

**STATEMENT OF THE ISSUES**

- I. Did the trial court abuse its discretion in granting the motions for default judgment against Bucklin on liability for McCormick's counterclaims, failing to grant Bucklin's motions for enlargement of time, or denying the Bucklin's motions to vacate?**

The trial court entered orders granting default judgment against Bucklin on the issue of liability on McCormick's counterclaims, did not grant Bucklin's motions for enlargement of time to answer the counterclaims, and denied Bucklin's motions to vacate default judgment in both actions.

- *Upper Plains Contracting Inc. v. Pepsi Americas*, 2003 S.D. 3, 656 N.W.2d 323
- *Colton Lumber Co. v. Siemonsma*, 2002 S.D. 116, 651 N.W.2d 871
- *Meier v. McCord*, 2001 S.D. 103, 632 N.W.2d 477
- SDCL 15-6-55

- II. Should the orders granting summary judgment to McCormick on Bucklin's claims be reversed in light of disputed material facts?**

The trial court entered orders granting summary judgment to McCormick on Bucklin's claims and denied Bucklin's motions to vacate summary judgment in both actions.

- *Discover Bank v. Stanley*, 2008 SD 111, 757 N.W.2d 756
- *Berbos v. Krage*, 2008 S.D. 68, 754 N.W.2d 432
- SDCL 15-6-56

**Statement of the Legal Issues**

- I. Whether default judgment was lawfully granted.**
- A. Whether the trial court abused its discretion by granting McC's motions for default judgments against Bucklin.**

The trial court granted McC's motions for default judgments against Bucklin. The trial court held McC

was entitled to default judgments because Bucklin failed to respond to McC's counterclaim within 20 days and because he was provided notice of the default more than 3 days prior to the default judgment hearing. (T2 21-22; R1 370; R2 386.)

SDCL § 15-6-55.

SDCL § 15-6-12.

**B. Whether the trial court abused its discretion by denying Bucklin's motions for an enlargement of time to answer McC's counterclaims.**

The trial court denied Bucklin's motions for an enlargement of time to answer McC's counterclaims. The trial court held Bucklin's attorneys did not prove their neglect in failing to answer McC's counterclaims was excusable and Bucklin did not offer any evidence that he himself was free from neglect. (T2 21-22.)

*Hawks v. J.P. Morgan Chase Bank*, 591 F.3d 1043 (8th Cir. 2010);

*Siewing v. Pearson Co.*, 736 P.2d 120 (Mont. 1987);

*Ledwith v. Storkan*, 2 F.R.D 539 (D. NE. 1942);

SDCL § 15-6-6(b)(2).

**C. Whether the trial court abused its discretion by denying Bucklin's motions to vacate the default judgments.**

The trial court denied Bucklin's motions to vacate the default judgments against him. The trial court held Bucklin did not prove that his failure to respond

to McC's counterclaims was excusable. (T3 25-26; R1 419; R2 435.)

*Elliott v. Cartwright*, 1998 S.D. 53, 580 N.W.2d 603;  
*State v. Nguyen*, 1997 S.D. 47, 563 N.W.2d 120;  
*Tingle v. Parkston Grain Co.*, 442 N.W.2d 252 (S.D. 1989);  
SDCL § 15-6-55(c);  
SDCL § 15-6-60(b).

## **II. Whether summary judgment was lawfully granted.**

The trial court granted McC's motions for summary judgment against Bucklin on his breach of contract claims and it denied Bucklin's motion to vacate the summary judgments. The trial court held that, with respect to whether Bucklin is owed money by McC, Bucklin did not provide any evidence that McC breached its contracts with Bucklin or that Bucklin is entitled to payment, beyond what he has already been paid, under the contracts' terms. (T2 23; T3 24-25; R1 370; R2 386.)

*Gul v. Center for Family Medicine*, 2009 S.D. 12, 762 N.W.2d 629;  
*Sazama v. State*, 2007 S.D. 17, 729 N.W.2d 335, 343;  
*Kuehl v. Horner Lumber Co.*, 2004 S.D. 48, 678 N.W.2d 809;  
SDCL § 15-6-56.