

SUPREME COURT OF SOUTH DAKOTA

Legendary Loan Link, Inc. v. Larson

2017 S.D. 25 · No. #27908 · Decided May 17, 2017

SUMMARY

The South Dakota Supreme Court affirmed a judgment in favor of Legendary Loan Link, Inc. against Todd Larson on a promissory note. The court held that Larson was not entitled to file an affidavit for a change of judge because the filing was untimely and he had waived the right by submitting argument to the judge before filing it. The court also granted Legendary Loan's motion for appellate attorney fees and costs.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Severson, Justice; Wilbur, Justice; Kern, Justice
JURISDICTION	South Dakota
DECIDED	May 17, 2017
DOCKET	#27908
DISPOSITION	affirmed
PROCEDURAL POSTURE	Larson appealed the circuit court's final judgment and the denial of his effort to change judges, arguing that Judge Carmen Means lacked authority to preside because the presiding judge did not enter a formal order denying his affidavit for a change of judge and assigning Judge Means.
STANDARD OF REVIEW	The Supreme Court reviewed the legal question concerning Larson's entitlement to file an affidavit for a change of judge and the resulting authority of Judge Means de novo.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Todd Larson v. Legendary Loan Link, Inc.

TOPICS

- appellate procedure
- civil procedure
- waiver
- attorney fees
- breach of contract

PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

contracts

QUESTIONS PRESENTED

1. Whether Larson was entitled to file an affidavit for a change of judge after submitting argument on multiple matters to Judge Means and filing the affidavit nearly one year after her assignment.
2. Whether the absence of a formal order from the presiding judge denying the affidavit and assigning Judge Means deprived Judge Means of authority to preside over the case.

HOLDINGS

1. Larson was not entitled to file the affidavit because it was untimely and because he waived the right by submitting argument to Judge Means before filing the informal request and affidavit.
2. The court did not need to decide whether a formal order was required because Larson had no right to file the affidavit for a change of judge in the first place; he therefore could not assert on appeal a right he did not possess below.

KEY QUOTATIONS

“Further, ‘the challenged judge has no jurisdiction to consider the propriety of the affidavit or to continue with the action.’” (¶ 7)

“But ‘[o]nce a party puts a matter before a judge, . . . judicial economy and fairness to the other parties require that it remain there.’” (¶ 9)

“Because Larson may not assert a right on appeal that he did not possess below, we affirm.” (¶ 10)

FACTUAL BACKGROUND

Legendary Loan sued Larson on a promissory note secured by certain property. Judge Robert Timm granted partial summary judgment determining that Larson was liable for the principal and interest but left issues concerning recoverable costs and the collateral for later resolution. After Judge Timm retired, Judge Carmen Means was assigned to the case and ruled on several motions. Nearly a year after that assignment, and after submitting argument to Judge Means on multiple occasions, Larson sought her disqualification and filed an affidavit for a change of judge.

PROCEDURAL HISTORY

Legendary Loan sued Larson on a secured promissory note. The circuit court granted partial summary judgment on liability, while reserving issues concerning recoverable costs and the collateral. After Judge Timm retired, Judge Means presided, ruled on Larson's motions, and ultimately granted summary judgment on the remaining issues. Larson filed an informal disqualification request and a formal affidavit for a change of judge nearly a year after Judge Means's assignment; the requests were denied, and Larson appealed the final judgment.

DISPOSITION

affirmed

CASES CITED

- State v. Peterson, 531 N.W.2d 581 (S.D. 1995)
- State v. Tapio, 432 N.W.2d 268 (S.D. 1988)
- State v. Burgers, 1999 S.D. 140, 602 N.W.2d 277

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