

WEDNESDAY, FEBRUARY 17, 2010
10:00 A.M.

NO. 2

#25327

WESTERN CONSOLIDATED
COOPERATIVE,
Plaintiff and Appellee,

vs.

LYNN PEW AND LYNETTE PEW,
Defendants,

and

LABOLT FARMERS GRAIN COMPANY,
Defendant and Appellant.

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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable Robert L. Timm
Third Judicial Circuit
Grant County

(CIV 05-103)

20-20-10

QUESTIONS PRESENTED

I. Whether there is a genuine issue of material fact as to whether LaBolt's interference was "unwarranted."

The trial court did not rule directly on this issue, but found LaBolt strictly liable for the entire amount of WestCon's grain loss, less credit for the entire amount of property WestCon was able to recover from LaBolt and the Pews.

Authority on Point: SDCL 21-3-3; *Rensch v. Riddle's Diamonds of Rapid City, Inc.*, 393 NW2d 269 (SD 1986); *Northern Finance Corp. v. Midwest Commercial Credit Co.*, 59 SD 282, 239 NW 242 (1931); *Western Idaho Production Credit Association v. Simplot Feed Lots, Inc.*, 678 P2d 52 (Idaho 1984).

II. Whether there are genuine issues of material fact as to the amount of damages WestCon may be entitled to recover.

The trial court denied application of the mitigation of damages defense for LaBolt. The trial court also failed or refused to consider WestCon's admission and other testimony that called into question where the stolen grain was obtained and to whom it was sold.

Authority on Point: *FinAg, Inc. v. Pipestone Livestock Auction Market, Inc.*, 2008 SD 48, 754 NW2d 29; *Great Western Cas. Co. v. Travelers Ind. Co.*, 925 FSupp 1455 (DSD 1996); *Security State Bank v. Benning*, 433 NW2d 232 (SD 1988).

III. Whether there is a genuine issue of material fact as to LaBolt's proportion of fault, for purposes of applying the Uniform Contribution Among Tort-feasors Law.

The trial court held this was an issue to be reached at a later time and refused to apportion fault.

Authority on Point: SDCL 15-8-11 through 15-8-22; *Brown v. Murdy*, 78 SD 367, 102 NW2d 664 (1960); *Northern Fin. Corp. v. Midwest Comm. Credit Co.*, 59 SD 282, 239 NW2d 242 (1931); *Richstein v. Roesch*, 78 SD 451, 25 NW2d 558 (1946).