

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 26374

L & L PARTNERSHIP, et al,

Plaintiffs-Appellees,

vs.

DAVID M. FINNEMAN; CONNIE S. FINNEMAN;
ROCK CREEK FARMS, SUCCESSORS IN INTEREST TO
DAVID FINNEMAN AND CONNIE S. FINNEMAN, et al,

Defendants-Appellants Finnemans.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA
Honorable James W. Anderson, Circuit Court Judge, presiding
Court File No. C10-316

Notice of Appeal filed on June 4, 2012

APPELLANTS' FINNEMANS' OPENING BRIEF

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JURISDICTIONAL STATEMENT

Appellants-Defendants David and Connie Finneman, husband and wife and farmers, hereinafter referred to as “the Finnemans,” appeal to this Court the trial court’s stripping of their statutory right to cure the breach of two contracts for deed that the Finnemans, as vendees, entered into with the vendor L & L Partnership, a/k/a Lutz & Laidlaw Partnership (“L&L”). The two contracts for deed involve about 9,200 acres of agricultural lands located in Pennington and Meade Counties. The trial court substituted Ann Arnoldy, a complete stranger to the contracts for deed, granting her their vendees’ redemption rights, rather than allowing the Finnemans as the contract for deed vendees or their assignee partnership Rock Creek Farms, to exercise the contract for deed vendee’s statutory right to cure a default and thereby save their substantial equity in the farmland.

This appeal is also based on the trial court’s failure to grant the Finnemans’ motion to invalidate the secret sheriff’s deed concerning the contract for deed lands. The secret deed was prepared by counsel for Ann Arnoldy; it was secretly signed and filed, without prior notice to or approval of the trial court, and without prior notice and opportunity to be heard for the landowner L & L Partnership, or the Finnemans, or their general partnership Rock Creek Farms. The secret deed wrongfully granted all of the 9,200 acres of contract for deed land to Ann Arnoldy without due process of law or court approval. The deed should have been set aside as illegal, unauthorized by the trial court, and void ab initio. The Finnemans filed their Notice of Appeal on June 4, 2012. Rec pp. 719-722.¹ The Finnemans’ Notice of Appeal was filed timely.

¹ “Rec” refers to the record of the pleadings created by the Pennington County Clerk of Courts for this Appeal.

STATEMENT OF LEGAL ISSUES

The Finnemans raise the following issues in this appeal:

- I. Did the trial court err in granting the vendees' redemption rights to Ann Arnoldy, a stranger to the contracts for deed, rather than allowing the contract for deed vendees, the Finnemans, or their assignee partnership Rock Creek Farms, to exercise their contract for deed vendee's statutory right to cure a default under the contracts for deeds?

The trial court stripped from the contract for deed vendees, the Finnemans and their assignee partnership Rock Creek Farms, the vendee's statutory right to cure the default in the two contracts for deeds. The trial court allowed a junior lienholder, Ann Arnoldy, a stranger to the contracts for deed, to exercise the vendees' right to redeem all of the 9,200 acres of land from the contract for deed foreclosure. The trial court erred in doing so. If allowed to stand, the Finnemans and their assignee partnership Rock Creek Farms will lose millions of dollars of equity in the land built up since 1996. The most relevant cases concerning this issue are:

- a) *VanGorp v. Sieff*, 624 N.W.2d 712; (S.D. 2001)
- b) *Anderson v. Aesoph*, 697 N.W. 2d 25 (S.D. 2005); *Scott v. Hetland*, 213 N.W. 732 (S.D. 1927); and
- c) *Heikkila v. Carver*, 378 N.W.2d 214 (S.D. 1985); Henderson, Justice (dissenting).

The most relevant statutory authority concerning this issue is:

- a) SDCL § 21-50-3.

- II. Did the trial court err by substituting Ann Arnoldy for the contract vendees David and Connie Finneman and their assignee partnership Rock Creek Farms, and by transferring to her their vendees' statutory redemption rights?

The trial court substituted Ann Arnoldy, a stranger to the two contracts for deed, for the contract vendees, the Finnemans and their assignee partnership Rock Creek Farms, and gave her their statutory vendees' redemption rights, even though Ann Arnoldy made a motion to be substituted for CLW, and even though Ann Arnoldy requested that her motion be considered post trial. The trial court did not consider Ann Arnoldy's substitution motion post trial.

The most relevant case concerning this issue is:

- a) *Ostwald v. Ostwald*, 331 N.W.2d 64 (S.D. 1983).

The most relevant statutory authority or rule of civil procedure concerning this issue is:

- a) SDCL § 15-6-25 (c).

- III. Did the trial court err in denying Finnemans' motion to invalidate the Arnoldy deed, which was secretly prepared by counsel for Arnoldy, and signed and filed without prior notice to or prior approval of the trial court, and without prior notice and opportunity to be heard for the landowner vendor L & L Partnership, or the vendees, the Finnemans or their assignee partnership Rock Creek Farms?

The secret deed in the Rabo case wrongfully granted to Arnoldy all of the 9,200 acres of contract for deed land, and the millions of dollars of the vendees' equity in the land built up since 1996. The Arnoldy's secret deed transferred to Ann Arnoldy, without notice or opportunity to be heard, an unearned windfall to her of millions of dollars of equity in the land that was earned over the years by the Finnemans and their assignee

partnership Rock Creek Farms. The trial court denied Finnemans' motion to invalidate the secret deed, even though the trial court, the landowner L & L Partnership, the Finnemans, and their assignee partnership Rock Creek Farms, had not been given any prior notice of the Arnoldy's preparation, signing, and filing of the secret deed. The most relevant cases concerning this issue are:

- a) *Texas American Bank/Levelland v. Morgan, et. al.*, 733 P.2d 864, 865, 105 N.M. 416 (1997); and
- b) *Manufacturer's Bank & Trust Co. of St. Louis v. Lauchli*, 118 F2d 607, 610 (8th Cir 1941).

The most relevant statutory authorities concerning this issue are:

- a) SDCL § 21-47-1 et. seq.;
- b) SDCL § 21-50-1 et. seq.; and
- c) SDCL § 21-52-1 et. seq.

STATEMENT OF THE CASE AND FACTS

Statement of the Case

This appeal concerns the action of the trial court stripping from the Finnemans, and their assignee partnership Rock Creek Farms, their vendees' statutory right to cure a default in the two contracts for deed entered into in 1996 and 1999, by the Finnemans as the vendees and L&L Partnership as the vendor. The trial court wrongfully gave the vendee's statutory redemption rights to Ann Arnoldy, a complete stranger to the contracts for deeds. The two contracts for deed describe about 9,200 acres of agricultural land located in Pennington and Meade Counties, South Dakota. Rock Creek Farms, a partnership between the Finnemans and Warrenn Anderson, acquired the land and the vendees' redemption rights from the Finnemans by quit claim deeds.

There were numerous secured debts on the Finnemans' land, and several foreclosure proceedings and two declaratory judgment suits were filed, namely:

- a) *FarmPro Services, Inc. v. David M. Finneman, et. al.*, filed in the Circuit Court for the Seventh Judicial Circuit, Pennington County, South Dakota, File No. C02-533 ("FarmPro Case");
- b) *Michael Arnoldy and Ann Arnoldy v. David Finneman, et. al.*, filed in the Circuit Court for the Seventh Judicial Circuit, Pennington County, South Dakota, File No. C08-1845 ("Arnoldy Case");
- c) *Rabo AgriFinance, Inc., et. al. v. David M. Finneman, et. al.*, filed in the Circuit Court for the Seventh Judicial Circuit, Pennington County, South Dakota, File No. C09-1211 ("Rabo Case");
- d) *L & L Partnership, et. al. v. David M. Finneman, et. al.*, filed in the Circuit Court for the Seventh Judicial Circuit, Pennington County, South Dakota, File No. C10-316 ("L&L Case"); and
- e) *David M. Finneman, et. al. v. L & L Partnership, et. al.*, filed in the Circuit Court for the Seventh Judicial Circuit, Pennington County, South Dakota, File No. C09-742 ("Finneman Dec. Action").

On January 15, 2010, the trial court in the Rabo case entered the Judgment and Decree of Foreclosure granting Rock Creek Farms the owner's right of redemption under SDCL 21-52-7. On March 18, 2011, Ann Arnoldy redeemed the land from the foreclosure sale held in the Rabo case. However, on May 26, 2011, before the owner's redemption rights ended, the trial court in the Rabo case stripped Rock Creek Farms of its redemption rights approximately 16 months after the trial court had granted Rock Creek Farms the owner's redemption rights in the land foreclosed on in the Rabo case. On March 13, 2012, this Supreme Court dismissed the Finnemans' appeal of the trial court's order dated May 26, 2011, that stripped the Finnemans' assignee Rock Creek Farms of its owner's redemption rights granted in the Judgment and Decree of Foreclosure dated January 15, 2010. This Supreme Court dismissed the Finnemans' appeal, because not all of the forty-two

defendants in the Rabo case, including the United States of America, were given notice of the appeal. *Rabo Agrifinance, Inc. v. Rock Creek Farms*, 2012 S.D. 20, ¶ 9. This Supreme Court did so even though all defendants, except for Ann Arnoldy, failed to exercise their statutory rights of redemption and were essentially non-parties, including the United States. Ann Arnoldy has voluntarily paid the United States lien on the land. On April 24, 2012, the United States, through Assistant U.S. Attorney Holmgren, filed a motion to dismiss the United States from this action, because “it no longer has an interest in the property that is the subject of this litigation.” Rec pp. 559-560. The Finnemans filed a Rule 60(b) motion in the Rabo case and filed a Joinder to Rock Creek Farms’ 60(b) motion. The Rabo court determined that it did not have the authority to consider Rock Creek Farms’ Rule 60(b) motion. The Rabo trial court assumed that the matter would be appealed to this Supreme Court.

Trial was held in this case on July 25, 2011, on L&L’s foreclosure complaint. Prior to trial Ann Arnoldy moved the trial court, “. . . pursuant to SDCL § 15-6-25(c), for the substitution of Ann Arnoldy as a party Defendant in place of CLW, which was ordered substituted for Rabo AgriFinance, Inc. . . .” Ann Arnoldy also moved that the trial court take judicial notice of all pleadings filed in the Rabo case. No parties objected to the court taking judicial notice of the pleadings filed in the Rabo case, and the motion was granted. At the commencement of the trial, the trial court considered Ann Arnoldy’s motion to substitute parties. Her attorney stated, “Rather than do another issue, I think the Court can rule on my motion after this hearing and that would alleviate another appeal issue. Rock Creek Farms’ objection, that the motion is not timely is accurate, and I think

the Court can take this up in a couple of days.” TT p. 9, ll. 17-23.² The trial court did not consider the motion to substitute post trial. Several motions were considered post trial, but not Ann Arnoldy’s motion to substitute parties. At the hearing held on Rock Creek Farms’ motion to invalidate the sheriff’s deed, the trial court denied the motion, stated that “The court is adopting the Arnoldy position in total. I am going to sign the proposed Findings of Fact and Conclusions of Law by Mr. Schaub.” MHT p. 11, ll. 1-10.³ The trial court’s conclusion of law No. 8 provides that, “Ann Arnoldy is substituted for Defendants Rock Creek Farms Partnership, whose interest in the land has been extinguished by virtue of the decision of *Rabo v. Finnemans*, 2012 SD 20.” The trial court signed the Arnoldys’ proposed findings of fact and conclusions of law (see App. A)⁴ and filed an unsigned judgment of foreclosure (see App. B) in total. MHT p. 11 ll. 1-10; Rec pp. 436-447 and Rec pp. 499-510. It did so even though every party appearing at trial objected to them. Rec pp. 421-429; 537-541; and 544-554.

Statement of the Facts

The L&L Partnership sold about 9,200 acres of farmland located in Meade and Pennington Counties to David and Connie Finneman under two contracts for deed. The first contract for deed dated April 29, 1996 (“the 1996 Contract”), covers about 6,950 acres in Meade County, and the second contract for deed dated October 13, 1999 (“the 1999 Contract”), covers about 2,250 acres in Pennington County. TT pp. 12-13, l. 23-1. When the parties entered into the 1996 contract for deed, the land was encumbered by a

² “TT” refers to the transcript of the Court Trial held on July 25, 2011, prepared by Court Reporter Cynthia M. Weichmann.

³ “MHT” refers to the transcript of the Trial Court’s Motions Hearing and the Court’s ruling, dated April 10, 2012, prepared by Court Reporter Kathy L. Davis.

⁴ “App.” refers to this Brief’s Appendix.

note and mortgage granted by the landowner L&L Partnership to Equitable Life Insurance Society of the United States n/k/a Rabo Equitable (“Equitable”), securing indebtedness of approximately \$1,700,000 owed by L&L Partnership to Equitable. TT p. 13, ll. 3-8. The Finnemans owned approximately 7,500 acres of farmland in fee. The Finnemans farmed and raised crops on about 16,700 acres of land, which included their 7,500 acres of deeded land and their 9,200 acres of contract for deed land. The Finnemans farmed and paid secured debts and property taxes for many years on the land. The Finnemans made a \$400,000 down payment on the 1996 contract for deed. TT p. 13, l. 23. The Finnemans made payments over the years and their receiver made payments on their behalf. L&L Partnership was paid over \$2,116,000 on the 1996 contract for deed. Rec p. 511. The Finnemans and their receiver paid L&L Partnership over \$885,500 under the 1999 contract for deed. Rec pp. 308-310, 513-514. In addition, the Finnemans over the years paid over \$3,000,000 to other creditors that held a security interest in their land.

Several foreclosure actions have been commenced concerning the land, which are identified above. The Finnemans had land but no money to redeem. They sought and found an investor, Warren Anderson, to help them save their land. Warren Anderson desired an ownership interest in the land rather than a mortgage interest in the land, so the Rock Creek Farms Partnership was formed. The Finnemans put their land in the partnership, and Warren Anderson put money in to pay the debts being foreclosed on to save the equity in the land. The Finnemans transferred ownership of the land to their partnership Rock Creek Farms by recorded quit claim deeds.

The first foreclosure action was the FarmPro case. FarmPro made the highest bid of \$1,439,130 at the foreclosure sale. FarmPro sold and assigned the Certificate of Sale to

Lee Ahrlin on May 10, 2006. On April 27, 2007, Michael Arnoldy paid about \$32,000 for an assignment of a judgment of Daimler Chrysler, CIV02-534, against the Finnemans, which with interest totaled about \$92,700. On May 3, 2007, Michael Arnoldy also took an assignment of a judgment of Farmers Union Oil Co., SMC04-10, against the Finnemans, which with interest totaled about \$3,700 for an unknown amount of money. Michael Arnoldy used these judgments to qualify as a redemptionor and paid \$1,765,232 to redeem from Ahrlin. On May 7, 2008, Warrenn Anderson's straw man Daniel R. Mahoney ("Mahoney") redeemed the land by paying Michael Arnoldy \$2,113,000, which amount included the \$822,000 paid by Rock Creek Farms to extend the redemption time period for one year. Warrenn Anderson provided the redemption money. Ann Arnoldy paid about \$300,000 for an assignment of a judgment of U.S. Bancorp Equipment Finance, Inc. (U.S. Banco), CIV05-206, against the Finnemans, which with interest totaled about \$1,600,000 as of April 27, 2007. On April 26, 2007, Ann Arnoldy paid about \$70,000 for an assignment of two judgments of Pioneer Garage, Inc. (Pioneer Garage), CIV01-5, against the Finnemans, which with interest totaled about \$195,000 as of April 26, 2007. These judgments were assigned on March 18, 2011, to Debra Schaub, who is apparently related to Ann and Michael Arnoldy's attorney Robert Schaub. Ann Arnoldy used these judgments and paid about \$1,254,570 to redeem from Daniel R. Mahoney. Rock Creek Farms paid Ann Arnoldy about \$1,291,220 to redeem as the owner's redemption. Ann Arnoldy accepted the owner's redemption money from Rock Creek Farms. Ann and Michael Arnoldy, as siblings and joint venturers, commenced the Arnoldy case to determine the validity of the redemption by Rock Creek Farms and the redemption by Dan Mahoney. Rock Creek Farms was precluded from doing discovery in

the Arnoldy case to determine who was financing the Arnoldys, who was the real party in interest, and other important matters.

The property was also sold in the Rabo case. On March 18, 2011, Ann Arnoldy redeemed the land from the foreclosure sale held in the Rabo case. The court in the Rabo case in the judgment and decree of foreclosure January 15, 2010, granted the owner's right of redemption to Rock Creek Farms, but about sixteen months later, without an evidentiary hearing, the trial court stripped Rock Creek Farms of the owner's redemption rights with the order of May 26, 2011. The Finnemans and Rock Creek Farms had buyers lined up to purchase a portion of the land, and use the proceeds to pay all debt on the land, including the lien of the United States. The buyers needed to obtain merchantable title to the land purchased. Given all the litigation involved, Rock Creek Farms moved for court supervision of the sale process to insure merchantable title for the buyers. That motion was denied by the Rabo trial court. Instead, in a bizarre twist, without an evidentiary hearing the Rabo trial court stripped Rock Creek Farms of its owner's redemption rights. The trial court stripped Rock Creek Farms of its statutory right to cure the default in the 1996 and 1999 contracts for deed, and instead allowed Ann Arnoldy, a stranger to these contracts for deed, to redeem.

In some arrangement that has not been disclosed, Arnoldys' counsel secretly prepared a deed in the Rabo case, got the sheriff to sign it, and filed it in the offices of the Register of Deeds of Pennington County and Meade County on about June 2, 2011. The secret deed purports to convey to Ann Arnoldy, without notice or opportunity to be heard, and without an evidentiary hearing in the Rabo case or in this case, all 16,700 acres of the land worth millions of dollars. The Finnemans are farmers but they do not have their land

to farm. Ann Arnoldy has the secret deed to the land, but she is a lawyer, not a farmer. She claims the secret deed gives her the right to lease out all the land and collect all the lease income for 2012. Her brother Michael Arnoldy is a farmer, and he and others are apparently either farming or leasing the land for 2012. The lease income for 2012, collected by the Arnoldys should be over \$600,000. This is money that Rock Creek Farms should be able to use to make the owner's redemption to save the land and the equity in the land.

ARGUMENT

I. Standard of Review

The Standard of Review is well settled.

This Court reviews questions of fact under the clearly erroneous standard of review.” *Estate of Moncur*, 2012 S.D. 17, ¶10; citing *Weekley v. Prostrullo*, 2010 S.D. 13, 778 N.W.2d 823; *In re Regennitter*, 1999 S.D. 26, ¶11, 589 N.W.2d 920, 923). However, we review purely legal questions de novo, giving no deference to the trial court's findings. *Estate of Moncur*, 2012 S.D. 17, ¶10; citing *Estate of Stevenson*, 2000 S.D. 24, ¶7, 605 N.W.2d at 820 (citing *Lustig v. Lustig*, 1997 S.D. 24, ¶5, 560 N.W.2d 239, 241).

When this Standard of Review is applied here, it is clear that the trial court made several reversible errors.

II. The Trial Court Clearly Erred in Granting Redemption Rights to a Stranger to the Contracts for Deed, Rather Than Allowing Rock Creek Farms to Avail Itself of its Statutory Right to Cure any Default Under the Contracts for Deeds.

The trial court ignored completely the restrictions imposed by South Dakota law as to who may cure a default in performance under a contract for deed. Our legislature in

SDCL § 21-50-3, restricts who may cure a default in performance under a contract for deed to only the buyer or vendee. SDCL § 21-50-3 reads in pertinent part:

Upon the trial of an action under this chapter **the court shall** have power to and by its judgment shall **fix the time within which the party or parties in default must comply with the terms of such contract on his or their part**, which time shall be not less than ten days from the rendition of such judgment . . . (emphasis added)

Instead of following this statutory mandate and allowing Rock Creek Farms to cure the default under these contracts for deed, the trial court wrongfully allowed a stranger to the contract, Ann Arnoldy, to redeem and wrongfully gain the unearned windfall of the owner's equity in the land worth many millions of dollars. The trial court erred gravely in doing so. This statute is unambiguous. It clearly restricts who may cure a default in a contract for deed. This Court has so interpreted this statute in *Staab v. Skoglund*, 234 N.W.2d 45 (S.D. 1975). This Court stated that:

[I]t is understandable why plaintiff should have desired not to bring an action for strict foreclosure of the contract under the provisions of SDCL 21-50 in view of the absolute statutory rights given to a contract vendee under the provisions of SDCL 21-50-3, and given this court's liberal interpretation of a contract vendee's rights. . . .

A trial court may not grant a junior lienholder the right to redeem in a contract for deed foreclosure action brought under Chapter 21-50. The right to redeem property from a foreclosure is purely statutory and "can be exercised only within the period and in the manner prescribed by law." *VanGorp v. Sieff*, 624 N.W.2d 712 (S.D. 2001); citing *Dardanella Fin. Corp. v. Home Fed. Sav. & Loan*, 392 N.W.2d 834, 835 (S.D. 1986). Chapter 21-50 does not create redemption rights per se. Rather it gives the contract for deed buyer [or buyers' assignee in this case] the exclusive statutory right to comply with the terms of the contract. It provides the vendee an exclusive statutory right to cure a

default. See, *Heikkila v. Carver*, 378 N.W.2d 214 (S.D. 1985); and *Prentice v. Classen*, 355 N.W.2d 352 (S.D. 1984). This Court in *BankWest v. Groseclose*, 535 N.W.2d 860 (S.D. 1995) stated that a contract for deed buyer has a right of redemption (contract purchaser has a right to redeem within minimum ten day period), citing, SDCL § 21-50-3. This Court has held that an assignee of a contract for deed has rights of redemption when the property was conveyed to the assignee by a quit claim deed. *Anderson v. Aesoph*, 697 N.W.2d 25 (S.D. 2005).

Even though Ann Arnoldy may be able to redeem land from the Rabo foreclosure sale under the different redemption statutes applicable in a mortgage foreclosure action, Chapter 21-52, Ann Arnoldy must now abide by different statutes that are applicable in this L&L contract for deed foreclosure action Chapter 21-50. By statute, as a junior lienholder she has no redemption rights in this contract for deed foreclosure. Redemptions in contract for deed foreclosures are not governed by Chapter 21-52, but instead by Chapter 21-50. Under SDCL § 21-50-3, the court is empowered to “. . . fix the time within which the party or parties in default must comply with the terms of such contract on his or her or their part . . .” The statute specifically contemplates that only the party obligated under the contract is entitled to prevent reversion of title by payment of the contract. Cf. *In re Carver*, 828 F.2d 463 (8th Cir. 1986) discussing the effect of a judicially decreed period of redemption under SDCL § 21-50-3. No section of Chapter 21-50 affords any lien creditor, such as Ann Arnoldy, a right of redemption. The right of redemption is afforded only to the Finnemans as vendees, and to their assignee partnership Rock Creek Farms alone. This statute clearly does not allow strangers to the

contract to redeem. The trial court plainly erred in allowing Ann Arnoldy to redeem the contract for deed land in the L&L contract for deed foreclosure action.

The trial court erroneously allowed Ann Arnoldy to redeem the contracts for deed. She was not a buyer or vendee; rather she was a stranger to the contracts for deed. She became a judgment creditor by taking an assignment of certain judgments against the Finnemans. The trial court was incorrect on the law. She has no right to redeem.

Redemption has been statutorily defined as:

Redemption is the right to repay the amount paid for real property or any interest thereon, sold on foreclosure of a real estate mortgage
(Emphasis added).

SDCL § 21-52-1. The contract for deed land was not sold as a result of a foreclosure of a real estate mortgage. No sale was held. The trial court has failed to distinguish between the two separate and distinct statutory foreclosure proceedings allowing Ann Arnoldy, a judgment creditor and a stranger to the contract, to redeem. The trial court clearly erred in doing so. This error constitutes reversible error requiring that the trial court's decision be vacated and the matter remanded back to the trial court.

III. The Trial Court Failed to Follow this Court's Procedural Rules in Substituting Ann Arnoldy for Rock Creek Farms.

The trial court erred in substituting Ann Arnoldy for Rock Creek Farms. SDCL § 15-6-25 prescribes the circumstance under which a party may be substituted for another party. The pertinent portion of this Court's procedural rule reads:

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in SDRCP 25(c).

This rule is inapplicable here, because Rock Creek Farms did not transfer its ownership interest in these lands and because the secret sheriff's deed (see App. C) issued is invalid for the reasons discussed earlier. This rule is also inapplicable here because Ann Arnoldy requested to be substituted for CLW rather than for Rock Creek Farms. Rec pp. 188-190. Moreover, when Rock Creek Farms resisted Ann Arnoldy's motion for substitution, Ann Arnoldy requested that her motion be considered post trial. When the trial court queried Ann Arnoldy if she was going to move to have Rock Creek Farms not participate at trial if her motion was granted she requested that her motion be considered post trial. TT p. 9, ll. 12-23. However, Ann Arnoldy never set her motion for substitution of parties for a hearing post trial. Rather, Ann Arnoldy merely added a conclusion of law, which the trial court did not make at trial or during a motions hearing, to her proposed findings. The trial court adopted Ann Arnoldy's position and her proposed findings of fact and conclusions of law in total. MHT p. 11, ll. 1-10; Rec pp. 436-447, 499-510. The trial court did so even though all of the other parties objected to her proposed findings of fact and conclusions of law. Rec pp. 421-429, 537-541, 544-554. The trial court clearly erred in doing so.

The rationale behind this Court's SDRCP 25(c) is to insure that the action is brought by the real party in interest. If issues are raised prior to the commencement of trial, the issue is addressed under SDRCP 17(a); but if the transfer occurs after the commencement of the case, it is governed by SDCRP 25(c). See, *Ostwald v. Ostwald*, 331 N.W.2d 64 (S.D. 1983); 3B Moore's Federal Practice, P25.08, at 25 77, 25 78 (2d. ed. 1948). Rock Creek Farms is the real party in interest with standing to redeem. Rock Creek Farms has invested several million dollars in the property to save the Finnemans' substantial equity in the land. As discussed earlier, Rock Creek Farms is the only party

that may cure the default under the two contracts for deed. Rock Creek Farms was ready, willing, and able to do so prior to the trial court's stripping it of that right and wrongfully giving it to a stranger to the contract, Ann Arnoldy.

Rock Creek Farms did not transfer its interest in the land. The sheriff signed a deed to all the land with the Rabo case heading, which was prepared and filed by Arnoldys' attorney, without court approval, apparently without the advice of its counsel, without notice and opportunity to be heard for the Finnemans or their partnership Rock Creek Farms, and without an evidentiary hearing with live testimony and cross examination. When the secret deed was being prepared the five separate cases identified earlier were all pending in the Seventh Judicial Circuit Court in Pennington County. 1. (File No. C02-533 ("FarmPro Case")); 2. File No. C08-1845 ("Arnoldy Case"); 3. File No. C09-1211 ("Rabo Case"); 4. File No. C10-316 ("L&L Case"); and 5. File No. C09-742 ("Finneman Dec. Action"). Ann Arnoldy did not seek approval from any of these courts or judges prior to her secretly preparing a deed to all of the 16,700 acres, and in a secret meeting getting the sheriff to sign the judicially unauthorized deed, and secretly filing the deed conveying all of the land (about 7,500 acres deeded and about 9,200 acres contract for deed land) to lawyer Ann Arnoldy. In doing so, the Arnoldys (a) usurped the jurisdiction and authority of the judges and circuit courts involved with the land and the parties in the five cases identified above, and (b) the Arnoldys violated the basic due process rights of L&L Partnership, the Finnemans, and their partnership Rock Creek Farms.

IV. The Trial Court Erred in Denying the Finnemans' and Rock Creek Farms' Motions to Invalidate the Sheriff's Deed

The secret deed prepared and filed with the Register of Deeds for Pennington and Meade Counties without judicial approval purports to transfer all 16,700 acres of land (about 7,500 acres deeded and about 9,200 acres contract for deed land) to lawyer Ann Arnoldy. The secret deed was prepared, without prior notice to or judicial approval by, any of the judges or circuit courts listed above that have jurisdiction over five cases that involve the land and the issues concerning the land. The secret deed was prepared, signed, and filed without any prior notice and opportunity to be heard to L&L Partnership, the Finnemans, or their partnership Rock Creek Farms.

Due process is one of the most fundamental rights granted by our State and Federal Constitutions. The Arnoldys' secret deed violated the basic requirements of due process of law. The federal court in *Wain v. Todd County Sch. Dist.*, 2005 DSD 17, noted that the U.S. Supreme Court has described the root requirement of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." Citing *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971).

In *Fuentes v. Shevin*, 407 U.S. 67 (1972), the U.S. Supreme Court held that "For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner." (Citations omitted).

This Supreme Court has stated: Under the Fourteenth Amendment to the United States Constitution, as well as Article VI, § 2 of the South Dakota Constitution, “no person shall be deprived of life, liberty, or property without due process of the law.” Due process guarantees that notice and the right to be heard are granted in a “meaningful time and in a meaningful manner.” *Hollander v. Douglas Co.*, 620 N.W.2d 181, 186 (S.D. 2000) (citations omitted). Such guarantees are fundamental to our American system of justice. *City of Pierre v. Blackwell*, 635 N.W.2d 581 (S.D. 2001).

In the instant case, the trial court deprived the Finnemans and Rock Creek Farms of their right to cure the default concerning about 9,200 acres of contract for deed lands worth about \$7,000,000. The trial court clearly erred in doing so. In addition, the Arnolds violated the basic due process rights of the Finnemans and Rock Creek Farms by secretly preparing, getting the sheriff to sign, and filing a deed with the Register of Deeds in Meade and Pennington Counties to all 16,700 acres, without prior notice to any of the circuit courts involved, without judicial approval, without prior notice and opportunity to be heard for the Finnemans and Rock Creek Farms, and without an evidentiary hearing with live testimony subject to cross examination.

When the Finnemans granted a mortgage to Rabo, the Finnemans did not own the 9,200 acres of contract for deed lands; they only had an equitable interest in the contract for deed lands. This Court has ruled, “[i]n a contract for deed, the installment vendor maintains legal title to the property while the vendee holds equitable title and has the right to use and possession of the property.” *Anderson*, 2005 S.D. at 56, ¶ 21. It is a fundamental principle of property law that a grantor can only give that which he owns.

Texas American Bank/Levelland v. Morgan, et. al., 733 P.2d 864, 865 (N.M. 1997). The *Texas American Bank* court held further that:

Haliburton, being a joint tenant, was not free to execute a mortgage which would encompass a greater interest in the property than he owned himself. It stands to reason, therefore, that the mortgage which Haliburton executed could not encumber Morgan's (the other joint tenant) interest in the property. *Texas American Bank*, 733 P.2d at 864, 865 (citations omitted).

Here, as to the 9,200 acres of contract for deed lands, the Finnemans could only mortgage what they owned, which was an equitable interest in the contract for deed lands. The Finnemans' interest in these lands was foreclosed upon by the trial court. The Finnemans could not encumber L & L's ownership interest in the contract for deed lands. The Finnemans could only mortgage their equitable interest in the contract for deed lands. The Eighth Circuit Court of Appeals has stated:

. . . it is the general rule that although the buyer cannot convey or encumber property possessed under a conditional sale contract in such manner as to defeat the title retained in the seller, yet he does acquire an interest, which has been variously described, in the property and he may, without consent of the seller, sell, mortgage or give away such interest prior to forfeiture under the contract—subject, of course, to the seller's rights therein. *Manufacturer's Bank & Trust Co. of St. Louis v. Lauchli*, 118 F2d 607, 610 (8th Cir 1941) (citations omitted).

Ann Arnoldy's ownership in the contract for deed land and her secret deed is dependent upon the Finnemans' ownership interest in the contract for deed lands. But the Finnemans' equitable interest in the contract for deed land was extinguished when the trial court and the Rabo court entered their judgments of foreclosure. Precluding Ann

Arnoldy from redeeming or acquiring a greater interest in land than she is entitled to receive will work no great injustice upon either her or L&L.

L&L will get its contract balance paid plus attorney's fees or it will get the property back. Ann Arnoldy already has a deed to about 7,500 acres of deeded land; with 3,000 acres of these lands located adjacent to the Rapid City Airport, and thus with the present value for those 3,000 acres far beyond the value of farmland located further away from the airport and Rapid City. Ann Arnoldy's investment in obtaining judgments and the secret sheriff's deed is a small fraction of the present value of the land. Even though she paid the lien of the United States, she should not be heard to complain because she unilaterally volunteered for her own self interest to make that payment with no legal obligation to do so.

The trial court clearly erred in failing to invalidate Ann Arnoldy's secret sheriff's deed for the reasons stated above. This Supreme Court should therefore remand this case to the trial court with instructions to invalidate the secret sheriff's deed and grant Rock Creek Farms its statutory right to cure the default under the contracts for deed.

CONCLUSION

The trial court committed a grave error by not allowing the Finnemans or Rock Creek Farms to cure the default in the contracts for deed, because only the Finnemans as the buyers or vendees or their partnership Rock Creek Farms have the exclusive statutory right to cure the default. The trial court erred by allowing Ann Arnoldy, a stranger to the contracts for deed, to redeem the contracts for deed.

The trial court compounded its error by substituting Ann Arnoldy for Rock Creek Farms, even though in her motion for substitution, Ann Arnoldy only requested to be

substituted for CLW. Moreover, when Rock Creek Farms resisted her motion, Ann Arnoldy requested that her motion be considered post trial. The trial court never considered her motion post trial.

The trial court compounded its error further by failing to invalidate Ann Arnoldy's secret sheriff's deed. It was prepared without prior notice to the landowner L&L, to the Finnemans or Rock Cree Farms, or to the judges involved in the five cases listed above. It was prepared and signed without prior Court approval. The Arnoldys violated the basic due process rights of the Finnemans and Rock Creek Farms by secretly preparing the deed, secretly meeting with the sheriff to get the sheriff to sign the deed, and filing the deed with the Register of Deeds in Meade and Pennington Counties transferring title to all 16,700 acres to Ann Arnoldy, without prior judicial approval, without prior notice and opportunity to be heard for the Finnemans and Rock Creek Farms, and without an evidentiary hearing with live testimony subject to cross examination. The secret sheriff's deed in the Rabo case should have been invalidated as to the contract for deed land involved in this L&L case, because at most the Rabo foreclosure action could only foreclose Finnemans' equitable interest in the contract for deed lands, and could not transfer ownership of the contract for deed land from L&L to Ann Arnoldy.

Dated this 2nd day of August, 2012.

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CERTIFICATE OF COMPLIANCE

Pursuant to SDCL § 15-26A-66(b)(4) counsel for Appellants states that the foregoing brief is typed in proportionally spaced typeface in Time New Roman 12 point using Microsoft Word 2010. The word processor used to prepare this Brief indicated that there are a total of 6,447 words in the body of the Brief.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of August, 2012, fifteen (15) copies and the original of Appellants' Finnemans' Opening Brief were provided by United States mail, postage paid, to:

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IN THE
SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

Appeal No. 26374

L & L PARTNERSHIP, et al.

vs.

DAVID M. FINNEMAN, CONNIE S. FINNEMAN,
ROCK CREEK FARMS, SUCCESSORS IN INTEREST TO
DAVID M. FINNEMAN AND CONNIE S. FINNEMAN, et al

Plaintiff-Appellee (L & L Partnership).

ON APPEAL FROM THE
SEVENTH JUDICIAL CIRCUIT COURT
PENNINGTON COUNTY, SOUTH DAKOTA,
HONORABLE JAMES W. ANDERSON
CIRCUIT COURT JUDGE PRESIDING
Court File No. C10-316

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PRELIMINARY STATEMENT

References in this brief to the trial transcript shall be “TTp. ____”. References to the Register of Actions shall be “Rec. ____”. References to the appendix shall be “Appendix. ____” and references to the trial exhibits shall be “Ex. ____”.

JURISDICTIONAL STATEMENT

Judgment of Foreclosure was entered on April 19, 2012, and filed with the Pennington County Clerk on April 23, 2012. Notice of Entry of Judgment of Foreclosure was dated May 4, 2012. Notice of Appeal, dated June 1, 2012, was filed by Appellant Rock Creek Farms, Appeal #26373. Notice of Appeal dated June 4, 2012 was filed by David M. and Connie S. Finneman, Appeal #26374.

Appellee, L & L Partnership filed its Notice of Review on June 20, 2012 in both appeals.

STATEMENT OF LEGAL ISSUES

L & L Partnership raises the following issues:

- I. Did the Trial Court award adequate damages to Seller, L & L Partnership, under its two contracts for Deed?

The Trial Court failed to include in its judgment all sums due to L & L according to the contract terms.

Relevant authorities:

Estate of Moncur, 2012 S.D. 17 ¶ 10

- II. Did the Trial Court improperly modify the contracts by bifurcating performance of the contracts among vendees and their claimed successors in interest?

The Trial Court’s judgment imposed obligations on L & L to issue deeds to

parties outside the contract and to collect damages from several potential redemptioners.

Relevant authorities:

Kroeplin Farms General Partnership v. Heartland Crop Insurance, 430 F.3d 906, 911 (8th Cir. 2005)

Hartman v. Wood, 436 N.W. 2d 854 (S.D. 1989)

SDCL 21-50-3

III. Did the Trial Court err in ordering equitable adjustment of damages and redemption rights among vendees and their claimed successors in interest?

The Trial Court shifted responsibility for payment of damages among vendees and their successors in interest without hearing evidence on the issue and changed the Seller's rights.

Relevant authorities:

Schultz v. Jibben, 513 N.W.2d 923 (S.D. 1994)

Pam Oil, Inc. v. Travex International Corp., 336 N.W.2d 672, 674 (S.D. 1982)

SDCL 21-50-3

STATEMENT OF THE CASE AND FACTS

Statement of the Case

Plaintiff L & L Partnership filed suit against David M. Finneman and Connie S. Finneman, their successor in interest, Rock Creek Farms, and a host of junior lien holders, to foreclose on two real estate contracts for deed. (Rec. P. 3). L & L sought damages for non-payment and other defaults and to foreclose on the two contracts, subject to the buyer's right of redemption under SDCL § 21-50-3.

Trial to the Court was had in the Seventh Circuit, Pennington County, with the

Honorable James W. Anderson, Circuit Judge presiding, on July 25, 2011. The action was defended by three parties asserting an interest in the contract for deed lands as vendees, or buyers: David M. and Connie S. Finneman, original vendees, Rock Creek Farms, a Partnership to whom they had conveyed their interest, and Ann Arnoldy, holder of s Sheriff's Deed on most of the affected real property. (Rec. 188).

The Trial Court stated its decision in open court at the conclusion of the evidence. The Trial Court delayed entry of Findings of Fact and Conclusions of Law and Judgment of Foreclosure until resolution of the pending appeal in Rabo Agrifinance, Inc., vs. Finnemans, et al, 2012 S.D. 20.

A Final Judgment was entered on April 19, 2012, along with Findings of Fact and Conclusions of Law. (Rec. 555, 499). The Court's Judgment of Foreclosure provided that there was due the sum of \$612,341.68 on the 1996 contract for deed. The Judgment also provided that Ann Arnoldy had the sole right to redeem the contract by payment of that amount.

On the 1999 contract for deed the judgment provided that there was due the sum of \$153,762.31 on all the land described in the contract, less 199.08 acres and that Ann Arnoldy had the sole right of redemption.

David and Connie Finneman could redeem the remaining 199.08 acres by payment of \$14,806.02, plus additional damages for attorney's fees and costs passed on to L & L of \$76,000.00, for a total of \$90,806.02. All costs and attorney fees subsequently ordered by the Court would also be taxed against Finneman's and their 199.08 acres as well. The Judgment also provided that other parties, including Ann Arnoldy could

redeem this portion of the contract lands as well, in the event Finnemans failed to do so.

Statement of Facts

In 1996, L & L Partnership owned, approximately, 7,200 acres of farm land in Meade County and about 2,200 acres in Pennington County. T.T. p 12, 13. Both farms were subject to a mortgage in favor of The Equitable Life Insurance Company, with an approximate balance of \$1,700,000.00. Exhibit 1, TTp. 13. L & L sold the Meade County land to Finnemans in April 1996 for \$1,800,000.00, payable \$400,000.00 down and \$1,400,000.00 on payments with a variable rate of interest. The contract acknowledged the prior mortgage to Equitable. Exhibit. 1. Paragraph 32. An escrow with First Western Bank in Wall, South Dakota, was established for payment and deposit of a Warranty Deed. Exhibit 1, paragraph 21.

The payments to be made by Finnemans were to flow to Equitable and L & L made the payments on that portion of the Equitable Note that was allocated to the Pennington County land. TT p. 16. In October of 1999, L & L sold the 2,200 acres in Pennington County to the Finnemans on contract for deed. Exhibit 2. The purchase price was \$600,000.00 with \$17,600.00 down and the remaining \$582,400.00 paid in installments with interest fixed at 8%. At paragraph 2g. of this contract the Finnemans were required to additionally “timely pay” to Equitable the semi annual mortgage payments due under its note and mortgages. Thus, between the two contracts, Finnemans payments were to cover the Equitable obligation, and more. TTp 20.

Both contracts contained provisions for the protection of the Seller by indemnification for any costs or attorneys fees incurred by the Seller from Finnemans use

or misuse of the land or legal actions to which Seller could be made a party. Over time, Finnemans caused to be placed against the contract lands, a host of voluntary and involuntary liens, mortgage and judgments, all without prior consent of L & L. TTp 23. Finnemans also conveyed their interests in the lands to Rock Creek Farms Partnership, without L & L's consent. TTp. 23.

Appellant's Brief in this case identifies the following actions brought against Finnemans, which also involved Equitable and L & L as parties in interest and resulted in both Equitable and L & L incurring legal expenses: Farm Pro Services, Inc. vs. David M. Finneman, et al., Seventh Circuit, Pennington County File No. C-02-533, a sale of Finneman's lands by execution on a judgment; Rabo Agri Finance, Inc., et al v. David M. Finneman, et al, Seventh Circuit, Pennington County, File No. C09-1211, a mortgage foreclosure action. This "Rabo" action was judicially noticed by the Trial Court in the present case. TTp. 6. Additionally, Finneman's began a declaratory judgment action against L & L to determine the balances due under the two contracts; David M. Finneman, et al. v. L & L Partnership, et al., Seventh Circuit, Pennington County, File No. CIV. 09-742, which case has effectively been abandoned.

The "Rabo" foreclosure action resulted in a foreclosure judgment against several thousand acres of Finneman land, including Finnemans interest in the L & L contract for deed lands, which Finnemans mortgaged to Rabo. Appendix. p 1-6. This judgment was subject to the prior interests of L & L, Equitable and the mortgage lien of Laidlaw Family Partnership, the latter being filed against the L & L Pennington County contract lands and identified in the contract. When Finnemans mortgaged their interests in the L & L

contract for deed lands to Rabo, the legal descriptions of these lands in the Rabo Mortgage, apparently, described all but 199.08 acres of the 1999 Pennington County contract lands.

The balance due on the 1996 contract came due January 1, 2010. TTp 42. This coincided with the balloon payment due Equitable by L & L on the underlying note and mortgage. TTp 42. Because the 1999 contract required Finneman to “timely pay to The Equitable Life Assurance Society of the United States the amount of the semi-annual mortgage payments attributable to the above-described property and due to Equitable according to the terms of the promissory note secured by Equitable’s mortgage on the subject property...” the 1999 contract ballooned as well. Exhibit 2, paragraph 2g. (emphasis added). Thereafter, L & L commenced this foreclosure action against Finnemans, Rock Creek Farms and all junior encumbrancers as described in the complaint.

At trial, testimony from the parties to the contracts indicated that there was a history of late payments, TTp. 58, default notices, TTp. 26-29, and an ongoing unresolved dispute governing the status of Finnemans’ payments, accrued default interest and the allocation of payments under each of the two contracts. TTp. 86.

The underlying Equitable note and mortgage, being due and payable was sold by Equitable to CLW Financial. TTp. 43. L & L then paid off that note, through Bob Laidlaw, original partner, to the tune of \$1,166,930.89. TTp 43. Of that amount, \$76,466.95 was set forth as attorney fees and costs incurred by Equitable and CLW from Finnemans’ prior legal proceedings, which were passed on to L & L. Exhibit 17, not

admitted into evidence, was specifically referenced by the Court when it issued its ruling on damages. TTp 170, 180; Appendix pages 7-10. Marvin Lutz of L & L also testified that he had incurred other legal fees with Attorney Curt Jensen in the amount of \$1,289.42 concerning Finneman's prior defaults. TTp 47-49, Exhibit 19.

The Court heard testimony from the accountants for L & L, Arnoldy and Rock Creek Farms/Finneman. Beginning in 1999, Finnemans' obligations under the contracts were to make the semi annual payments to Equitable on the underlying note and mortgage against the two farms as well as an annual payment from the 1999 contract of \$47,000.00.

The accountants allocated the payments to Equitable 83.679% on the 1996 contract and 16.321% on the 1999 contract. TTp. 91. Some of the payments made to L & L came not from Finnemans but from a receiver in the Rabo foreclosure case. TTp. 93. These payments were also allocated against the two contracts at the same percentage. TTp. 93.

The significant difference between L & L's calculations by CPA Phil Zacher and Finneman's calculations by CPA Paul Thorstenson was that L & L's calculations did not include a payment of \$83,600.00 that L & L testified was not paid by Finnemans. TTp. 139-140. The Court permitted CPA Thorstenson to correct and amend his calculations post trial, resulting in a determination that, as of the date of trial, July 25, 2011, there was due on the 1996 contract, \$605,540.77 and on the 1999 contract \$163,326.19, for a total of \$768,866.96. Rec. 301. Arnoldy's accountant, CPA Steve Kocr testified to different calculations and did not submit an accounting on the 1999 contract. TTp. 165. CPA Kocr's Exhibit 103 was prepared, on counsel's advice, without assessing a late payment penalty prior to January 2008. TTp. 162. No explanation was provided why

this was done and no comparable calculations for the 1999 contract could be compared.

The Trial Court entered Findings of Fact that went beyond the evidence presented at trial. Specifically, the Court found that because Finnemans/Rock Creek's interest in the contract for deed lands had been lost to Ann Arnoldy in the Rabo foreclosure case, that all junior liens that had attached to the contract for deed lands were foreclosed as well. Findings of Fact 44 and 45. The Rabo foreclosure judgment states that it is subject to the prior interests of L & L in the contract for deed lands. Appendix pages 1-6. The Court further found that in the 1999 contract, Finneman retained an interest in 199.08 acres, that remained subject to several judgment claims. The Court did not hear evidence on equitable adjustment but, nevertheless, concluded that only Finneman's interest in the 199.08 acres would be subject to L & L's damage claim of \$76,000.00 plus in attorney fees, absolving Arnoldy of any responsibility for this damage claim despite her apparent standing as Finnemans/Rock Creek Farms, successor in interest. Additionally, the Court concluded that a right to redeem the 199.08 acres portion of the 1999 contract inurred to Arnoldy and others, as junior lien holders and not just to Finnemans/Rock Creek Farms as the Contract vendees. The Court's bi-furcation of the 1999 contract obligations among various interested parties required L & L to issue different deeds to different parties in direct conflict with the contract terms.

The Court's Findings and Conclusions allowed for the redemption of the 1996 contract without payment of additional damages proved at trial or L & L's later application for costs and attorney fees. The Court's Findings and Conclusions permitted special status to Arnoldy to redeem the entire 1996 contract and most of the land in the

1999 contract without being responsible for costs, attorney fees or additional damages. Under the Court's Judgment, L & L is required to issue a new deed to Arnoldy, though the original is in escrow, and to do so upon tender of payment without attorney fees, costs or other damages.

ARGUMENT

I. Standard of Review

This Court reviews questions of fact under the clearly erroneous standard of review. Estate of Moncur, 2012 S.D. 17 ¶ 10; citing Weekley v. Prostrullo 2010 S.D. 13, 778 N.W.2d 823; In re Ragennitter, 1999 S.D. 26 ¶ 11, 589 N.W. 2d 920, 923. Findings of Fact may not be set aside unless clearly erroneous SDCL 15-6-52(a). "The interpretation of a contract is a question of law, which is reviewed de novo." Kernburner, LLC v. MitchHart Mfg., Inc. 2009 S.D. 33 ¶ 7, 765 N.W.2d 740, 742 (quoting, Arch v. Mid-Dakota Rural Water Sys., 2008 S.D. 122 ¶ 7, 75 N.W. 2d 280, 282).

II. The Trial Court's award of damages failed to include all sums properly due and owing under the contracts for deed.

The Trial Court heard the testimony of three accountants regarding the balances due under the two contracts. Each expert, beginning in 1999 when both contracts were in force, properly allocated the buyer's payments that were being made directly to Equitable 83.679% against the 1996 interest and 16.321% against the 1999 contract. TTP.92. The only substantial differences between Finneman/Rock Creek Farms CPA and L & L's CPA were as to whether the buyers should get credit for a payment of \$83,600.00. TP. 96. L & L's expert tendered exhibits 16 and 26 showing his calculations and testified, they were substantially the same as the report from

Finneman/Rock Creek Farms CPA. L & L's CPA did not give Finneman/Rock Creek Farms credit for a disputed payment of \$83,600.00. Finneman's/Rock Creek Farm's CPA included the \$83,600.00 payment and brought his calculations up to date with a revised report to the Court dated August 4, 2011. Rec. 301. Absent the \$83,600 disputed payment, CPA Thorstensen and CPA Zacher applied identical methodology and calculations. L & L concedes on the \$83,600.00 issue and accepts the calculations of CPA Thorstenson that the amounts due on the 1996 contract, as of July 25, 2011, is \$605,540.77 and on the 1999 contract \$163,320.19.

CPA Kocr, testifying for Arnoldy, produced trial exhibit 103 on the 1996 contract but no similar calculation on the 1999 contract. Nor did he have an opinion on the balance of the 1999 contract. Given that both contracts require that due credit be given between them for buyer's payments on The Equitable note and mortgage, it is impossible to determine if CPA Kocr's calculations are correct. More importantly, Kocr testified that, on the advice of counsel, he did not calculate the required penalty interest prior to January 2008. TTp. 162. This is contrary to the contract language as properly considered by Thorstenson and Zacher and totally arbitrary. Furthermore, Kocr offered no testimony justifying this discrepancy. Instead, Kocr's testimony was that he may have applied a payment differently from Thorstensen as between the two contracts but couldn't be sure because he did not have a completed analysis of the 1999 contract payments.

“Q All right. So you're aware that there was a payment shown on Mr. Thorstenson's amortization schedule for January 31st of 2000 and you took that out of yours. Right?

A. Correct.

Q And did you apply that payment for that date against your--whatever estimate you would have come up with on the 1999 contract?

A I would believe so. I'm not--I don't have my 1999 schedule here right now.

Q All right.

A --because its incomplete."

TTp. 165. The Court's finding that CPA Kocr's estimate of the balance due under the 1999 contract was clearly erroneous given the more complete, accurate and probative results obtained by Thorstenson and also Zacher, absent the \$83,600.00 payment dispute.

Marvin Lutz, testifying for L & L established that L & L and for Bob Laidlaw, his partner paid \$1,166,930.89 to CLW Financial, the successor in interest to The Equitable on the note and mortgage encumbering the two properties. Of that amount, the Court ruled from the bench at the conclusion of the evidence that L & L would be entitled to recover that portion of that amount that was the attorneys fees as set forth in trial Exhibit 17: "I'm going to allow attorneys fees as the \$76,000.00 plus" TTp. 180. The Court was referring to the demonstrative portion of Exhibit 17 showing \$76,466.95, as attorneys fees and interest passed on to L & L by The Equitable and CLW. App. 2. The Court's Findings of Fact #53, however, misstates this figure as \$76,000.00. This finding is inconsistent with the Trial Court's ruling from the bench and is, therefore, clearly erroneous.

Mr. Lutz, on behalf of L & L also testified that he had incurred additional attorney fees and expenses related to prior defaults of the Finnemans through his then attorney, Curt Jensen of Rapid City. Exhibit 19 established those damages as \$1,284.42. TTp

47-49. Both the \$76,466.95 and \$1,284.42 are recoverable sums as damages pursuant to paragraph 19 and 24 of the 1996 contract and paragraph 12 and 19 of the 1999 contract. The Court's failure to find that L & L was entitled to recover these sums was clearly erroneous.

III. The Trial Court improperly modified the contracts by allocating performance of the contracts among competing vendees, permitted multiple redemption rights and requiring L & L to issue different deeds to different parties without full compensation.

At trial, Finnemans, Rock Creek Farms and Ann Arnoldy all claimed an interest in the contract for deed lands, Finnemans as original buyers, Rock Creek Farms by virtue of an unauthorized quit claim deed from Finnemans, and Arnoldy, as holder of a sheriff's deed arising from the Rabo foreclosure action. If Arnoldy is deemed the owner of the vendee's interest under these two contracts for deed then that interest was obtained by operation of law, in effect, an involuntary assignment from Finnemans. Real property may be transferred either "by operation of law, or by an instrument in writing . . ."

SDCL § 43-25-1. See, Anderson v. Aesoph, 2005 S.D. 56 ¶ 22, 697 N.W.2d 25. Anderson v. Aesoph reiterated the general principle that a transfer of property by deed transfers all legal interest of the buyer to the assignee. Id. It follows then that a sheriff's deed accomplishes the same. This means that, as an assignee of the vendee's interest, she "stands in the same shoes as the assignor." Kroeplin Farms General Partnership v.

Heartland Crop Insurance, 430 F.3d 906, 911 (8th Cir. 2005), quoting, In Re Estate of Wurster, 409 N.W.2d 363, 366 (S.D. 1987) (Wuest, C.J. dissenting). “An assignee can obtain no greater rights than the assignor had at the time of the assignment.” 430 F.3d 906 at 911. The assignee merely stands in the shoes of the assignor. Collection Center, Inc. v. Bydal, 795 N.W.2d 667, 672, 2011 ND 63 ¶ 15 (N.D. 2011). Notwithstanding these fundamental principles, the Trial Court’s Findings of Fact, Conclusions of Law and Judgment of Foreclosure contain substantial errors and confer special status to Arnoldy contrary to law. These errors may be summarized as follows:

1. That the Rabo foreclosure judgment extinguished all junior liens and encumbrances against the contract for deed lands;
2. That Arnoldy has the sole right to redeem the contracts free and clear of junior liens and without payment of attorneys fees or costs as allowed by the Court;
3. That judgment creditors have a right to redeem a portion of the 1999 contract for deed;
4. That Finnemans retain a redeemable interest in 199.08 acres so long as they pay 100% of the attorneys fees and costs of the foreclosure action as well as damages incurred by L & L of \$76,000.00 plus;
5. That Arnoldy has a secondary right to redeem the 199.08 acres not conveyed in her sheriff’s deed;
6. That the Court may exercise equitable adjustment of the parties to that contract despite the repeal of SDCL § 21-50-2;
7. That L & L be required to accept redemption of portions of the contract lands from parties other than vendees, only some of which need pay attorney fees and costs, and to issue new deeds in accordance with their respective redemptions;
8. That L & L referee the redemption rights of the multiple parties set forth in Finding of Fact 45.

The Rabo foreclosure judgment, having the effect of extinguishing junior liens upon the expiration of redemption, specifically recognized the superior legal title of L & L in the contract for deed lands. That judgment excepted any legal effect on the L & L lands such that any of Finneman's creditors whose liens attached to Finneman's equitable interest in the lands retained their liens thereon.

If Arnoldy acquired the same and no greater rights to Finneman's interest in the contract for deed lands, she takes subject to these junior encumbrances. The tail goes with the hide.

The contract for deed may not be reformed to tailor the desires of the various claimants to the vendees' interest. In Hartman v. Wood, 436 N.W. 2d 854 (S.D. 1989) this court determined that an assignee from a contract for deed vendee may not, upon performance of the contract, compel a new deed from the seller where an original deed has already been deposited in escrow. 436 N.W. 2d at 856. Instead, upon performance the seller need only comply with his obligations under a contract by issuing a deed to the contract seller. That deed relates back to the time of conveyance and subsequent transfers are thereby validated. Since the contracts are in Finneman's names as buyers and recorded as such, it is to the subsequent transferee's benefit to establish the chain of title.

The remedy of a quiet title action is available to Arnoldy to cure any resulting perceived title defects. The Trial Court's judgment that a deed be issued to Arnoldy or any other redemptioner is a mistake of law and clear error. 436 N.W. 2d at 857. See, also, O'Brien v. R-J Development Corp., 387 N.W.2d 521, 528 (S.D. 1986) (where Court held that trial

courts are not empowered to sua sponte revise contracts).

The Court's finding that judgment creditors have a right to redeem on Finneman's 199.08 acres is contrary to SDCI 21-50-3, which affords a redemption right only to the contract vendee. This finding is clearly erroneous and, if a conclusion of law, a mistake of law. The consequence of this holding is that the contract seller, to his detriment, could receive multiple tenders of performance all at once. This is an improper modification of the contract terms. Again, the contract for deed seller can insist upon performance before he is obligated to convey title. The bifurcation of the 1999 contract with part performance potentially arising from several different parties defeats the contract terms. The balance of each contract must be paid as a whole.

Arnoldy takes the good with the bad as an assignee. The Court's finding that she may redeem the contracts by paying principal and interest only is contrary to contract law and provides her with a windfall at sellers expense. See, Conclusions of Law #13 and #14.

IV. The trial court committed reversible error in employing equitable adjustment of the rights of the contracting parties.

This matter was tried to the Court on July 25, 2011. Due to the pending appeal on Rabo Agrifinance, Inc., v. Finnemans, et. al., 2012 S.D. 20, which would have bearing on whether Arnoldy's sheriff's deed would stand, findings and conclusions were not submitted until April 2012. Arnoldy's proposed Findings of Fact, Conclusions of Law and Judgment of Foreclosure were adopted by the trial court, without modification, and over the objections of the other parties. Rec. 537. Arnoldy's findings and conclusions included an affidavit from Ann Arnoldy, essentially adding testimony and argument that

equitable adjustment favors allowing her to redeem the contracts while being excused from paying additional damages or taxable costs. The trial court's adoption of these findings and conclusions resulted in the following equitable adjustments to the parties' rights in the contracts:

a) Allowing Arnoldy to redeem the 1996 and 1999 contracts without payment of any attorney fees, costs or additional damages;

b) Assessing against Finnemans/Rock Creek Farms 100% of the additional damages awarded by the court plus taxable attorney fees and costs, to be later approved by the court;

c) Permitting Arnoldy a right to redeem on 199.08 acres in the 1999 contract though she was not a party to the contract.

The trial court may not employ equitable adjustment remedies in determining the rights of the parties in a contract for deed foreclosure action. Schultz v. Jibben, 513 N.W.2d 923 (S.D. 1994). The statutory remedy of equitable adjustment was repealed July 1, 1992. The court's conclusions of law 11 through 18 as well as the findings upon which they were based, are contrary to law and clear error. The court chopped up the contracts and allowed competing vendees to perform at different levels with burdensome consequences to some as well as the seller. "The court cannot make a contract for the parties that they did not make themselves as a compromise for any other purpose." Pam Oil, Inc. v. Travex International Corp., 336 N.W.2d 672, 674 (S.D. 1982), citing, Knapp v. Breeding, 77 SD 551, 553, 95 N.W.2d 535, 537 (1959). "Trial courts are not empowered to sua sponte revise contracts, when not petitioned to do so by any of the

parties.” O’Brien v. R-J Development Corp., 387 N.W.2d 521, 528 (S.D. 1986). The trial court’s equitable adjustment of the parties rights to the contracts, post trial on the affidavit of Arnoldy, improperly revised and rewrote the contracts to the sellers detriment and prejudiced the rights of all the trial participants.

CONCLUSION

Though the trial court was correct in ordering judgment of foreclosure of the contracts, it’s findings and conclusions, as well as the judgment itself, contained substantial errors of fact and law. This case should be reversed and remanded for entry of new findings of fact and conclusions of law correcting the errors shown.

Dated this 3rd day of October 2012.

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CERTIFICATE OF COMPLIANCE

Pursuant to SDCL § 15-26A-66(b)(4) counsel for appellee states that the foregoing Brief is typed in proportionately spaced type face in Times New Roman 12 point font using WordPerfect 2009. The word processor used to prepare this Brief indicated that there is a total of 4,525 words in the body of the Brief.

JOHN H. MAIROSE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served fifteen (15) copies of the foregoing **Appellee L & L Partnership's Opening Brief** in the above-entitled action, upon the person herein next designated on the date below shown, by United States mail, electronically transmitted, hand delivered, or faxed, at Rapid City, South Dakota, to-wit:

Ms. Shirley Jameson-Fergel, Clerk
Off ice of the Clerk of the Supreme Court
South Dakota Supreme Court
500 East Capitol Avenue
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and two correct copies of **Appellee L & L Partnership's Opening Brief** was provided by United States mail, postage paid, to:

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Dated this 3rd day of October 2012.

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IN THE
SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

Appeal No. 26364

L & L PARTNERSHIP, et al.

vs.

DAVID M. FINNEMAN, CONNIE S. FINNEMAN,
ROCK CREEK FARMS, SUCCESSORS IN INTEREST TO
DAVID M. FINNEMAN AND CONNIE S. FINNEMAN, et al

Plaintiff-Appellee (L & L Partnership).

ON APPEAL FROM THE
SEVENTH JUDICIAL CIRCUIT COURT
PENNINGTON COUNTY, SOUTH DAKOTA,
HONORABLE JAMES W. ANDERSON
CIRCUIT COURT JUDGE PRESIDING
Court File No. C10-316

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APPENDIX

Judgment and Decree of Foreclosure App. No. 1

L & L vs. Finneman's Et Al – Plaintiff's Exhibit 17 App. No. 2

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

RABO AGRIFINANCE, INC. FKA
AG SERVICES OF AMERICA, INC.
AND RABO AGSERVICES, INC.,

Civil No. 09-1211

Plaintiff,

v.

JUDGMENT AND DECREE
OF FORECLOSURE

DAVID M. FINNEMAN; CONNIE S.
FINNEMAN; ROCK CREEK FARMS,
SUCCESSORS IN INTEREST TO DAVID
M. FINNEMAN AND CONNIE S. FINNEMAN,
DBA AIRPORT FARMS; FARM CREDIT
SERVICES OF AMERICA FKA FARM
CREDIT SERVICES OF THE MIDLANDS,
FCLA; BLACK HILLS FEDERAL CREDIT
UNION; LUTZ/LAIDLAW PARTNERSHIP;
AXA EQUITABLE LIFE INSURANCE
COMPANY; LAIDLAW FAMILY
PARTNERSHIP; TOM J. WIPF; AMY WIPF;
JOHNNY JAY WIPF, DBA WIPF FARMS;
JOANN WIPF; CEN-DAK LEASING OF
NORTH DAKOTA, INC; SHEEHAN MACK
SALES AND EQUIPMENT, INC.; MICHAEL
ARNOLDY; ANN ARNOLDY; FARM
CAPITAL COMPANY, LLC; DANIEL R.
MAHONEY; PORTFOLIO RECOVERY
ASSOCIATES, LLC; PFISTER HYBRID
CORN CO.; KAUP SEED & FERTILIZER,
INC.; JOYCE M. WOLKEN; CHARLES W.
WOLKEN; STAN ANDERSON; DENNIS
ANDERSON; KENT KJERSTAD; WILLIAM
J. HUBER; KENDA K. HUBER; YU BLU SNI,
LLC; U.S. BANCORP EQUIPMENT FINANCE,
INC.; KENCO INC. DBA WARNE CHEMICAL
& EQUIPMENT COMPANY, INC.; DOUG
KROEPLIN AG SERVICES, INC; CREDICO,
INC. DBA CREDIT COLLECTIONS BUREAU;
SCOT D. EISENBRAUN; MELODY EISENBRAUN;
BART CHENEY; HAL OBERLANDER, KEI
OBERLANDER; RAY S. OLSEN; PATRICK X.
TRASK; ROSE MARY TRASK; PENNINGTON

COUNTY, SOUTH DAKOTA; MEADE COUNTY,
SOUTH DAKOTA; AND THE
UNITED STATES OF AMERICA,

Defendants.

The Court having this day granted Plaintiff's Motion for Judgment on the Pleadings, and for cause shown;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff shall have and recover judgment on the promissory notes attached to Plaintiff's Complaint from Defendant Note Makers in the sum of Two Million Four Hundred Thirty-Three Thousand Two Hundred Eight and 56/100ths Dollars (\$2,433,208.56) plus interest to the date of this Judgment in the amount of Eight Hundred Thirty-Eight Thousand Three Hundred Sixteen and 64/100ths Dollars (\$838,316.64) for a total of Three Million Two Hundred Seventy-One Thousand Five Hundred Twenty-five and 20/100ths Dollars (\$3,271,525.20).
2. Plaintiff has incurred costs, disbursements and attorney's fees in this action accruing from October 13, 2004 through the present in the amount of One Hundred Twenty Thousand Six Hundred Ninety-Two and 90/100ths Dollars (\$120,692.90), which shall be included in the Judgment amount hereof.
3. Interest shall accrue after this Judgment on the Mortgage debt at the rate of 12% per annum to the date of the Sheriff's sale. There shall be added to the amount of this Judgment all sums reasonably expended by Plaintiff for the protection of its interests in, or for protection and preservation of, the Mortgaged Property, and all other amounts

allowed by law, including without limitation, attorney fees, excepting only to the extent such amounts are already included in the amount of this Judgment.

4. The amount owed Plaintiff as above-described is secured by certain Collateral Real Estate Mortgages, copies of which are attached to Plaintiff's Complaint as Exhibits C, E, G and I (the "Mortgages") upon the following described real property in Pennington County, South Dakota and Meade County, South Dakota as set forth and attached to Plaintiff's Complaint as Exhibits L, M, N, O, P and Q (the "Mortgaged Property") and attached hereto, which Mortgages are valid and lawful liens and mortgages upon the Mortgaged Property enforceable according to their terms.

5. * The Mortgaged Property shall be sold at public auction in the manner prescribed by SDCL Chapter 21-47 and 15-19 by the Sheriff of Pennington County, South Dakota, subject only to the following:

- (a) Real estate taxes remaining unpaid which may constitute a lien thereon;
- (b) Defendant Farm Credit Services Mortgage executed by David M. Finneman and Connie S. Finneman to Farm Credit to secure indebtedness of Seven Hundred Thousand Dollars (\$700,000.00) dated December 14, 1993 and recorded in Meade County on December 28, 1993 in Book 470, pp. 800-802 and recorded in Pennington County on January 3, 1994 in Book 53, Page 4169. Said lien is superior to Rabo's interests only with regard to the property set forth as (Exhibit L and Q) attached hereto.
- (c) Defendant Lutz/Laidlaw Partnership's lien against the real property herein, by virtue of its ownership of the property set forth in Exhibits M, N, and O attached hereto, which was sold to David M. and Connie S. Finneman on a contract for deed dated April 23, 1996.
- (d) Defendant Equitable's Mortgage executed by Lutz/Laidlaw Partnership to Equitable to secure indebtedness of One Million Seven Hundred Thousand

Dollars (\$1,700,000) dated March 16, 1995 and recorded in Pennington County on March 16, 1995 in Book 58, p. 645. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibits M and N) attached hereto.

- (e) Defendant Equitable's Mortgage executed by Lutz Laidlaw Partnership to the Equitable Life Assurance Society of the United States to secure indebtedness of One Million Seven Hundred Thousand Dollars (\$1,700,000) recorded in Meade County on March 16, 1995 in Book 481, Page 709-714. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibit O) attached hereto.
- (f) Defendant Laidlaw Family Partnership's Mortgage executed by Lutz Laidlaw Partnership, a South Dakota general partnership, to Laidlaw Family Partnership, a California Limited Partnership, to secure an indebtedness of One Million Two Hundred Twenty Thousand Dollars (\$1,220,000) dated November 13, 1997, recorded in Pennington County on November 13, 1997 in Book 69, p. 5370. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibits M and N) attached hereto.
- (g) Defendant Black Hills Federal Credit Union's Mortgage executed by David M. Finneman and Connie S. Finneman to Black Hills Federal Credit Union to secure an indebtedness of One Hundred Eight Thousand Dollars (\$108,000) dated April 7, 1998 recorded in Pennington County, South Dakota on April 10, 1998 in Book 72, p. 3425. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibit P) attached hereto.

With the above-described sole exceptions, the rights of Plaintiff in and to the Mortgaged Property by virtue of the Mortgages are prior and superior to the claims, liens, encumbrances and interests of any other party hereto.

6. The Mortgaged Property consists of several separate and distinct parcels and shall be sold at public auction by the Sheriff of Pennington County in parcels. It being expressly determined by the Court that the provisions of SDCL 15-19-11 are applicable, so that parcels in Meade and Pennington Counties may be sold by the Sheriff of

Pennington County. Pursuant to SDCL 15-19-15, Defendant Rock Creek Farms may, by written notice served on the Sheriff or other person making such sales, before the time of such sales, or personally at the time and place of sale, direct the order in which such parcels of the Mortgaged Property shall be sold, and the Sheriff or such other person making the sale shall offer the parcels accordingly. In the event, however, such designation is not made pursuant to SDCL 15-19-15, Plaintiff shall determine and designate the order in which the parcels are sold at such public auction.

7. Plaintiff may be a purchaser at the Sheriff's sale of any or all of the parcels by bidding at such sale for each parcel all or a portion of the debt secured by the Mortgages; provided, however, that the sum of Plaintiff's bids for all parcels shall not be less than the amount of this Judgment, together with interest accrued to the date of such sale.

8. Upon completion of the foregoing Sheriff's sale, the debt secured by the Mortgages shall be deemed fully paid and satisfied; provided, however, that, pursuant to SDCL 21-47-17, neither this Judgment nor such Sheriff's sale shall be considered a satisfaction of the assignment of rents agreement under the Mortgages.

9. The proceeds of the Sheriff's sale shall be applied in the order set forth in applicable statutes.

10. All Defendants, except those hereby adjudged to have superior interests, liens or encumbrances as described in ¶5 above, are hereby barred and foreclosed from any estate, interest, lien or other claim upon the Mortgaged Property, excepting only their statutory rights of redemption, it being adjudged and determined hereby that such

Defendants' rights of redemption are governed by SDCL Chapter 21-52, and, in the case of the United States of America, under 28 U.S.C. §2410. In particular, and notwithstanding any contrary or other provisions of the Mortgage or any related agreements, Defendant Rock Creek Farms is determined and adjudged to have the owner's right of redemption for a period of one year and other redemption rights under SDCL Chapter 21-52.

11. Plaintiff shall have the right hereafter to determine whether the receiver shall continue under previous Order of the Court or shall be terminated. In any event, as to any parcel purchased at the Sheriff's sale other than by Plaintiff, such receivership shall be terminated as to such parcel, and Defendant Rock Creek Farms shall be entitled to possession of such parcel and the rents, issues and profits therefrom until expiration of all periods of redemption.

Dated: 15 Jan, 2010

BY THE COURT:

By [Signature]
Circuit Court Judge

ATTEST:

Ranae Truman, Clerk

By [Signature]
Deputy Clerk

(SEAL)

State of South Dakota } Seventh Judicial
County of Pennington } Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as
the same appears on record in my office this

JAN 15 2010

RANAE L. TRUMAN
Clerk of Courts, Pennington County

By [Signature] Deputy [Signature] Ranae Truman, Clerk of Courts
Deputy

1:30pm
Pennington County, SD
FILED
IN CIRCUIT COURT
JAN 15 2010

L & L VS. FINNEMANS, ET AL

PLAINTIFF'S EXHIBIT 17

Attorneys Fees & Costs Incurred by
AXA Equitable \$44,896.94

Attorneys Fees & Costs Incurred by
CLW FINANCIAL \$25,623.20
\$70,520.14

INTEREST PAYABLE AT 10.8% @
\$20.866 PER DAY, 10/13/10 -
7/25/11, 285 DAYS \$5,946.81
\$76,466.95

CLW FINANCIAL, LLC
Equitable Note/Mortgage Balance

Payoff Figure as of 10/13/10

	<u>Amount</u>
Principal Balance Due at Maturity on 1/1/10 (see assignment)	\$960,508.00
Delinquent Interest on Unpaid Installments Prior to Maturity (see assignment)	\$45,716.53
Attorney's Fees and Costs Incurred by AXA Equitable (see assignment)	\$44,896.94
Claim Subtotal	\$1,051,121.47
Default Interest 1/1/10-10/13/10 (10.8% - \$315.336441/day)	\$90,186.22
Attorney's Fees and Costs Incurred to Date by CLW Financial	\$25,623.20
TOTAL CLAIM AS OF 10/13/10	\$1,166,930.89

REPORT: MLS042R
DATE : 04/08/10

Rabo AgriFinance
NATIONAL SERVICE CENTER
STATEMENT OF ACCOUNT SUMMARY
AS OF 04/13/10

PAGE: 1
TIME: 13:57

Borrower's Name LUTZ-LAIDLAW PARTNERSHIP
County MEADE
State SD
Loan No. F-19715700

LOAN DATA:

Interest Rate 5.8000%
Default Interest Rate 10.8000%
Most Recent Installment Due Date 01/01/10
Date Interest Paid Through 07/01/09
Scheduled Maturity 01/01/10
Statement issued in connection with Payoff

This statement reflects all monies owed through the statement date. Unpaid invoices and costs of which the lender has yet to receive an invoice are not included in this statement. Interest calculations are based on a 30/360 basis.

ITEM	AMOUNT	PER DIEM INTEREST
Principal Balance Owed at Statement date	960,508.00	
* Total Interest Portion of Delinquent Installments	27,854.73	
Accrued interest at 5.8000% from 01/01/10 to 04/13/10	15,784.35	154.74851
* Additional Interest on Delinquent Installments	14,459.55	141.76031
Outstanding Payables	3,895.50	
* Recoverable Advances		
Amounts Advanced	13,696.33	
Interest on Amounts Advanced	4,797.96	4.10890
	<u>TOTAL AMOUNT OWED</u>	<u>PER DIEM INTEREST</u>
	<u>1,040,996.42</u>	<u>300.61772</u>

AMOUNTS OWED CALCULATED TO: 04/13/10

LOCAL COUNSEL TO ADD UNBILLED AND ESTIMATED LEGAL FEES

+32,000 see attorney fees

8 1077,00

Aggrav. Interest 115,776

Amount 96,48

6M - 57,888

Prepared by
Date Prepared
Verified by

Wilson
04/08/10

* Per Attached Schedules

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October 12, 2010

SENT VIA EMAIL

Mr. John H. Mairose
2640 Jackson Blvd., #3
Rapid City, SD 57702

Re: Laidlaw/CLW Financial

Dear John:

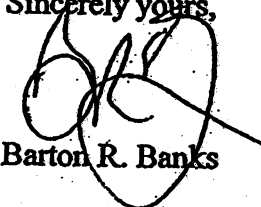
In response to your phone message from yesterday afternoon, I am writing to you to provide a payoff for the Equitable note and mortgage acquired by CLW Financial this past May. In that regard, the payoff is One Million One Hundred Sixty-six Thousand Nine Hundred Thirty Dollars and Eighty-nine Cents (\$1,166,930.89) as of the close of business on October 13, 2010. After that, interest accumulates at the rate of \$315.34 per day. See attached.

This is a payoff calculation and not an assignment. We will execute and deliver an appropriate satisfaction and release within Five (5) business days of the date that the payoff draft clears the bank and we have received unconditional funds. As it relates to the litigation known as *Lutz and Laidlaw v. Finneman, et. al.*, Civ. No. 10-316, nothing further will be required. I anticipated that your clients might pay off the mortgage so the October 4, 2010, Order signed by Judge Kern provides for the substitution of parties but does not join the foreclosure of the Equitable mortgage. We have until November 4, 2010, to join that claim with an appropriate pleading if necessary. Obviously, if the mortgage is paid by that time, there will be no claim to join.

If you have any questions, let me know.

Thank you.

Sincerely yours,


Barton R. Banks

Enclosure
cc: Client

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 26374

L & L PARTNERSHIP, et al,

Plaintiffs-Appellees,

vs.

DAVID M. FINNEMAN; CONNIE S. FINNEMAN;
ROCK CREEK FARMS, SUCCESSORS IN INTEREST TO
DAVID FINNEMAN AND CONNIE S. FINNEMAN, et al,

Defendants-Appellants Finnemans.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA
Honorable James W. Anderson, Circuit Court Judge, presiding
Court File No. C10-316

Notice of Appeal filed on June 4, 2012

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STATEMENT OF THE CASE AND STATEMENT OF FACTS

Finnemans do not agree with Arnoldys' statement of the case or statement of facts. This appeal concerns action of the trial court stripping from Finnemans and their assignee partnership Rock Creek Farms (RCF) their vendees' statutory right to cure a default in the two contracts for deed by Finnemans as vendees and their partnership L&L as vendor. The contracts for deed describe about 9,200 acres of valuable productive farmland with valuable minerals in Pennington and Meade Counties. The trial court in the Findings of Fact and Conclusions of Law and Judgment of Foreclosure wrongfully gave vendees' redemption rights to Ann Arnoldy, a complete stranger to the contracts for deeds, and failed to void the secret sheriff's deed.

ARGUMENT

Arnoldys claim "The court in the Rabo case granted Arnoldys the owner's right of redemption for all of the property that was subject to the Rabo foreclosure, including the equitable title to the contract for deed land and the corresponding right to pay off the contract for deed." (AAB p.6) Arnoldys also claim "Ann Arnoldy assumed Rock Creek's right to redeem under 21-50-3 when the equitable interest in the contract for deed land was transferred to her by the court in the Rabo case." (AAB p.8) These arguments are without merit because the documents signed by the Rabo court do not provide factual support for these bold claims.

On January 15, 2010, the Rabo court in the mortgage foreclosure action entered the Judgment and Decree of Foreclosure granting RCF on page 6 the owner's right of redemption under SDCL 21-52-7. On March 18, 2011, Ann Arnoldy holding a junior judgment redeemed the land from the foreclosure sale. Ann Arnoldy voluntarily paid the

United States' (U.S.) lien on the land. On April 24, 2012, the U.S. filed a motion to dismiss the U.S., because "it no longer has an interest in the property that is the subject of this litigation." Rec pp.559-560. Under SDCL 21-52-7 Finnemans' assignee RCF had the owner's final right of redemption. Finnemans and RCF lined up buyers for some of the land that would produce enough proceeds to pay off all debt on the land, including the lien of the U.S., and save the equity in the unsold land. RCF informed the trial court by motion it was ready to redeem. However at the motion hearing on May 26, 2011, before the end of the statutory period for the owner's redemption rights to be exercised, the Rabo trial court entered an order that partially changed the Judgment and Decree of Foreclosure striking out on page 6 RCF's owner's right of redemption, stripping RCF of its redemption rights without discovery or an evidentiary hearing preventing Finnemans and RCF from redeeming in the Rabo case.

But the Judgment and Decree of Foreclosure of January 15, 2011, or as changed on May 16, 2011, does not give Arnoldys the owner's right of redemption for "the equitable title to the contract for deed land and the corresponding right to pay off the contracts for deed" as Arnoldys contend.

Referring to the changed judgment of May 26, 2011, Arnoldys state "The court in the Rabo case entered a new judgment, granting the right of redemption to the Arnoldys." (AAB p.5) Arnoldys' statement is not true. There is no language in the new judgment granting the right of redemption on the 9,200 acres of contract for deed land to Arnoldys. In fact the Judgment and Decree of Foreclosure in paragraph 5 refers to SDCL Chapter 21-47, entitled Actions To Foreclose Real Property Mortgages, and does not apply to foreclosure of contracts for deed. Paragraph 8 refers to SDCL 21-47-17, again applicable

to mortgage foreclosures, not foreclosure of contracts for deed. Paragraph 10 refers to “the Mortgaged property” and states “Defendants’ rights of redemption are governed by SDCL Chapter 21-52” which is applicable to mortgage foreclosures, not the foreclosure of contracts for deed. SDCL Chapter 21-50 entitled Foreclosure Of Real Estate Contracts is not mentioned in the Judgment and Decree of Foreclosure of January 15, 2011, or in the judgment as changed on May 16, 2011.

In *First Fed. Sav. and Loan Assn. of Storm Lake v. Lovett*, 318 N.W.2d 133 (S.D. 1982), this Court stated that in a contract for deed, the installment vendor is said to maintain legal title to the property while the vendee holds equitable title and has the right to use and possession of the property. In this case L&L is the contract seller or vendor, and Finnemans are the contract buyers or vendees. This is a contract for deed foreclosure case under SDCL Chapter 21-50.

At the hearing held on RCF’s motion to invalidate the sheriff’s deed, the court denied the motion, stating “The court is adopting the Arnoldy position in total. I am going to sign the proposed Findings of Fact and Conclusions of Law by Mr. Schaub.” MHT p.11, ll. 1-10.¹ The court’s conclusion of law number 8 wrongly provides, “Ann Arnoldy is substituted for Defendants Rock Creek Farms Partnership, whose interest in the land has been extinguished by virtue of the decision of *Rabo v. Finnemans*, 2012 SD 20.” The court signed Arnoldys’ proposed findings of fact and conclusions of law and judgment exactly as presented by Arnoldys.² It did so even though every party appearing at trial objected to them. Rec pp.421-429; 537-541; and 544-554.

¹ “MHT” refers to the transcript of the Motions Hearing and the Court’s ruling, dated April 10, 2012.

² “App.” refers to this Brief’s Appendix.

Finnemans farmed and raised crops on about 16,700 acres of land, which included 7,500 acres of deeded land and 9,200 acres of contract for deed land. Finnemans farmed and paid secured debts and property taxes and made huge payments for many years on the land. Finnemans made a \$400,000 down payment on the 1996 contract for deed. TT p.13, l. 23. L&L was paid over \$2,116,000 over the years on the 1996 contract for deed and was paid over \$885,500 under the 1999 contract for deed. Rec p.511. In addition to paying real estate taxes annually on about 16,700 acres of land, over the years Finnemans paid over \$3,000,000 to creditors with liens on their land.

A receiver was appointed to handle the proceeds from the grain raised by Finnemans and rent from the land during the redemption period. The receiver's accounting shows that (a) during the redemption period in the Rabo case, from January 5, 2010, to September 20, 2011, Finnemans and RCF had income of \$985,748.51; (b) Finnemans paid through their receiver to L&L redemption payments of \$364,846.75 from proceeds from their crops and rent income. These payments should be counted as partial redemption paid to L&L by Finnemans and RCF; (c) they paid through the receiver real estate taxes of \$163,437. (App. 2); (d) Finnemans and RCF paid down the Farm Credit Services mortgage with payments of \$178,330.44 and paid down the CLW mortgage by payments of \$85,172.48; (e) during the redemption period in the Rabo case, since January 5, 2010, to September 20, 2011, the Finnemans paid to secured creditors \$638,094. (App. 2)

(AAB____) refers to Arnoldys' Appeal Brief.
(Rec. p.____) refers to the Clerk's Index.

Foreclosure is an equitable action. In equity and fairness Finnemans and RCF should be allowed credit for continuing to pay huge redemption payments looking forward to paying off all creditors at the end of the redemption period, and should be allowed to redeem and pay off the contracts for deed and save their substantial equity in the 9,200 acres. But the trial court permitted Ann Arnoldy to reap the benefits of all the payments made by Finnemans and RCF through their receiver during the redemption period, which is not fair or equitable.

Under the Findings of Fact and Conclusions of Law and Judgment of Foreclosure the trial court made reversible error as a matter of law in findings of fact 48 and 49, and conclusions of law 8, 11, 13, and 14. (App.1) At the trial the L&L court allowed the debt owed to L&L to be reduced by the substantial redemption payments of \$364,846.75 to L&L by Finnemans and RCF through their receiver since January 5, 2010, from proceeds from their crops and rent income. But the trial court refused to allow Finnemans and RCF to realize on their redemption payments by exercising their statutory right of redemption under SDCL 21-50-3 and paying off the remaining balance owed. Instead, the trial court allowed Ann Arnoldy to reap the windfall of Finnemans' and RCF's redemption payments to L&L of \$364,846.75 and \$85,172.48 to CLW, plus real estate taxes paid during the redemption period. The court made reversible error of law in concluding as a matter of law in the Judgment of Foreclosure (i) in paragraph 3 that "Ann Arnoldy is the successor to the interest of Finnemans and its assign, Rock Creek, to the 1996 CFD," and (ii) in paragraph 12 that "Ann Arnoldy is substituted for the defendants, Rock Creek Farms Partnership, whose interest in the land has been extinguished by virtue of the

issuance of the sheriff's deed and the decision of *Rabo v. Finnemans*, 2010 SD 20.”
(App.1)

The Rabo court in the Judgment and Decree of Foreclosure January 15, 2010, granted the owner's right of redemption to RCF. Finnemans and RCF relied on the Judgment and lined up buyers to redeem the land. They lined up buyers to purchase a portion of the land and use the proceeds to pay all debt on the land, including the lien of the US. The buyers needed merchantable title to the land purchased. Given all the litigation involved, RCF moved for court supervision of the sale process to insure merchantable title for the buyers. At the motion hearing the motion was denied. Instead, in a bizarre twist, without an evidentiary hearing the Rabo trial court stripped RCF of its owner's redemption rights. The court's abrupt decision was without discovery or an evidentiary hearing to question the facts stated by the court to support its reversal of the Judgment and Decree of Foreclosure January 15, 2010.

Similarly, in this case the L&L trial court stripped RCF of its statutory right to cure the default in the 1996 and 1999 contracts for deed, and instead allowed Ann Arnoldy, holder of a junior judgment she purchased to redeem and a stranger to these contracts for deed, to redeem.

Arnoldys discuss in their brief the FarmPro case. (AAB p.2-3) Arnoldys state FarmPro foreclosed on its mortgage in 2000, which is not correct, the complaint is dated April 25, 2002, and the sheriff's sale was May 10, 2006.

Arnoldys argue that RCF's owner's redemption in the FarmPro case was untimely. (AAB p.3) This argument has no factual basis.

(a) The certificate of redemption September 16, 2008, shows that Michael Arnoldy redeemed using junior judgments he purchased to make redemption by paying \$1,765,223.50 plus a \$2,000 contingency.

(b) Finnemans timely filed May 10, 2007, their Extension of Redemption Period, and paid \$822,000. Of this amount Michael Arnoldy received (i) \$58,000 for all taxes on the land for 2006; (ii) \$358,450 for all interest on the FarmPro judgment at the date of sale; (iii) \$216,136 for interest for one year forward; and (vi) \$184,748.39 to pay five senior liens.

(c) Daniel Mahoney redeemed from Michael Arnoldy May 8, 2008, using judgments he purchased, and paid Michael Arnoldy \$1,221,734.29.

(d) Ann Arnoldy redeemed from Daniel Mahoney using judgments she purchased to redeem. She paid \$1,254,570.42.

(e) RCF timely made the owner's final redemption from Ann Arnoldy under SDCL 21-52-7 on September 12, 2008. RCF paid \$1,280,000: Ann Arnoldy received (i) \$1,244,570.43 plus (ii) interest of \$24,209.45, and (iii) \$11,220.10 was paid to the Sheriff for contingency.

(f) Ann Arnoldy accepted the \$1,268,779.80 owner's redemption money from RCF.

By virtue of Finnemans'/RCF's timely redemption payments of \$2,102,000 (\$822,000 and \$1,280,000) all unpaid mortgages, judgments, and liens on the land were reinstated, which would have been stripped from the land if Finnemans and RCF had not made the owners redemptions. *Donovan v. Farmers Home Admin.*, 19 F. 3rd 1267 (8th

Cir. 1994). All unpaid liens immediately reattached to the property when owners Finnemans/RCF made the owner's final redemption.

If RCF's redemption was "untimely" as Arnoldys contend, then (i) RCF's owner's final redemption under SDCL 21-52-7 would have failed, (ii) Ann Arnoldy would have to pay back \$1,268,779.80 plus interest to RCF, and (iii) with Ann Arnoldy as the non-owner redemptionor, all junior unpaid mortgages, liens, and judgments, including the lien of the U.S. would have been automatically stripped from the land.

Arnoldys state that in Civ. No. 08-1845 "the circuit judge determined that the judgments Mahoney used to redeem in the FarmPro case were fraudulent and orally granted summary judgment in favor of Arnoldys November 20, 2009." (AAB p.3-4) But Arnoldys omitted important facts.

RCF was prevented from doing discovery in the Arnoldy case to determine who was financing the Arnoldys, who was the real party in interest, and other important matters. On appeal this Court reversed Judge Fuller and disregarded Arnoldys' argument that Mahoney's redemption and RCF's owner's final redemption were invalid. This Court stated "Questions of fraud and deceit are generally questions of fact and as such are to be determined by the jury." This Court reversed the trial court and held that "The trial court erred as a matter of law in finding fraud as the basis for summary judgment." Further, "If Arnoldys have evidence to substantiate their claim that the judgments are invalid, this issue will need to be presented to a jury."

Arnoldys argue that the Rabo foreclosure action (C09-1211) transferred Finnemans' and RCF's interest in the 9,200 acres of contract for deed land to Ann Arnoldy. They argue "Ann Arnoldy has become the equitable owner of all contract for

deed land covered by the Rabo foreclosure.” (AAB p.2) Arnoldys discuss in their brief the Rabo case in some detail. This argument is pure fiction unsupported by fact or law.

The Rabo Judgment and Decree of Foreclosure of January 15, 2010, as changed May 26, 2011, provides in paragraph 5 that the sale of the mortgaged property is “subject to” the “exceptions” listed in paragraph 5(c), the ownership lien interest of L&L in the contract for deed land, sold to David M. and Connie S. Finneman on a contract for deed dated April 23, 1996; in paragraph 5(d) and (e), Equitable’s mortgage (\$1,700,000) on the contract for deed land; and in paragraph 5(f), Laidlaw Family Partnership’s mortgage (\$1,220,000) on the contract for deed land. (App. 2) Ann Arnoldy did not redeem or pay off any of these superior liens and ownership interests within the redemption period in the Rabo case.

In addition, Arnoldy failed to timely redeem in this case. At the end of the trial on July 25, 2011, in his Ruling of the Court, Judge Anderson ordered that “its appropriate for redemption to be 30 days after the Supreme Court decides the Rabo case.” (Transcript of L&L trial July 25, 2011, Ruling of the Court, p.2) The Opinion of the Supreme Court in the Rabo case was filed March 14, 2012. Finnemans made redemption April 11, 2012, and RCF made redemption April 12, 2012, by paying \$856,803.99 within the redemption period provided by the trial court. Arnoldys made no redemption payment within the 30 day redemption period provided by the trial court. Arnoldys made redemption payments late on April 27, 2012, and May 18, 2012, clearly beyond the 30 day redemption as provided by the trial court.

L&L owns the 9,200 acres Finnemans are purchasing as vendees under the contracts for deed. Arnoldys, as purchasers of several junior judgments against

Finnemans, only hold junior judgment liens against Finnemans' equity interest as vendees under the contracts for deed.

When Finnemans and RCF were foreclosed in the Rabo case the junior judgments against Finnemans held by Arnoldys were foreclosed out also. And when Finnemans and RCF were foreclosed in the L&L case the junior judgments against Finnemans held by Arnoldys were foreclosed out also.

The trial court erred as a matter of law granting redemption rights to a stranger to the contracts for deed, rather than allowing RCF to make its statutory right to cure the default. The trial court ignored the restrictions imposed by South Dakota law as to who may cure a default under a contract for deed. SDCL 21-50-3 restricts who may cure a default under a contract for deed to only the buyer or vendee.

Upon the trial of an action under this chapter the court shall have power to and by its judgment shall fix the time within which **the party or parties in default** must comply with the terms of such contract on his or their part, which time shall be not less than ten days from the rendition of such judgment . . . (emphasis added)

Instead of following this statutory mandate and allowing RCF to cure the default, the court wrongfully allowed a stranger to the contracts, Ann Arnoldy, to redeem and gain an unearned windfall of the owner's equity in the land worth millions of dollars. The trial court made reversible error of law. This statute is clear. It restricts who may cure a default in a contract for deed. This Court in *Staab v. Skoglund*, 234 N.W.2d 45 (S.D. 1975) recognized liberal interpretation of a contract vendee's rights, and absolute statutory right to redeem under SDCL 21-50.

A trial court may not grant junior lienholder Ann Arnoldy the right to redeem in this contract for deed foreclosure action brought under Chapter 21-50. The right to

redeem property from a foreclosure is purely statutory and “can be exercised only within the period and in the manner prescribed by law.” *VanGorp v. Sieff*, 624 N.W.2d 712 (S.D. 2001). Chapter 21-50 provides contract for deed buyers or their assignees the exclusive right to redeem and cure a default. *Heikkila v. Carver*, 378 N.W.2d 214 (S.D. 1985); and *Prentice v. Classen*, 355 N.W.2d 352 (S.D. 1984). This Court held in *BankWest v. Groseclose*, 535 N.W.2d 860 (S.D. 1995) and *Anderson v. Aesoph*, 697 N.W.2d 25 (S.D. 2005) that a contract for deed buyer has the right of redemption, citing SDCL § 21-50-3.

Even though Ann Arnoldy may be able to redeem land from the Rabo foreclosure sale under different redemption statutes applicable in a mortgage foreclosure action, Chapter 21-52, here she must abide by different statutes applicable in this contract for deed foreclosure action Chapter 21-50.

When Finnemans granted a mortgage to Rabo, they did not own the 9,200 acres of contract for deed lands; they only had an equitable interest in the contract for deed lands. This Court has ruled, “in a contract for deed, the installment vendor maintains legal title to the property while the vendee holds equitable title and has the right to use and possession of the property.” *Anderson*, 2005 S.D. at 56, ¶ 21. It is a fundamental principle of property law that a grantor can only give that which he owns. *Texas Am. Bank/Levelland v. Morgan, et. al.*, 733 P.2d 864, 865 (N.M. 1997). As to the 9,200 acres of contract for deed lands, Finnemans could only mortgage to Rabo an equitable interest in the contract for deed lands. Finnemans could not mortgage L&L’s ownership interest in the contract for deed lands.

By statute junior lienholder Ann Arnoldy has no redemption rights in this contract for deed foreclosure. Redemptions in contract for deed foreclosures are not governed by

Chapter 21-52, but instead by Chapter 21-50. Under SDCL 21-50-3, the court is empowered to “. . . fix the time within which the *party or parties in default* must comply with the terms of such contract on his or her or their part . . .” (Emphasis added.)

The statute specifically contemplates that only the party obligated under the contract is entitled to prevent reversion of title by payment of the contract. Cf. *In re Carver*, 828 F.2d 463 (8th Cir. 1986). No section of Chapter 21-50 affords any lien creditor, such as Ann Arnoldy, a right of redemption. The right of redemption is afforded only to Finnemans as vendees and their assignee RCF. This statute clearly does not allow strangers to the contract to redeem. The trial court plainly made reversible error as a matter of law allowing Ann Arnoldy to redeem the contract for deed land.

The L&L court erroneously allowed her to redeem the contracts for deed. She was not a buyer or vendee; she was a stranger to the contracts for deed. She became a creditor by purchasing judgments to redeem with. The trial court was incorrect on the law. She has no right to redeem.

SDCL 21-52-1 provides that redemption is the right to repay the amount paid for real property *sold on foreclosure* of a real estate mortgage.

The contract for deed land was not sold on foreclosure of a real estate mortgage. No sale was held. The trial court failed to distinguish between the separate and distinct statutory foreclosure proceedings allowing Ann Arnoldy, a judgment creditor and a stranger to the contract, to redeem. This error of law constitutes reversible error requiring that the trial court’s decision be vacated and the matter remanded back to the trial court.

The trial court also made reversible error substituting Ann Arnoldy for RCF. SDCL 15-6-25 prescribes the circumstance under which a party may be substituted for

another party. This rule is not applicable here, because (a) RCF did not transfer its ownership interest in the contract lands, (b) the secret sheriff's deed is invalid, and (c) Ann Arnoldy requested to be substituted for CLW rather than for RCF. Rec pp.188-190. When RCF resisted her motion for substitution and the court asked her if she was going to move to have RCF not participate at trial if her motion was granted, she requested that her motion be considered post trial. TT p.9, ll. 12-23. But she never scheduled her motion for substitution of parties for hearing post trial. She merely added a proposed conclusion of law, which the trial court did not make at trial or during a motions hearing. The court signed her proposed findings of fact and conclusions of law in total without change, even though all other parties objected to her proposed findings of fact and conclusions of law. Rec pp.421-429, 537-541, 544-554. The trial court made a reversible error.

The rationale of SDRCP 25(c) is to insure that the action is brought by the real party in interest. RCF is the real party in interest with standing to redeem. RCF has invested several million dollars in the property to save Finnemans' substantial equity in the land. As discussed earlier, RCF is the only party that may cure the default under the contracts for deed. RCF was ready, willing, and able to do so prior to the L&L trial court stripping it of that right and wrongfully giving it to a stranger to the contract, Ann Arnoldy.

In some arrangement that has not been disclosed, Arnoldys' counsel secretly prepared a deed in the Rabo case, got a Pennington County deputy sheriff to sign it on June 2, 2011, and filed it in Pennington and Meade Counties. The Meade County sheriff did not sign the deed. The secret deed purports to convey to Ann Arnoldy, without notice

or opportunity to be heard, and without an evidentiary hearing in the Rabo case or in this L&L case, all 16,700 acres of the land worth millions of dollars. Finnemans are farmers, but they do not have their land to farm. Ann Arnoldy is a lawyer, not a farmer. She claims the secret deed makes her the owner of the 9,200 acres of contract for deed land including Finnemans' home, and the right to lease out all the land and collect all the lease income.

RCF did not transfer its interest in the land. The deputy sheriff secretly signed for Ann Arnoldy a judicially unauthorized deed in the Rabo case under the Rabo case heading C09-1211, not this case C10-316. The deed was prepared and filed by Arnoldys' attorney without court approval, apparently without the advice of the sheriff's counsel, without notice and opportunity to be heard for L&L, Finnemans or RCF, and without an evidentiary hearing with live testimony and cross examination. When the secret deed was being prepared, five separate cases were pending in the Seventh Judicial Circuit Court. 1. C02-533 (FarmPro Case); 2. C08-1845 (Arnoldy Case); 3. C09-1211 (Rabo Case); 4. C10-316 (L&L Case); and 5. C09-742 (Finneman Dec. Action). Arnoldys did not seek approval from any of these courts or judges prior to secretly preparing the deed to all of the 16,700 acres, and in a secret meeting getting the deputy sheriff to sign the judicially unauthorized deed, and secretly filing the deed conveying all of the land (about 7,500 acres deeded and about 9,200 acres contract for deed land) to lawyer Ann Arnoldy. In doing so, the Arnoldys (a) usurped the jurisdiction and authority of the judges and circuit courts involved with the land and the parties in the cases identified above, and (b) violated the basic due process rights of L&L, Finnemans, and RCF. The court erred in denying Finnemans' and RCF's motions to invalidate the sheriff's deed. The secret deed

was prepared, signed, and filed without any prior notice or opportunity to be heard to L&L, Finnemans, or RCF. The secret deed was filed June 2, 2011, well before the foreclosure trial in this case. If the secret deed did transfer ownership of the 9,200 acres of contract land to Ann Arnoldy as she contends, then the foreclosure trial would not have been necessary in this case.

Due process is one of the most fundamental rights granted by our State and Federal Constitutions. Arnoldys' secret deed violated the basic requirements of due process of law. The court in *Wain v. Todd County Sch. Dist.*, 2005 DSD 17, noted the U.S. Supreme Court described the root requirement of Due Process as "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." Citing *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971).

In *Fuentes v. Shevin*, 407 U.S. 67 (1972), the U.S. Supreme Court held that "For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner."

This Court has stated: Under the Fourteenth Amendment to the United States Constitution, as well as Article VI, § 2 of the South Dakota Constitution, "no person shall be deprived of life, liberty, or property without due process of the law." Due process guarantees that notice and the right to be heard are granted in a "meaningful time and in a meaningful manner." *Hollander v. Douglas Co.*, 620 N.W.2d 181, 186 (S.D. 2000). Such

guarantees are fundamental to our American system of justice. *City of Pierre v. Blackwell*, 635 N.W.2d 581 (S.D. 2001).

The L&L court deprived Finnemans/RCF their right to cure the default concerning 9,200 acres of valuable contract for deed lands worth about \$7,000,000. They were deprived of a significant property interest without due process of law. The court made reversible error as a matter of law in failing to void the offensive secret deed. Arnoldys violated the basic due process rights of Finnemans and RCF by secretly preparing, getting the deputy sheriff to sign, and filing the judicially unauthorized deed in Meade and Pennington Counties for all 16,700 acres, without prior notice to any of the circuit courts involved, without judicial approval, without the signature of the Meade County Sheriff, without prior notice and opportunity to be heard for Finnemans or RCF, and without an evidentiary hearing with live testimony subject to cross examination.

CONCLUSION

The trial court made reversible error of law by not allowing Finnemans or RCF to cure the default in their contracts for deed, because only Finnemans as the buyers or vendees or their partnership RCF have the exclusive statutory right to cure the default and save their equity in their land. The trial court erred by (1) allowing Ann Arnoldy, a stranger to the contracts for deed, the right to redeem the contract for deed land, (2) substituting Ann Arnoldy for Finnemans/RCF, and (3) failing to void Ann Arnoldy's secret judicially unauthorized sheriff's deed. This Court is requested to remand this case to the trial court with instructions to void the sheriff's deed and grant RCF its statutory right to cure the default under the contracts for deed within a reasonable time.

REQUEST FOR ORAL ARGUMENT

Finnemans request that oral argument be allowed.

Dated this 1st day of October, 2013.

**BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.**

BY: _____

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CERTIFICATE OF COMPLIANCE

Pursuant to SDCL § 15-26A-66(b)(4) counsel for Appellants state that the foregoing brief is typed in proportionally spaced typeface in Time New Roman 12 point using Microsoft Word 2010. The word processor used to prepare this Brief indicated that there are a total of 4,832 words in the body of the Brief.

JAMES P. HURLEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of October, 2013, fifteen (15) copies and the original of Appellants' Finnemans' Opening Brief were provided by United States mail, postage paid, to:

Shirley Jameson-Fergel
Clerk, South Dakota Supreme Court
500 East Capitol
Pierre, SD 57501-5070

and two (2) true and correct copies of Appellants' Finnemans' Reply Brief were provided by United States mail, postage paid, to:

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APPENDIX

Page(s)

1. Judgment and Decree of Foreclosure in the Rabo case001-014
2. Receiver's Final Accounting and Supplement in the Rabo case015-024

APPENDIX

	<u>Page(s)</u>
1. Judgment and Decree of Foreclosure in the Rabo case	001-014
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IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

RABO AGRIFINANCE, INC. FKA
AG SERVICES OF AMERICA, INC.
AND RABO AGSERVICES, INC.,

Civil No. 09-1211

Plaintiff,

JUDGMENT AND DECREE OF FORECLOSURE

V.

DAVID M. FINNEMAN; CONNIE S. FINNEMAN; ROCK CREEK FARMS, SUCCESSORS IN INTEREST TO DAVID M. FINNEMAN AND CONNIE S. FINNEMAN, DBA AIRPORT FARMS; FARM CREDIT SERVICES OF AMERICA FKA FARM CREDIT SERVICES OF THE MIDLANDS, FCLA; BLACK HILLS FEDERAL CREDIT UNION; LUTZ/LAIDLAW PARTNERSHIP; AXA EQUITABLE LIFE INSURANCE COMPANY; LAIDLAW FAMILY PARTNERSHIP; TOM J. WIPF; AMY WIPF; JOHNNY JAY WIPF, DBA WIPF FARMS; JOANN WIPF; CEN-DAK LEASING OF NORTH DAKOTA, INC.; SHEEHAN MACK SALES AND EQUIPMENT, INC.; MICHAEL ARNOLDY; ANN ARNOLDY; FARM CAPITAL COMPANY, LLC; DANIEL R. MAHONEY; PORTFOLIO RECOVERY ASSOCIATES, LLC; PFISTER HYBRID CORN CO.; KAUP SEED & FERTILIZER, INC.; JOYCE M. WOLKEN; CHARLES W. WOLKEN; STAN ANDERSON; DENNIS ANDERSON; KENT KJERSTAD; WILLIAM J. HUBER; KENDA K. HUBER; YU BLU SNI, LLC; U.S. BANCORP EQUIPMENT FINANCE, INC.; KENCO INC. DBA WARNE CHEMICAL & EQUIPMENT COMPANY, INC.; DOUG KROEPLIN AG SERVICES, INC; CREDICO, INC. DBA CREDIT COLLECTIONS BUREAU; SCOT D. EISENBRAUN; MELODY EISENBRAUN; BART CHENEY; HAL OBERLANDER, KEI OBERLANDER; RAY S. OLSEN; PATRICK X. TRASK; ROSE MARY TRASK; PENNINGTON

COUNTY, SOUTH DAKOTA; MEADE COUNTY,
SOUTH DAKOTA; AND THE
UNITED STATES OF AMERICA,

Defendants.

The Court having this day granted Plaintiff's Motion for Judgment on the
Pleadings, and for cause shown;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff shall have and recover judgment on the promissory notes attached to Plaintiff's Complaint from Defendant Note Makers in the sum of Two Million Four Hundred Thirty-Three Thousand Two Hundred Eight and 56/100ths Dollars (\$2,433,208.56) plus interest to the date of this Judgment in the amount of Eight Hundred Thirty-Eight Thousand Three Hundred Sixteen and 64/100ths Dollars (\$838,316.64) for a total of Three Million Two Hundred Seventy-One Thousand Five Hundred Twenty-five and 20/100ths Dollars (\$3,271,525.20).
2. Plaintiff has incurred costs, disbursements and attorney's fees in this action accruing from October 13, 2004 through the present in the amount of One Hundred Twenty Thousand Six Hundred Ninety-Two and 90/100ths Dollars (\$120,692.90), which shall be included in the Judgment amount hereof.
3. Interest shall accrue after this Judgment on the Mortgage debt at the rate of 12% per annum to the date of the Sheriff's sale. There shall be added to the amount of this Judgment all sums reasonably expended by Plaintiff for the protection of its interests in, or for protection and preservation of, the Mortgaged Property, and all other amounts

allowed by law, including without limitation, attorney fees, excepting only to the extent such amounts are already included in the amount of this Judgment.

4. The amount owed Plaintiff as above-described is secured by certain Collateral Real Estate Mortgages, copies of which are attached to Plaintiff's Complaint as Exhibits C, E, G and I (the "Mortgages") upon the following described real property in Pennington County, South Dakota and Meade County, South Dakota as set forth and attached to Plaintiff's Complaint as Exhibits L, M, N, O, P and Q (the "Mortgaged Property") and attached hereto, which Mortgages are valid and lawful liens and mortgages upon the Mortgaged Property enforceable according to their terms.

5. The Mortgaged Property shall be sold at public auction in the manner prescribed by SDCL Chapter 21-47 and 15-19 by the Sheriff of Pennington County, South Dakota, subject only to the following:

- (a) Real estate taxes remaining unpaid which may constitute a lien thereon;
- (b) Defendant Farm Credit Services Mortgage executed by David M. Finneman and Connie S. Finneman to Farm Credit to secure indebtedness of Seven Hundred Thousand Dollars (\$700,000.00) dated December 14, 1993 and recorded in Meade County on December 28, 1993 in Book 470, pp. 800-802 and recorded in Pennington County on January 3, 1994 in Book 53, Page 4169. Said lien is superior to Rabo's interests only with regard to the property set forth as (Exhibit L and Q) attached hereto.
- (c) Defendant Lutz/Laidlaw Partnership's lien against the real property herein, by virtue of its ownership of the property set forth in Exhibits M, N, and O attached hereto, which was sold to David M. and Connie S. Finneman on a contract for deed dated April 23, 1996.
- (d) Defendant Equitable's Mortgage executed by Lutz/Laidlaw Partnership to Equitable to secure indebtedness of One Million Seven Hundred Thousand

Dollars (\$1,700,000) dated March 16, 1995 and recorded in Pennington County on March 16, 1995 in Book 58, p. 645. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibits M and N) attached hereto.

- (e) Defendant Equitable's Mortgage executed by Lutz Laidlaw Partnership to the Equitable Life Assurance Society of the United States to secure indebtedness of One Million Seven Hundred Thousand Dollars (\$1,700,000) recorded in Meade County on March 16, 1995 in Book 481, Page 709-714. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibit O) attached hereto.
- (f) Defendant Laidlaw Family Partnership's Mortgage executed by Lutz Laidlaw Partnership, a South Dakota general partnership, to Laidlaw Family Partnership, a California Limited Partnership, to secure an indebtedness of One Million Two Hundred Twenty Thousand Dollars (\$1,220,000) dated November 13, 1997, recorded in Pennington County on November 13, 1997 in Book 69, p. 5370. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibits M and N) attached hereto.
- (g) Defendant Black Hills Federal Credit Union's Mortgage executed by David M. Finneman and Connie S. Finneman to Black Hills Federal Credit Union to secure an indebtedness of One Hundred Eight Thousand Dollars (\$108,000) dated April 7, 1998 recorded in Pennington County, South Dakota on April 10, 1998 in Book 72, p. 3425. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibit P) attached hereto.

With the above-described sole exceptions, the rights of Plaintiff in and to the Mortgaged Property by virtue of the Mortgages are prior and superior to the claims, liens, encumbrances and interests of any other party hereto.

6. The Mortgaged Property consists of several separate and distinct parcels and shall be sold at public auction by the Sheriff of Pennington County in parcels. It being expressly determined by the Court that the provisions of SDCL 15-19-11 are applicable, so that parcels in Meade and Pennington Counties may be sold by the Sheriff of

Pennington County. Pursuant to SDCL 15-19-15, Defendant Rock Creek Farms may, by written notice served on the Sheriff or other person making such sales, before the time of such sales, or personally at the time and place of sale, direct the order in which such parcels of the Mortgaged Property shall be sold, and the Sheriff or such other person making the sale shall offer the parcels accordingly. In the event, however, such designation is not made pursuant to SDCL 15-19-15, Plaintiff shall determine and designate the order in which the parcels are sold at such public auction.

7. Plaintiff may be a purchaser at the Sheriff's sale of any or all of the parcels by bidding at such sale for each parcel all or a portion of the debt secured by the Mortgages; provided, however, that the sum of Plaintiff's bids for all parcels shall not be less than the amount of this Judgment, together with interest accrued to the date of such sale.

8. Upon completion of the foregoing Sheriff's sale, the debt secured by the Mortgages shall be deemed fully paid and satisfied; provided, however, that, pursuant to SDCL 21-47-17, neither this Judgment nor such Sheriff's sale shall be considered a satisfaction of the assignment of rents agreement under the Mortgages.

9. The proceeds of the Sheriff's sale shall be applied in the order set forth in applicable statutes.

10. All Defendants, except those hereby adjudged to have superior interests, liens or encumbrances as described in ¶5 above, are hereby barred and foreclosed from any estate, interest, lien or other claim upon the Mortgaged Property, excepting only their statutory rights of redemption, it being adjudged and determined hereby that such

Defendants' rights of redemption are governed by SDCL Chapter 21-52, and, in the case of the United States of America, under 28 U.S.C. §2410. In particular, and notwithstanding any contrary or other provisions of the Mortgage or any related agreements, Defendant Rock Creek Farms is determined and adjudged to have the owner's right of redemption for a period of one year and other redemption rights under SDCL Chapter 21-52.

11. Plaintiff shall have the right hereafter to determine whether the receiver shall continue under previous Order of the Court or shall be terminated. In any event, as to any parcel purchased at the Sheriff's sale other than by Plaintiff, such receivership shall be terminated as to such parcel, and Defendant Rock Creek Farms shall be entitled to possession of such parcel and the rents, issues and profits therefrom until expiration of all periods of redemption.

Dated: 15 Jan, 2010

BY THE COURT:

By [Signature]
Circuit Court Judge

ATTEST:

Ranae Truman, Clerk

By [Signature]
Deputy Clerk
(SEAL)

State of South Dakota } Seventh Judicial
County of Pennington } Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as
the same appears on record in my office this

JAN 15 2010

RANAE L. TRUMAN
Clerk of Courts, Pennington County

By [Signature] Deputy

1:30pm
Pennington County, SD
FILED
IN CIRCUIT COURT

JAN 15 2010

Ranae Truman, Clerk of Courts
Deputy

STATE OF SOUTH DAKOTA :
:SS
COUNTY OF PENNINGTON :

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

RABO AGRIFINANCE INC, et al.

Civ. No. 09-1211

Plaintiffs,
vs.

DAVID M. FINNEMAN, et al.
Defendants.

**Order Partially Vacating Judgment and
Decree of Foreclosure and Order Granting
Motion for Judgment on the Pleadings**

The Court having this day granted Arnoldys Motion to Partially Vacate Judgment and Decree of Foreclosure and Order Granting Motion for Judgment on the Pleadings, and for cause shown;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The last sentence in paragraph 10 of the Judgment and Decree of Foreclosure is hereby stricken and vacated and is replaced with the following: Defendants David M. Finneman and Connie S. Finneman and Rock Creek Farms, successor in interest to David M. Finneman and Connie S. Finneman, are determined and adjudged to have waived all redemption rights under SDCL Chapter 21-52, pursuant to the terms of the loan restructure agreement (Rabo's Complaint, Exhibit K) and pursuant to the terms of the Stipulation as to Dismissal of Counterclaims Filed by Rock Creek Farms, David M. Finneman and Connie S. Finneman dated December 7, 2009 and Order Enforcing Stipulation as to Dismissal of the Counterclaims.
2. Added as the last sentence in paragraph 10 of the Judgment and Decree of Foreclosure is the following sentence: Michael Arnoldy is determined

and adjudged to have the owner's right of redemption for a period of one year under SDCL Chapter 21-52.

3. The words, "in the form submitted by Plaintiff" that appear on page two of the Order Granting Motion for Judgment on the Pleadings are hereby stricken and vacated.
4. The words, "in the form submitted" that appear on page three of the Order Granting Motion for Judgment on the Pleadings are hereby stricken and vacated.
5. The prior Judgment and Decree of Foreclosure and Order Granting Motion for Judgment on the Pleadings are attached and indicate the words that have been stricken and vacated.
6. The Judgment and Decree of Foreclosure is partially vacated upon the condition that the US Government's one-million dollar conviction lien against David M. Finneman and Connie Finneman be satisfied after Ann Arnoldy or Michael Arnoldy receive a deed to the foreclosed land from the Sheriff of Pennington County and after all appeals from this Order have been fully determined.

Dated at Rapid City, South Dakota, this 16 day of May, 2011

BY THE COURT:

(SEAL OF COURT)

ATTEST:

Ranae Truman, Clerk

by *Harold Forbes*
Deputy

[Signature]
Circuit Court Judge
State of South Dakota } Seventh Judicial
County of Pennington } Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as
the same appears on record in my office this

MAY 26 2011

RANAEL. TRUMAN
Clerk of Court, Pennington County

by *[Signature]* Deputy

Pennington County, SD
FILED
IN CIRCUIT COURT

MAY 26 2011 *2:30 PM*

Ranae Truman, Clerk of Court
By *[Signature]* Deputy

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

RABO AGRIFINANCE, INC. FKA
AG SERVICES OF AMERICA, INC.
AND RABO AGSERVICES, INC.,

Civil No. 09-1211

Plaintiff,

**JUDGMENT AND DECREE
OF FORECLOSURE**

v.

DAVID M. FINNEMAN; CONNIE S.
FINNEMAN; ROCK CREEK FARMS,
SUCCESSORS IN INTEREST TO DAVID
M. FINNEMAN AND CONNIE S. FINNEMAN,
DBA AIRPORT FARMS; FARM CREDIT
SERVICES OF AMERICA FKA FARM
CREDIT SERVICES OF THE MIDLANDS,
FCLA; BLACK HILLS FEDERAL CREDIT
UNION; LUTZ/LAIDLAW PARTNERSHIP;
AXA EQUITABLE LIFE INSURANCE
COMPANY; LAIDLAW FAMILY
PARTNERSHIP; TOM J. WIPF; AMY WIPF;
JOHNNY JAY WIPF, DBA WIPF FARMS;
JOANN WIPF; CEN-DAK LEASING OF
NORTH DAKOTA, INC; SHEEHAN MACK
SALES AND EQUIPMENT, INC.; MICHAEL
ARNOLDY; ANN ARNOLDY; FARM
CAPITAL COMPANY, LLC; DANIEL R.
MAHONEY; PORTFOLIO RECOVERY
ASSOCIATES, LLC; PFISTER HYBRID
CORN CO.; KAUP SEED & FERTILIZER,
INC.; JOYCE M. WOLKEN; CHARLES W.
WOLKEN; STAN ANDERSON; DENNIS
ANDERSON; KENT KJERSTAD; WILLIAM
J. HUBER; KENDA K. HUBER; YU BLU SNI,
LLC; U.S. BANCORP EQUIPMENT FINANCE,
INC.; KENCO INC. DBA WARNE CHEMICAL
& EQUIPMENT COMPANY, INC.; DOUG
KROEPLIN AG SERVICES, INC; CREDICO,
INC. DBA CREDIT COLLECTIONS BUREAU;
SCOT D. EISENBRAUN; MELODY EISENBRAUN;
BART CHENEY; HAL OBERLANDER, KEI
OBERLANDER; RAY S. OLSEN; PATRICK X.
TRASK; ROSE MARY TRASK; PENNINGTON

COUNTY, SOUTH DAKOTA; MEADE COUNTY,
SOUTH DAKOTA; AND THE
UNITED STATES OF AMERICA,

Defendants.

The Court having this day granted Plaintiff's Motion for Judgment on the
Pleadings, and for cause shown;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff shall have and recover judgment on the promissory notes attached to Plaintiff's Complaint from Defendant Note Makers in the sum of Two Million Four Hundred Thirty-Three Thousand Two Hundred Eight and 56/100ths Dollars (\$2,433,208.56) plus interest to the date of this Judgment in the amount of Eight Hundred Thirty-Eight Thousand Three Hundred Sixteen and 64/100ths Dollars (\$838,316.64) for a total of Three Million Two Hundred Seventy-One Thousand Five Hundred Twenty-five and 20/100ths Dollars (\$3,271,525.20).
2. Plaintiff has incurred costs, disbursements and attorney's fees in this action accruing from October 13, 2004 through the present in the amount of One Hundred Twenty Thousand Six Hundred Ninety-Two and 90/100ths Dollars (\$120,692.90), which shall be included in the Judgment amount hereof.
3. Interest shall accrue after this Judgment on the Mortgage debt at the rate of 12% per annum to the date of the Sheriff's sale. There shall be added to the amount of this Judgment all sums reasonably expended by Plaintiff for the protection of its interests in, or for protection and preservation of, the Mortgaged Property, and all other amounts

allowed by law, including without limitation, attorney fees, excepting only to the extent such amounts are already included in the amount of this Judgment.

4. The amount owed Plaintiff as above-described is secured by certain Collateral Real Estate Mortgages, copies of which are attached to Plaintiff's Complaint as Exhibits C, E, G and I (the "Mortgages") upon the following described real property in Pennington County, South Dakota and Meade County, South Dakota as set forth and attached to Plaintiff's Complaint as Exhibits L, M, N, O, P and Q (the "Mortgaged Property") and attached hereto, which Mortgages are valid and lawful liens and mortgages upon the Mortgaged Property enforceable according to their terms.

5. The Mortgaged Property shall be sold at public auction in the manner prescribed by SDCL Chapter 21-47 and 15-19 by the Sheriff of Pennington County, South Dakota, subject only to the following:

- (a) Real estate taxes remaining unpaid which may constitute a lien thereon;
- (b) Defendant Farm Credit Services Mortgage executed by David M. Finneman and Connie S. Finneman to Farm Credit to secure indebtedness of Seven Hundred Thousand Dollars (\$700,000.00) dated December 14, 1993 and recorded in Meade County on December 28, 1993 in Book 470, pp. 800-802 and recorded in Pennington County on January 3, 1994 in Book 53, Page 4169. Said lien is superior to Rabo's interests only with regard to the property set forth as (Exhibit L and Q) attached hereto.
- (c) Defendant Lutz/Laidlaw Partnership's lien against the real property herein, by virtue of its ownership of the property set forth in Exhibits M, N, and O attached hereto, which was sold to David M. and Connie S. Finneman on a contract for deed dated April 23, 1996.
- (d) Defendant Equitable's Mortgage executed by Lutz/Laidlaw Partnership to Equitable to secure indebtedness of One Million Seven Hundred Thousand

Dollars (\$1,700,000) dated March 16, 1995 and recorded in Pennington County on March 16, 1995 in Book 58, p. 645. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibits M and N) attached hereto.

- (e) Defendant Equitable's Mortgage executed by Lutz Laidlaw Partnership to the Equitable Life Assurance Society of the United States to secure indebtedness of One Million Seven Hundred Thousand Dollars (\$1,700,000) recorded in Meade County on March 16, 1995 in Book 481, Page 709-714. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibit O) attached hereto.
- (f) Defendant Laidlaw Family Partnership's Mortgage executed by Lutz Laidlaw Partnership, a South Dakota general partnership, to Laidlaw Family Partnership, a California Limited Partnership, to secure an indebtedness of One Million Two Hundred Twenty Thousand Dollars (\$1,220,000) dated November 13, 1997, recorded in Pennington County on November 13, 1997 in Book 69, p. 5370. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibits M and N) attached hereto.
- (g) Defendant Black Hills Federal Credit Union's Mortgage executed by David M. Finneman and Connie S. Finneman to Black Hills Federal Credit Union to secure an indebtedness of One Hundred Eight Thousand Dollars (\$108,000) dated April 7, 1998 recorded in Pennington County, South Dakota on April 10, 1998 in Book 72, p. 3425. Said lien is superior to Rabo's interests only with regard to the property set forth in (Exhibit P) attached hereto.

With the above-described sole exceptions, the rights of Plaintiff in and to the Mortgaged Property by virtue of the Mortgages are prior and superior to the claims, liens, encumbrances and interests of any other party hereto.

6. The Mortgaged Property consists of several separate and distinct parcels and shall be sold at public auction by the Sheriff of Pennington County in parcels. It being expressly determined by the Court that the provisions of SDCL 15-19-11 are applicable, so that parcels in Meade and Pennington Counties may be sold by the Sheriff of

Pennington County. Pursuant to SDCL 15-19-15, Defendant Rock Creek Farms may, by written notice served on the Sheriff or other person making such sales, before the time of such sales, or personally at the time and place of sale, direct the order in which such parcels of the Mortgaged Property shall be sold, and the Sheriff or such other person making the sale shall offer the parcels accordingly. In the event, however, such designation is not made pursuant to SDCL 15-19-15, Plaintiff shall determine and designate the order in which the parcels are sold at such public auction.

7. Plaintiff may be a purchaser at the Sheriff's sale of any or all of the parcels by bidding at such sale for each parcel all or a portion of the debt secured by the Mortgages; provided, however, that the sum of Plaintiff's bids for all parcels shall not be less than the amount of this Judgment, together with interest accrued to the date of such sale.

8. Upon completion of the foregoing Sheriff's sale, the debt secured by the Mortgages shall be deemed fully paid and satisfied; provided, however, that, pursuant to SDCL 21-47-17, neither this Judgment nor such Sheriff's sale shall be considered a satisfaction of the assignment of rents agreement under the Mortgages.

9. The proceeds of the Sheriff's sale shall be applied in the order set forth in applicable statutes.

10. All Defendants, except those hereby adjudged to have superior interests, liens or encumbrances as described in ¶5 above, are hereby barred and foreclosed from any estate, interest, lien or other claim upon the Mortgaged Property, excepting only their statutory rights of redemption, it being adjudged and determined hereby that such

Defendants' rights of redemption are governed by SDCL Chapter 21-52, and, in the case of the United States of America, under 28 U.S.C. §2410. ~~In particular, and notwithstanding any contrary or other provisions of the Mortgage or any related agreements, Defendant Rock Creek Farms is determined and adjudged to have the owner's right of redemption for a period of one year and the redemption right under SDCL Chapter 21-52.~~

11. Plaintiff shall have the right hereafter to determine whether the receiver shall continue under previous Order of the Court or shall be terminated. In any event, as to any parcel purchased at the Sheriff's sale other than by Plaintiff, such receivership shall be terminated as to such parcel, and Defendant Rock Creek Farms shall be entitled to possession of such parcel and the rents, issues and profits therefrom until expiration of all periods of redemption.

Dated: 15 Jan, 2010

BY THE COURT:

By

[Signature]
Circuit Court Judge

ATTEST:

Ranae Truman, Clerk

By

[Signature]
Deputy Clerk

(SEAL)

State of South Dakota } Seventh Judicial
County of Pennington } Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as
the same appears on record in my office this

JAN 15 2010

RANAE L. TRUMAN
Clerk of Courts, Pennington County

By

[Signature]

Deputy

1:30pm
Pennington County, SD
FILED
IN CIRCUIT COURT

JAN 15 2010

[Signature] Truman, Clerk of Courts
Deputy

Account Transactions

Rock Creek Farms Receiver Acct.

Num	Date	Payee	Category	Amount
Opening Balance				
Month Ending 1/31/2010				
1	1/5/2010	Boot Jack Farm Partnership	Farm Lease Payment	86,890.50
2	1/5/2010	Pat Trask	Farm Lease Payment	37,775.00
3	1/5/2010	Harold Oberlander	Farm Lease Payment	9,818.50
4	1/5/2010	Hal Kei Oberlander	Farm Lease Payment	45,495.00
97	1/5/2010	Sumner Law Office	Legal Expense	(14,488.69)
98	1/5/2010	Bret Estes	Receiver	(11,925.00)
99	1/5/2010	Farm Bureau Mutual Ins. Co.	Insurance	(2,200.00)
100	1/5/2010	Bret Estes	Insurance	(419.00)
101	1/5/2010	Bret Estes	Job Expense	(208.20)
102	1/12/2010	Pennington County Treasurer	Taxes	(27,368.98)
Total Month Ending 1/31/2010				123,369.13
Month Ending 3/31/2010				
103	3/1/2010	Sumner Law Office	Legal Expense	(5,503.52)
104	3/10/2010	Rapid Reporting	Legal Expense	(1,079.29)
Total Month Ending 3/31/2010				(6,582.81)
Month Ending 4/30/2010				
5	4/23/2010	Hal Kei Oberlander	Farm Lease Payment	34,530.00
6	4/23/2010	Dakota Mill & Grain, Inc.	Harvest at Airport & Owanka	112,250.22
105	4/23/2010	Farm Credit Services of America	Loan	(53,251.66)
106	4/29/2010	Bart Cheney	Combining	(23,370.00)
107	4/29/2010	Scot Eisenbraun	Combining	(23,370.00)
108	4/29/2010	Bill Cheney	Trucking	(7,413.20)
109	4/29/2010	Pennington County Treasurer	Taxes	(22,630.71)
110	4/29/2010	Meade County Treasurer	Taxes	(20,105.77)
111	4/29/2010	L & L Partnership	Payment to Secured Creditor	(75,000.00)
112	4/29/2010	Sumner Law Office	Legal Expense	(1,670.20)
113	4/29/2010	Bret Estes (Paid Thru 2-1-10)	Receiver	(7,275.00)
114	4/30/2010	Sumner Law Office	Legal Expense	(8,760.10)
Total Month Ending 4/30/2010				(96,066.42)
Month Ending 7/31/2010				
7	7/1/2010	Boot Jack Farm Partnership	Farm Lease Payment	86,890.50
8	7/1/2010	Pat Trask	Farm Lease Payment	37,775.00
9	7/1/2010	Harold Oberlander	Farm Lease Payment	9,818.50
10	7/1/2010	Hal Kei Oberlander	Farm Lease Payment	34,530.00
11	7/1/2010	Hal Kei Oberlander	Farm Lease Payment	45,495.00
115	7/12/2010	Sumner Law Office	Legal Expense	(1,433.13)
Total Month Ending 7/31/2010				213,075.87
Month Ending 8/31/2010				
116	8/17/2010	Duane Gordon	Clean Grain Bin	(100.00)
117	8/23/2010	Bret Estes (Paid Thru 3-1-10)	Receiver	(3,375.00)
118	8/23/2010	Bret Estes	Job Expense	(180.00)
119	8/25/2010	Geoff Meade	Clean Grain Bin	(300.00)
120	8/26/2010	Harold Oberlander	Dirt Work	(2,700.00)
Total Month Ending 8/31/2010				(6,655.00)
Month Ending 9/30/2010				
121	9/9/2010	Sumner Law Office	Legal Expense	(6,386.95)
Total Month Ending 9/30/2010				(6,386.95)
Month Ending 10/31/2010				
122	10/18/2010	Bret Estes (Paid Thru 4-1-10)	Receiver	(6,900.00)



Account Transactions
Rock Creek Farms Receiver Acct.

Num	Date	Payee	Category	Amount
123	10/20/2010	Oberlander Farms	Clean Grain Bin	(300.00)
124	10/25/2010	Pennington County Treasurer	Taxes	(8,942.96)
125	10/26/2010	Meade County Treasurer	Taxes	(20,105.77)
126	10/26/2010	Sumner Law Office	Legal Expense	(3,153.50)
127	10/28/2010	Bret Estes (Paid Thru 5-1-10)	Receiver	(7,050.00)
Total Month Ending 10/31/2010				(46,452.23)
Month Ending 11/30/2010				
128	11/3/2010	L & L Partnership	Payment to Secured Creditor	(87,175.00)
129	11/3/2010	CLW FINANCIAL, LLC	Payment to Secured Creditor	(62,825.00)
130	11/10/2010	Sumner Law Office	Legal Expense	(2,432.05)
131	11/29/2010	Farm Bureau Mutual Ins. Co.	Insurance	(422.40)
Total Month Ending 11/30/2010				(152,854.45)
Month Ending 12/31/2010				
132	12/16/2010	Sumner Law Office	Legal Expense	(1,163.83)
Total Month Ending 12/31/2010				(1,163.83)
Month Ending 1/31/2011				
	1/5/2011	Boot Jack Farm Partnership	Farm Lease Payment	86,890.50
	1/5/2011	Oberlander Farms	Farm Lease Payment	34,530.00
	1/5/2011	Oberlander Farms	Farm Lease Payment	55,314.00
	1/5/2011	Pat Trask	Farm Lease Payment	37,775.00
133	1/13/2011	Farm Bureau Mutual Ins. Co.	Insurance	(50.00)
134	1/13/2011	Farm Bureau Mutual Ins. Co.	Insurance	(1,255.00)
135	1/13/2011	Sumner Law Office	Legal Expense	(1,262.54)
Total Month Ending 1/31/2011				211,941.96
Month Ending 2/28/2011				
136	2/4/2011	Oberlander Farms	Load Cambelina	(703.50)
137	2/4/2011	Sumner Law Office	Legal Expense	(1,085.39)
	2/10/2011	Sustainable Oils, LLC	Harvest	15,015.87
138	2/22/2011	Meade County Treasurer	Taxes	(21,720.83)
139	2/22/2011	Pennington County Treasurer	Taxes	(10,564.89)
140	2/25/2011	Farm Credit Services of America	Loan	(48,797.52)
Total Month Ending 2/28/2011				(67,856.26)
Month Ending 3/31/2011				
141	3/8/2011	Sumner Law Office	Legal Expense	(1,293.30)
142	3/8/2011	L & L Partnership	Payment to Secured Creditor	(96,569.50)
143	3/8/2011	CLW FINANCIAL, LLC	Payment to Secured Creditor	(22,347.48)
144	3/8/2011	CLW FINANCIAL, LLC	Payment to Secured Creditor : Cambelina	(10,000.00)
145	3/29/2011	Bret Estes (Paid thru 6-1-10)	Receiver	(1,875.00)
Total Month Ending 3/31/2011				(132,085.28)
Month Ending 4/30/2011				
146	4/7/2011	Bret Estes (Paid Thru 7-1-10)	Receiver	(1,425.00)
147	4/7/2011	Bret Estes	Job Expense	(158.00)
Total Month Ending 4/30/2011				(1,583.00)
Month Ending 5/31/2011				
148	5/6/2011	Sumner Law Office	Legal Expense	(760.55)
149	5/19/2011	Bret Estes (Paid Thru 8-1-10)	Receiver	(3,600.00)
150	5/27/2011	Bret Estes (Paid Thru 9-1-10)	Receiver	(3,000.00)
151	5/27/2011	Bret Estes	Job Expense	(160.00)
Total Month Ending 5/31/2011				(7,520.55)
Month Ending 6/30/2011				

8/11/2011

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Account Transactions

Rock Creek Farms Receiver Acct.

Num	Date	Payee	Category	Amount
152	6/3/2011	Bret Estes (Paid Thru 10-1-10)	Receiver	(2,625.00)
153	6/3/2011	Bret Estes	Job Expense	(75.00)
154	6/9/2011	Bret Estes (Paid Thru 11-1-10)	Receiver	(2,700.00)
155	6/16/2011	Bret Estes (Paid Thru 12-1-10)	Receiver	(1,650.00)
156	6/16/2011	Bret Estes	Job Expense	(25.00)
157	6/16/2011	Bret Estes (Paid Thru 1-1-11)	Receiver	(900.00)
158	6/16/2011	Sumner Law Office	Legal Expense	(2,059.05)
159	6/17/2011	Bret Estes (Paid Thru 2-1-11)	Receiver	(3,675.00)
160	6/17/2011	Bret Estes	Job Expense	(175.00)
161	6/17/2011	Bret Estes (Paid Thru 3-1-11)	Receiver	(4,200.00)
162	6/17/2011	Bret Estes	Job Expense	(50.00)
163	6/24/2011	Farm Bureau Mutual Ins. Co.	Insurance	(383.02)
164	6/24/2011	Bret Estes (Paid Thru 4-1-11)	Receiver	(300.00)
165	6/27/2011	Bret Estes (Paid Thru 5-1-11)	Receiver	(75.00)
166	6/27/2011	Bret Estes (Paid Thru 6-1-11)	Receiver	(1,050.00)
Total Month Ending 6/30/2011				(19,942.07)
Month Ending 7/31/2011				
	7/1/2011	Oberlander Farms	Farm Lease Payment	55,314.00
	7/1/2011	Oberlander Farms	Farm Lease Payment	34,530.00
	7/1/2011	Pat Trask	Farm Lease Payment	16,880.00
	7/1/2011	Al Trask	Farm Lease Payment	20,895.00
	7/1/2011	Boot Jack Farm Partnership	Farm Lease Payment	86,890.50
167	7/12/2011	Meade County Treasurer	Taxes	(21,720.83)
168	7/12/2011	Pennington County Treasurer	Taxes	(10,276.37)
169	7/13/2011	Sumner Law Office	Legal Expense	(2,692.40)
170	7/13/2011	Bret Estes (Partial Payment)	Receiver	(880.00)
171	7/13/2011	Bret Estes	Job Expense	(50.00)
172	7/13/2011	L & L Partnership	Payment to Secured Creditor	(105,846.75)
173	7/13/2011	Farm Credit Services of America	Loan	(76,281.26)
Total Month Ending 7/31/2011				(3,238.11)
Month Ending 8/31/2011				
	8/11/2011	Farm Bureau Mutual Ins. Co.	Other Income	445.42
174	8/11/2011	Bret Estes (Final Payment)	Receiver	(445.42)
Total Month Ending 8/31/2011				0.00
Grand Total				0.00



8/11/2011

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Account Transactions
Rock Creek Farms Receiver Acct.

Running Balance

0.00

Month Ending 1/31/2010

86,890.50
124,665.50
134,484.00
179,979.00
165,490.31
153,565.31
151,365.31
150,946.31
150,738.11
123,369.13

Month Ending 3/31/2010

117,865.61
116,786.32

Month Ending 4/30/2010

151,316.32
263,566.54
210,314.88
186,944.88
163,574.88
156,161.68
133,530.97
113,425.20
38,425.20
36,755.00
29,480.00
20,719.90

Month Ending 7/31/2010

107,610.40
145,385.40
155,203.90
189,733.90
235,228.90
233,795.77

Month Ending 8/31/2010

233,695.77
230,320.77
230,140.77
229,840.77
227,140.77

Month Ending 9/30/2010

220,753.82

Month Ending 10/31/2010

213,853.82

8/11/2011

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Account Transactions
Rock Creek Farms Receiver Acct.

Running Balance

213,553.82
204,610.86
184,505.09
181,351.59
174,301.59

Month Ending 11/30/2010

87,126.59
24,301.59
21,869.54
21,447.14

Month Ending 12/31/2010

20,283.31

Month Ending 1/31/2011

107,173.81
141,703.81
197,017.81
234,792.81
234,742.81
233,487.81
232,225.27

Month Ending 2/28/2011

231,521.77
230,436.38
245,452.25
223,731.42
213,166.53
164,369.01

Month Ending 3/31/2011

163,075.71
66,506.21
44,158.73
34,158.73
32,283.73

Month Ending 4/30/2011

30,858.73
30,700.73

Month Ending 5/31/2011

29,940.18
26,340.18
23,340.18
23,180.18

Month Ending 6/30/2011

8/11/2011

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Account Transactions
Rock Creek Farms Receiver Acct.

Running Balance

20,555.18
20,480.18
17,780.18
16,130.18
16,105.18
15,205.18
13,146.13
9,471.13
9,296.13
5,096.13
5,046.13
4,663.11
4,363.11
4,288.11
3,238.11

Month Ending 7/31/2011

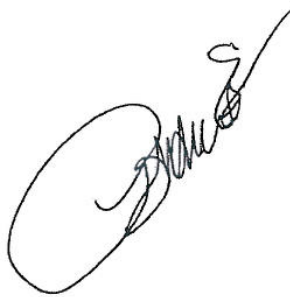
58,552.11
93,082.11
109,962.11
130,857.11
217,747.61
196,026.78
185,750.41
183,058.01
182,178.01
182,128.01
76,281.26
0.00

Month Ending 8/31/2011

445.42
0.00

0.00

FINAL ACCOUNTING



9/20/2011

Page 1

Category Spending
 All Accounts

Up to 9/20/2011

Num	Date	Payee	Category	Amount
Expense Categories				
Clean Grain Bin				
116	8/17/2010	Duane Gordon	Clean Grain Bin	(100.00)
119	8/25/2010	Geoff Meade	Clean Grain Bin	(300.00)
123	10/20/2010	Oberlander Farms	Clean Grain Bin	(300.00)
Total Clean Grain Bin				(700.00)
Combining				
106	4/29/2010	Bart Cheney	Combining	(23,370.00)
107	4/29/2010	Scot Eisenbraun	Combining	(23,370.00)
Total Combining				(46,740.00)
Dirt Work				
120	8/26/2010	Harold Oberlander	Dirt Work	(2,700.00)
Total Dirt Work				(2,700.00)
Insurance				
Insurance - Unassigned				
99	1/5/2010	Farm Bureau Mutual Ins. Co.	Insurance	(2,200.00)
100	1/5/2010	Bret Estes	Insurance	(419.00)
131	11/29/2010	Farm Bureau Mutual Ins. Co.	Insurance	(422.40)
133	1/13/2011	Farm Bureau Mutual Ins. Co.	Insurance	(50.00)
134	1/13/2011	Farm Bureau Mutual Ins. Co.	Insurance	(1,255.00)
163	6/24/2011	Farm Bureau Mutual Ins. Co.	Insurance	(383.02)
Total Insurance				(4,729.42)
Job Expense				
Job Expense - Unassigned				
101	1/5/2010	Bret Estes	Job Expense	(208.20)
118	8/23/2010	Bret Estes	Job Expense	(180.00)
147	4/7/2011	Bret Estes	Job Expense	(158.00)
151	5/27/2011	Bret Estes	Job Expense	(160.00)
153	6/3/2011	Bret Estes	Job Expense	(75.00)
156	6/16/2011	Bret Estes	Job Expense	(25.00)
160	6/17/2011	Bret Estes	Job Expense	(175.00)
162	6/17/2011	Bret Estes	Job Expense	(50.00)
171	7/13/2011	Bret Estes	Job Expense	(50.00)
Total Job Expense				(1,081.20)
Legal Expense				
97	1/5/2010	Sumner Law Office	Legal Expense	(14,488.69)
103	3/1/2010	Sumner Law Office	Legal Expense	(5,503.52)
104	3/10/2010	Rapid Reporting	Legal Expense	(1,079.29)
112	4/29/2010	Sumner Law Office	Legal Expense	(1,670.20)
114	4/30/2010	Sumner Law Office	Legal Expense	(8,760.10)
115	7/12/2010	Sumner Law Office	Legal Expense	(1,433.13)
121	9/9/2010	Sumner Law Office	Legal Expense	(6,386.95)
126	10/26/2010	Sumner Law Office	Legal Expense	(3,153.50)
130	11/10/2010	Sumner Law Office	Legal Expense	(2,432.05)

9/20/2011

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Category Spending

All Accounts

Up to 9/20/2011

Num	Date	Payee	Category	Amount
132	12/16/2010	Sumner Law Office	Legal Expense	(1,163.83)
135	1/13/2011	Sumner Law Office	Legal Expense	(1,262.54)
137	2/4/2011	Sumner Law Office	Legal Expense	(1,085.39)
141	3/8/2011	Sumner Law Office	Legal Expense	(1,293.30)
148	5/6/2011	Sumner Law Office	Legal Expense	(760.55)
158	6/16/2011	Sumner Law Office	Legal Expense	(2,059.05)
169	7/13/2011	Sumner Law Office	Legal Expense	(2,692.40)
Total Legal Expense				(55,224.49)
Load Cambelina				
136	2/4/2011	Oberlander Farms	Load Cambelina	(703.50)
Total Load Cambelina				(703.50)
Loan				
Loan - Unassigned				
105	4/23/2010	Farm Credit Services of America	Loan	(53,251.66)
140	2/25/2011	Farm Credit Services of America	Loan	(48,797.52)
173	7/13/2011	Farm Credit Services of America	Loan	(76,281.26)
Total Loan				(178,330.44)
Payment to Secured Creditor				
Cambelina				
144	3/8/2011	CLW FINANCIAL, LLC	Payment to Secured Creditor : Cambelina	(10,000.00)
				(10,000.00)
Payment to Secured Creditor - Unassigned				
111	4/29/2010	L & L Partnership	Payment to Secured Creditor	(75,000.00)
128	11/3/2010	L & L Partnership	Payment to Secured Creditor	(87,175.00)
129	11/3/2010	CLW FINANCIAL, LLC	Payment to Secured Creditor	(62,825.00)
142	3/8/2011	L & L Partnership	Payment to Secured Creditor	(96,569.50)
143	3/8/2011	CLW FINANCIAL, LLC	Payment to Secured Creditor	(22,347.48)
172	7/13/2011	L & L Partnership	Payment to Secured Creditor	(105,846.75)
				(449,763.73)
Total Payment to Secured Creditor				(459,763.73)
Receiver				
98	1/5/2010	Bret Estes	Receiver	(11,925.00)
113	4/29/2010	Bret Estes (Paid Thru 2-1-10)	Receiver	(7,275.00)
117	8/23/2010	Bret Estes (Paid Thru 3-1-10)	Receiver	(3,375.00)
122	10/18/2010	Bret Estes (Paid Thru 4-1-10)	Receiver	(6,900.00)
127	10/28/2010	Bret Estes (Paid Thru 5-1-10)	Receiver	(7,050.00)
145	3/29/2011	Bret Estes (Paid thru 6-1-10)	Receiver	(1,875.00)
146	4/7/2011	Bret Estes (Paid Thru 7-1-10)	Receiver	(1,425.00)
149	5/19/2011	Bret Estes (Paid Thru 8-1-10)	Receiver	(3,600.00)
150	5/27/2011	Bret Estes (Paid Thru 9-1-10)	Receiver	(3,000.00)
152	6/3/2011	Bret Estes (Paid Thru 10-1-10)	Receiver	(2,625.00)
154	6/9/2011	Bret Estes (Paid Thru 11-1-10)	Receiver	(2,700.00)
155	6/16/2011	Bret Estes (Paid Thru 12-1-10)	Receiver	(1,650.00)
157	6/16/2011	Bret Estes (Paid Thru 1-1-11)	Receiver	(900.00)
159	6/17/2011	Bret Estes (Paid Thru 2-1-11)	Receiver	(3,675.00)
161	6/17/2011	Bret Estes (Paid Thru 3-1-11)	Receiver	(4,200.00)
164	6/24/2011	Bret Estes (Paid Thru 4-1-11)	Receiver	(300.00)

Category Spending
 All Accounts

Up to 9/20/2011

Num	Date	Payee	Category	Amount
165	6/27/2011	Bret Estes (Paid Thru 5-1-11)	Receiver	(75.00)
166	6/27/2011	Bret Estes (Paid Thru 6-1-11)	Receiver	(1,050.00)
170	7/13/2011	Bret Estes (Parcial Payment)	Receiver	(880.00)
174	8/11/2011	Bret Estes (Final Payment)	Receiver	(445.42)
Total Receiver				(64,925.42)
Taxes				
Taxes - Unassigned				
102	1/12/2010	Pennington County Treasurer	Taxes	(27,368.98)
109	4/29/2010	Pennington County Treasurer	Taxes	(22,630.71)
110	4/29/2010	Meade County Treasurer	Taxes	(20,105.77)
124	10/25/2010	Pennington County Treasurer	Taxes	(8,942.96)
125	10/26/2010	Meade County Treasurer	Taxes	(20,105.77)
138	2/22/2011	Meade County Treasurer	Taxes	(21,720.83)
139	2/22/2011	Pennington County Treasurer	Taxes	(10,564.89)
167	7/12/2011	Meade County Treasurer	Taxes	(21,720.83)
168	7/12/2011	Pennington County Treasurer	Taxes	(10,276.37)
				(163,437.11)
Total Taxes				(163,437.11)
Trucking				
108	4/29/2010	Bill Cheney	Trucking	(7,413.20)
Total Trucking				(7,413.20)
Total Expense Categories				(985,748.51)
Grand Total				(985,748.51)

9/20/2011

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Income vs. Spending

Up to 9/20/2011

Category	Total
Income Categories	
Farm Lease Payment	858,037.00
Harvest	15,015.87
Harvest at Airport & Owanka	112,250.22
Other Income	445.42
Total Income Categories	985,748.51
Expense Categories	
Clean Grain Bin	700.00
Combining	46,740.00
Dirt Work	2,700.00
Insurance	4,729.42
Job Expense	1,081.20
Legal Expense	55,224.49
Load Cambelina	703.50
Loan	178,330.44
Payment to Secured Creditor	459,763.73
Receiver	64,925.42
Taxes	163,437.11
Trucking	7,413.20
Total Expense Categories	985,748.51
Grand Total	0.00