

TUESDAY, AUGUST 27, 2008
10:00 A.M.

NO. 2

#24734

SCOTT EHRESMANN,
Plaintiff and Appellant,

vs.

DOUGLAS R. MUTH.
Defendant and Appellee.

Mr. Michael A. Henderson
Cadwell, Sanford, Deibert & Garry, LLP
Attorneys at Law
PO Box 1157
Sioux Falls SD 57101
PH 336-0828

(FOR APPELLANT)

Mr. Daniel R. Fritz
Mr. Steven J. Morgans
Lynn, Jackson, Shultz & Lebrun, P.C.
Attorneys at Law
PO Box 2700
Sioux Falls SD 57101
Ph 332-5999

(FOR APPELLEE)

The Honorable William J. Srstka, Jr.
Second Judicial Circuit
Minnehaha County

(CIV 06-971)

STATEMENT OF THE ISSUES

- I. **Did the trial court err in determining as a matter of law that Doug Muth was not the builder or seller of the subject property and therefore owed no duty to Ehresmann under theory of negligence or breach of implied warranty?**

The trial court concluded that even though Doug Muth entered into a contract for deed to sell the subject property to Ehresmann and subsequently executed a warranty deed conveying the property, Muth owed Ehresmann no duty because an earlier purchase agreement between the parties listed an entity controlled by Doug Muth (and not Doug Muth himself) as the seller. Accordingly, the trial court granted summary judgment to Muth.

Relevant Cases:

Bunkers v. Jacobson, 2002 SD 135, 653 N.W.2d 732.

Waggoner v. Midwestern Development, Inc., 154 N.W.2d 803 (S.D. 1967).

Hendrix v. Schulte, 2007 SD 73, 736 N.W.2d 845.

Table Steaks v. First Premier Bank, N.A., 2002 SD 105, 650 N.W.2d 829.

- II. **Did the trial court err in determining that Ehresmann's fraud and deceit claims against Doug Muth failed as a matter of law?**

The trial court granted summary judgment to Muth with respect to these claims.

Relevant Cases and Authority:

Brevet International v. Great Plains Luggage Co., 2000 SD 5, 604 N.W.2d 272.

McKinney v. Pioneer Life Ins. Co., 465 N.W.2d 192 (S.D. 1991).

SDCL 53-4-5.

SDCL 53-4-6.

- III. **Did the trial court err in determining that Ehresmann's negligent misrepresentation claim against Doug Muth failed as a matter of law?**

The trial court granted summary judgment to Muth with respect to this claim.

Relevant Cases:

Bayer v. PAL Newcomb Partners, 2002 SD 40, 643 N.W.2d 409.

Meyer v. Santema, 1997 SD 21, 559 N.W.2d 254.