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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

The Estate of Leroy E. Seidel, Plaintiff and Appellee, v. James A. Seidel, Gravel Supply LLC, and Troy Seidel, Defendants and Appellants,	)	Supreme Court No. 20200148 District Court No. 53-2016-CV-01304

Appeal from the Findings of Fact, Conclusions of Law, and Order for Judgment dated November 22, 2019, and the Final Judgment dated May 13, 2020, in District Court Case Number 53-2016-CV-01304

County of Williams, Northwest Judicial District
Honorable Josh B. Rustad, Presiding

-- ORAL ARGUMENT REQUESTED –

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES

[¶1] Whether the district court erred as a matter of law in allowing Leroy Seidel to litigate his claims to James Seidel's property for the third time when the parties previously litigated and settled the same claims to the same property in the same deeds.

[¶2] Whether the district court erred as a matter of law in declaring Leroy Seidel owned the gravel rights under the Warranty Deed when the plain language of the deed conveyed Leroy's interest to James and the deed accurately reflected the parties' intent.

[¶3] Whether the district court erred as a matter of law in awarding damages to Leroy on the conversion claim when there was no evidence the Defendants intended to interfere with any later-declared gravel interest held by Leroy.

[¶4] Whether the district court erred as a matter of law in denying relief on the Defendants' counterclaims when Leroy breached his contractual and statutory obligations arising from the parties' settlement agreements and the Warranty Deed.

STATEMENT OF THE CASE

[¶5] This is the third lawsuit for the same property filed by Leroy Seidel against his brother James Seidel. On October 3, 2016, Leroy filed a Complaint alleging conversion based on the Defendants' sale of gravel. APP. 9. In their Answer and Counterclaim, the Defendants alleged Leroy held no gravel interest after he conveyed it to James in a previous settlement. APP. 16. Leroy's Estate was substituted as Plaintiff after his death in 2017.

[¶6] In its Amended Complaint, the Plaintiff added a claim for declaratory relief, which asked the Court to declare the parties' intent in a Warranty Deed wherein Leroy conveyed his interest to James. APP. 40. The Amended Answer and Counterclaim alleged breach of the settlements and the deed's covenants, and a claim for attorney's fees. APP. 22.

[¶7] The court held a bench trial on March 21, 2019. On November 22, 2019, the court entered its Findings of Fact, Conclusions of Law, and Order for Judgment (the "Findings"). APP. 124. Leroy later moved for an award of attorney's fees, which was denied by the court on February 11, 2020. On April 2, 2020, the Court adopted a Stipulation to correct the award of prejudgment interest. Final Judgment was entered on May 13, 2020. APP. 139. The Defendants filed a timely Notice of Appeal on May 20, 2020. APP. 142.

STATEMENT OF THE FACTS

[¶8] Leroy and James Seidel are the two sons of Hilda Seidel. Over the years, Hilda conveyed certain property to her sons, and Leroy and James transferred property to one other. Generally, the property can be described as the "Gravel Property," situated in Range 101 in Williams County, North Dakota, and the "Estate Property," situated in Range 102.[1]

A. James obtains ownership over the property

[¶9] James was raised on the Gravel Property and farmed it for nearly 30 years. Trial Tr. 74:11-24. On January 17, 1978, Hilda executed Mineral Deeds to James and Leroy conveying a one-fourth ($^1/_4$) interest in the oil, gas, and other minerals, including gravel and clay. APP. 83. On September 28, 1999, Hilda executed two more Mineral Deeds conveying to James and Leroy an undivided one-half (½) interest in the same minerals. APP. 79.

[¶10] On March 17, 2003, Hilda entered into a Contract for Deed with James. APP. 84. Through the contract, Hilda agreed to convey the Gravel Property, along with additional property in Williams County, in exchange for payment by James of $250,000.00. Id.

[1]Sections 20, 21, 28, and 29 were referred to below as the "Paragraph 6 Property," while the Estate Property was referred to as the "Paragraph 7 Property." APP. 38.

[¶11] During this time, the relationship between Leroy and James deteriorated. After Leroy threatened James's family in 1985, the brothers ceased most communications. Trial Tr. 72:18-73:16. In April 2006, Leroy sued James in Williams County Case No. 06-C-0248 (the "2006 Litigation"), challenging James's interest in the Gravel Property. APP. 45. In particular, Leroy alleged James owed fiduciary duties as the Personal Representative of Hilda's estate, he breached his duties by acquiring Hilda's property at less than fair market value, and the Contract for Deed should be reformed. APP. 45-49.

[¶12] Although James vigorously disputed Leroy's allegations, he "wanted to settle up so that there'd be no more disputes whatsoever on this whole situation." Trial Tr. 76:16-18. Following negotiations, Leroy and James signed a Release of Claims (the "Release") to settle the 2006 Litigation. APP. 108. The purpose of the Release was described as follows:

> The purpose of this Release and the payment recited herein is to provide for full and final settlement of all claims previously made by [Leroy] in the Complaint and Amended Complaint [in the 2006 Litigation] or any other claim [Leroy] may have to the real property above described and to discharge [James], and his insurers, representatives, agents, employees, and successors in interest from any and all liability for [Leroy's] claims.

Id. Leroy released James "from any and all past, present or future claims and demands which [Leroy] has or claims to have for or in any manner in, to, or against the real property . . . as well as those claims made in the Complaint and Amended Complaint." APP. 108-109. Attorney David Hermanson testified he drafted the release broadly to "cover any and all claims, so that it's over and done." Trial Tr. 58:16-17.

[¶13] To obtain the Release, James paid Leroy $126,866.28 to satisfy the Contract for Deed, as well as $40,882.07 in additional consideration. APP. 109. Leroy agreed to provide a release "regardless of whether too much or too little may have been paid." APP.

110. He further agreed to "execute a sufficient deed to convey any interest he has in the land" and he would "allow [James] peaceful and uncontested ownership of said land, forever" and he would "make no further claim to the land." APP. 109.

[¶14] James testified the Release's language mirrored his intent. Trial Tr. 76:19-78:4. When asked if he intended to be done with any litigation over all property, James stated, "This should have been it. Completely." Trial Tr. 78:7. James believed Leroy would stop making any claims to the Gravel Property and he stated he would not have paid $167,000 if he knew Leroy would sue him later for the gravel rights. Trial Tr. 80:8-11.

[¶15] The Release was accompanied by two additional steps closing out the dispute. First, Leroy and James executed a Stipulation for Dismissal with Prejudice. APP. 111. Second, on January 14, 2008, Leroy signed a Warranty Deed (the "Warranty Deed") conveying the Gravel Property to James. APP. 106. Under the deed, Leroy covenanted he would "warrant and defend the premises in the quiet and peaceable possession of [James]." Id. Notably, the Warranty Deed contained no reservation of gravel or any other interest. Id.

[¶16] Apart from the Gravel Property, Hilda still owned the Estate Property at her death. As Personal Representative, James conveyed the minerals in Hilda's Estate to himself and Leroy equally through two Personal Representative's Mineral Deed's of Distribution dated May 3, 2006, and April 13, 2010. APP. 89, 93.

B. The Defendants process the gravel they own

[¶17] At the time Leroy conveyed his interest in the Gravel Property to James, the gravel did not hold much value. Trial Tr. 81:19-25. This changed with the arrival of the oil boom in North Dakota. Id. As a result, James, as the owner of the gravel, began discussions with his son, Troy Seidel, about processing and selling gravel in the midst of the boom. Id.

[¶18] Before transacting with the gravel, James and Troy first consulted an attorney, Janet Zander, to provide a legal opinion as to the gravel ownership. Trial Tr. 122:15-123:13. Based upon her review of the various deeds, Zander concluded in August 2011 that James was the sole owner of the gravel. APP. 120. Relying on Zander's legal opinion, James and Troy decided to move forward with their operations. Trial Tr. 122:15-123:13.

[¶19] On May 4, 2012, James conveyed the gravel to a company he formed entitled North American Earth Products, LLC ("NAEP"). APP. 113. Troy, along with his siblings, set up a separate company entitled Gravel Supply, LLC ("Gravel Supply"). Trial Tr. 99:25-100:9. Gravel Supply entered agreements to purchase gravel from NAEP, and it resold processed gravel to third party entities. APP. 117. Gravel Supply's revenues from these third party sales totaled $133,496.00. APP. 121. However, the Defendants incurred expenses of $365,788.41 to process and sell the gravel. APP. 123. Thus, while not all of the gravel was sold, the operations were not ultimately profitable. Trial Tr. 133:4-134:2.

[¶20] The last sale took place on August 17, 2013. APP. 121. The following year, as James underwent estate planning work, he and NAEP quit claimed their interest in the Gravel Property to Tango Sierra Properties, LLLP ("Tango Sierra"). APP. 115. As of the date of trial, Tango Sierra was the record owner of the gravel.

C. Leroy sues James for the second time in the 2014 Litigation

[¶21] Following the last gravel sale, Leroy commenced a second lawsuit against James on January 8, 2014 (the "2014 Litigation"). APP. 71. In the 2014 Litigation, Leroy alleged the Contract for Deed only involved the surface of the Gravel Property. APP. 73. Leroy further claimed the Warranty Deed did not reserve any minerals, but the parties had

intended the deed to only apply to the surface interest. Id. Thus, Leroy requested a declaratory judgment clarifying the deed and quieting title to the property. Id.

[¶22] Once again, James agreed to settle the case. On December 4, 2014, the parties entered into a Settlement Agreement to address "the facts and contentions raised by the Parties regarding this dispute, and in all other aspects of the dispute between or among the Parties, whether plead or not, asserted or not asserted[.]" APP. 98. Leroy dismissed all claims in exchange for half of James's oil and gas interests in the Gravel Property and Estate Property, along with additional property, which James transferred in a Stipulation and Cross-Conveyance of Mineral Interests ("Cross-Conveyance"). APP. 103.

[¶23] While he conveyed his oil and gas rights, James made clear he still owned the gravel. On top of the expenses that had been incurred, it was always James's intent to own all surface rights — including the gravel, which is part of the surface. Trial Tr. 35:15-20; 41:14-16; 80:24-81:1; 86:3-14. The settlement documents made this distinction clear:

> The parties specifically agree that clay, scoria, and gravel are not included in this Settlement Agreement. Further , the parties specifically agree this Settlement Agreement in no way construes or interprets the Parties' right, obligations or intentions in that certain Settlement Agreement entered into by and between the parties in Civil No. 06-C-0248 in District Court, Williams County, North Dakota.

APP. 99, 103. Thus, the parties' intent related to the gravel remained the same as in the 2006 Litigation: James owned all the gravel. Trial Tr. 35:15-20; 41:14-16; 80:24-81:1; 86:3-14.

D. Leroy sues James for the third time in this litigation

[¶24] Less than two years later, Leroy sued James for a third time by commencing this lawsuit. Leroy's Amended Complaint alleges the same claim (declaratory relief) based on the same property (the Gravel Property and Estate Property) and the same deed (the

Warranty Deed) as the 2006 Litigation and 2014 Litigation. APP. 40. The court held a trial on March 21, 2019, at which James, Troy, and attorney David Hermanson testified.

[¶25] After each party submitted proposed findings, the court signed the Plaintiff's Findings without making any changes. APP. 124. The Findings differ significantly from the Amended Complaint. For example, the Amended Complaint only requested declaratory relief with respect to the Gravel Property in the Warranty Deed, but the Findings cover more property in other sections. APP. 38, 125. The court also found James breached fiduciary duties to Leroy in acting as Personal Representative of Hilda's estate, despite there being no claim for breach of fiduciary duty ever raised in this case. APP. 134.

[¶26] The court ultimately concluded Leroy owned half of the gravel in all property and the Defendants converted his gravel. Id. The court awarded Leroy $68,958.75, or approximately half of the revenues obtained by Gravel Supply in its sales to third parties, along with prejudgment interest from August 9, 2013. APP. 137. The Defendants appeal.

ARGUMENT

I. The district court erred as a matter of law in allowing Leroy Seidel to litigate his claims to the property for the third time because the parties previously litigated and settled the same claims to the same property in the same deeds

A. Standard of Review

[¶27] Leroy's claims are the textbook definition of res judicata. This is the third lawsuit Leroy commenced against the same party based on the same property, the same claim, and the same deed. "The applicability of res judicata or collateral estoppel is a question of law, fully reviewable on appeal." Fettig v. Estate of Fettig, 2019 ND 261, ¶ 15, 934 N.W.2d 547. Similarly, the interpretation and effect of the parties' prior settlement agreements is a question of law. Kuperus v. Willson, 2006 ND 12, ¶ 11, 709 N.W.2d 726.

B. Res judicata or collateral estoppel bars Leroy Seidel's claims because Leroy raised or could have raised the same claims and issues in the two prior lawsuits between the parties

[¶28] "Res judicata is a term often used to describe such doctrines as merger, bar, and collateral estoppel, or the more modern terms of claim preclusion and issue preclusion." Fettig, 2019 ND 261, ¶ 15 (internal quotation marks and citation omitted). "These doctrines promote efficiency for both the judiciary and litigants by requiring that disputes be finally resolved and ended." Id. While similar, the doctrines differ in their application:

> Although collateral estoppel is a branch of the broader law of res judicata, the doctrines are not the same. Res judicata, or claim preclusion, prevents relitigation of claims that were raised, or could have been raised, in prior actions between the same parties or their privies. Thus, res judicata means a valid, existing final judgment from a court of competent jurisdiction is conclusive with regard to claims raised, or those that could have been raised and determined, as to [the] parties and their privies in all other actions. Res judicata applies even if subsequent claims are based upon a different legal theory. Collateral estoppel, or issue preclusion, forecloses relitigation of issues of either fact or law in a second action based on a different claim, which were necessarily litigated, or by logical and necessary implication must have been litigated, and decided in the prior action.

Id. at ¶ 16 (internal quotation marks and citation omitted). "The basic difference between claim preclusion and issue preclusion is simply put: claim preclusion applies to whole claims, whether litigated or not, whereas issue preclusion applies to particular issues that have been contested and resolved." Id.

I. The district court erred as a matter of law by forcing James to relitigate the same claims that were raised or should have been raised in prior proceedings

[¶29] The district court erred as a matter of law by permitting Leroy to relitigate the same claims and issues the parties already litigated in two prior cases. In the 2006 Litigation, Leroy challenged James's interest in the Gravel Property. The Release signed by Leroy

applies to "all claims previously made by Plaintiff in the Complaint and Amended Complaint *or any other claim Plaintiff may have to the real property*[.]" APP. 108 (emphasis added). Leroy broadly released James "from any and all past, present or future claims and demands which [Leroy] has or claims to have for or in any manner in, to, or against the real property[.]" Id. Thus, the Release was not confined to the specific claims Leroy raised in the 2006 Litigation because it extended to any other claim Leroy may have to the property.

[¶30] In the 2014 Litigation, Leroy asked for declaratory relief related to the same Warranty Deed. Leroy's counsel described the 2014 Litigation as "an attempt to clear . . . up" the purported lack of a reservation contained in the same "deed that we're here today about[.]" Trial Tr. 29:6-11. It bears noting the gravel was already processed and sold at the time of the 2014 Litigation. Despite being aware of this, Leroy agreed in the 2014 Settlement Agreement he was not obtaining gravel and the "Settlement Agreement in no way construes or interprets, the Parties' right, obligations or intentions in that certain Settlement Agreement entered into by and between the parties in [the 2006 Litigation]." APP. 99.

[¶31] Leroy's claims in this case center on the parties' intent when they settled the 2006 Litigation. This is the same issue Leroy raised in the 2014 Litigation. The Amended Complaint makes virtually identical allegations as Leroy's Complaint in the 2014 Litigation. See Ungar v. N.D. State Univ., 2006 ND 185, ¶ 17, 721 N.W.2d 16 (applying res judicata because the prior action included similar allegations). Both Complaints allege the deed did not reserve minerals, the settlement in the 2006 Litigation was not intended to convey Leroy's minerals, and the parties only intended to deal with the surface. Compare APP. 42 at ¶¶ 27-31 with APP. 73 at ¶¶ 6-9. Both Complaints set forth the same claim for declaratory relief that the Warranty Deed did not transfer minerals. Id. This is confirmed by the district

court's own Findings, which state Leroy, in commencing the 2014 Litigation, was "seeking to clarify and quiet title to the mineral estate granted to Leroy from his parents by the series of mineral deeds described and identified by the Court above in these Findings." APP. 130.

[¶32] Under North Dakota law, Leroy cannot "rehash issues which were tried or could have been tried by the court in prior proceedings." Missouri Breaks, LLC v. Burns, 2010 ND 221, ¶ 10, 791 N.W.2d 33 (internal quotation marks and citation omitted). Leroy raised the same allegations and made the same claim for declaratory relief in the 2014 Litigation as he litigated in this case. He stipulated to a Settlement Agreement, which is conclusive under the doctrine of res judicata. See Hofsommer v. Hofsommer Excavating, Inc., 488 N.W.2d 380, 385 (N.D. 1992) (holding res judicata and collateral estoppel prevent a party from raising a claim she could have raised in an earlier proceeding when she stipulated to a judgment).

[¶33] To be sure, the 2014 Litigation related primarily to oil and gas rights instead of gravel. This makes no difference for two reasons. First, res judicata not only prevents relitigation of claims that were raised, but all claims that "could have been raised" in the prior action. Ungar, 2006 ND 185, ¶ 11. There is no question the gravel claims could have been raised in the 2014 Litigation because the gravel sales had already taken place and any question of whether the Warranty Deed should have included a reservation of gravel was known at that time. Once again, Leroy argued here the Warranty Deed should have included a reservation and was only meant to address the farmland. This same purported lack of a reservation, from the same deed, formed the same factual basis of the 2014 Litigation. See Wolf v. Anderson, 422 N.W.2d 400, 402 (N.D. 1988) (holding res judicata barred the action because "[t]heir claim for damages is based upon the same contract for deed and identical

factual situation."). There is no question Leroy could have litigated the gravel interest when it derived from the same reservation as the oil and gas rights.

[¶34] Second, Leroy "may not split his cause of action and bring successive suits involving the same set of factual circumstances." Gulbranson v. Gulbranson, 408 N.W.2d 216, 218 (Minn. Ct. App. 1987). In order to ensure disputes are "finally resolved and ended" and avoid wasteful expense and delay, a party must seek complete relief in a single case. K & K Implement, Inc. v. First Nat. Bank, Hettinger, N.D., 501 N.W.2d 734, 737 (N.D. 1993). "A party who brings some claims into one court without seeking complete relief and brings some related claims in another court, or who presents some issues in one court proceeding and reserves others to raise them in another court, invites wasteful expense and delay." Id.

[¶35] Under longstanding precedent, "[a] party cannot in one action sue for a part of that to which he is entitled, and in a subsequent action sue for the remainder, when the right or recovery rests on the same state of facts." Farmers Ins. Exchange v. Arlt, 61 N.W.2d 429, 435 (N.D. 1953). That is precisely what the district court permitted Leroy to do, as he sued for a part of what he was allegedly entitled in the 2014 Litigation (the oil and gas rights), and in this subsequent action sued for the reminder (the gravel rights), when his alleged right of recovery rests on the same purported lack of a reservation. Leroy cannot split his cause of action by siphoning off the claim for oil and gas rights in the 2014 Litigation and then, after obtaining half of James' oil and gas rights in a settlement, bringing a successive action to target James' gravel interest in the same property. Indeed, just weeks ago, the Court reaffirmed that "[r]es judicata is premised upon the prohibition against splitting a cause of action." Fredericks v. Vogel Law Firm, 2020 ND 171, ¶ 19, _ N.W.2d _. "The facts that

establish the existence of a right in a plaintiff and an invasion of that right by the defendant constitute a cause of action, and if a right of recovery rests on the same state of facts, the cause of action may not be split." Id. (internal quotation marks and citation omitted).

[¶36] In sum, "[p]arties should not have to defend the same action twice." Gulbranson, 408 N.W.2d at 218. Leroy forced James to defend his interest three times: (1) he sued James in the 2006 Litigation relating to the Gravel Property, then settled that case after obtaining $167,000 from James; (2) he sued James in the 2014 Litigation, then settled that case after obtaining half of James' oil and gas rights; and (3) he sued James a third time in this case to obtain the gravel rights in the same property, based on the same purported lack of a reservation in the Warranty Deed from the first case. Because res judicata and collateral estoppel prohibit claim splitting in this fashion, the Court should reverse the district court.

ii. The district court violated Fettig by not applying res judicata or collateral estoppel

[¶37] This Court's decision last year in Fettig, 2019 ND 261, which applied collateral estoppel in virtually identical circumstances, warrants special discussion. In Fettig, a father deeded three parcels to his two minor children. Id. at ¶ 2. After he was told the deeds were void, the father conveyed the land back to himself, followed by three deeds to his three adult children. Id. at ¶¶ 3-5. One adult son, Charles, filed an action to quiet title to one section of property. Id. at ¶ 6. The district court concluded the original deed from the father to the minors was void, and thus Charles was the owner of the section in question. Id. The other two adult sons then filed actions to quiet title to the sections the father conveyed to them. Id. at ¶ 7. The district court ruled in these adult sons' favor on similar grounds to Charles, but unlike in Charles's action, the minors appealed. Id.

[¶38] On appeal, this Court concluded the original deed to the minors was not void. Id. at ¶ 14. However, the Court proceeded to consider whether the minors' counterclaims were barred by res judicata or collateral estoppel since the effect of the deed was already litigated in Charles's action. Id. at ¶ 15. First, the Court recognized res judicata bars the litigation of issues that were tried or could have been tried in a previous action. Id. at ¶ 18. "A judgment on the merits in the first action between the same parties constitutes a bar to the subsequent action based upon the same claim or claims or cause of action, not only as to matters in issue but as to all matters essentially connected with the subject of the action which might have been litigated in the first action." Id. Because the minors' counterclaims in the second case involved different sections of property than the section involved in Charles's action, the Court concluded res judicata did not apply. Id. at ¶ 19.

[¶39] Second, the Court considered whether collateral estoppel applied. In both Charles's action and the later actions, the issue was the validity of the original deed to the minors. Id. at ¶ 22. The judgment in Charles's action "certainly put [the minor] and his attorney on notice that there could be similar implications for the other two sections of land that were conveyed through the deed." Id. at ¶ 24. The minors did not appeal in Charles's action, but they sought to attack that unappealed judgment in Fettig by relitigating the same issues on the other sections. Id. Collateral estoppel barred the minors' attempt to do so, Fettig held, and thus the minors could not claim an interest in the other two sections when the validity of the original deed was litigated in Charles's case. Id. at ¶ 25.

[¶40] Fettig demands reversal of the district court's decision. Like Fettig, this case involves the same Warranty Deed and the same claim for declaratory relief as the 2014 Litigation. The issue is identical: whether the parties intended any reservation of interest in

the Warranty Deed or whether the deed was limited to the farmland. Thus, like Fettig, Leroy was on notice there could be similar implications for the gravel interest conveyed through the Warranty Deed as the oil and gas interests. See id. at ¶ 16 (noting collateral estoppel precludes litigation of issues even if they are "presented as part of a different 'claim'").

[¶41] Remarkably, Leroy requested payment in this case for attorney's fees incurred from September 2013 for "[w]ork on ND Case law on action for payments of gravel as non-lessor of minerals." Doc. #180. Thus, Leroy's own documentation shows he researched the gravel issue *before* commencing the 2014 Litigation. Rather than litigating the issue then, Leroy decided to settle the 2014 Litigation by obtaining James's oil and gas rights. Under Fettig, collateral estoppel bars Leroy's attempt to relitigate this same issue. Id. at ¶ 25.

[¶42] The only distinction from Fettig is that this case involves the same sections of property as the prior litigation. Leroy's claim for declaratory relief in the 2014 Litigation covered the same sections, but he opted to settle the 2014 Litigation. See id. at ¶ 16 ("Claim preclusion prevents parties and those in privity with them from raising legal theories, claims for relief, or defenses which could have been raised in the prior litigation, even though such claims were never actually litigated in the prior case."). Consequently, not only does collateral estoppel apply, but res judicata applies as well to bar Leroy's claims.

C. The district court erred as a matter of law by ignoring the settlement agreements and allowing them to be collaterally attacked

[¶43] Alternatively, the court erred as a matter of law by disregarding the parties' settlements. "In North Dakota, the law looks with favor upon compromise and settlement of controversies between parties, and where the settlement is fairly entered into, it should be considered as disposing of all disputed matters which were contemplated by the parties at the

time of the settlement." Vandal v. Peavey Co., 523 N.W.2d 266, 268 (N.D. 1994) (internal quotation marks and citation omitted). A settlement agreement "is final and conclusive[.]" Id. Parties may not go behind a settlement because it is "final even though the parties may have been ignorant at the time of the settlement of the full extent of their rights." Bohlman v. Big River Oil Co., 124 N.W.2d 835, 837 (N.D. 1963). The settlement cannot be set aside based on one party's belief he has a better claim than he realized because that "merely raises again the very questions in dispute at the time the parties settled the litigation." Id. at 839.

[¶44] Leroy signed two settlement agreements tied to the property. The Release in the 2006 Litigation "release[d] and forever discharge[d] [James] and his successors in interest of and from any and all past, present or future claims and demands which [Leroy] has or claims to have for or in any manner in, to, or against the real property[.]." APP. 108. James paid over $167,000, in exchange for which Leroy promised to allow James "peaceful and uncontested ownership" and "make no further claim" to the property. APP. 109.

[¶45] Leroy entered a second Settlement Agreement in the 2014 Litigation, which stated Leroy was fully apprised of all facts and contentions raised by the parties "and in all other aspects of the dispute between or among the Parties, whether plead or not, asserted or not asserted, and the possibilities of each action and matter described herein." APP. 98. Leroy agreed this Settlement Agreement did not change anything with respect to the parties' intent in the 2006 Litigation. Id. He executed a broad release of claims and he assumed the risk that any change in facts that may develop in the future may have on his release. Id.

[¶46] Either the 2006 Release or the 2014 Settlement Agreement, standing alone, bar Leroy's claims. Taken together, the agreements leave no doubt the court erred as a matter of law. Under North Dakota law, the agreements are "a final determination upon the

merits which should be upheld regardless of the merits of the original controversy." Hastings Pork v. Johanneson, 335 N.W.2d 802, 805 (N.D. 1983). Having executed a broad release, Leroy cannot go behind the settlements, even assuming he did not know the full extent of what the settlement covered at the time. Bohlman, 124 N.W.2d at 837. Thus, even if Leroy misunderstood he was releasing his claims to the gravel, it does not make the Release any less conclusive. But this is the effect of the court's decision, as it allowed Leroy to go behind the settlement simply because Leroy wanted a better deal. The court enabled Leroy to keep the $167,000 paid by James to terminate the 2006 Litigation, as well as the oil and gas rights James gave to end the 2014 Litigation, while not holding Leroy to his end of the bargain.

[¶47] Ultimately, Leroy challenged the parties' intent in settling the prior litigation. The parties' intent must be ascertained from the written contracts, not by reference to some secret intent he alleged years later. Kuperus, 2006 ND 12, ¶ 11. Both the settlement agreements and the prior Judgment dismissing the litigation with prejudice are conclusive and cannot be collaterally attacked through this case. Ungar, 2006 ND 185, ¶¶ 16-18. Under these circumstances, the district court erred as a matter of law in disregarding the plain language of the parties' settlement agreements and allowing those agreements and the earlier court's dismissal with prejudice to be collaterally attacked.

II. The district court erred as a matter of law in declaring Leroy Seidel owned the gravel rights under the Warranty Deed because the plain language of the deed conveyed Leroy's interest to James and the deed accurately reflected the parties' intent

A. Standard of Review

[¶48] If the Court considers the merits, it should still reverse the district court's decision granting declaratory relief. Under the guise of a declaratory judgment claim, the

court effectively rewrote the parties' Warranty Deed to include a reservation of gravel that is nowhere to be found on the face of the deed. This decision should be reversed because the court misapplied the law and made fact findings unsupported by the evidence.

[¶49] On appeal from a bench trial, the court's findings are reviewed for clear error and its conclusions of law are fully reviewable. Brash v. Gulleson, 2013 ND 156, ¶ 7, 835 N.W.2d 798. "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence, [this Court is] left with a definite and firm conviction a mistake has been made." Id.

B. The district court misapplied the law by granting a declaratory judgment that contradicts the plain language of the Warranty Deed

[¶50] After analyzing the Warranty Deed, along with the other documents of record and the settlements, the court found Leroy was "at all times . . . the record title owner" to the gravel and, consequently, the Defendants converted his one-half interest. APP. 134. The court's determinations are both legally and factually erroneous.

I. The district court erred as a matter of law by considering parol evidence to vary from the Warranty Deed

[¶51] As an initial matter, the district court erred as a matter of law by considering parol evidence in determining the parties' intent. "When a deed is unambiguous, [the] Court decides the parties' intent from the instrument itself." Sargent County Water Res. Dist. v. Mathews, 2015 ND 277, ¶ 6, 871 N.W.2d 608. The court may only consider parol evidence to determine the parties' intent if the deed is ambiguous. Id. at ¶¶ 6-7.

[¶52] This principle was reaffirmed by this Court the day after trial concluded in this matter. In Bearce v. Yellowstone Energy Development, LLC, 2019 ND 89, ¶ 12, 924 N.W.2d 791, this Court held evidence of prior negotiations could not be considered to vary

the terms expressed in a contract for deed. The district court violated Bearce by considering parol evidence to interpret the parties' intent in the Warranty Deed and allowing Leroy to attack the grant he gave James in that deed. See, e.g., Gajewski v. Bratcher, 221 N.W.2d 614 (N.D. 1974) (concluding a grantor or his successors may not attack the grant in a deed).

ii. Leroy conveyed the gravel rights under the plain language of the Warranty Deed

[¶53] If the court had properly determined the parties' intent from the four corners of the deed, it would have denied Leroy's declaratory judgment claim. "The specific language of the granting clause of the deed controls the interests the grantor purported to give the grantee." Mathews, 2015 ND 277, ¶ 10 (internal quotation marks and citation omitted). Under N.D.C.C. § 47-10-13, "[a] fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended."

[¶54] North Dakota has two separate, but related statutes bearing on conveyances of gravel rights. Under N.D.C.C. § 47-10-24, "[a]ll conveyances of mineral rights . . . shall be construed to grant or convey to the grantee thereof all minerals of any nature whatsoever except those minerals specifically excluded by name in the deed, grant, or conveyance, . . . but shall not be construed to grant or convey to the grantee any interest in any gravel, clay, or scoria unless specifically included by name in the deed, grant, or conveyance." Under N.D.C.C. § 47-10-25, "[g]ravel, clay, and scoria shall be transferred with the surface estate unless specifically reserved by name in the deed, grant, or conveyance." These statutes establish that gravel, clay, and scoria are treated differently from other minerals because a grantor must specifically name them if he intends a reservation. Otherwise, the gravel, clay, and scoria transfer with the surface estate.

[¶55] The granting clause of the Warranty Deed unambiguously conveys Leroy's entire interest in the Gravel Property to James. APP. 106. There is no mention of any mineral reservation contained anywhere on the face of the Warranty Deed. Id. Because gravel, clay, and scoria transfer with the surface estate unless specifically reserved by name, and no such reservation appears in the Warranty Deed, Leroy conveyed the gravel, clay, and scoria to James through the Warranty Deed.

[¶56] Contrary to these principles, the district court found, "at all times material to this action, Leroy E. Seidel was the record title owner" to the gravel. APP. 134. This determination was the focal point of the court's entire decision, as it formed the basis of the court's conclusion the Defendants converted Leroy's record title interest in the gravel. However, the determination that Leroy was "at all times . . . the record title owner" to the gravel is a plain misapplication of N.D.C.C. §§ 47-10-24 and 47-10-25, which required the court to interpret the Warranty Deed as *not* reserving any gravel interest in favor of Leroy.

[¶57] The court's only mention of N.D.C.C. § 47-10-25 was its finding that the Warranty Deed could not convey the gravel rights "given the prior intent of gravel and surface minerals being specifically named, in the prior mineral deeds for the Seidel land." APP. 136. This conclusion misapplies N.D.C.C. § 47-10-25 because the parties' intent in the Warranty Deed must be ascertained through the plain language of that deed, as aided by the statutory interpretation tool provided in N.D.C.C. § 47-10-25 — not by referencing the language in other deeds from other parties.

[¶58] For instance, where parties enter a contract for deed with a reservation, but a later deed conveys the property without a reservation, the mere discrepancy between the deed and earlier documents is insufficient to alter the intent of the deed. See, e.g., Van

Berkom v. Cordonnier, 2011 ND 239, ¶ 13, 807 N.W.2d 802 (holding a contract for deed's reservation"was insufficient to overcome the presumption the warranty deed embodied [the grantee's] intentions."); Spitzer v. Bartelson, 2009 ND 179, ¶ 28, 773 N.W.2d 798. The district court determined that, since Hilda deeded gravel to her sons in 1978, that means Leroy did not intend to convey gravel in 2008 when Leroy and James settled their litigation. This contradicts black letter contract law, as the court not only disregarded the statutory interpretation mandated by N.D.C.C. § 47-10-25, it determined the parties' intent in the Warranty Deed by referencing the intent of a separate party (Hilda) in an unrelated deed from 30 years ago. See Spitzer, 2009 ND 179, ¶ 28 ("This change in circumstances may have caused [the parties] to form a different intent from that reflected in the contract for deed.").

[¶59] In short, Leroy's claim for declaratory relief simply asked the court to determine the parties' rights based on the Warranty Deed. Since gravel must be reserved by name, and the plain language of the Warranty Deed was silent as to gravel, the court misapplied the law by effectively declaring the *opposite* of what the deed states.

iii. The district court erred as a matter of law by granting declaratory relief impacting the rights of non-parties

[¶60] Finally, the district court erred in granting declaratory relief infringing on the rights of non-parties. "When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties[.]" N.D.C.C. § 32-23-11. "[A] district court must ensure the proper parties are before the court to prevent the declaratory relief ordered from prejudicing the rights of persons not parties to the proceedings." Kauk v. Kauk, 2017 ND 118, ¶ 11, 895 N.W.2d 295. This Court has reversed district courts that have granted declaratory relief without all proper parties being present.

See id. at ¶ 15 (holding the court "misapplied the law and abused its discretion when it ordered declaratory relief" because not all persons with an interest were parties).

[¶61] Here, neither NAEP, which owned the gravel at the time sales were conducted, nor Tango Sierra, which presently owns the gravel, are parties. Trial Tr. 71:18-21. Leroy conceded this problem after the Defendants raised the issue on summary judgment, and even attested he would "be making a timely motion to add Tango Sierra Properties, LLLP to this litigation." Doc. #51 at 5. However, Leroy never made such a motion, which renders the district court's declaratory judgment improper as a matter of law since it purports to grant Leroy an interest in the gravel rights that are owned by third parties.

C. The Warranty Deed cannot be rewritten because it accurately reflects the parties' intent

[¶62] Although the district court purported to grant Leroy's declaratory judgment claim, its decision more closely resembles a reformation claim. There are multiple problems with this decision. First, Leroy never alleged a reformation claim. Both Leroy's Amended Complaint and the district court's Findings make clear Leroy asserted a declaratory judgment claim, not a reformation claim. See APP. 40, 136. A declaratory judgment claim and a reformation claim are different claims, governed by distinct statutes and involving different elements. Compare N.D.C.C. § 32-23-01 with N.D.C.C. § 32-04-17. Indeed, a declaratory judgment claim, which asks the court to declare the parties' rights by interpreting a written document, is essentially the opposite of a reformation claim, which asks the court to rewrite that written document because the parties' intent is not reflected in the four corners.

[¶63] Second, the court's decision cannot be upheld under the pretense of a reformation claim because Leroy did not satisfy the high legal burden a reformation claim demands. "In reformation claims, courts presume the terms of an instrument accurately

express the actual agreement of the parties." Spitzer, 2009 ND 179, ¶ 24. "When considering whether to reform a written instrument, courts should exercise great caution and require a high degree of proof, especially when death has sealed the lips of the original parties or a party." Id. "A party who seeks reformation has the burden to prove by clear and convincing evidence that a written agreement does not state the agreement the parties intended." Id. "Therefore, courts will not grant the high remedy of reformation even upon a mere preponderance of the evidence, but only upon the certainty of error." Id.

[¶64] There was no evidence showing Leroy was mistaken when he conveyed his gravel to James through the Warranty Deed. There was no testimony presented from Leroy (who is deceased), his Personal Representatives, or anyone on Leroy's behalf, showing Leroy was mistaken. The only testimony came from witnesses who stated the opposite. For instance, James testified Leroy did not disagree with anything in the Release, nor did Leroy ever claim he made a mistake by not reserving the gravel. Trial Tr. 79:24-80:1, 81:5-8.

[¶65] Even assuming Leroy was mistaken, it would not be enough to reform the deed. "A mutual mistake that will justify reformation requires that, at the time of the execution of the agreement, both parties intended to say something different from what was said in the document." George v. Veeder, 2012 ND 186, ¶ 13, 820 N.W.2d 731 (internal quotation marks and citation omitted). Thus, a reformation claim fails if only one party's intent is shown, because there must be clear and convincing evidence of mutual mistake.

[¶66] For example, in George, the plaintiff transferred property to the defendants' predecessors. Id. at ¶ 2. The plaintiff claimed an interest in the scoria, despite there being no reservation of gravel, clay, or scoria in the deed. Id. at ¶ 3. The plaintiff later amended the complaint to add a claim for reformation. Id. The Court noted the term "minerals" does

not include gravel, clay, or scoria because "these substances, if they are not literally part of the surface itself, cannot be removed without damaging the surface," nor are they ordinarily classified as "exceptionally rare and valuable." Id. at ¶ 10. The Court concluded the plaintiff's affidavit alleging a mistake was insufficient to show a mutual intention to reserve the scoria because the plaintiff's assertions of his intent did not constitute evidence of the defendants' intent. Id. at ¶ 18; see also Anderson v. Selby, 2005 ND 126, ¶ 13, 700 N.W.2d 696 (holding a deed conformed to the defendant's belief and there was insufficient evidence "both parties intended to say something different from what was said in the warranty deed.").

[¶67] This matter is indistinguishable from George and Anderson with respect to James' intent. James testified his intent was always to own the surface rights — including the gravel, which attach to the surface rights. Trial Tr. 80:24-81:1. After Leroy sued James in the 2006 Litigation, James explained he "wanted to settle up so that there'd be no more disputes whatsoever on this whole situation." Trial Tr. 76:16-18. The Release was drafted broadly, which aligned with James's intent to obtain a release from not only the claims Leroy brought in the 2006 Litigation, but any claim Leroy had to the property as a whole. Trial Tr. 78:1-4. According to James, everything stated in the Release matched his intent. Trial Tr. 80:2-4. Similarly, James declared there was nothing in the Warranty Deed that was a mistake with respect to the gravel. Trial Tr. 81:2-4.

[¶68] Like the plaintiff's allegation the parties intended in reserve scoria in George, Leroy's "own assertions of [his] intent to reserve scoria [and gravel] in the warranty deed did not constitute evidence of the defendants' intent." 2012 ND 186, ¶ 18. Leroy's afterthought in seeking to recapture what he already gave away is not a mutual mistake. Moreover, like Anderson, the evidence conformed to James's belief because all of the documents, including

the Warranty Deed, matched James's intent and nothing shows otherwise. 2005 ND 126, ¶ 13; see also Heart River Partners v. Goetzfried, 2005 ND 149, ¶ 17, 703 N.W.2d 330.

[¶69] Ultimately, a reformation claim demands a higher burden than a declaratory judgment claim. See In re Estate of Vaage, 2016 ND 32, ¶ 23, 875 N.W.2d 527 ("Evidence justifying reformation must be clear, satisfactory, specific, and convincing, and a court . . . will not grant reformation upon a mere preponderance of evidence, but only upon certainty of error.") (internal quotation marks and citation omitted). The court failed to acknowledge the burden of proof, much less explain how Leroy satisfied it to reform the Warranty Deed. Thus, to the extent the decision is viewed as granting reformation, it should still be reversed.

D. The Findings are inconsistent and unsupported by the record

[¶70] Finally, the Findings are devoid of evidentiary support. This is explained by the fact the court adopted Leroy's proposed Findings without change. Although courts may sign findings drafted by the parties, the findings still must be supported by evidence in the record and not induced by an erroneous view of the law. Brash, 2013 ND 156, ¶ 7.

[¶71] For instance, the court found "Troy Seidel knew of the [2006 Litigation] and the contested issue over the title to the gravel and surface minerals at the time the surface minerals were mined and sold," such that he acted in concert with James to convert Leroy's interest. APP. 134. The only evidence in the record on this issue is Troy's testimony that he had no direct knowledge or involvement of the 2006 Litigation, since he was not a party to that action. Trial Tr. 95:20-96:16. Troy testified he first became involved with the gravel in 2011, when he and James hired an attorney who provided a legal opinion that James owned the gravel after her review of title. Trial Tr. 122:15-24. Thus, there is nothing in the

record supporting the finding Troy knew of any contested title issue over gravel, much less that Troy knew Leroy owned an interest in the gravel and acted to convert that interest.

[¶72] Perhaps nothing demonstrates the court's clear error better than its discussion about the 2010 Personal Representative's Deed, which features prominently in the Findings.[2] According to the court, after Leroy executed the Warranty Deed, additional minerals were found in Hilda's Estate. APP. 129. While James conveyed the minerals equally to himself and Leroy, as beneficiaries of the Estate, the 2010 Personal Representative's Deed does not mention gravel. Id. The court found James breached his fiduciary duty by intentionally omitting gravel from the deed in order to benefit himself. APP. 137.

[¶73] The Findings are nonsensical because the property conveyed in the Personal Representative's Deeds was not the same property conveyed in the Warranty Deed. Trial Tr. 91:6-15. As made clear by the legal descriptions, the Personal Representative's Deed covered property in Township 155, Range 103, while the Warranty Deed conveyed property in Township 156, Range 101. The Personal Representative's Deed, as the name implies, involved property still in Hilda's Estate. This property had nothing to do with the Gravel Property conveyed in the Warranty Deed that James already owned. Moreover, all of the gravel that was sold came from the Gravel Property; there was no evidence any gravel was ever produced from the property in the Personal Representative's Deed. Trial Tr. 135:1-8.

[¶74] Additionally, James conveyed the property in the Personal Representative's Deed to both himself and Leroy equally. It is absurd to suggest James somehow gained an advantage over Leroy by omitting a conveyance to himself. If the gravel was omitted from

[2]The Findings incorrectly refer to this deed as both a 2010 and 2013 Personal Representative's Deed. APP. 129.

the Personal Representative's Deed that should have been included in that deed, then it would mean the gravel is still owned by Hilda's Estate — not by James.

[¶75] Likewise, it makes no sense for the court to find James breached his duty by not conveying gravel in the Personal Representative's Deed, while simultaneously finding "at all times material to this action, Leroy E. Seidel was the record title owner" of the gravel. APP. 134. Those two findings are mutually exclusive: if Leroy was always the record title owner, then James could not have breached his duty by omitting gravel from the deed, and vice versa. Simply put, the Personal Representative's Deeds have nothing to do with the gravel in this case,[3] other than to exemplify the confusion that consumes the Findings.

III. The district court erred as a matter of law in awarding damages to Leroy on the conversion claim because there was no evidence the Defendants intended to interfere with any later-declared gravel interest held by Leroy

[¶76] While Leroy's conversion claim should be reversed because he has no gravel interest, the Court should still reverse the award of damages even if it affirms the grant of declaratory relief. As discussed below, Leroy failed to prove the Defendants intended to interfere with any gravel interest he maintained and Leroy cannot obtain a windfall.

A. There is no evidence the Defendants intended to wrongfully exercise control over any gravel later determined to be owned by Leroy

[¶77] "Conversion is a tortious detention or destruction of personal property, or a wrongful exercise of dominion or control over the property inconsistent with or in defiance of the rights of the owner." Van Sickle v. Hallmark & Assoc., Inc., 2008 ND 12, ¶ 21, 744

[3]Like the Warranty Deed, Leroy challenged the Personal Representative's Deed in his Complaint in the 2014 Litigation. APP. 73. Thus, the court should not have even reached these issues since they are barred by res judicata or collateral estoppel. See Fettig, 2019 ND 261, ¶¶ 16-19.

N.W.2d 532 (internal quotation marks and citation omitted). "The key element of a claim for conversion is that the plaintiff was wrongfully deprived of his property, and there must be an intent to exercise control or interfere with the use of property to such a degree as to require a forced sale of the plaintiff's interest in the goods to the defendant." Id.

[¶78] Here, there was no "intent to deprive the plaintiff of the property." McColl Farms, LLC v. Pflaum, 2013 ND 169, ¶ 20, 837 N.W.2d 359. The evidence shows the contrary, as James and Troy hired an attorney to provide a legal opinion as to the gravel ownership before selling the gravel. The attorney concluded James owned the gravel. APP. 120. Regardless of whether the attorney was correct, the fact James and Troy obtained and relied on her opinion demonstrates they did not intend to interfere with any interest Leroy maintained. Simply put, how could James and Troy intend to interfere with Leroy's gravel rights when they relied on a legal opinion concluding Leroy had no rights?

[¶79] This problem is particularly acute for Troy, who was not a party to the prior litigation or the deeds. Since the deeds show James as the owner and an attorney gave a legal opinion to that effect, it begs the question: what else was Troy expected to do before mining the gravel? He performed his due diligence and he was entitled to rely on the deeds of record and the legal opinion. Thus, the Court should reverse because there was no intent. See Restatement (Second) of Contracts § 155, cmt. f (stating third parties who rely on the finality of a transaction are protected in the reformation of a deed negatively affecting the property).

B. The district court erred in awarding damages because the Defendants should not be punished for an honest mistake as to the gravel rights

[¶80] The district court further erred in awarding damages. Under N.D.C.C. § 32-03-36, "no person can recover a greater amount in damages for the breach of an

obligation than the person could have gained by the full performance thereof on both sides[.]" If, as the court held, Leroy was always the owner of one-half of the gravel, then Leroy would have been responsible for one-half of the expenses incurred in mining and selling the gravel. Thus, Leroy cannot obtain an award of damages based on the revenues, without also considering the expenses incurred in producing those revenues.

[¶81] Instructive here is Lamoreaux v. Randall, 208 N.W. 104, 105 (N.D. 1926), where the plaintiff brought a conversion action based on the defendant's sale of grain. The defendant sought to limit the plaintiff's damages based on the expenses incurred in threshing the grain and delivering it to market. Id. While the trial court permitted the plaintiff to recover the value of the grain without taking into consideration the expenses incurred by the defendant, this Court reversed and held a defendant acting in good faith "is allowed the value of his labor." Id. at 106. The Court noted the "value of the property . . . was enhanced by the expenditure of money by the defendant," and justice is not done by allowing the plaintiff to recover damages for that enhanced value. Id. at 107. "The rule is founded on the idea that one innocent of intentional wrongdoing should not be punished because of an honest mistake as to his rights." Id.

[¶82] James honestly believed he owned the gravel, which is what he always intended and what the plain language of the Warranty Deed declares. James and Troy went above and beyond by seeking the advice of counsel, who concluded James owned the gravel. They acted in good faith in seeking and relying on the attorney's opinion, and both testified they would have handled matters differently if the attorney came to the opposite conclusion. Trial Tr. 83:3-16; 123:6-9; 123:10-13.

[¶83] Based on their good faith belief, the Defendants expended thousands of hours and dollars mining and selling the gravel. Trial. Tr. 124:3-6. For instance, they purchased a screen for $140,000 to process the different sizes of the aggregate. Trial Tr. 125:17-126:3. Expenses were also incurred for leasing equipment, fuel costs, insurance, and travel. APP. 122. In sum, $365,788.41 was incurred in direct expenses alone. Id. Despite these expenses, Gravel Supply had total gross sales of $133,496. APP. 121; Trial Tr. 131:25-132:23. Since the expenses incurred in processing and selling the gravel exceeded the revenues, the net result of the operations was a negative balance. Trial Tr. 133:4-9. Leroy has not paid any of the expenses for the gravel. Trial Tr. 134:3-10.

[¶84] Under these circumstances, the Court should reverse the award of damages because the Defendants' expenses must be taken into account under North Dakota law. The Defendants enhanced the value of the gravel through their expenditure of labor and resources, and they are "allowed the value of [their] labor." Lamoreaux, 208 N.W. at 106. Since the value of that labor exceeds the sales, there is nothing to award in damages.

[¶85] In short, Leroy cannot have it both ways by being awarded one-half of the revenues from the sale of gravel, without sharing in any of the expenses incurred to produce those revenues. That is precisely what the district court allowed, however, which constitutes a misapplication of law and a windfall to Leroy.

IV. The district court erred as a matter of law in not granting relief to the Defendants on their counterclaims because Leroy breached his contractual and statutory obligations arising from the parties' settlement agreements and the Warranty Deed

[¶86] The Defendants alleged counterclaims for breach of contract, breach of covenants/estoppel, rescission, and attorney's fees. Although the legal grounds vary slightly

among these claims, the theory is the same: the Defendants are entitled to relief due to Leroy's breach of his representations. The district court neglected to even mention the Defendants' counterclaims, much less explain why the Defendants were not entitled to relief.

A. Leroy breached the parties' settlement agreements

[¶87] The issues surrounding the settlement agreements have been discussed above. In sum, there are two central facts underpinning the Defendants' counterclaims. First, Leroy entered into two separate settlement agreements in the 2006 Litigation and the 2014 Litigation. "A settlement agreement is a contract which either party may enforce; the rights and responsibilities of the parties are limited by the terms of the agreement." Hastings Pork, 335 N.W.2d at 806. The Release in the 2006 Litigation was meant to be a "full and final settlement" of all claims Leroy held to the property. APP. 108.

[¶88] Despite these plain terms, Leroy sued James two more times for claims against the same property. In the 2014 Litigation, Leroy again agreed to a settlement whereby he obtained half of James' oil and gas rights in exchange for another release of claims. APP. 98. Just two years later, Leroy sued James again in this case to target the gravel. Leroy's claims are a breach of the settlements in the 2006 Litigation and 2014 Litigation, which barred him from making such claims. There was nothing particularly novel about the releases, which contain standard language releasing all claims. See Hanes v. Mitchell, 49 N.W.2d 606, 610 (N.D. 1951). The releases refer broadly to "the real property," and thus there was no question Leroy released any claim to the property, including the gravel.

[¶89] James shaped his actions in reliance on Leroy's representations. He paid over $167,000 in the 2006 Litigation, and he conveyed half of his oil and gas rights in the 2014 Litigation, in order to obtain the releases. See id. (noting a party owes a duty to abide by the

contract because the opposing party may "pay his money and shape his action in reliance upon the agreement."). That was the purpose of settling — to buy peace and not have to continue litigation with Leroy. James wanted a broad release to accomplish that goal, and Leroy provided one, only to then breach his obligations by commencing suit twice more.

B. Leroy breached his warranties in the Warranty Deed

[¶90] In addition to the settlement agreements, Leroy maintained contractual and statutory obligations under the Warranty Deed. "[E]stoppel by deed prevents a party from denying the truth of its deed." McLaughlin v. Lambourn, 359 N.W.2d 370, 372 (N.D. 1985); see also Kadrmas v. Sauvageau, 188 N.W.2d 753 (N.D. 1971) (noting a grantor is estopped from assertions in derogation of a deed to defeat the grantee's title). If a grantor conveys property by warranty, but "asserts against the grantee any right or title in an attempt to defeat his deed, he will be liable for damages for doing so." McLaughlin, 359 N.W.2d at 372.

[¶91] North Dakota statute lays out two different kinds of damages for the breach of covenants in a warranty deed. First, the grantee may obtain damages for the price paid to the grantor, or "the proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property," along with interest. N.D.C.C. § 32-03-11. In this case, that would consist of awarding James the price he paid to Leroy in the amount of $167,000, or the proper proportion deemed by the court.

[¶92] Second, the grantee may recover "any expense" incurred in defending his possession. Id. This Court has affirmed an award of attorney's fees incurred to defend title under N.D.C.C. § 32-03-11. Fredricks v. Fredricks, 2016 ND 234, ¶ 34, 888 N.W.2d 177.

[¶93] The Defendants requested fees for having to defend the same claims Leroy released on two previous occasions, but the court never addressed this request. Since Leroy

breached the settlements and his covenants in the Warranty Deed, the Court should reverse and remand to determine the proper amount of damages to be awarded to the Defendants.

CONCLUSION

[¶94] James Seidel twice sought to resolve family discord by settling lawsuits brought by Leroy. In exchange for broad releases and promises not to make future claims to the property, James gave his brother over $167,000 and half of his oil and gas rights. In violation of these representations, Leroy filed suit for a third time in this action claiming James converted the gravel interests James already owns.

[¶95] Leroy's claims are barred by res judicata and/or collateral estoppel. He alleged the identical claim for declaratory relief as he did in the 2014 Litigation, based on identical allegations a reservation was intended over the same property in the same deed. Under Fettig and other cases, Leroy cannot split his cause of action or relitigate the same matters he settled in the 2006 and 2014 Litigation. Nor can he collaterally attack the binding and conclusive settlement agreements he agreed to in the earlier litigation.

[¶96] In any event, Leroy's claim for declaratory relief fails. The plain language of the Warranty Deed, guided by N.D.C.C. § 47-10-25, transferred Leroy's gravel interest to James. While Leroy created confusion over the underlying events, there is no evidence showing Leroy was mistaken, and James testified he was not mistaken because the Warranty Deed mirrored his intent. Thus, the court erred as a matter of law by declaring the opposite of what the deed provides and allowing Leroy to vary from the deed's plain language.

[¶97] Without any interest in the gravel, Leroy's related conversion claim necessarily fails. However, even if the Court were to affirm the district court's grant of declaratory relief, it should still reverse the award of damages because the Defendants had

no intent to interfere with Leroy's later-declared gravel interest and Leroy cannot have it both ways by obtaining all the revenues for the gravel sales without paying his share of expenses.

[¶98] Ultimately, the only thing that changed from the settlement agreements and the Warranty Deed is Leroy's failure to fulfill the promises he made to release his claims against the property and stop the litigation. Leroy breached his contractual and statutory obligations by challenging James's interest and disregarding the terms of the settlements the parties negotiated. As a result, the Court should reverse and remand for further proceedings to determine the appropriate amount of damages to be awarded to the Defendants.

ORAL ARGUMENT REQUESTED

[¶99] In light of the significant legal and factual issues, the Court would be aided by oral argument in this matter. The Defendants respectfully request argument be allowed.

Dated: August 12, 2020.

/s/ Andrew D. Cook
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CERTIFICATE OF COMPLIANCE

In accordance with N.D.R.App.P. 32(a)(8)(A), the undersigned hereby certifies that the above brief contains 38 pages, which is within the limit of 38 pages.

/s/ Andrew D. Cook
Andrew D. Cook, ND ID #06278

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

The Estate of Leroy E. Seidel, Plaintiff and Appellee, v. James A. Seidel, Gravel Supply LLC, and Troy Seidel, Defendants and Appellants,	)	Supreme Court No. 20200148 District Court No. 53-2016-CV-01304

CERTIFICATE OF SERVICE

Karen Thompson, being first duly sworn, deposes and says that on the 12th day of August, 2020, she served the following documents:

1. **Appellant's Brief; and**

2. **Appendix to Appellant's Brief;**

with the Clerk of the North Dakota Supreme Court and served the same electronically as follows:

By North Dakota Supreme Court E-Filing Portal:

Charles L. Neff . . . . . cneff@nefflawnd.com

I declare under penalty of perjury that the foregoing is true and correct. I signed this Affidavit in the County of Cass, State of North Dakota, on this 12th day of August, 2020.

/s/ Karen Thompson
Karen Thompson