

IN THE
Supreme Court
of the
State of South Dakota

No. 30862

CHS CAPITAL, LLC,
PLAINTIFF, APPELLEE

vs.

SKYLINE CATTLE CO., AND
THE ESTATE OF PAULO O'FARRELL,
DEFENDANTS, APPELLANTS

and

VOR, INC.
DEFENDANT/INTERESTED PARTY, APPELLEE

An appeal from the Circuit Court, Third Judicial Circuit
Codington County, South Dakota

The Hon. Robert L. Spears
CIRCUIT COURT JUDGE

APPELLANTS' BRIEF

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INTRODUCTION

This Appeal

The underlying claim in this civil suit is an uncomplicated collection action. The plaintiff, CHS Capital, LLC, sought: (i) recovery of \$98,000 in farm input debt from Paul O'Farrell and his company, Skyline Cattle, and (ii) resolution of a potential priority dispute as to CHS Capital's collateral.

However, within this lawsuit, VOR, Inc., then brought an unrelated cross-claim against Paul and Skyline, seeking judgment on a million dollars-worth of promissory notes that VOR had purportedly acquired from a bank.

Paul and Skyline objected to raising such claims within *this* action because there was already a pending lawsuit challenging the validity of all of VOR's corporate actions. Permitting VOR to bring claims here would create a multiplicity of competing lawsuits, in violation of Rule 13(a).

Related Appeals

This appeal relates to several other appeals involving the O'Farrell family:

- The matriarch of the family, Victoria O'Farrell, commenced a lawsuit in June 2022 to halt a series of sudden, drastic changes that her husband Raymond had made to their estate plan and

landholdings, alleging undue influence by their son Kelly.

Victoria died shortly after commencing the suit.¹

- After Victoria's death, the attorneys helping Raymond attempted to secure his appointment as the special administrator for Victoria's Estate, in July 2022, and take control of Victoria's lawsuit against him.²
- By mid-August 2022, Raymond had been convinced to sell most of the couple's long-held farm ground, and specifically the parcels intended for Paul. The \$3.2 million sale to Grand Valley Hutterite Colony closed in October 2022, which led to an eviction action in April 2023 by the Colony against Paul and Skyline.³
- Prior to the filing of that eviction claim, Paul had already commenced a lawsuit seeking to unwind that real estate sale and to invalidate Raymond's other corporate and fiduciary actions

¹ See, 25CIV22-000038; Appeal #30508. Voluntary dismissal without prejudice affirmed, 12/18/2024.

² See, 25PRO22-000011; Appeal #30532. Appeal dismissed, 12/18/2024

³ See, 23CIV23-000018; Appeal #30344. Still pending.

which Raymond had taken in the name of VOR, Inc., (the family's farming entity).⁴

- Paul's attempt to secure a guardianship and conservatorship for Raymond was procedurally rejected by the Circuit Court.⁵
- And, this Court denied an earlier petition for intermediate appeal in this case.⁶

All of these matters are interrelated, and, the argument below will refer to the legal and factual contents of those appeals, and, in particular, Paul and Skyline's lawsuit seeking declaratory relief regarding VOR's corporate actions. *See*, 25CIV23-000015; Appeal #30482.

The Parties

Paul O'Farrell died on October 13, 2024, and by motion his Estate has been substituted as one of the appellants ("Paul" and "Paul's Estate"). Paul's farming entity, Skyline Cattle Co., is also an appellant ("Skyline").

⁴ *See*, 25CIV23-000015; Appeal #30482. Reversed and remanded, 12/18/2024.

⁵ *See*, 25GDN23-000001. Paul had initially intended to appeal this matter, but ultimately elected not to. His family intends to file a new petition, based upon the facts and circumstances at that time.

⁶ *See*, #30584 (petition for intermediate appeal denied on 2/5/2024).

The Appellees include CHS Capital, LLC (“CHS Capital”) and VOR, Inc., (“VOR”), which has been described in the related suits and appeals as the O’Farrell family’s “Trust Corporation.” It was “created in 2002 to hold their farm assets;” and Raymond and Victoria’s shares in VOR, Inc., were deposited into the family’s trust. [Appeal Record #30482 at AR.8 & 12; ¶¶ 5, 24, 25].

Transcript & Record

References to the settled record of this appeal are denoted by [R.123]. In a handful of instances, this Brief makes reference to the appellate records of other, related appeals. For those, the citation will identify the appeal number and page number, *e.g.*, [Appeal Record #30508 at AR.20-24].

The Circuit Court disposed of this matter on summary judgment, following a motions hearing on August 21, 2024, and a prior hearing on December 21, 2023. Those Hearing Transcripts are referred to by page number and date, such as [HT 123, 12/21/24]. The hearing transcripts are found in the settled record at R.886 and R.912, respectively.

JURISDICTIONAL STATEMENT

Appellants appeal the Circuit Court’s entry of a judgment by the Hon. Robert Spears on August 28, 2024, [R.830] (summary judgment), and

September 24, 2024 [R.851] (attorney's fees). Notice of entry was given on September 3, 2024. [R.832]. Appellants filed their notice of appeal on October 2, 2024. [R.856].

This Court has jurisdiction under SDCL 15-26A-3(1) and (4).

STATEMENT OF THE CASE AND FACTS

Pre-existing Lawsuit

Paul and Skyline are presently involved in a pre-existing lawsuit challenging the validity of VOR's corporate actions, including those which were a product of undue influence, perpetrated upon Raymond by Kelly O'Farrell. A summary of background facts is found in *Estate of O'Farrell et al v. Grand Valley Hutterian Brethren, Inc.*, 2024 S.D. 81, ¶¶ 2-11.⁷

The efforts to stop Raymond and Kelly first began with Paul's mother, Victoria O'Farrell. In June of 2022, Victoria brought a lawsuit to halt Raymond from making further changes to the family's corporation and estate plan. Her Complaint describes an orchestrated campaign of undue influence exercised by their son Kelly, who was angry at his prospective inheritance

⁷ Further background facts are also found within the briefing of the related appeals, including: Appellants' Brief #30482 (pp. 15-17); Appellants' Brief #30344 (pp. 9-17); Appellants' Reply Brief #30344 (pp. 2-7); Appellant's Brief # 30532 (pp. 3-4); Appellant's Brief #30508 (pp. 4-6); Appellant's Reply Brief #30508 (pp. 1-2).

under the Trust. [Appeal Record #30508, AR.5-29]. Her Complaint alleged that Raymond had diminished capacity, couldn't read, and did not understand the corporate actions he was taking. *Id.* Victoria died during the initial stages of that lawsuit.

On 9/29/2022, Paul attempted to intervene in that lawsuit and sought “the relief requested in Vicki’s Complaint,” and a “declaratory judgment” relating to Raymond’s actions pertaining to the Trust and VOR, Inc. [Appeal Record #30508, AR.269; AR.264]. The Circuit Court entered an order on 10/26/2022 refusing Paul’s intervention. [Appeal Record #30508, AR.552]. The case was voluntarily dismissed by Victoria’s attorney, even though *that dismissal was entirely at the direction of Raymond and his counsel*. On December 18, 2024, this Court dismissed an appeal of that matter. *See*, #30508.

In March 2023, Paul commenced his own action seeking similar relief (such as Count 1, which sought, *inter alia*, to invalidate all of VOR’s invalid actions), as well as a remedy to unwind the real estate sale (in Count 2). [Appeal Record #30482, AR.7-A.R.90]. The Circuit Court dismissed that case on procedural grounds. This Court reversed that dismissal on 12/18/2024. *See*, #30482; *Estate of O’Farrell et al v. Grand Valley Hutterian Brethren, Inc.*, 2024 S.D. 81.

This Lawsuit

In the interim, CHS Capital brought suit to collect an agricultural debt. CHS initiated this lawsuit in May 2023, seeking to collect \$98,000 related to crop inputs purchased by Paul O'Farrell and Skyline Cattle Co. during the 2022 planting season. [R.2; R.16].

CHS's Complaint also named VOR, Inc., as an "interested party" and Defendant. However, the Complaint identifies VOR's potential "interest" in the suit as merely that it "may have a secured interest in the collateral set forth in the U.C.C. financing statement." Complaint, ¶ 11 [R.3]. No actual claim was made against VOR by CHS. Likewise, in VOR's initial Answer, it did not make any claim against CHS, Paul, or Skyline. [R.28].

Within Paul and Skyline's initial Answer, [R.23], they asserted a cross-claim against Skyline that specifically questioned the validity of VOR's interest in the disputed collateral (it had acquired from First Interstate Bank), and further questioned the validity of VOR's attempted assignment of the promissory notes from First Interstate to VOR. However, even though the cross-claim asserted that "the underlying debt to VOR, Inc., is invalid," Paul and Skyline explained that "[t]his relief is intended to be

embraced by an existing suit, *O'Farrell, et al, v. O'Farrell, et al*, 25CIV23-000015, which seeks to avoid improper corporate action made by those purporting to act on behalf of VOR, Inc.” [R.24, ¶¶ 5-7].

Thus, Paul and Skyline’s cross-claim specifically advised that such relief was *only* requested in the instant suit “if unavailable or unresolved in that parallel suit [*i.e.*, the matter embraced by Appeal #30482].” *Id.* In conjunction with this, Paul and Skyline raised the affirmative defense of corporate capacity, because Paul was “the most recent duly elected executive officer of VOR, Inc., and that no other party has authority or capacity to proceed on behalf of VOR, Inc.” [R.24, ¶ 8].

Paul and Skyline made the same legal and factual assertions about Raymond and VOR in their 2023 lawsuit, 25CIV23-000015, and its Appeal #30482. *See, e.g.*,

- [Appeal Record #30482, AR.206] (in their Reply to VOR’s counterclaim in that action, Paul and Skyline alleged that VOR and Raymond “do not have authority or capacity to assert such claims”);
- [Appeal Record #30482, AR.209] (as an affirmative defense, asserting the principle that, “[w]hen corporate meetings are not

lawfully convened, the previous directors and officers continue to hold office.”);

- [Appeal Record #30482, AR.8] (in the Complaint, asserting that “attempts to remove Paul as President [of VOR] were invalid, as were various other corporate acts.”)⁸;
- [Appeal Record #30482, AR.21] (in the Complaint, asserting that “various corporate actions [of VOR] were taken in the name of Raymond O’Farrell. These were accomplished without prior corporate notice, without his full knowledge and understanding, and, as a result of undue influence and manipulation[,]” and “in derogation of established agreements....Such actions are void, *ultra vires*, or of a nature that the Corporation or its shareholders would be estopped to undertake them.”); and,
- [Appeal Record #30482, AR.23] (in the Complaint, asserting that “[d]iscovery is expected to identify further transactions

⁸ In her suit involving Raymond and VOR, Victoria alleged similar corporate wrongdoing and void actions; Paul’s Complaint incorporated all of those by reference (and attached her Complaint as an Exhibit). [Appeal Record #30482, AR.44-47] (Victoria’s Complaint, ¶¶ 60-81, attached as Exhibit 1 to Paul and Skyline’s Complaint).

and actions which would be subject to a declaratory judgment to nullify them, and those are incorporated herein.”)

Despite the existence of a prior, pending lawsuit regarding VOR’s corporate authority and actions (and which would serve as a basis for affirmative defenses and equitable offsets to Paul and Skyline), VOR attempted to use this lawsuit to collect disputed VOR debts, and to exercise its disputed rights to the collateral. [R.55 *et seq* (motion to amend); R.713-14 (VOR’s crossclaim)]. VOR also asserted that it held “a first priority interest as to the collateral at issue and agrees it should be sold by the sheriff and the proceeds paid over to VOR, Inc., as the first priority secured creditor.” [R.29, ¶ 9.b].

In particular, the VOR Crossclaim seeks to collect \$1.3 million from Paul and Skyline, based upon amounts “due and owing” under four promissory notes. [R.713, ¶ 2.a.-d]. VOR alleges that these loans were originally made between Skyline and First Interstate Bank, but, VOR asserts that it “is the assignee of these debts from First Interstate Bank” via a “denominated assignment.” [R.713, ¶ 4]. The purported assignment is dated October 17, 2022, and is allegedly based upon documents signed by Raymond O’Farrell as president of VOR, Inc. *Id.*

Of note, October 17, 2022, is not only the date of the purported assignment of the disputed VOR promissory notes, it is *also the same date* upon which Raymond and Kelly signed the disputed deed conveying most of the O'Farrell family's land to the Colony. *See*, Appeal Record #30344, A.R.109 ("Warranty Deed").

These promissory notes were Skyline's operating notes, under which Paul conducted the farming operations on VOR's land; for which VOR routinely signed guaranties for each year; and, through which Paul financed the home he built for himself on VOR's land.⁹

⁹ *See*, [Appeal Record #30482, AR.16, n.10 (Paul's Complaint, describing the "long-standing arrangement by which Skyline's operating loans were secured by the land owned by [VOR]" and that "there was never an issue with any of our lenders [until] as a result of Kelly [O'Farrell's] influence, financial information was not provided to the Bank for the 2022 refinancing process, which led to the declaration of default." Or, in other words, the "default" upon which VOR pursued judgment for these notes was itself occasioned by undue influence.

See, also, [Appeal Record #30482, AR.27, ¶¶ 107-108 (Paul's Complaint, alleging in the alternative that Paul holds a claim "for unjust enrichment for the value of the capital improvements Paul has made to the Family Land at his expense, without compensation, including his residence and his shop, which have an estimated value substantially in excess of one million dollars.") Or, in other words, Paul's Complaint articulates the necessity of an offset to Skyline in conjunction with any recovery on the defaulted notes.

Paul and Skyline repeatedly objected to VOR's pursuit of the loan crossclaim because it embraced questions already at issue in the prior suits, raising the issue on at least five occasions:

- first, they objected to VOR's attempt to amend its pleadings and assert a crossclaim [R.91];
- they used their Answer to VOR's Crossclaim to request a dismissal or stay of the VOR crossclaim [R.750-51];
- they objected to VOR's pursuit of summary judgment in December 2023, and moved for “**for an order staying any further proceedings** pertaining to VOR, Inc., [because] in the earlier-filed case, Paul and Skyline assert that VOR's actions are *ultra vires*, and that Raymond O'Farrell's actions on behalf of VOR are the product of undue influence or lack of capacity;”[R.247; 250] (emphasis in original);
- they raised these issues at both hearings [R.899-904; R.916-924]; and,
- they raised a general objection to VOR's attempt to pursue summary judgment because “the matters raised by VOR...embrace several other legal disputes which are currently

on appeal; and, the Court’s resolution of this motion is premature or impermissible at this time,” which meant that the Court “lacks jurisdiction” and that “[t]here is also a danger of inconsistent results amongst the various cases which have equal or prior legal importance here....” [R.793-94; R.802-806] (listing all four appeals: # 30508; 30532; 30344; and 30482). [R.793].

In the alternative, Paul and Skyline opposed summary judgment by identifying numerous, disputed material facts that would preclude the entry of summary judgment. [R.796-800].

On August 26, 2024, the Circuit Court issued a letter decision granting summary judgment on the First Interstate loans now purportedly held by VOR. The Circuit Court believed it had jurisdiction over VOR’s crossclaim “because the issue presented is different than the issues that are presently on appeal in the other cases cited by defendants Skyline and O’Farrell.” [R.826-27]. The Circuit Court did not cite or apply an express legal standard.

The Circuit Court’s 8/26/2024 letter opinion referred to its earlier ruling on this topic, namely an Order concluding it had “subject matter

jurisdiction and this case is substantially different than the other proceeding brought by Paul O'Farrell.” [R.703; “Order on Paul O'Farrell and Skyline Cattle's Motion to Stay”]. *See, also*, [R.944; HT 33:14-16; 34:6-7, 12/21/2023] (the Circuit Court's oral ruling on that question: “In this Court's opinion, the issues on appeal are substantially different than the issues that are presented to me this afternoon....The issues are, in this Court's opinion, completely different.”) On this earlier occasion, the Circuit Court likewise did not cite or apply an express legal standard.

And, as the hearing transcript demonstrates, the Circuit Court mischaracterized Paul and Skyline's Complaint as only having two prongs: rescinding the land sale, and, issues that “should have been brought by a personal representative in a probate proceeding....” [R.944; HT 33:21-25, 12/21/2023]. The Circuit Court ignored most portions of Count 1, in which Paul and Skyline sought a declaration as to the invalidity of Raymond's VOR transactions as *ultra vires* and a product of Kelly's undue influence, and incorporated all of Victoria's prior allegations about VOR. *See*, Appeal Record #30508 at AR.20-24, including ¶¶ 69; 70-75; 91.

The Circuit Court granted summary judgment on both VOR's and CHS's debt claims, and, it awarded attorney's fees to VOR. [R.830] (summary judgment); [R.851] (attorney's fees).

As to the summary judgment motion against Paul and Skyline, the Circuit Court's letter decision refused to take judicial notice of their positions and contentions and pleadings within the pre-existing cases because the claims are "the subject of reasonable legal dispute and nothing in those cases have been proven at this point." [R.828].

Eight months prior to its summary judgment decision on the promissory notes, the Circuit Court also entered partial summary judgment on a priority issue between CHS Capital and VOR. [R.705-706] (holding that "VOR, Inc., has the superior priority interest over CHS Capital, LLC...as to assets of both Skyline Cattle Company and Paul O'Farrell."). This priority issue was the *only* reason that VOR was included in this lawsuit in the first place.¹⁰

¹⁰ See, [R.3, ¶ 11 "Complaint"]. The only reference to VOR in CHS's Complaint is this: "Upon information and belief, VOR, Inc., may have a secured interest in the collateral set forth in the U.C.C. Financing Statement."

However, within that same Order on priority, the Circuit Court added relief beyond the scope of those priority questions (and, prematurely). The order commanded that a grain proceeds check to payable to Skyline in the amount of \$185,973.06 “must be endorsed, transferred, and put in the possession of VOR, Inc.” *Id.*

From these facts, the Skyline and Paul’s Estate appeal and assign three errors.

LEGAL ISSUES

1.

Two courts cannot simultaneously attempt to address the same legal issue between parties, and, therefore, a subsequent Circuit Court lacks subject matter jurisdiction over matters embraced by an earlier-filed, pending case. In service of this principle, Rule 13(a) was adopted to prevent a multiplicity of actions.

In March 2023, Paul O'Farrell and Skyline Cattle Co. brought suit to challenge the validity of VOR's corporate actions, rights, and claims. Later, within this instant 'collections' lawsuit brought by CHS (an unrelated creditor), VOR asserted cross-claims seeking recovery on debts, but, which were among the same corporate actions that Paul and Skyline are challenging in the original suit.

Did the Circuit Court err by entering judgment in favor of VOR, Inc., upon a claim which was already the subject of a pre-existing civil action?

Yes, the Circuit Court erred.

- SDCL 15-6-13(a) (compulsory counterclaim rule)
- *Am. Totalisator Co. v. S. Dakota Racing Club, Inc.*, 501 N.W.2d 374, 377 (S.D. 1993) (subsequent court lacks subject matter jurisdiction)
- *Olawsky v. Clausen*, 87 S.D. 578, 212 N.W.2d 653 (1973) (applying Rule 13(a))
- *Wentzel v. Huebner*, 104 N.W.2d 476 (S.D. 1960) (matters are still active while on appeal)

(The Circuit Court found that it had jurisdiction to proceed.)

2.

If judgment to VOR, Inc., was erroneous, was it also error to award attorney's fees to VOR?

Yes, the award of attorney's fees was error.

- *Peska Properties, Inc. v. N. Rental Corp.*, 2022 S.D. 33, ¶ 35 (attorney fee award vacated when underlying judgment reversed)
- *Bozied v. City of Brookings*, 2001 S.D. 150, ¶ 27 (same)
- SDCL 15-6-54(d)(2)(B)

(The Circuit Court awarded attorney's fees.)

3.

If the Circuit Court lacked jurisdiction to hear VOR's crossclaims, is dismissal an appropriate remedy, rather than staying those claims?

Yes, dismissal is an appropriate remedy.

- *Mushitz v. First Bank of S. Dakota, N.A.*, 457 N.W.2d 849, 856 (S.D. 1990)

(The Circuit Court declined to dismiss or stay.)

SUMMARY OF ARGUMENT

1.

The Circuit Court lacked jurisdiction in this suit to hear or resolve VOR's debt claims, due to Paul and Skyline's pending, pre-existing lawsuit regarding VOR's *ultra vires* corporate activities, and, Paul and Skyline's equitable and affirmative claims that are embraced by that prior suit.

2.

If the judgment upon these promissory notes is reversed, the attorney's fee award must also be reversed.

3.

In light of the recent reversal and remand of Paul's and Skyline's lawsuit, the better procedural remedy is to dismiss VOR's crossclaim.

STANDARD OF REVIEW

“Whatever the name of the motion or whatever the title of the court's disposition, we review [challenges] for lack of jurisdiction as a question of law under the *de novo* standard of review. When relevant to the inquiry, statutory interpretation is [also] a question of law, reviewed *de novo*.” *Upell v. Dewey Cnty. Comm'n*, 2016 S.D. 42, ¶ 9 (cleaned up; citations and

quotations omitted). *See, also, Discover Bank v. Stanley*, 2008 S.D. 111, ¶ 15, (interpreting Rules of Civil Procedure subject to *de novo* review).

An award of attorney's fees is normally reviewed under the abuse of discretion standard, unless its resolution is a matter of law, in which case the issue is reviewed *de novo*. *See, Peska Properties, Inc. v. N. Rental Corp.*, 2022 S.D. 33, ¶ 35.

ARGUMENT

1. The Circuit Court lacked jurisdiction to resolve questions about VOR's rights under the promissory notes, and, its entry of summary judgment was error.

Although cross-claims are considered permissive under Rule 13(g), there are nonetheless circumstances when existing or prior litigation precludes the pursuit of such claims, namely, whether the claim was a compulsory counterclaim in a prior action, under Rule 13(a). A prior, pending case deprives the second court of jurisdiction to act upon the subsequent crossclaim.

Legal Standards

Rule 13 governs counterclaims and crossclaims. Rule 13(a) "was designed to prevent a multiplicity of actions and a duplication of judicial efforts." *Peterson v. United Accts., Inc.*, 638 F.2d 1134, 1137 (8th Cir. 1981).

See, also, Olawsky v. Clausen, 87 S.D. 578, 212 N.W.2d 653 (1973); *Annis v. Dewey County Bank*, 335 F.Supp. 133, 138 (D.S.D. 1971). Rule 13(a) “should be given a broad, realistic interpretation to avoid a multiplicity of suits.” *In re Belcher*, 13 B.R. 421, 423 (Bankr. W.D. Mo. 1981) (citing *Sue & Sam Mfg. Co. v. B-L-S Const. Co.*, 538 F.2d 1048 (4th Cir. 1976)).

In addition, it is a fundamental rule that two courts cannot simultaneously attempt to address the same legal issue.¹¹ When “two actions are pending regarding the same legal question,” the second court “never possess[es] subject matter jurisdiction over the issue....” *Am. Totalisator Co. v. S. Dakota Racing Club, Inc.*, 501 N.W.2d 374, 377 (S.D. 1993) (citing 4 C.J.S.

¹¹ The application of Rule 13(a) to concurrent, overlapping lawsuits was an issue addressed at length within Appeal #30344, including in Appellants’ Brief, pp. 24-26. Those prior arguments apply here and are incorporated by reference.

As to the “first-filed rule” followed by the 8th Circuit and our District Court, *see, Lewis & Clark Reg’l Water Sys., Inc. v. Carstensen Contracting, Inc.*, 339 F.Supp. 3d 886, 892-93 (D.S.D. 2018) (quoting *Nw. Airlines, Inc. v. Am. Airlines, Inc.*, 989 F.2d 1002, 1006 (8th Cir. 1993)).

There is a similar, “dominant jurisdiction doctrine” followed in Texas. *See, Miles v. Ford Motor Co.*, 914 S.W.2d 135, 138 (Tex. 1995); *In re Texas Christian Univ.*, 571 S.W.3d 384, 389 (Tex. App. 2019); *In re Vinyl Techs., Inc.*, 352 S.W.3d 810, 815 (Tex. App. 2011).

APPEAL AND ERROR § 27 (1957)). A matter that is on appeal cannot be brought before another court if it relates to the matters on appeal. *Id.*

As a matter of law, a pre-existing action is still *pending* during the appeal. *See, Matter of Silver King Mines, Permit Ex-5*, 315 N.W.2d 689, 691 (S.D. 1982), on reh'g sub nom. *Matter of Expl. Permit Renewal of Silver King Mines, Permit EX-5*, 323 N.W.2d 858 (S.D. 1982) (quoting *Wentzel v. Huebner*, 104 N.W.2d 476 (S.D. 1960) (a matter is “‘*finally determined*’ either upon complete review within the appellate process or until the time for appeal is passed if no appeal is taken”))

Even if none of the parties has challenged jurisdiction, the Circuit Court and this Court will *sua sponte* determine whether jurisdiction exists, “as a condition precedent to its right to decide the issues involved.” *Id.*, (citing *Hardy v. West Cent. School Dist. No. 49-7*, 478 N.W.2d 832 (S.D.1991); *Long v. Knight Const. Co., Inc.*, 262 N.W.2d 207 (S.D.1978); *Sioux City Boat Club v. Mulhall*, 117 N.W.2d 92 (S.D. 1962); *Estate of Putnam*, 254 N.W.2d 460 (S.D.1977); *Shryock v. Mitchell Concrete Products, Inc.*, 212 N.W.2d 498 (S.D. 1973); *Tri-State Milling Company v. Board of County Comrs., Pennington County*, 68 N.W.2d 104 (S.D. 1955)). “If a lower court acts without jurisdiction, [the Supreme Court] will notice the defect and have jurisdiction on appeal, not on

the merits, but merely for the purpose of correcting the error of the lower court in maintaining the suit.” *Pawlowski v. Pawlowski*, 925 P.2d 240, 242 (Wyo. 1996) (quotation omitted).

The ‘logical relation’ test is the appropriate standard to apply when determining whether a counterclaim is compulsory or permissive. *Ainsworth v. First Bank of S. Dakota*, 420 N.W.2d 32, 33–34 (S.D. 1988); *Olawsky v. Clausen*, 212 N.W.2d 653 (S.D. 1973). In *Olawsky*, the Court established that this is addressed by asking, “*Is there any logical relation between the claim and the counterclaim?*” 212 N.W.2d at 654. “An affirmative answer...would mean that the counterclaim is compulsory.” *Id.*

This Court applies the same analysis to Rule 13(a) questions as does the U.S. Supreme Court. *Olawsky*, 212 N.W.2d at 655 (citing and quoting *Moore v. New York Cotton Exchange*, 270 U.S. 593 (1929)). This Court searches for a “logical relation” between the claim and counterclaim by looking for “a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship.” *Id.* The Court must ask whether any “essential facts alleged by [plaintiff] enter into and constitute in part the cause of action set forth in the counterclaim. That they are not

precisely identical, or that the counterclaim embraces additional allegations does not matter.” *Id.* (quoting *Moore*, 270 U.S. at 593).

Application of Those Legal Standards

Applying those principles here, the Circuit Court lacked jurisdiction to entertain VOR’s crossclaims upon the promissory notes. The validity of all of VOR’s actions is already in dispute within a prior lawsuit. This includes the validity of the assignment of the notes and VOR’s pursuit of their enforcement. The prior suit also includes any equitable defenses held by Skyline and Paul to the notes, as well as any affirmative equitable or legal relief relating to VOR. Paul and Skyline’s case was first-filed, and this deprived VOR of the ability to bring related and inter-related claims within a subsequent action.

It is not possible to address VOR’s crossclaim anew in this case, because its pursuit hinges upon the validity of each and every corporate action that would permit VOR to seek recovery of debts from Paul and Skyline. In his earlier-filed case, Paul and Skyline assert that VOR is a rogue entity; that its actions are *ultra vires*; and, that Raymond O’Farrell’s actions on behalf of VOR are the product of undue influence or lack of capacity (or in many instances, a failure of corporate notice).

The subject matter of Paul and Skyline's affirmative defenses to VOR's claims is also embraced by their pre-existing lawsuit. In their 2023 lawsuit, Paul and Skyline describe a long-term farming partnership between VOR and Skyline under which Paul farmed the land; Skyline held the operating debt (much of which was created prior to Paul's acquisition of Skyline from his parents); VOR secured the debt with the land as collateral; Skyline borrowed funds for Paul's house upon VOR land; and VOR each year agreed to renew the note to permit this arrangement to continue.

Then, in precipitous fashion in 2022, Raymond was persuaded by Kelly not to renew the operating note; to conduct surreptitious maneuvers to sell the Trust land designated for Paul (and which Paul was farming) without any compensation to Paul or Skyline, even for the house and shop Paul had built at his own expense; to acquire Skyline's operating notes from First Interstate; to seize Skyline's crop proceed money; to facilitate an eviction action to prevent Paul from farming the land; and then to foreclose upon the notes as if Paul were an ordinary debtor. This was a shakedown, at Kelly's behest, for which Paul, Raymond, and the rest of the family suffered.

Rule 13 applies to this set of facts and claims, including Paul and Skyline's equitable defenses to the debt, and, to questions about VOR's

corporate authority. There is no question that the VOR crossclaim is directly and logically related to the underlying Complaint in 25CIV23—000015.

In short, the Circuit Court lacked jurisdiction to decide the question of summary judgment upon the VOR notes in this second-filed case, and, as a prior error, the Circuit Court abused its discretion by permitting VOR's futile amendment to the pleadings to pursue its debt recovery in this action.¹²

To paraphrase the *Am. Totalisator* case, the Circuit Court did not “possess[] subject matter jurisdiction over the issue of whether or not the [loan amounts claimed by VOR] were actually owed to it,” or whether they can be collected against Paul and Skyline, because of the pending appeal (30482) related to civil file 25CIV23-000015. “Under the facts of this case, the *prior unresolved action* on this question deprives the lower court, and therefore this Court, of jurisdiction to consider the *same* question.” *Am. Totalisator Co.*, 501 N.W.2d at 378 (Miller, C.J., concurring). “Harsh consequences result from the failure to plead a compulsory counterclaim. There can be no other result since the objective of the rule is the settlement of all ‘logically related’ disputes

¹² *In re Wintersteen Revocable Tr. Agreement*, 2018 S.D. 12, ¶ 11 (“a court may appropriately deny leave to amend where there are compelling reasons such as futility of the amendment”).

between the parties in a single lawsuit.” *Olamsky v. Clausen*, 212 N.W.2d 653, 655 (S.D. 1973).

Relief Requested

Vacating Summary Judgment on Crossclaim. The judgment obtained by VOR upon the notes in the amount of \$1,290,545.88 must be vacated. [R.829-30]. The Circuit Court cannot enter judgment upon a claim for which it lacks jurisdiction. (Paul and Skyline do not challenge CHS Capital’s judgment.)

Vacating the Order regarding Skyline’s grain proceeds. In addition, a companion Order that VOR obtained regarding Skyline’s collateral must also be vacated. [R.706]. Eight months prior to its summary judgment decision on the promissory notes, the Circuit Court entered partial summary judgment on a priority issue between CHS Capital and VOR. [R.705]. However, within that Order, the Circuit Court added relief beyond the scope of priority questions (and, prematurely). That order commanded that a grain proceeds check to payable to Skyline in the amount of \$185,973.06 “must be endorsed, transferred, and put in the possession of VOR, Inc.” *Id.* This Order gave property rights to VOR *prior* to entry of judgment (and also beyond the scope of relief VOR requested in its pleadings). This portion of

the Order should be vacated, and those proceeds ordered to be paid over to Skyline.

(That Order directing the surrender of the grain check is typical of the unwarranted relief that the Circuit Court has continued to award against Paul O'Farrell in these various proceedings.)

2. The award of attorney's fees must be vacated

If summary judgment was improvidently granted to VOR, then there is no legal basis by which VOR could recover attorney's fees in this action. *See, Peska Properties, Inc. v. N. Rental Corp.*, 2022 S.D. 33, ¶ 35 (attorney fee award vacated when underlying judgment reversed); *Bozied v. City of Brookings*, 2001 S.D. 150, ¶ 27 (same). *See, also, Estate of O'Farrell et al v. Grand Valley Hutterian Brethren, Inc.*, 2024 S.D. 81, ¶ 32 (vacating attorney's fee award because of failure of jurisdiction).

The Estate and Skyline ask for the judgment of \$18,509.13 for attorney's fees to be vacated. [R.851].

3. The better remedy here is dismissal of VOR's crossclaim, rather than to stay the crossclaim

In the *Am. Totalisator* case, this Court's remedy was to direct the Circuit Court "to stay further proceedings in this action until such time as the appeal

process” in 25CIV23-000015 “has run its procedural course.” *Am. Totalisator Co.*, 501 N.W.2d at 377. In this case, the appeal has now concluded.

Rather than staying the crossclaims, another remedy would be dismissal of the crossclaims, so that they can be refiled within the larger, pre-existing action.

Now that Paul’s lawsuit has been reinstated by this Court’s decision in Appeal #30482, VOR’s crossclaim here should be dismissed here and brought as compulsory counterclaims there (in 25CIV23-000015). *See, Mushitz v. First Bank of S. Dakota, N.A.*, 457 N.W.2d 849, 856 (S.D. 1990) (dismissal of claims permissible remedy to enforce compulsory counterclaim rule). This appears to be the simplest remedy, and it reduces the multiplicity of actions.

CONCLUSION

The first error by the Circuit Court was allowing VOR to amend its pleadings to assert the crossclaim. The second error was granting summary judgment on those impermissible crossclaims.

We ask for this Court to reverse the Circuit Court’s entry of judgment against Paul and Skyline; to vacate the order requiring the turn-over of the crop proceeds check, and thus direct the repayment of those funds to Skyline; to vacate the award of attorney’s fees; and to direct the dismissal of

the cross-claims so that they can be heard (if at all) within Paul's existing lawsuit.

Dated this 9th day of January, 2025.

HOVLAND, RASMUS,
& BRENDTRO, PLLC

/s/ Daniel K. Brendtro

Daniel K. Brendtro
Mary Ellen Dirksen
Benjamin M. Hummel
PO Box 2583
Sioux Falls, South Dakota 57101-2583
Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellant's Brief does not exceed the word limit set forth in SDCL § 15-26A-66, said Brief containing approximately 5,447 words, exclusive of the Table of Contents, Table of Authorities, any addendum materials, and any certificates of counsel.

/s/ Daniel K. Brendtro

One of the attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2025, I electronically filed the foregoing via the Odyssey File and Serve system with the Supreme Court Clerk, which will send notice to Appellee's Counsel.

I also hereby certify that on this 9th day of January, 2025, I sent a bound copy of the foregoing to the Supreme Court Clerk at the following address:

Shirley Jameson-Fergel
Supreme Court Clerk
500 East Capitol Avenue
Pierre, South Dakota 57501

/s/ Daniel K. Brendtro
One of the attorneys for Appellants

APPELLANTS' APPENDIX - #30862
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Judgment, 8/28/2024	App 001
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VOR's Statement of Undisputed Material Facts	APP 011-013
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Response to Statement of Undisputed Material Facts	APP 022-030
Oral Ruling, Denying Motion to Stay, 12/21/2023	APP 031-034

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF GRANT)

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

CHS CAPITAL, LLC,)	
)	
Plaintiff,	)	25CIV.23-27
)	
v.)	
	)	ORDER AND JUDGMENT
SKYLINE CATTLE CO., and PAUL	)	AGAINST DEFENDANTS
O'FARRELL,)	
)	
Defendants,)	
)	
and)	
)	
VOR, INC.)	
)	
Defendant/Interested)	
Party.)	
)	

 This matter having come on for hearing, pursuant to VOR, Inc.'s Motion for Summary Judgment, before this Court on the 21st day of August, 2024, at 11:00 a.m., at the Codington County Courthouse, the Plaintiff appeared through counsel, Jason Shanks, the Defendants, Paul O'Farrell and Skyline Cattle Company, appeared through counsel, Daniel Brendtro, and the Defendant/Interested Party, VOR, Inc., appeared through counsel, Joe Erickson, and this Court having reviewed the pleadings and listened to arguments of counsel, and this Court having issued a letter opinion on August 26, 2024, which is incorporated herein, now therefore it is hereby

 ORDERED, ADJUDGED, AND DECREED that VOR, Inc.'s Motion for Summary Judgment against Paul O'Farrell and Skyline Cattle Company is hereby granted. Judgment in the amount of \$1,474,500.72 shall be entered in favor of VOR, Inc. against Defendants, Paul O'Farrell and Skyline Cattle Company, less the grain proceeds of \$185,973.06, and with pre-judgment interest accruing at \$336.37 per day to August 26,

2024, for a total judgment amount of \$1,290,545.88. Post judgment interest continues to accrue at \$336.37 per day. It is further,

ORDERED, ADJUDGED, AND DECREED that the Court's letter-opinion issued August 26, 2024, is incorporated herein by this reference. It is further,

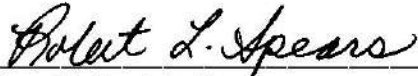
ORDERED, ADJUDGED, AND DECREED that VOR, Inc. be awarded attorney's fees and costs—as allowed under the loan contract that Skyline Cattle Company and Paul O'Farrell agreed to—and VOR, Inc. must supplement its submissions with updated amounts of attorney's fees and costs within fourteen days of entry of this Judgment. Once submissions are received by this Court, the Court will enter the amount of attorney's fees and costs in a separate judgment.

BY THE COURT:

8/28/2024 5:10:28 PM

Attest:
Mielitz, Brooke
Clerk/Deputy





Hon. Robert L. Spears
Circuit Court Judge

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF GRANT	)	THIRD JUDICIAL CIRCUIT
CHS CAPITAL, LLC,)	
)	
Plaintiff,	)	25CIV.23-27
)	
v.)	
	)	JUDGMENT FOR
SKYLINE CATTLE CO., and PAUL	)	ATTORNEY FEES AND COSTS
O'FARRELL,)	
)	
Defendants,)	
)	
and)	
)	
VOR, INC.)	
)	
Defendant/Interested)	
Party.)	
)	

Pursuant to the Court's *Order and Judgment Against Defendants* dated August 28, 2024, VOR, Inc. submitted supplemental attorney's fees and costs and provided notice to Defendants, Skyline Cattle Co. and Paul O'Farrell, via their counsel, Daniel Brendtro, on September 6, 2024. This Court having reviewed the attorney fees and costs submitted by VOR, Inc., and there being no objections filed, now it is hereby

ORDERED, ADJUDGED, AND DECREED that VOR, Inc. be awarded attorney's fees and costs—as allowed under the loan contract that Skyline Cattle Company and Paul O'Farrell agreed to—in the amount of \$18,509.13.

BY THE COURT:

9/23/2024 4:06:23 PM

Attest:
Mielitz, Brooke
Clerk/Deputy



Robert L. Spears

Hon. Robert L. Spears
Circuit Court Judge

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF GRANT)

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

CHS CAPITAL, LLC,)	
)	
Plaintiff,	)	25CIV.23-27
)	
v.)	
	)	ORDER ON VOR, INC.'S MOTION FOR
SKYLINE CATTLE CO., and PAUL	)	SUMMARY JUDGMENT
O'FARRELL,)	
)	
Defendants,)	
)	
and)	
)	
VOR, INC.)	
)	
Defendant/Interested)	
Party.)	
)	

 This matter having come on for hearing, pursuant to VOR, Inc.'s Motion for Summary Judgment, before this Court on the 21st day of December, 2023, at 1:00 p.m., at the Grant County Courthouse, the Plaintiff appeared through counsel, Paul Coppock, the Defendants, Paul O'Farrell and Skyline Cattle Company, appeared through counsel, Daniel Brendtro, and the Defendant/Interested Party, VOR, Inc., appeared through counsel, Joe Erickson, and this Court having reviewed the pleadings and listened to argument of counsel, now therefore it is hereby

 ORDERED, ADJUDGED, AND DECREED that VOR, Inc.'s Motion for Summary Judgment against Paul O'Farrell and Skyline Cattle Company will not be heard until Paul O'Farrell and Skyline Cattle Company file an Answer to VOR, Inc.'s Crossclaim that is included in VOR, Inc.'s Amended Answer. It is further,

 ORDERED, ADJUDGED, AND DECREED that VOR, Inc.'s Motion for Summary Judgment against CHS Capital, LLC is granted. It is further,

ORDERED, ADJUDGED, AND DECREED that VOR, Inc. has the superior priority interest over CHS Capital, LLC as shown by the UCC Filings. VOR, Inc. has a superior priority than CHS Capital, LLC as to assets of both Skyline Cattle Company and Paul O'Farrell. It is further,

ORDERED, ADJUDGED, AND DECREED that the grain proceeds of \$185,973.06, which was a check issued by Western Consolidated Cooperative to Skyline Cattle Company, Great Western Bank, and CHS Capital, LLC, must be endorsed, transferred, and put in the possession of VOR, Inc. in a manner that allows VOR, Inc. to deposit those proceeds. In the alternative, since the Court has determined the priorities between Skyline Cattle Company, CHS Capital, LLC, and VOR, Inc. as to the proceeds of the \$185,973.06 check, Western Consolidated Cooperative may stop payment on the issued check and reissue the check to the Grant County Clerk of Courts and deposit the payment with the Grant County Clerk of Courts. Upon receipt of such payment by the Grant County Clerk of Courts, the Grant County Clerk of Courts shall issue payment to VOR, Inc.

BY THE COURT:

12/27/2023 3:20:18 PM

Attest:
Schuelke, Cathy
Clerk/Deputy



A handwritten signature in cursive script, reading "Robert L. Spears", is written over a horizontal line.

Hon. Robert L. Spears
Circuit Court Judge

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF GRANT	)	THIRD JUDICIAL CIRCUIT
<hr/>		
CHS CAPITAL, LLC,)	
)	
Plaintiff,	)	25CIV.23-27
)	
v.)	
	)	ORDER ON PAUL O'FARRELL AND
SKYLINE CATTLE CO., and PAUL	)	SKYLINE CATTLE'S MOTION TO STAY
O'FARRELL,)	
)	
Defendants,)	
)	
and)	
)	
VOR, INC.)	
)	
Defendant/Interested)	
Party.)	
<hr/>		

This matter having come on for hearing, pursuant to Paul O'Farrell and Skyline Cattle Company's Motion to Stay Proceedings, before this Court on the 21st day of December, 2023, at 1:00 p.m., at the Grant County Courthouse, the Plaintiff appeared through counsel, Paul Coppock, the Defendants, Paul O'Farrell and Skyline Cattle Company, appeared through counsel, Daniel Brendtro, and the Defendant/Interested Party, VOR, Inc., appeared through counsel, Joe Erickson, and this Court having reviewed the pleadings and listened to argument of counsel, now therefore it is hereby

ORDERED, ADJUDGED and DECREED that the Motion to Stay is denied because the Court has subject-matter jurisdiction and this case is substantially different than the other proceeding brought by Paul O'Farrell.

BY THE COURT:

12/27/2023 10:13:41 AM

Attest:
Schuelke, Cathy
Clerk/Deputy



Robert L. Spears

Hon. Robert L. Spears
Circuit Court Judge

STATE OF SOUTH DAKOTA
THIRD JUDICIAL CIRCUIT COURT
CODINGTON COUNTY COURTHOUSE
14 1st Avenue S.E., Watertown, SD 57201
Fax Number (605) 882-5106

HON. ROBERT L. SPEARS
Circuit Judge
(605) 882-5107
Robert.Spears@ujs.state.sd.us



MICHELLE GAIKOWSKI
Court Reporter
(605) 882-5020
Michelle.Gaikowski@ujs.state.sd.us

August 26, 2024

Joe Erickson
1200 Mickelson Drive
STE 300
Watertown, SD 57201

Jason Shanks
P.O. Box 88738
Sioux Falls, SD 57109

Daniel Bendtro
P.O. Box 2583
Sioux Falls, SD 57101

Ref: CHS Capital LLC, v. SKYLINE CATTLE CO., AND PAUL O'FARRELL DEFENDANTS,
AND VOR, INC. DEFENDANT/INTERESTED PARTY 25CIV23-0027.

Counselors,

The opinion of the Court regarding VOR's motion for an order of summary judgment is set forth below. For the reasons set forth below, the motion is granted.

FACTS

Defendant VOR, Inc. filed a motion for an order of summary judgment late last year. Subsequently, VOR agreed to hold its motion for summary judgment in abeyance in order to allow defendants Skyline Cattle Co., and Paul O'Farrell time

to answer an amended complaint filed by VOR. The above defendants answered the amended complaint earlier this year.

The issue before the Court is whether a series of promissory notes which VOR acquired from First Interstate Bank have been paid and if not, is VOR entitled to an order of summary judgment. This Court held a hearing on VOR's motion on August 21, 2024. The above attorneys appeared at the hearing on behalf of their respective clients. This Court took the above motion under advisement. I have reviewed the submissions and listened to the arguments presented by counsel.

The statutory standards regarding a summary judgment order are set forth in SDCL 15-6-56(c). The party seeking such an order must file the motion along with a statement of undisputed material facts no later than 28 days before the scheduled hearing. In addition, the party opposing such an order must file an answer and a response to the moving party's statement of undisputed material facts and submit a statement of disputed material facts in which there exists a genuine factual dispute. The opposing party must do so within 14 days prior to the scheduled hearing. (15-6-56(c)).

In the case at bar, the defendants Skyline and Paul O'Farrell did not file their response as required and violated the above statute. This standing alone gives this Court the authority to grant VOR's motion for an order of summary judgment. This Court will do so.

In the alternative, this Court will grant VOR's motion based on the additional reasoning. The responses submitted by Skyline and O'Farrell do not contest the amounts owed by them. Instead, the responses submitted by the defendants challenge the jurisdiction of this Court because several issues involving other cases concerning these parties are on appeal. This Court has previously

ruled that I have jurisdiction to proceed on this summary judgment motion because the issue presented herein is different than the issues that are presently on appeal in the other cases cited by defendants Skyline and O'Farrell. (See *Am. Totalisator Co. v. S. Dakota Racing Club Inc.* 501 N.W.2d 374, (SD 1993).

In addition, the issues involved in this summary judgment case were the subject of an intermediate appeal and the South Dakota Supreme Court dismissed the intermediate appeal. (See Summary Denial of Intermediate Appeal dated February 4th, 2024).

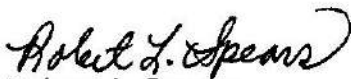
Finally, none of the answers or submissions and reasons filed by the defendants contest the amount of the loans taken out or that they have been paid by the defendants Skyline and O'Farrell. Instead, the defendants contest the actions of VOR, Inc. in acquiring these loans from the bank that approved the loans and whether Paul O'Farrell was wrongfully removed as the CEO of VOR. In this Court's opinion, these facts are irrelevant to the sole issue of the money owed to VOR. At this point, it remains unrefuted that Paul O'Farrell and Skyline Cattle borrowed money from a bank in the amounts stated in VOR's summary judgment motion. These loans remain unpaid.

Assuming *arguendo*, the defendants' statement of material facts along with their objections to VOR's statements of undisputed material facts are somehow remotely relevant to the issues presented in this current summary judgment motion, they are nothing more than mere conclusions or speculations and unsupported based on the current record before me. As such, this Court is free to ignore them. (See *Novak v. Novak*, 741, N.W.2d 22, 2007 SD 108).

Likewise, this Court declines to take Judicial Notice of the cases, pleadings and documents cited by the defendants in their opposition to this summary

judgment proceeding because the accuracy of these cases and documents contained therein are in question and the subject of a reasonable legal dispute and nothing in those cases have been proven at this point. (See SDCL 19-19-201(b)). Of course, all the above, assumes these cases are relevant to this proceeding in the first place which this Court believes they are not.

Mr. Erickson will submit an order for summary consistent with this letter-opinion.


Robert L. Spears
Circuit Court Judge

Attest:
Schuelke, Cathy
Clerk/Deputy



STATE OF SOUTH DAKOTA)
: SS
COUNTY OF GRANT)

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

CHS CAPITAL, LLC, Plaintiff, vs. SKYLINE CATTLE CO., and PAUL O'FARRELL, Defendants, and VOR, INC. Defendant/Interested Party.	25CIV23-000027 PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS
--	---

COMES NOW, the Plaintiff, CHS Capital, LLC ("CHS") and hereby submits its
Statement of Undisputed Material Facts in support of its Motions For Summary Judgment:

1. Defendant Skyline Cattle Co. ("Skyline") is a South Dakota business with its principal office located at 14551 466th Avenue, Marvin, South Dakota 57251. (Aff'd of Bolinske, ¶ 2.)

2. Defendant Paul O'Farrell ("O'Farrell") resides at 14551 466th Avenue, Marvin, South Dakota 57251 and is the sole President/Owner of Skyline. (*Id.*, ¶ 3.)

3. The Conditional Line of Credit/Application and Note/Security Agreement ("Agreement") dated December 14, 2021 has been signed by Defendants as set forth in Exhibit "1" of the Affidavit of Bolinske. (*Id.*, ¶ 4, Exhibit "1".)

4. Defendants received funds pursuant to the Agreement in the total principal amounts of \$93,761.74, plus accrued interest in the amount of \$16,794.85, plus late fees and

costs of \$10,901.83, for a total balance due and owing as of May 21, 2024 of \$121,458.42, plus accruing interest at a per annum rate of 12%. (*Id.*, ¶ 5, Exhibit “2”.)

5. Of the costs identified by CHS in Exhibit “2” that is attached to the Affidavit of Bolinske, \$5,523.99 of such total consists of attorney fees and litigation costs paid to date. (*Id.*, ¶ 6.)

6. On February 9, 2023, CHS filed a UCC Financing Statement securing collateral owned by the Defendants to CHS. (*Id.*, ¶ 7, Exhibit “3”.)

7. Defendants were mailed statements requesting payment of the amounts due and owing which were originally due on December 15, 2022. (*Id.*, ¶ 8.)

8. Due to the Defendants’ breach of the payment terms and conditions of the Agreement, CHS is owed \$121,458.42 as of May 21, 2024, plus interest that continues to accrue at a per annum rate of 12%, plus additional attorney fees and costs. (*Id.*, ¶ 9.)

9. Plaintiff has incurred attorney fees in the amount of Ten Thousand Four Hundred Six Dollars and 54/100 (\$10,406.54), plus costs and filing fees in the amount of \$193.23, for a total of \$10,599.77. (Aff’d of Shanks, Exhibit “1”.)

10. Of such total, CHS has made payment and has claimed damages within its statement of \$5,523.99, and therefore, the additional fees/costs claimed is \$5,075.78. (Aff’d of Bolinske, ¶ 6.)

11. According to the terms and conditions of the agricultural Application For Credit, in the event of default, CHS is authorized to collect attorney’s fees and expenses pertaining to the collection of the debt due and owing. (Affidavit of Chad Bolinske, Exhibit “1”, p. 2 (¶ 6).)

12. CHS is a regulated agricultural lender under SDCL 54-3-13 as documented by the NMLS documentation. (Aff’d of Shanks, Exhibit “2”.)

Dated this 29th day of May, 2024.

MAY & JOHNSON, P.C.

BY

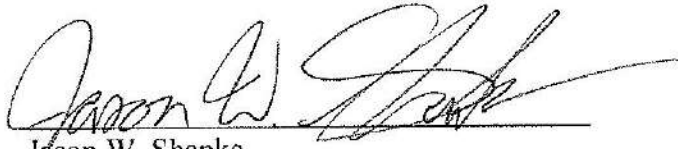

Jason W. Shanks
6805 S Minnesota Ave
PO Box 88738
Sioux Falls SD 57109-8738
(605) 336-2565
Fax: (605) 336-2604
jshanks@mayjohnson.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Plaintiff's Statement of Undisputed Material Facts** was electronically filed and served through the Court's Odyssey File & Serve system and/or served by United States mail, first class, postage prepaid thereon, this 29th day of May, 2024, upon:

Daniel K. Brendtro
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Attorneys for VOR, Inc.


Jason W. Shanks

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

:: §§§

COUNTY OF GRANT)

THIRD JUDICIAL CIRCUIT

CHS CAPITAL, LLC,
Plaintiff,

vs.

SKYLINE CATTLE CO., AND PAUL
O'FARRELL,
Defendants,

and

VOR, INC.

Defendant/Interested Party.

25CIV23—000027

**DEFENDANTS'
MOTION AND BRIEF
TO STAY PROCEEDINGS;
OBJECTION TO HEARING;
AND NOTICE OF HEARING**

MOTION FOR STAY & NOTICE OF HEARING

1. Paul O'Farrell and Skyline Cattle Company ("Defendants"), by and through their counsel of record, **move this Court for an order staying any further proceedings** pertaining to VOR, Inc., and its potential asserted claims against Skyline Cattle and Paul O'Farrell.
2. This Court lacks subject matter jurisdiction over the questions related to the validity of VOR's debts and Skyline and Paul's affirmative defenses.
3. Defendants give **Notice** that this Motion will be heard on **December 21, 2023, at 1:00 pm**, at the Grant County Courthouse in Milbank, South Dakota, or as soon thereafter as a judicial officer can hear this matter.

BRIEF IN SUPPORT OF MOTION

4. This Court has the authority to enter a stay under the discretion afforded by Rule 16(5), Rule 42(a), and, its general authority to manage the Circuit Court docket efficiently. *See*, Rule 1; *and see*, *Am. Totalisator Co. v. S. Dakota Racing Club, Inc.*, 501 N.W.2d 374, 377 (S.D. 1993)
5. VOR, Inc., has attempted to amend the pleadings to add a cross-claim against VOR, Inc. *See*, Motion, 10/6/2023.
6. The Court has not granted that motion, and, no hearing has taken place on that motion.
7. Nonetheless, even prior to obtaining an Order to amend its pleadings, VOR, Inc., has already filed a motion for summary judgment (or, in other words, VOR is prematurely attempting to obtain judgment upon claims it does not yet have permission to raise, because the requested amendment has not yet approved by the Court).
8. VOR's actions will have the effect of further fragmenting this litigation.
9. As explained in prior briefing, the disputes between Skyline, Paul, and VOR are embraced by an existing lawsuit. *See*, 25CIV23—000015
10. Portions of that pre-existing lawsuit are on appeal.
11. As a matter of law, that pre-existing action is still pending during the appeal. *See*, *Matter of Silver King Mines, Permit Ex-5*, 315 N.W.2d 689,

691 (S.D.), on reh'g sub nom. *Matter of Expl. Permit Renewal of Silver King Mines, Permit EX-5*, 323 N.W.2d 858 (S.D. 1982) (quoting *Wentzel v. Huebner*, 104 N.W.2d 476 (S.D. 1960) (a matter is “‘*finally determined*’ either upon complete review within the appellate process or until the time for appeal is passed if no appeal is taken”))

12. Portions of that same lawsuit include counterclaims purportedly asserted by VOR, Inc., against Paul O’Farrell and Skyline. Portions of that lawsuit also relate to the question of who has authority to act for VOR, Inc., and whether its actions related to Paul, Skyline, the Trust, and Victoria O’Farrell are *ultra vires* or otherwise invalid.
13. Rule 13 governs counterclaims and crossclaims. This Rule “was designed to prevent a multiplicity of actions and a duplication of judicial efforts.” *Peterson v. United Accts., Inc.*, 638 F.2d 1134, 1137 (8th Cir. 1981). *See, also, Olawsky v. Clausen*, 87 S.D. 578, 212 N.W.2d 653 (1973); *Annis v. Dewey County Bank*, 335 F.Supp. 133, 138 (D.S.D. 1971).
14. Rule 13 is designed to avoid the fragmentation of litigation. *Id.* It “should be given a broad, realistic interpretation to avoid a multiplicity of suits.” *In re Belcher*, 13 B.R. 421, 423 (Bankr. W.D. Mo. 1981) (citing

Sue & Sam Mfg. Co. v. B-L-S Const. Co., 538 F.2d 1048 (4th Cir. 1976)).

15. In addition, it is a fundamental rule that two courts cannot simultaneously attempt to address the same legal issue.
16. In the present case, VOR is attempting to assert the validity of corporate actions that would permit it to seek recovery of debts from Paul and Skyline.
17. But, in the earlier-filed case, Paul and Skyline assert that VOR's actions are *ultra vires*, and, that Raymond O'Farrell's actions on behalf of VOR are the product of undue influence or lack of capacity.
18. Thus, the subject matter of Paul and Skyline's affirmative defenses to the relief requested by VOR, Inc.'s attempted amendment is already embraced by an existing lawsuit.
19. VOR's efforts should be stayed. No further proceedings should take place between VOR, Skyline, and Paul within this lawsuit.
20. The Rules of Procedure do not permit to lawsuits regarding the same legal question.
21. **This Court lacks jurisdiction to proceed regarding any claims asserted by VOR against Skyline and Paul.** When "two actions are pending regarding the same legal question," the second court lacks

jurisdiction to hear the matter. *Am. Totalisator Co. v. S. Dakota Racing Club, Inc.*, 501 N.W.2d 374, 377 (S.D. 1993) (citing 4 C.J.S. Appeal and Error § 27 (1957)). A matter that is on appeal to an appellate court cannot be brought before another court if it relates to the matters on appeal. *Id.* Even if none of the parties has challenged jurisdiction, the Circuit Court and the Supreme Court will *sua sponte* determine whether the Circuit Court has jurisdiction, “as a condition precedent to its right to decide the issues involved.” *Id.*, (citing *Hardy v. West Cent. School Dist. No. 49-7*, 478 N.W.2d 832 (S.D.1991); *Long v. Knight Const. Co., Inc.*, 262 N.W.2d 207 (S.D.1978); *Sioux City Boat Club v. Mulhall*, 79 S.D. 668, 117 N.W.2d 92 (1962); *Estate of Putnam*, 254 N.W.2d 460 (S.D.1977); *Shryock v. Mitchell Concrete Products, Inc.*, 87 S.D. 566, 212 N.W.2d 498 (1973); *Tri-State Milling Company v. Board of County Comrs., Pennington County*, 75 S.D. 466, 68 N.W.2d 104 (1955)).

22. This Court does not “possess[] subject matter jurisdiction over the issue of whether or not the [loan amounts claimed by VOR] were actually owed to it,” or whether they can be collected against Paul and Skyline, until the appeal concludes in 25CIV23-000015.

23. The correct remedy is “to stay further proceedings in this action until such time as the appeal process” in 25CIV23-000015 “has run its procedural course.” *Id.*

OBJECTION

24. Paul and Skyline also note their objection to the “Amended Notice of Rescheduled Hearings” dated November 6, 2023. A summary judgment motion cannot be filed, defended, and argued upon a cross-claim that is not yet pled. This Court has not yet granted any motion to amend. The notice for a summary judgment hearing is thus premature.

25. Further, it is also improper for a party to seek summary judgment for claims it does not yet have legal authority to bring. Rule 56(a) contemplates that summary judgment is a procedure available *after* a cross-claim has been asserted. There is no order granting the motion to amend. The summary judgment motion and briefing on an ungranted amendment is premature.

CONCLUSION

26. The solution that Paul and Skyline seek is for the Court to stay all of the proceedings between VOR, Paul, and Skyline, and, to direct VOR to bring any such claims within the existing lawsuit, 25CIV23—000015.

27. The narrow purpose of this present lawsuit should simply be to determine the validity of the CHS debt, rather than burden the proceeding with other matters that can and should be addressed elsewhere.
28. And, Paul and Skyline anticipate that the CHS debt claim will be resolved by settlement among those parties in the very near future, prior to the hearing date, such that CHS can be dismissed as a party.
29. If the CHS claims are resolved, the motion to stay could then be treated as a motion to dismiss, such that the parties would be required to bring their claims within the other civil file, 25CIV23—000015.

Dated this 7th day of December, 2023.

HOVLAND, RASMUS,
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I certify that on the 7th day of December, 2023, a true and correct copy of the foregoing was filed and served through the Odyssey File & Serve System upon:

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STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

:: §§§

COUNTY OF GRANT)

THIRD JUDICIAL CIRCUIT

CHS CAPITAL, LLC,
Plaintiff,

25CIV23—000027

vs.

SKYLINE CATTLE CO., AND PAUL
O'FARRELL,
Defendants,

**DEFENDANTS' RESPONSE TO
VOR'S STATEMENT OF
UNDISPUTED FACTS; AND,
ADDITIONAL MATERIAL FACTS;
AND, OBJECTION**

and

VOR, INC.
Defendant/Interested Party.

SKYLINE CATTLE CO. AND PAUL O'FARRELL, as the Defendants,
respectfully submit their RESPONSE to ¶¶ 1 to 20 of VOR's statement of undisputed
material facts, in connection with VOR's Motion for Summary Judgment; and, they
submit ADDITIONAL material facts pertinent to the resolution of the questions raised by
this motion for summary judgment, numbered below as ¶¶ 21 *et seq.*

OBJECTION

And, as a general **OBJECTION**, the matters raised by VOR's motion for summary
judgment embrace several other legal disputes which are currently on appeal; and, the
Court's resolution of this motion is premature or impermissible at this time. *See*,
25CIV22-38 (Appeal #30508); 25PRO22-11 (Appeal #30532); 25CIV23-18 (Appeal
#30344); 25CIV23-18 (Appeal #30482). Various interested parties in those lawsuits are
not parties here. There is also a danger of inconsistent results amongst the various cases

which have equal or prior legal importance here.¹

When “two actions are pending regarding the same legal question,” the second court lacks jurisdiction to hear the matter. *Am. Totalisator Co. v. S. Dakota Racing Club, Inc.*, 501 N.W.2d 374, 377 (S.D. 1993) (citing 4 C.J.S. Appeal and Error § 27 (1957)). A matter that is on appeal to an appellate court cannot be brought before another court if it relates to the matters on appeal. *Id.*

Thus, Defendants urge the Circuit Court to acknowledge it lacks jurisdiction to proceed on VOR’s motion, or, in the alternative, to exercise its discretion and postpone ruling on VOR’s motion for summary judgment until this matter can be consolidated with or subsumed by the other, pending litigation matters.

In the interim, the purpose of this lawsuit, for now, should simply be to determine the validity of the CHS debt, rather than burden the proceeding with other matters that can and should be addressed elsewhere, at a later time.

However, even if this Court had the ability to proceed on VOR’s motion, it should be denied because there are material facts in dispute which preclude summary judgment.

**DEFENDANTS’ RESPONSE TO
VOR’S STATEMENT OF UNDISPUTED FACTS**

1. Skyline Cattle Company signed the \$600,000 Promissory Note, attached

¹ As a matter of law, a pre-existing action is still *pending* during the appeal. See, *Matter of Silver King Mines, Permit Ex-5*, 315 N.W.2d 689, 691 (S.D.), on reh’g sub nom. *Matter of Expl. Permit Renewal of Silver King Mines, Permit EX-5*, 323 N.W.2d 858 (S.D. 1982) (quoting *Wentzel v. Huebner*, 104 N.W.2d 476 (S.D. 1960) (a matter is “‘finally determined’ either upon complete review within the appellate process or until the time for appeal is passed if no appeal is taken”))

hereto. (Ex. 1 – \$600k Note.) **UNDISPUTED**

2. Skyline Cattle Company signed the Agricultural Loan Agreement for the \$600,000 loan, attached hereto. (Ex. 2 – Ag. Loan Agreement.) **UNDISPUTED**

3. Skyline Cattle Company signed the \$300,250 Promissory Note, attached hereto. (Ex. 3 - \$300k Note.) **UNDISPUTED**

4. Skyline Cattle Company signed the Agricultural Loan Agreement in the principal amount of \$300,250, attached hereto. (Ex. 4 – Ag. Loan Agreement.)

UNDISPUTED

5. Skyline Cattle Company signed the Promissory Note for \$500,250, attached hereto. (Ex. 5 - \$500k Note.) **UNDISPUTED**

6. Skyline Cattle Company signed the Agricultural Loan Agreement with respect to the \$500,250 loan, attached hereto. (Ex. 6 - Ag. Loan Agreement.)

UNDISPUTED

7. Skyline Cattle Company signed the Promissory Note for \$250,149.99, attached hereto. (Ex. 7 – \$250k Note.) **UNDISPUTED**

8. Paul O’Farrell signed Personal Guaranties of the Great Western Bank notes, attached hereto. (Ex. 8 – Paul’s Guaranties.) **UNDISPUTED**

9. The Promissory Notes referenced above represent that the borrower has executed Agricultural Security Agreements to support the Promissory Notes. (Ex. 9 – Ag. Security Agreements 2013 & 2018.) **UNDISPUTED**

10. Pursuant to the debt instruments and security agreements, financing

statements were filed by Great Western Bank against Skyline Cattle Company's collateral, which are attached hereto. (Ex. 10 - 2018 & 2022 UCC Filings.)

UNDISPUTED

11. Great Western Bank merged with First Interstate Bank, which became the successor, and First Interstate Bank signed the Loan Sale Agreement with VOR, Inc., attached hereto. (Ex. 11 - Loan Sale Agreement.) **UNDISPUTED.**

12. First Interstate Bank signed an Assignment and Assumption of Loan documents to VOR, Inc., attached hereto. (Ex. 12 - Assignment/Assumption of Loan.)

DISPUTED IN PART. The validity of the assignment is disputed See,

Additional Statement of Facts, ¶¶ 21 *et seq.*, below.

13. First Interstate Bank transferred its financing statements to VOR, Inc., and those documents are attached hereto. (Ex. 13 - 2023 UCC Transfers.)

DISPUTED IN PART. The validity of the assignment and transfer of collateral is disputed. See, Additional Statement of Facts, ¶¶ 21 *et seq.*, below.

14. The balance on the four Skyline Cattle Company Notes as of October 14, 2022, were:

\$600,000	Promissory Note,	DUE: \$461,903.95
\$300,250	Promissory Note,	DUE: \$236,107.60
\$500,250	Promissory Note,	DUE: \$305,053.42
\$250,149.99	Promissory Note,	DUE: \$244,722.37

(Aff. of VOR, Inc.) **UNDISPUTED**

15. No payment has been made on the four Promissory Notes set forth above during 2022 or 2023. (Aff. of VOR, Inc.) **DISPUTED IN PART. The performance**

of Skyline and Paul O'Farrell was interfered with by VOR, Inc. *See, Additional Statement of Facts, ¶¶ 21 et seq., below.* The ordinary sequence upon harvest would be for a portion of the grain proceeds to be remitted toward payment upon the notes, but, that process was interfered with here by VOR.

16. The Promissory Notes are in default. (Aff. of VOR, Inc.) **DISPUTED IN PART.** The performance of Skyline and Paul O'Farrell was interfered with by VOR, Inc. *See, Additional Statement of Facts, ¶¶ 21 et seq., below.*

17. CHS Capital, LLC has possession of a check from the sale of grain by Skyline Cattle Company in the amount of \$183,973.06. (Aff. of VOR, Inc.). **DISPUTED.** *See, Affidavit of Don Geiszler, ¶¶ 2-3.* CHS does not have this check, and, the check was originally drafted by Western Consolidated Cooperative in the amount of \$185,973.06.

18. VOR, Inc.'s financing statement was filed with the Secretary of State's office as of January 30, 2018. (Ex. 10 - 2018 UCC Filing.). **DISPUTED.** **VOR, Inc., did not file a financing statement on that date. The documents found at Exhibit 10 do not list VOR, Inc.**

19. CHS Capital, LLC's financing statement was not filed until February 9, 2023, according to CHS's Complaint. (See, CHS Complaint & Ex. 4 to Complaint.). **UNDISPUTED.**

20. Attorney's fees incurred through the hearing and reasonably expected to be incurred to complete this matter are \$8,953.49. (Aff. of Schoenbeck.).

DISPUTED. The recovery of attorney's fees is dependent upon the validity of the assignments and other instruments relating to this dispute.

ADDITIONAL FACTS RELATING TO MATERIAL DISPUTES

21. Raymond O'Farrell's capacity and decision-making ability is in dispute, including for himself, as well as on behalf of VOR, Inc.

22. Existing litigation is underway which is addressing the question of Raymond O'Farrell's capacity to make decisions, and, whether his decisions are the result of undue influence, and, whether he is or has been a proper corporate actor for VOR, Inc. *See*, 25CIV22-38 (Appeal #30508); 25PRO22-11 (Appeal #30532); 25CIV23-18 (Appeal #30344); 25CIV23-18 (Appeal #30482). The Court is asked to take judicial notice of those files, including the affidavits and testimony and other documents.

23. The questions in those prior lawsuits include Raymond O'Farrell's legal ability and legal right to make decisions regarding VOR, Inc. *Id.* Various affidavits, hearing testimony, and other documentary evidence have been submitted in those actions, sufficient to raise a question of fact as to capacity, corporate agency, and undue influence. *Id.*² Based upon those issues, the validity of the assignment is at issue, as is

² Among the selections of hearing testimony bearing upon these topics are Lance O'Farrell's testimony and Paul O'Farrell's testimony. *See*, 25CIV22-38, Hearing Transcript, 10/18/2022 [at 84-108]; and [at 56-57], respectively. Multiple affidavits have been filed in 25CIV22-38. In addition, the Statement of Facts sections of each of the appellants' briefs in these four appeals crystallizes and

the ability of VOR to pursue remedies under such putative assignments.

24. Those questions must be resolved in those lawsuits, prior to any action here on VOR's behalf.

25. This Court lacks subject matter jurisdiction to grant summary judgment because of those prior, pending lawsuits. When "two actions are pending regarding the same legal question," the second court lacks jurisdiction to hear the matter. *Am. Totalisator Co. v. S. Dakota Racing Club, Inc.*, 501 N.W.2d 374, 377 (S.D. 1993) (citing 4 C.J.S. Appeal and Error § 27 (1957)). A matter that is on appeal to an appellate court cannot be brought before another court if it relates to the matters on appeal. *Id.*

26. To paraphrase the *Am. Totalisator* case, this Court does not "possess[] subject matter jurisdiction over the issue of whether or not the [loan amounts claimed by VOR] were actually owed to it," or whether they can be collected against Paul and Skyline, until the appeal concludes in the various matters (25CIV22-38 (Appeal #30508); 25PRO22-11 (Appeal #30532); 25CIV23-18 (Appeal #30344); 25CIV23-18 (Appeal #30482)).

27. The correct remedy is "to stay further proceedings in this action until such time as the appeal process" in those other matters "has run its procedural course." *Id.*

28. Paul O'Farrell also testified in prior, related matters that his operation of the VOR land holdings was in the nature of a partnership. *See*, Hearing Transcript, 41:13-

outlines the overall scope of such facts, with citations to the respective Records in support of the contention that Raymond lacked capacity, or, was subject to undue influence, or lacked corporate capacity.

14; 42:2-4; 56:6-7.

29. VOR's ongoing ownership of its farmland was an integral part of that partnership. *Id.* Selling VOR's farmland interfered with Defendants' ability to perform, and would amount to a prior breach excusing further performance.

30. The stewardship of VOR belongs to the Trustee of the family trust, for which Paul O'Farrell is the successor trustee, and, an action is already pending regarding Raymond's removal, which, in conjunction with the other relief embraced by these lawsuits, would negate his ability to pursue relief on behalf of VOR, Inc. *See*, 25CIV23-18 (Appeal #30344).

Dated this 14th day of August, 2024.

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CERTIFICATE OF SERVICE

I certify that on the date above, I electronically filed the foregoing with the Odyssey filing system which are “presumed served upon all attorneys of record at the time of submission” pursuant to Rule 5(b)(2), including:

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One of the *Attorneys for Defendants*

1 STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

2 COUNTY OF GRANT

THIRD JUDICIAL CIRCUIT

3 CHS Capital, L.L.C.,

4 Plaintiff,

25 CIV 23-27

5 vs

Motions Hearing

6 Skyline Cattle Co.,
7 and Paul O'Farrell,

8 Defendants,

9 and

10 VOR, Inc.,

11 Defendant/
12 Interested
Party.

13
14 Date & Time:

December 21, 2023
1:00 P.M.

15
16 Before:

THE HONORABLE ROBERT L. SPEARS
17 Circuit Court Judge
14 1st Ave. SE
18 Watertown, SD 57201

19
20
21
22 Location:

Grant County Courthouse
23 Milbank, South Dakota
24
25

1 happen.

2 THE COURT: But you have no position on the
3 motion to stay or continue these proceedings based on
4 jurisdiction, whether a case is related or whether it's
5 to be determined related or unrelated cases on appeal,
6 you have no position on the motion to stay on either
7 grounds asserted by Mr. Brendtro, is that correct?

8 MR. COPPOCK: That's correct.

9 THE COURT: All right. Thank you. Give me
10 a minute, counselors.

11 Here's what the Court is going to do. On the motion
12 to stay any further proceedings or issues that are
13 before me this afternoon, I'm going to deny that motion.

14 In this Court's opinion, the issues on appeal are
15 substantially different than the issues that are
16 presented to me this afternoon.

17 In this Court's opinion, there were two counts in
18 that complaint alleging certain allegations that this
19 Court dismissed under SDCL 15-6-12(b)(5), that's the
20 case that's on appeal at the present time.

21 The issues in that case were rescission of a sale of a
22 -- or the sale and a land contract and other issues were
23 purportedly brought and this Court ruled that they
24 should have been brought by a personal representative in
25 a probate proceeding or by a court-appointed special

1 administrator in a probate proceeding.

2 While it is true, and I heard the argument presented
3 by Skyline Cattle and Paul O'Farrell's attorney that
4 there were "a myriad of issues and wrongful actions".

5 Again, for the purposes of today, the Court rejects
6 that argument. The issues are, in this Court's opinion,
7 completely different.

8 And -- so I'm going to proceed on a limited summary
9 judgment issue whether VOR, Incorporated has a secured
10 interest and a superior secured interest to that of CHS.
11 And I'll proceed on the summary judgment on that issue.

12 On the issue as to whether to allow an amendment of
13 pleadings, I've looked at the appropriate statute and
14 the case law, both federal and state precedent and the
15 federal cases of the 8th Circuit finding, in this
16 Court's opinion, on the court, the amended pleadings
17 should be allowed and freely -- the court should allow
18 the amendment of pleadings as a matter of course, at
19 least once before the time the complaint is answered,
20 and then once the complaint has been answered, then by
21 discretion of the court.

22 Based on my file review, I'm going to allow an
23 amended pleading. Skyline Cattle and Paul O'Farrell's
24 motion to delay proceedings are denied. Any questions
25 about that, Mr. Brendtro?

1 MR. BRENDTRO: So --

2 THE COURT: I'm allowing the amendment of
3 pleadings. I'm not staying the proceedings and I'm
4 going to proceed on a summary judgment issue on the
5 limited basis as to whether or not VOR has a superior
6 perfected UCC filing over CHS.

7 And I don't think that's going to matter whether I'm
8 reversed or not. If your file is reversed on appeal in
9 the other case that we've been talking at length about
10 and your client, Paul O'Farrell, ends up as president of
11 VOR, that would be a benefit to him.

12 And in my opinion, there would be nothing -- if I am
13 reversed in that other case -- of consolidating these
14 two cases.

15 Any questions about that, Mr. Brendtro? I don't want
16 to hear any further argument, just if you have questions
17 about what I just ruled.

18 MR. BRENDTRO: No questions, Your Honor.

19 THE COURT: All right. Thank you.

20 Mr. Erickson, any questions?

21 MR. ERICKSON: I guess I have a question.
22 So the summary judgment hearing today is now limited to
23 what you just described, Judge --

24 THE COURT: The UCC issue and whether VOR is
25 superior to CHS.

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

No. 30862

CHS CAPITAL, LLC,
Plaintiff and Appellee,

vs.

SKYLINE CATTLE CO.
AND PAUL O'FARRELL,

Defendants and Appellants,

and

VOR, INC.,

Defendant/Interested Party and Appellee.

Appeal from the Circuit Court
Third Judicial Circuit
Grant County, South Dakota

HONORABLE ROBERT L. SPEARS
Presiding Judge

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Notice of Appeal was filed October 2, 2024

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INTRODUCTION

The only issue raised on appeal is whether the trial court had subject matter jurisdiction. Appellants argue the trial court did not have subject matter jurisdiction because VOR failed to plead a compulsory counterclaim in the First Lawsuit involving some of the parties in this case, but a compulsory counterclaim was not possible.

The factual pleadings and posture that underlie the two lawsuits that make Attorney Brendtro's appellate argument are unique.

As this Court knows from the eviction matter it recently affirmed, Attorney Brendtro has not been VOR's attorney, and has been adverse to VOR.

In the First Lawsuit, Mr. Brendtro included VOR as one of his plaintiffs!¹ In this appeal, he is now contending that in the First Lawsuit, at a time he had "taken over" VOR by naming them as his client/plaintiff, VOR had to make a compulsory counterclaim against the other plaintiffs and Appellants in this appeal (also represented by Mr. Brendtro).

For purportedly lack of subject matter jurisdiction, Appellants also attempt to vacate the trial court's order from December 27, 2023, which granted VOR, Inc. a superior priority interest over CHS Capital. (SR 705-706.) However, the Appellants did not include this Order in its Notice of Appeal. (SR 860-864.)

PRELIMINARY STATEMENT

Appellants Skyline Cattle Co. and Paul O'Farrell will be referred to as

¹ Oddly, in the same complaint he asserts claims against VOR.

"Skyline" and "Paul" or "Paul's Estate"; Appellee VOR, Inc. as "VOR"; Appellee CHS Capital, LLC as "CHS"; the transcript of the motion hearing on August 21, 2024, as "HT" followed by the appropriate page number; and the settled record will be referred to as "SR" followed by the page number.

The other lawsuit involving these parties that is referenced in Appellants' Brief and will be referenced herein, *Paul O'Farrell, Skyline Cattle Company, and VOR, Inc. vs. Kelly O'Farrell, Grand Valley Hutterian Brethren, Inc., and The Raymond and Victoria O'Farrell Living Trust*, case 25CIV.23-15, Appeal #30482, will be referred to as the "First Lawsuit."

For consistency's sake, this brief will follow Appellants' manner of referencing the appellate record concerning the First Lawsuit as "Appeal Record #30482 at AR.____."

JURISDICTIONAL STATEMENT

Appellants appeal the Circuit Court's entry of a judgment by the Honorable Robert L. Spears on August 28, 2024 (SR 829-830), and September 23, 2024 (SR 851). Notice of entry was given on September 3, 2024 (SR 832-833). Appellants filed their notice of appeal on October 2, 2024 (SR 856-857).

Appellants did not include in their notice of appeal (SR 860-864) the entry of partial summary judgment dated December 27, 2023 (SR 705-706).

This Court only has jurisdiction under SDCL 15-26A-3(1) and (4) to review the summary judgment order against Paul and Skyline dated August 28, 2024 (SR 865-866) and attorney fees entered on September 24, 2024 (SR 867).

STATEMENT OF LEGAL ISSUES

- 1. Did the trial court err when it entered summary judgment in favor of VOR, when VOR was a plaintiff in an existing lawsuit (First Lawsuit) with the same counsel as Paul and Skyline?**

No, the circuit court did not err.

SDCL 15-6-13(a) (compulsory counterclaim rule)
Am. Totalisator Co. v. S. Dakota Racing Club, Inc., 501 N.W.2d 374 (S.D. 1993)

- 2. Did the circuit court err in awarding attorney fees due to a lack of subject matter jurisdiction?**

No, the award of attorney fees was not error.

SDCL 15-6-13(a)
Peska Properties, Inc. v. Northern Rental Corp., 2022 S.D. 33, 976 N.W.2d 749

- 3. Is dismissal of VOR's crossclaim the appropriate remedy?**

No, the judgment of the trial court should be affirmed. If not, VOR should be allowed to pursue these claims.

SDCL 15-6-13(a)

- 4. Did the trial court commit error in its December 27, 2023, partial summary judgment order?**

No, the circuit court did not err.

SDCL 15-26A-4(1)
Stock v. Garret, 2025 S.D. 8, 2023 WL 12029417

STATEMENT OF THE CASE AND FACTS

The "facts" described by Appellants are mostly unproven allegations outside the record of this appeal. Because this Court has already reviewed several versions of the background facts of these parties in other appeals, a rehash of

those allegations is not necessary. Instead, VOR's brief focuses on the facts determinative of this appeal.

1. Attorney Brendtro Filed a Complaint on Behalf of VOR, Inc.

The lawsuit that Appellants rely on to claim the trial court in this case did not have subject matter jurisdiction is the First Lawsuit, where Attorney Brendtro claimed to act on behalf of VOR and the Appellants, and filed a complaint against Kelly O'Farrell, Grand Valley Hutterian Brethren, Inc., and The Raymond and Victoria O'Farrell Living Trust. Attorney Brendtro pled the case with the following Complaint:

STATE OF SOUTH DAKOTA) : §§§ : COUNTY OF GRANT)	IN CIRCUIT COURT THIRD JUDICIAL CIRCUIT
PAUL O'FARRELL , individually; and, as a beneficiary of the family trust; and, for the benefit of the Estate of Victoria O'Farrell; SKYLINE CATTLE COMPANY , a South Dakota corporation; & VOR, INC. , a South Dakota corporation PLAINTIFFS v. KELLY O'FARRELL , an individual; GRAND VALLEY HUTTERITE BRETHREN, INC. ; a South Dakota corporation; & THE RAYMOND AND VICTORIA O'FARRELL LIVING TRUST , a South Dakota trust, by and through its trustee; and any other necessary parties. DEFENDANTS	25CIV23—_____ 25CIV23-000015 COMPLAINT

(SR 298.)

The Complaint was never amended to include VOR as a proper defendant, and Appellants never attempted a motion to amend the complaint. (Appeal Record

#30482 Chronological Index I-II.)

In response to the complaint, VOR made an appearance to dismiss VOR as a plaintiff because Appellants did not have authority to act on behalf of VOR. (Appeal Record #30482, at AR. 126-141.) After responding to the allegations of the complaint, the defendant Trust and VOR asserted counterclaims limited to Appellants improperly acting on their behalf. (Appeal Record #30482, at AR. 126-141.) In response, Paul and Skyline, the current Appellants, stated:

5. The parties asserting these counterclaims, or their agents, do not have authority or capacity to assert such claims.

(Appeal Record #30482, at AR. 206.)

The trial court granted VOR's motion to dismiss VOR as a plaintiff and awarded attorney fees. (Appeal Record #30482, at AR. 425-439). No actions were taken regarding the "counterclaims" of the defendants and VOR.

2. Facts Relating to the Order Noticed for this Appeal

This case began when CHS Capital brought a collection action against Paul and Skyline related to crop inputs for the 2022 planting season. (SR 2-5, 16-17.) Additionally, CHS pled VOR as an interested party and defendant, but did not make any claims against VOR in its complaint. (SR 2-5.)

Paul and Skyline's answer included a crossclaim that specifically questioned the validity of VOR's interest in the disputed collateral and questioned the validity of VOR's assignment of the promissory notes from First Interstate Bank to VOR. (SR 23-27.) Paul and Skyline included within their answer that they believe this crossclaim would be embraced by a different lawsuit and cited to the lawsuit in which VOR was named as a plaintiff and where

Attorney Brendtro had filed a complaint on VOR's behalf (the First Lawsuit). (SR 24.)

In this lawsuit, VOR answered CHS' complaint and Appellants' crossclaim, and did not make any claims initially against CHS nor the Appellants, other than asserting it had a first priority interest in Paul and Skyline's collateral. (SR 28-30.)

VOR subsequently sought to amend its answer to include a crossclaim against Appellants for the debt that VOR owned and had acquired—the same debt Appellants had previously included in its crossclaim against VOR. (SR 55-56.) VOR also reasserted in its crossclaim that it had a first priority interest in Paul and Skyline's collateral. (SR 711-714.)

The following facts were included in VOR's summary judgment on its crossclaim and Appellants did not raise appellate review of these facts (See Appellant's Brief):

- Four loans were originally made between Skyline and First Interstate Bank. (SR 128-130, 793-800.)
- The loans were assigned from First Interstate Bank to VOR. (SR 128-130, 793-800.)
- The notes total approximately \$1.3 million dollars. (SR 128-130, 793-800.)

After a continuance, VOR moved for summary judgment against Paul and Skyline on these facts and included all the necessary documentation in support for the record. (SR 126-246, 285-323, 807-818.) Paul and Skyline opposed summary judgment, but did not provide evidence to dispute the material facts.

(SR 793-806.) Further, Paul and Skyline asked the trial court to take judicial notice of all the other allegations in the other cases without identifying which allegations or which evidence. (SR 802-806; HT pp. 9-10.)

After a hearing, on August 26, 2024, the circuit court issued a letter decision granting summary judgment for VOR against Paul and Skyline. (SR 825-828.) The circuit court's opinion provided several reasons for granting VOR's summary judgment motion:

- Paul and Skyline did not timely file their response as required and violated SDCL 15-6-56(c).
- Paul and Skyline don't contest the amounts owed by them.
- The court previously ruled it had jurisdiction to proceed on the summary judgment motion because the issues are different than issues presently on appeal in the other cases.
- It is unrefuted that Paul and Skyline borrowed money from a bank and the loans remain unpaid.
- Facts asserted by Paul and Skyline are unsupported based on the current record before the court.
- Declined to take judicial notice of the other cases as they are subject to legal disputes, and nothing has been proven at this point.
- The court doesn't believe the other cases are relevant to this proceeding.

Following the summary judgment in favor of VOR and CHS, the trial court awarded attorney fees to VOR as allowed under the promissory notes. (SR 851.)

STANDARD OF REVIEW

Appellee agrees the Appellants' jurisdictional argument is one of *de novo* review. (See Appellants' Brief, p. 20.)

ARGUMENT

A. Summary.

1. The Appellants' insistence on relying on a lawsuit where the Appellants' counsel brought a claim on behalf of VOR is illogical and cannot support a lack of subject matter jurisdiction.

2. The attorney fees are only appealed based on a lack of subject matter jurisdiction. Such jurisdiction existed, and the attorney fees should be affirmed.

3. There does not need to be any procedural remedy to dismiss VOR's crossclaim, as the trial court's ruling should be affirmed.

4. Appellants failed to include the trial court's rulings on December 27, 2023, regarding VOR's right to grain proceeds and subject matter jurisdiction in their notice of appeal.

B. **The Trial Court did not commit error when it found that it had subject matter jurisdiction.**

VOR did not have a compulsory counterclaim in the First Lawsuit, thus the trial court had subject matter jurisdiction. The Appellants argue that a compulsory counterclaim existed but ignore that VOR was pled as a plaintiff in that First Lawsuit alongside the Appellants. The Appellants are attempting to use their improper lawsuit "on behalf" of VOR to argue that VOR was required to

bring a counterclaim against them in that same lawsuit. Appellants' argument is not logical and fails under the law.

1. Legal Standards for a Compulsory Counterclaim

A cause brought before one appellate court cannot, while such proceeding is pending, also be brought before another, unless the different proceedings relate to different issues, or there is uncertainty as to the proper tribunal.

* * * * *

Appellate review cannot be had where a remedy for the same errors has been sought in the lower court by a pending valid proceeding, but appellate review will not be precluded if the lower court proceeding is void, or is no longer pending.

Am. Totalisator Co. v. S. Dakota Racing Club, Inc., 501 N.W.2d 374 (S.D. 1993), citing 4 C.J.S. *Appeal and Errors* § 27 (1957).

We have ruled that the “logical relation” test is the appropriate standard to apply when determining whether a counterclaim is compulsory or permissive. The purpose of our compulsory counterclaim statute, SDCL 15-6-13(a),¹ is “to reduce the volume of litigation and promote the just, speedy, and inexpensive determination of controversies by barring relitigation of the same set of facts.” In fact, “[h]arsh consequences [will] result from the failure to plead a compulsory counterclaim.”

Ainsworth v. First Bank of South Dakota, 420 N.W.2d 32, 33-34 (S.D. 1988) (citations omitted).

A compulsory counterclaim must be plead, or it is barred. *Olawsky v. Clausen*, 87 S.D. 578, 580, 212 N.W.2d 653, 654 (citing SDCL 15-6-13(a)):

‘Compulsory counterclaims.—A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence

that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if

(1) at the time the action was commenced the claim was the subject of another pending action, or

(2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under § 15-6-13; or

(3) if the claim is not one over which the court would have jurisdiction if brought as an original action.'

2. Analysis

Appellants' assignment of error requires that VOR must have had a compulsory counterclaim in the First Lawsuit. VOR was not a proper defending party in the First Lawsuit and was instead included with the Appellants as plaintiffs, all while being represented by Mr. Brendtro.

To have a compulsory counterclaim, VOR needed to be a defendant in the First Lawsuit. VOR never appeared as a named defendant in the First Lawsuit. Instead, when VOR appeared in the First Lawsuit and attempted to assert a "counterclaim" related to Appellants' improper actions on behalf of VOR, Appellants objected and stated the following: "5. The parties asserting these counterclaims, or their agents, do not have authority or capacity to assert such claims." (Appeal Record #30482, AR 206.)

To summarize, in the First Lawsuit, Appellants objected to VOR asserting a counterclaim and claimed it did not have authority to do so. Now, Appellants claim VOR's counterclaims were compulsory.

The pleadings control whether a compulsory counterclaim exists. SDCL 15-6-13(a). Appellants' argument does not include an analysis of the pleadings of the First Lawsuit. Instead, to support their argument regarding the related nature of the First Lawsuit and this case, they rely on the claims that the Appellants had in the First Lawsuit regarding the nature of acts of other parties in relation to VOR. See Appellants' Brief. A response to Appellants' argument regarding the nature of the allegations in the First Lawsuit is not necessary. To do so ignores the basic nature of what a compulsory counterclaim is.

The posture of VOR as a plaintiff in the First Lawsuit is dispositive. VOR was not required to respond to the First Lawsuit by pleading an answer when it had no obligation to file a responsive pleading—VOR cannot then be required to have to file a compulsory counterclaim. Appellants' attorney chose to draft their complaint with VOR as a plaintiff and made no motion to amend that complaint.

Appellants' argument of a compulsory counterclaim ignores its own complaint in the First Lawsuit, and their own response to the attempted "counterclaim" by VOR. The trial court in this case did not err when it ruled a compulsory counterclaim did not exist.

C. The Trial Court did not commit error by awarding attorney fees.

Because there was no compulsory counterclaim in the First Lawsuit, the trial court had subject matter jurisdiction to award attorney fees. The only basis Appellants claim that attorney fees should not have been granted is that subject

matter jurisdiction did not exist. Because the trial court had subject matter jurisdiction, there exists no basis on appeal to vacate or remand the trial court's findings of attorney fees. *Peska Properties, Inc. v. Northern Rental Corp.*, 2022 S.D. 33, ¶ 35, 976 N.W.2d 749, 759.

D. VOR's crossclaim should be upheld. If it is not, a stay in this lawsuit is the most efficient procedural remedy.

Appellants argue VOR's crossclaim should be dismissed in this action and re-filed in the First Lawsuit. This position ignores that the First Lawsuit has summary judgments and motions to dismiss pending. If this Court finds subject matter jurisdiction did not exist, a stay of VOR's crossclaim prevents judicial inefficiency given the posture of the First Lawsuit.

The result of the pending dispositive motions in the First Lawsuit may require a consolidation of this matter with it if Appellants are successful in defeating the pending matters. However, to dismiss VOR's crossclaim in this matter, while the First Lawsuit is pending, will likely result in an inefficient circular issue where the First Lawsuit is back before the Supreme Court after this case is determined by this Court.

E. The Trial Court's rulings on December 27, 2023, regarding VOR's right to grain proceeds and subject matter jurisdiction were not included in Appellants' Notice of Appeal.

In Appellants' Brief, Appellants argue that the trial court's order on December 27, 2023, should be vacated and \$185,973.06 should be returned to Appellants. The Appellants did not include this order in their notice of appeal. (SR 856-857, 860-864.)

Additionally, the trial court ruled on December 27, 2023, that the trial court had subject matter jurisdiction. (SR 703.) Appellants did not include this order in its notice of appeal. (SR 856-857, 860-864.)

In addition to Appellants' appeal failing because the trial court had subject matter jurisdiction, the Appellants' failure to include these orders in their notice of appeal may also prevent judicial review of the orders the trial court entered on December 27, 2023.

Recently, in *Stock v. Garret*, 2025 S.D. 8, ¶129, 2023 WL 12029417, 7, described the analysis when a party fails to include the orders appealed from in its notice of appeal:

While the Garretts' failure to reference the judgment of eviction in their notice of appeal is not jurisdictional, the Garretts did not comply with the procedural requirement of SDCL 15-26A-4(1) when they failed to "designate the judgment, order, or part thereof appealed from[.]" In such circumstances, we must determine whether any party was prejudiced by the irregularity, or if any other reason exists to dismiss the appeal. See SDCL 15-26A-4.

The Court may find the exclusion of the order regarding the priority of the grain proceeds was prejudicial to the Appellees. The support for prejudice is in the remedy the Appellants seek for the grain proceeds—which is to have the order vacated and the money returned to Appellants. However, this ignores the effect of the earlier ruling—to award priority to one of the Appellees. The Appellants never contended at the trial court level that they did not owe the money to either Appellees.

CONCLUSION

VOR did not have a compulsory counterclaim in the First Lawsuit. The trial court did not err when it ruled in favor of VOR in this case because it had subject matter jurisdiction. The trial court's rulings should be affirmed.

DATED this 24th day of February, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements set forth in SDCL 15-26A-66(b)(4). This brief was prepared using Microsoft Word 2013, with 12 point Georgia font. This brief contains 2,483 words, excluding table of contents, table of authorities, jurisdictional statement, statement of legal issues, and certificate of counsel. I relied on the word count feature in Microsoft Word 2013 to prepare this certificate.

DATED this 24th day of February, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on February 24, 2025, I served a true and correct copy of the foregoing *Appellee's Brief* via electronic means on the following:

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IN THE
Supreme Court
of the
State of South Dakota

No. 30862

CHS CAPITAL, LLC,
PLAINTIFF, APPELLEE

vs.

SKYLINE CATTLE CO., AND
THE ESTATE OF PAULO O'FARRELL,
DEFENDANTS, APPELLANTS

and

VOR, INC.
DEFENDANT/INTERESTED PARTY, APPELLEE

An appeal from the Circuit Court, Third Judicial Circuit
Codington County, South Dakota

The Hon. Robert L. Spears
CIRCUIT COURT JUDGE

APPELLANTS' REPLY BRIEF

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INTRODUCTION: CIRCULAR LAWSUITS

In their brief, VOR highlights the precise problem it created by failing to heed the compulsory counterclaim rule. VOR worries that dismissal of its crossclaim in this lawsuit could “result in an inefficient circular issue” where Paul’s original lawsuit ends up before this Court after the present appeal is resolved. Appellees’ Brief, p. 12.

This is a prime example of the “multiplicity” of competing lawsuits that Rule 13(a) seeks to avoid. Paul and Skyline attempted to warn VOR about this outcome on at least six occasions. VOR cannot now be heard to complain.

ARGUMENT-IN-REPLY

1. VOR’s 2023 litigation actions contradict (and defeat) its current argument about compulsory counterclaims

In the initial stages of Paul’s lawsuit, two competing corporate factions brought claims seeking relief for VOR.

First, on March 3, 2023, Paul’s Complaint included VOR as a Plaintiff. [#30508, R.7]. Paul alleged authority “on behalf of” VOR because his ouster as President was void, and he thus remained in office. [#30508, R.8, ¶ 5].

The second VOR faction¹ claimed the inverse of this. In their first responsive pleading (entitled “Answer, Counterclaim, and Motions of VOR, Inc., *et al*,”) they argued that “Paul *used to be* an officer in the corporation,” and that “Paul’s knowledge of his *lack of authority* is apparent....” [#30508; R.127, ¶ 2; R.140, ¶ 4; filed 4/5/2023) (emphasis added).

Of critical importance is that *within the second faction’s initial pleading, VOR filed actual counterclaims against Paul and Skyline.* [#30508, R.139-140].²

Now, two years later, this second faction of VOR claims that “VOR...had no obligation to file a responsive pleading [and thus] VOR cannot be required to have to file a compulsory counterclaim.” [Appellee’s Brief, p. 11]. This is VOR’s *only* substantive argument in Section B (pp. 8-11). Its assertion arises from its view that “VOR never appeared *as a named*

¹ [#30508, R.103; “[Counsel] hereby make an appearance as attorneys for *Raymond O’Farrell, The Raymond and Victoria O’Farrell Living Trust, and VOR, Inc.*, in the above entitled action.”]

² [#30508, at R.126; “Comes now *VOR, Inc.*, the Estate of *Victoria O’Farrell*..., and the...*Living Trust*, and make the following Answer, *Counterclaim*, and Motion to Dismiss....”]; [#30508, at R.139-140; “Counterclaim Count 1: Tortious Interference with Contractual Rights....” The Plaintiff has *caused damage to VOR, Inc.’s reputation*. Count 2: Barratry...[T]he Trust and *VOR, Inc.* are entitled to an award of damages....”]; and, [#30508 at R.140, (wherein VOR joins the prayer for relief)].

defendant in the First Lawsuit.” [*Id.*, p. 10]. This premise is wrong, both as a matter of the history of Paul’s lawsuit, as well as the plain text of Rule 13(a).

Whether VOR “had no obligation” to assert counterclaims is now irrelevant. VOR can no longer make this argument, since it voluntarily appeared in Paul’s lawsuit in 2023 via the second faction, and then *VOR voluntarily issued counterclaims against Paul and Skyline*. [#30508, R.139-140]

Once the second faction of VOR chose to take the step of pleading, it was then required to bring any other compulsory counterclaims at that time.

Other than broadly quoting the same case law as the Appellants, VOR cites only to one, single authority for its argument, namely, claiming that Rule 13(a) stands for the proposition that “[t]he pleadings control whether a compulsory counterclaim exists.” [*See*, Appellee’s Brief, p. 11 (citing SDCL 15-6-13(a))].

But Rule 13(a) does not say that. Nor is Rule 13(a) interpreted in a hyper-technical manner.³ In fact, Rule 13(a) does not even discuss

³ *See, e.g., Ainsworth v. First Bank of S. Dakota*, 420 N.W.2d 32, 34 (S.D. 1988) (the logical relation test under Rule 13(a) evaluated from “the record, taken as a whole” rather than “solely on the pleadings”)

‘plaintiffs’ or ‘defendants,’ nor does it discuss the concept of ‘named defendants.’

Instead, Rule 13(a) is directed at “pleaders.” In particular, it states that a “*pleader*” is required to bring “*any claim* which at the time of serving the pleading *the pleader has against an opposing party*, if it arises out of the same transaction or occurrence that is the subject matter of the opposing party’s claim....” SDCL 15-6-13(a) (emphasis added).

Via the acts of its second corporate faction, VOR appeared in Paul’s lawsuit and began *pleading*. From this point forward, this second faction of VOR was required to bring “any claim” that arose out of the same transaction or occurrence. The status of VOR as a plaintiff or defendant is immaterial, as was Paul and Skyline’s response. Once this second faction of VOR began pleading, it was required to bring all related claims.

To determine which claims are under this umbrella, we look to *Olawsky v. Clausen*, 212 N.W.2d 653, 654 (S.D. 1973). Under the *Olawsky* test, the question is whether there is “*any logical relation*” between VOR’s crossclaims in this lawsuit and the operative facts of Paul’s lawsuit. The answer is yes.

VOR claims that our opening brief “does not include an analysis of the pleadings” of Paul’s lawsuit. [*See*, Appellee’s Brief, p. 11]. We think it does, but, here are ten examples of the logical relationships between VOR’s crossclaim and Paul’s lawsuit:

- VOR’s crossclaim seeks to recover upon loan debts that were purchased with the proceeds of the disputed \$3.2 million land sale to the Colony.⁴
- VOR’s purchase of the debt arose from Raymond’s act as purported officer of VOR, and, the validity of all of Raymond’s actions as an officer of VOR is in doubt.⁵ This would include authority for the transaction itself (to purchase the loans), as well as the purported efforts by VOR to enforce the loans.
- Skyline has legal and equitable defenses regarding VOR’s enforcement of the defaulted debt, including that VOR itself caused the default, and, VOR wrongfully prevented Skyline

⁴ [#30508; R.138, ¶ 47].

⁵ [#30508; R.14, ¶ 34; R.20, ¶¶ 68-78; R.34, ¶ 12 (As his wife Victoria asserted: “Raymond took these inexplicable actions because he is being unduly influenced by their son, Kelly, who resides in the couple’s house and who has worked to exert extensive control over Raymond while limiting other family members’ access to him.”)

from continuing to farm the land, thus depriving Skyline of the ability to further repay the notes.⁶

- Prior to its purchase, this debt with Great Western was *only* “in foreclosure status” because Kelly manipulated Raymond into refusing to renew the notes for the 2022 crop year.⁷
- Prior to its purchase from Great Western, the debt was *owed by* Skyline and Paul, but guaranteed by the Trust’s/VOR’s farmground, as part of an ongoing farming partnership between VOR and Skyline.⁸
- The bulk of the VOR/Trust farmground that secured these loans was secretly and precipitously sold to the Colony.⁹
- That precipitous sale violated the terms of the Trust which held all of VOR’s shares.¹⁰
- Paul’s lawsuit alleged an equitable claim for the value of his home, shop, and feedlot that were constructed and financed by

⁶ [#30508, R.28, ¶ 111-112].

⁷ [#30505; R.34, ¶ 14-18].

⁸ [#30508; R.138, ¶ 45].

⁹ [#30508; R.18, ¶ 58-59].

¹⁰ [#30508, R.17, ¶ 53].

Skyline's debt to Great Western, which VOR then acquired, and now seeks to foreclose upon.¹¹

- VOR's newly-purchased debt may constitute a setoff against any monetary recovery against it by Skyline.¹²
- And, Paul's Complaint seeks a "constructive trust" as well as "an accounting of the proceeds of the land sale," which were used by VOR to purchase the Great Western debt.¹³

These are "essential facts alleged by [plaintiff that] constitute, in part, the cause of action set forth in the counterclaim. That they are not precisely identical, or that the counterclaim embraces additional allegations does not matter." *Olawsky*, 212 N.W.2d at 655 (quoting *Moore v. New York Cotton Exchange*, 270 U.S. 593, 610 (1926)).

Here, there are *many* logical relations between Paul's Complaint and the loans. (For an example of a case involving loans that have "*no* logical relationship" with the transaction and occurrences of the prior litigation, *see*, *Ainsworth v. First Bank of S. Dakota*, 420 N.W.2d 32, 35 (S.D. 1988)).

¹¹ [#30508; R.139, ¶ 49; R.19, ¶ 61; R.27, ¶ 107-108].

¹² *Id.*

¹³ [#30508; R.27, ¶ 109]

There is also a clear *legal* relationship between Paul's lawsuit and the recovery of the debts by VOR. Under the Uniform Commercial Code, VOR's "right to enforce the obligation [of Paul and Skyline] to pay [the debt] instrument is subject to" various defenses, *see*, SDCL 57A-3-305(a)(2), and "subject to... a claim in recoupment...if the claim arose from the transaction that gave rise to the instrument." *See*, SDCL 57A-3-305(a)(3). These provisions encompass defenses pertaining to Raymond's actions (undue influence, lack of capacity, failure of corporate authority), as well as "recoupment" because Skyline used the loans to pay for improvements which VOR then retained. In addition, VOR acquired the debt instruments "subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds." SDCL 57A-3-306. (Due to its imputed knowledge, VOR is not a holder in due course. *See*, SDCL 57A-3-203; SDCL 57A-3-302).¹⁴

¹⁴ And, because the Great Western loans that VOR seeks to enforce were *secured*, Paul and Skyline would have similar defenses regarding the collateral, governed by Chapter 57A-9 (Article 9). The operative facts of their Article 3 and Article 9 defenses are interwoven within Paul's Complaint.

Moreover, Raymond appeared in Paul's lawsuit personally (and not just in his role as Special Administrator). [#30508; R.103]. By his pleadings, Raymond further placed his own capacity and authority in issue within Paul's lawsuit, as well as questions about the ownership of VOR by the Trust. [See, #30508; at R.127, ¶ 4 and R.129 ¶ 5 (asserting Raymond's role as "president, director, and owner of VOR"); at R.134 ¶ 11 (denying that Raymond lacks capacity); at R.135 ¶ 15 ("the stock in VOR, Inc., that was in the Revocable Trust is no longer there."); at R.140, ¶ 3 ("Paul...can't legally act for...VOR")].

Thus, by April of 2023 (less than two months after filing) Paul's lawsuit (seeking declaratory, equitable, and legal relief) had acquired all of the necessary parties to resolve questions about VOR, the Trust, the land transaction, and VOR's acquisition of and attempts to enforce the Great Western debt. All of these issues are embraced by Paul's Complaint. In spite of the existence of that prior lawsuit, VOR then waited six months to attempt to amend its pleadings to assert its debt claims in this (CHS) lawsuit. [R.55; October 6, 2023].

"[C]ourts should give the phrase 'transaction or occurrence that is the subject matter of the suit' a broad realistic interpretation in the interest of

avoiding a multiplicity of suits [and] a liberal basis for joining all related claims.” *Ainsworth*, 420 N.W.2d at 35 (Wuest, C.J., dissenting (quoting 3 MOORE’S FEDERAL PRACTICE ¶. 13.13 (1985) and citing *Warshawsky & Co. v. Arcata Nat. Corp.*, 552 F.2d 1257 (7th Cir. 1977); *Annis v. Dewey County Bank*, 335 F.Supp. 133, 138 (D.S.D. 1971)). The same is true for declaratory actions, which are construed liberally. SDCL 21-24-14. A broad interpretation also avoids the “duplication of judicial resources.” *Peterson v. United Accts., Inc.*, 638 F.2d 1134, 1137 (8th Cir. 1981).

It is inefficient and unfair for Paul and Skyline to defend VOR’s crossclaims in a collateral proceeding (and, when Paul’s first lawsuit makes it apparent that there are clear disputes of fact exist on every aspect of VOR’s attempted recovery here).

VOR fails to dispute Paul and Skyline’s premise that a second court lacks jurisdiction to proceed when a prior, pending case embraces the same legal questions. [Appellants’ Brief, pp. 22-24]. “Under the facts of this case, the *prior unresolved action* on [the] question [of VOR’s and Raymond’s authority] deprives the lower court, and therefore this Court, of jurisdiction to consider the *same* question.” *Am. Totalisator Co.*, 501 N.W.2d at 378 (Miller, C.J., concurring).

Whether as a failure of jurisdiction or as a failure to plead compulsory claims, VOR's crossclaims in this action are a legal nullity, and, they should be dismissed.

2. The award of attorney's fees must be vacated

VOR does not dispute our basic premise that if summary judgment was improvidently granted to VOR, then there is no legal basis by which VOR could recover attorney's fees in this action. *See*, Appellees' Brief, Section C. The Estate and Skyline ask for the judgment of \$18,509.13 for attorney's fees to be vacated.

3. The better remedy here is dismissal of VOR's crossclaim, rather than to stay the crossclaim

If the goal is to reduce the multiplicity of actions, then the obvious remedy is to dismiss the crossclaims. In Section D, the Appellees ask for the case to be *stayed*, instead. "Staying" this case until the other lawsuit resolves does not make sense, because the issues are so interrelated. *See Olamsky*, 212 N.W.2d at 654 (determinative inquiry is "*Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?*"). If this matter is stayed, then the second court (and its Jury) would be left trying to figure out how the prior case rulings should meld with the VOR debt issues in this case, and, in some instances hearing the same evidence all over again. The

better remedy is dismissal of the crossclaim so that all of the questions can be resolved now, within a single proceeding.

“Harsh consequences result from the failure to plead a compulsory counterclaim. There can be no other result since the objective of the rule is the settlement of all ‘logically related’ disputes between the parties in a single lawsuit.” *Olamsky*, 212 N.W.2d at 655 (S.D. 1973). *See, also, VOR, Inc. v. Est. of O'Farrell*, 2025 S.D. 2, ¶¶ 57-58 (Devaney, J., concurring in part, dissenting in part) (quoting *Olamsky* and providing analysis of Rule 13(a)).

4. Paul and Skyline’s notice of appeal was sufficient

Finally, in Section E, VOR challenges the sufficiency of the notice of appeal, because it did not mention the Circuit Court’s intermediate order dated December 27, 2023.

As authority for this argument, VOR misapplies the holding of *Stock v. Garrett*, 2025 S.D. 8, ¶ 29. VOR also misunderstands the nature of a final, appealable order or judgment.¹⁵

¹⁵ It is admittedly a complicated question. *State v. Koch*, 2012 S.D. 59, ¶ 7 (quoting *Fed. Trade Comm’n v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 215 (1952)) (Black, J., dissenting) (“Defining ‘final’ for purposes of appealability is not an effortless task. ‘Of course appealability of a judgment depends on its being ‘final’ in the legalistic sense. But there is no more ambiguous word in all the legal lexicon.’”)

Absent unusual circumstances such as a Rule 54(b) certification, in every case, there is usually only *one* order or judgment that is the “final” judgment from which an appeal can be taken on the merits. *See*, SDCL 15-26A-3(1).¹⁶ In *Stock v. Garret*, the appellants filed a notice of appeal that referred to the two most recent orders by the circuit court, rather than to the judgment of eviction which is the final judgment for which appellate jurisdiction arises under SDCL 15-26A-3(1). (The Stocks’ notice of appeal mistakenly referred to the Court’s order denying their motion to stay the eviction, and, the order denying their motion for a new trial. Neither of these orders are *final*, appealable orders as contemplated by SDCL 15-26A-3.)

The appellees in *Stock* protested, arguing that the notice of appeal failed to meet SDCL 15-26A-4, because the notice designated those later orders, rather than designating “the judgment, order, or part thereof appealed from.” *Stock*, 2025 S.D. 9, ¶ 24.

¹⁶ Beyond final judgments, other appeals of right can arise from the following situations: orders that would otherwise preclude entry of a final judgment, *see* SDCL 15-26A-3(2); an order granting a new trial, *see*, SDCL 15-26A-3(3); a final order granting relief after judgment, such as an award of attorney’s fees or collection proceedings, *see*, SDCL 15-26A-3(4); an order granting or denying various ancillary remedies like injunction or garnishment, *see*, SDCL 15-26A-3(5); or an order upon a Rule 11 motion, *see*, SDCL 15-26A-3(7).

This Court held that the contents of the notice of appeal are “procedural” and not jurisdictional, and, thus the Stocks’ notice of appeal was timely and sufficient, even though it failed to list the actual, final judgment being appealed from.

That is not the case here. Instead, there was only one, final judgment. It was entered on August 28, 2024. The appellants correctly and timely appealed from this final judgment via a notice of appeal on October 2, 2025, which specified that judgment. [R.856].¹⁷

Once this Court acquired jurisdiction via an appeal of the August 28th judgment, this Court’s review could then extend to “*any* order, ruling or determination of the trial court...whether any such determination is made before or after judgment involving the merits and necessarily affecting the judgment and appearing upon the record.” SDCL 15-26A-7.

In short, the notice of appeal should ordinarily identify only a single order or judgment which is ‘final’ and capable of being appealed.

¹⁷ The notice of appeal also referred to the judgment awarding attorney’s fees. [R.856]. The award of attorney’s fees was separately appealable, including under SDCL 15-26A-3(3), as a “final order affecting a substantial right...after judgment.”

Thereafter, this Court can review the entirety of the file, including all intermediate orders. Unlike in *Stock*, there was no mistake here.

Requiring appellants to list each intermediate order is not required by the Rules, and, it would be a cumbersome process for both the litigants and this Court. And, by their nature, intermediate orders are never appealable of right. *Compare*, SDCL 15-6-54(a) (“Judgment” means “the final determination of the rights of the parties in an action or proceeding”), *with* SDCL 15-6-54(b) (“[A]ny *order* or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of...the parties shall not terminate the action as to any of the claims or parties, and the *order* or other form of decision is *subject to revision at any time* before the entry of judgment....”) (emphasis added).

VOR also argues that the Docketing Statement did not mention the circuit court’s intermediate order dated December 27, 2023. The contents of the Docketing Statement do not control the scope of the appeal. The form provided by this Court says, in Section 6: “State each issue intended to be presented for review. (*Parties will not be bound by these statements.*)” *See*, Ch. 15-26A, Appendix of Forms; “Form 5. Docketing Statement” (emphasis added).

Section D of the Appellees' Brief does not contain any viable legal or procedural argument that would defeat this appeal. The judgment obtained by VOR for \$1.29 million should be vacated, as well as the intermediate Order regarding Skyline's grain proceeds. VOR's procedural arguments are erroneous.

CONCLUSION

The purpose of SDCL 15-6-13(a) "is to reduce the volume of litigation and promote the just, speedy, and inexpensive determination of controversies. *Ainsworth v. First Bank of S. Dakota*, 420 N.W.2d 32, 33-34 (S.D. 1988).

Paul and Skyline attempted on several occasions to avoid this unnecessary lawsuit and appeal. They objected to VOR's attempt to amend its pleadings. They objected to allowing this lawsuit to proceed upon those amended pleadings. They objected to summary judgment upon the crossclaim. With this appeal, VOR's crossclaim should be dismissed.

We ask for this Court to reverse the Circuit Court's entry of judgment against Paul and Skyline; to vacate the order requiring the turn-over of the crop proceeds check, and thus direct the repayment of those funds to Skyline; to vacate the award of attorney's fees; and to direct the dismissal of

the cross-claims so that they can be heard (if at all) within Paul's existing lawsuit.

Dated this 26th day of March, 2025.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellant's Brief does not exceed the word limit set forth in SDCL § 15-26A-66, said Brief containing approximately 3,266 words, exclusive of the Table of Contents, Table of Authorities, any addendum materials, and any certificates of counsel.

/s/ Daniel K. Brendtro
One of the attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March, 2025, I electronically filed the foregoing via the Odyssey File and Serve system with the Supreme Court Clerk, which will send notice to Appellee's Counsel.

I also hereby certify that on this 26th day of March, 2025, I sent a bound copy of the foregoing to the Supreme Court Clerk at the following address:

Shirley Jameson-Fergel
Supreme Court Clerk
500 East Capitol Avenue
Pierre, South Dakota 57501

/s/ Daniel K. Brendtro
One of the attorneys for Appellants