

SUPREME COURT OF SOUTH DAKOTA

Vivos Xpoint Investment Group, LLC v. Sindorf

Vivos Xpoint, 2026 S.D. 25 (S.D. 2026) · No. 31074 · Decided April 22, 2026

SUMMARY

The South Dakota Supreme Court reversed a summary judgment ruling that a 99-year bunker lease was an illusory contract because the lessor could modify community rules and regulations. The court held that the lease was supported by valid consideration and that the lessor's rulemaking authority was constrained by reasonableness, good faith, nondiscriminatory enforcement, and the implied covenant of good faith and fair dealing. The case was remanded for further proceedings in the forcible detainer action.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Mark E. Salter; Chief Justice Jensen; Justice Devaney; Justice Myren; Circuit Court Judge Hoffman, sitting for Justice Gusinsky
JURISDICTION	Supreme Court of South Dakota
DECIDED	April 22, 2026
DOCKET	31074
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Vivos appealed from an order granting Sindorf summary judgment in Vivos's forcible entry and detainer action. The circuit court ruled that the parties' 99-year lease was illusory because Vivos could unilaterally modify the community rules and regulations.
STANDARD OF REVIEW	Summary judgment and the existence of a valid contract are reviewed de novo. The appellate court gives no deference to the circuit court and determines whether a genuine issue of material fact exists and whether the law was correctly applied.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Vivos Xpoint Investment Group, LLC v. Daniel Sindorf

TOPICS

- landlord tenant
- eviction
- summary judgment
- contracts
- implied covenant of good faith

PRACTICE AREAS

landlord-tenant law

contracts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether a 99-year lease is illusory and unenforceable because it permits the lessor to modify incorporated community rules and regulations on thirty days' written notice.
2. Whether the lease's modification provision eliminates consideration or otherwise prevents the lease from being a valid contract.
3. Whether the circuit court properly granted summary judgment to the tenant in the forcible detainer action.

HOLDINGS

1. The lease was not illusory. Vivos's ability to modify the community rules and regulations did not eliminate the consideration supporting the lease or make the lease unenforceable.
2. The community rules and modifications were enforceable because Vivos's discretion had to be exercised reasonably and in good faith.
3. The circuit court erred by granting Sindorf summary judgment on the ground that the lease was illusory.

KEY QUOTATIONS

“When a “party can unilaterally modify an agreement such that the party could relieve itself of its promises, there is no meaningful mutuality, which renders the agreement illusory and unenforceable.” (¶ 19)

“Thus, any modification that Vivos has made or will make to the community rules and regulations needs to be reasonable, made in good faith, enforced in a non-discriminatory manner, and not adopted for the purpose of depriving any tenant of the benefit of their lease or evading the lessor’s obligations under the lease.” (¶ 24)

“And any modifications to the rules and regulations are also enforceable, so long as they are reasonable, made in good faith, equally enforced, and not adopted for the purpose of evading the lessor’s obligations under the lease or depriving any tenant of the benefit of their lease.” (¶ 27)

FACTUAL BACKGROUND

Vivos converted former military bunkers near Edgemont, South Dakota, into survival shelters available for purchase or lease. In July 2020, Sindorf signed a 99-year lease for an unfinished bunker and paid \$35,000 upfront. The lease incorporated community rules and allowed Vivos to modify them on thirty days' written notice. After an alleged July 2023 altercation in which Sindorf brandished a firearm, Vivos terminated the tenancy and filed a forcible detainer action after Sindorf left the community but retained a lock on the bunker.

PROCEDURAL HISTORY

Sindorf leased a bunker from Vivos and allegedly brandished a firearm in violation of a community rule. Vivos served notices to quit and terminate the tenancy, then filed a forcible entry and detainer action seeking possession. Sindorf moved for summary judgment and dismissal, arguing that Vivos's authority to modify the

rules made the lease illusory; the circuit court granted the motion. The South Dakota Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the circuit court for further proceedings consistent with the opinion.

CASES CITED

- Zochert v. Protective Life Ins., 2018 S.D. 84, ¶ 18, 921 N.W.2d 479, 486
- Harvieux v. Progressive N. Ins., 2018 S.D. 52, ¶ 9, 915 N.W.2d 697, 700
- Paulsen v. McKennan, 2025 S.D. 37, ¶ 11, 24 N.W.3d 522, 526
- Karst v. Shur-Co., 2016 S.D. 35, ¶ 15, 878 N.W.2d 604, 612
- Coffee Cup Fuel Stops & Convenience Stores, Inc. v. Donnelly, 1999 S.D. 46, ¶ 17, 592 N.W.2d 924, 926
- Walther v. KPKA Meadowlands Ltd. P'ship, 1998 S.D. 78, ¶ 14, 581 N.W.2d 527, 531
- Heiser v. Rodway, 247 N.W.2d 65, 67 (S.D. 1976)
- Raich v. Weisman, 234 N.W. 664, 665 (S.D. 1931)
- VOR, Inc. v. Est. of O'Farrell, 2025 S.D. 2, ¶ 39, 17 N.W.3d 252, 262
- LPN Tr. v. Farrar Outdoor Advert., Inc., 1996 S.D. 97, ¶ 9, 552 N.W.2d 796, 798
- LP6 Claimants, LLC v. S.D. Dep't of Tourism & State Dev., 2020 S.D. 38, ¶ 24, 945 N.W.2d 911, 918
- Cain v. Fortis Ins., 2005 S.D. 39, ¶ 22, 694 N.W.2d 709, 714
- Tri-City Assocs., L.P. v. Belmont, Inc., 2014 S.D. 23, ¶ 9, 845 N.W.2d 911, 914-15
- Nelson v. Est. of Campbell, 2023 S.D. 14, ¶ 28, 987 N.W.2d 675, 685
- Harvey v. Reg'l Health Network, Inc., 2018 S.D. 3, ¶ 55, 906 N.W.2d 382, 398
- Acklie v. Greater Omaha Packing Co., 944 N.W.2d 297, 306 (Neb. 2020)
- Lane v. Wahl, 6 P.3d 621, 624 (Wash. Ct. App. 2000)
- Thousand Island Park Ass'n v. Tucker, 65 N.E. 975, 977-78 (N.Y. 1903)
- Schipporeit v. Khan, 2009 S.D. 96, ¶ 7, 775 N.W.2d 503, 505
- Farm Credit Servs. of Am. v. Dougan, 2005 S.D. 94, ¶ 8, 704 N.W.2d 24, 27

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