

STATE OF SOUTH DAKOTA
:SS
COUNTY OF HANSON

IN CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

JOHN & DEBORAH E. HORNIDGE,

Plaintiffs,
vs. Case No. 30CIV25-000032
BRENT & MELISSA MENTELE, et al.,

Defendants/Counterclaim Plaintiffs.

FILED

JUL 06 2026

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

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION
TO EXTEND TIME TO REPLY TO COUNTERCLAIM
(CORRECTED COPY)**

Defendants and Counterclaim Plaintiffs Brent Mentele and Melissa Mentele (collectively "Mentele"), hereby oppose Plaintiffs' Motion to Extend Time to Reply to Counterclaim filed June 30, 2026. Plaintiffs' motion, supporting affidavit of J.R. Davies, and Reply to Counterclaim were filed fourteen (14) days after the statutory deadline of June 16, 2026 under SDCL 15-6-12(a), and five (5) days after the deadline under Plaintiffs' own counsel's alternative calculation. Plaintiffs have failed to satisfy any of the three required elements for relief under SDCL 15-6-55(c). The motion should be denied.

I. BACKGROUND AND PROCEDURAL HISTORY

1. Plaintiffs filed their Complaint on July 28, 2025. On May 27, 2026, Defendants filed their Answer and Counterclaim with the Hanson County Clerk of Courts and personally served Plaintiffs' attorney of record, J.R. Davies, by hand delivery at his office at 409 Main Ave, Alexandria, South Dakota 57311.
2. Attorney Davies was present at his office and personally received the Answer and Counterclaim on May 27, 2026. A Certificate of Service documenting this personal service was filed with the Clerk of Courts on May 27, 2026.

3. Under SDCL 15-6-12(a), Plaintiffs were required to serve a reply to the Counterclaim within twenty (20) days of service. Computing the deadline under SDCL 15-6-6, excluding the date of service and counting forward twenty days, the deadline expired on Tuesday, June 16, 2026 — a date that is neither a Saturday, Sunday, nor legal holiday.
4. As of June 16, 2026, Plaintiffs filed no reply to the Counterclaim, no motion for extension of time, and no other responsive pleading. Defendants filed their Motion for Default Judgment on Counterclaim, Affidavit of Melissa Mentele in Support of Application for Entry of Default, Motion for Hearing on Damages, and Proposed Order on June 25, 2026 — nine days after the deadline had passed.
5. On June 25, 2026, Defendants personally served the foregoing documents on Attorney Davies at his office. Under SDCL 15-6-5(b), service of papers after the initial pleading does not require the recipient's signature. Service was complete upon delivery. Attorney Davies made statements to Defendant Melissa Mentele at the time of service indicating his belief that the deadline had not passed — demonstrating his actual awareness of the deadline.
6. On June 26, 2026, Defendants filed and served a Notice of Hearing for the July 6, 2026 hearing scheduled by this Court.
7. On June 30, 2026, fourteen days after the June 16 deadline and five days after Plaintiffs' own counsel's alternative thirty-day calculation would have expired on June 25, Plaintiffs filed their Motion to Extend Time, Affidavit of J.R. Davies, and Reply to Counterclaim.

II. LEGAL STANDARD

To obtain relief from a default under SDCL 15-6-55(c), the moving party must demonstrate all three of the following elements: (1) good cause for the default; (2) excusable neglect; and (3) a meritorious defense. *Colton Lumber Company v. Simmonsma*, 651 N.W.2d 871, 2002 S.D. 116 (2002), cited by Plaintiffs, confirms that all three elements must be satisfied. Failure to establish any single element is fatal to the motion. Plaintiffs have failed to establish any of the three required elements.

III. PLAINTIFFS CANNOT ESTABLISH EXCUSABLE NEGLIGENCE

A. The Affidavit Contradicts Itself on the Central Excusable Neglect Question

Plaintiffs' motion and supporting affidavit are fatally self-contradictory. Paragraph one of the Davies Affidavit states that the failure to reply "was purely inadvertent and accidental and not caused by any deliberate choice or action." Paragraph two of the same affidavit states that upon receipt of the counterclaim, Davies "immediately provided copies of the same and made a notation in his calendar for a deadline date of thirty days after the date of service."

These two statements cannot be reconciled. A deliberate notation in a calendar for a specific deadline date is, by definition, a deliberate choice. An attorney who consciously decides to calendar a specific deadline has made an affirmative, intentional decision. Inadvertence means the failure to take notice or pay attention. It is the opposite of making a deliberate calendar notation. Davies cannot simultaneously claim inadvertence and describe the deliberate act that caused the deadline to be missed.

B. Davies Admits He Knew the Correct Deadline Was Twenty Days

Plaintiffs' motion explicitly states: "this was inadvertent and incorrect since the time on a counterclaim is established by SDCL is twenty days." Davies is therefore admitting that he knew the correct deadline was twenty days under South Dakota law. An attorney who knows the correct answer and deliberately calendars the wrong deadline has not been inadvertent — he has been negligent. Negligence by a licensed attorney in calendaring a clear statutory deadline does not constitute excusable neglect under South Dakota law.

C. Davies' Own Statements to Defendant Confirm Deliberate Choice

When Defendants served the Motion for Default Judgment and related documents on June 25, 2026, Attorney Davies stated to Defendant Melissa Mentele that "the time was not up" — indicating his belief that the deadline had not yet passed. This statement proves Davies was actively monitoring the deadline and had formed a deliberate judgment about it. An attorney who is tracking a deadline and forming opinions about whether it has passed is not an attorney who inadvertently forgot about it. This is the conduct of someone who made a conscious decision about the deadline, not someone who accidentally overlooked it.

D. The Pattern of Inactivity Confirms Deliberate Non-Response

Excusable neglect must be evaluated in the context of the party's overall conduct in the litigation. The docket in this matter reflects that Plaintiffs have made no filing of any kind between the original Complaint filed July 28, 2025 and the June 30, 2026 filings — a period of three hundred thirty-five days. During this period: Plaintiffs' counsel received a written letter dated September 16, 2025 from an attorney identifying specific legal defects in the Complaint, responded with a single call requesting to speak with his clients, and then deliberately ceased all further communication for nine months without follow-up, without providing the requested information, and without taking any action on the docket; Plaintiffs' counsel received documentary closing proof from Defendant at an August 2025 meeting refuting the complaint's foundational allegations and took no corrective action; and Plaintiffs received the Answer and Counterclaim by personal delivery on May 27, 2026 and allowed the twenty-day response period to expire without a single filing. This is not the conduct of a party who was diligently pursuing their case and made one excusable error on a deadline. This is a pattern of deliberate disengagement after actual notice of the legal defects in Plaintiffs' own pleading.

E. No Valid Cure Amount Has Ever Been Provided and the \$10,000 Cure Payment Has Never Been Credited

Plaintiffs' own forfeiture notice, dated February 26, 2025, demanded \$23,952.93 and gave Defendant until March 27, 2025 to pay it. Defendant disputed this amount within minutes: at 1:06 p.m. that same day — six minutes after the notice was received at 1:00 p.m. — Defendant responded in writing, stating that she was not forfeiting the property, that she and Plaintiff John Hornidge had discussed resolving the interest dispute directly, and specifically requesting “Principle and Interest break down requested.” Sharman provided an accounting that same day, but it is the same accounting shown by Defendants' Notice of Accounting Discrepancies to contain five specific, documented errors — including an under-credited down payment, interest charged before the contractual start date, and unauthorized compounding — that overstate the balance by \$1,858.02. Neither that accounting, Defendant's renewed request by certified letter on March 18, 2025 discussed below, nor any communication in the sixteen months since has ever produced an accurate figure. The Contract for Deed itself requires that a forfeiture notice “set[] forth in said notice the amount due upon said Contract.” A forfeiture notice whose stated amount was disputed within six minutes of receipt, and never corrected despite a specific and timely

request for an accurate accounting, did not validly trigger forfeiture under the parties' own contract.

An additional and independent basis for denying the extension is that Plaintiffs have never provided Defendant with a valid cure amount despite being formally requested to do so. On March 18, 2025, Defendant sent a certified letter to Plaintiffs' agent and to the Hornidges disputing the claimed balance and demanding an accurate payoff statement within ten days. Both parties received and signed for this letter. No updated cure amount was ever provided.

On or about March 27, 2025, Defendant made a \$10,000.00 cash payment deposited to Plaintiffs' Rivers Edge Bank account — the cure deadline established by Plaintiffs' own forfeiture notices — with the condition that it be accepted as full and final payment or the funds returned. Plaintiffs received and retained this payment. It has never been credited. It does not appear anywhere in the Complaint filed four months later. No updated accounting reflecting this payment has ever been provided to Defendant.

On August 18, 2025, Plaintiffs' counsel J.R. Davies sent Defendant a certified letter stating that his calculations differed from Defendant's but providing no alternative accounting and no cure amount. This letter — sent months after the \$10,000 cure payment was made and retained — is the only communication Plaintiffs have made regarding the balance since the February 2025 forfeiture notices. A party that has retained \$10,000 in cure funds, provided no credit for that payment, and provided no updated cure amount in sixteen months cannot now claim equitable relief from a default that resulted from their own failure to engage with the legal proceedings they initiated.

IV. PLAINTIFFS CANNOT ESTABLISH GOOD CAUSE

A. The Statute Cited Requires Excusable Neglect — Which Plaintiffs Cannot Establish

Plaintiffs' motion cites SDCL 15-6-6(b)(2) as authority for the extension. That provision permits a court, upon motion made after expiration of a specified period, to allow an act to be done "where the failure to act was the result of excusable neglect." This is the same excusable neglect standard that governs relief from default under SDCL 15-6-55(c). Plaintiffs have chosen the correct statute but the statute requires the very showing they cannot make. As demonstrated in Section III above, the failure to timely reply to the Counterclaim was not the result of excusable

neglect — it was the result of a deliberate calendar notation applying the wrong deadline, in the context of a three hundred thirty-five day pattern of deliberate non-engagement with this litigation.

B. Distance and Electronic Service Are Irrelevant

Davies’ affidavit argues that distance is an issue because the Hornidges live out of state and no electronic service arrangement exists. This argument is legally irrelevant. Davies is the attorney of record practicing in Alexandria, South Dakota. His clients’ physical location has no bearing on his obligation to file a reply in the court where he filed the complaint. The deadline under SDCL 15-6-12(a) runs from service on the attorney of record — not from communication between the attorney and his out-of-state clients. Every South Dakota attorney who represents out-of-state clients manages this reality as a basic matter of professional practice.

C. Defendant’s Consultations with an Attorney Are Irrelevant

Davies’ affidavit argues that Defendant had contact with an attorney requesting information on her behalf and that this created uncertainty about the procedural posture. This argument has no legal foundation. Whether Defendant consulted with an attorney has absolutely no effect on Plaintiffs’ obligation to file a timely reply to the Counterclaim. The deadline under SDCL 15-6-12(a) runs from service regardless of what the opposing party is doing. Moreover, this argument reveals that Davies was actively monitoring activity on Defendant’s side of the case — further undermining his claim that he inadvertently overlooked the deadline.

D. The Affidavit’s Request for an Order Compelling Disclosure Is Improper and Irrelevant

Davies’ affidavit further requests “a specific court order clarifying the relationship of any attorney” Defendant is consulting with. No procedural mechanism supports this request on an extension motion, and no authority is cited for it. Whatever informal consultations Defendant may have had are not a proper subject of compelled disclosure on a motion addressed solely to whether Plaintiffs’ own default was the product of excusable neglect. The request should be denied along with the remainder of the motion, and in any event has no bearing on whether Plaintiffs have met their burden under SDCL 15-6-55(c).

V. PLAINTIFFS CANNOT ESTABLISH A MERITORIOUS DEFENSE

A. The Reply Is Filed on Behalf of Parties Not Named in This Action

Plaintiffs' Motion to Extend Time identifies the moving parties as "John and Melissa Hornidge." The Plaintiffs of record in this action are John Hornidge and Deborah E. Hornidge, as identified in the Complaint filed July 28, 2025 and in every subsequent filing. "Melissa Hornidge" is not a party to this action. Melissa Mentele is the Defendant. A motion filed on behalf of a party who does not exist in this case cannot be granted. This error appears on the face of the motion and was not present in the Affidavit or Reply, indicating the Motion itself was prepared carelessly and without adequate review.

B. The Claimed Defense Is Refuted by Plaintiffs' Own Documents

Plaintiffs' Reply and motion claim a meritorious defense based on allegedly incomplete and untimely payments. This claimed defense is directly refuted by documents Plaintiffs themselves produced. Plaintiffs' own agent, J. Michael Sharman, provided an accounting document on **February 26, 2025** crediting total payments of \$46,985.00, **consistent with the Hornidge/Mentele Amortization Schedule** — the payment schedule issued at closing. Against credited payments of \$46,985.00 and the \$10,000.00 cash payment deposited to Plaintiffs' Rivers Edge Bank account on March 27, 2025 — the cure deadline established by Plaintiffs' own forfeiture notices — Defendant has fully performed. There is no meritorious defense to a specific performance claim where the buyer has fully performed and the seller's own documents establish that fact.

C. The Late Payment Defense Is Contractually Barred

Plaintiffs' Reply claims Defendant made payments not on the scheduled dates and that Plaintiffs were denied interest on late payments. This defense is contractually barred. The Contract for Deed contains no provision for late fees or additional interest on late payments. Plaintiffs' own agent acknowledged this in writing on February 26, 2025, stating that Defendant was "very fortunate" the amount due was not higher because the contract lacks "the standard and normally required provisions for late fees and attorney fees and costs." A party cannot claim damages for late payment interest that the governing contract expressly does not provide for. The waiver and estoppel doctrine additionally bars this argument — Plaintiffs accepted payments from Defendant for over ten years without objection, creating a mutual understanding regarding payment arrangements that is evidenced by years of contemporaneous communications.

D. The Jury Demand Is Legally Impossible

Plaintiffs' Reply includes a demand for jury trial. This demand is legally impossible in this proceeding. An action for strict foreclosure of a contract for deed under SDCL 21-50 is an action in equity. There is no right to a jury trial in an equitable proceeding under South Dakota law. The inclusion of a jury demand in a reply to a counterclaim seeking specific performance of a contract for deed is a facial defect confirming that the Reply was prepared without adequate knowledge of South Dakota law and procedure.

E. The Jury Demand in the Reply Proves Unauthorized Out-of-State Drafting

Plaintiffs' Reply to Counterclaim concludes with a demand for jury trial. This demand is not merely legally impossible — it is documentary proof that the Reply was drafted by an attorney applying Virginia procedural rules to a South Dakota equitable proceeding.

An action for strict foreclosure of a contract for deed under SDCL 21-50 is an action in equity. There is no right to a jury trial in an equitable proceeding under South Dakota law. No South Dakota attorney who has practiced in this area would include a jury demand in a reply to a counterclaim in an equitable foreclosure case. The inclusion of this demand is legally impossible under South Dakota law and reflects no familiarity with South Dakota equitable procedure. Virginia Rule of Supreme Court 3:25, by contrast, requires an explicit standalone jury demand at the conclusion of a pleading to preserve the right to jury trial. Virginia law firms routinely include this demand as boilerplate in all pleadings as a matter of professional practice. The jury demand appearing in Plaintiffs' Reply is the automatic output of a Virginia law firm's template system applied to a South Dakota equitable proceeding without adequate review or understanding of South Dakota law.

This is not an isolated drafting error. The original Complaint filed July 28, 2025 contains the same jury demand — also legally impossible in this equitable proceeding — along with: (1) illegal joinder of Forcible Entry and Detainer with damages claims in direct violation of SDCL 21-16-4, mirroring Virginia Code § 55.1-3000 which permits such joinder; (2) a "right to reenter" remedy in the prayer that exists under Virginia Code § 55.1-1419 but has no counterpart in South Dakota contract for deed law; (3) a verification block pre-typed "STATE OF VIRGINIA" and subsequently altered by hand; and (4) a missing numbered paragraph 25 reflecting deletion of Virginia-specific statutory boilerplate without renumbering. The jury demand appearing in both

the original Complaint and the Reply to Counterclaim is the signature of the same Virginia drafting system applied to both documents.

F. The Reply Was Drafted by J. Michael Sharman in Violation of SDCL 16-18-1

The evidence establishes that both the original Complaint and the Reply to Counterclaim were drafted by J. Michael Sharman, VSB #29651, a Virginia-licensed attorney who has never been admitted to practice law in South Dakota and has never sought pro hac vice admission in this Court at any time during the seventeen months of his involvement in this matter.

The proof of Sharman's drafting is documentary and appears on the face of the filings themselves. The forfeiture notices attached as Exhibits B and C to the Complaint bear Sharman's Virginia bar number (VSB #29651) and his Virginia office address. The Complaint's language is word-for-word from those notices. The Complaint's verification block was pre-typed "STATE OF VIRGINIA" — consistent with a document generated on a Virginia law firm's server — before being altered by hand. The Complaint's four causes of action mirror Virginia law templates inapplicable in South Dakota. The August 18, 2025 letter from Davies to Defendant copies "J. Michael Sharman" — proving Sharman's continued active participation in this litigation after the Complaint was filed. Now the Reply to Counterclaim contains the same Virginia jury demand boilerplate appearing in the original Complaint, confirming the same drafting system produced both documents.

Under SDCL 16-18-1, the unauthorized practice of law in South Dakota is a criminal act. Each document prepared by Sharman and filed in this Court constitutes a separate violation. Under SD RPC 5.5(a), a licensed South Dakota attorney shall not assist another in the unauthorized practice of law. Davies' filing of documents prepared by Sharman under his South Dakota bar number constitutes such assistance. The Court should not reward this conduct by granting equitable relief that would allow documents prepared through unauthorized practice to remain in this proceeding.

The Court's inherent authority to regulate practitioners appearing before it includes the authority to deny equitable relief to a party whose litigation has been directed by an unlicensed practitioner for seventeen months after receiving written notice of the unauthorized practice. Defendant put both Sharman and the Hornidges on written notice of the unauthorized practice issue on March

18, 2025 — sixteen months before this filing. The response to that notice was not to seek South Dakota admission. It was to file a complaint. And now, sixteen months later, the same unlicensed Virginia attorney's drafting fingerprints appear in the Reply to Counterclaim seeking to undo the consequences of that choice.

By operation of SDCL 15-6-8(d), all averments of Defendants' Counterclaim were deemed admitted on June 17, 2026 — the day after the June 16 deadline passed without a reply. Those deemed admissions include: that Defendant has fully performed all requirements under the Contract for Deed; that the real property is Defendant's home and has been for several years; that Plaintiff is required to convey the real property pursuant to SDCL 43-26-1; and that Plaintiff's refusal has caused significant damages to Defendant. A late reply filed fourteen days after the deadline cannot retroactively withdraw deemed admissions that have already become part of the legal record by operation of statute. The Court would first need to grant the extension motion and set aside the default before the Reply has any legal effect. For all the reasons stated above, the extension motion should be denied.

VI. GRANTING THE EXTENSION WOULD SEVERELY PREJUDICE DEFENDANTS

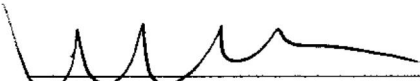
Defendants have been defending against this wrongful forfeiture action for seventeen months. During this period, the lis pendens recorded against the real property on July 30, 2025 has prevented Defendants from obtaining financing for necessary structural repairs, including foundation footing displacement that has caused the structure to become unstable and has resulted in plumbing failure, water intrusion, and mold contamination requiring remediation and reconstruction. Every additional month of delay caused by Plaintiffs' inaction causes additional and measurable harm to Defendants' property and financial position. Allowing Plaintiffs to re-enter this litigation after three hundred thirty-five days of inactivity, on the basis of a motion that misstates the names of Plaintiffs' own clients, cites the wrong statute, contradicts itself on the excusable neglect question, and offers a meritorious defense refuted by Plaintiffs' own documents, would severely prejudice Defendants who have built their entire defense in reliance on the established procedural record.

VII. PRAYER FOR RELIEF

Defendants respectfully request that this Court:

- A. Deny Plaintiffs' Motion to Extend Time to Reply to Counterclaim in its entirety;
- B. Strike Plaintiffs' Reply to Counterclaim as untimely filed without leave of court;
- C. Confirm that all averments of Defendants' Counterclaim are deemed admitted pursuant to SDCL 15-6-8(d) as of June 17, 2026;
- D. Enter default judgment in favor of Defendants on Count 1 of the Counterclaim ordering specific performance and title transfer as set forth in Defendants' Proposed Order filed June 25, 2026;
- E. Proceed with the damages hearing scheduled for July 6, 2026 at 1:30 PM; and
- F. Grant Defendants such other and further relief as this Court deems just and equitable.

Respectfully submitted this 6 day of July, 2026.



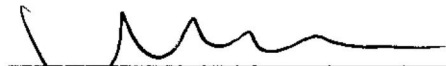
Melissa Mentele
Defendant and Counterclaim Plaintiff
[REDACTED] Emery, SD [REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Opposition to Plaintiffs' Motion to Extend Time to Reply to Counterclaim was served upon James Davies, Attorney at Law, 409 Main Ave, Alexandria, SD 57311, by the method indicated:

☒ Hand Delivered *Michael Davies*
☐ United States Mail, First Class, Postage Prepaid
☐ Email: daviesj@triotel.net

Dated this ____ day of July, 2026.



Melissa Mentele

FILED

JUL 06 2026

Pam Koupal
Nelson County Clerk of Courts
First Judicial Circuit Court of SD