

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

JAMES TODD and TERI TODD,)	ORDER DIRECTING ISSUANCE OF
Plaintiffs and Appellees,)	JUDGMENT OF AFFIRMANCE
)	AND
vs.)	MODIFICATION
)	
RICHARD W. KIEFFER,)	#30743
Defendant and Appellant.)	
)	

The Court has considered all of the briefs filed in the above-entitled matter, together with the appeal record, and concluded that "[o]ther good cause exists for summary affirmance" under SDCL 15-26A-87.1(A)(4). Pursuant to this rule, the Court provides this "succinct statement of the reason for affirmance."

On June 28, 2024, Appellant Richard Kieffer appealed from the circuit court's entry of judgment in favor of Appellees James and Teri Todd, awarding them damages in the amount of \$2,351,629.50. After considering the parties' briefs filed, the Court concludes that the circuit court did not err in resolving the three issues raised by Appellant.

First, the circuit court did not err when it determined the lease was year-round. Beyond raising the possibility that the crop year provision of the lease could impact damages, the Appellant otherwise failed to develop this argument both factually and legally, leaving the record insufficient to warrant relief on appeal. As a result, we affirm the court's decision to assess damages year-round.

Next, the circuit court did not err when it concluded that the agreement to abate the September 2020 rent was enforceable. The Appellant bore the burden of establishing his contention that the parties' underlying agreement constituted an unenforceable liquidated damages agreement. See *Heikkila v. Carver*, 378 N.W.2d 214, 216 (S.D. 1985). Notably, the court did not award damages as a result of the \$1,000/\$5,000 agreement alleged by the Appellees. The court instead enforced the parties' agreement to treat the September 2020 rent and the amount owed from the underlying agreement as a "wash." This abatement agreement finds support in the record. The Appellant simply did not meet his burden.

Lastly, the circuit court's finding of forcible exclusion was not clearly erroneous. Although this Court reversed the circuit court's decision to grant the Todds' motion for summary judgment in the previous appeal, the Appellees presented evidence at trial and further developed their factual assertions in support of their claim of forcible exclusion. The resulting trial record supports the court's finding of forcible exclusion. And upon making that finding, the court's assessment of treble damages became mandatory. See SDCL 21-3-6; *Shippy v. Hollopeter*, 304 N.W.2d 118, 122-23 (S.D. 1981).

However, the Court does note clear error in the circuit court's computation of treble damages. Under SDCL 21-3-6, "the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of." (Emphasis added.) The compensatory or actual damages should include the setoff

amount in order to reach a base net actual damages amount before applying SDCL 21-3-6 to treble the damages. Here, that requires the deduction of the four-year rent setoff from the gross applicable damages *before* trebling the damages, not after as the court calculated. And critically, the record allows this Court to correct this error without engaging in factfinding. See *Wright v. Temple*, 2021 S.D. 15, ¶ 53, 956 N.W.2d 436, 453. Therefore, it is now

ORDERED that the court's entry of judgment in favor the Appellees is affirmed.

IT IS FURTHER ORDERED that the court's damages award be modified to \$1,556,206.96 in accordance with the following calculation:

2021 Gross	\$157,732.36
2022-23 Gross	\$588,402.47
2024 Projected Gross	
(157,732.36 + 588,402.47)/3	\$248,711.61
<u>GROSS DAMAGES</u>	<u>\$994,846.44</u>
LESS: 2021-24 Rent Setoff	
(\$106,000 x 4)	(\$424,000.00)
<u>NET DAMAGES</u>	<u>\$570,846.44</u>
	x3
<u>NET TREBLE DAMAGES</u>	<u>\$1,712,539.32</u>
LESS: Prior Affirmed	
Damages from Appeal #30165	(\$157,732.36)
Dead Cow	\$1,400.00
<u>TOTAL DAMAGES AWARD</u>	<u>\$1,556,206.96</u>

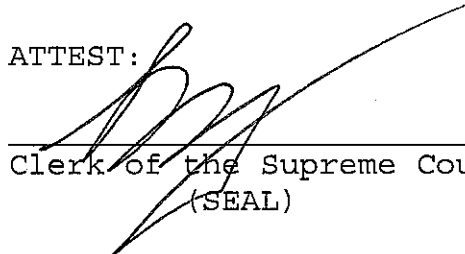
IT IS FURTHER ORDERED that Appellees' motion on appeal seeking costs and delay damages is denied.

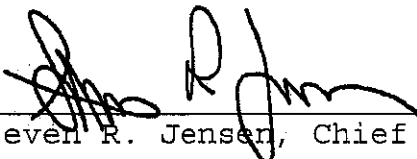
IT IS FURTHER ORDERED that Appellees' amended motion for appellate attorney's fees is denied.

DATED at Pierre, South Dakota this 30th day of January, 2025.

BY THE COURT:

ATTEST:


Clerk of the Supreme Court
(SEAL)


Steven R. Jensen, Chief Justice

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Janine M. Kern, Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JAN 30 2025


Clerk