

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Watford City Lodging,

Plaintiff and Appellant,

v.

Christopher Dean Miskin,

Defendant and Appellee,

**SUPREME COURT NO.
20180339**

Civil No. 27-2017-CV-00617

BRIEF OF APPELLANT WATFORD CITY LODGING

APPEAL FROM ORDER DENYING MOTION TO AMEND
JUDGMENT DATED AUGUST 23, 2018

THE HONORABLE DANIEL S. EL-DWEEK, DISTRICT COURT
STATE OF NORTH DAKOTA, MCKENZIE COUNTY
NORTHWEST JUDICIAL DISTRICT

Respectfully submitted,

By: */s/ William C. Black*

William C. Black (ND #07284)

LARSON LATHAM HUETTLL LLP

1100 College Drive

PO Box 2056

Bismarck, ND 58502-2056

Telephone: 701.223.5300

wblack@bismarcklaw.com

TABLE OF CONTENTS

	<u>Paragraph</u>
TABLE OF CONTENTS.....	<i>i</i>
TABLE OF AUTHORITIES.....	<i>iii</i>
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE	¶ 1
STATEMENT OF FACTS	¶ 7
ARGUMENT AND AUTHORITIES	¶ 29
I. THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER THE EVICTION PROCEEDINGS AND/OR LACKED SUBJECT MATTER JURISDICTION TO MAKE EXTRANEOUS FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	¶ 29
A. Pursuant to N.D.C.C. § 47-32-02, the district court lacked subject matter jurisdiction over the eviction proceedings.....	¶ 30
B. Pursuant to N.D.C.C. § 47-32-01, the district court lacked subject matter jurisdiction over the eviction proceedings.....	¶ 35
C. The District Court exceeded its jurisdiction by making extraneous findings of fact and conclusions of law.....	¶ 41
II. THE DISTRICT COURT ABUSE ITS DISCRETION BY MISINTERPRETING AND/OR MISAPPLYING APPLICABLE LAW.....	¶ 51
A. The district court abused its discretion by improperly joining Misikin’s counterclaims to the action of eviction, thereby misapplying N.D.C.C. § 47-32-04.....	¶ 53
B. The district court abused its discretion by	

misinterpreting N.D.C.C. § 32-03-29.....¶ 57

C. The district court abused its discretion by denying WCL’s Motion to Amend Judgment under N.D.R.Civ.P. 60(b)(1) for surprise due to the inappropriate taking of testimony and evidence at the December 11, 2017 hearing on Miskin’s Motion to Vacate Default Judgment.....¶ 62

CONCLUSION.....¶ 72

CERTIFICATE OF COMPLIANCE... ..¶ 74

CERTIFICATE OF SERVICE.....¶ 75

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Paragraph</u>
<u>Cheetah Props.1, LLC v. Panther Pressure Testers, Inc.</u> , 2016 ND 102, 879 N.W,2d 423.....	¶¶ 41, 54
<u>City of Bismarck v. Mariner Constr., Inc.</u> , 2006 ND 108, 714 N.W.2d 484.....	¶ 51
<u>Dockter v. Dockter</u> , 2018 ND 219, 918 N.W,2d 35.....	¶ 29
<u>DuPaul v. Forth Dakota Dep't of Transp.</u> , 2003 ND 201, 672 N,W.2d 680.....	¶ 29
<u>Gasic v. Bosworth</u> , 2014 ND 85, 845 N.W,2d 306.....	¶ 41
<u>Helgeson v. Locken</u> , 130 N.W.2d 573 (N.D. 1964).....	¶ 58
<u>In re Guardianship of B.K.J.</u> , 2015 ND 191, 867 N.W.2d 345.....	¶ 51
<u>Osborn v. United States</u> , 918 F.2d 724 (8 th Cir. 1990).....	¶ 37
<u>Rath v. Rath</u> , 2017 ND 80, 892 N.W,2d 205.....	¶ 29
<u>Spirit Property Management v. Vandell</u> , 2017 ND 158, 897 N.W,2d 334.....	¶¶ 41, 54
<u>Werven v. Werven</u> , 2016 ND 60, 877 N.W,2d 9.....	¶ 51
 <u>Statutes and Regulations</u>	
N.D.C.C. § 32-03-29	¶¶ 57, 58, 59, 61, 72

N.D.C.C. § 47-16-7.1(4)	¶ 48
N.D.C.C. § 47-32-01	¶¶ 1, 5, 10, 35, 36, 41, 71
N.D.C.C. § 47-32-02	¶¶ 1, 5, 6, 30, 34, 41, 55, 71
N.D.C.C. § 47-32-04	¶¶ 3, 6, 41, 42, 53, 54, 72

Rules

N.D.R.Civ.P. 12(h)(3)	¶¶ 29, 37
N.D.R.Civ.P. 59(j)	¶¶ 2, 26, 51
N.D.R.Civ.P. 60(b)	¶¶ 2, 18, 26, 29, 34, 51, 52, 70
N.D.R.Ct. 3.2(a)(3)	¶¶ 4, 62, 63, 64

STATEMENT OF THE ISSUES

- I. DID THE DISTRICT COURT LACK SUBJECT MATTER JURISDICTION OVER THE EVICTION PROCEEDINGS AND/OR LACK SUBJECT MATTER JURISDICTION TO MAKE EXTRANEOUS FINDINGS OF FACT AND CONCLUSIONS OF LAW.
 - A. Pursuant to N.D.C.C. § 47-32-02, the district court lacked subject matter jurisdiction over the eviction proceedings.
 - B. Pursuant to N.D.C.C. § 47-32-01, the district court lacked subject matter jurisdiction over the eviction proceedings.
 - C. The District Court exceeded its jurisdiction by making extraneous findings of fact and conclusions of law.
- II. DID THE DISTRICT COURT ABUSE ITS DISCRETION BY MISINTERPRETING AND/OR MISAPPLYING APPLICABLE LAW.
 - A. The district court abused its discretion by improperly joining Miskin's counterclaims to the action of eviction, thereby misapplying N.D.C.C. § 47-32-04.
 - B. The district court abused its discretion by misinterpreting N.D.C.C. § 32-03-29.
 - C. The district court abused its discretion by denying WCL's Motion to Amend Judgment under N.D.R.Civ.P. 60(b)(1) for surprise due to the inappropriate taking of testimony and evidence at the December 11, 2017 hearing on Miskin's Motion to Vacate Default Judgment.

STATEMENT OF THE CASE

[¶1] Chapter 47-32 of the North Dakota Century Code sets forth the requirements and procedures for maintaining an action for eviction. Pursuant

to N.D.C.C. § 47-32-02, a hearing on the eviction must be held not fewer than three nor more than fifteen days from the date on which the summons for the action is issued. Section 47-32-01 sets forth the circumstances for which an eviction action can be maintained.

[¶2] Rules 59 and 60 of the North Dakota Rules of Civil Procedure allow a party to file a motion to alter or amend on a judgment and to relieve a party from a final judgment. Under Rule 60(b)(1),(4)&(6), a court may grant relief from a final judgment for mistake or surprise, if the judgment is void, or for any other reason that justifies relief.

[¶3] An action for eviction pursuant to Chapter 47-32-04 is designed as a summary proceeding of limited scope; meaning that the proceeding is limited to a speedy determination of the right to possession of the property at issue and is not meant to decide matters which are extraneous to that determination.

[¶4] Rule 3.2(a)(3) of the North Dakota Rules of Court contemplates a difference between requesting a hearing for an oral argument and requesting an evidentiary hearing. The plain language of the Rule intimates that an evidentiary hearing must be specifically requested. Without such a request, the opposing party is not put on notice that evidence will be taken and can be susceptible to ambush proceedings.

[¶5] The district court did not have subject matter jurisdiction because the initial eviction hearing was scheduled, and held, outside of the time mandated

by N.D.C.C. § 47-32-02. The district court also lacked subject matter jurisdiction because the litigants failed to meet the threshold requirements of N.D.C.C. § 47-32-01. The district court exceeded its jurisdiction by issuing findings of fact, conclusions of law, and a Judgment which went beyond the scope of the summary eviction proceedings. Because the district court lacked jurisdiction, its Judgment is void and Plaintiff/Appellant is entitled to relief from the same.

[¶6] The district court abused its discretion in denying Plaintiff/Appellant's motion to amend judgment due to a mistake of law, surprise, the fact that the judgment was void, or other reasons which justified relief. The district court misapplied N.D.C.C. § 47-32-04 by improperly joining counterclaims to the summary eviction proceeding. The district court misinterpreted N.D.C.C. § 32-03-29. Finally, WCL's motion to amend should have been granted on the basis of surprise because the district court erred in receiving testimony and evidence at a hearing that was not noticed by Defendant/Appellee as an evidentiary hearing. As such, the Order Denying Motion to Amend Judgment, dated August 23, 2018 should be reversed.

STATEMENT OF THE FACTS

[¶7] On or about January 23, 2017, the Plaintiff/Appellant, Watford City Lodging, LLC (“WCL”), as seller, and the Defendant/Appellee Christopher Dean Miskin (“Miskin”), as purchaser, entered into a purchase agreement for the sale of a home located in Arnegard, McKenzie County, North Dakota (“Property”). (App. Pg. 9). The purchase price was to be eighty thousand dollars (\$84,500.00). *Id.*

[¶8] Concurrently with the purchase agreement, the parties executed an early occupancy agreement, whereby Miskin would be able to occupy the Property prior to the closing of the sale, which was to take place on or before June 10, 2017. (App. Pg. 9). Pursuant to the terms of the early occupancy

agreement, Miskin was to pay an earnest money deposit of eight thousand dollars (\$8000.00), which was nonrefundable if the sale was not finalized. Miskin was also required to have water, heat, and electrical services transferred into his name and to remain responsible for those bills as of the date of his occupancy of the Property. (App. Pg. 8). Miskin was also required to obtain renters insurance on personal possessions until the date of sale. *Id.*

[¶9] Closing on the Property did not occur by June 10, 2017, although the parties dispute who is at fault for the failure to close. WCL retained the services of Jordan Evert (“Evert”) of Furuseth Olson & Evert, P.C. and by letter dated July 6, 2017, Evert informed Miskin that he was in default of the purchase agreement and that WCL was entitled to the earnest money and to cancel the purchase agreement. (App. Pg. 29). Evert’s letter further informed Miskin that WCL would still be willing to sell the property to him for the new price of \$120,000.00 with a new closing date of July 31, 2017. *Id.* The letter stated that if Miskin did not agree, then WCL would exercise its rights under the purchase and early occupancy agreements.

[¶10] Miskin did not agree to the new terms proposed by WCL, and on August 18, 2017, WCL’s property manager supplied Miskin with a Notice to Evict (“August 18th Notice”), providing three-day notice of intention to evict as required by NDCC § 47-32-01. Miskin did not vacate the property. (App. Pg. 20).

[¶11] On August 23, 2017, Evert caused a Notice of Intention to Evict (“August 23rd Notice”) to be served upon Miskin. (App. Pg. 31, ¶ 1) Miskin again refused to vacate the property. Evert took no further action on the August 23rd Notice. On November 22, 2017, through newly retained counsel, Derek Thooft (“Thooft”) of Sand Law, PLLC, WCL filed its Complaint for eviction on WCL’s behalf. (App. Pg. 6). The August 18th Notice was filed as an exhibit to the Complaint. (App. Pg. 20).

[¶12] Also on November 22, 2017, Thooft caused a Notice of Hearing to be served upon Miskin. (App. Pg. 21). The Notice of Hearing erroneously stated “that a scheduling conference hearing has been requested ... by counsel for Plaintiff. This hearing is scheduled for December 11, 2017 at 10:00 a.m.” *Id.* The hearing noticed by Thooft was, in actuality, an eviction hearing. The hearing took place as scheduled, and neither Miskin or counsel for him appeared at the hearing. (App. Pg. 22, ¶ 1). From the bench, the district court entered judgment against Miskin and awarded WCL immediate possession of the Property. *Id.* Findings of Fact, Conclusions of Law and Order for Judgment, as well a Judgment and a Writ of Eviction, were entered by the district Court on December 14, 2017. (App. Pg. 22, 24, 25).

[¶13] That same day, the McKenzie County Sheriff served the Writ of Eviction on Miskin. (App. Pg. 27). Miskin refused to grant entry to the Sheriff’s Office. *Id.* As a result, the Sheriff’s Office forced entry into the Property and forcibly

removed Miskin and the other occupants, allowing them to take essential personal property and live animals. *Id.* The Property was then turned over to WCL. *Id.*

[¶14] At some point between receipt of Evert's letter and the filing of the Summons and Complaint, Attorney Greg W. Hennessy ("Hennessy") was retained by Miskin regarding the purchase agreement dispute. Hennessy claimed that he had contacted Evert to notice his appearance on or about August 23, 2017. (Index # 25.). Hennessy did not file a Notice of Appearance with the district Court, however, on the day of the eviction hearing, he telephoned the district Court and sent an email to the Judge in an attempt to notice his appearance to the Court. *Id.*

[¶15] On January 10, 2018, Thooft was removed as WCL's attorney of record and replaced by Attorney Richard Sand ("Sand"), also of Sand Law, PLLC. (App. Pg. 33). Attorney Tim Prindiville ("Prindiville") of Sand Law also began working on the case. On February 7, 2018, Miskin, through Hennessy, served and filed his Motion to Vacate Default Judgment. (App. Pg. 35). A "Notice of Motion" was served and filed by Hennessy which only stated "[p]lease take notice that the foregoing motion will be held 03/16/2018 at 1:30 pm, McKenzie County Courthouse, Watford City, North Dakota." (App. Pg. 34). None of Miskin's filings indicated that an evidentiary hearing had been requested.

[¶16] On February 9, 2018, Miskin commenced a separate action against WCL

and its owner Ken Hartog (“Hartog”) (McKenzie County Case No. 27-2018-CV-00096). This case made claims against WCL and Hartog for Specific Performance and Breach of Contract. (App. Pg. 73, ¶ 13).

[¶17] On March 13, 2018, WCL, through Sand and Prindiville, filed its Answer Brief. (Index # 29). The hearing for Miskin’s motion to vacate the default judgment took place on March 16, 2018. On Miskin’s behalf, Hennessy appeared in person for the hearing, while Sand and Prindiville appeared for WCL by telephone. (App. Pg. 53, ¶ 1).

[¶18] At this hearing, Hennessy first called Miskin as a witness. Tr. 4: 9-10. WCL’s counsel objected to Miskin testifying, and the following exchange took place:

MR. PRINDIVILLE: Your Honor, I must object. There has been no notice that Mr. Hennessey [sic] would be calling witnesses. We have had absolutely no chance to prepare or bring our own witnesses to bear in this matter. It was my understanding this was a Rule 60 Motion. And I object to the taking of testimony and presenting of evidence. This case was decided, and the Judgment was entered over three months ago.

THE COURT: Well, all right. I’ll let you respond, Attorney Hennessey [sic]. And I’ll let you know what I think.

MR. HENNESSEY [sic]: The three months has got nothing to do with anything. Rule 60(b) allows the Motion to be brought up to a year after the occurrence. And we’re trying to establish a fact basis for foundation for vacating the default Judgment that was improperly obtained.

THE COURT: Any other response, Counsel?

MR. PRINDIVILLE: Yes, Your Honor. We simply haven't been given any opportunity to prepare for this. We had absolutely no idea, and were not given any notice that there would be live testimony, let alone – or any exhibits, should there be any. It seems that this is completely prejudicial to our position.

THE COURT: Well, with respect, this matter was scheduled for three hours. And it's not often that there would be an hour and a half of argument on either side on this kind of a Motion. So, I was expecting testimony, I guess. And I do believe Attorney Hennessey is able to – if he thinks that there is any facts or any evidence that I need to hear about in order to grant the Motion, I think it only stands to reason that – it might be different if this were a Summary Judgment where's [sic] there some undisputed facts. There wouldn't be any facts taking or any evidence taken. But under these circumstances, I think this is completely appropriate. So, I'll overrule the objection. You can re-ask the question.

Tr. 5:15 – 6:22.

[¶19] As noted in the objection, WCL's counsel received no advance notice of who Miskin's witnesses would be or what evidence would be offered by Miskin. Over the objection of Sand and Prindiville, the Court took testimony from Miskin and from John Voll. Tr. 23: 14. The Court also received several exhibits from Hennessey that were not provided to WCL's counsel prior to the hearing. (App. Pg. 36-40). Because there was no notice that testimony and evidence would be received by the district court, no witnesses appeared on behalf of

WCL, nor was any evidence presented.

[¶20] Ruling from the bench, the court ruled that:

“A summary proceeding for this file is simply not the appropriate venue for this matter. You didn’t have a lease. It was an Early Occupancy Agreement that didn’t have any rent. And furthermore, the \$8000 as I read the Early Occupancy Agreement – and I don’t know if this is the case or not. But by the time it was signed by all parties, I think it implies that it was already paid. Because it says earnest money, \$8000, to be nonrefundable if sale is not finalized. That implies that it’s already there. So even any claim for nonpayment on this record, I just don’t think can be maintained.

I don’t think this is a correct procedure for this kind of occupancy. I think that based on my review of the exhibits herein, the Early Occupancy, the purchase agreement, I don’t think that there was – I’m not convinced at least on this record at this point that there was any breach by Mr. Miskin. I mean, I was under the impression, I think, when this was brought to me that this was some sort of lease. And there was a nonpayment. And so forth. But that isn’t the case here.” (Tr. 43: 23 – 44: 15).

[¶21] The Court further stated that “... I even question whether or not I had jurisdiction to hear this case at an eviction hearing given the state of the occupancy and the tenancy in this matter.” (Tr. 45: 18-22). The Court granted Miskin’s motion and vacated the default judgment, asking Attorney Hennessy to draft the Order. (Tr. 45: 23 – 46: 2).

[¶22] On March 23, 2018, the Sand and Prindiville, on behalf of Sand Law, filed a Motion to Withdraw as Counsel. (App. Pg. 42). On April 20, 2018, the

Court issued its order granting Sand Law's motion and allowing them to withdraw their representation of WCL. (App. Pg. 45). On April 23, 2018, Hennessy filed his first proposed Findings of Fact, Conclusions of Law and Order for Judgment with the district court. (App. Pg. 46). On April 24, 2018, Attorney William C. Black and the firm of Larson Latham Huettl, LLP entered their Notice of Appearance on behalf of WCL. (App. Pg. 52). On April 26, 2018, Hennessy resubmitted his proposed Findings of Fact, Conclusions of Law and Order for Judgment ("proposed findings"), and proposed Judgment. (App. Pg. 53).

[¶23] On May 11, 2018, WCL, via its newly retained counsel, submitted its Objection to Plaintiff's Proposed Findings of Fact, Conclusions of Law and Order for Judgment. (App. Pg. 62). WCL objected to the majority of Miskin's proposed findings either in whole, or in part. WCL objected on the grounds that the offensive proposed findings were either not addressed by the court, mischaracterizations of what was stated at the hearing, were not contained in the record or the court's statements, were not properly before the court, amongst other objections. *Id.* WCL objected to "all similar and identical statements and language in the proposed Judgment submitted by [Miskin]" and stated that "[s]aid objections are on the same grounds as the foregoing." *Id.*

[¶24] Concurrently with its objection, WCL submitted its own proposed

Findings of Fact, Conclusions of Law and Order for Judgment. (App. Pg. 66). WCL's proposed findings were narrowly tailored to the issue of vacating the default judgment and stated that "questions of Wrongful Eviction, Breach of Contract, Slander of Title, and damages are not properly before the Court in this summary eviction proceeding...." (App. Pg. 67).

[¶25] On June 4, 2018, the district court entered its Findings of Fact, Conclusions of Law and Order for Judgment, along with its Judgment, adopting Hennessy's proposed findings and judgment in substantially the same form as they were submitted. (App. Pg. 69, 75).

[¶26] On June 7, 2018, and pursuant to N.D.R.Civ.P. 59(j) and 60(b), WCL submitted its Motion to Amend Judgment and its brief in support to the district court. (App. Pg. 78)(Index # 63). WCL's motion and brief argued that the district court committed a mistake of law by ruling on matters other than the possession of the Property, that the district court erred in receiving testimony and evidence because no notice was given that the March 16, 2018 hearing was an evidentiary hearing, and that Misikin's Motion to Vacate Default Judgment should have been the only question before the court at the March 16, 2018 hearing. Index # 63. WCL requested an amended judgment striking paragraphs 3, 7, 8, 9, 12 and 13 of the Judgment or, alternatively, an amended judgment striking all but paragraphs 1, 10, 14, 15 and 16 of the Judgment and setting the matter for a hearing on the merits within 3-15 days of the entry of

the amended judgment. *Id.*

[¶27] On June 22, 2018, Miskin filed a Brief Objecting to Motion to Amend Judgment which included allegations which were neither included in any prior pleadings or raised at any hearing. Index # 65. On August 23, 2018, the district court entered its Order Denying Motion to Amend Judgment. (App. Pg. 79). This Order stated that “[t]his matter was inappropriate for a summary eviction proceeding *ab initio*...” and that “The summary eviction proceedings in Chapter 47-32 are inappropriate....” *Id.*

[¶28] In denying WCL’s Motion to Amend, the district court stated that “[b]ecause [Miskin] moved the Court to vacate the eviction order, he was required to present evidence that he was entitled to relief. To support the Court’s conclusion the judgment should be vacated, specific findings of fact need to be made. For these reasons, [WCL’s] motion is denied.” *Id.* WCL timely filed its Notice of Appeal on September 14, 2018. (App. Pg. 84).

ARGUMENT AND AUTHORITIES

I. THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER THE EVICTION PROCEEDINGS AND LACKED SUBJECT MATTER JURISDICTION TO MAKE EXTRANEIOUS FINDINGS OF FACT AND CONCLUSIONS OF LAW.

[¶29] “We review challenges to a court’s subject matter jurisdiction under a de novo standard of review.” *Rath v. Rath*, 2017 ND 80, ¶ 11, 892 N.W.2d 205. “If a district court does not have subject-matter jurisdiction, it is compelled to

dismiss the action.” *DuPaul v. North Dakota Dep't of Transp.*, 2003 ND 201, ¶ 5, 672 N.W.2d 680 (citing N.D.R.Civ.P. 12(h)(3)). “on motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons ... (4) the judgment is void....” N.D.R.Civ.P. 60(b)(4). “A judgment is void only if the court lacks subject-matter jurisdiction over the action or personal jurisdiction over the parties.” *Dockter v. Dockter*, 2018 ND 219, ¶ 13, 918 N.W.2d 35.

A. Pursuant to N.D.C.C. § 47-32-02, the District Court lacked subject matter jurisdiction over the eviction proceedings.

[¶30] “In any action for eviction the time specified in the summons for the appearance of the defendant may not be fewer than three nor more than fifteen days from the date on which the summons is issued.” N.D.C.C. § 47-32-02.

[¶31] Miskin was served with an eviction summons and complaint on November 22, 2017. (App. Pg. 4). This fact was admitted to in Miskin’s pleadings. (Index # 25). Miskin argued that section 47-32-02 “does not permit an eviction hearing 19 days after summons is issued, therefore the Court had no jurisdiction to issue any order in this case on 12/11/17.” *Id.*

[¶32] In its Findings of Fact, the district court noted that Miskin was “served an eviction summons and complaint and notice of hearing on Nov. 22, 2017....” (App. Pg. 69). The Court further stated that “[o]n Dec. 11, 2017, Attorney Thooft appeared in person at the eviction hearing....” *Id.* The fact that the

hearing took place nineteen (19) days after the issuance of the summons is undisputed. As such, the district court did not have jurisdiction over the parties.

[¶33] This finding alone was sufficient to grant Miskin's Motion to Vacate Default Judgment. Once the district court determined it did not have subject-matter jurisdiction, it was required to dismiss the action. That is not what the district court did. Instead, the district court proceeded to make numerous additional findings of fact and conclusions of law. At one point during the proceedings, the Judge even stated "...I even question whether or not I had jurisdiction to hear this case at an eviction hearing given the state of the occupancy and the tenancy in this matter." Tr. 45: 19-22. While this jurisdictional question had to do with the tenancy and occupancy, it shows that the district court was aware of the jurisdictional issues and still issued findings of fact and conclusions of law instead of dismissing the action.

[¶34] The December 11, 2017 hearing took place outside of the time prescribed by N.D.C.C. § 47-32-02. As such, the appropriate action by the Court would have been to vacate its default judgment due to Rule 60(b)(4) and then to issue an order of dismissal. The district court did not have subject matter jurisdiction to make any additional findings of fact or conclusions of law. Based on the foregoing, the district court committed reversible error in denying WCL's Motion to Amend Judgment and/or failing to dismiss the action.

B. Pursuant to N.D.C.C. § 47-32-01, the District Court lacked subject matter jurisdiction over the eviction proceedings.

[¶35] “An action of eviction to recover the possession or real estate is maintainable in the proper district court when:

1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same.
2. A party, after peaceably entering upon real property, turns out by force, threats, or menacing conduct the party in possession.
3. A party, by force or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the possession was acquired peaceably or otherwise.
4. A lessee, in person or by subtenant, holds over after the termination of the lease or expiration of the lessee's term, or fails to pay rent for three days after the rent is due.
5. A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity in the real estate.
6. A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a district court.
7. A lessee or a person on the premises with the lessee's consent acts in a manner that unreasonably disturbs other tenants' peaceful enjoyment of the

premises.

8. The lessee violates a material term of the written lease agreement between the lessor and lessee.

N.D.C.C. § 47-32-01.

[¶36] In its Order Denying Motion to Amend Judgment, the district court correctly stated:

“This matter was inappropriate for a summary eviction proceeding *ab initio*. Section 47-32-01 N.D.C.C. governs when an action for eviction is maintainable. Subsections 1, 2, and 3 relate to holding over by force, threat, intimidation, and the like. Subsection 5 relates to foreclosure and subsection 6 to partition. The remainder of the subsections (4, 7, and 8) relate to lessees. There is no evidence that Mr. Miskin was holding over by way of force or intimidation. Furthermore, Mr. Miskin is not a lessee, but held a tenancy other than leasehold. The summary eviction proceedings in Chapter 47-32 are inappropriate for this matter because these types of tenancies are not covered by N.D.C.C. 47-32-01.”

(App. Pg. 80).

[¶37] Jurisdiction is a threshold question that should be decided at the outset of litigation. *Osborn v. United States*, 918 F.2d 724, 729 (8th Cir. 1990). Stated another way, before a court can make factual findings, that court must first have jurisdiction. While it does stand to reason that certain factual findings must be made to determine whether a court has jurisdiction, any finding of fact or conclusion of law made in excess of the jurisdictional question, once that question is answered in the negative, is void and the court must dismiss the

action pursuant to N.D.R.Civ.P. 12(h)(3).

[¶38] As noted herein, the district court agreed that “this matter was inappropriate for a summary eviction proceeding *ab initio*.” To vacate the December 11, 2017 default judgment, the district court needed only to make findings necessary to determine that it did not have jurisdiction over the initial proceeding. The district court did that. However, instead of dismissing the action, the district court proceeded to make findings of fact and conclusions of law that were in excess of its jurisdiction. Amongst these are the following:

“¶3. There never was or is a lease agreement of any kind between the parties, but only a purchase agreement for \$80,000.00 which Plaintiff breached by failure to sign the deed and closing documents on June 10, 2017.”

“¶7. There never was \$8000.00 unpaid rent, but instead a pre-paid \$8000.00 down payment on the \$80,000.00 purchase price, plus another \$8000.00 deposit to escrow for closing, as paid by Mr. Miskin totaling \$16,000.00 in escrow as of June 10, 2017 through March 16, 2018.”

“¶8. It was wrongful eviction by Plaintiff LLC to use Ch. 47-32 NDCC against Defendant Miskin.”

“¶9. There is no evidence of breach of contract by Mr. Miskin.”

“¶12. Mr. Miskin is entitled to treble damages for wrongful eviction in an amount to be determined;” and

“¶13. Mr. Miskin has filed suit against Plaintiff LLC and Mr. Hartog individually for breach of contract and specific performance based on the purchase agreement

in McKenzie Civ. No. 27-2018-CV-00096 which will address the other and further damages suffered at the hands of the defendants named therein."

(App. Pg. 75-76)(Emphasis added).

[¶39] These findings of fact and conclusions of law clearly went beyond the jurisdiction of the district court. Indeed, they appear to have decided matters that were more appropriate for the separate civil suit that Miskin brought against WCL and which was specifically mentioned in the Judgment.

[¶40] Based on the foregoing, the district court committed reversible error in denying WCL's Motion to Amend Judgment and/or failing to dismiss the action.

C. The district court exceeded its jurisdiction by making extraneous findings of fact and conclusions of law.

[¶41] "Eviction actions under N.D.C.C. ch. 47-32 are designed as summary proceedings." *Gasic v. Bosworth*, 2014 ND 85, ¶ 7, 845 N.W.2d. 306. This Court has explained this procedure as follows:

"Section 47-32-02, N.D.C.C., provides for an expedited procedure, with the defendant allowed between three and fifteen days to appear and defend in the action. If the court finds for the plaintiff, the court must enter judgment granting immediate restitution of the premises to the plaintiff, but the court may delay execution in case of hardship for a reasonable period not exceeding five days. N.D.C.C. § 47-32-04. The statute strictly limits the parties' ability to combine the eviction with other claims and precludes the defendant from interposing a counterclaim, except as a setoff to the plaintiff's claim for damages, rent, or

profits. N.D.C.C. § 47-32-04. **The proceeding is limited to a speedy determination of the right to possession of the property, without bringing in extraneous matters.** The purpose of the statute is to provide an inexpensive, expeditious, and simple means to determine possession."

Spirit Property Management v. Vandell, 2017 ND 158, ¶ 4, 897 N.W.2d 334 (quoting *Cheetah Props. 1, LLC v. Panther Pressure Testers, Inc.*, 2016 ND 102, ¶ 20, 879 N.W.2d 423)(emphasis added). "While '[t]he defendant may show the character of the possessory rights claimed by the parties[,], the right to possession of the real estate is the only fact that can be rightfully litigated unless damages or rent is claimed." *Id.* (quoting *Gasic*, at, 8). "[A] party seeking damages in a summary eviction proceeding under N.D.C.C. § 47-32-01(4) is limited to those specified under N.D.C.C. § 47-32-04." *Id.* (quoting *Cheetah Props.*, at 20). "Specifically, a party may seek damages resulting from 'rents and profits accrued or for damages arising by reason of the defendant's possession." *Id.* (emphasis in the original).

[¶42] Section 47-32-04 specifically states that:

An action of eviction cannot be brought in a district court in connection with any other action, except for rents and profits accrued or for damages arising by reason of the defendant's possession. **No counterclaim can be interposed in such action, except as a setoff to a demand made for damages or for rents and profits.**

N.D.C.C. § 47-32-04 (emphasis added).

[¶43] It is well-settled law that a counterclaim may only be interposed in a

summary eviction proceeding if it is for a setoff to a demand made for damages, rents, or profits. At no time did Miskin make a counterclaim alleging a setoff for damages, rents, or profits. However, the Judgment does state that “Attorney Hennessy gave notice of appearance by phone and email to Plaintiff’s Attorney Evert on or about August 23, 2017 and stated a claim for breach of contract....” (App. Pg. 75). No such claim was filed in the eviction proceedings. Even had a counterclaim been made for a breach of contract, it is clear that such a claim is beyond the scope of the summary eviction proceeding.

[¶44] Even though Miskin’s claim of breach of contract was not filed in the eviction proceeding, the district court made findings of fact and conclusions of law pertaining to Miskin’s purported breach of contract claim. (App. Pg. 70-73, 75,76). While finding whether the Early Occupancy Agreement was a contract between the parties, and not a lease agreement, was pertinent to the jurisdictional issue, all findings of fact and conclusions of law beyond the question of whether the Early Occupancy Agreement was a lease or not were beyond the scope of a summary eviction proceeding.

[¶45] Paragraph 3 of the Judgment stated that there was "only a purchase agreement for \$80,000.00 which Plaintiff breached by failure to sign the deed and closing documents on June 10, 2017." (App. Pg. 75)(emphasis added).

Findings regarding a breach of contract are clearly outside the scope of a summary eviction proceeding. Breach of contract is a claim that is extraneous

to the possession of the property or damages arising from Defendant's possession of the premises. Likewise, Paragraph 9 of the Judgment states that "[t]here is no evidence of breach of contract by Mr. Miskin." (App. Pg. 76). This too is a finding that pertains to an action for breach of contract that is extraneous to, and outside the scope of, a summary eviction proceeding.

[¶46] Paragraph 7 of the Judgment notes that there was "a pre-paid \$8000.00 down payment on the \$80,000.00 purchase price, plus another \$8,000.00 deposit to escrow for closing, as paid by Mr. Miskin totaling \$16,000.00 in escrow as of June 10, 2017 through March 16, 2018." *Id.* Again, this finding is extraneous to the issue of which party was entitled to the premises. It is also irrelevant because no claim of offset was made by Defendant.

[¶47] Paragraph 13 of the Judgment states that "Mr. Miskin has filed suit against Plaintiff LLC and Mr. Hartog individually for breach of contract and specific performance based on the purchase agreement in McKenzie Civ. No. 27-2018-CV-00096 which will address the other and further damages suffered at the hands of the defendants named therein." *Id.*(Emphasis added). While the fact that Defendant has brought suit against Plaintiff and Ken Hartog is of public record, it is extraneous to the summary eviction proceeding. The emphasized language is most concerning because it presupposes that damages have been, or will be, found in Case No. 27-2018-CV- 00096. **This is especially disturbing because Hartog is not a party to the instant action.** Every finding of

fact and conclusion of law contained within Paragraph 13 of the Judgment is outside the scope of a summary eviction proceeding.

[¶48] Paragraph 8 of the Judgment states that "[i]t was wrongful eviction by Plaintiff LLC to use Ch. 47-32 NDCC against Defendant Miskin." (App. Pg. 76). Paragraph 12 of the Judgment states that "Mr. Miskin is entitled to treble damages for wrongful eviction in an amount to be determined." *Id.* Wrongful Eviction is its own action and is not a permissible counterclaim in a summary eviction proceeding. In fact, "wrongful eviction" is not found anywhere in Chapter 47-32. Nothing in Chapter 47 allows for treble damages for anything other than a landlord wrongfully holding a security deposit. *See* N.D.C.C. 47-16-7.1(4). Miskin wholly failed to present any grounds or authority upon which he would be entitled to treble damages in a summary eviction proceeding.

[¶49] The findings identified above are extraneous to the determination to be made in a summary eviction proceeding; i.e. determining which party is entitled to possession of the premises. Furthermore, because the only permissible counterclaim in a summary eviction proceeding is for a setoff to a demand made for damages or for rents and profits, and because no such counterclaim was made, each of the findings highlighted above are extraneous and should not have been ruled upon by the district court.

[¶50] Based on the foregoing, the district court committed reversible error in denying WCL's Motion to Amend Judgment and/or failing to dismiss the

action. As such, the district court's findings of fact and conclusions of law extraneous to the determination of which party is entitled to possession of the Property, including, but not limited to, any findings or conclusions related to breach of contract, wrongful eviction, and damages should be stricken from the Judgment and the case should be dismissed.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY MISINTERPRETING AND/OR MISAPPLYING APPLICABLE LAW.

[¶51] “A district court’s decision on a motion to alter or amend a judgment under N.D.R.Civ.P. 59(j) or on a motion for relief from judgment under N.D.R.Civ.P. 60(b) will not be reversed on appeal unless the court abused its discretion.” *Werven v. Werven*, 2016 ND 60, ¶ 24, 877 N.W.2d 9. “A court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, its decision is not the product of a rational mental process leading to a reasoned determination, or it misinterprets or misapplies the law.” *In re Guardianship of B.K.J.*, 2015 ND 191, ¶ 4, 867 N.W.2d 345 (citing *City of Bismarck v. Mariner Constr., Inc.*, 2006 ND 108, ¶ 8, 714 N.W.2d 484.

[¶52] Rule 60(b)(1) and (6) give a district court authority to grant relief from a Judgment for “mistake, inadvertence, surprise ... excusable neglect” or “any other reason that justifies relief.” N.D.R.Civ.P 60(b)(1),(6). The district court’s Judgment was based on multiple mistakes, misapplications, and misinterpretations of law. The first misapplication of the law occurred when

the district court allowed an extraneous proceeding for wrongful eviction to proceed in the summary eviction proceeding. The district court then misapplied the law of wrongful eviction.

A. The district court abused its discretion by improperly joining Miskin’s counterclaims to the action of eviction, thereby misapplying N.D.C.C. § 47-32-04.

[¶53] In pertinent part, N.D.C.C. § 47-32-04 states as follows:

“An action of eviction cannot be brought in a district court in connection with any other action, except for rents and profits accrued or for damages arising by reason of the defendant's possession. **No counterclaim can be interposed in such action, except as a setoff to a demand made for damages or for rents and profits.** If the court finds for the plaintiff in the action, the court shall enter judgment that the plaintiff have immediate restitution of the premises....”

N.D.C.C. § 47-32-04(Emphasis added). This section makes it clear that a defendant is not allowed interpose any counterclaim other than as a setoff to the plaintiff’s demand for damages, rents, and profits.

[¶54] As noted in *Spirit Property Management*, supra, “[A] party seeking damages in a summary eviction proceeding ... is limited to those specified under N.D.C.C. § 47-32-04.” *Spirit Property Management*, 2017 ND 158, ¶ 4 (quoting *Cheetah Props.* at ¶ 20). Indeed, Miskin’s Brief in Support of Motion to Vacate Default Judgment anticipated that the wrongful eviction action and the determination of appropriate damages would be a separate action when it stated:

“Christopher Miskin requests the Court to vacate the default judgment of Dec. 11, 2017 so that he can proceed to the specific performance and wrongful eviction case against Watford City Lodging and its principal member Ken Hartog, and to award attorney fees costs and disbursements for Watford Lodging’s misconduct.”

(Index # 25).

[¶55] It is undisputed that this action was brought pursuant to N.D.C.C. § 47-32-02. An action for wrongful eviction is not provided for in Chapter 47-32. It is a separate and distinct action from an eviction proceeding itself. Moving the district court to vacate the default judgment did not change the character of the proceeding. The case remained an eviction action governed by Chapter 47-32.

[¶56] By combining Miskin’s cause of action for wrongful eviction with the summary eviction proceeding, the district court abused its discretion by misapplying the applicable law. As such, the district court’s findings, other than those necessary to the determination of the question of possession of the Property, should be stricken and the instant case should be dismissed.

B. The district court abused its discretion by misinterpreting N.D.C.C. § 32-03-29.

[¶57] Even if Miskin was able to join the wrongful eviction action with the action of eviction, which he is not, the district court made a mistake by misinterpreting section 32-03-29 of the North Dakota Century Code.

[¶58] Section 32-03-29 states: “**For forcibly ejecting or excluding a person from the possession of real property**, the measure of damages is three times such a sum as would compensate for the detriment caused to the person by the act complained of.” N.D.C.C. § 32-03-39 (Emphasis added). This Court has held that “[t]he term ‘forcibly ejecting and excluding a tenant’ means force of an unusual kind which tends to bring about a breach of the peace, such as an injury with a strong arm, or a multitude of people, or in a riotous manner, or with personal violence, or with threat or meance [sic] to life or limb, or under circumstances which would naturally inspire fear.” *Helgeson v. Locken*, 130 N.W.2d 573, 574–75 (N.D. 1964). Section 32-03-39 and this Court’s decision in *Helgeson* make it clear that wrongful eviction does not simply mean that a person was evicted from real property for an improper reason.

[¶59] In the district court’s Order Denying Motion to Amend Judgment, the court stated “in its written findings, the Court found due to the Defendant’s unlawful eviction, he was entitled to treble damages, pursuant to N.D.C.C. 32-03-29” (App. Pg. 80).¹ As noted above, the district court also stated that “[t]his matter was inappropriate for a summary eviction proceeding *ab initio*.” *Id.* Despite the fact that the matter was inappropriate for a summary eviction proceeding, WCL obtained what it thought was a lawful Writ of Eviction on

¹ It is noted that N.D.C.C. § 32-03-39 is not mentioned anywhere in the district court’s written findings or its Judgment.

December 14, 2017. (App. Pg. 24). This Writ was then used by the McKenzie County Sheriff's Department in good faith to remove Miskin from the Property. (App. Pg. 27).

[¶60] As shown in the *Helgeson* decision, *supra*, there are elements to a wrongful eviction claim that must be proven. The facts that WCL obtained a court order for Miskin's eviction and that Miskin was removed from the premises by the McKenzie County Sheriff's Department are uncontroverted. These would have been defenses to Miskin's claims of wrongful eviction, had WCL known that the district court was going to litigate them *during a hearing on a motion to vacate a default judgment*. WCL was not even given notice of what authority the district court would be proceeding under to make such findings, even though such findings were extraneous to the eviction.

[¶61] By misinterpreting N.D.C.C. § 32-03-39, the district court abused its discretion. As such, the district court's findings, other than those necessary to the determination of the question of possession of the Property, should be stricken.

C. The district court abused its discretion by denying WCL's Motion to Amend Judgment under N.D.R.Civ.P. 60(b)(1) for surprise due to the inappropriate taking of testimony and evidence at the December 11, 2017 hearing on Miskin's Motion to Vacate Default Judgment.

[¶62] Rule 3.2(a)(3) of the North Dakota Rules of Court states that "[r]equests for oral argument or the taking of evidence must be made not later than seven

days after expiration of the time for filing the answer brief.... **If an evidentiary hearing is requested in a civil action**, notice must be served at least 21 days before the time specified for the hearing." N.D.R.Ct. 3.2(a)(3)(Emphasis added).

[¶63] As shown in paragraph 62, above, the North Dakota Rules of Court require that requests for oral argument **OR** the taking of evidence be noticed to the opposing party/parties. N.D.R.Ct. 3.2(a)(3). Furthermore, Rule 3.2(a)(3) specifically notes that notice for an evidentiary hearing is to be served at least 21 days prior to the hearing. *Id.* This is not a requirement for notice of oral argument. A full reading of Rule 3.2(a)(3) clearly shows that requests for oral argument and evidentiary hearings are not interchangeable. It stands to reason that the rule's intent is that the opposing party is to be given notice that evidence will be presented in order to prevent unfair surprise.

[¶64] Sound public policy would dictate that an opposing party be given notice that evidence and testimony are to be taken at a hearing so that the opposing party is given a fair chance to review and rebut the same. When notice is given for an oral argument, the parties have had a chance to submit briefs addressing one another's positions. Those briefs are required to be served on the opposing parties. N.D.R.Ct. 3.2(a)(2). This prevents surprise and allows parties to address one another's arguments.

[¶65] The "Notice of Motion," which should have been appropriately titled as a

“Notice of Hearing,” was served on February 7, 2018, and stated "that the foregoing motion will be held 03/16/2018 at 1:30 pm, McKenzie County Courthouse, Watford City, North Dakota." (App. Pg.). This Notice wholly failed to indicate that Miskin intended to introduce testimony and evidence. Furthermore, there is nothing in the record which shows that an evidentiary hearing was ever requested.

[¶66] At the March 16, 2018 hearing, Prindiville objected to the taking of evidence and testimony. *See* ¶18, *supra*. The objection was overruled by the district court and testimony and evidence was taken. Much of the testimony taken was extraneous to the question of who was entitled to possession of the premises. However, all of it should have been disallowed because WCL was never placed on notice that an evidentiary hearing would be held.

[¶67] The district court allowed Miskin to read letters and emails into the record. The content of these documents was extraneous to the matter of entitlement to possession of the premises. More disturbingly, these documents were provided to WCL’s counsel only two days prior to the hearing and they were unable to prepare for a rebuttal thereof.

[¶68] The district court then allowed testimony from Mr. John Voll regarding the value of the premises and the alleged breach of contract by WCL. Again, WCL was not notified that Mr. Voll would be testifying, what the substance of his testimony would be, and was not allowed a chance to secure witnesses or

evidence to rebut that testimony.

[¶69] The district court also received exhibits over the objection of WCL's counsel. Exhibits E (an email from John Voll to Hennessy regarding the closing), F (a letter from Miskin's ability to finance the purchase), and G (an email from the closing agent to Hennessy regarding the closing) were extraneous to both the question of who was entitled to possession of the property, as the purchase agreement and early occupancy agreement were already part of the record, and also to the question of whether the default judgment should be vacated. (App. Pg. 37-39). Despite this, and the objections of WCL's counsel, the district court received the exhibits and made findings of fact and conclusions of law thereon.

[¶70] The record shows that WCL's counsel were surprised that testimony and evidence were going to be received. This was due to the fact that WCL was not given proper notice of an evidentiary hearing. Based on the foregoing, the district court abused its discretion by taking testimony and evidence at the March 16, 2018 hearing and failing to grant WCL's Motion to Amend Judgment for surprise under N.D.R.Civ.P. 60(b)(1).

CONCLUSION

[¶71] Pursuant to N.D.C.C. §§ 47-32-01 and 47-32-02, the district court lacked subject matter jurisdiction over this action because the eviction hearing was not held within the time required by the statute and because there was no lease

agreement between the parties. The district court further exceeded its jurisdiction by making findings of fact and conclusions of law extraneous to the determination of the right to possession of the property.

[¶72] The district court abused its discretion by (1) joining Miskin's counterclaims to the eviction proceedings, thereby misapplying N.D.C.C. § 47-32-04; (2) misinterpreting N.D.C.C. § 32-03-29 with regard to wrongful eviction; and (3) allowing Miskin to present testimony and evidence at the December 11, 2017 hearing without giving proper notice to WCL, and by making findings of fact and conclusions of law thereon.

[¶73] **WHEREFORE**, Watford City Lodging, LLC respectfully requests this Court **REVERSE** the district court's order and dismiss this eviction action. In the alternative, Watford City Lodging, LLC respectfully requests that this court **REVERSE** the district court's order and **REMAND** these proceedings to the district court with instruction to make only those findings of fact and conclusions of law which are within the jurisdiction of the court pursuant Chapter 47-32 of the North Dakota Century Code.

Respectfully submitted this ____ day of November, 2018.

LARSON LATHAM HUETTLL LLP

By: /s/ William C. Black
William C. Black (#07284)

Attorneys for Plaintiff/Appellant
1100 College Drive
PO Box 2056
Bismarck, ND 58502-2056
Telephone: 701.223.5300
wblack@bismarcklaw.com

CERTIFICATE OF COMPLIANCE

[¶74] The undersigned, as attorney for the Plaintiff/Appellant in the above matter, hereby certifies, in compliance with Rule 32 of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportionally

spaced, 13 point font typeface, and the total number of words in the above Brief, including footnotes, but excluding words in the table of contents, table of authorities, signature block, certificate of service, and this certificate of compliance, totals 7708 words.

Dated this 19th day of November, 2018.

LARSON LATHAM HUETTLL LLP

By: /s/ William C. Black
William C. Black (#07284)
Attorneys for Plaintiff/Appellant
1100 College Drive
PO Box 2056
Bismarck, ND 58502-2056
Telephone: 701.223.5300
wblack@bismarcklaw.com

CERTIFICATE OF SERVICE

[¶75] I hereby certify that on November 19, 2018, I filed and served the foregoing document on the following by electronic mail transmission, pursuant to Rules 25 and 31 of the N.D.R.App.P.:

Clerk of the Supreme Court
supclerkofcourt@ndcourts.gov

By: /s/ William C. Black
William C. Black (#07284)
LARSON LATHAM HUETTL LLP
Attorneys for Plaintiff/Appellee
1100 College Drive
PO Box 2056
Bismarck, ND 58502-2056
Telephone: 701.223.5300
wblack@bismarcklaw.com

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Watford City Lodging, LLC,

Plaintiff/Appellant,

v.

Christopher Dean Miskin,

Defendant/Appellee.

Supreme Court No. 20180339

McKenzie County No. 27-2017-CV-00617

AFFIDAVIT OF SERVICE BY E-MAIL

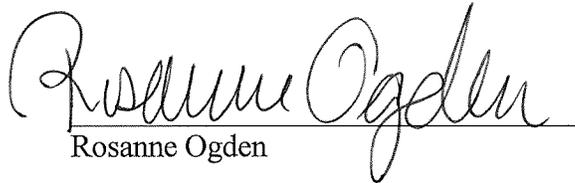
1. On November 19, 2018, I, Rosanne Ogden, served the party(s) described below with the documents described below by e-mail to the addresses shown below. The e-mail address of each party served is the last reasonably ascertainable e-mail address of such party. I am of legal age and not a party to this action.

Documents Served:

1. Appendix to the Brief of Appellant Watford City Lodging;
2. Brief of Appellant Watford City Lodging; and
3. Affidavit of Service by E-mail.

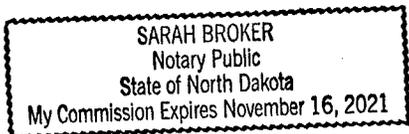
Names & Address of Party(s) Served:

Greg W. Hennessy
integrated@nemont.net


Rosanne Ogden

State of North Dakota)
)ss
County of Burleigh)

2. On November 19, 2018 before me personally appeared Rosanne Ogden, known to me to be the same person described in and who executed the within and foregoing instrument and acknowledged to me that she executed the same.




Notary Public