

SUPREME COURT OF SOUTH DAKOTA

Berbos v. Berbos

2018 S.D. 82 (S.D. 2018) · No. #28570 · Decided December 12, 2018

SUMMARY

The South Dakota Supreme Court considered whether landowners claiming unpaid farm rent were entitled to intervene as of right in a partnership dissolution action. The Court held that although the landowners showed a recognized creditor interest, they failed to demonstrate that the interest might be impaired by disposition of the dissolution proceeding, particularly because a separate rent action remained pending and partnership assets must be applied to creditor obligations. The Court affirmed the denial of intervention.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Chief Justice Gilbertson; Justice Kern; Justice Jensen; Justice Salter
JURISDICTION	South Dakota
DECIDED	December 12, 2018
DOCKET	#28570
DISPOSITION	affirmed
PROCEDURAL POSTURE	Applicants and appellants appealed the circuit court's denial of their motion to intervene as a matter of right in a partnership-dissolution action.
STANDARD OF REVIEW	The denial of a motion to intervene is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Victoria Perry, Craig Perry, James Perry v. Joe Berbos, Lisa Berbos, Joe Berbos Real Estate Limited Partnership, Joe Berbos Management, LLC, Nick Berbos, Berbos Farms General Partnership, Nick Berbos Real Estate Limited Partnership

TOPICS

intervention

civil procedure

appellate procedure

commercial litigation

breach of contract

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appellants satisfied the requirements for intervention as a matter of right under SDCL 15-6-24(a)(2).
2. Whether the circuit court abused its discretion by denying intervention in the partnership-dissolution action.

HOLDINGS

1. The appellants demonstrated a recognized interest in the dissolution action because the alleged unpaid rent made them potential creditors of Berbos Farms, whose affairs would be wound up if the partnership were dissolved.
2. The appellants failed to make the required showing that disposition of the partnership-dissolution litigation might impair or impede their ability to protect their unpaid-rent claim.
3. Because the appellants failed to satisfy the impairment-or-impediment element of the tripartite intervention test, they were not entitled to intervene as a matter of right, and the circuit court did not abuse its discretion in denying the motion.

KEY QUOTATIONS

“Upon timely application anyone shall be permitted to intervene in an action:” (§ 6)

“The purpose of this rule is ‘to obviate delay and multiplicity of suits by creating an opportunity to persons directly interested in the subject matter to join in an action or proceeding already instituted.’” (§ 7)

“The clear and unambiguous text of SDCL 48-7A-807(a) provides that a dissolving partnership’s assets, including the contributions of the partners, “must be applied to discharge its obligations to creditors[.]” (§ 13)

FACTUAL BACKGROUND

The appellants owned approximately 900 acres of cropland and leased it to Berbos Farms for the 2013 through 2015 farming seasons. They alleged that Berbos Farms failed to pay the \$56,196 cash rent due for 2015 and pursued a separate action against the partnership and individual partners. During discovery, they learned that Joe and Lisa Berbos had commenced a partnership-dissolution action and sought to intervene to protect their claimed rent interest in the event the partnership was dissolved and its assets distributed.

PROCEDURAL HISTORY

The appellants separately sued Berbos Farms and individual partners to recover allegedly unpaid 2015 farm rent. After discovering that Joe and Lisa Berbos had previously commenced a partnership-dissolution action, the appellants moved to intervene in that action under SDCL 15-6-24(a)(2). The circuit court denied intervention, concluding that the separate rent action was unrelated, intervention could invite claims by other creditors, and intervention would permit unnecessary discovery into the partnership's finances. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Olson, 2008 S.D. 126, ¶ 4, 759 N.W.2d 315, 318
- O'Day v. Nanton, 2017 S.D. 90, ¶ 17, 905 N.W.2d 568, 572
- Kaiser v. Univ. Physicians Clinic, 2006 S.D. 95, ¶ 29, 724 N.W.2d 186, 194
- In re Estate of Olson, 2008 S.D. 126, ¶ 5, 759 N.W.2d 315, 318
- In re D.M., 2006 S.D. 15, ¶¶ 4-5, 710 N.W.2d 441, 443-44
- United States v. Union Elec. Co., 64 F.3d 1152, 1158 (8th Cir. 1995)
- Action Mech., Inc. v. Deadwood Historic Pres. Comm'n, 2002 S.D. 121, ¶ 51, 652 N.W.2d 742, 756