

**SUPREME COURT OF NORTH DAKOTA**

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Supreme Court No. 20190283  
District County Court No. 50-2018-CV-00169

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JERRI L. AND LORI BETH SAPA,	)
	)
Plaintiff and Appellant,	)
	)
vs.	)
	)
GREGORY LOFTHUS,	)
	)
Defendant and Appellee.	)
	)

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APPEAL FROM THE DISTRICT COURT, WALSH COUNTY

NORTHEAST JUDICIAL DISTRICT

THE HONORABLE BARBARA WHELAN, PRESIDING

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**BRIEF FOR THE APPELLEE**

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## **TABLE OF AUTHORITIES**

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<u>Schumacher Homes, Inc. v. J &amp; W Enters.</u> , 318 N.W.2d 763, 765 (N.D. 1982).....	¶11
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### **STATEMENT OF JURISDICTION**

- [¶1] This Court has Jurisdiction under N.D. Const. art. VI, §§ 2 and 6, and N.D.C.C. § 28-27-01.

### **STATEMENT OF THE ISSUES**

- [¶2] Did the Court abuse it's discretion in making its decision?

## **STATEMENT OF FACTS**

[¶3] Jerri and Lori Sapa own the property located at 70 3rd Avenue North, Edinburg, North Dakota, 58227 (Tr.12:22-23). On December 15, 2015, Jerri L. and Lori Beth Sapa, as Sellers, entered into a Contract for Deed with Gregory Lofthus the Appellee, as Purchaser, for the real property. (Tr.129:4-6).

[¶4] The Contract for Deed was recorded on June 15, 2016, as Document Number 286245 in the Office of the County Recorder in Walsh County, North Dakota, The real property description is as follows:

A tract of land located in the SW¼ NW¼ of Section 22, Township 158, Range 56, more particularly described as follows: Beginning at a point 73 ½ rods due north from the west quarter stake of Section 22, Township 158, Range 56, thence proceeding due east 21 ½ Rods to the south edge of the Great Northern Railway Right-of-Way, thence in a southeasterly direction along the south edge of said Railway Right-of Way a distance of 83.09 feet to the point of beginning; thence continuing Southeast along the South edge of said Railway Right- of-Way a distance of 83 .91 feet to a point; thence due south a distance of 181.5 feet to a point; thence in a northwesterly direction on a line parallel to the south edge of said Railway Right-of-Way a distance of 83.91 feet to a point; thence due north a distance of 181.5 feet to the point of beginning; said tract of land containing 0.3125 acres more or less;

AND

A parcel in the SW¼ NW¼ of Section 22, Township 158, Range 56, Walsh County, North Dakota, described as follows: Beginning 73½ rods due North from the West Quarter stake of Section 22, Township 158, Range 56, and thence 21 ½ rods due East to the Railroad right- of-way from this point of beginning the tract of land hereby conveyed runs in a southeasterly direction along the Railroad right-of-way 297 feet; thence 181 ½ feet due South, thence 297 feet in a Northwesterly direction parallel to the Railroad Co. right-of-way, thence 181½ feet due North to the point of beginning. (See Contract for Deed, at 1-2).

[¶5] The Contract for Deed did not have a specific number of months in which it was to be paid. (Tr.83:14-18)

[¶6] The Contract for Deed did not have a specific payoff date. (Tr.83:2-8)

- [¶7] The Sapas used financing from North Star Community Credit Union to purchase the property. (Tr.15:3-23). The parties agreed to have Mr. Lofthus make payments on this Contract for Deed directly to the Appellant's North Star Community Credit Union account. (Tr.33:7-13). Specifically he paid \$500.00 per month into the escrow account. (Tr.76:2-4).
- [¶8] The Sapa's monthly payment for their mortgage was \$345.00 (Tr.75:7-11).
- [¶9] Of the \$345 paid into the account, \$115.00 per month covered the cost for all of the taxes and insurance on the property. (Tr. 86:13-16).
- [¶10] On October 27, 2017, a nearby warehouse fire caused significant smoke damage to the property. (Tr.47:10-12). Due to the damage to the house, Farmers Union insurance company sent checks to the Sapa's in all three names (Jerri Sapa, Lori Beth Sapa and Greg Lofthus) along with the Community Credit Union. The first insurance check was made payable to Sapas, North Star Community Credit Union, and Gregory Lofthus. A-29. The second check was made out to Jerri Sapa, Lori Beth Sapa and Gregory Lofthus. A-30. The Sapa's commenced this action after receiving the insurance checks which included Mr. Lofthus' name as payee.

### **LAW AND ARGUMENT**

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN MAKING ITS EQUITABLE DECISION.

- [¶11] Cancellation of a Contract for Deed by action is an action in equity, and the District Court must base its decision on equitable principles. Schumacher Homes, Inc. v. J & W Enters., 318 N.W.2d 763, 765 (N.D. 1982)

- [¶12] “When a district court exercises its discretion after weighing the equities of the case, we will not interfere unless an abuse of discretion is affirmatively established. Bendish v. Castillo, 2012 ND 30, ¶ 9, 812 N. W. 2d 398. “We do not substitute our judgment for that of the court. A district court abuses its discretion when it acts arbitrarily, unconscionably, or unreasonably, or when its decision is not the product of a rational mental process leading to a reasoned determination.” Johnson v Hovland, 2011 ND 64, ¶8, 795 N.W.2d 294.
- [¶13] The District Court noted the ambiguities in the Contract for Deed in this case including how to apply interest to the principal balance, how late payments would be handled and the lack of an Ammortization schedule setting forth a payment schedule. The District Court cited Gawryluk v Poynter, 2002 ND 205, ¶9, 654 N.W.2d 400: “Whether a contract is ambiguous is a question of law for the court to decide,” and “extrinsic evidence may be used to clarify the parties’ intentions. Gawryluk at 9,
- [¶14] At Trial, Lori Sapa testified that she and her husband’s monthly mortgage payment for the property was \$345.00 per month with \$115.00 going to the escrow account for taxes and insurance. (Tr.75:10-15).
- [¶15] Mr. Lofthus made payments on the Contract for Deed directly to the Sapa’s escrow account (Tr.76:1-4). He attempted to purchase his own property insurance, but it was cancelled by “Lori’s bank” as he was told the insurance had to be in the Sapa’s name with him being a secondary coverage. (Tr.131:8-18).
- [¶16] Paragraph 28 of the Appellants Argument includes an assertion that “The Defendant allowed the Plaintiffs’ to unwittingly pay the real estate taxes and

insurance with no notice.” Additionally, in paragraph 29 of the Appellant’s argument states: “The Plaintiffs had no choice but to pay taxes and pay for full insurance coverage...”.

[¶17] These statements ignore the fact the Plaintiff’s had an escrow account at North Star Community Credit Union which they knew was paying the taxes and insurance at \$115.00 per month.

[¶18] The District Court determined Lofthus could not pay the taxes because they were already taken out of Plaintiff’s escrow account. (Tr.153:4-23) (Judgment ¶16)

[¶19] From these findings, the District Court created Exhibit A an Ammortization schedule. The Court distributed Lofthus’ \$500.00 per month payment by applying \$385.00 monthly to principal (along with 3% interest) with the insurance and taxes covered by the remaining \$115.00. (Judgment ¶16).

[¶20] Thus the District Court did not apply the full \$500.00 Lofthus paid each month to the principal balance due under the Contract for Deed.

[¶21] By applying Lofthus’ payments in this manner, the Contract for Deed would be satisfied in May 2021. (Judgment ¶17)

[¶22] The District Court noted that this litigation ended the normal operation of the Contract for Deed (Judgment ¶18).

[¶23] By applying \$385.00 per month to the principal (with 3% interest), the District Court determined the pay off balance at the end of 2018 was \$12,810.39 according to line 30 of Exhibit A. (Judgment ¶19)

[¶24] After deducting insurance payments given to Sapas the payoff balance was \$9,810.39 in July 2018. (Judgment ¶20)



[¶25] From these findings, the District Court Judgment provides the Appellant full payment of the Contract for Deed (\$24,000.00) plus 3% interest on all unpaid amounts. A-1

[¶26] The Judgment provides for the full payment of the property taxes and insurance to Appellant as \$115.00/month covered those costs.

[¶27] The District Court Judgment provides the Appellant the full benefit of the terms of the Contract for Deed. There is nothing arbitrary, unconscionable or unreasonable about the District Court's Judgment.

[¶28] Nonetheless, the Appellant seeks to keep all payments made by Lofthus totaling \$11,189.61 (Judgment Exhibit A) and keep all the insurance proceeds in the amount of \$16,118.03 (Judgment ¶26). The appellant also seeks to retain full possession and title to the premises that is the subject matter of the Contract for Deed and remove Lofthus and his family from the property.

[¶29] There is nothing equitable about that result.

**A. Appellant's fundamental misunderstanding of Contract for Deed Law and the issuance of the insurance checks lead to this litigation.**

[¶30] Beckstrand v Beckstrand, 2017 ND 20 cites Nearing v Coop, 6 ND 345, 70 NW2d 1044 (1897) for the proposition that the grantee in a Contract for Deed is the equitable and beneficial owner thereof and the grantor holds the legal title in trust for the grantee. Beckstrand, ¶23 citing Nearing at 1045. "The Court further held that, as long as the contractual relationship between the vendor and vendee existed and Nearing was in possession of the land, Nearing was entitled to treat the land as his own, to crop or rent the same as he might see proper, and, if

rented, was entitled to receive or recover the rent therefor.” Id. at 1046...

Beckstrand, ¶24 citing Nearing at 1046.

[¶31] The Sapas filed this lawsuit in part due to Mr. Lofthus’ refusal to let them into his house after the fire. (Tr.51:6-9). (See also Tr. 116: 9-12 “This whole thing basically started because of the damage to the property and his unwillingness to work with you about fixing the property, is that correct? A. Yes ma’am”; “This whole thing meaning this lawsuit? A. Yes. (Tr. 117:2-9).).

[¶32] Lori Sapa testified that she (and her husband) had the right to do whatever they wanted to the property, that they were in control of the property and it was their right to fix it. (TR216:12-25). Jerri Sapa testified that he (and his wife) had the authority to use the insurance checks to fix the house. (TR114;2-19). They even went so far as to place a “For Sale” sign on the property in 2018. (Tr.85:3-6).

[¶33] The Appellants believe they are not only the title holders to the property, but “the equitable and beneficial owner thereof” contrary to the holding Beckstrand.

[¶34] Additionally, the District Court found: “It is also noted that Lofthus did not cease making payments until after this action was initiated and the Sapas began asserting their ownership in the property” (Judgment 18). Notably, the Complaint initiating this litigation does not allege a failure to make timely payments on this Contract for Deed.

[¶35] Their claim alleges Lofthus’ failure to make payment of taxes and insurance but it’s really their ability to maintain the control and decision making authority over the property and especially the insurance checks they received. (Tr. 84: 4-25 and 85:1-6)

## CONCLUSION

[¶36] The District Court's findings are sufficiently definitive to withstand a clearly erroneous or abuse-of-discretion standard review. The Judgment is not arbitrary, unconscionable, or unreasonable. The Court's decision is equitable and places the Appellant in the same position they'd be in had the Contract for Deed been fulfilled over a longer period of time. The District Court Judgment should be affirmed.

Dated this 21<sup>st</sup> day of January, 2020.

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ATTORNEY FOR APPELLEE

### **CERTIFICATE OF COMPLIANCE**

The undersigned, as attorney for the Appellee, Gregory Lofthus, in this matter, and as the author of the above Brief, hereby certifies, in compliance with Rule 32(a)(8)(A) of the North Dakota Rules of Appellant Procedure, the Brief of Appellee contains 11 total pages.

Dated this 21<sup>st</sup> day of January, 2020.

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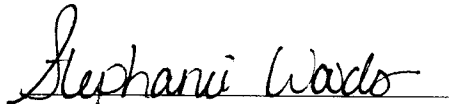
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BY E-FILING PORTAL

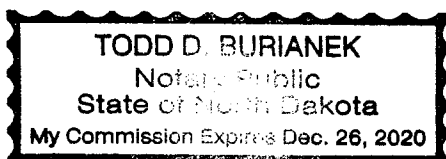
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COUNTY OF WALSH )

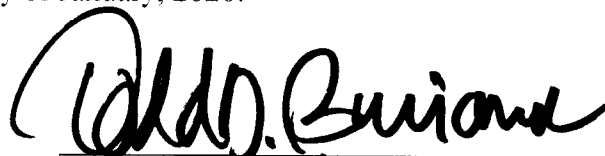
[¶1] Stephanie Woods, being first duly sworn upon oath deposes and states that on the 21<sup>st</sup> day of January, 2020 she served the attached **Brief For The Appellee and Apendix for Appellee** through the E-Filing Port of the North Dakota Supreme Court filing system on Ms. Darla J. Schuman, Attorney for Plaintiffs/Appellants, by electronically transmitting to the following email address:

**lawfirmmaildjs@aol.com**

  
Stephanie Woods

Subscribed and Sworn to before me this 21 day of January, 2020.



  
Todd D. Burianek, Notary Public  
State of North Dakota  
My Commission exp. Dec 26, 2020

## SUPREME COURT OF NORTH DAKOTA

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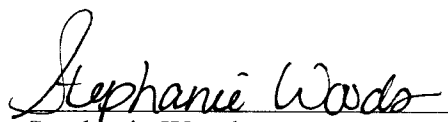
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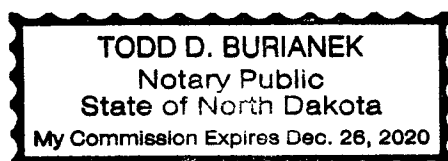
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[¶1] Stephanie Woods, being first duly sworn upon oath deposes and states that on the 23<sup>rd</sup> day of January, 2020 she served the attached **Brief For The Appellee and Apendix for Appellee** through the E-Filing Port of the North Dakota Supreme Court filing system on Ms. Darla J. Schuman, Attorney for Plaintiffs/Appellants, by electronically transmitting to the following email address:

**lawfirmmaildjs@aol.com**

  
Stephanie Woods

Subscribed and Sworn to before me this 23 day of January, 2020.



  
Todd D. Burianek, Notary Public  
State of North Dakota  
My Commission exp. Dec 26, 2020