

#24517

LEGAL ISSUES PRESENTED FOR APPEAL BY APPELLANT

I. WHETHER THE TRIAL COURT ERRED IN FAILING TO ENTER
A DIRECTED VERDICT AS TO THE BREACH OF CONTRACT CLAIM
AGAINST DEFENDANT GARY PETERSON

As to the breach of contract claim, the trial court denied Defendants motion for directed verdict as to all Defendant in this case.

The most relevant cases as to this issue are:

Northwest Realty Co. v. Perez, 137 NW2d 345 (SD 1965) and
Martinmaas v. Engelmann, 612 NW2d 600 (SD 2000).

The most relevant statutes are: SDCL § 15-6-50(a) and
SDCL § 53-1-2.

II. WHETHER THE TRIAL COURT ERRED IN FINDING THAT THE
MANUAL CREATED A CONTRACT BETWEEN JAMES OSMAN AND GARY
PETERSON

The trial court improperly found that a written contract existed between Plaintiff James Osman and Defendant Gary Peterson through the Manual.

The most relevant cases as to this issue are:

Osterkamp v. Alkota Manufacturing, 332 NW2d 275 (SD 1983);
Amdahl v. Lowe, 471 NW2d 770 (SD 1991); Bauer v. American
Freight System, Inc., 442 NW2d 435 (SD 1988); Hopes v.
Black Hills Power & Light Co., 386 NW2d 490 (SD 1986).

The most relevant statutes are: SDCL § 53-1-2, SDCL §
60-4-4.

continued

III. WHETHER THE TRIAL COURT ERRED WHEN IT FAILED TO HOLD THAT PLAINTIFF'S CLAIMS IN EQUITY ARE BARRED AS HE COMES BEFORE THE COURT WITH UNCLEAN HANDS

The trial court improperly used any equitable powers it had to render this judgment as it is barred by the doctrine of unclean hands.

The relevant cases on this issues are: Action Mechanical, Inc. v. Deadwood Historical Preservation Com'n, 652 N.W.2d 742, 751 (SD 2002) and Henle v. Larson, 466 N.W.2d 846, 852 (SD 1991).

IV. WHETHER THE TRIAL COURT ERRED IN HOLDING THAT COMMISSIONS SHOULD HAVE BEEN SPLIT ON A 60/40 BASIS

The trial court improperly found that Gary owes James forty percent of the Hellwig commissions based upon a 60/40 split. Evidence of such a split was never offered at trial and is thus not properly based upon the evidence.

The most relevant case law on this subject includes: Bell v. Bell, 499 N.W.2d 145 (SD 1993).