

Supreme Court No. 20160048  
District Court No. 25-2014-CV-00122

---

---

**STATE OF NORTH DAKOTA**

In the Supreme Court

---

Kevin Klein and Lynn Klein,

Plaintiffs/Appellants,

vs.

Glen Sletto, Norine Sletto, Gregory Sletto, Their Heirs, Donald Schmidt, And Any Person in Possession of the Real Property Described in the Complaint, and Any Person In Possession of Any Portion of the Real Property Described in the Complaint and All Other Persons Unknown Claiming Any Estate or Interest in or Lien or Encumbrance Upon the Real Property Described in the Complaint and all Other Person Discovered During The Litigation Herein Claiming Any Estate or Interest in or Lien or Encumbrance Upon the Real Property Described in the Complaint,

Defendants/Appellees,

Klein et al v. Sletto et al,

**On appeal from an Order  
of the District Court of McHenry County  
dated December 1, 2015,  
Honorable John C. McClintock presiding**

---

---

**BRIEF OF APPELLANTS.**

---

---

Erin M. Conroy (ND ID 05932)  
CONROY LEGAL SERVICES, PLLC  
519 Main Street, Suite 10  
PO Box 137  
Bottineau, ND 58318  
Tel: (701) 228-2083  
Fax: (701) 228-2986  
[erin@conroylegalservices.com](mailto:erin@conroylegalservices.com)  
ATTORNEY FOR  
PLAINTIFFS/APPELLANTS

**TABLE OF CONTENTS**

	<b>PAGE</b>
TABLE OF AUTHORITIES .....	3
STATEMENT OF ISSUES .....	5
	<b>PARAGRAPH</b>
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS .....	13
LAW AND ARGUMENT .....	27
CONCLUSION.....	71
CERTIFICATION OF COMPLIANCE .....	72

## TABLE OF AUTHORITIES

### FEDERAL

### PARAGRAPH

Shuffle Master, Inc. v. Progressive Games, Inc.,  
170 F.R.D. 166 (D. Nev. 1996).....42, 43

### STATE

Aaland v. Lake Region Grain Co-op,  
511 N.W.2d 244 (N.D.1994) .....29, 39

Anderson v. Mooney,  
279 N.W.2d 423 (N.D.1979) .....49

Brown v. North Dakota State University,  
372 N.W.2d 879 (N.D.1985) .....40

Burris Carpet Plus, Inc. v. Burris,  
2010 ND 118, 785 N.W.2d 164 .....31

Buettner v. Nostdahl,  
204 N.W.2d 187 (N.D.1973) .....46

BTA Oil Producers v. MDU Resources Group, Inc.,  
642 N.W.2d 873, 2002 ND 55 .....68, 69

Choice Fin. Group v. Schellpfeffer,  
2006 ND 87, 712 N.W.2d 855 .....56

Cooke v. Blood Sys., Inc.,  
320 N.W.2d 124 (N.D.1982) .....46

Dole v. Hansen,  
238 N.W.2d 58 (N.D.1975) .....39

Farmers Union Oil Co. v. Smetana,  
2009 ND 74, 764 N.W.2d 665 .....31

GeoStar Corp. v. Parkway Petroleum, Inc.,  
495 N.W.2d 61 (N.D.1993) .....39

Heng v. Rotech Med. Corp.,  
2004 ND 204, 688 N.W.2d 389 .....31

In re Estate of Hill,  
492 N.W.2d 288 (N.D.1992) .....68

<u>Holverson v. Lundberg,</u> 2016 ND 103, __N.W.2d__ .....	30, 31
<u>Irish Oil and Gas, Inc. v. Reimer, et al,</u> 2011 ND 22, 794 N.W.2d 715 .....	33
<u>Jones v. Barnett,</u> 2000 ND 207, 619 N.W.2d 490 .....	32
<u>Marsden v. Koop,</u> 2010 ND 196, 789 N.W.2d 531 .....	59
<u>McAllister v. McAllister,</u> 2010 ND 40, 779 N.W.2d 652 .....	59
<u>Moen v. Thomas,</u> 2001 ND 95, 627 N.W.2d 146 .....	46
<u>Myaer v. Nodak Mut. Ins. Co.,</u> 2012 ND 21, 812 N.W.2d 345 .....	30
<u>N. Oil &amp; Gas, Inc. v. Creighton,</u> 2013 ND 73, 830 N.W.2d 556 .....	59
<u>Opp v. Source One Mgmt., Inc.,</u> 1999 ND 52, 591 N.W.2d 101 .....	32
<u>Osterman-Levitt v. MedQuest, Inc.,</u> 513 N.W.2d 70 (N.D.1994) .....	40
<u>PHI Financial Services, Inc. v. Johnston Law Offices, P.C.,</u> 2016 ND 20, 874 N.W.2d 910 .....	57, 59, 60
<u>Riedlinger v. Steam Bros., Inc.,</u> 2013 ND 14, 826 N.W.2d 340 .....	31
<u>Ruud v. Larson,</u> 392 N.W.2d 62 (N.D. 1986) .....	58
<u>Schroeder v. Buchholz,</u> 2001 ND 36, 622 N.W.2d 202 .....	68
<u>Shark v. Thompson,</u> 373 N.W.2d 859 (N.D.1985) .....	46

<u>Sykeston Township v. Wells County,</u> 356 N.W.2d 136 (N.D.1984) .....	69
<u>Thompson v. Peterson,</u> 546 N.W.2d 856 (N.D. 1996) .....	56
<u>Tibert v. Nodak Mut. Ins. Co.,</u> 2012 ND 81, 816 N.W.2d 31 .....	30
<u>Trosen v. Trosen,</u> 2014 ND 7, 841 N.W.2d .....	47
<u>Watcher Development, LLC v. Gomke,</u> 544 N.W.2d 127 (N.D. 1996) .....	39
<u>W. Horizons Living Ctr. v. Feland,</u> 2014 ND 175, 853 N.W.2d 36 .....	60
<u>Williston Co-Op. Credit Union v. Fossum,</u> 459 N.W.2d 548 (N.D.1990) .....	43
<b>RULES</b>	
N.D.R.Civ.P. 37(a)(1) .....	57, 58, 59
N.D.R.Civ.P. 52(a)(6) .....	59
N.D.R.Civ.P. 56(c).....	29
<b>STATUTES</b>	
N.D.C.C. § 9-06-04(a) .....	38
N.D.C.C. § 47-10-01 .....	42
<b>SECONDARY SOURCES</b>	
73 Am.Jur.2d STATUTE OF FRAUDS § 289 (2012).....	47
73 Am.Jur.2d STATUTE OF FRAUDS §§ 292, 295-96 (2012) .....	46
73 Am.Jur.2d STATUTE OF FRAUDS § 293 (2012).....	49
73 Am.Jur.2d STATUTE OF FRAUDS § 364 (2012).....	47
10 Richard A. Lord, WILLISTON ON CONTRACTS § 28.2 (4th ed.2011) .....	46

## **STATEMENT OF ISSUES**

- I. Whether Summary Judgment is Appropriate when a Factual Issue Remains on an Oral Contract.
- II. The District Court Erred When It Did Not Order the Defendants to Appear at Depositions.
- III. The District Court Erred When It Denied Plaintiffs Equitable Relief Applied the Statute of Limitations to Deny the Claim.

## STATEMENT OF THE CASE

[¶ 1] This case involves the disputed oral agreement to sell approximately 800 acres of real property in McHenry County in the State of North Dakota. The seller of the real property is the defendants and appellees, Glen Sletto (hereinafter “Glen”), Norine Sletto (hereinafter “Norine”), Gregory Sletto (hereinafter “Greg”), Donald Schmidt (hereinafter “Donald”) and their heirs and assigns. The buyers of the real property are Kevin (hereinafter “Klein”) and Lynn Klein, husband and wife.

[¶ 2] On January 29<sup>th</sup>, 2014, Klein commenced this suit against Sletto by virtue of personal service via the Bottineau County Sheriff’s Department on Gregory Sletto. (R. at 4). Norinne and Glenn Sletto were personally served via the Grand Forks County Sheriff’s Department on February 15, 2014. (R. at 3). On October 30, 2014, Klein filed the Affidavit for Publication of the Summons and Complaint in District Court of McHenry County. (R. at 1 and 2). Donald Schmidt was personally served by the Walsh County Sheriff’s Department on December 17, 2014. (R. at 8). The Summons was filed on January 7, 2015. (R. at 7).

[¶ 3] Defendants, Glen Sletto, Norine Sletto and Gregory Sletto filed and served an Answer by and through their attorney, Richard P. Olson, Olson & Burns, P.C., P.O. Box 1180, Minot, North Dakota 58702-1180. (R. at 15). From the record, it did not appear as though Schmidt filed an Answer and made no appearance on the record.

[¶ 4] On February 20, 2015, the District Court Judge John C. McClintock filed and served upon the parties a scheduling order setting a jury trial for December 8, 2015. The commenced discovery. Kevin Klein’s attorney, Fallon Kelly, attempted to depose the parties to the original contract, including Glen Sletto and his wife, Norine Sletto.

By and through his counsel, Greg Sletto objected to the depositions citing poor health and submitted physicians' reports from 2011, more than four years prior to the written objection to the subpoena. (R. at 27, 28 and 29). Plaintiff's submitted a reply brief arguing that the physician's letters were out-of-date, inadmissible hearsay and not specific enough to prohibit compulsion of the depositions.

[¶ 5] On April 7, 2015, the district court filed an email that was sent to the parties requesting further information on the motions to compel, including updated physician's reports. (R. at 52). No physicians' reports or further responsive pleadings appear to have been filed. The district court did not issue an order on the motion to compel. Glenn Sletto died on October 22, 2015. Glenn Sletto is survived by his wife, Norine Sletto, who resides in Grand Forks, North Dakota.

[¶ 6] On August 28, 2015, Sletto filed and served a motion for summary judgment, together with a supporting brief and affidavits. (R. at 54). On September 18, 2015, Sletto then filed and served a motion to strike jury trial. (R. at 67). On September 25, 2015, Klein filed a responsive brief opposing the motion for summary judgment. (R. at 71).

[¶ 7] No brief was submitted in response to the motion to strike jury trial. The district court issued an order striking the jury trial on October 22, 2015. (R. at 80).

[¶ 8] Sletto also filed a reply brief to Klein's opposition brief. (R. at 76). No oral arguments were heard on the motion. (R. at 87).

[¶ 9] Both parties submitted pre-trial briefs in anticipation of a bench trial. (R. at 82 and 85).

[¶ 10] On November 13, 2015, the district court issued its memoranda decision and order granting Sletto's motion for summary judgment. The court trial was then canceled without any issues of fact being presented to the court for resolution.

[¶ 11] The district court did not rule on the motion to compel testimony in the form of depositions on Glen or Norine. No testimony, affidavit or other document was submitted evidencing the testimony or position of Glen or Norine Sletto, the original parties to the alleged verbal contract.

[¶ 12] On December 3, 2015, the notice of entry of judgment was filed and served in the case. (R. at 96 and 97). Klein then filed for this appeal. (R. at 98).

## STATEMENT OF FACTS

[¶ 13] In or around 1993, Kevin Klein, a farmer residing near Karlsruhe, North Dakota, faced foreclosure on an FHA loan on approximately 800 acres of property located in McHenry County, North Dakota. (App. at 6). In discussing his problem with a family friend, Daniel Boehm (hereinafter “Boehm”), Boehm suggested Klein contact Glen Sletto<sup>1</sup>. Glen Sletto was a neighboring farmer and known to both Boehm and Klein. (Deposition of Daniel Boehm, page 19, lines 2-24, App. at 60). Daniel suggested Glen might be able to assist Kevin in saving the property from foreclosure in an arrangement similar to the one Daniel had with Glen. (Deposition of Daniel Boehm, page 19, lines 18-19). In the arrangement Glen had with Boehm, Glen agreed to pay off the outstanding FHA loan balance, lease the property back to Kevin and then Kevin would be able to purchase the property back after a certain number of years. (Deposition of Kevin Klein, page 47, lines 5-16, App. at 47). This arrangement ensured Glen would enjoy a profit and Kevin would be able to re-purchase the property at the original pay-off price. (Deposition of Daniel Boehm, page 19, lines 14-24).

[¶ 14] During the initial contact, Klein argues Glen agreed that of the 800 acres owned by Kevin, if Kevin transferred 240 acres of land to Glen, Glen would sell a portion of the 240 acres to Kip Farms to pay off the debt to FHA. (App. at 6). The payment from Kip Farms came directly to Kevin, which Kevin then transferred to Glen as a part of the agreement. Sletto then paid \$113,500.00 to FHA, which satisfied a portion of the loan. (App. at 6).

---

<sup>1</sup> The first name of Glen Sletto is used both as “Glenn” and “Glen” in the course of this litigation. In its memorandum opinion, the district court used “Glen” therefore for purposes of this brief, “Glen” is used throughout. All references to Glen are to Glenn Sletto a/k/a Glen Sletto.

The sale to Kip Farms represented a per acre price of \$472.92, which Kevin testified was a typical per acre price at the time of the transaction. (Deposition of Kevin Klein, page 28, lines 18-20).

[¶ 15] Sletto used his own cash to satisfy the \$46,500.00 remaining debt, which was then supposed to be able to be re-purchased by Kevin after ten (10) years at the original loan pay-off price. The parties agreed the remaining 560 acres would be rented or leased by Kevin for a number of years, the parties agreed to ten (10) years, after which time he would have the opportunity to purchase the land back from Glen. (App. at 6). Glen had this arrangement with one more than one farmer in the area at the time, as demonstrated by the testimony of both Klein and Boehm. (Deposition of Daniel Boehm, page 18, lines 18-24).

[¶ 16] Kevin and Glen agreed that Kevin would rent the land from Glen for ten (10) years to provide Sletto a profit on the arrangement and at the end of ten (10) years, Kevin would pay Glen the \$46,500.00 balance of the loan that Glen paid to FHA. (App. at 6). In the deposition of Daniel Boehm. Boehm testified that he had a similar, verbal contract with Glen. In his deposition, Boehm stated that when facing a similar foreclosure, Glen Sletto offered to purchase Boehm's property and then "rent" it back to Boehm and then after a certain time frame Glen would sell the property back to Boehm for the original sale price. Boehm testified that this way Glen Sletto made a profit with the rent payments and Boehm was able to keep the property out of foreclosure. (App. at 6).

[¶ 17] Kevin asked Sletto on multiple occasions to reduce the agreement to writing. Sletto refused stating the parties "didn't need one." (Deposition of Kevin Klein, page 17, lines 18-25; App. at 40). Kevin did not have legal representation in the transaction. (App. at 6). Sletto consulted with and was advised by an attorney during the entire process, although

the name of the attorney with whom he consulted was never made an official part of the record nor was he deposed. (Deposition of Kevin Klein, page 47-48, lines 25 and 1-2). The record reflects Kevin Klein is not sophisticated business person. Glen had worked out this particular arrangement with multiple farmers and was arguably more sophisticated in finessing the buyback arrangement than Kevin. When Kevin attempted to involve other family members, including Kevin's brother to assist him with the transaction, Glen Sletto scolded Kevin and insisted Kevin was only allowed to deal with Glen and no one else. (Deposition of Kevin Klein, page 34, lines 10-15).

[¶ 18] The parties agreed that Glenn would receive ten (10) years of cash rent from Kevin so that he could make a profit on the arrangement and after ten (10) years Kevin would have the opportunity to purchase the property back at the original purchase price of \$46,5000.00. (Deposition of Kevin Klein, page 21, lines 13-25 and page 22, lines 1-8; App. at 6).

[¶ 19] During the course of the ten (10) year agreement, Kevin occasionally assigned the rental obligation, with Glen's explicit permission, to Boehm and/or Marvin Duchsherer, both of whom were directly aware of the arrangement Kevin had with Glen. (Deposition of Kevin Klein, page 22, lines 3-25). Kevin and Daniel both acknowledged the express agreement Kevin had with Glen with regarding to the return of the property to Kevin after he fulfilled the ten (10) year lease requirement. (App. at 6). On multiple occasions, Glen verbalized to both Boehm and Klein that Boehm's use and payment of the cash rent was sufficient to fulfill the terms of Klein and Sletto's agreement. This fact is not disputed in the record by Slettos.

[¶ 20] Greg Sletto is Glen Sletto's son. Greg took over substantially all of Glen's farming operation. At the time that Greg transitioned into his father's farming operation, Greg verbally acknowledged the terms of the agreement between Glen and Klein. Klein continued to perform on the verbal agreement, as did Greg Sletto.

[¶ 21] On January 7, 2002, unbeknownst to Kevin, Greg Sletto sold a portion of the remaining 560 acres to Donald Schmidt. (App. at 6). Sletto sold approximately 160 acres for \$40,000.00 representing a per acre price of approximately \$250.00. Klein had no knowledge of the transaction and at this time, still believed that Greg intended to sell him back the full 540 acres for the original purchase price of \$46,500.00. The acreage was the southeast quarter of section 29. Schmidt's purchase price of \$40,000.00 as evidenced on the consideration statement on the deed, represents a per acre price of \$250.00.

[¶ 22] Following the expiration of ten (10) years, Klein repeatedly requested to be able to pay the \$46,500.00 in order to have the land conveyed back to Klein. Both Glen and then Greg repeatedly denied Klein's request. (Deposition of Kevin Klein, page 15, lines 19-22). Greg repeatedly "put off" the final transaction of the bargained-for exchange, which was the repayment of the \$46,500.00 and final conveyance back to Klein. (Deposition of Kevin Klein, page 17, lines 24-25, page 27, lines 21-24 and page 46, lines 4-11). During this time, Greg repeatedly acknowledged the verbal agreement allowing Klein to re-purchase the land after ten (10) years. (Deposition of Kevin Klein, page 46, lines 4-11). Both parties continued to perform as though the agreement was in place. Neither Glen nor Greg denied the verbal agreement. (App. at 6). Rather, the Slettos took advantage of Klein's trusting nature and kept postponing the final conveyance from Sletto to Klein. (App. at 6).

[¶ 23] In 2013, for the first time, Greg Sletto outright denied the agreement to allow Klein to repurchase the property. (Deposition of Kevin Klein, page 45, lines 1-3). This was the first notice Klein had that Greg did not intend to live up to his part of the bargain. Prior to that time, Greg Sletto had consistently affirmed the verbal contract between the parties originally made between Glen and Kevin Klein. During a 2013 telephone conference, Kevin questioned Greg Sletto regarding the verbal agreement with Glenn. Greg responded by stating, “I bought the land from my dad. The deal between – the contract was between my dad and you, not me.” (Deposition of Kevin Klein, page 45, lines 1-3).

[¶ 24] In his deposition, Greg Sletto admitted he considered Klein to have control of certain items of personal property on the disputed property, including pieces of abandoned property and equipment. (Deposition of Greg Sletto, page 16, lines 4-9). Sletto also offered to allow Klein to purchase certain parcels, including the homestead, but not the full acreage, due to “tax purposes.” (Deposition of Kevin Klein, page 45, lines 15-18).

[¶ 25] At best, Sletto’s deposition testimony can be described as vague and effusive. Sletto avoided answering questions outright and frequently answered with “I don’t know” or “I can’t remember.” At worst, Sletto’s deposition testimony is deceptive and demonstrates his knowledge of the verbal agreement between Glen and Kevin, but lack of willingness to reveal it. (Deposition of Greg Sletto, page 31, lines 13-14).

[¶ 26] Unlike Greg Sletto’s testimony, Kevin’s testimony and performance are consistent with the existence of a verbal agreement. Further Kevin’s testimony is corroborated with the deposition testimony of Daniel Boehm who was aware of the verbal agreement between Glen Sletto and Kevin Klein and had a similar arrangement with Glen Sletto. (App. at 6).

## LAW AND ARGUMENT

[¶ 27] Kevin and Lynn Klein appeal from a summary judgment dismissing his action quieting title in disputed real property interests in McHenry County against multiple defendants with the genesis of the action originating from an oral agreement between Kevin Klein and Glen Sletto. The district court erred in concluding Defendants, Glen Sletto, et al., were entitled to summary judgment as a matter of law. This Court should reverse and remand for further presentation of factual witnesses including Norine Sletto, who is the wife of one of the original contracting parties, Glen Sletto. Glen Sletto is now deceased.

[¶ 28] This court reviews decisions from summary judgment de novo. In this case, the district court granted Slettos' motion for summary judgment. A summary judgment of dismissal was entered and Klein filed this appeal. (App. at 21).

[¶ 29] Rule 56(c) of the North Dakota Rules of Civil Procedure is a procedural device that permits summary judgment, "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." Summary judgment is appropriate if either party is entitled to judgment as a matter of law, if no dispute exists as to either the material facts or the inferences to be drawn from them, or if resolving disputed facts would not alter the result. Aaland v. Lake Region Grain Co-op., 511 N.W.2d 244 (N.D.1994).

[¶ 30] The standards for review of a summary judgment are well established by this Court:

Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law. A party

moving for summary judgment has the burden of showing there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. In determining whether summary judgment was appropriately granted, we must view the evidence in the light most favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably be drawn from the record. On appeal, this Court decides whether the information available to the district court precluded the existence of a genuine issue of material fact and entitled the moving party to judgment as a matter of law. Whether the district court properly granted summary judgment is a question of law which we review de novo on the entire record.

Holverson v. Lundberg, 2016 ND 103, ¶ 12, \_\_N.W.2d\_\_ (citing Tibert v. Nodak Mut. Ins. Co., 2012 ND 81, ¶ 8, 816 N.W.2d 31; Myaer v. Nodak Mut. Ins. Co., 2012 ND 21, ¶ 9, 812 N.W.2d 345).

[¶ 31] Summary judgment is not appropriate if reasonable differences of opinion exist as to the inferences to be drawn from the undisputed facts. Holverson, at ¶ 13, (citing Riedlinger v. Steam Bros., Inc., 2013 ND 14, ¶ 10, 826 N.W.2d 340; Burris Carpet Plus, Inc. v. Burris, 2010 ND 118, ¶ 10, 785 N.W.2d 164 (quotations omitted)). In determining with an issue of fact is sufficient to preclude judgment as a matter of law, “the district court’s role is limited to determining whether the evidence and inferences to be drawn therefrom, when viewed in the light most favorable to the party opposing summary judgment, demonstrate that there are no genuine issues of material fact.” Id. (citing Farmers Union Oil Co. v. Smetana, 2009 ND 74, ¶ 10, 764 N.W.2d 665; Heng v. Rotech Med. Corp., 2004 ND 204, ¶ 34, 688 N.W.2d 389 (quotations omitted)). Summary judgment is not appropriate if the district court must draw inferences and make findings on disputed issues of material fact. Smetana, at ¶ 10. A district court may not weigh evidence, calculate credibility, or attempt to discern the truth of the matter when ruling on a motion for summary judgment. Id.

[¶ 32] Factual issues may only become appropriate for summary judgment is “when reasonable minds can draw but one conclusion from the evidence.” Jones v. Barnett, 2000 ND 207, ¶ 4, 619 N.W.2d 490 (quoting Opp v. Source One Mgmt., Inc., 1999 ND 52, ¶ 16, 591 N.W.2d 101).

[¶ 33] In this case, multiple issues of fact remain regarding not only the issue on the contract, but also summary judgment was granted prematurely pursuant to this court’s decision in Irish Oil and Gas, Inc. v. Reimer, et al, 2011 ND 22, 794 N.W.2d 715. In the Reimer case, this Court held that when there is a failure of consideration, that is a question of fact for the factfinder to decide. Id. at ¶23. In this case, the failure of consideration should have been sufficient for a factual dispute to preclude the dismissal with an order for summary judgment.

[¶ 34] In this case, factual issues remain disputed which need to be further explored in the depositions of Glen Sletto and Norine Sletto. Current factual disputes include whether Glen Sletto intended to perform on the verbal contract, whether Glen Sletto paid sufficient consideration for the property, whether Glen Sletto fraudulently induced Kevin Klein to enter into the contract, whether Greg Sletto further induced Kevin Klein’s reliance on the verbal promises and whether the verbal contract was partially performed by Kevin Klein.

[¶ 35] This Court should reverse and remand for a trial on the remaining issues of fact and to allow Klein to amend his complaint to include an action for deceit against Slettos.

I. **Whether Summary Judgment is Appropriate when a Factual Issue Remains on an Oral Contract.**

[¶ 36] There is substantial evidence, both direct and circumstantial the parties had a valid verbal contract for the purchase of land and that Klein had fully performed his end of the bargain.

[¶ 37] The first issue for the court to resolve in this case is whether or not a valid contract for the purchase of the land existed. In North Dakota, in order for a contract to exist, the party asserting the existence of the contract must show: (1) an offer; (2); an acceptance; and (3) consideration. In this case, all three of those elements exist.

[¶ 38] In North Dakota, verbal contracts for the sale of property are invalid pursuant to the statute of frauds. See N.D.C.C. § 9-06-04(a). A verbal contract for the sale of real property may be excluded from the statute of frauds and considered an enforceable contract when there exists a question of fact regarding part performance of the contract.

[¶ 39] “The existence of an oral contract is a question of fact.” Watcher Development, LLC v. Gomke, 544 N.W.2d 127, 132 (N.D. 1996) (citing GeoStar Corp. v. Parkway Petroleum, Inc., 495 N.W.2d 61, 66 (N.D.1993). Whether an agreement is intended to be binding is a question of fact. Id. (citing Dole v. Hansen, 238 N.W.2d 58 (N.D.1975)). Whether a contract exists is a question of fact. Aaland v. Lake Region Grain Co-op, 511 N.W.2d at 246. If the terms of a contract are ambiguous, extrinsic evidence of the parties’ intent may be considered and the terms of the contract and the parties’ intent become questions of fact. Id.

[¶ 40] In its order granting the defendants’ motion for summary judgment, the district court wrote that, “this court is not convinced that Klein has shown that the transfer by warranty deed was anything less than a transfer of interest in fee simple.” (App. at 21).

Intent is a matter of fact, unless it can be ascertained from the agreement alone. Osterman-Levitt v. MedQuest, Inc., 513 N.W.2d 70 (N.D.1994). When a court needs to make findings of fact, summary judgment is generally inappropriate. Brown v. North Dakota State University, 372 N.W.2d 879 (N.D.1985). This district court erred in this conclusion; first, it erred when it made a finding with respect to the existence of contract; and, second it erred when it failed to compel the depositions of Glen and Norine Sletto.

[¶ 41] In this case, the existence of the oral contract is highly disputed. The factual dispute regarding several items, including the existence of the contract, the time upon which Klein was on notice that Glen and/or Greg Sletto never intended to perform on the contract and the failure of consideration are all issues for the factfinder. Compulsion by the district court of Glen Sletto's testimony (prior to his death) or Norine Sletto's testimony may have shed light on many of these disputed facts. In issuing its decision to grant Sletto summary judgment, the district court allowed Sletto to use his own bad behavior, namely, Sletto's avoidance of allowing the deposition testimony of Glen Sletto to benefit his case.

[¶ 42] Generally, a contract for the sale of land is unenforceable against one who has not signed it. North Dakota's statute of frauds, which provides that an agreement for the sale of real property is invalid unless there is a contract, note, or memorandum in writing subscribed by the party to be charged. There are multiple exceptions to the statute of fraud's requirement of a signed writing, which this Court has interpreted multiple times. Section 47-10-01, N.D.C.C., provides that the requirement of a subscribed written instrument does not prevent a court from compelling "specific

performance of any agreement for the sale of real property in case of part performance thereof.”

[¶ 43] In order for part performance to operate as a device for removing verbal contracts from the statute of frauds, the performance must be consistent with the existence of an oral contract. Williston Co-Op. Credit Union v. Fossum, 459 N.W.2d 548 (N.D.1990).

[¶ 44] In this case, the part performance relied upon by Klein consists of negotiating with Glen Sletto initially when Klein conveyed the property and then again when Glen’s son, Greg Sletto, took over the property and any verbal agreements thereon. The district court ruled that those acts were insufficient, as a matter of law, to take the contract out of the statute of frauds; however, the district court’s memorandum and opinion are conclusory and without support in the record.

[¶ 45] As is more fully discussed below, the partial performance doctrine is based purely in equity, premised upon principles of equitable estoppel, and is intended to prevent a party from using the statute of frauds to perpetrate a fraud. In this case, the Slettos took advantage of Klein and continued the deceit for decades; further, deposition testimony from multiple sources indicated the verbal agreement between Glen Sletto and Kevin Klein was common knowledge and that Glen Sletto had similar arrangements with other farmers. The record reflects the Klein repeatedly requested to reduce the agreement with writing and for Glen Sletto and Greg Sletto to allow him to finish the agreement by paying for the property. The record further reflects both Glen and Greg did everything they could to prohibit Klein from exercising the buy-back option. (Deposition of Kevin Klein, page 17, lines 19-22). Nothing in the record disputes that Kevin Klein fully performed his end of the bargain. Further, there is not contradictory

evidence, other than Greg Sletto's self-serving deposition testimony, that he could not "recall" or "didn't know" if his father had the verbal arrangement with Kevin Klein. (Deposition of Greg Sletto, page 28, lines 5-25).

[¶ 46] This Court has previously held that part performance of an agreement or contract for the leasing of property for longer than a one-year period may bar the assertion of the statute of frauds. Cooke v. Blood Sys., Inc., 320 N.W.2d 124, 127 (N.D.1982); see also Moen v. Thomas, 2001 ND 95, ¶ 16, 627 N.W.2d 146; Buettner v. Nostdahl, 204 N.W.2d 187, 190 (N.D.1973) overruled on other grounds by Shark v. Thompson, 373 N.W.2d 859, 867 (N.D.1985); see also 73 Am.Jur.2d STATUTE OF FRAUDS § 364 (2012). The doctrine of part performance is based in equity. Id. When a party asserts part performance as a bar to the assertion of the statute of frauds, the assertion must be premised upon principles of equitable estoppel and is intended to prevent a party from using the statute of frauds to perpetrate a fraud upon another party. See 10 Richard A. Lord, WILLISTON ON CONTRACTS § 28.2 (4th ed.2011); 73 Am.Jur.2d STATUTE OF FRAUDS §§ 292, 295-96 (2012).

[¶ 47] Under the doctrine of part performance, "[t]he Statute of Frauds defense can be avoided if there has been part performance of an alleged oral contract." 73 Am.Jur.2d STATUTE OF FRAUDS § 289 (2012). Successful application of the doctrine of part performance to an oral contract has the effect "of taking [the] contract from the operation of the Statute of Frauds so that a court of equity may decree its specific performance or grant other equitable relief." Id. When a court sits in equity, it is obligated to look to all elements of a contract, not merely those that meet the statute of frauds' writing requirement. In this case, the requirements for formation of a valid oral

contract were met. Trosen v. Trosen, 2014 ND 7, ¶ 23, 841 N.W.2d. The parties had an offer, acceptance and consideration.

[¶ 48] The remaining issue is whether Kevin Klein performed in such a way that is consistent with performance on the contract sufficient to remove it from the statute of frauds. In this case, the evidence is consistent with full performance on behalf of Klein and performance on behalf of both Glen and Greg Sletto. First, there is the fact that Glen Sletto had the arrangement with other farmers who testified to knowing that Kevin had worked out a similar arrangement with Kevin Klein. Second, there is the fact that Glen Sletto paid far below market value for the property such that no reasonable person would sell in fee simple for such a low price.

[¶ 49] The doctrine of part performance can be asserted to secure specific performance of a contract for which there is no memorandum in writing, as required by the Statute of Frauds, only where the circumstances of the case meet the general prerequisites to equitable relief.” 73 Am.Jur.2d STATUTE OF FRAUDS § 293 (2012). A party asserting that part performance has removed an unwritten agreement from the statute of frauds must prove that a contract existed. Anderson v. Mooney, 279 N.W.2d 423, 429 (N.D.1979).

[¶ 50] The element of estoppel should weigh heavily in this Court’s analysis in this case and certainly should have been in the district court’s analysis considering that the district court sat in equity in quieting title in Sletto’s name. First, there is credible testimony that Glen Sletto had this arrangement not only with Klein, but with other farmers. Second, Glen Sletto’s payment of the exceedingly low purchase price coupled with the Klein’s repeated request for a writing to memorialize the agreement or to allow

him to pay off the price is evidence of Sletto's intent to induce Klein's reliance on Sletto's word, rather than by the terms of the original agreement.

[¶ 51] In this case, there are multiple issues of fact that remain evidencing several claims on behalf of Klein. First, there is the remarkably low price for which Glen purchased the property. At the district court level, Klein presented evidence in his pleadings that at the time of the transfer of the property to Sletto, the value of the land per acre was \$450 per acre for a total of approximately \$350,000.00. Sletto paid off Kevin's debts for less than half of the fair market value and then proceeded to make additional profit from Kevin through two decades of cash rent. (App. at 6). Considering that \$113,000 was paid directly for the loan payment only 240 acres, Glen Sletto's net payment per acre was a mere \$86.11 per acre, more than 500 percent below fair market value at the time of the transfer. (App. at 6). This fact alone demonstrates Sletto's version of the facts is not credible.

[¶ 52] Finally, the testimony from Daniel Boehm stating Klein's annual payment to Sletto was a party of "fulfilling the contract" between Klein and Sletto and the annual payment was an "interest payment" on the verbal agreement is sufficient evidence to demonstrate partial performance. (Deposition of Daniel Boehm, page 17, lines 1-2 and 5-6). Daniel further testified that both Greg and Glen Sletto verbally confirmed the arrangement multiple times. During his deposition, Daniel stated, "I was told directly by Glenn on multiple times when visiting with him that Kevin had the same agreement and that after a certain amount of time he was going to get to purchase it back. And when I asked Glenn, well, when is Kevin going to get to buy that back, he just told me, let's leave it like it is for now." (Deposition of Daniel Boehm, page 18, lines 18-24.)

Slettos may attempt to claim this is inadmissible hearsay; however, such testimony is admissible and should be considered by the court because it is a party admission and presents credible third party evidence of Glen Sletto's intent which was then assigned to Greg Sletto.

[¶ 53] In this case, there is sufficient evidence to demonstrate the existence of a verbal contract and partial performance of the contract. The district court erred when it issued the order granting Sletto summary judgment and quieting title on the property in Sletto's name.

II. **The District Court Erred When It Did Not Order the Defendants to Appear at Depositions.**

[¶ 54] In this case, the Slettos prohibited Glen and Norine from testifying by using their ill health as an excuse, but then simultaneously attempted to benefit from the protection of the court by making a motion for summary judgment as a matter of law when the testimony of Glen or Norine could have easily confirmed the existence of the verbal agreement between Glen and Kevin and the subsequent ratification of the agreement between Greg and Kevin. In this case, the Slettos have repeatedly used the law and the courts as both a shield and a sword to maintain their inequitable position vis-à-vis the evidence presented in this case.

[¶ 55] In this case, the district court failed to rule on the motion to compel without issuing an order on the denial. For purposes of this appeal and to set a standard on appeal on the motion to compel, this author has treated the failure to issue an order on the motion to compel as a denial on the motion without a written order.

[¶ 56] The North Dakota Rule of Civil Procedure regarding compulsion of discovery is modeled on the corresponding federal rule. "Although not binding, federal court

interpretations of a corresponding federal rule of civil procedure are highly persuasive” in construing North Dakota Rules. Choice Fin. Group v. Schellpfeffer, 2006 ND 87, ¶ 12, 712 N.W.2d 855 (quoting Thompson v. Peterson, 546 N.W.2d 856, 860 (N.D. 1996)). In this case, the court did not make any determinations regarding good faith attempts to confer before denying the motion and failed to make any findings on the motion when it made its de facto ruling by ruling on the subsequent motion for summary judgment.

[¶ 57] The North Dakota Supreme Court has used federal cases interpreting frequently cited federal case discussing whether a party made a good faith effort to confer or attempt to confer under Fed.R.Civ.P. 37(a)(1) outlines the good faith standard as follows:

Good faith under [Fed.R.Civ.P. 37(a)(1)] contemplates, among other things, honesty in one’s purpose to meaningfully discuss the discovery dispute, freedom from intention to defraud or abuse the discovery process, and faithfulness to one’s obligation to secure information without court action. “Good faith” is tested by the court according to the nature of the dispute, the reasonableness of the positions held by the respective parties, and the means by which both sides conferred. Accordingly, good faith cannot be shown merely through the perfunctory parroting of statutory language on the certificate to secure court intervention; rather it mandates a genuine attempt to resolve the discovery dispute through non-judicial means.

PHI Financial Services, Inc., at ¶ 11 (citing Shuffle Master, Inc. v. Progressive Games, Inc., 170 F.R.D. 166, 171 (D. Nev. 1996) (internal citation omitted)).

[¶ 58] Good faith determinations should be predicated upon the particularities of a given situation. PHI Financial Services, Inc., at ¶ 12. Whether a party acted in good faith under N.D.R.Civ.P. 37(a)(1) is a question of fact. Id. (citing Shuffle Master, Inc., 170 F.R.D. at 171; cf. N. Oil & Gas, Inc. v. Creighton, 2013 ND 73, ¶ 15, 830 N.W.2d 556) (stating “[w]hether a party acted in good faith is a question of fact”); Ruud v. Larson,

392 N.W.2d 62, 63 (N.D. 1986) (stating “[t]he determination whether the landlord has made a good faith effort to mitigate damages is a finding of fact”).

[¶ 59] Under N.D.R.Civ.P. 52(a)(6), the North Dakota Supreme Court on an appeal may not set aside a finding of fact on appeal unless the finding is clearly erroneous, and the Court may not reverse a district court’s determination of good faith under N.D.R.Civ.P. 37(a)(1) unless the finding of fact is clearly erroneous. “[A] finding of fact is clearly erroneous only if it is induced by an erroneous view of the law or, although there is some evidence to support it, on the entire record we are left with a definite and firm conviction a mistake has been made.” Marsden v. Koop, 2010 ND 196, ¶ 8, 789 N.W.2d 531 (quoting McAllister v. McAllister, 2010 ND 40, ¶ 13, 779 N.W.2d 652). Accordingly, this Court reviews the district court’s decision as to whether to deny an order to compel under the abuse of discretion standard; and it reviews the factual findings supporting the decision, including whether a party, in good faith, attempted to confer, under the clearly erroneous standard. PHI Financial Services, Inc., at ¶ 12.

[¶ 60] The district court abuses its discretion when it acts in an unreasonable, arbitrary or unconscionable manner. PHI Financial Services, Inc. v. Johnston Law Office, P.C., 2016 ND 114, 9, \_\_\_N.W.2d\_\_\_ (citing W. Horizons Living Ctr. v. Feland, 2014 ND 175, ¶ 11, 853 N.W.2d 36).

[¶ 61] In this case, Kevin Klein presented ample evidence of his attempts to meet and confer with Defendants’ counsel. Further, the district court erred when it failed to provide a written order of its reasons for denying the motion to compel, including a finding of lack of good faith.

[¶ 62] Finally, the district court should have issued an order compelling the depositions of Glen and Norine Sletto because of the evasive nature of Greg Sletto's deposition testimony. A close reading of Greg Sletto's deposition testimony demonstrates his lack of credibility. His answers are evasive, intentionally vague and lacking creditability. When questioned about the similar land buyback Glen Sletto had with Greg Sletto, Greg Sletto never denied the existence of the agreement, but rather purposefully interjected his answers with vague recollections:

Q: ...the land in question to Dan Boehm, that was an extension of Kevin Klein's duty under the contract between him, Glenn and Norine?

A: No, I don't know that.

...

Q: [Was] there an understanding that when other people were leaving the land, either from Kevin or from you or Glenn, that that was an extension of Kevin's agreement with Glenn?

A: I don't know.

...

Q: Okay. Did you ever – prior to being sued in this lawsuit, did you ever deny the existence of any agreement between you and Kevin whereby you were carrying on Glenn and Norine's agreement and if he paid the rest of the money you would deed the land to him?

A: No. I didn't know nothing about that.

Q: You never denied that?

A: No.

Q: How about the time when Kevin brought up all those issues? Did you deny that at that point?

A: I don't remember what I said.

(Deposition of Greg Sletto, page 29, lines 4-15).

[¶ 63] A deposition of Glen Sletto and/or his wife, Norine Sletto, would have potentially resolved many of the outstanding factual issues in this case. Arguably, one of the reasons that Greg Sletto opposed the motion to compel was because of the previous transfer of 160 acres to Donald Schmidt in violation of the original terms of the agreement between Glen Sletto and Kevin Klein and Greg Sletto. In this case, Greg

Sletto's answers and testimony indicate an intentional use of verbal promises without the evidence of writing in order to place Kevin Klein in a disadvantageous position with the judicial system.

[¶ 64] This Court should remand the case for a finding of whether Norine Klein may be deposed.

III. **The District Court Erred When it Denied Plaintiffs Equitable Relief and Applied the Statute of Limitations to Deny the Claim.**

[¶ 65] Based on law and the disputed facts, this court should remand for a trial on the issue of whether a valid contract exists and give the Plaintiff the opportunity to amend the Complaint in order to add equitable claims for deceit, unjust enrichment and quantum merit.

[¶ 66] The record reflects that Glen Sletto paid far below market value for the purchase price of the disputed property. Keven Klein testified Glen Sletto paid off the outstanding FSA loan in the amount of approximately \$46,500.00. (Deposition of Kevin Klein, page 21, lines 13-25). Glen Sletto also sold a portion of the property to Kip Farms for a per acre price that represented fair market value at the time of approximately \$470. (Deposition of Kevin Klein, page 30, lines 2-19; App. at 6). The record reflects that for the 540 acres that Glen Sletto purchased and intended to resell back to Kevin Klein, Sletto only paid approximately \$86.00 per acre.

[¶ 67] In this case, the district wrote that it was not convinced an enforceable verbal contract existed between the parties, but the district failed to ever reconcile the reduced price paid by Sletto. The district court should have allowed Klein to amend his complaint for other equitable relief to compensate him for the reduced price.

[¶ 68] “Unjust enrichment is an equitable doctrine based upon quasi- or constructive contracts implied by law to prevent a party from being unjustly enriched at another’s expense.” BTA Oil Producers v. MDU Resources Group, Inc., 642 N.W.2d 873, ¶ 37, 2002 ND 55 (citing Schroeder v. Buchholz, 2001 ND 36, ¶ 14, 622 N.W.2d 202; In re Estate of Hill, 492 N.W.2d 288, 295 (N.D.1992)). Unjust enrichment applies in the absence of an express contract between the parties.

[¶ 69] This Court has repeatedly recognized the basis for unjust enrichment in quasi-contract, stating, “the doctrine of unjust enrichment serves as a basis for requiring restitution of benefits conferred in the absence of an express or implied in fact contract.” BTA, et al, ¶ 38 (quoting Sykeston Township v. Wells County, 356 N.W.2d 136, 139 (N.D.1984))

[¶ 70] In this case, should this Court determine that as a matter of law, Klein is not entitled to the requested appellate relief, then it should remand to allow Klein to amend his pleadings to include equitable relief to compensate him for the value lost in the property as a result of the sale at a highly reduced price.

## **CONCLUSION**

[¶ 71] Kevin and Lynn Klein respectfully request this Court to remand the case for trial as issues of fact remain sufficient to preclude judgment as a matter of law and for a finding on whether Klein may compel the deposition testimony of Norine Klein.

**CERTIFICATION**

[¶ 72] The undersigned, as one of the attorneys representing Appellant, and the author of the Brief of Appellant, hereby certifies that said brief complies with Rule 32(a)(7)(A) of the North Dakota Rules of Appellate Procedure, in that the brief was prepared with proportional typeface and that the total number of words does not exceed 8,000 from the portion of the brief entitled “Statement of Issues” through the signature block. The word count was verified with the assistance of the undersigned’s word processing software, which also counts abbreviations as words.

Dated this 11<sup>th</sup> day of July, 2016.



---

Erin M. Conroy (ND ID 05932)  
CONROY LEGAL SERVICES, PLLC  
519 Main Street, Suite 10  
PO Box 137  
Bottineau, ND 58318  
Tel: (701) 228-2083  
Fax: (701) 228-2986  
erin@conroylegalservices.com  
ATTORNEY FOR PLAINTIFF/  
APPELLANT

IN DISTRICT COURT, COUNTY OF MCHENRY, STATE OF NORTH DAKOTA

---

Kevin Klein and Lynn Klein,

Plaintiffs,

vs.

Glen Sletto, Norine Sletto, Gregory Sletto,  
Their Heirs, Donald Schmidt, And Any  
Person in Possession of the Real Property  
Described in the Complaint, and Any Person  
In Possession of Any Portion of the Real  
Property Described in the Complaint and All  
Other Persons Unknown Claiming Any Estate  
or Interest in or Lien or Encumbrance Upon  
the Real Property Described in the Complaint  
and all Other Person Discovered During The  
Litigation Herein Claiming Any Estate or  
Interest in or Lien or Encumbrance Upon the  
Real Property Described in the Complaint,

Defendants.

---

Case No. 25-2014-CV-00122

Supreme Court No. 20160048

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing:

1. BRIEF OF APPELLANTS;
2. APPENDIX OF APPELLANTS;
3. CERTIFICATE OF SERVICE

was served by electronic communication as required by the North Dakota Rules of Appellate Procedure Rule 3(a) this 11th day of July, 2016 on the Defendant's attorneys of record at the following email addresses:

1. Richard P. Olson  
Attorney at Law  
Olson & Burns P.C.  
17 First Ave. S.E.  
P.O. Box 1180  
Minot, ND 58702-1180  
[rpolson@minotlaw.com](mailto:rpolson@minotlaw.com)
2. Ryan Gregory Quarne

Attorney at Law  
Olson & Burns P.C.  
17 First Ave. S.E.  
P.O. Box 1180  
Minot, ND 58702-1180  
[rguarne@minotlaw.com](mailto:rguarne@minotlaw.com)

Dated this the 11<sup>th</sup> day of July, 2016.

  
Erin M. Conroy (ND ID 05932)  
CONROY LEGAL SERVICES, PLLC  
519 Main Street, Suite 10  
PO Box 137  
Bottineau, ND 58318  
Tel: (701) 228-2083  
Fax: (701) 228-2986  
[erin@conroylegalservices.com](mailto:erin@conroylegalservices.com)  
ATTORNEY FOR  
PLAINTIFFS/APPELLANTS

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCHENRY

NORTHEAST JUDICIAL COURT

Kevin Klein and Lynn Klein,

Plaintiffs,

vs.

Glen Sletto, Norine Sletto, Gregory Sletto,  
Their Heirs, Donald Schmidt, And Any  
Person in Possession of the Real Property  
Described in the Complaint, and Any Person  
In Possession of Any Portion of the Real  
Property Described in the Complaint and All  
Other Persons Unknown Claiming Any Estate  
or Interest in or Lien or Encumbrance Upon  
the Real Property Described in the Complaint  
and all Other Person Discovered During The  
Litigation Herein Claiming Any Estate or  
Interest in or Lien or Encumbrance Upon the  
Real Property Described in the Complaint,

Defendants.

Case No. 25-2014-CV-00122

**AFFIDAVIT OF SERVICE**

STATE OF NORTH DAKOTA

)

**AFFIDAVIT OF SERVICE**

)s

**BY USPS**

COUNTY OF BOTTINEAU

)

*2016* Lisa Vad, being first duly sworn deposes and says that she is of legal age and that on the day of July, 2016, she filed and served the following:

- 1. Amended Appendix.

**By sending a true and correct copy thereof by a secure electronic file transfer through USPS to:**

Name	
Richard P. Olson	rpolson@minotlaw.com
Ryan G. Quarne	rgquarne@minotlaw.com

*SMITH ERICK*

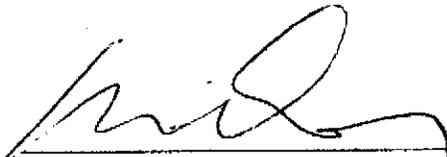
*scrcak.ndcourts.gov*

*(Lisa Vad)*

Lisa Vad

Subscribed and sworn to me the 20 day of <sup>July</sup>~~May~~, 2016.

ERIN M. CONROY  
Notary Public  
State of North Dakota  
My Commission Expires Sept. 6, 2019

  
\_\_\_\_\_  
Notary Public

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCHENRY

NORTHEAST JUDICIAL COURT

Kevin Klein and Lynn Klein,

Plaintiffs,

vs.

Glen Sletto, Norine Sletto, Gregory Sletto,  
Their Heirs, Donald Schmidt, And Any  
Person in Possession of the Real Property  
Described in the Complaint, and Any Person  
In Possession of Any Portion of the Real  
Property Described in the Complaint and All  
Other Persons Unknown Claiming Any Estate  
or Interest in or Lien or Encumbrance Upon  
the Real Property Described in the Complaint  
and all Other Person Discovered During The  
Litigation Herein Claiming Any Estate or  
Interest in or Lien or Encumbrance Upon the  
Real Property Described in the Complaint,

Defendants.

Case No. 25-2014-CV-00122

**AFFIDAVIT OF SERVICE**

STATE OF NORTH DAKOTA

)

**AFFIDAVIT OF SERVICE**

)s

**BY Electronic filing and service**

COUNTY OF BOTTINEAU

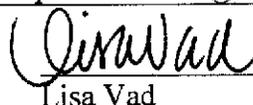
)

*Lisa Vad* Lisa Vad, being first duly sworn deposes and says that she is of legal age and that on the  
day of July, 2016, she filed and served the following:

1. Brief,
2. Amended Appendix.

**By sending a true and correct copy thereof by a secure electronic file transfer through Email  
to:**

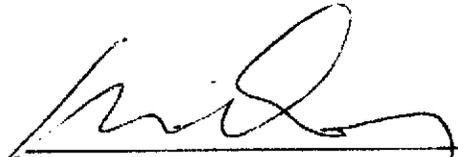
Name	
Richard Olson	rpolson@minotlaw.com
Ryan G. Quarne	rgquarne@minotlaw.com
Sarah Erck	serck@ndcourts.gov
Supreme Clerk of Court Penny L. Miller	supclerkofcourt@ndcourts.gov



Lisa Vad

Subscribed and sworn to me the 20 day of <sup>July</sup>~~May~~, 2016.

ERIN M. CONROY  
Notary Public  
State of North Dakota  
My Commission Expires Sept. 6, 2019

  
\_\_\_\_\_  
Notary Public

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCHENRY

NORTHEAST JUDICIAL COURT

Kevin Klein and Lynn Klein,

Plaintiffs,

vs.

Glen Sletto, Norine Sletto, Gregory Sletto,  
Their Heirs, Donald Schmidt, And Any  
Person in Possession of the Real Property  
Described in the Complaint, and Any Person  
In Possession of Any Portion of the Real  
Property Described in the Complaint and All  
Other Persons Unknown Claiming Any Estate  
or Interest in or Lien or Encumbrance Upon  
the Real Property Described in the Complaint  
and all Other Person Discovered During The  
Litigation Herein Claiming Any Estate or  
Interest in or Lien or Encumbrance Upon the  
Real Property Described in the Complaint,

Defendants.

Case No. 25-2014-CV-00122

**AFFIDAVIT OF SERVICE**

STATE OF NORTH DAKOTA

)

**AFFIDAVIT OF SERVICE**

)s

**BY USPS**

COUNTY OF BOTTINEAU

)

20 Lisa Vad, being first duly sworn deposes and says that she is of legal age and that on the day of July, 2016, she sent via USPS a stamped and addressed envelope of the following:

1. Copy of Brief,
2. Copy of Appendix.

**By sending a true and correct copy thereof through USPS to:**

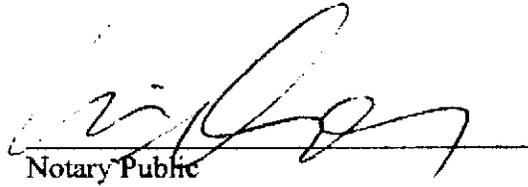
Name	
Donald Schmidt	5534 156 <sup>th</sup> Avenue NE Minto, ND 58261

*Lisa Vad*

Lisa Vad

Subscribed and sworn to me the 20<sup>th</sup> day of July, 2016.

ERIN M. CONROY  
Notary Public  
State of North Dakota  
My Commission Expires Sept. 6, 2019

  
Notary Public