20180241
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
NOVEMBER 1, 2018
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Heartland State Bank, Plaintiff and Appellee, v. Jared A. Larson, Defendant and Appellant, and U.S. Express, Inc., Dale Redinger, and State of North Dakota acting by and through the Department of Human Services' Child Support Division, and all other parties in possession, Defendants.	Supreme Court No. 20180241 LaMoure County District Court 2017-CV-00014 Southeast Judicial District The Honorable Daniel D. Narum

APPEAL FROM ORDER GRANTING MOTION TO AMEND COMPLAINT DATED DECEMBER 27, 2017 (INDEX #73); ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT DATED MAY 16, 2018 (INDEX #112); ORDER FOR JUDGMENT DATED MAY 16, 2018 (INDEX #113); AND JUDGMENT ENTERED MAY 16, 2018 (INDEX #115)

BRIEF OF APPELLEE

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STATEMENT OF FACTS

[¶ 1] On May 1, 2014, Jared A. Larson ("Larson") executed and delivered to Heartland State Bank ("HSB") a Promissory Note No. 77392 ("Note 77392") in the principal sum of $200,000, plus interest at the rate of 5.99% percent. (Appendix 12-14). On June 11, 2014, Larson executed and delivered to HSB a Promissory Note No. 77444 ("Note 77444") in the principal sum of $70,000, plus interest at the rate of 5.99% percent. (App. 15-17). On May 11, 2015, Larson executed and delivered to HSB an Extension of Note 77392, and an Extension of Note 77444, wherein the maturity dates were extended to October 30, 2015. (App. 29-32); (App. 91, ¶ 11); (App. 123, ¶ 4). On July 30, 2015, Larson executed and delivered to HSB a Promissory Note No. 77886 ("Note 77886") in the principal sum of $575,393.70, plus interest at the rate of 5.85% percent. (App. 18-20).

[¶ 2] Larson also executed a mortgage on July 30, 2015, describing the following agricultural real estate located in LaMoure County, North Dakota:

> **The Northwest Quarter of Section Twelve in Township One Hundred Thirty-five North of Range Sixty-two West of the Fifth Principal Meridian, LaMoure County, North Dakota.**

(App. 21-28); (App. 91, ¶ 10); (App. 123, ¶ 4). The mortgage was recorded in the office of the LaMoure County Recorder on July 30, 2015, as Document No. 172571 (herein "Mortgage"). (App. 21); (App. 91, ¶ 10); (App. 123, ¶ 4). Larson granted the Mortgage to secure repayment of Note 77886, but also any existing and future debts between Larson and HSB, which included Note 77392 and Note 77444.[1] (App. 22); (App. 92, ¶ 13); (App. 123, ¶ 4).

[1] Note 77392, Note 77444, and Note 77886 will be collectively referred to herein as the "Notes."

[¶ 3] On December 10, 2015, Larson executed and delivered to HSB another Extension of Note 77392 and another Extension of Note 77444. The maturity dates for the notes were extended from October 30, 2015, to March 1, 2016. (App. 33-36); (App. 92, ¶ 12); (App. 123, ¶ 4).

[¶ 4] Larson defaulted under the terms of the Notes. On or about June 17, 2016, HSB commenced an action against Larson, individually, and Jared Larson Trucking, LLC, in Stutsman County District Court, Case No. 47-2016-CV-00361 (the "Stutsman County Action"). (App. 92, ¶ 15); (App. 123, ¶ 4). In the Stutsman County Action, HSB sought a judgment against Larson for the unpaid sums due under the Notes. (App. 92, ¶ 16); (App. 123, ¶ 4). HSB also sought to repossess and sell personal property collateral pledged to secure the Notes, and HSB expressly reserved the right to foreclose the Mortgage. (App. 92, ¶ 16); (App. 123, ¶ 4).

[¶ 5] Larson defaulted in the Stutsman County Action. (App. 92, ¶ 17); (App. 123, ¶ 4). On July 27, 2016, the Stutsman County District Court entered a judgment against Larson ("Stutsman County Judgment"). (App. 92-93, ¶ 18); (App. 123, ¶ 4). The Stutsman County District Court determined there was due and owing to HSB the amount of $770,791.47 as total principal, together with interest in the amount of $10,906.78, together with late fees in the amount of $200, together with costs incurred for clerk's fees in the amount of $80, service fees in the amount of $284.92, and statutory attorney's fees in the amount of $10, for a total amount due of $782,273.17, plus interest at the daily rate of $126.23 from and after July 13, 2016, to the date of the entry of judgment. Id. HSB then began efforts to collect and liquidate the personal property collateral pledged by

Larson to satisfy the Stutsman County Judgment.[2] (App. 93, ¶ 19); (App. 123, ¶ 4); (App. 139, ¶ 13).

[¶ 6] HSB determined to initiate a foreclosure of the Mortgage. HSB served Larson with the requisite Notice Before Foreclosure on January 26, 2017. (App. 38-40). After 30 days passed, HSB initiated a foreclosure action against Larson on March 14, 2017. (App. 6-37, 41).

[¶ 7] HSB moved for summary judgment on June 22, 2017. (App. 45-47); (Index #35 and #36). A hearing on the motion was set for August 2, 2017. (Index #41). Larson responded to the summary judgment motion on July 24, 2017. (Index #43-#46). In preparing for the hearing, the undersigned counsel learned that the Stutsman County Judgment had previously been entered on the unpaid sums due under Note 77392, Note 77444, and Note 77886. HSB withdrew its summary judgment motion on September 6, 2017, so it could amend the allegations in the complaint. (App. 58-59).

[¶ 8] On September 11, 2017, HSB filed and served a motion to amend the complaint and a proposed amended complaint. (App. 60-72). HSB sought only to amend some of the factual allegations and to clarify the requested relief. (App. 63-69). Larson opposed the motion arguing the proposed amendment was futile, made in bad faith, and prejudicial to his defense. (App. 73-81). The district court entered the Order Granting Motion to Amend Complaint on December 27, 2017. (App. 89).

[¶ 9] HSB served the Amended Complaint upon Larson on January 3, 2018. (App. 90-122). Larson served an answer to the Amended Complaint on January 17, 2018.

[2] HSB's efforts ultimately resulted in $451,322.48 being applied to partially satisfy the Stutsman County Judgment. (App. 139, ¶ 14).

(App. 123-26). Larson admitted he executed the Notes and Mortgage, admitted HSB commenced an action against him in Stutsman County, admitted he defaulted in the Stutsman County action, and admitted that the Stutsman County Judgment was entered against him on July 27, 2018, in the amount of $782,273.17. (App. 123, ¶ 4). Larson also admitted that the Stutsman County Judgment remained unsatisfied. Id. Larson denied "the implied allegation in paragraph 23 of Plaintiff's Amended Complaint that Larson was served with a legally sufficient notice before foreclosure" but he did not characterize the denial as an affirmative defense. (App. 124, ¶ 9). Larson did not deny that he received a notice before foreclosure at least 30 days before the foreclosure action was commenced. (App. 9, ¶ 20); (App. 42, ¶ 4).

[¶ 10] HSB moved for summary judgment on its Amended Complaint on January 26, 2018. (App. 127-41). The sole argument Larson made in opposing the summary judgment motion was that the Notice Before Foreclosure served by HSB was "fatally defective." (App. 142-49). The district court held a hearing on the motion on April 5, 2018. At the hearing, Larson conceded there were no factual disputes. (Transcript of April 5, 2018, Hearing (hereafter cited as "T."), 8). Larson also admitted during the hearing that the Stutsman County Judgment had not been satisfied. (T. 9).

[¶ 11] The district court determined that Larson received sufficient prior notice of the foreclosure through the Notice Before Foreclosure. (T. 11). The district court entered an order concluding that the Notice Before Foreclosure complied with the requirements of N.D.C.C. § 32-19-21 under the circumstances because it was served on Larson as the record owner of the subject property at least 30 days prior to the commencement of foreclosure, and there were no installments of principal and interest

due and owing by Larson under the Notes at the time of service because of the entry of the Stutsman County Judgment. (App. 150-51). The Order for Judgment was entered on May 16, 2018. (App. 152-54). Judgment was also entered on May 16, 2018. (App. 155-57). HSB served Larson with a Notice of Entry of Orders and Judgment on May 29, 2018. (App. 158-59). Larson appealed on June 12, 2018. (App. 160-62).

LEGAL ARGUMENT

[¶ 12] This Court should affirm the district court's decision granting HSB leave to amend its Complaint. Larson has not demonstrated that the district court acted arbitrarily, unreasonably, or in an unconscionable manner, or that the district court's decision was not the product of a rational mental process leading to a reasoned determination. The district court did not abuse its discretion in permitting HSB to serve the Amended Complaint.

[¶ 13] The Court should affirm the district court's order granting summary judgment in favor of HSB. Larson conceded there were no genuine issues of material fact precluding summary judgment and the district court correctly determined HSB complied with the requirements of giving notice before commencing the foreclosure action against Larson. The district court properly granted summary judgment in favor of HSB and Larson was not entitled to summary judgment in his favor.

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING HEARTLAND STATE BANK LEAVE TO AMEND ITS COMPLAINT.

A. Standard of review.

[¶ 14] A district court has discretion to grant or deny a motion to amend the pleadings. Darby v. Swenson, Inc., 2009 ND 103, ¶ 11, 767 N.W.2d 147. This Court,

therefore, reviews the district court's decision on a motion to amend the pleadings for an abuse of discretion. "The district court abuses its discretion only when it acts in an arbitrary, unreasonable, or unconscionable manner, or when its decision is not the product of a rational mental process leading to a reasoned determination." Nesvig v. Nesvig, 2006 ND 66, ¶ 12, 712 N.W.2d 299. "An abuse of discretion by the district court is never assumed, and the burden is on the party seeking relief affirmatively to establish it." Id. "The party seeking relief must show more than the district court made a 'poor' decision, but that it positively abused the discretion it has under the rule." Id. This Court "will not overturn the district court's decision merely because it is not the decision" this Court would have made. Id.

B. The district court did not abuse its discretion in allowing Heartland State Bank to amend its complaint.

[¶ 15] Larson asks this Court to reverse the district court's decision allowing HSB to amend its complaint. Larson's only argument on appeal is that the proposed amendment was futile because the Notice Before Foreclosure served by HSB was "legally insufficient." Larson failed to demonstrate the amendment was futile and failed to establish the district court abused its discretion. The district court properly exercised its discretion in allowing the amendment and the decision should be affirmed.

[¶ 16] After a responsive pleading is served, a complaint may only be amended by leave of court or by written consent of the adverse parties. N.D.R.Civ. P. 15(a). Leave is to "be freely given when justice so requires." N.D.R.Civ. P. 15(a)(2). The district courts have wide discretion in deciding motions to amend pleadings. Thimjon Farms P'Ship v. First Intern. Bank & Trust, 2013 ND 160, ¶ 28, 837 N.W.2d 327. When an amendment is sought prior to the close of discovery, then the amendment is not deemed

futile if the proposed amendment "sets forth a general scenario which, if proven, would entitle the plaintiff to relief against the defendant on some cognizable theory." Johnson v. Hovland, 2011 ND 64, ¶ 9, 795 N.W.2d 294 (citation omitted).

[¶ 17] Larson's argument here is the same argument advanced in his appeal of the district court's decision granting summary judgment to HSB. Both arguments center on whether the Notice Before Foreclosure served by HSB was defective. Larson argues that HSB's request to amend the Complaint was futile only because the Notice Before Foreclosure did not comply with the statutory requirements. Appellant's Br., ¶ 39. This argument will be addressed in more detail below, but Larson has done nothing to demonstrate the district court abused its discretion in granting HSB's request to amend the Complaint.

[¶ 18] The amendment sought by HSB was not futile because the proposed Amended Complaint set forth a "general scenario which, if proven, would entitle" HSB to relief against Larson. Hovland, 2011 ND 64, ¶ 9. The district court did not act arbitrarily, capriciously, or in an unconscionable manner by permitting HSB to amend its complaint to correct factual allegations and the relief requested. This Court must therefore affirm the district court's decision to allow HSB to amend its Complaint.

II. THE DISTRICT COURT DID NOT ERR IN GRANTING HEARTLAND STATE BANK'S MOTION FOR SUMMARY JUDGMENT.

A. Standard of review.

[¶ 19] Whether the district court properly granted summary judgment is a question of law which this Court reviews de novo on the entire record. Green v. Mid Dakota Clinic, 2004 ND 12, ¶ 5, 673 N.W.2d 257. On appeal, this Court reviews the evidence in the light most favorable to the party opposing the motion and gives that party

the benefit of all favorable inferences which reasonably can be drawn from the evidence. Id.

[¶ 20] The interpretation of a statute also presents a question of law which this Court reviews de novo. Garaas v. Cass Cty. Joint Water Res. Dist., 2016 ND 148, ¶ 7, 883 N.W.2d 436. This Court also reviews a district court's conclusions of law under the de novo standard of review. In re Pederson Trust, 2008 ND 210, ¶ 17, 757 N.W.2d 740.

B. The district court determined Larson was in default under the terms of the Mortgage.

[¶ 21] Larson's first argument is that the district court—by determining there were no "installments of principal and interest" due under the Notes because of the entry of the Stutsman County Judgment—found that Larson was not in default under the Mortgage. This argument is unsupported by the record and is entirely contrary to the district court's order. It is also a complete misinterpretation of the district court's decision.

[¶ 22] It is clear from the Order Granting Plaintiff's Motion for Summary Judgment that the district court made the exact opposite determination and found that Larson was in default under the terms of the Mortgage. (App. 151, ¶ 8). The district court granted HSB's motion for summary judgment on the Amended Complaint, which alleged Larson was in default and had breached the terms of the Mortgage. It is surprising that Larson would argue the district court found he was not in default under the Mortgage when Larson admitted his default during the hearing. (T. 9). He also admitted to the default in his Answer to Plaintiff's Amended Complaint when he admitted a judgment was entered against him in Stutsman County and admitted the judgment remained

unsatisfied. Compare (App. 93, ¶¶ 18, 20) with (App. App. 123, ¶ 4); see also (App. 24, § 15(H)).

[¶ 23] The district court correctly determined the only issue to be decided was whether the Notice Before Foreclosure complied with N.D.C.C. § 32-19-21 under the circumstances because Larson conceded his default and HSB demonstrated Larson's default by affidavit and other means. (App. 150-51, ¶¶ 5, 7, 8). Larson did not create any genuine issues of material fact in opposing HSB's motion and actually conceded there were no disputed facts at issue. The district court correctly determined Larson was in default and that HSB was entitled to foreclose the Mortgage. The district court's decision must be affirmed.

C. The district court correctly interpreted N.D.C.C. § 32-19-21 and Heartland State Bank was entitled to judgment as a matter of law.

[¶ 24] Larson argues the Notice Before Foreclosure served by HSB was "fatally defective" because it did not include the amount due and owing under the Stutsman County Judgment. Appellant's Br., ¶ 44. Larson contends the Notice Before Foreclosure therefore did not strictly comply with the requirements of N.D.C.C. § 32-19-21. His position is that the foreclosure action is void and the district court should not have granted judgment as a matter of law. Appellant's Br., ¶ 38. Larson's argument fails and the district court properly granted summary judgment.

[¶ 25] Summary judgment is a procedural device for promptly disposing of a lawsuit without a trial if there are no genuine issues of material fact or inferences which can reasonably be drawn from undisputed facts, or if the only issues to resolve are questions of law. Vansickle v. Hallmark & Assocs., Inc., 2008 ND 12, ¶ 8, 744 N.W.2d 532. Larson failed to properly support his opposition to the summary judgment motion by

affidavit or other means. In addition, Larson conceded there were no genuine issues of material fact in dispute and that the only issue for the district court to decide was a question of law. (T. 8). Therefore, the only issue before this Court is whether the district court correctly interpreted N.D.C.C. § 32-19-21 in concluding the Notice Before Foreclosure was sufficient under the circumstances.

[¶ 26] North Dakota law requires that "[a]t least thirty days and not more than ninety days before the commencement of any action or proceeding for the foreclosure of a mortgage on real estate, a written notice shall be served on the title owner of record of the real estate." N.D.C.C. § 32-19-20. The notice is to contain: (1) a description of the real estate; (2) the date and amount of the mortgage; (3) the amount due to bring the installments of principal and interest current as of a date specified, and the amount advanced by the mortgagee for taxes, insurance, and maintenance, separately itemized; and (4) a statement that if the amount is not paid within 30 days a foreclosure action will be commenced. N.D.C.C. § 32-19-21. The Notice Before Foreclosure served by HSB contained a description of the real estate, the date and amount of the mortgage, and a statement that if the amounts were not paid within 30 days a foreclosure action would be commenced. (App. 38-39). The Notice Before Foreclosure also included amounts then in default under the Notes if the Stutsman County Judgment had not already been entered against Larson. Id. On its fact, the Notice Before Foreclosure complied with all of the requirements of N.D.C.C. § 32-19-21.

[¶ 27] Larson's only contention is that the Notice Before Foreclosure should have included the amount of the Stutsman County Judgment plus post-judgment interest instead of the installments of principal and interest owed under the Notes. His argument

is contrary to the plain language of the statute. Section 32-19-21 says nothing about identifying amounts due and owing under a judgment.

[¶ 28] Section 32-19-21 does not contemplate debt obligations owed because of a judgment. There is no guidance in the statute about what, if any, amounts must be included in a Notice Before Foreclosure if the debt has become part of a judgment entered in another action in a different county. HSB therefore complied with the plain language of the statute given the statute's silence on the situation presented here.

[¶ 29] Prior to commencing the foreclosure action, HSB initiated an action against Larson in Stutsman County to repossess and sell personal property collateral and apply those proceeds against Larson's debt obligations under the Notes. Once Larson's debt obligations under the Notes became a judgment there were no longer "installments[3] of principal and interest" due under the Notes. See N.D.C.C. § 32-19-21(3) (requiring the notice to include "[t]he amount due to bring the installments of principal and interest current as of the date specified . . . ."). It would have been impossible for HSB to strictly comply with the requirements of the statute. Section 32-19-21 does not contemplate this procedural situation and the district court correctly determined the notice given by HSB was sufficient.

[¶ 30] "When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05. The Notice Before Foreclosure did comply with the plain language of N.D.C.C. § 32-19-21(3) because it contained the amounts that would have been in default at the time of

[3] An "installment" is defined as "any of several parts into which a debt or other sum payable is divided for payment at successive fixed times." Dictionary.com, available at: http://www.dictionary.com/browse/installment (last visited October 31, 2018). A judgment is not due in installments of principal and interest.

service of the Notice Before Foreclosure if the debt obligations had not become a judgment against Larson. Larson is trying to utilize the statutory language to his advantage for a situation not contemplated by the statute, and for which there is no North Dakota case law on point. He is skewing the statutory language trying to invalidate the district court's judgment and force HSB to start the process over. Larson should not benefit from this apparent technicality in the statute when he has clearly been provided sufficient notice of the foreclosure proceedings. See N.D.C.C. § 31-11-05(19) ("The law respects form less than substance.").

[¶ 31] The purpose of a notice before foreclosure "is to afford the record title owner an opportunity to be informed of the proposed foreclosure so that he can pay the amount due and avoid the cost, expense, and annoyance of foreclosure." State Bank of Kenmare v. Lindberg, 436 N.W.2d 12, 15 (N.D. 1989). Larson first received notice of HSB's intent to foreclose the Mortgage on January 26, 2017. (App. 40). This was six months after the Stutsman County Judgment was entered against Larson. HSB then waited until March 14, 2017, to start the foreclosure action. (App. 6-37, 41). Larson then knew of the new allegations pertaining to the Stutsman County Judgment when HSB served its motion seeking leave of the district court to amend its complaint on September 11, 2017. (App. 60-72). When Larson responded to the Amended Complaint he knew of the entry of the Stutsman County Judgment and admitted the Stutsman County Judgment was unsatisfied. (App. 92-93, ¶¶ 15-18); (App. 123, ¶ 4). Even after HSB served the Amended Complaint, Larson made no efforts to pay off the Stutsman County Judgment and he could do so to avoid foreclosure. (T. 7).

[¶ 32] Another purpose of giving the mortgagor-borrower notice of the amounts in default is to allow the mortgagor-borrower an opportunity to pay the amounts to avoid having the entire debt obligation accelerated. See Lindberg, 436 N.W.2d at 16 (a creditor may not accelerate the mortgage debt until 30 days after service of a notice before foreclosure). North Dakota law affords 30 days for the mortgagor to pay the default and avoid acceleration of the entire debt obligation. Here, there was no risk of Larson having the debt accelerated because a judgment had already been entered against him in Stutsman County. Larson owed the full amount of the judgment as of the date it was entered, which was July 27, 2016. Nevertheless, HSB still gave Larson 30 days to avoid foreclosure whether he owed under the Notes or under the Stutsman County Judgment, but he made no efforts to do so.

[¶ 33] If the Court were to accept Larson's position on appeal then the precedent would require a commercial or agricultural mortgagee that also has a collateral interest in personal property to always foreclose against real property ***before*** foreclosing against the personal property collateral. This result is clearly not supported by North Dakota law. See Schiele v. First Nat. Bank of Linton, 404 N.W.2d 479, 484 (N.D. 1987) ("We recognize that a lender's ability to utilize multiple items of collateral to secure an obligation is an important financial tool which benefits both the borrower and the lender. If that financial tool were unavailable, lenders would be less willing and less able to aid a borrower's financial needs.") It was entirely permissible for HSB to seek foreclosure of personal property collateral first without impairing the real estate mortgage.

> Generally, until the mortgage debt is actually satisfied, the recovery of a judgment on the obligation secured by a mortgage, without the foreclosure of the mortgage, although merging the debt in the judgment, has no effect upon the mortgage or its lien, does not merge it, and does not preclude its

> foreclosure in a subsequent suit instituted for that purpose, or the exercise of the power of sale contained in the mortgage or deed of trust—the conclusion often reached in such cases being that the debt is not destroyed by the merger and that the mortgage secures the debt in its new form as merged in the judgment.

55 Am.Jur.2d Mortgages § 463 (2018).

[¶ 34] The district court correctly interpreted section 32-19-21 and applied it to the situation here. The district court determined Larson had sufficient notice to avoid foreclosure. The district court that denying HSB's summary judgment motion would "create an absurd result." (T. 11). Statutes are to be construed to avoid absurd or illogical results. Blomdahl v. Blomdahl, 2011 ND 78, ¶ 10, 796 N.W.2d 649. This Court should therefore affirm the district court's decision.

III. THE DISTRICT COURT DID NOT ERR IN DENYING SUMMARY JUDGMENT IN FAVOR OF JARED LARSON.

[¶ 35] Larson's final argument is that the district court should have entered summary judgment in his favor. If Larson's position is that the foreclosure action is void, he is incorrect. The Notice Before Foreclosure was not "fatally defective" and even if it were that would not render the action void and entitle Larson to summary judgment.

[¶ 36] Larson argued to the district court that HSB's failure to state the amount in arrears under the Stutsman County Judgment in the Notice Before Foreclosure rendered the action void. Under North Dakota law, a judgment is void if the district court lacked subject matter jurisdiction over the action or personal jurisdiction over the parties. First Western Bank & Trust v. Wickman, 527 N.W.2d 278, 279 (N.D. 1995). "[S]trict compliance with the notice before foreclosure provisions is not a jurisdictional prerequisite to the district court's exercise of subject matter jurisdiction over the foreclosure action . . . ." Northwestern Nat'l Life Ins. v. Delzer, 425 N.W.2d 365, 368

(N.D. 1988). This Court has concluded that there is a "clear legislative intent that failure to strictly comply with the notice provisions does not automatically void all subsequent proceedings as a matter of law." First Western Bank & Trust v. Wickman, 527 N.W.2d 278, 280 (citing Delzer, 425 N.W.2d at 368). Larson was provided sufficient and adequate notice of HSB's intent to foreclose the Mortgage, and HSB complied with the requirements of section 32-19-21. The Notice Before Foreclosure is not "fatally defective" and the district court did not err in granting summary judgment in favor of HSB.

CONCLUSION

[¶ 37] The district court did not abuse its discretion by allowing HSB to serve the Amended Complaint. The district court did not err in granting summary judgment in favor of HSB. Therefore, this Court should affirm the decisions of the district court.

Dated this 1st day of November, 2018.

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CERTIFICATE OF COMPLIANCE

[¶ 38] The undersigned, as attorney for the Appellee, Heartland State Bank, in the above-entitled matter, and as the author of the above brief, hereby certify, in compliance with Rule 32(a)(5) and Rule 32(8)(a) of the North Dakota Rules of Appellate Procedure, that the above Brief was prepared with proportional typeface and the total number of words in the above Brief, excluding words in the table of contents, table of authorities, certificate of service and this certificate of compliance, totals 4,397.

Dated this 1st day of November, 2018.

/s/ Kasey D. McNary

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Heartland State Bank, Plaintiff and Appellee, v. Jared A. Larson, Defendant and Appellant, and U.S. Express, Inc., Dale Redinger, and State of North Dakota acting by and through the Department of Human Services' Child Support Division, and all other parties in possession, Defendants.	Supreme Court No. 20180241 LaMoure County District Court 2017-CV-00014 Southeast Judicial District The Honorable Daniel D. Narum
AFFIDAVIT OF SERVICE	

STATE OF NORTH DAKOTA
COUNTY OF CASS

[¶ 1] Karen Davis, being first duly sworn, deposes and says that she is a resident of the City of Casselton, State of North Dakota, is of legal age; and that she served the foregoing:

BRIEF OF APPELLEE

on November 1, 2018, by sending a true and correct copy thereof by electronic means only to the following e-mail address:

James F. Lester
Attorney for Defendant-Appellant Jared Larson
jameslesterlaw@gmail.com

[¶ 2] To the best of affiant's knowledge, the email address above given is the actual email address of the parties intended to be so served. The above document was emailed in accordance with the provisions of the Rules of Civil Procedure.

/s/ Karen Davis

Subscribed and sworn to before me this 1st day of November, 2018.

/s/ Theresa A. Luehring
Theresa A. Luehring, Notary Public
Cass County, North Dakota
Commission Expires: 2-5-21