. (CR 117.) The Circuit Court examined the materials submitted in support of GPB’s summary judgment motion, as well as the materials submitted in opposition by Ambort. It granted summary judgment on Count 1 of GPB’s counterclaim, stating that “the alleged adverse interest claimed by [Ambort] . . . is extinguished and title is quieted in favor of [GPB].” (CR 349-350.)

The opportunity that Ambort claims he was denied because he was not joined in the Foreclosure Lawsuit was made available here. He served his complaint, GPB answered and counterclaimed, GPB moved for summary judgment on Count 1 of its counterclaim, GPB won, and Ambort lost. Regardless of what transpired in the Foreclosure Lawsuit, the issue of the validity of Ambort's supposed leasehold interest was met head-on and decided below.

Ambort does not assert in the Appellant's Brief that the Circuit Court erred by granting summary judgment on Count 1 of the Counterclaim. Nor could he. Ambort's argument is couched in terms of what he *alleged* or *argued* below. (Appellant's Brief, at 21-22.) Whether or not the language Ambort used stated a claim for relief under SDCL 21-41-1 is immaterial. GPB sought a ruling on the merits through summary judgment, which required Ambort to resist with sufficient facts supporting his position. "While the facts must be viewed in a light most favorable to the nonmoving party, '[w]hen a motion for summary judgment is made and supported as provided in § 15-6-56, an adverse party may not rest upon the mere allegation or denials of his pleading, but his response, by affidavits or as otherwise provided in § 15-6-56, must set forth specific facts showing that there is a genuine issue for trial.'" Cashman v. Van Dyke, 2012 S.D. 43, ¶ 6, 815 N.W.2d 308, 311 (quoting SDCL 15-6-56(e)).

The undisputed facts *in this case* show that Ambort's supposed leasehold interest was subsequent and inferior to GPB's mortgage. See SDCL 44-2-1. In Ambort's response to GPB's Statement of Undisputed Material Facts, he admitted that WIPT took the Real Estate subject to GPB's mortgage. (CR 140, 262.) Ambort stepped into the shoes of the owner and original lessor, WIPT, who assigned the lease to Ambort while the Real Estate was subject to GPB's mortgage. Ambort, as an assignee, has no greater rights than WIPT, as assignor. See Heinzman v. Howard, 348 N.W.2d 147, 148 (S.D. 1984) (quoting Orr v. Allen, 73 S.D. 547, 552, 45 N.W.2d 737, 739 (1951) ("it is well settled that the assignee of a land contract takes it subject to all equities and defenses existing while it is in the hands of the assignor.")).

There was no factual dispute about the relevant timeline or about WIPT, and Ambort as its assignee, being subject to the prior GPB mortgage. Ambort presented no evidence to the contrary. He argues that "no court ever adjudicated the effect of the foreclosure on Ambort's rights." (Appellant's Brief, at 18.) That was the whole point of Count 1 of GPB's Counterclaim. As the fee owner, GPB was entitled to a ruling, as a matter of law, that the subordinate lease be extinguished and title quieted. That is what the Circuit Court *in this case* ordered.

D. The leasehold interest created by the WIPT/BRIT lease was extinguished by the summary judgment and the sheriff's sale in the Foreclosure Lawsuit.

The summary judgment in the Foreclosure Lawsuit stands uncontested, under Rule 60(b) or otherwise, and the Circuit Court's grant of summary judgment on Count 1 of GPB's counterclaim likewise stands uncontested. Considering these waivers, Ambort's attempts to argue the survival of his supposed leasehold interest are all for naught.

Relying on an unrecorded assignment from WIPT, a corporation he served as vice president and secretary, Ambort asserts leasehold rights to the Real Estate that GPB acquired via Sheriff's Deed. He pursues this despite being served with pleadings and documents and sitting idle through the entire Foreclosure Lawsuit, while watching the Circuit Court bar the defendants and *all persons claiming under, by or through them* of all right, title, interest and equity of redemption in the Real Estate. Ambort made no attempt to intervene or otherwise object to the Foreclosure Lawsuit. Instead, he waited until after the conclusion of the sheriff's sale and then initiated a frivolous lawsuit and slandered the Real Estate's title with a Notice of Lis Pendens.

When GPB foreclosed and received the Sheriff's Deed, title was returned to its original state as it existed before the 2017 lease was executed and recorded. The WIPT/BRIT lease upon which Ambort relies to claim his rights of tenancy was extinguished. "Once mortgaged and after foreclosure,

redemption, lapse of all other redemption rights, and issuance of the sheriff's deed, the purchaser at the foreclosure sale becomes the owner of any rights held by mortgagor or the mortgagor's assignees.” L&L P'ship v. Rock Creek Farms, 2014 S.D. 9, ¶ 13, 843 N.W.2d 697, 702 (emphasis added) (citing SDCL 21-47-24 (“At the expiration of the time for the redemption of such mortgaged premises, if the same is not redeemed, the person . . . making the sale . . . must make to the purchaser . . . a deed . . . to such premises which shall vest in the purchaser . . . **the same estate that was vested in the mortgagor at the time of the execution and delivery of the mortgage** . . . ; and such deed shall be as valid as if executed by the mortgagor and mortgagee, and shall be a complete bar against each of them”)) (Emphasis added.)

The “estate that was vested in [CRE] at the time of execution and delivery of the mortgage” did not include the WIPT/BRIT lease that Ambort relies upon for his supposed leasehold rights. Rather, the lease was recorded *after* the CRE mortgage. It was subordinate and inferior to the CRE mortgage. SDCL 44-2-1. The lessor, WIPT, and lessee, BRIT, were named as defendants in the Foreclosure Lawsuit and personally served. The Summary Judgment states: “defendants, and *all persons claiming under, by or through them* . . . are forever barred and foreclosed of all right, title, interest and equity of redemption in and to the above-described Real Estate. . . .” (CR 200.) Thus, WIPT and persons claiming under or through it were barred.

E. The assignment on which Ambort relies is an unrecorded conveyance.

Ambort bases his argument primarily on SDCL 21-49-15 and the Court's decision in Peters v. Great W. Bank, Inc., 2015 S.D. 4, 859 N.W.2d 618. But neither requires more of GPB than what happened in the Foreclosure Lawsuit. According to the information available to GPB via a search of the Real Estate's title at the time it commenced the foreclosure, WIPT and BRIT were the parties to the lease with some interest in the Real Estate. Both were joined.

Under South Dakota law:

Every conveyance of real property other than a lease for a term not exceeding one year is void as against any subsequent purchaser or encumbrancer including an assignee of a mortgage, lease, or other conditional estate of the same property, or any part thereof in good faith and for a valuable consideration whose conveyance is first duly recorded. The term "conveyance" as used in this section, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered or by which the title to any real property may be affected, except wills and powers of attorney.

SDCL 43-28-17.

The purpose of this statute is to protect subsequent purchasers or those who hold encumbrances from unrecorded conveyances. The Schleuter Co. v. Sevigny, 1997 S.D. 68, ¶ 11, 564 N.W.2d 309, 312. "As to them, an unregistered deed or mortgage is in all respects as if it did not exist." Id. (quoting 66 AM. JUR. 2D Records & Recording Laws § 161 (1973)). As this Court has held:

The purpose and object of our system of laws for the recording of written instruments affecting the title to real estate cannot be misunderstood. It is to give notice in the manner most likely to prove efficacious, to all who are or may become interested, of such contracts and agreements between parties as may affect the title to such real estate, or the rights and liabilities of parties who may deal in or with reference to it.

Schleuter Co., 1997 S.D. 68, ¶ 11, 564 N.W.2d at 312 (quoting Merrill v. Luce, 6 S.D. 354, 360, 61 N.W. 43, 45 (1894)).

In South Dakota “[p]ublic policy dictates that judgment creditors must be able to rely on the title shown in public records.” Id. (quoting Nussbaumer v. Fetrow, 556 N.W.2d 595, 599 (Minn. Ct. App. 1996)). This public policy could not be more important than in a case like this, where a party like Ambort plays shell games, moving interests around between himself and entities he controls, like a ball hidden under a cup.⁵ The assignment upon which Ambort relies was never recorded. It was generated in 2017, while Ambort was vice president and secretary of WIPT. It was presumably created to allow Ambort to litigate issues against BRIT and others without WIPT having to hire counsel. See Sunflour R.R., Inc. v. Paulson, 2003 S.D. 122, ¶ 9, 670 N.W.2d 518, 521 (“In South Dakota, a director, officer or shareholder of a corporation who is not a licensed attorney is not permitted to appear pro se to represent a corporation.”).

⁵ See “Shell game.” Merriam-Webster.com Simple Definition, Merriam-Webster, <https://www.merriam-webster.com/simple/shell%20game>. Accessed 30 Jul. 2026.

Anyone reviewing records of the Brown County Register of Deeds would find nothing to show that WIPT assigned the lease that pertained to the Real Estate. There is no basis to preserve Ambort's claimed leasehold right when he failed to complete the modest act of recording the assignment that supposedly created it.

F. The Circuit Court correctly found that the lawsuit was frivolous and awarded attorney's fees.

GPB's Motion for Attorney's Fees was 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.

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.”). “A frivolous action exists when the proponent can present no rational argument on the evidence or law in support of the claim.” Johnson, 818 N.W.2d at 808. “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.” Id. “[I]t may become apparent through discovery and other

case developments that a claim or defense has become frivolous under the standard set forth in our case law.” Id.

There is an important distinction that should be made between the narrow argument Ambort presents in this appeal versus the actual claims he pled in the Complaint that GPB had to defend. Ambort’s argument now is focused solely on whether he should have been joined to the Foreclosure Lawsuit. This is an argument Ambort mainly developed *after* the Circuit Court’s summary judgment ruling against him. However, before that, the Court’s review of the record will show that Ambort was trying to utilize an unrelated Circuit Court ruling from the Klapperich Lawsuit as the basis to invalidate GPB’s promissory notes and mortgages. No rational person would have believed this theory would succeed, particularly after a Circuit Court Judge ruled the theory was baseless.

Ambort’s case, as pled, hinged on a poorly contrived legal theory that he simultaneously advanced in multiple lawsuits involving lenders. The theory, as applied in this case, is that actions taken by Ron Clemensen as a member of CT&T and CRE are inseverable from a mortgage against Betty’s Trust land that Ron signed as Betty Clemensen’s power of attorney. So, Ambort’s argument goes, GPB could not enforce the promissory notes signed by Ron Clemensen as a member of CT&T or the mortgage signed by Ron Clemensen as a member of CRE. Ambort took these positions and made these arguments despite a judgment in GPB’s favor on the promissory notes,

which became final during the pendency of this case; and a summary judgment in favor of GPB, entitling it to foreclose its mortgage and sell the CRE real estate.

Ambort did not make a rational argument in favor of his position, particularly in this case which followed the two prior court rulings favoring GPB, of which Ambort was aware. The idea that Ron Clemensen's unlawful actions as a power of attorney concerning a completely different tract of land could somehow invalidate CT&T's separate loan obligation, as well as the security pledged by CRE, when Ron Clemensen was acting a member of those entities and *not acting as power of attorney*, is completely irrational. Ambort cited no persuasive authority supporting such a position.

Ambort also knew that, whatever leasehold interest may have existed, it was in a subordinate position to the CRE mortgage. To get around that, Ambort asked the Court to invalidate GPB's notes and mortgage and essentially strip GPB of any interest in the CRE real estate after the sheriff's sale had occurred. (CR 4.) He continued to urge this theory after it was debunked in a single paragraph by the same Circuit Court Judge on August 23, 2023, in *First Dakota National Bank v. Clemensen and Ambort*, 71CIV22-65. In fact, he filed his September 13, 2023 brief *after* the First Dakota National Bank ruling, and repeated the same nonsense arguments, requiring GPB to respond in a reply brief and appear for hearing. (CR 265-298.) This may explain why Judge Portra saw no need for further argument at the

September 27, 2023 hearing. (CR 434.) Although it should have been imminently clear to Ambort that his theory was futile when he started this lawsuit, by August 23, 2023, he *knew* his theory was futile, and he persisted.

The reality is that Ambort's goal with this lawsuit was simply to disrupt. The Real Estate was abandoned and vacant. (CR 229-230.) If there was a supposed leasehold interest in the Real Estate, neither Ambort nor any of his shell entities were exercising any rights as supposed lessors. The sheriff's sale was conducted on May 5, 2023, and, with no objections made by anyone, the sale was confirmed on May 31, 2023. (CR 211-212.) Ambort then made an eleventh-hour appearance in the Foreclosure Lawsuit to try to assert redemption rights on behalf of CRE. On June 28, 2023, on the eve of the hearing on GPB's motion to shorten the redemption period to 60 days based on the abandonment of the property, he sent an email to Judge Sommers and counsel saying that CRE wanted to pay off the debt and redeem. (CR 220.) GPB resisted this request. (CR 213-224.) The request for a continuance was denied on June 28, 2023. (CR 225.) GPB's motion to shorten the redemption period was then granted. (CR 229-230.) The redemption period was then set to run July 3, 2023.

Despite requesting more time to "redeem the property at issue for the amount due" just two days earlier, tacitly recognizing the validity of both the notes and mortgage, Ambort asserted *two days later* in the June 30, 2023 Complaint in this case that the CT&T promissory notes and CRE mortgage

were void. (CR 4.) He also filed a Notice of Lis Pendens with the Brown County Register of Deeds on June 30, 2023.

In other words, when Ambort couldn't prevent the redemption period from being shortened, he started a frivolous lawsuit against GPB and slandered the title. That way, even when the shortened 60-day redemption period had run, GPB could not deliver clear title to any prospective purchaser of the CRE real estate. The Circuit Court recognized Ambort's conduct as precisely the type of litigation conduct that is appropriately addressed under SDCL 15-17-51. The Order granting GPB its attorney's fees should be affirmed.

CONCLUSION

GPB respectfully urges the Court to affirm the Circuit Court's decisions.

Respectfully submitted this 31st day of July, 2026.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief does not exceed the number of words permitted by SDCL 15-26A-66(b)(2), said brief containing 6,855 words Century Schoolbook, 12-point, and 34,512 characters (no spaces).

Dated this 31st day of July, 2026.

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CERTIFICATE OF SERVICE

The undersigned one of the attorneys for the appellee, hereby certifies that on the 31st day of July, 2026 a true and correct copy of **APPELLEE'S BRIEF** was served via email and via U.S. first class mail on:

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and the original and one copy of APPELLEE'S BRIEF were mailed by first-class mail, postage prepaid to Ms. Shirley Jameson-Fergel, Clerk of the Supreme Court of South Dakota, State Capitol Building, 500 East Capitol Avenue, Pierre, SD 57501-5070. An electronic version of the Brief was also electronically transmitted in Word format to the Clerk of the Supreme Court.

Dated at Aberdeen, South Dakota, this 31st day of July, 2026.

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31430

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

AUG 27 2026

Shirley A. Johnson-Lopez
Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

GLENN AMBORT,
Appellant,

vs.

GREAT PLAINS BANK,
Appellee.

Appeal No. 31430

APPEAL FROM THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT
BROWN COUNTY, SOUTH DAKOTA

THE HONORABLE TONY L. PORTRA
THE HONORABLE JULIA M. DVORAK
Circuit Court Judges

APPELLANT'S REPLY BRIEF

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Notice of Appeal Filed March 31, 2026.

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PRELIMINARY STATEMENT

This appeal does not seek to overturn the foreclosure judgment, disturb the sheriff's deed, reopen the completed sale, or affect title held by any third-party purchaser. For purposes of the limited relief sought in this appeal, Ambort does not dispute that the sheriff's deed under SDCL 21-47-24 ended the asserted leasehold's enforceability against the land. The final Judgment of Dismissal preserves those matters and provides that Ambort's remaining interest, if any, lies solely in the potential monetary value of his claimed leasehold rights as they existed at foreclosure. CR 520, 524.

The narrow question is whether the deed's effect on the land also rendered legally immaterial GPB's failure to name Ambort, a known leasehold-interest holder, under SDCL 21-49-15. Ambort contends it did not. SDCL 21-47-24 addresses the estate that passes upon a completed foreclosure; SDCL 21-49-15 addresses whom the foreclosing plaintiff must name when the action is commenced. The requested relief is limited to a determination whether GPB's non-joinder under SDCL 21-49-15 has any remaining legal consequence, without disturbing the completed sale or title.

ARGUMENT

I. GPB's Points A and B Are Intentionally Abandoned; Its Point C Does Not Present a Separate, Unchallenged Ground for Affirmance.

Ambort intentionally abandons the issues GPB identifies as Points A and B. He does not pursue an appellate challenge to denial of leave to amend, does not seek relief under SDCL 15-6-60(b), and does not seek to vacate the foreclosure judgment or disturb title arising from the completed foreclosure sale.

A. The Counterclaim Ruling Does Not Present a Separate, Unchallenged Ground for Affirmance.

GPB contends that Ambort waived any challenge to the October 2, 2023, order granting partial summary judgment on Count 1 of GPB's counterclaim. RB 16. That contention does not accurately describe either the record or the opening brief.

Before the October 2 order entered, Ambort opposed the premise on which GPB sought summary judgment. In his materials opposing GPB's motion for partial summary judgment, Ambort repeatedly showed that GPB did not name him as a defendant in the foreclosure action despite GPB's actual notice of his leasehold assignment. CR 284, 290, 293, 296, 298. After the circuit court declined further argument at the September 27 hearing, CR 434, Ambort filed a motion to reconsider on September 28, 2023, CR 346, expressly invoking SDCL 21-49-15 and *Peters v. Great Western Bank, Inc.* CR 348. Four days later, the circuit court entered its October 2, 2023, order granting GPB's motion for partial summary judgment, dismissing Ambort's complaint with prejudice, and declaring Ambort's claimed adverse interest extinguished. CR 350. The order contains no analysis of SDCL 21-49-15 or *Peters*.

The opening brief presents the same issue. Its first stated issue asks whether a known leasehold assignee must be joined as a person having an interest in mortgaged property under SDCL 21-49-15. Appellant's Br. 5-6. The opening brief argues that GPB's failure to name Ambort under SDCL 21-49-15 could not be treated as legally immaterial merely because GPB completed foreclosure and obtained a sheriff's deed; identifies the circuit court's failure to apply SDCL 21-49-15 as legal error; and requests reversal of the October 2, 2023, order and the final judgment. Appellant's Br. 10-20, 30.

GPB's Counterclaim Count 1 rested on the same foreclosure-extinguishment premise. GPB sought a declaration that Ambort's alleged adverse interest was extinguished and that title be quieted in GPB. CR 350. Ambort's Count 2 asserted the converse: that GPB could not treat the asserted leasehold as extinguished despite failing to name Ambort individually in the foreclosure action. Thus, although the claims sought opposite property outcomes, both presented the same threshold statutory question: whether GPB's alleged noncompliance with SDCL 21-49-15 could be disregarded because the foreclosure sale was completed and the sheriff's deed issued.

Ambort does not contend that the parties' later stipulated dismissal of GPB's counterclaim automatically vacated the October 2 order. But GPB cannot characterize the order as a separate, unchallenged basis for affirmance. The opening brief challenges the statutory premise on which GPB obtained the ruling: that foreclosure and the sheriff's deed made its failure to name Ambort legally immaterial.

The stipulated dismissal confirms that GPB no longer seeks affirmative relief under its counterclaim. The October 2 order itself declares Ambort's alleged adverse interest extinguished and quiets title in GPB, but it contains no analysis of whether SDCL 21-49-15 required GPB to name Ambort individually or what consequence, if any, follows from the asserted failure to do so. CR 350.

For purposes of the limited relief sought on appeal, Ambort does not seek to disturb the completed foreclosure sale, the sheriff's deed, or title held by any purchaser. The relevant question is whether GPB's failure to comply with SDCL 21-49-15 can be treated as legally immaterial solely because the leasehold can no longer be enforced against the land after the deed issued. If the Court concludes that the statutory issue

remains material, it may reverse the dismissal and remand for the circuit court to determine the consequences, if any, of the alleged non-joinder on the existing claim and record. Any further proceedings would not affect the completed sale, the deed, or title held by any purchaser.

II. The Deed's Effect on the Land Does Not Necessarily Eliminate Every Consequence of Statutory Non-Joinder.

A. The Parties' Agreement on Title Finality Narrows the Issue.

The parties' dispute over the word "extinguished" does not require a decision about present title. GPB argues that the sheriff's deed under SDCL 21-47-24 extinguished the asserted leasehold. Ambort accepts, for purposes of this appeal and the relief requested, that the deed barred and ended the leasehold's enforceability against the land. Neither party now asks this Court to restore the leasehold to the property, reopen redemption, set aside the foreclosure sale, or disturb the title of any purchaser.

That agreement narrows rather than resolves the case. The leasehold's later termination as against the land does not answer whether GPB was required by SDCL 21-49-15 to name Ambort as a defendant when foreclosure was commenced, given GPB's actual notice of Ambort's leasehold assignment before foreclosure. Nor does issuance of the deed, without further analysis, establish that non-joinder caused no legally cognizable injury.

The Court need only determine whether the statutory non-joinder issue remains legally material after issuance of the deed. If it does, the circuit court on remand may determine, on an appropriate record and under governing law, whether GPB's actual notice and Ambort's leasehold assignment required joinder under SDCL 21-49-15,

whether GPB failed to comply with that requirement, and what consequence, if any, follows. The stipulated judgment already limits any remaining relief to the potential monetary value, if any, of Ambort's claimed leasehold rights as they existed at foreclosure. CR 520, 524.

B. SDCL 21-49-15 and SDCL 21-47-24 must be read together.

SDCL 21-49-15 commands that all persons having an interest in, or lien on, mortgaged property at the date of filing shall be named as defendants in the foreclosure action. SDCL 21-47-24 describes the estate conveyed after foreclosure and expiration of redemption. The statutes concern the same foreclosure process and should be construed together so that each has a field of operation.

Ambort's position does not require the Court to unsettle title. GPB argues that, because the WIPT-BRIT lease arose after GPB's mortgage, the sheriff's deed vested the purchaser with the same estate held by the mortgagor when the mortgage was executed. RB 20-21. For purposes of this appeal, Ambort does not request a contrary ruling as to the land. He does not contend that the lease can now be exercised against the property or against a subsequent purchaser.

But the deed's in-rem finality does not answer the distinct question whether GPB was required to name Ambort, a known holder of a leasehold interest, under SDCL 21-49-15, or whether GPB's non-joinder caused a legally cognizable injury. Reading the deed statute to eliminate every consequence of non-joinder would leave the mandatory joinder requirement without practical effect whenever a foreclosing plaintiff completes a sale.

The statutes can be harmonized. SDCL 21-47-24 governs final transfer of the land. SDCL 21-49-15 imposes the antecedent duty to name persons with interests in the mortgaged property. The deed may end enforcement of a subordinate leasehold against the land without necessarily eliminating a claim, if one otherwise exists, arising from the foreclosing plaintiff's failure to comply with the joinder duty.

C. GPB's "claiming under" argument does not resolve statutory non-joinder.

GPB relies on standard foreclosure-judgment language barring persons claiming under, by, or through named defendants. RB 20–21. That general language does not itself determine whether GPB was required to name Ambort individually under SDCL 21-49-15 after GPB received actual notice of Ambort's leasehold assignment.

Ordinarily, a judgment may affect persons whose rights derive from a party. But SDCL 21-49-15 specifically directs a foreclosing plaintiff to name persons having interests in the mortgaged property. Ambort's position is not that privity has no role in foreclosure law. It is that general privity language should not be interpreted so broadly that it makes the Legislature's specific joinder command superfluous as to a known, asserted assignee.

GPB's theory assumes the conclusion it seeks. It treats naming WIPT as an adequate substitute for naming Ambort even though GPB had actual notice of Ambort's leasehold assignment before GPB filed its foreclosure action. CR 376, Exs. 14–15. Whether that assignment and actual notice required joinder under SDCL 21-49-15, and what consequence follows from GPB's non-joinder, are questions the general "claiming under" language does not itself resolve.

D. Ambort Held an Interest Within the Joinder Statute.

A leasehold is a partial interest in real property. *Harding County v. South Dakota State Land Users Ass'n*, 486 N.W.2d 263, 265 (S.D. 1992). The record shows that WIPT assigned to Ambort its interest in a lease concerning the Crossroads property that ran through February 29, 2032. CR 2–3. Thus, Ambort held a direct leasehold interest in the mortgaged property—not merely a general claim against the mortgagor.

Peters v. Great Western Bank, Inc. does not resolve this case against Ambort. The claimant in *Peters* did not possess an interest in the foreclosed property; her asserted right depended on establishing a lien. 2015 S.D. 4, ¶¶ 8-9, 859 N.W.2d at 622. The question here is different: whether an asserted assignee of a leasehold interest qualifies as a person having an interest in the mortgaged property under SDCL 21-49-15.

GPB had actual notice of Ambort's assignment before it commenced foreclosure. A filing served on GPB's counsel in the related proceedings stated that WIPT assigned the Crossroads lease to Ambort and included the assignment. CR 376, Exs. 14-15. GPB does not deny receipt; it relies principally on the fact that the assignment was not recorded in Brown County. RB 22-24.

The absence of recording may bear on priority, enforceability, valuation, or a recording-act defense. But actual notice and recording serve different functions. SDCL 21-49-15 is not textually limited to recorded interests. On the pleaded and record-supported facts, the absence of recording did not permit GPB to treat the asserted interest as nonexistent for purposes of a statutory duty to name persons having an interest in the mortgaged property.

E. Actual awareness of foreclosure is not joinder.

GPB also emphasizes Ambort's knowledge of the foreclosure proceeding and his June 28, 2023, email concerning CRE's requested time to redeem. RB 8-9, 15; CR 220. The email was sent in Ambort's capacity as managing member of CRE, following CRE counsel's reported medical emergency, and sought a continuance to permit CRE to pursue redemption. CR 220.

That communication did not make Ambort an individually named and served foreclosure defendant in his claimed capacity as assignee of WIPT's leasehold interest. Nor did it waive the statutory question whether GPB was required to name and serve him as an individual under SDCL 21-49-15. Ambort's awareness, conduct, and any resulting duty to mitigate may bear on causation, damages, or value. They do not make GPB's non-joinder legally immaterial as a matter of law.

III. The Deed Did Not Necessarily Eliminate the Existing Statutory Non-Joinder Claim.

The parties' stipulation and final judgment materially narrow the appeal. GPB stipulated that its counterclaim could be dismissed with prejudice, that a final appealable judgment could enter, that the completed foreclosure sale and third-party title would remain undisturbed, and that Ambort's remaining interest, if any, was confined to the potential value of the leasehold at foreclosure. CR 520. The final judgment contains the same limitation. CR 524.

Ambort therefore seeks no relief against the property, the completed sale, the sheriff's deed, or a later purchaser. He accepts, for purposes of this appeal, that the deed ended the leasehold's enforceability against the land. The issue is whether that in-rem

result also eliminated the existing statutory claim arising from GPB's failure to name Ambort under SDCL 21-49-15.

The circuit court did not reach that question. Its October 2 order declared the adverse interest extinguished and quieted title in GPB, but it did not analyze SDCL 21-49-15 or determine whether GPB's actual notice and Ambort's leasehold assignment required joinder. CR 350.

The requested relief is limited to reversal of the dismissal to the extent it treated the deed's effect on the land as eliminating the statutory non-joinder claim, and remand for the circuit court to determine in the first instance whether GPB's actual notice and Ambort's leasehold assignment required joinder under SDCL 21-49-15 and, if so, what consequence follows under governing law. No relief is sought that would disturb the completed sale, sheriff's deed, or title held by any purchaser.

IV. The Attorney-Fee Award Cannot Stand.

The circuit court awarded GPB \$12,874.41 in attorney fees under SDCL 15-17-51 after finding Ambort's action frivolous. CR 442-47. A claim is frivolous only when the proponent has no rational argument based on law or fact and no reasonable expectation of a favorable judicial ruling. *Johnson v. Miller*, 2012 S.D. 61, ¶ 12, 818 N.W.2d 804, 808. A claim may fail on the merits without becoming frivolous. *Stratmeyer v. Engberg*, 2002 S.D. 91, ¶ 17, 649 N.W.2d 921, 926.

Ambort's leasehold/non-joinder theory was not frivolous. It rested on: (1) SDCL 21-49-15's command that persons having an interest in mortgaged property be named as defendants; (2) the rule that a leasehold is a partial interest in real property; (3) Ambort's assignment of the lessor's interest under a lease extending through 2032; (4) record

evidence that GPB had actual notice of Ambort's leasehold assignment; (5) GPB's failure to name Ambort in the foreclosure; and (6) a statutory construction that preserves finality of title while giving effect to the Legislature's mandatory joinder command.

The statutory non-joinder position presents a rational argument based on the record and governing law. It therefore cannot fairly be characterized as one for which no reasonable litigant could expect a favorable ruling, regardless of this Court's ultimate disposition on the merits.

The circuit court did not substantively address the distinct statutory theory. It declined oral argument at the summary-judgment hearing, CR 434, denied reconsideration the next day, CR 346, 348, and did not analyze SDCL 21-49-15 or the actual-notice evidence in its merits ruling, CR 434-36. The fee findings focused principally on Ambort's separate trust/note theory, CR 443-47. Treating an abandoned or unsuccessful theory as if it were the whole action, while disregarding the independently pleaded leasehold/non-joinder theory, was an abuse of discretion.

CONCLUSION

Ambort respectfully requests that this Court:

1. Reverse the dismissal of Ambort's statutory non-joinder claim to the extent it treated foreclosure finality and the sheriff's deed as eliminating every consequence of GPB's failure to comply with SDCL 21-49-15;
2. Hold that termination of the leasehold's enforceability against the property under SDCL 21-47-24 does not itself make GPB's noncompliance with SDCL 21-49-15 legally immaterial;

3. Remand for the circuit court to determine in the first instance whether GPB's actual notice and Ambort's leasehold assignment required joinder under SDCL 21-49-15 and, if so, what consequence follows under governing law—without disturbing the completed foreclosure sale, sheriff's deed, or title held by any purchaser; and
4. Reverse the attorney-fee award.

Respectfully submitted this 27th day of August 2026.

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CERTIFICATE OF COMPLIANCE

I certify that this Reply Brief complies with the type-volume limitations of SDCL 15-26A-66. The brief contains 2,671 words, excluding any portions excluded by the applicable rule, as counted by the word-processing software used to prepare it.

/s/ Glenn Ambort

CERTIFICATE OF SERVICE

I certify that on the 27th day of August 2026, I served a true and correct copy of this Appellant's Reply Brief through email as shown below and mailed two (2) printed copies to the Clerk and one copy to Counsel for GPB:

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/s/ Glenn Ambort

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ARGUMENT

I. GPB's Points A and B Are Intentionally Abandoned; Its Point C Does Not Present a Separate, Unchallenged Ground for Affirmance.

Ambort intentionally abandons the issues GPB identifies as Points A and B. He does not pursue an appellate challenge to denial of leave to amend, does not seek relief under SDCL 15-6-60(b), and does not seek to vacate the foreclosure judgment or disturb title arising from the completed foreclosure sale.

A. The Counterclaim Ruling Does Not Present a Separate, Unchallenged Ground for Affirmance.

GPB contends that Ambort waived any challenge to the October 2, 2023, order granting partial summary judgment on Count 1 of GPB's counterclaim. RB 16. That contention does not accurately describe either the record or the opening brief.

Before the October 2 order entered, Ambort opposed the premise on which GPB sought summary judgment. In his materials opposing GPB's motion for partial summary judgment, Ambort repeatedly showed that GPB did not name him as a defendant in the foreclosure action despite GPB's actual notice of his leasehold assignment. CR 284, 290, 293, 296, 298. After the circuit court declined further argument at the September 27 hearing, CR 434, Ambort filed a motion to reconsider on September 28, 2023, CR 346, expressly invoking SDCL 21-49-15 and *Peters v. Great Western Bank, Inc.* CR 348. Four days later, the circuit court entered its October 2, 2023, order granting GPB's motion for partial summary judgment, dismissing Ambort's complaint with prejudice, and declaring Ambort's claimed adverse interest extinguished. CR 350. The order contains no analysis of SDCL 21-49-15 or *Peters*.

The opening brief presents the same issue. Its first stated issue asks whether a known leasehold assignee must be joined as a person having an interest in mortgaged property under SDCL 21-49-15. Appellant's Br. 5-6. The opening brief argues that GPB's failure to name Ambort under SDCL 21-49-15 could not be treated as legally immaterial merely because GPB completed foreclosure and obtained a sheriff's deed; identifies the circuit court's failure to apply SDCL 21-49-15 as legal error; and requests reversal of the October 2, 2023, order and the final judgment. Appellant's Br. 10-20, 30.

GPB's Counterclaim Count 1 rested on the same foreclosure-extinguishment premise. GPB sought a declaration that Ambort's alleged adverse interest was extinguished and that title be quieted in GPB. CR 350. Ambort's Count 2 asserted the converse: that GPB could not treat the asserted leasehold as extinguished despite failing to name Ambort individually in the foreclosure action. Thus, although the claims sought opposite property outcomes, both presented the same threshold statutory question: whether GPB's alleged noncompliance with SDCL 21-49-15 could be disregarded because the foreclosure sale was completed and the sheriff's deed issued.

Ambort does not contend that the parties' later stipulated dismissal of GPB's counterclaim automatically vacated the October 2 order. But GPB cannot characterize the order as a separate, unchallenged basis for affirmance. The opening brief challenges the statutory premise on which GPB obtained the ruling: that foreclosure and the sheriff's deed made its failure to name Ambort legally immaterial.

The stipulated dismissal confirms that GPB no longer seeks affirmative relief under its counterclaim. The October 2 order itself declares Ambort's alleged adverse interest extinguished and quiets title in GPB, but it contains no analysis of whether SDCL 21-49-15 required GPB to name Ambort individually or what consequence, if any, follows from the asserted failure to do so. CR 350.

For purposes of the limited relief sought on appeal, Ambort does not seek to disturb the completed foreclosure sale, the sheriff's deed, or title held by any purchaser. The relevant question is whether GPB's failure to comply with SDCL 21-49-15 can be treated as legally immaterial solely because the leasehold can no longer be enforced against the land after the deed issued. If the Court concludes that the statutory issue

remains material, it may reverse the dismissal and remand for the circuit court to determine the consequences, if any, of the alleged non-joinder on the existing claim and record. Any further proceedings would not affect the completed sale, the deed, or title held by any purchaser.

II. The Deed's Effect on the Land Does Not Necessarily Eliminate Every Consequence of Statutory Non-Joinder.

A. The Parties' Agreement on Title Finality Narrows the Issue.

The parties' dispute over the word "extinguished" does not require a decision about present title. GPB argues that the sheriff's deed under SDCL 21-47-24 extinguished the asserted leasehold. Ambort accepts, for purposes of this appeal and the relief requested, that the deed barred and ended the leasehold's enforceability against the land. Neither party now asks this Court to restore the leasehold to the property, reopen redemption, set aside the foreclosure sale, or disturb the title of any purchaser.

That agreement narrows rather than resolves the case. The leasehold's later termination as against the land does not answer whether GPB was required by SDCL 21-49-15 to name Ambort as a defendant when foreclosure was commenced, given GPB's actual notice of Ambort's leasehold assignment before foreclosure. Nor does issuance of the deed, without further analysis, establish that non-joinder caused no legally cognizable injury.

The Court need only determine whether the statutory non-joinder issue remains legally material after issuance of the deed. If it does, the circuit court on remand may determine, on an appropriate record and under governing law, whether GPB's actual notice and Ambort's leasehold assignment required joinder under SDCL 21-49-15,

whether GPB failed to comply with that requirement, and what consequence, if any, follows. The stipulated judgment already limits any remaining relief to the potential monetary value, if any, of Ambort's claimed leasehold rights as they existed at foreclosure. CR 520, 524.

B. SDCL 21-49-15 and SDCL 21-47-24 must be read together.

SDCL 21-49-15 commands that all persons having an interest in, or lien on, mortgaged property at the date of filing shall be named as defendants in the foreclosure action. SDCL 21-47-24 describes the estate conveyed after foreclosure and expiration of redemption. The statutes concern the same foreclosure process and should be construed together so that each has a field of operation.

Ambort's position does not require the Court to unsettle title. GPB argues that, because the WIPT-BRIT lease arose after GPB's mortgage, the sheriff's deed vested the purchaser with the same estate held by the mortgagor when the mortgage was executed. RB 20-21. For purposes of this appeal, Ambort does not request a contrary ruling as to the land. He does not contend that the lease can now be exercised against the property or against a subsequent purchaser.

But the deed's in-rem finality does not answer the distinct question whether GPB was required to name Ambort, a known holder of a leasehold interest, under SDCL 21-49-15, or whether GPB's non-joinder caused a legally cognizable injury. Reading the deed statute to eliminate every consequence of non-joinder would leave the mandatory joinder requirement without practical effect whenever a foreclosing plaintiff completes a sale.

The statutes can be harmonized. SDCL 21-47-24 governs final transfer of the land. SDCL 21-49-15 imposes the antecedent duty to name persons with interests in the mortgaged property. The deed may end enforcement of a subordinate leasehold against the land without necessarily eliminating a claim, if one otherwise exists, arising from the foreclosing plaintiff's failure to comply with the joinder duty.

C. GPB's "claiming under" argument does not resolve statutory non-joinder.

GPB relies on standard foreclosure-judgment language barring persons claiming under, by, or through named defendants. RB 20-21. That general language does not itself determine whether GPB was required to name Ambort individually under SDCL 21-49-15 after GPB received actual notice of Ambort's leasehold assignment.

Ordinarily, a judgment may affect persons whose rights derive from a party. But SDCL 21-49-15 specifically directs a foreclosing plaintiff to name persons having interests in the mortgaged property. Ambort's position is not that privity has no role in foreclosure law. It is that general privity language should not be interpreted so broadly that it makes the Legislature's specific joinder command superfluous as to a known, asserted assignee.

GPB's theory assumes the conclusion it seeks. It treats naming WIPT as an adequate substitute for naming Ambort even though GPB had actual notice of Ambort's leasehold assignment before GPB filed its foreclosure action. CR 376, Exs. 14-15. Whether that assignment and actual notice required joinder under SDCL 21-49-15, and what consequence follows from GPB's non-joinder, are questions the general "claiming under" language does not itself resolve.

D. Ambort Held an Interest Within the Joinder Statute.

A leasehold is a partial interest in real property. *Harding County v. South Dakota State Land Users Ass'n*, 486 N.W.2d 263, 265 (S.D. 1992). The record shows that WIPT assigned to Ambort its interest in a lease concerning the Crossroads property that ran through February 29, 2032. CR 2–3. Thus, Ambort held a direct leasehold interest in the mortgaged property—not merely a general claim against the mortgagor.

Peters v. Great Western Bank, Inc. does not resolve this case against Ambort. The claimant in *Peters* did not possess an interest in the foreclosed property; her asserted right depended on establishing a lien. 2015 S.D. 4, ¶¶ 8-9, 859 N.W.2d at 622. The question here is different: whether an asserted assignee of a leasehold interest qualifies as a person having an interest in the mortgaged property under SDCL 21-49-15.

GPB had actual notice of Ambort's assignment before it commenced foreclosure. A filing served on GPB's counsel in the related proceedings stated that WIPT assigned the Crossroads lease to Ambort and included the assignment. CR 376, Exs. 14-15. GPB does not deny receipt; it relies principally on the fact that the assignment was not recorded in Brown County. RB 22-24.

The absence of recording may bear on priority, enforceability, valuation, or a recording-act defense. But actual notice and recording serve different functions. SDCL 21-49-15 is not textually limited to recorded interests. On the pleaded and record-supported facts, the absence of recording did not permit GPB to treat the asserted interest as nonexistent for purposes of a statutory duty to name persons having an interest in the mortgaged property.

E. Actual awareness of foreclosure is not joinder.

GPB also emphasizes Ambort's knowledge of the foreclosure proceeding and his June 28, 2023, email concerning CRE's requested time to redeem. RB 8-9, 15; CR 220. The email was sent in Ambort's capacity as managing member of CRE, following CRE counsel's reported medical emergency, and sought a continuance to permit CRE to pursue redemption. CR 220.

That communication did not make Ambort an individually named and served foreclosure defendant in his claimed capacity as assignee of WIPT's leasehold interest. Nor did it waive the statutory question whether GPB was required to name and serve him as an individual under SDCL 21-49-15. Ambort's awareness, conduct, and any resulting duty to mitigate may bear on causation, damages, or value. They do not make GPB's non-joinder legally immaterial as a matter of law.

III. The Deed Did Not Necessarily Eliminate the Existing Statutory Non-Joinder Claim.

The parties' stipulation and final judgment materially narrow the appeal. GPB stipulated that its counterclaim could be dismissed with prejudice, that a final appealable judgment could enter, that the completed foreclosure sale and third-party title would remain undisturbed, and that Ambort's remaining interest, if any, was confined to the potential value of the leasehold at foreclosure. CR 520. The final judgment contains the same limitation. CR 524.

Ambort therefore seeks no relief against the property, the completed sale, the sheriff's deed, or a later purchaser. He accepts, for purposes of this appeal, that the deed ended the leasehold's enforceability against the land. The issue is whether that in-rem

result also eliminated the existing statutory claim arising from GPB's failure to name Ambort under SDCL 21-49-15.

The circuit court did not reach that question. Its October 2 order declared the adverse interest extinguished and quieted title in GPB, but it did not analyze SDCL 21-49-15 or determine whether GPB's actual notice and Ambort's leasehold assignment required joinder. CR 350.

The requested relief is limited to reversal of the dismissal to the extent it treated the deed's effect on the land as eliminating the statutory non-joinder claim, and remand for the circuit court to determine in the first instance whether GPB's actual notice and Ambort's leasehold assignment required joinder under SDCL 21-49-15 and, if so, what consequence follows under governing law. No relief is sought that would disturb the completed sale, sheriff's deed, or title held by any purchaser.

IV. The Attorney-Fee Award Cannot Stand.

The circuit court awarded GPB \$12,874.41 in attorney fees under SDCL 15-17-51 after finding Ambort's action frivolous. CR 442-47. A claim is frivolous only when the proponent has no rational argument based on law or fact and no reasonable expectation of a favorable judicial ruling. *Johnson v. Miller*, 2012 S.D. 61, ¶ 12, 818 N.W.2d 804, 808. A claim may fail on the merits without becoming frivolous. *Stratmeyer v. Engberg*, 2002 S.D. 91, ¶ 17, 649 N.W.2d 921, 926.

Ambort's leasehold/non-joinder theory was not frivolous. It rested on: (1) SDCL 21-49-15's command that persons having an interest in mortgaged property be named as defendants; (2) the rule that a leasehold is a partial interest in real property; (3) Ambort's assignment of the lessor's interest under a lease extending through 2032; (4) record

evidence that GPB had actual notice of Ambort's leasehold assignment; (5) GPB's failure to name Ambort in the foreclosure; and (6) a statutory construction that preserves finality of title while giving effect to the Legislature's mandatory joinder command.

The statutory non-joinder position presents a rational argument based on the record and governing law. It therefore cannot fairly be characterized as one for which no reasonable litigant could expect a favorable ruling, regardless of this Court's ultimate disposition on the merits.

The circuit court did not substantively address the distinct statutory theory. It declined oral argument at the summary-judgment hearing, CR 434, denied reconsideration the next day, CR 346, 348, and did not analyze SDCL 21-49-15 or the actual-notice evidence in its merits ruling, CR 434-36. The fee findings focused principally on Ambort's separate trust/note theory, CR 443-47. Treating an abandoned or unsuccessful theory as if it were the whole action, while disregarding the independently pleaded leasehold/non-joinder theory, was an abuse of discretion.

CONCLUSION

Ambort respectfully requests that this Court:

1. Reverse the dismissal of Ambort's statutory non-joinder claim to the extent it treated foreclosure finality and the sheriff's deed as eliminating every consequence of GPB's failure to comply with SDCL 21-49-15;
2. Hold that termination of the leasehold's enforceability against the property under SDCL 21-47-24 does not itself make GPB's noncompliance with SDCL 21-49-15 legally immaterial;

3. Remand for the circuit court to determine in the first instance whether GPB's actual notice and Ambort's leasehold assignment required joinder under SDCL 21-49-15 and, if so, what consequence follows under governing law—without disturbing the completed foreclosure sale, sheriff's deed, or title held by any purchaser; and
4. Reverse the attorney-fee award.

Respectfully submitted this 27th day of August 2026.

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CERTIFICATE OF COMPLIANCE

I certify that this Reply Brief complies with the type-volume limitations of SDCL 15-26A-66. The brief contains 2,671 words, excluding any portions excluded by the applicable rule, as counted by the word-processing software used to prepare it.

/s/ Glenn Ambort

CERTIFICATE OF SERVICE

I certify that on the 27th day of August 2026, I served a true and correct copy of this Appellant's Reply Brief through email as shown below and mailed two (2) printed copies to the Clerk and one copy to Counsel for GPB:

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