20130034
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MAY 9, 2013
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

May 9, 2013

Jeff Trosen, Appellant, v. Shirley Trosen, individually and in her Capacity as Trustee of the Trosen Family Trust, dated August 23, 2002 and Brent Trosen, Appellee.	)	Supreme Court No. 20130034 Grand Forks County Number: 18-2011-CV-362

APPEAL FROM THE DISTRICT COURT,
GRAND FORKS, NORTH DAKOTA
NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE KAREN BRAATEN, PRESIDING

BRIEF OF APPELLANT, JEFF TROSEN

DEWAYNE JOHNSTON (ND ID # 05763)
ATTORNEY FOR APPELLANT
JOHNSTON LAW OFFICE
221 SOUTH 4TH STREET
GRAND FORKS, ND 58201
Ph. (701) 775-0082
DEWAYNE@WEDEFENDYOU.NET

TABLE OF CONTENTS

[¶1]TABLE OF AUTHORITIES

Statutes and Rules:

Other Authority:

[¶2]STATEMENT OF THE ISSUES

I. Whether the District Court erred in granting Defendants' motion for judgment as a matter of law.

A. Whether partial performance brought the lease outside of the statute of fruads.

B. Whether the lower court abused its discretion in failing to recognize the exception to the parol evidence rule that allows evidence outside the four corners of a contract that seeks to explain ambiguous terms.

C. Whether Jeff's January 1, 2011 lease with Shirley is valid.

STATEMENT OF THE CASE

[¶3] Jeff Trosen "Jeff" filed his summons and complaint on March 17, 2011, accompanied by a request for a temporary injunction to guard his property interests from the actions of his brother, Brent Trosen "Brent." (Docket "D." 1-15.)(Appendix "A." 11). Jeff's complaint sought relief one five counts: (1) Specific Performance; (2) Breach of Lease Contract; (3) Declaratory Relief; (4) Injunctive Relief, and; (5) Interference with Contractual Relations. (D.2). Defendants/Appellees, Shirley Trosen "Shirley" and Brent, answered and entered separate counterclaims against Jeff. (D.33, 31)(A.29,36). The trial was bifurcated and the breach of contract and intentional interference with contractual relations claims were to be decided by a jury and the equitable claims were to be tried to the district court subsequent to the jury trial.

[¶4] A jury trial was held on 04/25/2012, 04/26/2012, 04/27/2012, 05/01/2012, and 05/02/12. After the closing of evidence and before closing arguments, Jeff submitted a Motion for Judgment as a Matter of Law pursuant to Rule 50 of the North Dakota Rules of Civil Procedure to declare the September 20, 2010 lease between Brent and Shirley

invalid. (Trial Transcript "Tr." 810:19-23)(D.202). Brent and Shirley also moved pursuant to Rule 50 for Judgment as a Matter of Law on both causes of action before the jury and find that Jeff and Shirley's January 1, 2011 lease was invalid as a matter of law. (Tr.849:3-7). The Court granted Brent and Shirley's motion for Judgment as a Matter of Law on both counts and found that the lease did not comply with N.D.C.C. § 9-06-04, the Statute of Frauds. (Tr.857-859:1-17)(D.206;239)(A.100;104). The Court denied Jeff's motion and declined to determine whether Brent's September 20, 2010 lease was valid reasoning that the Court was "not required to reach the issue on the claims presently before the jury." (Tr.859:18-25-860:1-6)(D.239)(A.104). The remaining issues were decided by the court months later and the Complaint was dismissed in its entirety because a valid and enforceable lease between Shirley and Jeff was a required element for each of Jeff's claims. (D.284)(A-121). A final judgment in the matter was entered on November 21, 2012. Id.

STATEMENT OF THE FACTS

[¶5] Jeff entered into a farm lease for land owned by his mother, Shirley and The Trosen Family Trust in 2008. (D.208)(Tr.273:18-23)(A.77). That contract encompassed the years 2008, 2009, and 2010 with tillable acres being determined by the FSA office for each year's rent payment. (Tr.275:24-25;276:1-7;278:14-16;710:23-25;711:1-2). Shirley, Brent, and Jeff sat at the kitchen table and divided the land up between Jeff and Brent so as to allow Jeff and Brent the ability to farm an equal portion of the land. (Tr.262:16-23). In fashioning the 2008 leases between Shirley and both Jeff (P-1) and Brent (P-14) the parties used the future designation of the land under the Trosen Family Trust and certain life estates held by the children as a basis of designating "Jeff's land" and "Brent's land"

then using convenience to the parties respective farming operation in dividing the remaining parcels. Id. (D.208;215)(A.77;98). The following parcels of property were denoted by the lease as "Jeff's land" in 2008 and then again in 2011 not to include any portions then in CRP:

In Grand Forks County, North Dakota--

Township 152 North, Range 54 West
Section 17: W½ (including the farmstead at 3564 21st Ave. NE, Larimore,ND 58251)
Section 20: W½ (SW¼ and NW¼)
Section 28: S½SW¼
Section 29: SE¼SE¼
Township 153 North, Range 53 West
Section 27: E½ (less parcels previously conveyed)

(D.212)(A.81). The tillable land in each section could change from year to year given the CRP contracts that might be coming out of contract or going into a new contract. (Tr.323:25;3241-3). In 2010 "Jeff's land" was farmed by Brent due to Jeff's inability to pay the land rent. (Tr.282:15-25;283:1-17). Brent and Shirley entered into a separate subcontract allowing Bent to farm "Jeff's land" in 2010 and have possession of that land until the crop was harvested, which Brent indicated was in November. (D.224)(Tr.779:18-25;780:1-4). All the testifying witnesses but Brent indicated that Shirley made it known that if Jeff were able to pay his land rent in 2011 she would again be leasing Jeff back the land he had originally leased in 2008. (Tr.288:22-25;289:1-5;710:6-10).

[¶6] On or about January 1, 2011, Jeff and his mother renewed their 2008-2010 farm lease agreement by re-signing and dating the original 2008-2010 farm lease agreement and changing the term to 2011-2013. (D.208;209)(A.77;78). Both Jeff's and his mother's initials appear on the lease where the handwritten changes or updates were

made. (D.209)(A.78). Shirley then contacted the Grand Forks County Farm Service Agency "FSA" (a federal agency that administers the Direct and Counter-Cyclical Payment Program (DCP) for North Dakota farmers) and requested that their records be updated to reflect that Jeff was now the farm operator in general control of the farming operations on the properties described above as he was in 2009, instead of Brent, who had been the designated farm operator on these properties in 2010. (Tr.711:14-21). After the lease was signed and Jeff was reinstated as the operator, Jeff filed the lease with the FSA to get the tillable acres for calculation of the rent due, which is the accepted business custom in the farm industry and specifically in the Trosen family. (Tr.710:23-25;711:1-5)(D.209;210). Shortly thereafter, Jeff gave his mother a check in the amount of $28,522.00, 438.8 acres at $65 per acre. (Tr.324:7-9;325:12-21;710:16-22;711:6-10)(D.211)(A.80).

[¶7] On January 6, 2011, Farm Service Agency sent Jeff a letter confirming his status as farm operator of the properties described above as of that date. (D.213)(A.96). Four days later, Grand Forks County Farm Service Agency sent Jeff another letter, this time indicating that he had been removed as the designated farm operator on the properties described above. (D.214)(A.97). Sometime between January 6, 2011 and January 10, 2011, Shirley was contacted by Brent who informed his mother that he had a contract and had spent money on inputs for that land and worked the land so it was his to farm. (Tr.597:19-25;598:1-2,9-25;711:22-25;712:1-8). Shirley testified that she felt obligated to change her mind and not lease the land to Jeff anymore after Brent told her he bought material for the land and did extra work. (Tr.712:1-12). Subsequently, Shirley

contacted FSA to request that Brent Trosen be relisted as operator of the farm land in dispute, removing Jeff Trosen as the valid operator. (Tr.601:14-19).

[¶8] Shirley later returned Jeff's check to him, refusing to cash it. (Tr.326:10-15;333:12-17). Jeff then learned that Shirley and Brent executed a separate farm lease agreement between themselves on September 20, 2010, supposedly for the same farm land, beginning in 2011 through 2015. (D.225). The September 20, 2010 lease contained no descriptions of the land to be rented and did not reference land in any manner that included ways that Shirley may have been able to understand, such as Jeff's land or Brent's land, as they did in the March 1, 2010 lease. (D.224).

[¶9] Jeff hired a lawyer and Brent was made aware of the fact that his September 20, 2010 lease effective in 2011 was not a valid lease and received a demand for the return of the land to Jeff. Then, on or about March 8, 2011, Brent hired a lawyer to draft a supplementary farm lease, dated March 8, 2011, between Shirley (individually, and in her capacity as Trustee of the Trosen Family Trust, dated August 23, 2002) which included the verbiage purporting to cure the prior lease. (D.226).

STANDARD OF REVIEW

[¶10] "On appeal the district court's decision on a motion for judgment as a matter of law is fully reviewable." Minto Grain, LLC v. Tibert, 2009 ND 213, ¶ 8, 776 N.W.2d 549. In order "[t]o determine whether the district court erred in granting a motion for judgment as a matter of law under N.D.R.Civ.P. 50(b), this Court examines the trial record and applies the 'same standard' as the district court was required to apply initially." Id. The standard the Court is to apply is "whether the evidence favoring the

verdict is so insufficient, reasonable minds could reach only one conclusion as to the verdict." Id. at ¶ 7.

LAW AND ARGUMENT

I. The District Court Erred in Granting the Defendants' Rule 50 Motion for Judgment as a Matter of Law.

[¶11] North Dakota Rules of Civil Procedure 50 provides in pertinent part:

> (a) Judgment as a Matter of Law.
>
> (1) *In General.* If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:
>
> (A) resolve the issue against the party; and
>
> (B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

N.D.R.Civ.P. 50(a).

[¶12] "The district court's decision to grant or deny a motion for judgment as a matter of law under N.D.R.Civ.P. 50 is based upon whether the evidence, when viewed in the light most favorable to the party against whom the motion is made, leads to but one conclusion as to the verdict about which there can be no reasonable difference of opinion." Martin v. Trinity Hosp., 2008 ND 176, ¶ 28, 755 N.W.2d 900. "A motion for a directed verdict should not be granted pursuant to Rule 50(a), N.D.R.Civ.P., unless the moving party is entitled to a judgment on the merits as a matter of law." Rau v. Kirschenman, 208 N.W.2d 1, 4 (N.D. 1973). Further,:

> In a jury case, where conflicting inferences reasonably can be drawn from the evidence, it is the function of the jury to determine what inference shall be drawn. It is only when the evidence is all one way, or so

> overwhelmingly one way as to leave no doubt what the fact is, that a court is justified in taking a case from the jury.

Cont'l Can Co. v. Horton, 250 F.2d 637, 643 (8th Cir. 1957).

[¶13] "Whether a contract exists is a question of fact." Lenthe Investments, Inc. v. Service Oil, Inc., 2001 ND 187, ¶ 17, 636 N.W.2d 189. "To create an enforceable contract, there must be a mutual intent to create a legal obligation." Lire, Inc. v. Bob's Pizza Inn Restaurants, Inc., 541 N.W.2d 432, 434 (N.D.1995). "The parties' mutual assent to a contract is determined by their objective manifestations of contractual assent." Moen v. Meidinger, 1998 ND 161, ¶ 6, 583 N.W.2d 634. "It is the words of the contract and the manifestations of assent which govern, not the secret intentions of the parties." Amann v. Frederick, 257 N.W.2d 436, 439 (N.D.1977). The construction of a written contract to determine its legal effect is a question of law. Lenthe Investments, Inc., 2001 ND 187 at ¶ 17.

A. Partial Performance Brought the Lease Outside of the Statute of Frauds.

[¶14] Jeff and Shirley's subsequent acts in accordance with the January 1, 2011 lease, brings the lease outside of the Statute of Frauds. Generally, part performance of a contract which is consistent only with the existence of the contract may remove it from the statute of frauds. Under N.D.C.C. § 47-10-01:

> An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law or by an instrument in writing, subscribed by the party disposing of the same or by the party's agent thereunto authorized by writing. This does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

N.D.C.C. § 47-10-01. A number of North Dakota cases have recognized the statutory exception to the statute of frauds' requirement of a signed writing in the part performance

of a contract. *See* Johnson Farms v. McEnroe, 568 N.W.2d 920 (N.D. 1997) (stating paying contract price constitutes sufficient part performance). "To take a contract out of the statute of frauds, the party seeking to enforce the oral contract must establish part performance that is not only consistent with, but that is consistent *only* with, the existence of the alleged oral contract." Kohanowski v. Burkhardt, 2012 ND 199, ¶16, 821 N.W.2d 740. "Another requirement of the doctrine . . . is that the acts relied upon as constituting part performance must unmistakably point to the existence of the claimed agreement. If they point to some other relationship ... or may be accounted for on some other hypothesis, they are not sufficient. " Rickert v. Dakota Sanitation Plus, Inc., 2012 ND 155, ¶ 14, 812 N.W.2d 413 (internal quotations omitted). The part performance must be performance from the day the contract starts.

[¶15] In Kohanowski, the Court examined the validity of an oral contract between a man, his brother and his brother's former fiancé. 2012 ND 199, 821 N.W.2d 740. Kohanowski loaned his brother and his brother's then fiancé ten thousand dollars for the couple to purchase a house, and orally arranged a repayment system of certain amounts of increasing size over thirty-six months. Id. at ¶ 3. When the pair split and eventually defaulted on the loan, Kohanowski settled separately with his brother for his half of the amount, and then took Burkhardt to small claims court to sue for the remaining half. Id. at ¶ 4-5. Kohanowski then removed the case district court, and was awarded over six-thousand dollars by the jury. Id. On appeal, Burkhardt contended that the alleged oral contract was barred by the statute of frauds because it was a contract that was meant to be performed in more than one year. Id. at ¶7. What is relevant to this case is the court's

discussion on whether part performance could remove an oral contract from the statute of frauds, and what that part performance must look like in order to qualify. Id. at ¶ 14.

[¶16] The Kohanowski Court said that to "remove the alleged oral agreement from the statute of frauds, Jon Kohanowski would have to establish an act of partial performance that 'unmistakably point[ed] to the existence of the claimed agreement,' that was consistent only with the terms and existence of the alleged contract, and that could not 'be accounted for on some other hypothesis.'" Id. at ¶ 16 q*uoting* Rickert, 2012 ND 37, Estate of Thompson, 2008 ND 144, ¶ 13, 752 N.W.2d 624. The Court found that because the defendant's actions—that of writing out a check each month for an amount alleged as the payment amount on the loan—was easily explainable for other purposes—she wrote the couples' monthly bills out, and the amount could have been for other bills—the Plaintiff could not say that her actions were only indicative of the existence of the contract. Id. at ¶¶17-18.

[¶17] After Jeff and Shirley signed the lease, Shirley either called or drove to the FSA office and had the FSA remove Brent as operator and named Jeff as the operator of the land in dispute. (Tr.711:14-21). Jeff brought the lease to the FSA office to receive the number of tillable acres. (Tr.322:6-13;710:23-25;711:1-5). After Jeff received the number of tillable acres from the FSA, 438.8, Jeff gave Shirley a check for $28,522 which she accepted, but did not cash. (Tr.325:12-25;326:7-15;702:4-8;710:16-25;711:1-13)(D.211)(A.80). These acts were all done in conformance of the lease. There is no other explanation as to why Shirley would notify the FSA that Jeff would be farming the land, and instructing them to put Jeff as farm operator. Further, Jeff paid the contract price to Shirley. These acts constitute sufficient part performance, taking the lease

outside of the statute of frauds. Because the lease is outside the statute of frauds, the fact finder can look to evidence outside of the four corners to determine any ambiguous terms.

B. The Lower Court Abused Its Discretion in Failing to Recognize the Exception to the Parol Evidence Rule that Allows Evidence Outside the Four Corners of a Contract that Seeks to Explain Ambiguous Terms.

[¶18] The district court found that Jeff's lease did not satisfy the Statute of Frauds—and was therefore void—for two major reasons: (1) a lack of consideration; and (2) lack of legal description of the land to be leased. (D.239)(A.104). The court heard Shirley's testimony and believed her account that these elements of the lease were not contained on the lease she signed and were instead added later. Id. The Court decided that this was enough to declare Jeff's January 1, 2011 lease void and to award judgment to the Defendants on that issue, taking the decision from the hands of the jury before they received the case. The parties' behavior and surrounding circumstances evidenced a clear intent to lease the land in question, for a defined amount, and for a defined period of time.

[¶19] A contract can be part written and part oral. Odegaard v. Investors Oil Inc., 118 N.W.2d 362, 371 (N.D. 1962).

> [T]he only criterion of the completeness of the written contract as a full expression of the agreement of the parties is the writing itself; but, in determining whether it is thus complete, it is to be construed, as in any other case, according to its subject-matter and the circumstances under which and the purposes for which it was executed.

Id. at 372 (internal quotations omitted). Further, "[i]f the parties never adopted the writing as a statement of the whole agreement, the rule does not exclude parol evidence of additional promises." Id. (quoting Williston on Contracts, Revised Edition, Volume

Three, § 636). Although the price of rent was not written on the lease, Jeff and Shirley had orally agreed to the price of rent at $65 per tillable acre. (Tr.324:10-14;710:16-22;716:15-19). This was also the price of rent that everyone in the family paid years prior and continuing on in 2011. Id.

[¶20] The concept of contract interpretation with ambiguous terms was first discussed by the North Dakota Supreme Court in Battagler v. Dickson, 38 N.W.2d 720 (N.D. 1949). The Battagler case arose from a farm lease contract and a misunderstanding about an obligation to plow certain acreage of the fields. Id. The lease consisted of a standard crop share form, but contained contradictory language on the contract price. Id. at 721-22. The Court, in its holding that such ambiguities did not void the contract, reasoned:

> The object of construing a contract is to ascertain the intention of the parties as it existed at the time of contracting. Wisner v. Field, 15 N.D. 43, 106 N.W. 38; Baird v. Fuerst, 60 N.D. 592, 235 N.W. 594. Section 9-0703, NDRC 1943. Where the contract is written the intention of the parties must, if possible, be ascertained from the writing alone. Sec. 9-0704, NDRC 1943. However, if a clause in a contract is of doubtful or ambiguous meaning it is proper "to search for its true meaning in the light of the extraneous facts and circumstances. This rule is voiced by the Code. Section 3562, [now Sec. 9-0712, NDRC 1943], reads: 'A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.'" Hazelton Boiler Co. v. Fargo Gas and Electric Co., 4 N.D. 365, 376, 61 N.W. 151, 155. See also Halstead v. Missouri Slope Land and Investment Co., 48 N.D. 220, 184 N.W. 284, and Baird v. Fuerst, 60 N.D. 592, 235 N.W. 594. "**And where a contract is ambiguous, and it is impossible to ascertain the intention of the parties thereto from the writing alone, the subsequent acts of the parties showing the construction they put upon the agreement themselves may be looked to by the court**." Baird v. Fuerst, 60 N.D. 592, 596, 235 N.W. 594, 596.

38 N.W.2d at 722 (emphasis added).

[¶21] The statute upon which the Court in Battagler based its reasoning has since been amended to N.D.C.C. § 9-07-03, but the purpose and legal substance of the statute remains the same. The newer version of the statute reads:

> A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting so far as the same is ascertainable and lawful. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

N.D.C.C. § 9-07-03.

[¶22] The reasoning in Battagler was subsequently upheld by Beck v. Lind and Hamilton v. Winter, two more cases involving ambiguities in farm lease contracts. See Beck v. Lind, 235 N.W.2d 239 (N.D. 1975); Hamilton v. Winter, 281 N.W.2d 54 (N.D. 1979) (holding that cases involving leases will usually be construed most strongly against the lessor). In Beck, in determining that the lower Court should have allowed the use of a deposition in order to explain some of the contract terms, reiterated the Battagler holding that: "if the language of a contract is ambiguous the subsequent acts of the parties performed after entering into the contract pursuant to the contract may be helpful in determining the intentions of the parties and the construction placed on the language by the parties." 235 N.W.2d at 248.

[¶23] The Hamilton Court expounded similar reasoning, applying the amended version of N.D.C.C. § 9-07-03, and saying:

> When the intention of the parties to a written contract cannot be determined from the written instrument itself, the contract may be explained by reference to the circumstances under which it was made. s 9-07-12, N.D.C.C.; Delger, supra; and Kruger v. Soreide, 246 N.W.2d 764 (N.D.1976). Furthermore, a contract which contains an uncertainty will be construed most strongly against the party who caused it. s 9-07-19, N.D.C.C. In cases involving leases, the lease will usually be construed most strongly against the lessor. Drees Farming Ass'n v. Thompson, 246 N.W.2d

883 (N.D.1976); and Hughes Realty Company v. Breitbach, 98 N.W.2d 374 (N.D.1959)."

281 N.W.2d at 57-58.

[¶24] In this case, Shirley and Jeff demonstrated a clear intention to enter into a lease for land, and documented their intention in a signed writing on January 1, 2011. During her testimony, Shirley testified that there were certain terms missing from the January 1, 2011written lease; however, Shirley did not say that she did not intend to enter into a lease with Jeff on January 1, 2011. In fact, Shirley testified that when Jeff came to her on that day, the intent was that he would rent the land. (Tr.710:11-15). Shirley's counsel has repeatedly contended that the absence of terms in the written lease voided the lease outright. This is contrary to ND law as the intention of the parties to adhere to certain terms must be construed by the parties' actions, and by the surrounding circumstances. N.D.C.C. § 9-07-12 states: "A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates." The missing terms are easily explained by an examination of the circumstances under which the lease was made, and the matter to which it relates.

C. Jeff's January 1, 2011 Lease with Shirley is Valid.

[¶25] If the district court would have applied § 9-07-12, it would not have granted Defendants' motion and would have left the determination of facts up to the jury. Because the agreement between Jeff and Shirley contained consideration and a description of the land, it is valid.

[¶26] The court found that there was no consideration contained in the January 1, 2011 lease. Jeff, Shirley, and Brent all testified that the price per tillable acre for the family land was sixty-five dollars. (Tr.324:10-14;710:16-22;716:15-19). There was

never any confusion as to what amount Jeff would pay per tillable acre; all that was left to be determined after the signing of the lease was how many acres he would be able to till, which would in turn determine the amount of the contract price due to Shirley. (Tr.710:16-25;711:1-2). This exact price was unable to be determined at the time of lease signing, because it was up to the FSA to tell the parties how many acres were tillable. Jeff could not gain this knowledge until Shirley indicated to the FSA that he would once again be the operator on the land. This FSA determination is standard practice in the farming community, and was well known to both parties to the January 1, 2011 lease contract. (Tr.322:5-7;710:23-25-711:1-2). Shirley has never disputed the contract price that Jeff ended up giving her after the FSA determination. (Tr.711:6-13). Shirley's wavering confidence as to the wisdom of her lease with Jeff only came as soon as Brent conveyed his displeasure at losing out on the opportunity to farm the property to Shirley. (Tr.712:1-12). Shirley has never alleged that the consideration given was incorrect, and she accepted the check from Jeff without any word to the contrary as to the amount of the check itself. The intention of the parties as to the consideration contained in the lease is evidenced by the surrounding circumstances, and should withstand scrutiny under Statute of Frauds based on these circumstances.

[¶27] The same holds true for the description of the land to be leased contained in the January 1, 2011 document. Shirley has never alleged that Jeff sought to farm the wrong land, or that there was some confusion as to which land Jeff was going to farm. (Tr.710:6-15). Both parties to the January 1, 2011 contract knew exactly what land Jeff was going to farm under that lease. This is also evidenced by Shirley's subsequent call or visit to the FSA office to have Brent removed as the operator on the land and to have Jeff

put on for the purposes of their records. (Tr.711:14-21). When she gave those instructions to the FSA, she knew exactly what land to indicate that Jeff would be farming, and she did so on the heels of forming the lease contract with Jeff on January 1, 2011. Once again, the precise acreage could not be on the initial contract, because it is up to the FSA—and not Shirley or Jeff—to determine how many tillable acres are available out of certain parcels. Shirley's behavior evidenced her intention to lease the specific land in dispute here, directly aligning with the holding of the Beck Court as evidence of "subsequent acts of the parties performed after entering into the contract pursuant to the contract…" Beck, 235 N.W.2d at 248. Shirley cannot claim, and has never claimed, that there was any confusion as to which land Jeff was meant to farm, and her subsequent act of instructing the FSA to have Jeff named as operator of the land in question after the contract formation solidified the parties' intentions in that regard. The intention of the parties as to the land to be leased was evidenced by the surrounding circumstances and subsequent acts of the parties, and should withstand Statute of Frauds scrutiny based on those circumstances.

CONCLUSION

[¶28] Jeff's lease with Shirley is not void, and Plaintiff requests the Court reverse the district court's Order granting the Defendants' Motion for Judgment as a Matter of Law and reverse the district court's dismissal of Jeff's complaint.

Dated this 9th day of May, 2013.

JOHNSTON LAW OFFICE

/s/ DeWayne Johnston
DeWayne Johnston (ND ID #5763)
dewayne@wedefendyou.net
221 South 4th Street
Grand Forks, ND 58201
Telephone: (701) 775-0082
Attorney for Jeff Trosen/Appellant

IN THE NORTH DAKOTA SUPREME COURT

Jeff Trosen	)	
	)	Supreme Court No. 20130034
Appellant,	)	
vs.	)	
	)	Grand Forks County No.:
Shirley Trosen, individually and	)	18-2011-CV-362
In her Capacity as Trustee of the	)	
Trosen Family Trust, dated	)	
August 23, 2002 and Brent Trosen,	)	**CERTIFICATE OF SERVICE**
	)	
Appellee.	)	

I, **DEWAYNE JOHNSTON**, attorney for the Appellant, and officer of the court, hereby certify that a true and correct copy of the foregoing:

1. **BRIEF OF APPELLANT; and**
2. **APPENDIX OF APPELLANT**

was served by **EMAIL PURSUANT TO N.D. SUP.CT.ADMIN. ORDER 14** on this 9th day of May, 2013 to the following:

Michael Morley
mmorley@morleylawfirm.com
Morley Law Firm
1697 S. 42nd St., Suite 200
Grand Forks, ND 58201

Dated this 9th day of May, 2013.

JOHNSTON LAW OFFICE

/s/ DeWayne Johnston
DeWayne Johnston (ND #5763)
dewayne@wedefendyou.net
221 South 4th Street
Grand Forks, ND 58201
Telephone: 701-775-0082
Fax: 701-775-2230
Attorney for Appellant