

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Midwest Family Mutual Insurance Company, <i>Plaintiff and Appellee,</i> vs. Superior Manufacturing, LLC and Superior, Inc., <i>Defendants and Appellees,</i> and James & David Cooper Farms, Inc., Philip Cooper, and Michael D. Cooper, <i>Intervenors, Defendants, and Appellants.</i>	Supreme Court No. _____ Case No: 09-2021-CV-03028
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NOTICE OF APPEAL TO SUPREME COURT

[¶1] PLEASE TAKE NOTICE, that pursuant to N.D.C.C. § 28-27-02(1), (5), and N.D.R. App. P. 3(a), Appellants James & David Cooper Farms, Inc., Philip Cooper, and Michael D. Cooper (“Cooper Farms”), intervenors and specially appearing defendants below, hereby appeal to the North Dakota Supreme Court from the Order denying Cooper Farms’ Motion to Dismiss for *forum non conveniens* or Stay, June 2, 2022 (Doc. ID No. 97), as much of the Order on Motion for Summary Judgment that grants Plaintiff’s Motion for Summary Judgment, August 3, 2022 (Doc. ID No. 131), the Amended Order Granting Plaintiff’s Motion for Summary Judgment, August 17, 2022 (Doc. ID No. 132), and the Court’s Judgment dated August 17, 2022 (Doc. ID No. 133).

[¶2] The preliminary issues presented on appeal are as follows:

- [1] Whether the District Court erred in denying Specially Appearing Intervenor and Defendants James & David Cooper Farms, Inc., Philip Cooper, and Michael D. Cooper (collectively, “Cooper Farms”) Motion to Dismiss for Forum Non Conveniens or Stay Proceeding;
- [2] Whether the District Court erred in granting Appellee, plaintiff below, Midwest Family Mutual Insurance Company’s (hereinafter referred to as “MFM”) Motion for Summary Judgment;
- [3] Whether the District Court erred in granting Appellee, plaintiff below, MFM’s Motion for Summary Judgment by concluding that the Missouri judgment which concluded Superior caused Cooper Farms to sustain damages in the total sum of Six Million One Thousand Eighty-Four Dollars (\$6,001,084.00) is not covered under the MFM Business Owners’ Policy nor the Commercial Umbrella Policy issued to Superior, with the exception of the amount of Two Hundred Ninety-Six Thousand Dollars (\$296,000.00) set forth in the Stipulation of Settlement dated August 6, 2021 for damage to the other property;
- [4] Whether the District Court erred in granting Appellee, plaintiff below, MFM’s Motion for Summary Judgment by concluding that Superior and Cooper Farms did not meet their burden of proof that the performance of defective or fault work by Superior is an “occurrence” covered by MFM Business Owner’s Policy or Commercial Umbrella Policy;

- [5] Whether the District Court erred in granting Appellee, plaintiff below, MFM’s Motion for Summary Judgment by concluding that there was no “occurrence” under the MFM Business Owner’s Policy or Commercial Umbrella Policy;
- [6] Whether the District Court erred in granting Appellee, plaintiff below, MFM’s Motion for Summary Judgment by concluding that there was no “property damage” under the MFM Business Owner’s Policy or Commercial Umbrella Policy;
- [7] Whether the District Court erred in granting Appellee, plaintiff below, MFM’s Motion for Summary Judgment by concluding that Superior and Cooper Farms did not meet their burden of proof that the physical grain bin structures and any loss of use is “property damage” covered by the MFM Business Owner’s Policy or Commercial Umbrella Policy;
- [8] Whether the District Court erred in granting Appellee, plaintiff below, MFM’s Motion for Summary Judgment by concluding that even if Superior and Cooper Farms were able to meet their burden of proving “property damage” caused by an “occurrence,” coverage is excluded by the “business risk” exclusions, specifically Damage to Your Product under Exclusion l, and Damage to Your Work under Exclusion m.

[¶]3 The issues set forth above are merely a preliminary statement of issues on appeal. Appellants reserve the right to raise or otherwise address additional issues in connection with their appellate briefing.

Dated: October 17, 2022.

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