

STATEMENT OF LEGAL ISSUES

1. The trial court erred in concluding that all of the Cowans' claims were barred, as a matter of law, on the basis of the Bank's affirmative defenses of illegality and *in pari delicto*.

Quick v. Samp, 2005 S.D. 60, 697 N.W.2d 741.
Massey Ferguson Credit Corp. v. Bice, 450 N.W.2d 435 (S.D. 1990).
Restatement (Second) of Torts § 889.
Sexauer v. Watertown Co-operative Elevator Association, 79 N.W.2d 220 (S.D. 1956).

2. The trial court erred in determining that the Bank was entitled to judgment as a matter of law on the Cowans' claim for breach of fiduciary duty.

Brandriet v. Norwest Bank of South Dakota, 499 N.W.2d 613 (S.D. 1993).
Buxcel v First Fidelity Bank, 1999 SD 126, 601 N.W.2d 593.
Garrett v. BankWest, Inc. 459 N.W.2d 833 (S.D. 1990).
Capital Bank v. MVB Bank, Inc., 644 So2d 515, 519 (Fla. App. 1994).

STATEMENT OF THE ISSUES

1. The trial court correctly granted ASB's motion for summary judgment because the Cowans' claims are barred as a matter of law by the doctrine of illegality.

Beverage Co. v. The Villa Marie Co., 69 SD 627, 13 N.W.2d 670 (1944).
Bayer v. Johnson, 400 N.W.2d 884 (S.D. 1987).
Bradley Grain Co. v. Peterson, 267 N.W.2d 836 (S.D. 1978).
First Nat. Bank of Barron v. Strimling, 241 N.W.2d 478 (Minn. 1976).
SDCL § 44-1-12.
18 U.S.C. § 1344.

2. The trial court correctly granted ASB's motion for summary judgment because the Cowans' claims are barred as a matter of law by the doctrine of *in pari delicto*.

Quick v. Samp, 2005 SD 60, 697 N.W.2d 741.
Massey Ferguson Credit Corporation v. Nelson, 450 N.W.2d 435 (S.D. 1990).
Brubaker v. Hi-Banks Resort Corp., 415 N.W.2d 680 (Minn. App. 1987).

3. The trial court correctly granted ASB's motion for summary judgment on the Cowans' claim for breach of fiduciary duty.

Garrett v. BankWest, Inc., 459 N.W.2d 833 (S.D. 1990).
Farm Credit Services of America v. Dougan, 2005 SD 94, 704 N.W.2d 24.
Waddell v. Dewey County Bank, 471 N.W.2d 591 (S.D. 1991).
Buxcel v. First Fidelity Bank, 1999 SD 126, 601 N.W.2d 593.

4. The trial court erred when it denied ASB's motion for summary judgment on the affirmative defense of release.

Parkhurst v. Burkel, 1996 SD 19, 544 N.W.2d 210.

Holzer v. Dakota Speedway, Inc., 2000 SD 65, 610 N.W.2d 787.

SDCL § 20-7-10.

SDCL § 20-7-11.

5. The trial court erred when it denied ASB's motion for summary judgment on the affirmative defenses of waiver and estoppel.

Cooper v. James, 2001 SD 59, 627 N.W.2d 784.

Action Mechanical, Inc., v. Deadwood Historic Preservation Com'n.,

2002 SD 121, 652 N.W.2d 742.

Culhane v. Michels, 2000 SD 101, 615 N.W.2d 580.

6. The trial court erred when it denied ASB's motion for summary judgment by finding that the statute of limitations was tolled by the filing of ASB's lawsuit in 1998.

Saiz v. Horn, 2003 SD 94, 668 N.W.2d 332.

DiNorscia v. Tibbett, 124 A.2d 715 (Del. Super. 1956).

Egeland v. City Council of Cut Bank, Montana, 803 P.2d 609 (Mont. 1990).

SDCL § 15-2-13.

SDCL § 15-2-14.

7. The trial court erred when it denied ASB's motion for summary judgment by finding that genuine issues of material fact exist for trial as to Count IV, negligent misrepresentation.

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

Moore v. Kluthe & Lane Ins. Agency, Inc., 89 SD 419, 234 N.W.2d 260 (1975).

Pickering v. Pickering, 434 N.W.2d 758 (S.D. 1989).

Birt v. Wells Fargo Home Mortg., Inc., 75 P.3d 640 (Wyo. 2003).

SDCL § 20-9-1.

8. The trial court erred when it denied ASB's motion for summary judgment by finding that genuine issues of material fact exist for trial as to Count III, deceit.

Grynberg v. Citation Oil & Gas Corp., 1997 SD 121, 573 N.W.2d 493.

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

SDCL § 20-10-1.

SDCL § 20-10-2.

9. The trial court erred when it denied ASB's motion for summary judgment by finding that genuine issues of material fact exist for trial as to Counts VII and VIII, tortious interference with business relationships and expectancies.

Hayes v. Northern Hills General Hosp., 1999 SD 28, 590 N.W.2d 243.

Landstrom v. Shaver, 1997 SD 25, 561 N.W.2d 1.

McGreevy v. Daktronics, Inc., 156 F.3d 837 (8th Cir. 1998).

10. The trial court erred when it denied ASB's motion for summary judgment by finding that genuine issues of material fact exist for trial as to Count IX, slander of title.

Gregory's, Inc. v. Haan, 1996 SD 35, 545 N.W.2d 488.

Johnson v. Kirkwood, Inc., 306 N.W.2d 640 (S.D. 1981).

Sabbagh v. Professional & Business Men's Life Ins. Co., 79 SD 615,
116 N.W.2d 513 (1962).

11. The trial court erred when it denied ASB's motion for summary judgment by finding that genuine issues of material fact exist for trial as to Count X, intentional infliction of emotional distress.

Maryott v. First Nat. Bank of Eden, 2001 SD 43, 624 N.W.2d 96.

Harris v. Jefferson Partners, L.P., 2002 SD 132, 653 N.W.2d 496.

12. The trial court erred when it denied ASB's motion for summary judgment by finding that genuine issues of material fact exist for trial as to Count XI, negligent infliction of emotional distress.

Maryott v. First Nat. Bank of Eden, 2001 SD 43, 624 N.W.2d 96.

First Nat. Bank in Sioux Falls v. Drier, 1998 SD 1, 574 N.W.2d 597.

13. The trial court erred when it denied ASB's motion for summary judgment by finding that genuine issues of material fact exist for trial as to Count XIII, punitive damages.

Dahl v. Sittner, 474 N.W.2d 897 (S.D. 1991).

Maryott v. First Nat. Bank of Eden, 2001 SD 43, 624 N.W.2d 96.

Hannahs v. Noah, 83 SD 296, 158 N.W.2d 678 (1968).

SDCL § 21-3-2.