

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 HEARING ON DAMAGES

Defendants and Counterclaim Plaintiffs Brent Mentele and Melissa Mentele (collectively "Mentele"), hereby move this Court pursuant to SDCL 15-6-55(b)(2) to schedule a hearing to determine the amount of damages on Count 2 (Breach of Contract) of Defendants' Counterclaim. In support thereof, Defendants state as follows:

I. BASIS FOR HEARING

1. Plaintiffs John Hornidge and Deborah E. Hornidge have defaulted on Defendants' Counterclaim by failing to file a reply within the twenty (20) day period prescribed by SDCL 15-6-12(a). The deadline expired on June 16, 2026.
2. By operation of SDCL 15-6-8(d), Plaintiffs have admitted all averments of the Counterclaim, including that their refusal to transfer the real property despite Defendants' full performance has caused significant damage to Defendants, including but not limited to preventing Defendants from being able to pledge the real property as collateral to make repairs and updates needed for the real property.
3. Under SDCL 15-6-55(b)(2), where the amount of damages is not a sum certain, the Court shall conduct a hearing to determine the amount before entering default judgment on damages. Defendants' damages are not a sum certain and require a hearing.

II. DAMAGES TO BE DETERMINED

A. Structural Repair Damages

The real property at [REDACTED] Emery, South Dakota has sustained significant structural damage due to flooding, including foundation footings that are displaced, causing the structure to be unstable. One corner of the house sits precariously on the edge of the affected footing. Defendants have been unable to obtain financing for necessary structural repairs because Plaintiffs' wrongful forfeiture filing created a cloud on title that prevented Defendants from pledging the property as collateral.

Contractor estimates obtained in February-March 2025 documented repair costs of \$35,000.00 to \$53,000.00, including: (1) structural reinforcement and footing stabilization (\$10,000 - \$15,000); (2) waterproofing and drainage solutions (\$5,000 - \$8,000); and (3) foundation repair (\$20,000 - \$30,000). Updated estimates will be presented at the hearing reflecting current construction costs and any additional deterioration occurring during the period Defendants were unable to obtain financing due to the cloud on title. The cloud on title was created on July 28, 2025 and has not been cleared. Every day of delay in obtaining financing has been a day the structural condition has been permitted to worsen.

B. Carrying Costs and Financial Damages

Defendants have incurred carrying costs, costs of defending against the wrongful forfeiture action, and financial losses resulting from the inability to leverage the property during the period of the wrongful cloud on title. These costs will be documented at the hearing.

C. Contract Overpayment

Applying the correct simple interest calculation per the contract's express terms to the financed amount of \$44,000.00 beginning January 1, 2015, and crediting all payments, including the \$10,000.00 cure payment deposited to Plaintiffs' Rivers Edge Bank account on March 27, 2025, as a Satisfaction and Accords payment that was never returned and never credited, Defendants have overpaid the contract obligation.

D. Attorney Fees and Costs

Defendants seek attorney fees and costs pursuant to SDCL 15-17-7 (bad faith prosecution) and as permitted by law under the Prayer for Relief in the Counterclaim. The amount of attorney fees and costs incurred in defending against this action will be documented at the hearing through counsel's billing records.

III. WITNESSES AND EVIDENCE

Defendants anticipate presenting the following witnesses and evidence at the damages hearing:

1. R.R. Gerlach, closing attorney — testimony regarding the closing date of December 23, 2014, the down payment funds received and disbursed from his Client's Trust Account, and the full accounting of the transaction. Gerlach has confirmed his willingness to testify in writing.

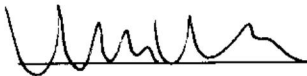
2. Contractor witnesses — testimony and documentation regarding the structural condition of the property, the scope and cost of necessary repairs, and the additional deterioration that has occurred during the period Defendants were unable to obtain financing due to the cloud on title created by Plaintiffs' wrongful filing.
3. Melissa Mentele — testimony regarding the payment history, the \$10,000.00 Accords and satisfaction payment made on March 27, 2025, the financial impact of the cloud on title, the carrying costs incurred during the pendency of this action and the reputational damage due to this file sitting unmoved for over 10 months.
4. Documentary evidence — including but not limited to: the Contract for Deed and Hornidge/Mentle Amortization Schedule; the Rivers Edge Bank deposit receipt dated March 27, 2025; the Gerlach Clients Trust Account check and bank records; contractor estimates and updated repair quotes; proof of out of state counsel who has not sought Pro Hac admission being the actual primary attorney on this case, and the 2025 Hanson County tax assessment showing the property assessed at \$127,783.00 in Defendants' name.

IV. PRAYER FOR RELIEF

Defendants respectfully request that this Court:

- A. Schedule a hearing on damages on Count 2 of the Counterclaim at the earliest available date;
- B. Enter judgment following the hearing for Defendants' actual damages including structural repair costs, carrying costs, contract overpayment, and all other damages proven at the hearing;
- C. Award Defendants their attorney fees and costs pursuant to SDCL 15-17-7 and as permitted by law; and
- D. Grant Defendants any other just relief the Court deems appropriate.

Respectfully submitted this 25 day of June, 2026.



Melissa Mentele

Defendant and Counterclaim Plaintiff

██████████ Emery, SD ██████████

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