

TUESDAY, NOVEMBER 16, 2010
9:00 A.M.

NO. 1

#25525, #25610

JAY E. LINK,
Plaintiff and Appellant,

vs.

#25525

L.S.I., INC., a South Dakota
Corporation, JOHN E. LINK,
TROY J. LINK, JOHN A. HERMEIER,
LAWRENCE J. JARVELA, TERRY L.
SMITH, DOUGLAS WALZ and
JOHN DOE DEFENDANTS 1-5,
Defendants and Appellees.

JAY E. LINK,
Plaintiff and Appellee,

vs.

#25610

L.S.I., INC., a South Dakota
Corporation, JOHN E. LINK,
TROY J. LINK, JOHN A. HERMEIER,
LAWRENCE J. JARVELA, TERRY L.
SMITH, DOUGLAS WALZ and
JOHN DOE DEFENDANTS 1-5,
Defendants and Appellants.

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The Honorable Jon R. Erickson
Third Judicial Circuit
Jerauld County

(CIV 05-12)

STATEMENT OF THE ISSUES

I. WHETHER THE CIRCUIT COURT INCORRECTLY APPLIED *FIRST WESTERN BANK OF WALL V. OLSEN*, 2001 SD 16, 621 N.W.2D 611, BY ORDERING THAT JAY'S SHARES IN LSI BE REDEEMED AT A PRICE NOT REFLECTING THEIR "FAIR VALUE"?

Although the circuit court correctly concluded that Jay was entitled to receive "fair value" for his shares in LSI, the circuit court mistakenly adopted a value that expressly included discounts associated with the risks involved in a hypothetical transaction to a third-party purchaser of Jay's shares, which are not present in the statutory transaction at issue.

Most relevant authorities:

SDCL § 47-1A-1434
First Western Bank of Wall v. Olsen, 2001 SD 16, 621 N.W.2d 611
Charland v. Country View Golf Club, Inc., 588 A.2d 609 (R.I. 1991)
State v. Belmontes, 2008 SD 97, 757 N.W.2d 219

II. WHETHER THE CIRCUIT COURT ERRED IN NOT ORDERING THE IMMEDIATE PAYMENT OF JAY'S SHARES PURSUANT TO SDCL § 47-1A-1434.6?

The circuit court held that there was no statutory presumption in favor of prompt and immediate payment for the shares under SDCL § 47-1A-1434.6, and ordered that payment for the shares could be made over five years pursuant to SDCL § 47-1A-1434.4, absent any evidence or finding of need to do so, and absent any requirement that LSI post any security for the deferred payment.

Most relevant authorities:

SDCL § 47-1A-1434.4
 3 MODEL BUSINESS CORPORATION ACT ANNOTATED § 14.34
Wilcox v. Vermeulen, 2010 SD 29, 781 N.W.2d 464
Watertown Concrete Prods., Inc. v. Foster, 2001 SD 79, 630 N.W.2d 108

**III. WHETHER THE CIRCUIT COURT ERRED IN DISMISSING
THE ACTION WITH PREJUDICE ALTHOUGH THERE
REMAINED CLAIMS FOR BREACH OF FIDUCIARY DUTY
THAT WERE NEVER TRIED?**

The circuit court adopted Defendants' proposed findings of fact and conclusions of law which included a provision dismissing the action with prejudice, despite the fact that Jay's claims against two individual directors were never tried, and despite the fact that no motion to dismiss the claims was filed, briefed or decided.

Most relevant authorities:

SDCL § 15-6-52(a)

Toft v. Toft, 2006 SD, 91, 723 N.W.2d 546

People ex rel. L.S., 2006 SD 76, 721 N.W.2d 83

Gottschalk v. South Dakota State Real Estate Comm'n,
264 N.W.2d 905 (S.D. 1978)

STATEMENT OF THE ISSUES

WHETHER THE CIRCUIT COURT ERRED IN DENYING LSI'S MOTION UNDER SDCL § 15-6-60(b) TO VACATE JAY'S AWARD OF ACCRUED INTEREST BASED ON HIS FRAUD, MISREPRESENTATIONS, AND MISCONDUCT?

The circuit court denied LSI's motion to vacate this award pending this Court's ruling on Jay's appeal, even though, based on Jay's post-judgment admissions, he (1) had transferred possession and control of his shares, after LSI had filed its election to purchase them, in violation of SDCL § 47-1A-1434.1 (SR 791-804.); (2) had misrepresented to the Court and to LSI, in order to recover the Accrued Interest, that he had been denied the use of his shares, when, in fact, he had used those very shares to secure a \$4,000,000 loan (01/06/10, Norton Aff., Ex. D, at 2-5:App-37-40; SR 767-768:App-46-47; SR 791-804:App-48-61.); and (3) stands to obtain a double recovery as a result of his duplicity, if the award of Accrued Interest is not vacated.

SDCL § 47-1A-1434

SDCL § 15-6-60(b)

Brown v. Hanson, 2007 SD 134, ¶ 13, 743 N.W.2d 677, 681

Esling v. Krambeck, 2003 SD 59, ¶ 8, 663 N.W.2d 671, 676

In re GCC License Corp., 2001 SD 32, ¶ 12, 623 N.W.2d 474, 480

In re West River Elec. Ass'n, 2004 SD 11, ¶ 22, 675 N.W.2d 222, 228