

LEGAL ISSUES

1. Whether the legal standard for damages in a conspiracy to abuse process action is "mental anguish"?

The trial court held in the negative.

Authorities:

- Chisum v. Behrens, 283 N.W.2d 235 (S.D. 1979)
- State Farm Mut. Auto. Ins. Co. v. Village of Isle, 122 N.W.2d 36 (Minn. 1963)
- Alden v. Lorning, 904 So. 2d 24 (La. App. 4th Cir. 2005)
- Layton v. Chase, 144 N.W.2d 561 (S.D. 1966)

2. Whether Bank, in spite of no affirmative defenses and no counterclaim, should be allowed to argue to the jury for a damage offset as a form of restitution? The trial court held in the affirmative.

Authority:

- Schoon v. Looby, 2003 S.D. 123, 670 N.W.2d 885

3. Whether the settlement with one joint tortfeasor, instead of being deducted from the verdict against the remaining joint tortfeasor after the entire case was tried, should be deducted from the compensatory damage award, and then only allow punitive damage if there is a remaining balance of compensatory damages after the joint tortfeasor offset? The trial court held that the funds received from

the settling joint tortfeasor should be deducted from a compensatory damage verdict, and then only allow the punitive damage issue to go the jury if there was a remaining positive balance for compensatory damages after the joint tortfeasor offset.

Authorities:

- SDCL 15-8-17
- Hoaas v. Griffiths, 2006 S.D. 27, 714 N.W.2d 61

4. Whether the alternate juror can be selected by drawing a name from the jury panel, after the completion of the jury trial? The trial court held in the affirmative.

Authorities:

- SDCL 15-6-47(b)
- SDCL 15-14-10.1

5. Whether costs incurred in a separate federal court proceeding can be taxed in this matter? The trial court held in the affirmative.

Authorities:

- DeHaven v. Hall, 2008 S.D. 57, 753 N.W.2d 429
- SDCL 15-17-37

6. Whether summary judgment should have been granted to First State Bank of Roscoe and Roscoe Community Bankshares, Inc., with respect to the intentional infliction of emotional distress claim? The trial court held in the affirmative.

Authorities:

- Fix v. First State Bank of Roscoe, 559 F.3d 803 (8th Cir. 2009)
- CitiBank (S.D.), N.A. v. Hauff, 2003 S.D. 99, 668 N.W.2d 528
- Tibke v. McDougall, 479 N.W.2d 898 (S.D. 1992)
- Wilson v. Great Northern Ry. Co., 157 N.W.2d 19, 21 (S.D. 1968)

LEGAL ISSUES

1. Whether FSB and RCBI were entitled to summary judgment on Rita's claim of intentional infliction of emotional distress, when the claim was based upon the sale of property in which Rita held no ownership interest or right of possession.

The trial court held in the affirmative.

Fix v. First State Bank of Roscoe, 559 F.3d 803 (8th Cir. 2009)
In re Perkins, 902 F.2d 1254 (7th Cir. 1990)
11 U.S.C. § 704(1)

2. Whether the legal standard for emotional distress damages in an action where a plaintiff alleges intentional conduct is "extreme and disabling emotional distress."

The trial court held in the affirmative.

Maryott v. First Nat'l Bank of Eden, 2001 SD 43, 624 N.W.2d 96.
Anderson v. First Century Fed. Credit Union, 2007 SD 65, 738 N.W.2d 40.

3. Whether FSB and RCBI were permitted to argue that a state's attorney properly sought restitution for FSB and RCBI as victims of Rita's crimes?

The trial court held in the affirmative.

Schoon v. Looby, 2003 SD 123, 670 N.W.2d 885, 891.
SDCL § 15-26A-8
SDCL § 15-6-59(f)
SDCL § 23A-28-1

4. Whether a trial court may select the alternate juror by a lot after the completion of the jury trial?

The trial court held in the affirmative.

SDCL § 15-14-10.1
SDCL § 15-26A-8
SDCL § 15-6-59(f)

Beitelspacher v. Winther, 447 N.W.2d 347 (S.D.1989)
Kaberna v. School Bd. of Lead-Deadwood Sch. Dist. 40-1, 438
N.W.2d 542 (S.D.1989)
Lowery v. State, 640 N.E.2d 1031 (Ind. 1994)

5. Whether the amount of a plaintiff's settlement with one joint tortfeasor should be deducted from the plaintiff's compensatory damage award against the other joint tortfeasor so that if there is no remaining balance of compensatory damages, no punitive damage claim may proceed?

The trial court held in the affirmative.

Hoaas v. Griffiths, 2006 SD 27, 714 N.W.2d 61
SDCL § 15-8-11
SDCL § 15-8-15
SDCL § 15-8-17
SDCL § 15-8-18

6. Whether costs incurred in a separate federal court proceeding can be taxed in a state court proceeding, when the federal court proceeding resolved the ownership of the state-law claims.

The trial court held in the affirmative.

SDCL § 15-17-37.

7. Whether FSB's and RCBI's affirmative defense of fraud and unclean hands should have been dismissed?

The trial court held in the affirmative

Talley v. Talley, 566 N.W.2d 846 (S.D. 1997)

8. Whether Rita should have been permitted to present evidence relevant only to claims raised by her Chapter 7 Bankruptcy Trustee, when those claims had been bifurcated for separate trial?

The trial court held in the affirmative.

Fix v. First State Bank of Roscoe, 559 F.3d 803 (8th Cir. 2009)

9. Whether Rita should have been permitted to try a conspiracy to abuse process claim against FSB and RCBI when, as of the date of hearing on dispositive motions, Rita had never pled abuse of process against FSB or RCBI, and the only conspiracy she had ever pled was one to take the Homeplace away from her, not to abuse process.

The trial court held in the affirmative.

10. Whether the trial court should have prohibited FSB from introducing court rulings that occurred after the conspiracy to abuse process, when those rulings were based on fundamental principles of law, and were res judicata in the litigation?

The trial court held in the affirmative.

Fix v. First State Bank of Roscoe, 559 F.3d 803 (8th Cir. 2009)
Berardo v. Emro Marketing Co., 1998 WL 35171728 (E.D. Mich.)

11. Whether Rita was entitled to summary judgment regarding FSB's and RCBI's defense of release, and whether FSB's and RCBI's motion for summary judgment on their defense of release should have been denied?

The trial court held in the affirmative.

Satellite Cable Services, Inc. v. Northern Elec. Coop, Inc., 1998 SD 67, 581 N.W.2d 478
Flynn v. Lockhart, 526 N.W.2d 743 (S.D.1995)
Estate of Williams v. Vandenberg, 2000 SD 155, 620 N.W.2d 187