

STATE OF SOUTH DAKOTA
:SS

COUNTY OF HANSON

JOHN & DEBORAH E. HORNIDGE,
PLAINTIFFS,

-vs-

BRENT & MELISSA MENTELE,
HANSON COUNTY, SOUTH DAKOTA,
A local government subdivision,
STATE OF SOUTH DAKOTA-
DEPARTMENT OF REVENUE,
STATE OF SOUTH DAKOTA-
DEPARTMENT OF LABOR,
LINCOLN COUNTY, SOUTH DAKOTA,
A local government subdivision,
AAA COLLECTIONS INC.,
CREDIT COLLECTIONS INC.,
CREDIT COLLECTIONS BUREAU,
RUSHMORE SERVICE CENTER, LLC,
ROGER GERLACH
DEFENDANTS.

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT
File # 30Civ25-

COMPLAINT

Comes now John Hornidge and Deborah E. Hornidge, Plaintiffs, by and through their attorney, J. R. Davies of 421 Main St., Alexandria, SD, allege as follows:

I. FACTUAL BACKGROUND:

1. That the Plaintiffs, John Hornidge & Deborah E. Hornidge, husband and wife, are each a resident 2048 Mitchell Mountain Rd., Reva, VA 22735.

2. That Defendants are each a resident of 241 7th St. Emery, SD 57332, that they are each of legal age and that your undersigned does not believe that either is in the military service to the United States of America at this time.

3. That this matter involves the real property more particularly described as:

"Lots Twenty-Three (23), Twenty-Four (24), Twenty-Five (25) and the North Half (N1/2) of Lot Twenty-Six (26), Block Seven (7), First Addition to Emery, Hanson County, South Dakota."

4. On December 12, 2014, Plaintiff and Defendant entered into a written agreement whereby Plaintiff agreed to sell, and Defendant agreed to purchase the herein described property. By the terms of the Contract, Plaintiff, for themselves and heirs and assigns agreed to sell and convey to the Defendant, and her heirs and assigns, by good and sufficient Warranty Deed, marketable title to the real property on the terms and conditions that the Defendant pay Plaintiff purchase price for the real property the sum of \$55,000.00 plus interest. The Defendants made part of the payment but is in default thereunder.

5. The sum of \$11,000.00 was payable on the execution and delivery of the Contract and the balance of the purchase price was payable on annual payments due each January 1 and terminating on January 1, 2025. Defendant accepted the Contract and agreed to purchase the real property on the terms and conditions therein. In accordance with the terms and conditions of the Contract, Plaintiff surrendered possession of the land and Defendant entered into possession and has since remained in possession thereof.

6. A copy of the Agreement, marked Exhibit "A", is attached, and made a part of this pleading by reference as though incorporated herein verbatim. The Contract was duly recorded in the office of the Hanson

County Register of Deeds on December 24, 2014, at Book 172, Pages 134-138 thereof;

7. It was expressly agreed in the Contract that time was of the essence thereof. Defendants did not comply.

8. The party's agreement did not restrict the Plaintiffs' right to apply for a variety of relief under the Contract, including the rescission and termination of the agreement and the recovery of the property on Defendants' default.

9. The parties' agreement required Defendant to make certain periodic cash money payments to Plaintiffs. Defendants have failed to perform within the terms and under the time set under the agreement.

10. Plaintiffs gave notice of default to Defendants on February 25, 2025, notice of default, a copy of that notice is attached hereto, marked Exhibit "B" and by this reference incorporated herein.

11. Plaintiffs gave further notice of default to Defendants on February 26, 2025, a copy of that notice is attached hereto, marked Exhibit "C" and by this reference incorporated herein.

12. Defendant failed to timely tender the required performance or cure the defaults.

13. As of the date of this Complaint, Defendants remain in default.

14. Plaintiff was not in default in any of its performances under the parties' agreement at any relevant time.

15. In addition to Plaintiff's claim, the following parties, organizations, and persons have liens showing at the Hanson County courthouse which may affect the title to this property.

- /a/ Hanson County for 2025 property taxes due 2026 property taxes which are accruing, but not yet delinquent.
- /b/ Hanson County Poor Lien file #C1224 to Melissa R. Mentele: February 6, 2013, original amount \$325.00 and March 11, 2016, original amount \$325.00 plus interest;
- /c/ Out of county Poor Lien (Lincoln County) file #C1224-Melissa R. Mentele: November 16, 2016, original amount \$167.60, plus interest;
- /d/ State of South Dakota Sales Tax Lien, Melissa R. Mentele dba "The Farmer Jayne" in the original amount of \$245.00, plus interest, fees and penalties, filed September 13, 2021, Lien #404;
- /e/ State of South Dakota Department of Labor Reemployment Assistance Compensation Lien against Melissa R. Mentele in the amount of \$5,352.13, plus interest, fees and penalties, filed June 6, 2024;
- /f/ AAA Collections Inc., judgment against Melissa R. Mentele and others in the amount of \$504.00, plus court costs and interest, docketed May 16, 2018, Case #: 30CIV18-000013-01;
- /g/ Credit Collections Bureau: judgment against Melissa R. Mentele and others in the amount of \$687.54, plus court costs and interest, docketed October 23, 2019, Case #: 30SMC19-000049-01;
- /h/ Rushmore Service Center, LLC: judgment against Melissa R. Mentele

and others in the amount of \$427.20, plus court costs and interest, docketed July 10, 2019, Case #: 30SMC19-000033-01;

/i/ Roger Gerlach, attorney: judgment for \$532.50, plus court costs and interest, docketed December 7, 2023, Case #: 30SMC23-000035-01;

II. CAUSES OF ACTION

[A] FOR A FIRST CAUSE OF ACTION (DECLARATORY JUDGMENT SDCL 21-24):

16. Incorporates herein all preceding paragraphs of this complaint.
17. Plaintiffs request a ruling in declaratory judgment from the court setting forth the terms of the contract between the parties and determining that Defendants have breached the same.
18. Plaintiffs further request a ruling determining that Plaintiff's Contract For Deed is a first lien on the property, superseding all claims except Hanson County's property taxes, and including the superseding of any homestead claims which Defendants may have.

[B] FOR A SECOND CAUSE OF ACTION (FORECLOSURE SDCL 21-50)

19. Incorporates herein all preceding paragraphs of this complaint.
20. Defendants are in default under the terms of their Contract and Plaintiffs are entitled to have the same foreclosed, determined and cancelled according to the its terms.

[C] FOR A THIRD CAUSE OF ACTION (FORCIBLE ENTRY AND RETAINER SDCL 21-16)

21. Incorporates herein all preceding paragraphs of this complaint.
22. Plaintiffs are entitled to have possession of this property returned to them as a result of this action and under the terms of the Contract and therefore request that they be granted possession of this property.

[D] FOR A FOURTH CAUSE OF ACTION (TORT SDCL 21-3)

23. Incorporates herein all preceding paragraphs of this Complaint.
24. Defendants have deliberately, willfully, and wrongfully failed and refused to comply with the terms of the Contract, all to Plaintiffs' detriment and damage and as such entitles Plaintiffs to judgment as requested herein.
26. Plaintiffs are entitled to the priority established by their Contract For Deed and the terms thereof and under the judgment herein foreclosing the Contract are entitled to have all other liens against this property determined to be inferior to Plaintiffs' claim and to have them discharged against the property, with the sole exception of accrued property taxes due and owing to Hanson County, South Dakota.
27. That as a result of the willful and wrongful actions by the said Defendants, Plaintiff will incur out of pocket costs, attorney's fees, and expenses relating to this matter and will be damaged thereby.
28. That the Plaintiff is lawfully and rightfully entitled to recover possession of the property, a determination that the Defendants have forfeited payments, cancellation of the Contract, and to recover their prejudgment interest, post judgment interest, attorney fees, costs and expenses incurred maintaining this action.

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter Judgment in favor of the Plaintiff and against the Defendants as follows:

[A] For declaratory judgment order determining the terms of the Contract For Deed between the parties and finding the Defendants to be in default thereunder and that the agreement between the parties is terminated in accordance with its provisions and the laws of the state of South Dakota.

[B] For declaratory judgment determining that Plaintiff's claim under the Contract For Deed supersedes all other claims against the property, including Defendant's homestead claims, except Hanson County's property tax claims.

[C] For possession of the property subject to the party's agreement of sale.

[D] For money judgment against the Defendants, both jointly and severally, in an amount to be determined at trial.

[E] For a judgement granting to Plaintiffs immediate possession of the property, and a right to reenter the property.

[F] Determining what redemption time or period, if any, Defendant's have in this matter.

[G] For judgment in foreclosure in favor of Plaintiffs and against Defendants.

[H] For a judgment determining that Plaintiff's claim supersedes all other liens and claims on file against the title to this property except the property.

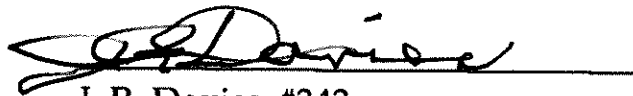
[I] For prejudgment interest on the amounts due Plaintiffs.

[J] For the cost of these proceedings and reasonable attorney fees, costs and expenses;

[K] For post judgment interest at the statutory rate; and

[L] For such other relief as the court may deem to be to be just and equitable in the premises.

Dated July 25, 2025.

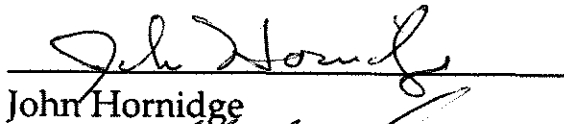


J. R. Davies, #343
Attorney for Plaintiff
PO Box 277
Alexandria, SD 57311-0277
(605) 239-4321

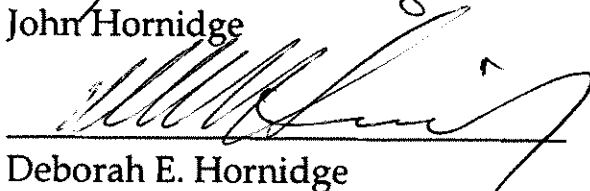
(LDT)
STATE OF ~~VIRGINIA~~ FLORIDA
COUNTY OF ESCAMBIA :SS

John Hornidge & Deborah E. Hornidge, each being first duly sworn and examined upon oath, depose and say that they are the Plaintiffs named in the within instrument; that they have read the same and know the contents thereof; that the same is true and correct to the best of their own individual knowledge, information and belief; and further that they did sign the same for the purposes therein contained.

Dated July 19 2025.



John Hornidge



Deborah E. Hornidge

Subscribed and sworn to before me by John Hornidge & Deborah E. Hornidge on July 19, 2025. In witness whereof I have hereunto set my hand and official seal.



LISA DURANT THOMPSON
Commission # HH 594162
Expires December 10, 2028

Notary Public

My commission expires: 12/10/2028

LISA DURANT THOMPSON
Commission # HH 594162
Expires December 10, 2028



(SEAL)

DEMAND FOR JURY TRIAL

Plaintiffs demand that all matters and aspects of this case, against all parties, whether plead in this complaint or in a subsequent pleading, be tried to a jury.

Dated July 26, 2025.

A handwritten signature in black ink, appearing to read "J. R. Davies".

J. R. Davies, #343
Attorney For Plaintiff
PO Box 277
Alexandria, SD 57311
(605) 239-4321
daviesj@triotel.net

DOC #: 20140699 FEE: \$30.00 TRANS FEE: \$0.00
HANSON COUNTY REGISTER OF DEEDS, STATE OF SD
RECORDED 12/24/2014 AT 10:55 AM, BOOK 172, PG 134-138

Prepared by:
R. R. Gerlach
Attorney at Law
310 N. Main
P.O. Box 544
Salem, SD 57058-0544
(605) 425-2911


Debra D. Zens, REGISTER OF DEEDS



CERTIFIED COPY

I hereby certify that this is a true and correct reproduction of information appearing on a record filed in the Register of Deeds Office, Hanson County Alexandria, South Dakota.

Date Issued 6-16-2025

Register of Deeds

CONTRACT FOR DEED

THIS AGREEMENT, made and entered into this 12th day of December, 2014, by and between John Hornidge and Deborah E. Hornidge, husband and wife, of 2048 Mitchell Mountain Rd., Reva, VA 22735, hereinafter described as Sellers, and Melissa Mentele, a married person, of 241 7th Street, Emery, SD 57332, hereinafter described as Buyer, witnesseth:

If the Buyer shall first make the payments and perform the covenants hereinafter mentioned on her part to be made and performed, the said Sellers hereby covenant and agree to convey and assure to the Buyer, in fee simple, clear of all encumbrances, by a good and sufficient Warranty Deed, the real property situated in the County of Hanson and State of South Dakota described as:

Lots Twenty Three (23), Twenty Four (24), Twenty Five (25) and the North Half (N1/2) of Lot Twenty Six (26), Block Seven (7), First Addition to Emery, Hanson County, South Dakota.

And as consideration therefore the Buyer hereby covenants and agrees to pay the Seller the sum of fifty five thousand dollars (\$55,000.00) payable in the manner following:

The sum of eleven thousand dollars (\$11,000.00) at or before the execution of this contract;

EXHIBIT A-1

The sum of \$4,400.00 principal plus interest on the 1st day of January, 2016 and a like sum of \$4,400.00 principal plus interest on the 1st day of January each year thereafter for a period of ten (10) years with the final installment due on January 1, 2025 if not sooner paid. The interest shall begin on January 1, 2015 at the rate of five percent (5%) per annum payable annually on the whole sum remaining from time to time unpaid and to pay all taxes, assessments, or impositions that may be legally levied or imposed upon said land beginning the year 2015, due and payable in the year 2016. The 2014 real estate taxes due and payable in 2015 shall be paid by Sellers.

In the case of the failure of the Buyer to make either of the payments or interest thereon or any part thereof, or perform any of the covenants on her part hereby made and entered into; then the whole of said payments and interest shall at the election of said Sellers become immediately due and payable, and this Contract shall at the option of the Sellers be forfeited and determined by giving to said Buyer thirty (30) days' notice in writing of the intention of said Sellers to cancel and determine this Contract, setting forth in said notice the amount due upon said Contract, and the time and place, when and where, payment can be made by said Buyer.

It is mutually understood and agreed by and between the parties to this Contract that (30) days is a reasonable and sufficient notice to be so given to said Buyer in case of failure to perform any of the covenants on her part hereby made and entered into, and shall be sufficient to cancel all obligations hereunto on the part of said Sellers and fully reinvest them with all right, title and interest hereby agreed to be conveyed, and the Buyer shall forfeit all payments made by her on this Contract, and her right, title and interest in all buildings, fences and other improvements whatsoever, and such payments and improvements shall be retained by the Sellers in full satisfaction and in liquidation of all damages by them sustained, and they shall have the right to re-enter and take possession of the premises aforesaid.

The right of Sellers to forfeit and determine this Contract, and be reinvested with all right, title and interest in the real property and improvements thereto, shall not be an exclusive remedy, nor in lieu of any other remedy available to Sellers, and it is agreed that Sellers shall retain all other remedies, at law or in equity, otherwise available for breach of this Contract.

The Buyer agrees to keep the buildings insured for the sum of at least the full insurable value against fire, lightning, wind and extended coverage in a company or companies satisfactory to the Sellers, with loss payable as the interests of the parties shall appear.

The Sellers will deliver to the Buyer on or before closing a duly certified title insurance policy to said property for examination and will promptly take proper steps to overcome any legal and valid objections to the title, and upon payment of the balance of the purchase price will deliver to the Buyer a Warranty Deed as above provided together with a title insurance policy to said property duly certified to date showing marketable title in the Sellers free and clear of all encumbrances. The cost of the title insurance policy shall be paid 50% by Sellers and 50% by Buyer.

The cost of closing fees shall be paid 50% by Buyer and 50% by Sellers.

The Buyers shall have possession of said property and the rents, issues and profits thereof from execution of this contract for deed.

Personal property included in the purchase price is none.

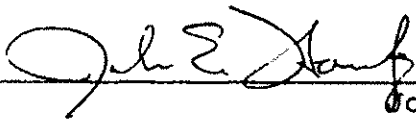
The Buyer has inspected the real property and is purchasing the same in "AS IS" condition.

IT IS MUTUALLY AGREED by and between the parties hereto that the time of payment shall be an essential part of this Contract and that all covenants and agreements herein contained shall extend to ~~and be~~ obligatory upon

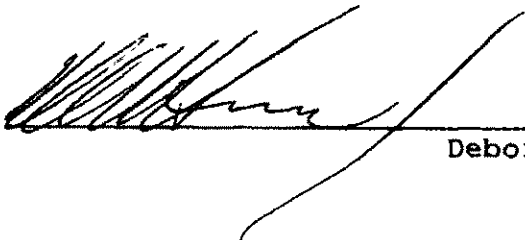
the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year hereinbefore written.

SELLERS:




John Hornidge



Deborah E. Hornidge

BUYER:



Melissa Mentele

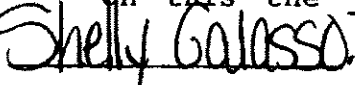
STATE OF

VA

COUNTY

OF

Madison SS

On this the 12th day of December, 2014, before me,

the undersigned officer, personally appeared John Hornidge and Deborah E. Hornidge, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged

that they executed the same for the purposes therein contained

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Shelly Aylor Galasso

Notary Public - State of

(SEAL)

My commission expires:



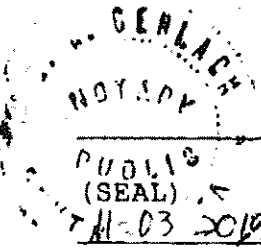
Shelly Aylor Galasso
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #343631
My Commission Expires
May 31, 2016

STATE OF SOUTH DAKOTA)

COUNTY OF McCook : SS

On this the 23rd day of December, 2014, before me, R. R. Gerlach, the undersigned officer, personally appeared Melissa Mentele, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



R. R. Gerlach

Notary Public - South Dakota

My commission expires:

EXHIBIT A-5

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COMMONWEALTH LAW OFFICES, P.C.

246 E. DAVIS STREET, SUITE 200, CULPEPER, VA 22701
VOICE: (540) 727-1007 FAX: (540) 727-7917

February 25, 2025

Melissa Mentele
241 7th Street
Emery, South Dakota 57332

Also sent via electronic mail to:
mmentele@yahoo.com

Re: Forfeited Contract on Lots Twenty Three (23), Twenty Four (24), Twenty Five (25) and the North Half (N 1/2) of Lot Twenty Six (26), Block Seven (7), First Addition to Emery, Hanson County, South Dakota

Dear Ms. Mentele:

On December 12, 2014, you entered into a *Contract for Deed* with John and Deborah Hornidge for purchase of the property described as:

Lots Twenty Three (23), Twenty Four (24), Twenty Five (25) and the North Half (N 1/2) of Lot Twenty Six (26), Block Seven (7), First Addition to Emery, Hanson County, South Dakota.

The Contract for Deed, on page 2, stated:

In the case of the failure of the Buyer to make either of the payments or interest thereon or any part thereof, or perform any of the covenants on her part hereby made and entered into; then the whole of said payments and interest shall at the election of said Sellers become immediately due and payable, and this Contract shall at the option of the Sellers be forfeited and determined by giving to said Buyer thirty (30) days' notice in writing of the intention of said Sellers to cancel and determine this Contract, setting forth in said notice the amount due upon said Contract, and the time and place, when and where, payment can be made by said Buyer.

You have failed to make the full payments and interest thereon.

You have failed to perform the covenants specifying when and what amount the payments were to be made.

You have failed to perform the covenant which required that the principal and interest payments were to be completed and the final payments made by January 1, 2025.

Amount owed: \$23,952.93 principal and interest.

Time payment must be made: 5:00 p.m. (Eastern Time) March 27, 2025.

Place payment must be made: Commonwealth Law Offices, P.C., 246 E. Davis Street, Suite 200, Culpeper, Virginia 22701.

Should you have any further comments or questions please do not hesitate to contact me.

Best Regards,

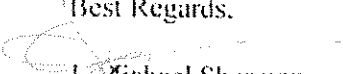

J. Michael Sharman

EXHIBIT "B-1"

CC:
John and Deborah Hornidge
2048 Mitchell Mountain Road
Reva, Virginia 22735

Scanned # 6 21MAR25

COMMONWEALTH LAW OFFICES, P.C.

246 E. DAVIS STREET, SUITE 200, CULPEPER, VA 22701
VOICE: (540) 727-1007 FAX: (540) 727-7917

February 26, 2025

Melissa Mentele
241 7th Street
Emery, South Dakota 57532

Sent via CERTIFIED RETURN RECEIPT REQUESTED MAIL:

Re: Forfeited Contract on Lots Twenty Three (23), Twenty Four (24), Twenty Five (25) and the North Half (N 1/2) of Lot Twenty Six (26), Block Seven (7), First Addition to Emery, Hanson County, South Dakota.

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Should you have any further comments or questions please do not hesitate to contact me.

Best Regards,

J. Michael Sharman

EXHIBIT "C-1"

CC:
John and Deborah Hornidge
2048 Mitchell Mountain Road
Reva, Virginia 22735