APPENDIX

A

DENIAL OF APPEAL, COURT OF APPEALS

SEVENTH JUDICIAL CIRCUT

SOUTH DAKOTA

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)	
COUNTY OF FALL RIVER	)	SEVENTH JUDICIAL CIRCUIT
	)	
HISTORIC LOG CABINS, INC., RICK AND SHAYLA MALCOM Plaintiffs and Appellee,	)	**23CIV21-20**
v.	)	
ANNE MARIE JORDAN Defendant and Appellant,	)	**ORDER AFFIRMING MAGISTRATE COURT**

This matter having come before the court on appeal following Magistrate Judge Scott Bogue issuing a Judgment on April 21, 2021.

The court has considered the appeal record in its entirety and all the briefs submitted by parties and /or decisions relied upon by counsel. The court being fully advised as to all matters, argument, and briefs finds the magistrate court was not erroneous in entering its Findings of Fact, Conclusions of Law, and Judgment in the matter. The court finding any error in the magistrate's Findings of Fact to be harmless error.

The court, therefore, under SDCL 15-38-38,

AFFIRMS the decision of the Magistrate Court, and it is further,

ORDERED that pursuant to SDCL 21-16-11, the Appellee have and recover of the Appellant, reasonable attorney fees on this appeal. Appellee shall submit a supplemental affidavit and proposed order for fees.

Dated this the 5th day of January, 2022.

BY THE COURT:

Honorable Judge
Joshua K. Hendrickson

ATTEST:
/s/ Tammy Grapentine
Clerk of Courts

By: Tammy Grapentine, Deputy Clerk
Deputy

(SEAL) UNIFIED JUDICIAL SYSTEM STATE OF SOUTH DAKOTA

FILED
7TH JUDICIAL CIRCUIT COURT
AT HOT SPRINGS, SD
JAN 05 2022
By: 10:50am

23CIV21-20

APPENDIX

B

DECISION OF SEVENTH JUDICIAL CIRCUT COURT

FALL RIVER COUNTY, SOUTH DAKOTA

D.

Seventh Judicial Circuit Court

906 N. River St.
Hot Springs, SD 57747
(605) 745-5131

April 16, 2021

Mr. William Hustead, Esq.
441 N. River St.
Hot Springs, SD 57747

Mr. Chris M. Beesley, Esq.
428 Mt. Rushmore Rd., #1
Custer, SD 57730

Re: Historic Log Cabins, Inc., Shayla Malcolm and Rick Malcolm v. Anne Marie Jordan, 23 Civ. 21-20; Findings of Fact & Conclusions of Law

Greetings:

Historic Log Cabins, Inc., one of the plaintiffs, filed a complaint against the defendant, Anne Marie Jordan, alleging unlawful detainer under SDCL ch. 21-16, and seeking a judgment for eviction and damages, including rent and double damages under SDCL 21-3-8. Ms. Jordan, denied the claim and filed counterclaims for retaliatory eviction and malicious prosecution. A court trial was held on April 7, 2021, at which testimony and exhibits were received. At the conclusion of the trial, the Court took the matter under advisement. Afterward, the Court communicated with the parties, who stipulated that the complaint should be amended to also include Shayla and Rick Malcolm as plaintiffs, and also stipulated that Mr. & Mrs. Malcolm entered the lease on behalf of Historic Log Cabins, Inc. Having reviewed the evidence, the Court now issues its findings of fact and conclusions of law. The plaintiffs may present the Court with a judgment and writ consistent with the Court's findings and conclusions.

Findings of Fact

1. Anne Marie Jordan, the defendant, signed a written residential lease allowing her to rent a cabin in Hot Springs, SD.

2. The parties have stipulated that the leased property is owned by Historic Log Cabins, Inc., and that Mr. & Mrs. Malcolm acted on behalf of that corporation in entering the lease.

3. Adjacent to Ms. Jordan's signature at the bottom of page 2 of the lease, the word "Owner" appears, above which the words "Rick and Shayla Malcolm" appear to have been stamped, albeit in cursive form.

4. Nowhere does the lease mention Historic Log Cabins, Inc., and no evidence indicated that the Malcolms disclosed to Ms. Jordan that the corporation owned the leased property.

5. At no time during the hearing did the defendant/counterclaimant dispute that the plaintiffs had subscribed the lease, and both parties partly seek enforcement of language contained in the written lease.

6. The caption at the top of the first page of the lease contains the phrase: "Six Month Lease Cabin #19 Starting 8/13/2020.

7. The first paragraph of the lease provides:

> Tenant(s) agree to pay a damage deposit in the amount of $800.00 and pay the first month's rent in advance. If you have a dog, there is a $50.00, (fifty dollar fee) and 150.00 (3) pets will be on lease when outside your cabin pet Waste Station is provided, you must pick up after your pets. Please provide Rabies and Shot record for your file. All pets must be registered at City Hall. This agreement is for one year starting on the date signed below.

8. Ms. Malcolm stated that she verbally told Ms. Jordan that the lease in question was for 6 months.

9. Ms. Jordan testified that before she signed the lease, Ms. Malcolm did not say that the lease was for 6 months; and further stated that Ms. Malcolm said that she did not just keep the lease in effect for 6 months, but allowed people to stay longer, and indicated that if Ms. Malcolm wanted to stay longer, she could do so.

10. The fourth paragraph on page one addresses utility payments

> Tenant is responsible for propane usage. Electric will be charged in the amount of usage on your Meter due on the 15th of the month. Meters for Propane will be read and utilities bill will be provided no later than the 5th of the month following usage. For your Utilities payment must be made by the 15th of the month or balance is subject to a 10% late fee. Cable, wi-fi (if you're in range), garbage, water, and sewer are provided free.

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11. Ms. Malcolm testified that a basement below the cabin leased by Ms. Jordan contained a propane and electric meter that had been installed by a private utility company before she had purchased the property in question.

12. The business that installed the meters in the basement does not appear to be the same business that has provided utilities during the term of the lease in question.

13. The utility company that provides electricity and propane to the cabins owned by the plaintiff does not meter and bill each cabin individually, but instead bills Mrs. Malcolm for all the cabins.

14. Mrs. Malcolm testified that she used the reading from the meters below Ms. Jordan's cabin to determine how much she would have to pay for utilities attributable to her cabin.

15. No evidence was provided regarding the accuracy of the meters or whether they were consistent with the meters used by the companies that supply utilities to and bill the Malcolms.

16. At some point during the lease in question, and prior to the start of the current lawsuit, Ms. Jordan contacted the South Dakota Public Utilities Commission to complain that she thought Ms. Malcolm was illegally acting as a utility.

17. E-mail correspondence was introduced, indicating that The SD PUC investigated the complaint and asked Ms. Malcolm for records.

18. Ms. Malcolm testified that no formal action had been brought against her by the agency, that she was working with the PUC to reach a resolution of the issue, and that the matter had been made difficult by the fact that the utility provider refused to individually meter each cabin on the plaintiffs' property, apparently because it considered the buildings in question to be a single commercial establishment, as opposed to individual residences.

19. On February 2, 2021, Ms. Malcolm asked Ms. Jordan to vacate the leased premises by February 13.

20. Afterward, the plaintiffs served a notice to quit on the defendant.

21. The defendant remains on the premises despite the notice to quit.

22. The plaintiff billed the defendant $300.84 for propane for February, and $224.22 for electric for that month.

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23. The defendant paid $1050 for February, representing $850 for rent and $200 for utilities.

24. The defendant also paid $1050 for March.

25. The evidence indicates with greater convincing force that the defendants did not receive payment for April. Mrs. Malcolm testified that she has not received payment for that month. While Ms. Jordan testified that she photographed her son taping a check for $1050 to the plaintiffs' door in April, no such photographs were provided. Nor was a cancelled check produced. The evidence whole weighs in favor of a finding that the Malcolms did not receive the check.

26. The evidence did not address whether the plaintiffs had received the $800 damage deposit, or who currently has possession of such.

Conclusions of law

1. If any finding of fact actually constitutes a conclusion of law, or vice-versa, the appropriate classification shall control.

2. SDCL 21-16-1(4) allows an action for unlawful detainer to be maintained if a lessee "holds over after the termination of his lease or expiration of his term...".

3. If the plaintiff meets its burden to establish unlawful detainer, it is entitled to recover possession of the leased premises, and to receive an award of damages and costs, including attorney fees, pursuant to SDCL 21-16-10, -11.

4. Because the leased residence is located in Fall River County, jurisdiction and venue are properly located with this Court.

5. The plaintiffs have also met the jurisdictional prerequisite of serving a notice to quit on the defendant.

6. To be entitled to removal of the defendant, and to an award of damages, the plaintiffs bore the burden of establishing, with the greater convincing force of the evidence: 1) that the plaintiffs and defendant entered into a residential lease; 2) the duration of the lease; 3) that the defendant refused to surrender the premises after the expiration of the lease and a request to vacate and notice to quit; 4) that the plaintiffs suffered financial injury as a result of holding over; and 5) the amount of money damages, if any, which will reasonably compensate the plaintiffs for the defendant's holding over.

7. Both the Malcolms and Historic Log Cabins, Inc. are proper party plaintiffs. "Generally speaking, the law is well settled that an undisclosed principal can sue as well as be sued...."'Subject to certain exceptions, a third person is liable to an

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undisclosed principal on a contract made in his behalf by his agent.'" Baker Oil Tools v. Chisolm, 251 P.2d 569, 570 (Wyo. 1952). And "liability will be imposed on an agent who fails to disclose the fact of his agency or the identity of his principal". Cooper v. Hileman, 222 N.W.2d 229, 302 (SD 1974). Because Historic Log Cabins, Inc., an undisclosed principal, owns the leased property, and the Malcolms acted on behalf of the corporation; because only the Malcolms subscribed the lease, but did not inform the defendant that they acted on behalf of the corporation; and nothing in the lease mentions the corporations, the Malcolms also are proper plaintiffs in their individual capacities.

8. The written contract here is sufficiently subscribed to comply with the statute of frauds.

> The statute of frauds contained in SDCL 53–8–2 provides that those contracts required to be in writing are not enforceable "unless the contract or some memorandum thereof is in writing and *subscribed* by the party to be charged...."....While the Court has not previously addressed the meaning of the term "subscribed" under SDCL 53–8–2, the term is inclusive of more than a handwritten signature.
>
> Courts from other jurisdictions have consistently approved of a typewritten signature to authenticate a memorandum or contract if the party intended the typewritten name or symbol to be his or her act authenticating the document. "The traditional form of signature is, of course, the handwritten name of the signer. But initials or any symbol may also be used; and the signature may be written in pencil, typed, printed, made with a rubber stamp or impressed into the paper." "It is generally held that a typewritten 'signature' may be sufficient to satisfy the requirements of the Statute of Frauds, but only if the party intends to authenticate the instrument by that act."

Northstream Investments, Inc. v. 1804 Country Store Co., 2007 SD 93, ¶¶12-13, 739 N.W.2d 44. While the Malcolms appear to have used a stamp with their names presented in cursive form, under the foregoing authority, and because both parties tried the case on the clear premise that the writing in the lease was binding, the stamp was sufficient.

9. To determine the intent of parties to a contract, the Court must rely on the language within the "four corners" of the document, unless such language is ambiguous. See, Black Hills Excavating Services, Inc. v. Retail Const. Services, Inc., 2016 SD 23, ¶10, 877 N.W.2d 318. If the written language is ambiguous, the Court may go outside the document and consider "extrinsic" evidence of the parties' intent. Id.

10. The meaning of a contract, and the issue of whether it is ambiguous, does not depend on the *subjective* understanding of either party:

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> "A contract is not rendered ambiguous simply because the parties do not agree on its proper construction or their intent upon executing the contract." Instead, "a contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement." If a writing is found to be ambiguous, parol evidence "is admissible to *explain* the instrument."

Roseth v. Roseth, 2013 SD 27, ¶15, 829 N.W.2d 136 (citations omitted).

11. The written lease in question here is ambiguous regarding its duration. The caption contains the phrase: "6 Month Lease Cabin #12", but the last sentence of the first paragraph states: "This agreement is for one year starting on the date signed below". The plaintiff's insistence that this only addressed a tenant's need to renew rabies shots and pet registration on a yearly basis does not match the language in the lease. No language in this paragraph mentions either renewal of the lease after one year or renewal of requirements for pets after one year.

12. Further, the meaning of the last sentence should not be determined solely in relation to the sentence immediately preceding it. "Meaning is inevitably dependent on context. A word changes meaning when it becomes part of a sentence, the sentence when it becomes part of a paragraph." Engelhard Corp. v. NLRB, 437 F.3d 374, 381 (3d Cir. 2006)(quoting Restatement (Second) of Contracts, sec.202, cmt.d). The sentence indicating that "this agreement is for one year" ends a paragraph that references not only requirements for pets, but also a damage deposit and payment of the first month's rent. And nothing in the wording and substance of the last sentence restricts itself to modifying the preceding one or two sentences. Read in that manner, the last sentence cannot be narrowed to the topic of pets, and instead is broad enough to create substantial conflict regarding the duration of the lease.

13. And in the face of such ambiguity, the Court can go outside the "four corners" of the lease and examine what the parties said to each other about that subject, and such "parol" evidence supports the plaintiffs' assertion that the lease was for 6 months, not one year. This conclusion is supported not only by Mrs. Malcolm's testimony that she told Ms. Jordan that the lease was 6 months long, but also by the latter's recollection that Ms. Malcolm said she did not "keep the lease open" for only 6 months, that she does not "hold" tenants to the 6-month lease, and that if Ms. Jordan wanted to stay longer, she could, These statements to the defendant presupposed that the lease was 6 months long, but indicated that the plaintiffs had the discretion to allow tenants to stay longer.

14. And to the extent that the defendant testified that Ms. Malcolm told her that she had let other tenants stay beyond the 6-month period, and that Ms. Jordan could stay

longer if she wanted, the Court concludes that such discussion neither created an enforceable extension of the lease, nor create a binding option to renew or extend the lease. First, the defendant did not plead or argue at the hearing that she was enforcing an option to renew the lease, so such argument should be deemed waived. And the testimony did not indicate that the parties actually agreed that the lease would be extended, but instead only indicated that Mrs. Malcolm related that Ms. Jordan could stay longer *if* she wanted. Even if the Court were to analyze whether such language created an option to renew, there was no apparent discussion about what the period of any extension might be, or whether the terms would be identical to those on the written lease; and because of the lack of any certainty or definiteness in the discussion of those terms, at best the plaintiff and the defendant merely "agreed to agree" on an extension in the future. "[A]n agreement to agree does not fix an enforceable obligation. It is indefinite, vague, and uncertain. An agreement must be sufficiently definite to enable a court to give it an exact meaning." Deadwood Lodge No. 508 Benevolent and Protective Order of Elks of United States v. Albert, 319 N.W.2d 823, 826 (SD 1982)(holding unenforceable an option to renew clause that indicated that the parties would negotiate a mutually acceptable monthly rental rate in the future).

15. Accordingly, the defendant's right to occupy the premises expired at the end of the 6-month period of the lease, on February 13, 2021. Therefore, a judgment of unlawful detainer must issue.

16. SDCL 21-16-10 addresses damages for a judgment of unlawful detainer.

> If the finding of the court or the verdict of the jury be in favor of the plaintiff, the judgment shall be for the delivery of possession to the plaintiff, and for rents and profits or damages, including those authorized by § 21-3-8, where the same are claimed in the complaint, and for costs.

17. Consequently, the plaintiffs are entitled to the removal of the defendant from the leased premises.

18. SDCL 21-3-8 allows for the assessment of double damages against holdover tenants in certain instances:

> For willfully holding over real property, by a tenant after the end of his term, and after notice to quit has been duly given, and demand of possession made, the measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby.

19. The Court concludes that under this statute, a tenant does not "willfully" hold over if such occurred because of a "bona fide" dispute or "colorably justified reasons". See, J.M. Beals Enterprises, Inc. v. Industrial Hard Chrome, Ltd., 648 N.E.2d 249,

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252 (Ill.App. 1995)(construing similar statute and reaching such conclusion); See also, Heral v. Smith, 803 S.W.2d 938, 941 (Ark.App. 1991)(noting that a statute that allows treble damages when a tenant holds over "willfully and without right" is not satisfied if a tenant holds a bona fide belief that he has a right to do so). This position--that "willfulness" under such statutes does not occur when a tenant has a good faith belief that she is entitled to remain—appears to be the prevailing position among jurisdictions. See, *What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession,* 7 A.L.R.4th 589 (1981).

20. Ms. Jordan had a colorably justified or bona fide reason for disputing the notice to quit, and accordingly is not subject to double damages under SDCL 21-3-8. As earlier noted, the written lease is ambiguous regarding its duration, and such uncertainty was compounded when Mrs. Malcolm discussed not limiting tenants to 6-months tenancy.

21. The Court concludes that damages, for holding over after the *expiration* of the lease, necessarily are not controlled by the terms of the lease, which is no longer in existence at the point of holding over:

> [I]n cases where the tenant withholds possession after its lease is terminated, damages awarded under the unlawful detainer statutes are a unique breed. These damages grow not out of the lease or an implied contract—indeed, the holdover tenant is, at that point, a trespasser—but are statutory damages which arise from the tenant's unlawful withholding of the property. The metes and bounds of the damages are highly fact specific. The straightforward component of unlawful-detainer damages are the rental value of the property for the time the property is unlawfully detained. That said, in some cases, a landlord may receive "special damages" occasioned by the tenant's failure to surrender the premises.

Caldwell Land and Cattle, LLC v. Johnson Thermal Systems, Inc., 452 P.3d 809, 824 (Idaho 2019).

22. Accordingly, the plaintiffs can seek to recover the reasonable rental value of the leased premises, in addition to special damages in the form of a reasonable measure for utility costs paid by the plaintiffs, minus any amounts paid by the defendant after the lease expired.

23. In this instance, the Court concludes that the amount of monthly lease paid by Ms. Jordan, $850 for her and her pet, is adequate proof of the "reasonable rental value" per month for the premises, namely the amount that a willing tenant would pay a willing landlord to rent it.

24. The plaintiffs did not provide sufficient proof of the "reasonable value" of utilities for the second half of February through the date of this decision. Paragraph 4 of the lease entitled the plaintiffs to charge for utilities indicated by the meter in the basement below the defendant's cabin. But again, after the expiration of the lease, paragraph 4 no longer was in effect. Consequently, the plaintiffs bore the proof of establishing the reasonableness of the utility charge for the period after February 13, 2021, and not merely the readings indicated by a metering device. Accordingly, at least some evidence had to be produced regarding the accuracy of the meters below the cabin, including whether they were calibrated to be consistent with the unit measurements of the meters placed by the utility company (or companies), at the point of entry to the property, which meters were used to bill the Malcolms for utilities. No such evidence was presented, and the Court may not speculate as to the accuracy of the readings of the devices in the basement.

25. Accordingly, the evidence indicates with greater convincing force that Ms. Jordan owes the Malcolms $296.33 for the period to the date of this judgment. This results from the following calculations. The plaintiffs were entitled to receive $453.33 as a prorated amount of monthly rent ($850) for April, up to today's date (because the evidence indicated no payment received in April). But the Court deducts from that amount the amount that Ms. Jordan paid for utilities for March, because the evidence did not suffice to prove the reasonable value of utilities attributable to Ms. Jordan for that period. Because Ms. Jordan paid $200 for February, but the Malcolms were entitled to $243 for the period through February 13, the defendant is liable for $43 for February. But Ms. Jordan is entitled to a reduction of $200 for the amount she paid for utilities in March. Accordingly, Ms. Jordan owes $296.33 ($453.33 + $43 - $200 = $296.33).

26. The plaintiffs did not engage in retaliatory eviction as defined by SDCL 43-32-27:

> A cause of action may arise in favor of a lessee and against a lessor of residential property...for retaliation by the lessor against the lessee...if the lessor gives the lessee notice to vacate the premises when such notice is not based upon a breach of the terms of the lease; subsequent to any of the following special events:
>
> (1) The lessor has received written notice from the lessee or a governmental agency that the lessee has complained to a governmental agency charged with responsibility for enforcement of a building or housing code violation applicable to the premises and materially affecting health and safety, and the complaint is determined to be reported in good faith.
>
> ....
>
> **The failure of the lessor to renew any written lease prior to or upon its expiration, is not retaliation.**

Id. (emphasis added). Among other things, the plaintiffs legally declined to renew the lease prior to its expiration. Accordingly, retaliatory eviction has not occurred.

27. Similarly, the plaintiffs have not engaged in "malicious prosecution".

> A claim for malicious prosecution requires the [claimant] to prove: (1) The commencement or continuance of an original criminal or civil judicial proceeding; (2) its legal causation by the present defendant against [claimant], who was defendant in the original proceeding; (3) its bona fide termination in favor of the present [claimant]; (4) the absence of probable cause for such proceeding; (5) the presence of malice therein; (6) damage conforming to legal standards resulting to [claimant].

Harvey v. Regional Health Network, Inc., 2018 SD 3, ¶45 (bracketed words substituted). These elements require the termination of a prior proceeding before the claim can be brought, making this malicious prosecution claim premature. But even if the claim were reviewable, the Court's determination that judgment should be rendered in favor of the plaintiffs also would defeat the claim for malicious prosecution.

28. SDCL 21-16-10 provides that the Court may award attorney fees to the prevailing party in actions under ch. 21-16. The plaintiff is the prevailing party, so the plaintiffs will be entitled to reasonable attorney fees and costs incurred by the plaintiffs, if they meet the burden of showing such by supplemental affidavit.

29. In conclusion, the plaintiffs are entitled to the removal of the defendant from the leased premises, and to an award of damages in the amount of $296.33. They also are eligible to be awarded costs and attorney fees if such are established by a supplemental affidavit. This decision does not address the damage deposit, because no evidence was offered regarding such. The defendant's counterclaims for retaliatory eviction and malicious prosecution are denied.

Dated this 16 day of April, 2021

Scott Bogue

Hon. Scott Bogue
7th Circuit Magistrate

ATTEST: _____
Tammy Grapentine, Clerk of Court

By: _____(Deputy)

FILED
7TH JUDICIAL CIRCUIT COURT
AT HOT SPRINGS, SD
APR 16 2021

APPENDIX

C

ISSUANCE OF JUDGMENT OF AFFIRMANCE

SUPREME COURT OF SOUTH DAKOTA

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

SEP 06 2022

Clerk

HISTORIC LOG CABINS, INC., RICK MALCOLM AND SHAYLA MALCOLM, **Plaintiffs and Appellees,** **vs.** **ANNE MARIE JORDAN,** **Defendant and Appellant.**	**ORDER DIRECTING ISSUANCE OF JUDGMENT OF AFFIRMANCE** **#29896**

The Court having, pursuant to SDCL 15-26A-87.1(A), considered all of the briefs filed in the above-entitled matter, together with the appeal record, and having concluded that it is manifest on the face of the briefs and the record that the appeal is without merit on the following grounds: 1. that the issues on appeal are clearly controlled by settled South Dakota law or federal law binding upon the states, and 2. that the issues on appeal are factual and there clearly is sufficient evidence to support the findings of fact and conclusions below (SDCL 15-26A-87.1(A)(1) and (2)), now, therefore, it is

ORDERED that a judgment affirming the Judgment of the lower court be entered forthwith.

DATED at Pierre, South Dakota, this 6th day of September, 2022.

BY THE COURT:

Steven R. Jensen, Chief Justice

ATTEST:

Clerk of the Supreme Court

(SEAL)

PARTICIPATING: Chief Justice Steven R. Jensen, Justices Janine M. Kern, Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

Supreme Court of South Dakota

OFFICE OF THE CLERK
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
(605) 773-3511

Shirley A. Jameson-Fergel
Clerk

Laura J. Graves
Chief Deputy

Amy Hudson
Deputy Clerk

Sarah L. Gallagher
Deputy Clerk

July 26, 2022

Ms. Anne Marie Jordan
514 Americas Way #16120
Box Elder SD 57719-7600

Mr. William R. Hustead
Farrell, Farrell and Ginsbach
Attorneys at Law
441 N River St
Hot Springs SD 57747-1499

Re: #29896, Historic Log Cabins, Inc. et al. v. Anne Marie Jordan

Ms. Jordan and Counsel:

This is to advise you that the above-referenced action has been placed on the Court's August 2022 non-oral calendar.

Very truly yours,

Shirley A. Jameson-Fergel

SAJ/ah

APPENDIX

D

DENIAL OF PETITION FOR REHEARING

SUPREME COURT OF SOUTH DAKOTA

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

HISTORIC LOG CABINS, INC., RICK MALCOLM AND SHAYLA MALCOLM, Plaintiffs and Appellees,	**ORDER DENYING PETITION FOR REHEARING**
vs.	**#29896**
ANNE MARIE JORDAN, Defendant and Appellant.	

A petition for rehearing in the above cause having been filed September 23, 2022, and no issue or question of law or fact appearing to have been overlooked or misapprehended, and more than fifteen days having elapsed therefrom and no written statement having been filed with the Clerk of this Court by a majority of the justices requesting a rehearing, now, therefore, in accordance with the Rehearing Procedure Rule of this Court, the petition for rehearing is denied.

DATED at Pierre, South Dakota, this 17th day of October, 2022.

BY THE COURT:

Steven R. Jensen, Chief Justice

ATTEST:

Shirley A. Jameson-Fergel
Clerk of the Supreme Court

By Laura J. Graves
Chief Deputy Clerk
(SEAL)