

STATEMENT OF THE ISSUES

I. FRAUD AND DECEIT

A. Do promises of future performance fail as a matter of law to constitute fraud where there is no proof of intent not to perform and where the promises were in fact performed?

The trial court denied Krause Gentle's Motion for Summary Judgment, Motion for Directed Verdict, and Motion for Judgment Notwithstanding the Verdict and submitted the Shareholders' fraud claims to the jury.

B. Is Krause Gentle entitled to a new trial where the jury's verdict is directly contradicted by the Shareholders' own proof?

The trial court denied Krause Gentle's Motion for a New Trial.

C. Do claims of fraud fail as a matter of law where such claims are based on alleged oral representations that are directly contradicted by contractual terms?

The trial court denied Krause Gentle's Motion for Summary Judgment, Motion for Directed Verdict, and Motion for Judgment Notwithstanding the Verdict and submitted The Shareholders' fraud claims to the jury.

II. STANDING

A. Under South Dakota law, may individual shareholders recover for claimed corporate losses?

Contrary to established South Dakota and Iowa law, the trial court held that individual shareholders could recover for losses experienced by the corporations in which they were shareholders.

B. Was there sufficient evidence to support the jury's finding that the Shareholders purchased Blimpie franchises in their individual capacities?

Despite a complete absence of any competent evidence on this point, the jury determined that each shareholder plaintiff purchased Blimpie franchises as individuals rather than as corporate agents.

III. JURY INSTRUCTIONS

Are jury instructions on actual fraud and constructive fraud under SDCL Ch. 53-4 proper in a tort claim for deceit?

The trial court improperly submitted instructions on actual contract fraud and constructive fraud.

IV. SEVERENCE

Is joinder of claims brought by multiple plaintiffs appropriate to allow plaintiffs to "tag along" with allegations made by other plaintiffs?

The trial court denied Krause Gentle's Motion to Sever.

V. PUNITIVE DAMAGES

Is the jury's award of punitive damages inappropriate and excessive?

The jury awarded punitive damages in an amount totaling \$995,000.00.

VI. PREJUDGMENT INTEREST

Did the Court apply the wrong prejudgment interest rate to the Iowa Plaintiffs' Judgment against Krause Gentle?

The trial court failed to apply the appropriate Iowa prejudgment interest rate.

STATEMENT OF THE ISSUES OF PLAINTIFFS' CROSS APPEAL

1. Did the Trial Court err when it ruled that the Denton Olson evidence of how he was induced to purchase an interest in a Blimpie franchise was hearsay and thus was not admissible?

The Trial Court ruled that the evidence which Denton Olson sought to introduce was hearsay and did not allow it to be submitted to the jury.