

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENTS) RULE 22-14
OF THE APPENDIX OF FORMS TO)
SDCL CHAPTER 15-6 TO INCLUDE)
FORMS 8, 9, 14, 17, 19, 20 and 21)

A hearing was held on November 9, 2022, at Pierre, South Dakota, relating to the amendments of the Appendix of Forms to SDCL Chapter 15-6 to Include Forms 8, 9, 14, 17, 19, 20 and 21 and the Court having considered the proposed amendments, oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the amendments of the Appendix of Forms to SDCL Chapter 15-6 to Include Forms 8, 9, 14, 17, 19, 20 and 21 be and they are hereby amended to read in their entirety as follows:

Forms 8, 9, 14, 17, 19, 20, AND 21 OF THE APPENDIX OF FORMS TO SDCL CHAPTER 15-6.

Form 8. Complaint for negligence

1. On June 1, 1956, in a public highway called Phillips Avenue in Sioux Falls, South Dakota, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in ~~the sum of _____ dollars and costs~~ an amount to be determined by the trier of fact.

Note:

Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

Form 9. Complaint for negligence where plaintiff is unable to determine definitely whether the person responsible is C.D. or E.F. or whether both are responsible and where his evidence may justify a finding of willfulness or of recklessness or of negligence

A.B., Plaintiff

vs. COMPLAINT

C.D. and E.F., Defendants

1. On June 1, 1956, in a public highway called Phillips Avenue in Sioux Falls, South Dakota, defendant, C.D. or defendant E.F., or both defendants, C.D. and E.F. ~~willfully or recklessly or~~ negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C.D. or against E.F. or against both in the sum of _____ dollars and costs.

Form 14. Motion to dismiss, presenting defenses of failure to state a claim, of lack of service of process, and of lack of jurisdiction under § 15-6-12(b)

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the state of South Dakota, and (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M.N. and X.Y. hereto annexed as Exhibit A and Exhibit B respectively.

Signed:

Attorney for Defendant

Address:

~~Notice of Motion~~

To: _____

~~Attorney for Plaintiff~~

~~Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the courtroom at the Court House in the City of Sioux Falls, South Dakota on the _____ day of _____, 20____, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.~~

~~Signed:~~

~~Attorney for Defendant~~

~~Address: _____~~

Form 17. Motion to bring in third-party defendant

Defendant moves for leave to make E.F. a party to this action and that there be served upon him summons and third-party complaint as set forth in Exhibit A hereto attached.

Signed:

Attorney for Defendant C.D.

Address: _____

~~Notice of Motion~~

~~(Contents the same as in Form 14. No notice is necessary if the motion is made before the moving defendant has served his answer).~~

~~Exhibit A~~

~~STATE OF SOUTH DAKOTA IN CIRCUIT COURT~~

~~COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT~~

~~A.B., Plaintiff~~

~~vs.~~

~~C.D., Defendant and Third-Party SUMMONS~~

~~Plaintiff~~

~~vs.~~

~~E.F., Third-Party Defendant~~

~~To the above-named Third-Party Defendant:-~~

~~You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C.D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you and an answer to the complaint of the plaintiff, a copy of which is herewith served upon you, within 30 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.~~

~~Attorney for C.D.~~

~~Third-Party Plaintiff~~

~~STATE OF SOUTH DAKOTA IN CIRCUIT COURT~~

~~COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT A.B., Plaintiff~~

~~vs. THIRD-PARTY~~

~~C.D., Defendant and Third-Party COMPLAINT~~

~~Plaintiff~~

~~vs.~~

~~E.F., Third-Party Defendant~~

~~1. Plaintiff A.B. has filed against defendant C.D. a complaint, a copy of which is hereto attached as "Exhibit C."~~

~~2. (Here state the grounds upon which C.D. is entitled to recover from E.F., all or part of what A.B. may recover from C.D. The statement should be framed as in an original complaint.)~~

~~Wherefore C.D. demands judgment against third-party defendant E.F. for all sums that may be adjudged against defendant C.D. in favor of plaintiff A.B.~~

~~Signed:~~

~~Attorney for C.D.~~

~~Third-Party Plaintiff~~

~~Address:~~

~~Source: SD RCP, Form 17.~~

Form 19. ~~Motion to bring in third-party defendant~~ Notice of Hearing

~~Defendant moves for leave, as third-party plaintiff, to cause to be served upon E.F. a summons and third-party complaint, copies of which are hereto attached to Exhibit X.~~

~~Signed:~~

~~Attorney for Defendant C.D.~~

~~Address:~~

~~Notice of Motion~~

~~(Contents the same as in Form 14. The notice shall be addressed to all parties to the action.)~~

~~Exhibit X~~

~~(Contents the same as in Form 18.)~~

~~Note:~~

~~Form 19 is intended for use when, under § 15-6-14(a), leave of court is required to bring in a third-party defendant.~~

~~To: [adverse party] and [his/her/its] attorney[s], [attorney's[s']] address]:~~

~~PLEASE TAKE NOTICE that [moving party]'s [name of motion] will be brought on for hearing before the Honorable [name of judge], Circuit Court Judge, in the [name of County] County Courthouse, [City], South Dakota, on the _____ day of _____, at _____ .m., or as soon thereafter as counsel can be heard.~~

Form 20. Motion to intervene as a defendant under § 15-6-24

STATE OF SOUTH DAKOTA IN CIRCUIT COURT
COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT
A.B., Plaintiff
vs. MOTION TO INTERVENE
C.D., Defendant AS A DEFENDANT
E.F., Inc., Applicant for
Intervention

E.F., Inc., moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in its proposed answer, of which a copy is hereto attached, on the ground that it is the manufacturer and vendor to the defendant of the automobile described in plaintiff's complaint, the brakes of which are alleged to have been defectively manufactured; and as such, if the allegations of plaintiff's complaint be true, would be the one ultimately liable to the plaintiff, and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action. Signed:

Attorney for E.F., Inc.,
Applicant for Intervention
Address: _____

~~Notice of Motion~~

~~(Contents the same as in Form 14)~~

STATE OF SOUTH DAKOTA IN CIRCUIT COURT
COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT
A.B., Plaintiff
vs. INTERVENER'S ANSWER
C.D., Defendant
E.F., Inc., Intervener
First Defense

Intervener admits the allegations stated in paragraphs 1 and 4 of the complaint; denies the allegations in paragraph 3, and denies the allegations in paragraph 2 in so far as they assert that the brakes of the automobile described in plaintiff's complaint were defectively manufactured.

Second Defense

Plaintiff was guilty of contributory negligence which proximately caused or contributed to the accident and to the personal injuries which he sustained therein, if any, in that he drove said automobile at a high rate of speed in a negligent and careless manner after the discovery of the defective condition of the brakes which contributory negligence on the part of the plaintiff was greatly more than slight in comparison to the negligence, if any, of this intervener.

Signed:

Attorney for E.F., Inc.,
Intervener
Address:

Note:

Under § 15-6-24 the motion to intervene must be served upon all parties as provided in § 15-6-5.

Form 21. Motion for ~~production of documents etc.~~ Compel under § ~~15-6-34~~ 15-6-37.

~~Plaintiff A.B. moves the court for an order requiring defendant C.D.~~

~~_____ (1) To produce and to permit plaintiff to inspect and to copy each of the following documents: (Here list the documents and describe each of them.)~~

~~_____ (2) To produce and permit plaintiff to inspect and to photograph each of the following objects: (Here list the objects and describe each of them.)~~

~~_____ (3) To permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph (here describe the portion of the real property and the objects to be inspected and photographed).~~

~~_____ Defendant C.D. has the possession, custody, or control of each of the foregoing documents and objects and of the above-mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.~~

~~_____ Signed:~~

~~_____ Attorney for Plaintiff~~

~~_____ Address:~~

~~_____ Notice of Motion~~

~~_____ (Contents the same as in Form 14)~~

~~_____ Exhibit A State of South Dakota~~

~~_____ County of _____~~

~~_____ A.B., being first duly sworn says:~~

~~_____ (1) (Here set forth all that plaintiff knows which shows that defendant has the papers or objects in his possession or control).~~

~~_____ (2) (Here set forth all that plaintiff knows which shows that each of the above-mentioned items is relevant to some issue in the action).~~

~~_____ Signed: A.B.~~

~~_____ (Jurat)~~

[Movant], pursuant to SDCL 15-6-37(a), respectfully moves the Court for an order compelling [opposing party] to [specific relief sought]. The Court should enter the requested order because:

1. The discovery was properly served;
2. [Opposing party] has failed to respond to the discovery;
3. Counsel for [movant] certifies that he has, in good faith, conferred or attempted to confer with [opposing party] in an effort to secure the information or material without court action;

all as set forth in the accompanying Brief in Support of [movant]'s Motion to Compel Discovery.

Attach the following certification:

Certification of Good Faith Efforts to Resolve

Counsel for [movant] hereby certifies, pursuant to SDCL 15-6-37(a)(2), that counsel attempted, in good faith, to resolve this discovery dispute without involving the Court.

On [date], the undersigned communicated to [opposing party] that [opposing party's] responses to outstanding discovery requests were inadequate because [explain what you believe you are entitled to.]

[list each successive communication, including:

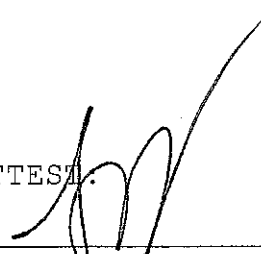
- a. who participated,
- b. the date, and, if relevant, the time of each communication, and
- c. the manner of each communication.]

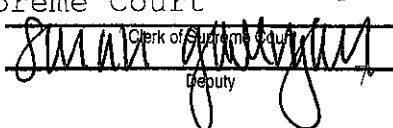
Summarize the outcome of these communications, identifying the substantive dispute that has stalemated the parties' discussions, and which the Court must resolve.

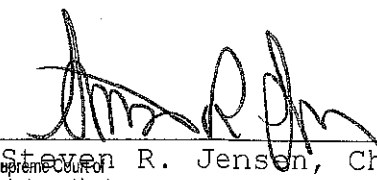
IT IS FURTHER ORDERED that this rule shall become effective January 1, 2023.

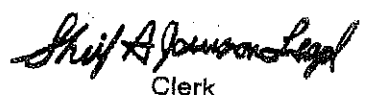
DATED at Pierre, South Dakota, this 17th day of November, 2022.

BY THE COURT:

ATTEST: 
 Clerk of the Supreme Court
 (SEAL)

STATE OF SOUTH DAKOTA
 In the Supreme Court
 I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this 17 day of NOV, 2022.

 Deputy


 Steven R. Jenson, Chief Justice

SUPREME COURT
 STATE OF SOUTH DAKOTA
 FILED
 NOV 17 2022

 Clerk