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JANUARY 9, 2015
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court Case No. 20140358
Cass County District Court No. 9-2013-CV-02802

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Darwin Savre, d/b/a Savre's
Heavy Truck & Auto Repair,

Plaintiff/Appellee,

v.

Jose Santoyo,

Defendants/Appellant.

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# BRIEF OF PLAINTIFF/APPELLEE

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**Appeal from the Findings of Fact, Conclusions of Law and Order for Judgment entered on August 20, 2014, and the Judgment entered on September 9, 2014, Cass County, East Central Judicial District Honorable Norman G. Anderson, Presiding**

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Ann E. Miller (ND ID 06706)
**ANDERSON, BOTTRELL, SANDEN & THOMPSON**
4132 30th Avenue SW, Suite 100
P.O. Box 10247
Fargo, ND 58106-0247
*amiller@andersonbottrell.com*
(701) 235-3300
Attorneys for Plaintiff/Appellee

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## STATEMENT OF ISSUES

[¶1] Did the District Court correctly conclude that Savre did not attempt to assign, convey, delegate or transfer his purchase option to JDDS, LLC?

[¶2] Did the District Court correctly conclude that the formation of JDDS, LLC, and any subsequent involvement of JDDS, LLC in Savre's attempt to purchase the Property was not a valid reason to terminate the Option Agreement?

[¶3] Did the District Court correctly conclude that Santoyo waived his right to require strict compliance with the terms of the Option Agreement?

[¶4] Did the District Court correctly conclude that Santoyo's counterclaim for property damage against Savre necessarily failed because Santoyo did not meet his evidentiary burden?

## STATEMENT OF THE CASE

[¶5] This is an appeal from Findings of Fact, Conclusions of Law, and Order for Judgment dated August 20, 2014, and Judgment dated September 9, 2014, of the East Central Judicial District Court, Cass County. Appellant's A. at 55 and 66. This action was commenced via Summons and Complaint dated July 25, 2013. Appellant's A. at 5. It arises out of a lease to purchase option agreement between Appellant Jose Santoyo and Appellee Darwin Savre, d/b/a Savre's Heavy Truck & Auto Repair. Savre's Complaint alleged Santoyo breached the option agreement when he failed to sell property leased to Savre after Savre exercised his option, and that Santoyo had been unjustly enriched. Id. Santoyo denied the allegations and interposed a Counterclaim alleging Savre damaged the property owned by Santoyo. Appellant's A. at 18.

[¶6] Santoyo moved for summary judgment, however that motion was denied. The case was subsequently tried to the District Court on June 2, 2014. Appellant's A. at 55. The District Court found Santoyo breached the option to purchase agreement and awarded Savre damages in the amount of $31,996.00, representing overpayments made under the lease agreement. Appellant's A. at 64. The court further found Santoyo's counterclaim for property damage against Savre failed because Santoyo did not meet his burden of proof. Id. Judgment was entered by the Clerk of Court on September 9, 2014. Appellant's A. at 66. Santoyo's Notice of Appeal followed on October 14, 2014. Appellant's A. at 67.

## STATEMENT OF THE FACTS

[¶7] Savre owns and operates an auto repair business in Fargo, North Dakota. Tr. 12. In June of 2008, Savre and Santoyo entered into a Lease Agreement ("Lease") for the rental of a commercial building space ("Property") owned by Santoyo and located at 302B 40th Street North in Fargo. Tr. 13-16; Appellant's A. at 22. The original lease period was from June 15, 2008 to June 15, 2010. Id. Savre paid a monthly rent of $2,300.00 until June 15, 2009 when his rent increased to $2,708.33. Id. Around the time Savre's rent payment was set to increase, Savre and Santoyo entered into a new agreement whereby Savre would lease 302 40th Street N and 310 40th Street N from Santoyo for a period of time, after which he could exercise an option to purchase. Appellant's A. 9. The Lease to Purchase Option Agreement ("Option Agreement") was executed on July 15, 2009. Id. The Option Agreement provided, in pertinent part:

> **1. OPTION TERM.** The option to purchase period commences either on April 1, 2013, and expires at 11:59 PM April 30th, 2013, or will commence at such time that [Savre] has made & been given receipt of not less than $180,000 in consideration toward the purchase of the subject property.
>
> **2. NOTICE REQUIRED TO EXERCISE OPTION.** To exercise the Option to Purchase, [Savre] must give a minimum of 60 days notice, & deliver to [Santoyo] written notice of [Savre's] intent to purchase. In addition, the written notice must specify a valid closing date. The closing date must occur before the original expiration date of the Lease Agreement, or the date of the expiration of the Option to Purchase Agreement designated in paragraph 1, whichever occurs later.
>
> . . . .
>
> **4. PURCHASE PRICE.** The total purchase price for the [Building] is $550,000. Provided that [Savre] timely executes the option to purchase, is not in default of the Lease Agreement,

> & closes the conveyance of the [Building], [Santoyo] shall credit towards the purchase price at closing . . . the total sum of $4,000 for every month lease payment that [Savre] timely made, beginning from the date of the fully accepted Option to Purchase Agreement. . . . [Savre] shall receive no credit at closing for any monthly lease payment that [Santoyo] received after the due date specified in the Lease Agreement(s). Receipts of additional payments, consideration & [Santoyo] allowed delinquent lease payments are to be kept & maintained by both parties and copies will be freely given to one another upon written request.
>
> **5. EXCLUSIVITY OF OPTION.** This Option to Purchase Agreement is exclusive & non-assignable & exists solely for the benefit of the named parties above. Should [Savre] **attempt to assign, convey, delegate, or transfer** this option to purchase without [Santoyo's] express written permission, **any such attempt shall be deemed null & void**.
>
> . . . .
>
> **9. REMEDIES UPON DEFAULT.** If [Savre] defaults under this Option to Purchase Agreement or the Lease Agreement, then in addition to any other remedies available to [Santoyo] at law or in equity, [Santoyo] may terminate this Option to Purchase by giving **written notice of the termination**. If terminated, [Savre] shall lose entitlement to any refund of rent or option consideration. For this Option to Purchase Agreement to be enforceable & effective, [Savre] must comply with all terms & conditions of the Lease Agreements.

Id. (emphases added).

[¶8] Under the Option Agreement, certain provisions of the Lease were still controlling.

One such provision related to actions by Savre that could constitute 'default":

> **18. DEFAULT.** If [Savre] fails to pay the rent as agreed, or fails to fulfill any of the conditions herein contained, then [Santoyo] may, at [his] option, **by written notice to [Savre]**, immediately declare this Agreement terminated and evict [Savre] in accordance with the laws of the State of North Dakota.

Appellant's A. at 25 (emphasis added).

[¶9] The increase in Savre's monthly payments, from $2,708.33 under the Lease to $4,000.00 under the Option Agreement, was for the option to purchase. Tr. 34-35. Appellant's A. at 57-58. While both the Lease and Option Agreement required Savre to pay his monthly rent payments by the first of the month, Savre was late in his payments almost from the very beginning of the Lease. Appellant's A. at 63. Not only did Santoyo fail to give Savre notice of his intent to terminate the Lease due to Savre's late payments, Santoyo entered into the Option Agreement having full knowledge that Savre's payments were generally late. Id.; Tr. 204. Savre made monthly payments in varying amounts under the Option Agreement, but never paid less than $4,000.00. Appellant's A. at 61.

[¶10] In the fall of 2012, Savre and James Danielson formed JDDS, LLC with the intent to utilize that entity to finance the purchase of the property located at 302 and 310 40th Street North in Fargo. Tr. 36; Appellant's A. at 63. Santoyo was aware of the formation of the LLC and Mr. Danielson's involvement. Tr. 37. Despite Savre's formation of JDDS, LLC and the LLC's involvement in the purchase of the Property, Savre did not attempt to assign, convey, delegate or transfer his purchase option to JDDS, LLC. Appellant's A. at 63. In the months prior to the formation of JDDS, LLC, Savre and Santoyo had discussions regarding a customer that wanted to purchase the Property from Santoyo, then Savre would purchase the Property from the customer. Tr. 40. Those discussions never materialized into a sale, but based on those discussions, Savre was under the impression that Santoyo had no issue with involving a third party in the eventual sale of the Property. Tr. 43.

[¶11] Indeed, at various points throughout the duration of the Option Agreement, Savre testified that Santoyo approached him to purchase the property early, despite Savre not yet having met certain terms of the Option Agreement. Tr. 130; Appellant's A. at 63. Thus,

being under the impression that strict compliance with the Option Agreement was unnecessary, Savre made his first attempt to exercise his option to purchase the Property on December 21, 2012. Appellant's A. at 12, 63. Savre made a second attempt to exercise his option to purchase the Property on February 27, 2013. Appellant's A. at 13. Under the Option Agreement, one way Savre could exercise his option to purchase was by paying Santoyo a total of $180,000.00. Appellant's A. at 9; Tr. 102. In fact, from August 1, 2009 to April 30, 30, 2013, Savre paid $189,000.00 to Santoyo that was to go towards Savre's purchase of the Property. Id.

[¶12] Santoyo did not respond to the exercise of Savre's option. Tr. 50. When it became evident that Santoyo was not going to honor the Option and sell him the Property, Savre stopped paying the $4,000.00 monthly payment. Tr. 94. Santoyo initiated eviction proceedings against Savre, and due to his failure to pay rent for the months of May and June, eviction was granted. Tr. 95; Appellant's A. at 49. The court entered Judgment against Savre for the unpaid rent as well as Santoyo's costs and fees. Appellant's A. at 53. Savre satisfied the Judgment. Tr. 95.

[¶13] Savre vacated the Property at the end of June, 2013, and began leasing a different space also located in Fargo. Tr. 98. Shortly thereafter, on July 25, 2013, Savre initiated this lawsuit against Santoyo for damages suffered as a result of Santoyo's refusal to sell the Property pursuant to the Option Agreement. Appellant's A. at 5. In his defense, Santoyo argued that he could not have breached the Option Agreement because Savre had been in default due to Savre's failure to make timely rent payments, and alleged that Savre attempted to assign his option to JDDS, LLC. Appellant's A. at 63. Santoyo asserted a counterclaim against Savre for damage Savre was alleged to have caused to the Property.

Appellant's A. at 18. Specifically, Santoyo alleged damages including, "gravel, dirt, clay, wood piles, garbage, paint cans, and other items being left on the Property; damage to the walls, floor, and other areas inside the building on the Property, and inoperable trucks left on the Property." Appellant's A. at 20. Testimony was presented by both parties regarding the alleged damage to the Property; however, Santoyo failed to present exhibits to support his claimed damages and meet his burden of proof. The District Court's determination on Sanotyo's Counterclaim was thus based on credibility of the witnesses and the Court did not find Santoyo's testimony credible. Appellant's A. at 64.

[¶14] The District Court concluded that Santoyo waived all claims of default against Savre and was thus in breach of the Option Agreement when he refused to sell the Property to Savre upon Savre's exercise of his option. Id. The District Court further concluded that Savre was entitled to $31,996.00 for the overpayments made under the Lease to Purchase Option Agreement. Id. Finally, the District Court concluded Santoyo's counterclaim for property damage against Savre failed because Santoyo did not meet his evidentiary burden. Id.

## LAW AND ARGUMENT

### I. Standard of Review

[¶15] Appellant concedes, as he must, that the standard of review in this case is clearly erroneous. See Appellant's Br. 7. Yet Appellant attempts to circumvent this standard of review by couching his arguments in terms of whether the District Court "erred as a matter of law". This Court should not rise to the bait. The underlying claim at issue here is a breach of contract. While interpretation of a contract is a question of law for the Court to decide, this is only the case if the language of the contract is clear and unambiguous, and

the intent of the parties is clear from its face. Moen v. Meidinger, 547 N.W.2d 544, 546-47 (N.D. 1996). A contract is ambiguous, however, if reasonable arguments can be made for different positions on its meaning. Id. at 547. If an ambiguity exists, "'extrinsic evidence of the parties' intent may be considered and the terms of the contract and the parties' intent become questions of fact.'" Id. (citing Wachter Dev, L.L.C. v. Gomke, 544 N.W.2d 127, 131 (N.D. 1996)).

[¶16] Such was clearly the case here. That a trial was held in this matter and testimony considered as to the meaning of the Option Agreement is proof positive that the Option Agreement was ambiguous, requiring the District Court to make findings of fact as to the parties' intent. And, of course, the issue whether a party has breached a contract is factual. Accordingly, the applicable standard of review to be applied by this Court is clearly erroneous. See Pfeifle v. Tanabe, 2000 ND 219, ¶ 7, 620 N.W.2d 167 (whether a party has breached a contract is a finding of fact that will not be reversed on appeal unless it is clearly erroneous). 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, an appellate court is left with a definite and firm conviction a mistake has been made. C & C Plumbing and Heating, LLP v. Williams Cty., 2014 ND 128, ¶ 6, 848 N.W.2d 709 (citations omitted). Put another way, the Court must determine that the trial court's finding has no support in the evidence or, although some evidence exists to support the finding, the Court is left with a definite and firm conviction that a mistake has been made. Brash v. Gulleson, 2013 ND 156, ¶ 10, 835 N.W.2d 798 (citations omitted). A District Court's findings of fact are presumptively correct, and this Court views the evidence in the light most favorable to the findings. Guthmiller Farms, LLP v. Guthmiller, 2013 ND

248, ¶ 7, 840 N.W.2d 636; Tweeten v. Miller, 477 N.W.2d 822, 824-25 (N.D. 1991) (citations omitted) (findings of the trial court are presumptively correct).

[¶17] Under this deferential standard of review this Court does not reweigh the evidence or reassess the credibility of witnesses; nor does it retry a case or substitute its judgment for a District Court's decision merely because it may have reached a different result. Danuser v. IDA Marketing Corp., 2013 ND 196, ¶31, 838 N.W.2d 488 (citations omitted); see also Jensen v. Deaver, 2013 ND 47, 828 N.W.2d 533 (under the clearly erroneous standard, the Supreme Court does not reweigh the evidence, reassess the credibility of the witnesses, or substitute its judgment for the district court's decision). Indeed, in a Court trial such as this, the District Court is the determiner of credibility issues and this Court will not second-guess the trial court on its credibility determinations. C & C Plumbing & Heating, LLP, 2014 ND 128 at ¶ 6.

[¶18] Via this appeal Santoyo asks this Court to substitute the District Court's factual findings and credibility determinations with its own. The testimony and exhibits presented at trial support the District Court's factual findings, and thus cannot create in this Court a definite and firm conviction that a mistake has been made. Further, the District Court's findings were not induced by an erroneous view of the law. Because the District Court's findings were not clearly erroneous they should be affirmed.

## II. The District Court correctly concluded Savre did not attempt to assign, convey, delegate or transfer his option to purchase.

[¶19] This Court is aware that an "assignment" is "an expression of intention by the assignor that his duty shall immediately pass to the assignee, and the benefited party's consent to the transfer can be manifested either expressly or by implication." Van Sickle v. Hallmark & Assoc., Inc., 2013 ND 218, ¶ 34, 840 N.W.2d 92. The common legal definition of

"assignment" is "the transfer of rights or property." Black's Law Dictionary 49 (3rd pocket ed. 2006). Santoyo claimed Savre attempted to assign his option to JDDS, LLC, which according to Santoyo, meant Savre could not be liable for not accepting a purchase option exercised by a third party. Appellant's Br. 8. This was simply not the case.

[¶20] The Option Agreement provision pertaining to exclusivity and assignment states:

> **5. EXCLUSIVITY OF OPTION**. This Option to Purchase Agreement is exclusive & non-assignable & exists solely for the benefit of the named parties above. Should [Savre] **attempt to assign, convey, delegate, or transfer** this option to purchase without the [Santoyo's] express written permission, **any such attempt shall be deemed null & void**.

Appellant's A. at 10 (emphasis added). The District Court correctly concluded Savre did not attempt to assign his rights to the Option Agreement to JDDS, LLC. Appellant's A. at 63. The record reflects that JDDS was formed in October of 2012 and its existence was known to Santoyo. Tr. 37. While JDDS, LLC was the entity utilized by Savre to seek financing for the purchase of the Property, Savre at no time transferred his interest in his Option to the JDDS. As the Court is aware, any assignment, conveyance, etc. of an interest in property must be in writing. See N.D. Cent. Code § 9-06-04(3). Santoyo introduced no such writing into evidence, and indeed no such writing existed. Because Savre, not JDDS, exercised the Option, the District Court's finding in this regard was clearly correct.

### A. Obtaining Financing Prior to Exercise of Option Was Not Required

[¶21] Santoyo argued that Savre's testimony regarding his ability, or lack thereof, to pay the remainder of the purchase price at the time he exercised his option was another reason Santoyo could not have breached the Option Agreement. Appellant's Br. at 13. Instead, Savre obtained financing under JDDS, LLC. Appellant's A. at 27. The provision of the Option Agreement regarding financing is as follows:

> **8. FINANCING DISCLAIMER**. The parties acknowledge that it is impossible to predict the availability of obtaining financing towards the purchase of this Property. ***Obtaining financing shall not be held as a condition of performance of this Option to Purchase Agreement***. The parties further agree that this Option to Purchase Agreement is not entered into in reliance upon any representation or warranty made by either party.

Appellant's A. at 10 (emphasis added). The clear language of the "financing disclaimer" states that obtaining financing would not be a condition of performance. Further, payment of the remainder of the purchase price was due upon closing; whether Savre had the remaining funds at the time he exercised his Option, and/or the entity through which Savre was attempting to obtain financing, clearly did not excuse Santoyo's performance under the Option Agreement.

## III. The District Court correctly concluded Santoyo waived his right to declare Savre in default of the Option Agreement because of late lease payments.

[¶22] In support of his argument that Savre's late lease payments excused his performance under the Option Agreement, Santoyo cites holdings from this Court standing for the proposition that "in order to obtain an enforceable right to the property, an optionee must exercise an option within the time and upon the terms and conditions provided in the option agreement." Fries v. Fries, 470 N.W.2d 232, 233 (N.D. 1991) (citing Wessels v. Whetstone, 338 N.W.2d 830 (N.D. 1983)). These holdings are inapposite. The issue is whether Santoyo, having accepted Savre's payments without notifying him at any time that he was in default, could use those late payments as a *post hoc* excuse from performing under the Option Agreement. The answer is obviously no.

[¶23] Throughout the original Lease term and Option Agreement, Savre made his monthly payments without objection from Santoyo. Tr. 93-94; 131-32. Savre did not deny that some of his payments were made after the first of the month; nor did he deny that some payments

were made in two-parts or that at least one of his payments to Santoyo was returned for insufficient funds. It was undisputed, however, that at no time did Santoyo declare Savre in default of the Lease and Option Agreement due to these late payments.

[¶24] The general integration clause cited by Santoyo for the proposition that any waiver of any rights be in writing bears no significance based on Santoyo's actions. The applicable portion of the contracts is the default provision cited above, which provides, in pertinent part, that "If [Savre] fails to pay the rent as agreed, or fails to fulfill any of the conditions herein contained, then [Santoyo] may, at [his] option, **by written notice to [Savre]**, immediately declare this Agreement terminated and evict [Savre] in accordance with the laws of the State of North Dakota." Appellant's A. at 25. Santoyo undisputedly did not do so during the relevant time period. Instead, he knowingly and voluntarily accepted Savre's payments, which, significantly, were not merely rent but rather consideration for the Option Agreement the parties had entered into. Recall, again, that Savre's original lease with Santoyo called for monthly rental payments of $2,708.33. The increased payment of $4,000 per month was undisputedly not merely rent but rather consideration for the Option Agreement.

[¶25] The District Court correctly concluded Santoyo waived his right to assert that Savre was in default. Waiver can be established by an express agreement or by inference from acts or conduct; the existence of which is generally a question of fact. Pfeifle v. Tanabe, 2000 ND 219, ¶ 18, 620 N.W.2d 167; see also Allen v. Minot Amusement Corp., 312 N.W.2d 698, 702 (N.D. 1981) (existence of an acquiescence or waiver of a right on part of landlord to enforce a restriction or reservation depends upon facts and circumstances of each particular case). "Waiver may be found from an unexplained delay in enforcing contractual

rights or accepting performance different than called for by the contract." Id. (citations omitted).

[¶26] Santoyo clearly waived strict compliance and his right to claim Savre was in default of terms of the Option Agreement when he accepted each of Savre's payments, regardless of the amount or date of receipt. See Hanson v. Hanson Hardware Co., 135 N.W. 766 (N.D. 1912) (evidence of a lessor's continued acquiescence in prior defaults in the payment of rent is admissible to prove waiver by him of strict performance as to future installments). Savre was not given notice that he was in default for failure to comply with the stated payment conditions until the May 24, 2013 notice, but this was after Santoyo had made clear to Savre that he would not perform his obligations under the Option Agreement. "Where a lessor for a long time received payments of rent after the time stipulated, he waived a provision requiring prompt payment, and, if he desires to exact strict compliance with the lease, ***he must give notice, and, not having done so, he cannot declare a forfeiture for subsequent similar defaults***." Hanson v. Hanson Hardware Co., 135 N.W. 766 (N.D. 1912) (emphasis added).

[¶27] The District Court's findings in this regard were ample, to wit:

> Paragraph 9 of the [Option Agreement] sets out the remedies available to Santoyo in the event Savre defaulted under the terms of the option. It specifically gave Santoyo the remedy of terminating the option to purchase in case of default by simply giving Savre written notice of the termination. Savre was late in monthly lease payments almost from the beginning of the lease agreement, yet Santoyo never gave notice of intent to terminate the lease. Nor did Santoyo respond in any way when Savre attempted to exercise the option to purchase on December 21, 2012, and February 27, 2013. Moreover, Savre testified at trial that as late as August 2012 Santoyo wanted Savre to purchase the property, a clear indication Santoyo did not view the late payments as an obstacle to Savre purchasing the property

> under the option. By accepting late payments Santoyo waived his right to demand strict compliance with the terms of the option.

Appellant's A. at 63. The District Court's findings were clearly correct.

## IV. The District Court's findings regarding Santoyo's Counterclaim were sufficient, and should be affirmed.

[¶28] Findings of fact made in a Court trial are adequate if they provide this Court with an understanding of the factual basis used by the district court in reaching its decision. SolarBee, Inc. v. Walker, 2013 ND 110, ¶ 17, 833 N.W.2d 422. "A lack of specificity alone does not make findings of fact erroneous." Id. (citing State v. Bergstrom, 2006 ND 45, ¶ 15, 710 N.W.2d 407)). Although a district court must provide an adequate explanation for the Supreme Court to understand the basis for its decision, the Supreme Court will not reverse a district court's decision when valid reasons are fairly discernable, either by deduction or inference. In re Spicer, 2006 ND 79, ¶ 8, 712 N.W.2d 640.

[¶29] The District Court's findings regarding Santoyo's counterclaim are sufficient based on the evidence presented at trial. Santoyo simply failed to present sufficient exhibits or otherwise sufficiently corroborate his testimony regarding the damages he allegedly suffered following Savre vacating the Property. The evidence of property damage to which he points and which is appended to his Brief was controverted by testimony and documentary evidence submitted by Savre. Tr. Ex. 10. The District Court determined Santoyo's counterclaim necessarily failed because his testimony regarding his damages was not credible. Appellant's A. at 64. Any dearth of findings is attributable solely to Santoyo's complete failure of proof. The District Court's findings on Santoyo's counterclaim are a reflection of the amount of evidence presented and are not clearly erroneous.

## CONCLUSION

[¶30] Based upon the foregoing, Savre respectfully requests the Judgment of the District Court be affirmed.

Dated this 13th day of January, 2015.

*/s/ Ann E. Miller*
Ann E. Miller (ND # 06706)
Anderson, Bottrell, Sanden & Thompson
4132 30th Avenue SW, Suite 100
P.O. Box 10247
Fargo, ND 58106-0247
amiller@andersonbottrell.com
(701) 235-3300
Attorneys for Plaintiff/Appellee

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## AFFIDAVIT OF SERVICE BY E-MAIL

STATE OF NORTH DAKOTA )
) ss.
COUNTY OF CASS )

The undersigned, being first sworn, says upon her oath that on January 9, 2015, she delivered via e-mail a true and correct copy of each of the following:

*Brief of Plaintiff/Appellee*

A copy of the foregoing was securely e-mailed to the address(es) as follows:

Andrew D. Cook
Ohnstad Twichell, PC
*acook@ohnstadlaw.com*

To the best of Affiant's knowledge, the e-mail addresses above given are the actual e-mail addresses of the parties intended to be so served and said parties have consented to service by e-mail.

Dated this 9th day of January, 2015.

Liza A. Gion

Subscribed and sworn to before me this 9th day of January, 2015.

JENNIFER A. ERNST
Notary Public
State of North Dakota
My Commission Expires Aug. 19, 2015

Notary Public

## AFFIDAVIT OF SERVICE BY E-MAIL

STATE OF NORTH DAKOTA )
) ss.
COUNTY OF CASS )

The undersigned, being first sworn, says upon her oath that on January 13, 2015, she delivered via e-mail a true and correct copy of each of the following:

*Corrected Brief of Plaintiff/Appellee*

A copy of the foregoing was securely e-mailed to the address(es) as follows:

Andrew D. Cook
Ohnstad Twichell, PC
*acook@ohnstadlaw.com*

To the best of Affiant's knowledge, the e-mail addresses above given are the actual e-mail addresses of the parties intended to be so served and said parties have consented to service by e-mail.

Dated this 13th day of January, 2015.

Liza A. Gion

Subscribed and sworn to before me this 13th day of January, 2015.

JENNIFER A. ERNST
Notary Public
State of North Dakota
My Commission Expires Aug. 19, 2015

Notary Public