

STATE OF SOUTH DAKOTA

:SS IN CIRCUIT COURT

COUNTY OF HANSON FIRST JUDICIAL CIRCUIT

JOHN & DEBORAH E. HORNIDGE,

Plaintiffs, Case No. 30CIV25-000032

vs.

BRENT & MELISSA MENTELE, et al.,

Defendants/Counterclaim Plaintiffs.

FILED

JUN 25 2026

Pam Koupa
Hanson County Clerk of Courts
First Judicial Circuit Court of SD

DEFENDANTS' MOTION FOR DEFAULT JUDGMENT

ON COUNTERCLAIM

Defendants and Counterclaim Plaintiffs Brent Mentele and Melissa Mentele (collectively "Mentele"), hereby move this Court pursuant to SDCL 15-6-55 and SDCL 15-6-8(d) for entry of default and default judgment on Defendants' Counterclaim. In support thereof, Defendants state as follows:

I. SERVICE OF THE ANSWER AND COUNTERCLAIM

1. On May 27, 2026, Defendants filed their Answer and Counterclaim in the above-captioned matter with the Hanson County Clerk of Courts. The Answer and Counterclaim was filed and stamped by Pam Koupal, Hanson County Clerk of Courts, First Judicial Circuit Court of South Dakota, on May 27, 2026.
2. On the same date, May 27, 2026, Defendants personally hand-delivered a true and correct copy of the Answer and Counterclaim to Plaintiffs' attorney of record, James Davies, at his office located at 409 Main Ave, Alexandria, South Dakota 57311. Attorney Davies personally received the document. As a courtesy, a copy was also sent by United States Mail.
3. The Certificate of Service, signed by Melissa Mentele and dated May 27th, 2026, reflects that service was accomplished by hand delivery by Melissa Mentele to James Davies, Attorney of Plaintiffs, at 409 Main Ave, Alexandria, South Dakota 57311, and sent by US Mail. The Certificate of Service is on file with this Court as part of the Answer and Counterclaim filing.

II. PLAINTIFFS' FAILURE TO REPLY

4. Under SDCL 15-6-12(a), a party must serve a reply to a counterclaim within twenty (20) days after service. Under SDCL 15-6-7(a), a reply to a counterclaim denominated as such is a required responsive pleading.
5. Computing the deadline under SDCL 15-6-6 — excluding the day of service (May 27, 2026) and counting forward twenty (20) days — the deadline for Plaintiffs to serve a reply to the Counterclaim expired on Tuesday, June 16, 2026. June 16, 2026 is not a Saturday, Sunday, or legal holiday.
6. As of the date of this Motion, Plaintiffs have filed no reply to the Counterclaim, no motion for extension of time to reply, no motion attacking the sufficiency of the Counterclaim, and no other responsive pleading of any kind. The docket in this matter has been monitored continuously by Defendants from the date of service through the date of this filing and reflects no activity by Plaintiffs since the original Complaint was filed on July 28, 2025 — a period of more than ten months.

III. EFFECT OF PLAINTIFFS' FAILURE TO REPLY — SDCL 15-6-8(d)

7. SDCL 15-6-8(d) provides: *"Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."*

8. By failing to serve a reply to the Counterclaim within the time prescribed by SDCL 15-6-12(a), Plaintiffs have admitted all averments of Defendants' Counterclaim, including:

(a) Counterclaim ¶1: That Mentele has fully performed all requirements under the contract for deed, including all payments required under the contract;

(b) Counterclaim ¶2: That Mentele has lived in the real property for 15 years and has invested over 120,000 dollars into remodeling and updating the property;

(c) Counterclaim ¶3: That pursuant to SDCL 21-9-9, Plaintiff's refusal to transfer the real property cannot be adequately relieved by pecuniary compensation, and that the real property is Mentele's home and has been for 15 years;

(d) Counterclaim ¶4: All preceding Answer and Counterclaim paragraphs as incorporated, including Defendants' affirmative allegations in Answer ¶3 that the contract has been paid in full and that Plaintiff's refusal to transfer title has caused and continues to cause significant damage to Mentele; Answer ¶5 that Mentele has fully performed under the contract; Answer ¶9 that Mentele has clearly fully performed and Plaintiff's refusal continues to cause ongoing damage; and Answer ¶¶11, 13, and 15 that Mentele has shown Plaintiff proof of all required payments being made and Plaintiff refuses to transfer title;

(e) Counterclaim ¶5: That Plaintiff is required to convey the real property to Mentele pursuant to the express terms of the agreement and pursuant to SDCL 43-26-1; and

(f) Counterclaim ¶6: That Plaintiff's refusal to transfer the real property to Mentele despite being paid in full has caused significant damage to Mentele, including but not limited to preventing Mentele from being able to pledge the real property as collateral to make emergent structural repairs needed for the real property and significant professional reputational harm due to a known false proceeding sitting on a visible UJS file for months with no movement by the Plaintiffs or their attorneys, harassment by friends of the Plaintiffs being sent over to photograph the property without permission of Mentele that were caught on security cameras and by Menteles neighbors.

IV. DEFAULT JUDGMENT STANDARD

9. SDCL 15-6-55(a) provides that when a party against whom a counterclaim is asserted has failed to plead or otherwise defend as provided by the rules of civil procedure, the clerk shall, upon application by the party asserting the claim, enter the default of that party.
10. SDCL 15-6-55(b) authorizes this Court to enter judgment by default. Where, as here, the defaulting party has by operation of SDCL 15-6-8(d) admitted all factual allegations of the Counterclaim, this Court may proceed to enter judgment on those admitted facts. Judgment on the specific performance count (Count 1) is appropriate without further

hearing on the basis of the admitted allegations. Judgment on the breach of contract count (Count 2) is appropriate as to liability, with damages to be determined at a hearing.

11. This Court should not set aside any default entered here. To set aside a default, the defaulting party must demonstrate good cause, excusable neglect, and a meritorious defense. None exists:

(a) No excusable neglect: Plaintiffs were represented by counsel throughout this period. Attorney Davies personally received the Counterclaim on May 27, 2026. The twenty-day deadline under SDCL 15-6-12(a) is clear and unambiguous. No emergency, error, or extenuating circumstance has been brought to this Court's attention. The docket reflects that Plaintiffs have made no filing of any kind in this matter since the Complaint was filed on July 28, 2025 — a pattern of inactivity that predates service of the Counterclaim by ten months.

(b) No meritorious defense: The Counterclaim alleges full performance under a contract for deed and demands specific performance of Plaintiffs' obligation to convey title. Full downpayment was made at closing, and closing documents, cashed check by Hornidges, and records from Roger Gerlach's trust account were provided to Attorney Davis with no clarification or amendment to the foreclosure claim that was built off that omission by out-of-state counsel J. Micheal Sharman's, fatal foreclosure filings. A \$10,000.00 cash payment was made by Mentele on Plaintiffs' own cure deadline and deposited to Plaintiffs' Rivers Edge Bank account with the stipulation that it be accepted as full final

payment or returned, and it has never been credited nor was it returned. The mathematical record establishes that Mentele has fully performed. There is no meritorious defense to a specific performance claim where the buyer has fully performed, and the seller refuses to convey.

(c) Prejudice to Defendants: Defendants have been defending against a wrongful forfeiture and foreclosure action for seventeen months. The cloud on title created by Plaintiffs' filing has prevented Defendants from obtaining financing for necessary repairs to the real property. Allowing Plaintiffs to belatedly respond after ten months of complete inactivity and the expiration of the statutory deadline would severely prejudice Defendants.

V. PRAYER FOR RELIEF

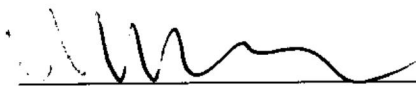
Defendants respectfully request that this Court:

- A. Enter default against Plaintiffs John Hornidge and Deborah E. Hornidge on Defendants' Counterclaim pursuant to SDCL 15-6-55(a);
- B. Enter default judgment in favor of Defendants on Count 1 (Specific Performance, SDCL 21-9-9) of the Counterclaim and issue an Order requiring Plaintiffs to specifically perform by transferring the real property located at [REDACTED] Emery, South

[REDACTED]
[REDACTED]
[REDACTED]
within thirty (30) days of this Order, free and clear of all claims by Plaintiffs;

- C. Enter default judgment as to liability on Count 2 (Breach of Contract, SDCL 43-26-1) of the Counterclaim and schedule a hearing to determine the amount of damages caused by Plaintiffs' breach of contract and refusal to transfer the real property to Mentele;
- D. Deny all relief requested by Plaintiffs in their Complaint;
- E. Award Defendants all pre- and post-judgment interest as permitted by law;
- F. Award Defendants all attorneys' fees as permitted by law; and
- G. Grant Defendants any other just relief determined by the Court.

Respectfully submitted this 25th day of June, 2026.



Melissa Mentele

Melissa Mentele

Defendant and Counterclaim Plaintiff

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Emery, SD ██████

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