

STATEMENT OF THE ISSUES

- I. Whether the trial court erred as a matter of law applying the language of SDCL §§ 44-9-1 and 44-9-4, when it concluded that Defendants had "knowledge" of the labor and materials furnished by Plaintiff prior to the completion of the work.

The trial court denied Defendants' motion for summary judgment and concluded post trial that Defendants had knowledge of work being performed and failed to post a notice of disclaimer.

- II. Whether the trial court erred as a matter of law when interpreting SDCL §§ 44-9-1 and 44-9-4 in determining that the Defendants were responsible for paying for additional parking lot repairs performed under a second contract between lessee and Plaintiff, for which there was no actual notice, constructive notice or agency.

The trial court included in the amount owed by Defendants, repair work unrelated to the replacement of the underground tanks.

- III. Whether the trial court erred as a matter of law when interpreting the meaning of the word "repair" in SDCL § 44-9-2 with regard to the following language; "as against a lessor no lien is given for repairs made by or at the instance of the lessor."

The trial court denied Defendants' motion for summary judgment and concluded post trial that the work performed by Plaintiff was not exempt from SDCL § 44-9-2 as a repair.

- IV. Whether the trial court erred as a matter of law concluding that a claim for unjust enrichment exists absent privity of contract between the Defendants and the Plaintiff.

The trial court denied Defendant's motion for summary judgment and concluded that Plaintiff had been unjustly enriched.

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- V. Whether the trial court erred in determining that Defendants are obligated to pay for repairs to equipment made by Plaintiff after Defendants received clear title to the equipment through a bankruptcy proceeding.

The trial court refused to recognize Defendant's clear title purchase of goods from the bankruptcy court as payment in-full.

- VI. Whether the trial court erred in awarding attorney's fees to Plaintiff, when the trial court ruled that material issues of fact existed, which precluded Defendants' summary judgment and some of the fees were incurred while pursuing a claim against Trailside.

The trial court denied Defendant's motion for summary judgment, concluding that material issues of fact existed, which precluded summary judgment.