

Tuesday, November 15, 2011
11:00 A.M.

NO. 3

#26012

STANLEY E. STABLER,
ROSE MARIE STABLER,
BRAD A. STABLER and
BRENDA L. STABLER,
Plaintiffs and Appellees,

vs.

FIRST STATE BANK OF ROSCOE,
a South Dakota corporation and
JOHN R. BEYERS,
Defendants and Appellants,

and

ARNOLD SCHURR d/b/a
SCHURRS, SCHURR FARMS, INC.,
a South Dakota corporation,
ROGER ERNST, IPSWICH STATE
BANK,
Defendants.

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(FOR APPELLEES STABLERS)

The Honorable Scott P. Myren
Fifth Judicial Circuit
McPherson County

(CIV 07-11)

STATEMENT OF ISSUES

1. Whether a \$650,000 promissory note related to pre-bankruptcy liens executed by Brad and Brenda Stabler in favor of FSB was an invalid reaffirmation of debts discharged in their Chapter 7 bankruptcy?

The circuit court held in the affirmative.

First State Bank v. Zoss, 312 N.W.2d 127 (S.D. 1981)

Shields v. Stangler (In re Stangler), 186 B.R. 460 (Bankr. D. Minn. 1995)

Minster State Bank v. Heirholzer (In re Heirholzer), 170 B.R. 938 (Bankr. N.D. Ohio 1994)

11 U.S.C. § 524(a)(2)

11 U.S.C. § 524(c)

2. Whether a 2000 Mortgage and 2002 collateral real estate mortgage entered into by Stan and Rose Marie Stabler in favor of FSB were enforceable by Beyers, when neither the mortgages, nor the debts secured by them, were ever marked as released or satisfied, and when FSB, Beyers, and Brad and Brenda Stabler presented evidence the debts secured by the mortgages were refinanced and then eventually assigned to Beyers?

The circuit court held in the negative.

Jones v. Guaranty and Indemnity Co., 101 U.S. 622 (U.S. 1880)

Nat'l City Bank v. Abdalla, 722 N.E.2d 130 (Ohio App. 1999)

Emerson-Brantingham Implement Co. v. Ainslie, 161 N.W. 1001 (S.D. 1917)

Guaranty State Bank, Claremont, v. Russell, 225 N.W. 53 (S.D. 1929)

SDCL § 44-8-1.4

SDCL § 15-6-56(c)

3. Whether addendums to a collateral real estate mortgage assigned to Beyers were properly filed, and whether Beyers was otherwise entitled to an equitable lien based on the mortgage?

The circuit court held in the negative.

Gust v. Peoples and Enderlin State Bank, 447 N.W.2d 914 (N.D. 1989)

SDCL § 44-8-26

N.D.C.C. § 35-03-17