
IN THE NEBRASKA COURT OF APPEALS

NO. A-19-0901

AMY SCHULZE and
PAUL FLEUREN,

Appellants,

vs.

MATT RASMUSSEN; BEAR HOMES,
P.C.; OLD REPUBLIC NATIONAL
TITLE INSURANCE COMPANY;
MIDWEST TITLE, INC.; and,
NP DODGE REAL ESTATE SALES, INC.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF WASHINGTON COUNTY, NEBRASKA
Honorable JOHN E. SAMSON, Judge

APPELLEE NP DODGE REAL ESTATE SALES, INC.'S BRIEF

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STATEMENT OF JURISDICTION

Appellee NP Dodge Real Estate Sales, Inc. (“NP Dodge”), does not dispute jurisdiction in this matter.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

As it relates to NP Dodge, this case involves Appellants’ claims alleged against NP Dodge under theories of recovery that include and are limited to breach of Neb. Rev. Stat. § 76-2,120, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment. (T1-6; T297-303).

B. ISSUES TRIED IN THE DISTRICT COURT

On February 27, 2019, the District Court entered an Order (NP Dodge Motion for Summary Judgment / Common Law Duty) partially granting NP Dodge’s Motion for Summary Judgment and dismissing with prejudice Appellees’ claims against NP Dodge for fraudulent misrepresentation, negligent misrepresentation, and fraudulent concealment. (T455-459). In addition, the District Court entered an Order (Neb. Rev. Stat. § 76-2,120 Limitation of Action) dismissing with prejudice Appellants’ claim against NP Dodge alleging breach of Neb. Rev. Stat. § 76-2,120. (T461-468). On June 14, 2019, the District Court entered a Revised Order (NP Dodge’s Motion for Summary Judgment) affirming its previous finding “that NP Dodge cannot be vicariously liable for common law causes of action (e.g. misrepresentation, fraud, etc.)” (T531-535). However, the District Court concluded in its Order (NP Dodge Motion for Summary Judgment / Common Law Duty) that NP Dodge may be liable to Appellants to the extent, if any, that NP Dodge breached NP Dodge’s breached its duty to Appellants under Neb. Rev. Stat. § 76-2417.

Prior to the commencement of trial, the District Court entered an Order Granting Defendants' Motion to Enforce Settlement Agreement and for Dismissal of All Claims under which "all claims alleged in this action by and amongst the parties [were] dismissed with prejudice, with each party to bear their own costs". (T650-655). In addition to dismissing all relevant claims with prejudice, the Order Granting Defendants' Motion to Enforce Settlement Agreement and for Dismissal of All Claims determined that all Appellees were and are "deemed to be released of all claims possessed by Plaintiffs Amy Schulze and/or Paul Fleuren arising from or relating to Plaintiffs' purchase of the residence known as 23526 County Road 26, Arlington, Nebraska, including the title conditions relating to the subject property alleged by Plaintiffs in this action." (T654).

C. RESOLUTION OF ISSUES AND JUDGMENT ENTERED

The claims alleged by Appellees against NP Dodge for breach of Neb. Rev. Stat. § 76-2,120 fraudulent misrepresentation, negligent misrepresentation, and fraudulent concealment were dismissed on summary judgment in the Order (Neb. Rev. Stat. § 76-2,120 Limitation of Action) and the Order (Neb. Rev. Stat. § 76-2,120 Limitation of Action) entered by the District Court on February 27, 2019. (T455-468). On August 21, 2019, the District Court entered an Order Granting Defendants' Motion to Enforce Settlement Agreement and for Dismissal of All Claims enforcing a settlement agreement with terms recited and accepted by the parties, including Appellants, **personally** and their attorney, on the record in open Court whereby "all claims alleged in this action by and amongst the parties [were] dismissed with prejudice, with each party to bear their own costs". (T650-655).

SCOPE OF REVIEW

A. APPELLANTS' ASSIGNMENT OF ERROR RELATING TO THE ORDER GRANTING DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND FOR DISMISSAL WITH PREJUDICE

“A settlement agreement is subject to the general principles of contract law.” *Thrower v. Anson*, 276 Neb. 102, 108, 752 N.W.2d 555, 561 (2008); *Strategic Staff Mgmt., Inc. v. Roseland*, 260 Neb. 682, 686, 619 N.W.2d 230, 234 (2000)(citing *Woodmen of the World Life Ins. Soc. v. Kight*, 246 Neb. 619, 522 N.W.2d 155 (1994)). “The construction of a contract is a matter of law, in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determinations made by the court below.” *Id.*

B. APPELLANTS' ASSIGNMENTS OF ERROR RELATING TO THE ORDERS GRANTING PARTIAL SUMMARY JUDGMENT IN NP DODGE'S FAVOR

“An appellate court affirms a lower court’s grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.” *DH-1, LLC v. City of Falls City*, 305 Neb. 23, 29, 938 N.W.2d 319, 325 (2020). “In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence.” *Id.*

“It is well settled that the primary purpose of the summary judgment statute is to pierce sham pleadings and to dispose of those cases where there is no genuine claim or defense.” *Ashby v. First Data Res., Inc.*, 242 Neb. 529, 534, 497 N.W.2d 330, 335 (1993); *Draemel v. Rufenacht, Bromagen & Hertz, Inc.*, 223 Neb. 645, 392 N.W.2d 759 (1986). “A party with a just case should

be able to obtain judgment without the necessity, expense, and delay of trial, where there is no genuine claim or defense.” *Zannini v. Ameritrade Holding Corp.*, 266 Neb. 492, 499, 667 N.W.2d 222, 229 (2003).

PROPOSITIONS OF LAW

I. “A settlement agreement is subject to the general principles of contract law.” *Thrower v. Anson*, 276 Neb. 102, 108, 752 N.W.2d 555, 561 (2008); *Strategic Staff Mgmt., Inc. v. Roseland*, 260 Neb. 682, 686, 619 N.W.2d 230, 234 (2000)(citing *Woodmen of the World Life Ins. Soc. v. Kight*, 246 Neb. 619, 522 N.W.2d 155 (1994)); *Heese Produce Co. v. Lueders*, 233 Neb. 12, 443 N.W.2d 278 (1989).

II. “To create a contract, there must be both an offer and an acceptance; there must also be a meeting of the minds or a binding mutual understanding between the parties to the contract.” *Hoeft v. Five Points Bank*, 248 Neb. 772, 780, 539 N.W.2d 637, 644 (1995); *Lindsay Ins. Agency v. Mead*, 244 Neb. 645, 652–53, 508 N.W.2d 820, 825 (1993).

III. “A binding mutual understanding or meeting of the minds sufficient to establish a contract requires no precise formality or express utterance from the parties themselves as to all of the details of the proposed agreement; it may be implied from conduct and the surrounding circumstances.... Likewise, the acceptance of an offer may be shown by words, conduct, or acquiescence indicating agreement.” *Hoeft v. Five Points Bank*, 248 Neb. 772, 780, 539 N.W.2d 637, 644 (1995).

IV. “Consideration is an essential element to the validity of a contract.” *Irwin v. West Gate Bank*, 288 Neb. 353, 360, 848 N.W.2d 605, 610 (2014)(quoting *Middagh v. Stanal Sound Ltd.*, 222 Neb. 54, 59, 382 N.W.2d 303, 307 (1986)).

V. “Consideration is sufficient to support a contract if there is any detriment to the promise or benefit to the promisor.” *Aon Consulting v. Midlands Fin. Benefits*, 275 Neb. 642, 654, 748 N.W.2d 626, 638 (2008); *Melchar v. Bank of Madison*, 248 Neb. 793, 801-02, 539 N.W.2d 837, 844 (1995).

VI. “Settlement of litigation ranks high in our public policy. Moreover, courts will not ordinarily inquire into the adequacy or inadequacy of the consideration underlying a compromise settlement fairly and deliberately made.” *Pascarella v. Bruck*, 190 N.J. Super. 118, 125, 462 A.2d 186, 190 (App. Div. 1983)(Internal citations omitted). See also, *e.g.*, Neb. Rev. Stat. § 27-408; Fed. R. Evid. 408; California Evidence Code §§ 1152, 1154; Kansas Code of Civil Procedure §§ 60-452, 60-453; New Jersey Evidence Rules 52 and 53.

VII. “A contract provision to execute effectuating documents in the future is enforceable where all of the material terms are specified in the original contract and leave none to be agreed upon through future negotiations.” *Strategic Staff Management, Inc. v. Roseland*, 260 Neb. 682, 689, 619 N.W.2d 230 (2000).

VIII. “If a conveyance of real property is not made in compliance with this section, the purchaser shall have a cause of action against the seller and may recover the actual damages, court costs, and reasonable attorney's fees. The cause of action created by this section shall be in addition to any other cause of action that the purchaser may have. Any action to recover damages under the cause of action shall be commenced within one year after the purchaser takes possession or the conveyance of the real property, whichever occurs first.” Neb. Rev. Stat. § 76-2,120(12).

IX. A “conveyance” occurs when the owner of the real estate transfers ownership to another party. See *Carusco v. Parkos*, 262 Neb. 961 967, 637 N.W.2d 351, 357 (2002).

X. “Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.” Neb. Rev. Stat. § 25-2221.

XI. Under Nebraska law, the phrases “...’occupants’ and ‘actual possession or occupancy’ were synonymous and meant actual, open, visible possession or occupancy in fact, exactly that and nothing less, as distinguished from constructive occupancy.” *Durfee v. Keiffer*, 168 Neb. 272, 284, 95 N.W.2d 618, 626 (1959)(quoting *Parsons v. Prudential Real Estate Co.*, 86 Neb. 271, 125 N.W. 521 (1910)).

XII. “[T]he mischief which statutes of limitations are intended to remedy is the general inconvenience resulting from delay in the assertion of a legal right which it is practicable to assert. The statutes of limitations are enacted upon the presumption that one having a well-founded claim will not delay enforcing it beyond a reasonable time if he [or she] has the right to proceed. The basis of the presumption is gone whenever the ability to resort to the courts is taken away. If an injured party is wholly unaware of the nature of his [or her] injury or the cause of it, it is difficult to see how he [or she] may be charged with lack of diligence or sleeping on his [or her] rights.” *Alston v. Hormel Foods Corp.*, 273 Neb. 422, 431-32, 730 N.W.2d 376, 384 (2007)(Quoting *Shlien v. Bd. of Regents, Univ. of Nebraska*, 263 Neb. 465, 473, 640 N.W.2d 643, 650 (2002)).

XIII. “[W]e have stated that when the discovery rule is applicable, the statute of limitations does not begin to run until the potential plaintiff discovers, or with reasonable diligence should have discovered, the injury. In those cases in which the discovery rule applies, the beneficence of the discovery rule is not bestowed on a potential plaintiff where the potential plaintiff in fact discovers, or in the exercise of reasonable diligence should have discovered, the injury within the initial period of limitations running from the wrongful act or omission. However, in a case where the injury is not obvious and is neither discovered nor discoverable within the limitations period running from the wrongful act or omission, the statute of limitations does not begin to run until the potential plaintiff discovers, or with reasonable diligence should have discovered, the injury.” *Alston v. Hormel Foods Corp.*, 273 Neb. 422, 432, 730 N.W.2d 376, 385 (2007); *Egan v. Stoler*, 265 Neb. 1, 6, 653 N.W.2d 855, 860 (2002); *Reinke Mfg. Co., Inc. v. Hayes*, 256 Neb. 442, 454, 590 N.W.2d 380, 390 (1999); *Lindsay Mfg. Co. v. Universal Sur. Co.*, 246 Neb. 495, 505, 519 N.W.2d 530, 539, (1994); *Economy Housing Co. v. Rosenberg.*, 239 Neb. 267, 269, 475 N.W.2d 899, 901 (1991).

XIV. The common law discovery rule applies only where the plaintiff did not discover and could not have reasonably discovered the injury before the statute of limitations period lapsed. *Alston v. Hormel Foods Corp.*, 273 Neb. 422, 433, 730 N.W.2d 376, 386 (2007). See also *Shlien v. Bd. of Regents, Univ. of Nebraska*, 263 Neb. 465, 473, 640 N.W.2d 643, 650 (2002); John Lenich, 5 Neb. Prac., Civil Procedure § 5:27 (March 2018 Update).

XV. For discovery of an injury to occur, “it is not necessary that a plaintiff have knowledge of the exact nature or source of a problem in order to “discover” an injury—a plaintiff need only know that a problem existed.” *Guinn v. Murray*, 286 Neb. 584, 597, 837 N.W.2d 805, 817 (2013)(citing *Gering–Ft. Laramie Irr. Dist. v. Baker*, 259 Neb. 840, 612 N.W.2d 897 (2000)).

“A limitation period may begin to run even though the full nature and extent of the damages are not known.” *Reinke Mfg. Co. v. Hayes*, 256 Neb. 442, 453, 590 N.W.2d 380, 390 (1999).

XVI. “Sections 76-2401 to 76-2430 shall supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a principal, except as provided in subsection (6) of section 76-2422. Sections 76-2401 to 76-2430 shall be construed broadly to accomplish their purposes.” Neb. Rev. Stat. § 76-2429.

XVII. A real estate licensee may only be liable for acts or omissions in breach of a duty set forth in §§ 76-2401 to 76-2430. *Ruble v. Reich*, 259 Neb. 658, 670, 611 N.W.2d 844, 853 (2000).

STATEMENT OF FACTS

A. FACTS RELEVANT TO APPELLANTS' CLAIMS AGAINST NP DODGE.

1. NP Dodge is and was, at all relevant times, a real estate brokerage company performing licensed real estate services within the greater Washington County, Nebraska area. (T1; E7, 1:36, 36).

2. Appellee Matt Rasmussen ("Mr. Rasmussen") has been a Nebraska real estate licensee at all times since January 29, 2003. (T1; E7, 1:36, 36). Mr. Rasmussen has been affiliated with NP Dodge since January 29, 2003 pursuant to the terms of their Independent Contractor Agreement (the "Independent Contractor Agreement"). (E7, 1:36, 36). In the Independent Contractor Agreement, Mr. Rasmussen agreed to perform licensed real estate activities on behalf of NP Dodge. (E7, 3-9:36, 36). All work performed by Mr. Rasmussen through his relationship with NP Dodge was done within Mr. Rasmussen's capacity as a real estate licensee. (E7, 1:36, 36). Mr. Rasmussen was at all relevant times the sole owner of Appellee Bear Homes, P.C. ("Bear Homes"). (E27, 8:65, 65).

3. NP Dodge has not hired Bear Homes to perform labor or services or any kind. (E7, 1:36, 36).

4. Real property and log cabin improvements commonly known as 23526 County Road 26, Arlington, Nebraska (the "Arlington Home") are the subject of this action. (T1-6). In 2003, Ken Reed ("Mr. Reed"), an owner of the Arlington Home at the time, applied for and obtained various building permits in connection with his construction of the log cabin improvements. (E12, 17-22:65, 65). The Washington County Building Code Inspector, Kris Robinson ("Mr. Robinson"), or his representative conducted various building code inspections at the Arlington Home and approved such improvements. (E12, 26-64:65, 65). However, Mr. Robinson did not approve the Arlington Home during its final inspection, because there was not a

three-way light switch installed both at the top and bottom of the stairway leading to the loft. (E12, 26-64:65, 65). Based upon the lack of a successful final inspection, Mr. Robinson caused a letter (the “Recorded Letter”) stating that the Arlington Home “has not been built in compliance with the County’s codes” to be recorded in the Office of the Washington County Register of Deeds on June 11, 2003. (E12, 64-65:65, 65).

5. Appellants purchased and began to occupy a home commonly known as 11809 North 157th Avenue, Bennington, Nebraska (the “Bennington Home”) on May 28, 2013. (E8, 17: 61, 61).

6. On or about March 23, 2016, Bear Homes and NP Dodge entered into a Listing Agreement (the “Listing Agreement”) in which NP Dodge agreed to provide licensed real estate services to Bear Homes to find a buyer for the Arlington Home. (E7, 1:36, 36).

7. On March 23, 2016, Appellants entered into a Uniform Purchase Agreement (the “Purchase Agreement”) in which they agreed to purchase the Arlington Home from Bear Homes. (E8, 107-109, 496-505: 61, 61).

8. Prior to entering into the Purchase Agreement, Bear Homes provided to Appellants a completed Seller Property Condition Disclosure Statement (the “Disclosure Statement”) for the Arlington Home on March 23, 2016. (E8, 93-95, 61, 61). Appellants acknowledged receipt of the Disclosure Statement by initialing the bottom of each page and by signing on the “Purchaser’s Signature” signature block provided for the “Acknowledgement of Receipt of Disclosure Statement, Understanding and Certification”. (E8, 93-95:61, 61).

9. Bear Homes disclosed the following in the portion of the Disclosure Statement labeled “Part III-Comments”:

Seller is licensed agent and will not represent Buyer. Buyer should hire their own agent or attorney if they do not understand contract and for proper representation.

Seller is selling for a profit.

(E8, E6: 61, 61).

10. Appellants hired Warren Wooledge (“Mr. Wooledge”) of Nebraska Home Inspections to inspect the Arlington Home on their behalf despite foregoing in the Purchase Agreement a Whole Home Inspection and the contingencies that would have been available to them in the Purchase Agreement had they elected to have such inspection. (E8, 128-129: 61, 61). On March 29, 2016, Mr. Wooledge inspected Arlington Home and prepared a written report (the “Inspection Report”) describing his findings. (E8, 128-129: 61, 61).

11. The Inspection Report included the following findings regarding the retaining wall at Arlington Home:

The retaining wall appeared to be leaning at the time of the inspection. Does not appear to have been backfilled with crushed rock/gravel for drainage. Recommend further evaluation and repairs as needed.

(E8, p. 14 to E13: 61, 61).

12. The Inspection Report reports the following finding regarding the deck at the front of the home:

Repairs required. The rise (height of step) is inconsistent between steps or is too small, creating a potentially unsafe condition. Missing joist hangers and angle bracket on the outside band joist. Flashings are not visible where the structure attaches to the building.

(E8, p. 14 to E13: 61, 61).

13. The Inspection Report stated the following regarding the log cabin exterior on the Arlington Home:

Further evaluation. Common cracks up to 1/8” were found in the exterior walls at the time of the inspection. Some lower sections of log veneer covering the box joist area has openings and allows water to penetrate behind and possible enter [sic] into the structure. Recommend further evaluation and repairs. Holes and or penetrations were noted and should be sealed to prevent future / further moisture penetration / deterioration and or pest / insect intrusion.

(E8, p. 14 to E13: 61, 61).

14. The Inspection Report contained the following findings regarding the stone stairs leading to the log cabin improvements at the Arlington Home:

Safety Hazard. Steps have loose treads and the potential to break loose from supporting blocks. Recommend further evaluation and repairs.

(E8, p. 14 to E13: 61, 61)(Emphasis in original).

15. The Inspection Report stated the following regarding the “Egress Window Wells” at the Arlington Home:

Further Evaluation. Conditions exist that prevent water from draining out of the window wells efficiently. This can cause ponding against the windows and possible water intrusion into structure. Recommend review and correction. Recommend further evaluation and correction.

(E8, p. 14 to E13: 61, 61).

16. Appellants received and fully reviewed a copy of the Inspection Report on March 29, 2016. (E8, 128-130: 61, 61). In addition, Mr. Wooledge and Appellants met on March 29, 2016 to review and discuss the inspection and various photographs of the Arlington Home. (E8,132-133:61, 61). The photographs provided by Mr. Wooledge to Appellants included:

- a. A photograph of a gap between logs forming the log cabin veneer and bold, yellow font pointing to a gap and stating, “Openings should be sealed”. (E8, 135–136: 61, 61).
- b. A photograph of the stone stairs leading up from the driveway with dislodged stone stairs. (E8, 138-139: 61, 61). During this meeting, Mr. Wooledge told Appellants that he had injured his leg while walking on the stone stairs and that the stone stairway “is a danger”, “a safety hazard”, and “needs to be fixed”. (E8, 138-139:61, 61).
- c. A photograph of the basement egress window with yellow font stating, “Drain should be finished installation”. (E8:140-144:61, 61). Mr. Wooledge told Appellants following the inspection that the egress window had “some major issues” and that it “wasn’t constructed right”. (E8, 140-141:61, 61). Additionally, Mr. Wooledge advised Appellants that the egress window was “not properly vented to drain anything out from that lower half of that window area. And what happens when it snows or rains, everything goes down to the bottom part of the egress window, and without having proper drainage, it could be a major water issue.” (E8, 141–142:61, 61). Appellants acknowledge that they observed water leaking into the Arlington Home through the kitchen window and egress window prior to closing. (E8, 155:61, 61).

- d. Multiple photographs depicting gaps between the logs forming the log veneer and stating “Openings [between logs] should be sealed” and “Cracks [between logs] should be repaired / sealed”. (E8, E14: 61, 61).
 - e. A photograph of the wooden stairs on the balcony describing the stairs as having “Uneven rise”. (E8, E14: 61, 61).
17. On April 14, 2016, Appellant Schulze obtained a renter’s insurance policy insuring the Arlington Home from April 26, 2016 through and including May 9, 2016. (E8, 117-119: 61, 61).
18. On April 14, 2016, Appellants had the utilities for the Arlington Home transferred into their names. (E8, 25:61, 61).
19. In April 2016, Appellants caused the ADT home security system installed in the Bennington Home to be relocated to and activated at the Arlington Home. (E8, 123:61, 61).
20. Appellants closed on their sale of the Bennington Home on April 28, 2016. (E8, 18-19:61, 61).
21. A majority of Appellants’ personal property had already been moved into the Arlington Home by April 28, 2016. (E8, 20:61, 61). Indeed, prior to closing on their sale of Bennington Home on April 28, 2016, Appellants had moved “[m]ost of [their] furniture, personal belongings, appliances that [they] had taken, vehicles, pretty much everything that you would move if you were moving to a new house” into the Arlington Home. (E8, 20: 61, 61).
22. Appellants and their two children slept at the Arlington Home every night between April 29, 2016 and the May 9, 2016 date on which Appellants closed on their purchase of the Arlington Home. (E8, 21– 22:61, 61).

23. Prior to May 2, 2016, Appellants observed a “huge leak in the egress window and the leak underneath the kitchen window”. (E9, 57-58:61, 61). Appellant Schulze purchased Vulkem caulk from Home Depot on May 1, 2016 and May 2, 2016 to be applied around the windows by Appellant Fleuren for the purpose of preventing future water intrusions. (E9, 57-60:61, 61). Appellant Fleuren applied the Vulkem caulking to the windows of the Arlington Home on May 1, 2016 and May 2, 2016. (E9, 57-58:61, 61).

24. Appellants closed on their purchase of the Arlington Home on May 9, 2016. (E8, 115, 189, 323:61, 61; E11, 10:62, 63). Prior to closing, Bear Homes provided to Appellants a supplemented version of the Disclosure Statement completed that day and stating:

Water has leaked in windows during heavy rains. Water has leaked in through gaps in logs.

(E8, 105-107:61, 61).

25. During closing, Appellants signed a Purchaser’s Closing Affidavit in which they acknowledged after “first being duly sworn” that, among other things, they “agree[d] that all of the terms of the Purchase Agreement” and that they were “satisfied with all repairs completed” after the inspection performed by Mr. Woledge and “require no further repairs. (E8, 191-194, E15: 61, 61). Nonetheless, Appellants claim that they did not read the sworn Purchaser’s Closing Affidavit that they signed in connection with a \$280,000.00 transaction, because the person conducting the closing “was very rude”. (E8, 195-198:61, 61).

26. On July 20, 2016, Mr. Robinson prepared a letter (the “Robinson Letter”) setting forth alleged building code “violations” and “noncompliance issues” at the Arlington Home. (E8, 199-200:61, 61). Upon completing the Robinson Letter on July 20, 2016, Mr. Robinson telephoned Appellants to request that they retrieve the Robinson Letter from the Washington

County Courthouse. (E8, 200:61, 61). On July 20, 2016, Appellants went to the Washington County Courthouse and picked up the Robinson Letter. (E8, 200:61, 61). The Robinson Letter provided to Appellants on July 20, 2016 described an alleged “violation” or “noncompliance issue” with the septic system at the Arlington Home as follows:

The septic tank installed must be checked and verified for size and installed to Title 124 of NE Dept. of Environmental standards with drain field sized for added bedroom. The septic system must be installed and serviced by a State of NE licensed Septic installer. The house does not have a kitchen sink disposal or an oversized tub which would have an effect on the size of the septic system.

(E16 to E8, 2:61, 61). In addition, Mr. Robinson concluded that the Arlington Home “did not have a passed final inspection nor a final Certificate of Occupancy Issued” and that “[o]n June 11, 2011 a Notice of Noncompliance was filed with the Register of Deeds stating the house had not been built in compliance with Washington County Codes.” (E16 to E8, 1-2:61, 61). The Robinson Letter also alleged building code violations relating to the “head height” for the clearance on the stairway leading down from the ground level to the basement, the amount of weight that could be supported by the guardrails on the front porch, the lack of “joist hangers” attaching the front porch to the home, the lack of a three-way light switch at the top and bottom of the stairway leading to the loft, the lack of a building code inspection on the electrical components added during the partial finishing of the basement. (E16 to E8, 2:61, 61).

27. Consistent with the supplemental disclosure in the Disclosure Statement that water had leaked through the windows prior to closing, water leaked through the windows at the Arlington Home after closing. (E9, 79: 61, 61). Appellants videotaped footage of water leaking through the windows during July and August of 2016. (E9, 79: 61, 61).

28. On approximately August 26, 2016, Appellants requested and received from Legacy Landscaping & Supply, LLC, a bid for \$18,523.00 for repair work at the Arlington Home stating:

Existing retaining wall is not built properly, missing a proper footing, proper backfill, doesn't now have a sock, no Geo-Grid, this wall is faulty on every level of proper wall construction.

(E3 to E8, 33-35:61, 61).

29. On August 22, 2016, Mr. Robinson conducted a final building code inspection at the Arlington Home at the request of Appellant Schulze. (E12, 75-76:65, 65). During the inspection, Mr. Robinson prepared and provided to Appellant Schulze a list of all building code violations that Mr. Robinson believed on such date to exist at the Arlington Home. (E12:75-76,65, 65; E26, 1:66, 67).

B. PROCEDURAL HISTORY

30. Appellants filed their Complaint in this matter on May 10, 2017. (T1-6). Appellants did not allege any basis upon which any statute of limitations should be tolled in their Complaint. (T1-6).

31. On September 25, 2018, an Amended Pretrial Progression Order was entered directing counsel to each party to appear on July 16, 2019 for a Pretrial Conference. (T285-288).

32. On October 21, 2018, Appellants filed a Second Amended Complaint and again did not allege any basis upon which any statute of limitations should be tolled. (T319-325). In their Second Amended Complaint, Appellants alleged that NP Dodge had breached Neb. Rev. Stat. § 76-2,120 as well as common law claims that included fraudulent misrepresentation, negligent misrepresentation, and fraudulent concealment. (T319-325).

33. On October 22, 2018, NP Dodge filed an Answer, Affirmative Defenses, and Jury Demand in which NP Dodge denied any liability in the claims alleged against it and affirmatively alleged that Appellants' claim for breach of Neb. Rev. Stat. § 76-2,120 is barred under the one year statute of limitations set forth at § 76-2,120(12). (T327-333).

34. On November 16, 2018, NP Dodge filed a Motion for Summary Judgment requesting dismissal with prejudice of all claims alleged against it. (T370-373).

35. On February 27, 2019, an Order (Neb. Rev. Stat. § 76-2,120 Limitation of Action) was entered dismissing Appellants' claim alleged against NP Dodge under Neb. Rev. Stat. § 76-2,120. (T461-468). The District Court concluded that "it is undisputed that the date of closing and the conveyance of the subject real estate occurred on May 9, 2016", that Appellants first filed their claims on May 10, 2017, and that Appellants claim against NP Dodge under § 76-2,120 is barred under the one-year statute of limitation in § 76-2,120(12) running from the date of "the conveyance of the property". (T461-463). Likewise, the District Court concluded that Appellants failed to timely file their claim against NP Dodge under § 76-2,120, because "[Appellants] were in possession of the [Arlington Home] no later than April 29, 2016 and the date of filing of the lawsuit was May 10, 2017—more than one year after the date of possession." (T463). Finally, the District Court rejected Appellants' assertion that their claim alleged pursuant to Neb. Rev. Stat. § 76-2,120 should be tolled under the common law discovery exception, because "there is no genuine issue of material fact that [Appellants] discovered all of the code violations and all of the other alleged conditions in 2016, which is well before the one-year statute of limitations had expired." (T464-468).

36. On February 27, 2019, the District Court entered an Order (NP Dodge Motion for Summary Judgment / Common Law Duty) dismissing Appellants' common law fraudulent

misrepresentation, negligent misrepresentation, and fraudulent concealment claims against NP Dodge. (T455-459). The District Court reasoned:

[B]y enacting § 76-2401 et seq., the legislature has superseded the duties and responsibilities of [real estate licensees] under the common law. In return, the legislature imposed statutory duties which include, among other things, a duty to disclose in writing to the client all adverse material conditions actually known by the licensee.

Therefore, the Court finds as a matter of law that NP Dodge cannot be vicariously liable to [Appellants if Mr. Rasmussen], as licensee, breached a statutory duty he owed to [Appellants] as set forth in [Neb. Rev. Stat. § 76-2417].

(T456-458).

37. The District Court entered an Order Granting Leave to Withdraw granting attorney Douglas W. Ruge leave to withdraw as Appellants' counsel on March 7, 2019. (T481).

38. On May 16, 2019, attorney John H. Sohl ("Mr. Sohl") entered an appearance as Appellants' new attorney. (T528-529).

39. On June 14, 2019, the District Court entered a Revised Order (NP Dodge's Motion for Summary Judgment) affirming its previous dismissal of Appellants' common law claims against NP Dodge and stating that NP Dodge may, as a matter of law, be liable in this matter to the extent, if any, that Mr. Rasmussen breached his duty under Neb. Rev. Stat. § 76-2417 to disclose all adverse material conditions at the Arlington Home actually known to him. (T531-536).

40. On July 15, 2019, Mr. Sohl sent a letter (the "Sohl Letter") to NP Dodge's counsel stating that Appellants "have authorized [Mr. Sohl] to settle for \$50,000.00 as to all parties" to this

matter. (E29, 1:167, 170). Upon receiving the Sohl Letter, counsel to NP Dodge communicated with the attorneys for Mr. Rasmussen, Bear Homes, Old Republic National Title Insurance Company (“Old Republic”), and Midwest Title, Inc. (“Midwest Title”), regarding the \$50,000.00 settlement offer from Appellants, and Appellees agreed to accept the \$50,000.00 settlement payment amount. (E29, 1:167, 170). Later, on July 15, 2019, counsel to NP Dodge communicated to Mr. Sohl that NP Dodge, Mr. Rasmussen, Bear Homes, Old Republic, and Midwest Title were ready, willing, and able to collectively pay \$50,000.00 in exchange for a mutual release of liability and dismissal of all claims alleged with prejudice, with each party bearing their own costs and such terms to be memorialized in a written agreement to be executed by the parties. (E29, 1-2:167, 170).

41. A Pretrial Conference was held on July 16, 2019 in which counsel for each party and Appellants personally appeared. (E28, 1-10: 172, 172; E29, 2:167, 170; 158:6-159:15). Counsel notified the District Court prior to the Pretrial Conference that the parties had reached a settlement agreement (the “Settlement Agreement”) and wished to recite and accept the Settlement Agreement while on the record. (159:16-21). The following terms were recited into the record in open Court, with counsel for each party and Appellants present:

First, the Defendants, NP Dodge Real Estate Sales, Inc., Old Republic National Title Insurance Company, Midwest Title, Inc., Matt Rasmussen and Bear Homes, P.C., shall collectively pay \$50,000.00 as settlement proceeds. Such proceeds shall be deposited in my firm’s trust account, the Liakos & Matukewicz, LLC, Client Trust Account, and from that trust account a check in the amount of \$50,000 will be issued and delivered to plaintiffs’ counsel. That check will be made payable to

plaintiffs, Paul Fleuren and Amy Schulze, and Douglas W. Ruge, Attorney at Law, P.C., Limited Liability Organization.

Second, upon—Excuse me. Second, the parties shall release one another of all claims arising from or relating to plaintiffs' purchase of the residence known as 23526 County Road 26, Arlington, Nebraska, including the title conditions relating to the subject residence alleged by plaintiffs in this action.

Third, all claims in this action shall be dismissed with prejudice, with each party to bear their own costs.

(159:22-160:21; E28, 5-6:172, 172). Counsel for each party thereafter stated the parties' acceptance of the above-recited terms, and the Court confirmed acceptance of the terms Appellants as follows:

MR. SOHL: And, if I may, is that your understanding, Amy?

MS. SCHULZE: Yes.

MR. SOHL: Okay. By the way, there is a power of attorney which has been executed by Paul to Amy, so that's why I'm not talking to or asking Amy.

THE COURT: Sure.

Mr. Fleuren, you're present today and you heard all of this, is that correct, sir?

MR. FLEUREN: Yeah.

THE COURT: Okay.

MR. FLEUREN: Yes, sir.

THE COURT: And, Ms. Schulze, you've heard all of this?

MS. SCHULZE: Yes.

THE COURT: Okay. And you had an opportunity to consult with Mr. Sohl obviously about this?

MS. SCHULZE: Yes.

THE COURT: Very good. All right. And that sounds like the agreement is accepted by everybody and we have a deadline of August 5th, 2019, to get that accomplished.

(162:3-163:7; E28, 7-9:172, 172).

42. Based on the Settlement Agreement recited and accepted on the record during the Pretrial Jury Conference, a Journal Entry was entered stating:

Settlement agreement read into the record. All counsel and both Plaintiffs acknowledged the terms of the settlement agreement. Cash settlement to be paid as soon as possible with distribution of check from Mr. Hollingsead's trust account. The August 19, 2019 jury trial is cancelled due to complete settlement of issues.

(T661-662).

43. At approximately 11:45 a.m. on July 17, 2019, Appellant Schulze telephoned a legal assistant for the law firm acting as counsel to NP Dodge and stated that the Settlement Agreement "was off", that the Appellees "should not bother" preparing a check for payment of the settlement proceeds, and that Appellants had terminated Mr. Sohl as their attorney. (E29, 3: 167, 170).

44. On July 18, 2019, Mr. Sohl filed a Motion to Withdraw stating:

[D]uring a telephone conversation during the morning of July 17, 2019, during a disagreement between [Mr. Sohl] and one of the Plaintiffs, said Plaintiff asked what she should do to which counsel said "Get someone else." Said Plaintiff replied

“Okay”. Counsel then had a subsequent conversation with the same Plaintiff who wished to pursue a course of conduct that counsel felt was repugnant and said Plaintiff and counsel had a fundamental disagreement.

(T592-593). The District Court entered an Order granting leave to Mr. Sohl to withdraw as counsel for Appellants on July 26, 2019. (T603).

45. On August 5, 2019, counsel for Old Republic sent an e-mail to Appellants that included a written Settlement Agreement and Mutual Release memorializing the terms of the Settlement Agreement recited into the record. (E30, 1-2:167. 171). To date, Appellants have not responded to the Settlement and Release Agreement prepared by Old Republic’s attorney or to his e-mail regarding the same. (E30, 2:167. 171).

46. On August 5, 2019, NP Dodge, Mr. Rasmussen, Bear Homes, Old Republic, and Midwest Title jointly filed a Motion to Enforce Settlement Agreement requesting entry of an Order enforcing the terms of the Settlement Agreement. (T607-614).

47. A hearing was held on August 20, 2019 at which Appellants personally appeared. (164:13-165:11). During the hearing, Appellants did not allege any basis upon which the Settlement Agreement is not an enforceable contract. (T176-186). Rather, Appellants claimed that they did not “come [to the July 16, 2019 hearing] with the intent of settling”, that they want more than the \$50,000.00 settlement amount originally proposed by their attorney and personally accepted on the record, and that Mr. Sohl purportedly did not render appropriate legal advice. (T176-186).

48. During the August 20, 2019 hearing, counsel for NP Dodge delivered to Appellants, while on the record in the presence of the Court, a \$50,000.00 check (the “Settlement Check”) providing payment of the amount specified in the Settlement Agreement. (T187:8-183:14;

T196:8-18; E32, 1:187-188). Appellants left the Settlement Check at counsel's table at the conclusion of the hearing. (198:7-10; T663-664).

49. On August 21, 2019, counsel to NP Dodge mailed the Settlement Check to Appellants at the Arlington Home via Certified United States Mail, postage prepaid, return receipt requested. (T664). On August 28, 2019, a representative from the United States Postal Service returned the Settlement Check to NP Dodge's attorney with the word "Refused" written across the front of the envelope. (T664-667).

50. On August 21, 2019, the District Court entered an Order Granting Defendants' Motion to Dismiss Settlement Agreement and for Dismissal with Prejudice finding that the Settlement Agreement constitutes an enforceable contract and that Appellees have performed all of their obligations under the Settlement Agreement, including delivery of the Settlement Check in the manner specified in the Settlement Agreement. (T650-660). Based on such findings, the District Court ordered as follows:

[T]he Defendants are entitled to the benefits that they bargained for under the Settlement Agreement. Defendants NP Dodge Real Estate Sales, Inc., Matt Rasmussen, Bear Homes, P.C., Old Republic National Title Insurance Company, and Midwest Title, Inc., are hereby deemed to be released of all claims possessed by Plaintiffs Amy Schulze and/or Paul Fleuren arising from or relating to Plaintiffs' purchase of the residence known as 23526 County Road 26, Arlington, Nebraska, including the title conditions relating to the subject residence alleged by Plaintiffs in this action. Further, pursuant to the terms of the Settlement Agreement, all claims alleged in this action by and amongst the parties are hereby dismissed with prejudice, with each party to bear their own costs.

(T654). After the terms of the Settlement Agreement were recited and offered to Appellants, that District Court confirmed on the record with each of the Appellants that they had heard the terms, accepted the terms, understood the terms, and that they had had the opportunity to confer with their attorney regarding the terms. (162:3-163:7; E28, 7-9:172, 172).

SUMMARY OF ARGUMENT

1. The District Court correctly concluded that the Settlement Agreement constitutes an enforceable contract, that NP Dodge and the other Appellees have performed all obligations under the Settlement Agreement, and that NP Dodge and the other Appellees are entitled to the benefits for which they bargained, including but not limited to a release of liability and dismissal with prejudice of all claims.

2. The District Court correctly determined that Appellants' claim alleged against NP Dodge under Neb. Rev. Stat. § 76-2,120 is time barred under the one-year statute of limitations set forth in § 76-2,120(12).

3. The District Court correctly found that Appellants cannot, as a matter of law, recover against NP Dodge on their common law claims for fraudulent misrepresentation, negligent misrepresentation, and fraudulent concealment.

ARGUMENT

I.

THE DISTRICT COURT CORRECTLY HELD THAT THE SETTLEMENT AGREEMENT IS AN ENFORCEABLE CONTRACT AND ENFORCED ITS TERMS.

The District Court correctly determined that the Settlement Agreement constitutes an enforceable contract and enforced it. The Nebraska Supreme Court has repeatedly held that “[a] settlement agreement is subject to the general principles of contract law.” *Thrower v. Anson*, 276 Neb. 102, 108, 752 N.W.2d 555, 561 (2008); *Strategic Staff Mgmt., Inc. v. Roseland*, 260 Neb. 682, 686, 619 N.W.2d 230, 234 (2000)(citing *Woodmen of the World Life Ins. Soc. v. Kight*, 246 Neb. 619, 522 N.W.2d 155 (1994)); *Heese Produce Co. v. Lueders*, 233 Neb. 12, 443 N.W.2d 278 (1989). “To create a contract, there must be both an offer and an acceptance; there must also be a meeting of the minds or a binding mutual understanding between the parties to the contract.” *Hoefl v. Five Points Bank*, 248 Neb. 772, 780, 539 N.W.2d 637, 644 (1995); *Lindsay Ins. Agency v. Mead*, 244 Neb. 645, 652–53, 508 N.W.2d 820, 825 (1993). The Supreme Court has described the requirements for “offer and acceptance” as follows:

A binding mutual understanding or meeting of the minds sufficient to establish a contract requires no precise formality or express utterance from the parties themselves as to all of the details of the proposed agreement; it may be implied from conduct and the surrounding circumstances.... Likewise, the acceptance of an offer may be shown by words, conduct, or acquiescence indicating agreement.

Hoefl, 248 Neb. at 780. In addition, “consideration is an essential element to the validity of a contract.” *Irwin v. West Gate Bank*, 288 Neb. 353, 360, 848 N.W.2d 605, 610 (2014)(quoting

Middagh v. Stanal Sound Ltd., 222 Neb. 54, 59, 382 N.W.2d 303, 307 (1986)). “Consideration is sufficient to support a contract if there is any detriment to the promisee or benefit to the promisor.” *Aon Consulting v. Midlands Fin. Benefits*, 275 Neb. 642, 654, 748 N.W.2d 626, 638 (2008); *Melchar v. Bank of Madison*, 248 Neb. 793, 801-02, 539 N.W.2d 837, 844 (1995).

Public policy strongly supports the resolution of disputes through settlement. See *e.g.* Neb. Rev. Stat. § 27-408; Fed. R. Evid. 408; California Evidence Code §§ 1152, 1154; Kansas Code of Civil Procedure §§ 60-452, 60-453; New Jersey Evidence Rules 52 and 53. In this vein, Courts have held:

Settlement of litigation ranks high in our public policy. Moreover, courts will not ordinarily inquire into the adequacy or inadequacy of the consideration underlying a compromise settlement fairly and deliberately made.

Pascarella v. Bruck, 190 N.J. Super. 118, 125, 462 A.2d 186, 190 (App. Div. 1983)(Internal citations omitted).

In *Strategic Staff Management, Inc. v. Roseland*, 260 Neb. 682, 619 N.W.2d 230 (2000), the Nebraska Supreme Court examined a trial court’s enforcement of settlement reached through mediation. Strategic Staff Management and Roseland executed a “Memorandum of Agreement” following a mediated settlement. *Id.* After mediation, the parties were unable to agree on the final language of settlement documents. *Id.* One of the parties thereafter moved to enforce the settlement reached in mediation, and the trial court obliged. *Strategic Staff Management, Inc.*, 260 Neb. at 689. The Nebraska Supreme Court affirmed the trial court’s enforcement action finding that all of the material terms were agreed upon by the parties making the settlement enforceable. *Id.* at 689, 619 N.W.2d at 235. Here, the Nebraska Supreme Court rejected the argument that the underlying agreement was merely an unenforceable agreement to contract in the future. *Id.* Rather,

the Supreme Court held that “[a] contract provision to execute effectuating documents in the future is enforceable where all of the material terms are specified in the original contract and leave none to be agreed upon through future negotiations.” *Id.*

This case presents a clear case of buyer’s remorse on the part of Appellants rather than a genuine controversy regarding contract formation and enforcement. Indeed, the record is abundantly clear: Appellants appeared with their attorney on the record in open Court and unequivocally accepted, both **personally** and through their attorney, the Settlement Agreement providing the settlement payment amount proposed **by Appellants**. (162:3-163:7; E28, 7-9:172, 172; E29, 1-2:167, 170). While on the record and with their attorney present, counsel for NP Dodge recited to Appellants, counsel, and the Court the following terms:

First, the Defendants, NP Dodge Real Estate Sales, Inc., Old Republic National Title Insurance Company, Midwest Title, Inc., Matt Rasmussen and Bear Homes, P.C., shall collectively pay \$50,000.00 as settlement proceeds. Such proceeds shall be deposited in my firm’s trust account, the Liakos & Matukewicz, LLC, Client Trust Account, and from that trust account a check in the amount of \$50,000 will be issued and delivered to plaintiffs’ counsel. That check will be made payable to plaintiffs, Paul Fleuren and Amy Schulze, and Douglas W. Ruge, Attorney at Law, P.C., Limited Liability Organization.

Second, upon—Excuse me. Second, the parties shall release one another of all claims arising from or relating to plaintiffs’ purchase of the residence known as 23526 County Road 26, Arlington, Nebraska, including the title conditions relating to the subject residence alleged by plaintiffs in this action.

Third, all claims in this action shall be dismissed with prejudice, with each party to bear their own costs.

(159:22-160:21; E28, 5-6:172, 172). After having the terms recited and offered to Appellants, the Court confirmed separately with Appellant Schulze and Appellant Fleuren that they heard the terms, understood the terms, and had the opportunity to confer with their attorney regarding such terms. (162:3-163:7; E28, 7-9:172, 172). Meanwhile, Appellants do not dispute the obvious: that the terms of the Settlement Agreement were offered and accepted on the record in open Court. Thus, the transcript from the July 16, 2019 hearing plainly demonstrates that Appellants unequivocally accepted the Settlement Offer, both personally and through their attorney.

The Settlement Agreement is supported by consideration. Notwithstanding any waiver by Appellants to the settlement payment through their repeated refusal to accept such funds, the Settlement Agreement confers consideration to Appellants that includes the \$50,000.00 payment amount proposed by Appellants, immediate recovery without the risks and burdens of trial, and a release of liability. The Settlement Agreement provides consideration to NP Dodge, Mr. Rasmussen, Bear Homes, Old Republic, and Midwest Title that includes a release of liability, dismissal with prejudice of all claims, and avoidance of the risks and burdens of trial.

Appellants have not and cannot identify any basis grounded in law or fact upon which the Settlement Agreement is not an enforceable contract in all respects. Appellants have filed a “Replacement Brief” completely void of any law or evidence upon which the Settlement Agreement might be unenforceable while alleging irrelevant facts not supported by the record. NP Dodge, Mr. Rasmussen, Bear Homes, Old Republic, and Midwest Title are entitled to the benefits bargained for under the Settlement Agreement, and the District Court’s Order Granting

Defendants' Motion to Dismiss Settlement Agreement and for Dismissal with Prejudice should be affirmed in all respects. (T650-660).

II.

THE DISTRICT COURT CORRECTLY HELD THAT APPELLANTS' CLAIMS UNDER NEB. REV. STAT. § 76-2,120 WERE TIME BARRED.

The undisputed evidence establishes that Appellants failed to timely file their claims alleged pursuant to Neb. Rev. Stat. § 76-2,120.¹ Neb. Rev. Stat. § 76-2,120(12) states:

If a conveyance of real property is not made in compliance with this section, the purchaser shall have a cause of action against the seller and may recover the actual damages, court costs, and reasonable attorney's fees. The cause of action created by this section shall be in addition to any other cause of action that the purchaser may have. **Any action to recover damages under the cause of action shall be commenced within one year after the purchaser takes possession or the conveyance of the real property, whichever occurs first.**

(Emphasis added). Here, the District Court correctly concluded that Appellants did not file their claims within one year after taking possession of the Arlington Home or within one year of the conveyance of the Arlington Home to Appellants. (T461-468).¹

A. Measured from Date of "Conveyance"

¹ Appellants argue, without citing any supporting evidence or legal authority, that the District Court erred in finding that their claims under Neb. Rev. Stat. § 76-2,120 were not timely filed. Nevertheless, Appellants filed with this Court a "Resistance" and "Settlement and Release Agreement" on January 8, 2020 under which Appellants settled a claim against their former attorney in this matter, Douglas Ruge, in which Appellants claimed "that Ruge failed to file a complaint under Neb. Rev. Stat. 76-2,120 within the one year's statute of limitations".

The undisputed evidence demonstrates that Bear Homes conveyed the Arlington Property to Appellants on the May 9, 2016 closing date. (E1, 1:15, 16; E6, 1: 66, 67; E8, 115, 189, 323:61, 61; E11, 10:62, 63; E17, 5:61, 61). A “conveyance” occurs when the owner of the real estate transfers ownership to another party. See *Carusco v. Parkos*, 262 Neb. 961 967, 637 N.W.2d 351, 357 (2002). Appellants first filed their claims on May 10, 2017. (T1-6; 64:6-10). Neb. Rev. Stat. § 25-2221 defines the computation of statute of limitations periods as follows:

Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.

In *Lindsay Mfg. Co. v. Universal Sur. Co.*, 246 Neb. 495, 519 N.W.2d 530 (1994), the Nebraska Supreme Court analyzed the application of the two-year statute of limitations period governing professional negligence claims at Neb. Rev. Stat. § 25-222. In its analysis, the Supreme Court found that the Plaintiff’s professional negligence claim accrued no later than December 21, 1982 and “would have had to be filed by December 21, 1984.” *Id.* at 504.

Here, the District Court took “judicial notice that May 9, 2017 was a Tuesday and May 10, 2017 was a Wednesday. There is no evidence that May 9, 2017 was a legal holiday as described in Neb. Rev. Stat. § 25-2221.” (T462). By excluding the May 9, 2016 date of the “conveyance”, May 9, 2017 was the last date on which Appellants’ claims under Neb. Rev. Stat. § 76-2,120 could

be timely filed, and such claims were clearly time barred when Appellants filed their claims on May 10, 2017.

B. Measured from Date of “Possession”

In the alternative, Appellants’ claims alleged pursuant to Neb. Rev. Stat. § 76-2,120 are time barred when the one-year statute of limitations period is measured from the date that Appellants took “possession” of the Arlington Home. Possession of real property may be “actual” or “constructive”. When interpreting a separate statute, the Nebraska Supreme Court has reasoned that “...’occupants’ and ‘actual possession or occupancy’ were synonymous and meant actual, open, visible possession or occupancy in fact, exactly that and nothing less, as distinguished from constructive occupancy.” *Durfee v. Keiffer*, 168 Neb. 272, 284, 95 N.W.2d 618, 626 (1959)(quoting *Parsons v. Prudential Real Estate Co.*, 86 Neb. 271, 125 N.W. 521 (1910)).

In this case, the undisputed evidence establishes that Appellants took “possession” of the Arlington Home no later than the end of April 2016. Appellant Schulze has testified as follows:

1. Appellants moved a majority of their personal property into the Arlington Home by April 28, 2016. (E8, 20:61, 61). In fact, Appellants had moved “[m]ost of [their] furniture, personal belongings, appliances that [they] had taken, vehicles, pretty much everything that you would move if you were moving to a new house” into the Arlington Home prior to the April 28, 2016 closing on Appellants’ sale of the Bennington Home. (E8, 20:61, 61).
2. Appellants and their two children slept at the Arlington Home every night between April 29, 2016 and May 9, 2016. (E8, 21-22:61, 61).

3. In April 2016, Appellants caused the ADT home security system installed in the Bennington Home to be relocated to and activated at the Arlington Home. (E8, 123:61, 61).
4. On April 14, 2016, Appellant Schulze obtained from Erica Wilkinson Agency a renter's insurance policy underwritten by State Farm Insurance insuring the Arlington Home from April 26, 2016 through and including May 9, 2016. (E8, 117-118:61, 61).
5. On April 14, 2016, Appellants had the utilities for the Arlington Home transferred into their names. (E8, 25:61, 614).
6. In April 2016, Appellants caused the ADT home security system installed in the Bennington Home to be relocated to and activated at the Arlington Home. (E8, 123:61, 61).

The undisputed evidence establishes that Appellants were in possession of the Arlington Home by the end of April 2016. The May 10, 2017 filing date was more than one year after Appellants' claims under Neb. Rev. Stat. § 76-2,120 and became time barred no later than the end of April 2017. Therefore, the District Court correctly ruled that Appellants' claims alleged pursuant to Neb. Rev. Stat. § 76-2,120 were not timely filed under the one-year statute of limitations set forth at § 76-2,120 (12).

C. Application of Common Law Discovery Rule

The uncontroverted evidence clearly and unequivocally demonstrates that Nebraska's common law discovery rule does not apply to Appellants' claims under Neb. Rev. Stat. § 76-2,120, because Appellants had actual knowledge of a "problem" existing as to all alleged adverse material conditions approximately nine (9) months before the one-year limitations period expired in late April 2017. The Nebraska Supreme Court explained application of the statutory and common law

discovery rules in *Alston v. Hormel Foods Corp.*, 273 Neb. 422, 430, 730 N.W.2d 376, 384 (2007).

In *Alston*, the Supreme Court described the rationale underlying the discovery rule as follows:

‘[T]he mischief which statutes of limitations are intended to remedy is the general inconvenience resulting from delay in the assertion of a legal right which it is practicable to assert.’” ... The statutes of limitations are “ ‘enacted upon the presumption that one having a well-founded claim will not delay enforcing it beyond a reasonable time if he [or she] has the right to proceed. The basis of the presumption is gone whenever the ability to resort to the courts is taken away.’ ” ... “‘If an injured party is wholly unaware of the nature of his [or her] injury or the cause of it, it is difficult to see how he [or she] may be charged with lack of diligence or sleeping on his [or her] rights.’ ”

Id. at 431–32 (Quoting *Shlien v. Bd. of Regents, Univ. of Nebraska*, 263 Neb. 465, 473, 640 N.W.2d 643, 650 (2002)). Based on this reasoning, the Nebraska Supreme Court has applied the discovery rule as follows in the context of the discovery rule when it is codified into a statute of limitations:

[W]e have stated that when the discovery rule is applicable, the statute of limitations does not begin to run until the potential plaintiff discovers, or with reasonable diligence should have discovered, the injury. **In those cases in which the discovery rule applies, the beneficence of the discovery rule is not bestowed on a potential plaintiff where the potential plaintiff in fact discovers, or in the exercise of reasonable diligence should have discovered, the injury within the initial period of limitations running from the wrongful act or omission.**

However, in a case where the injury is not obvious and is neither discovered nor discoverable within the limitations period running from the wrongful act or

omission, the statute of limitations does not begin to run until the potential plaintiff discovers, or with reasonable diligence should have discovered, the injury.

Alston v. Hormel Foods Corp., 273 Neb. 422, 432, 730 N.W.2d 376, 385 (2007)(Emphasis added); *Egan v. Stoler*, 265 Neb. 1, 6, 653 N.W.2d 855, 860 (2002); *Reinke Mfg. Co., Inc. v. Hayes*, 256 Neb. 442, 454, 590 N.W.2d 380, 390 (1999); *Lindsay Mfg. Co. v. Universal Sur. Co.*, 246 Neb. 495, 505, 519 N.W.2d 530, 539, (1994); *Economy Housing Co. v. Rosenberg.*, 239 Neb. 267, 269, 475 N.W.2d 899, 901 (1991).

The Nebraska Supreme Court has applied the common law discovery rule in an identical manner and repeatedly stated that the common law discovery rule applies only where the plaintiff did not discover and could not have reasonably discovered the injury before the statute of limitations period lapsed. In referring to its application of the statutorily created discovery rule, the Supreme Court has held:

The same reasoning is applicable to the common-law discovery rule we have applied in cases where an injury is not obvious and an individual is wholly unaware that he or she has suffered an injury.

Alston v. Hormel Foods Corp., 273 Neb. 422, 433, 730 N.W.2d 376, 386 (2007). See also *Shlien v. Bd. of Regents, Univ. of Nebraska*, 263 Neb. 465, 473, 640 N.W.2d 643, 650 (2002).

In *Shlien v. Bd. of Regents, Univ. of Nebraska*, 263 Neb. 465, 473, 640 N.W.2d 643, 650 (2002), a University of Nebraska student, Rania Shlien, filed a claim against the University of Nebraska and its Board of Regents alleging that they negligently failed to properly supervise a professor who published sensitive information regarding a student online no later than October 24, 1995. *Id.* at 475. *Id.* In its analysis, the Supreme Court found that the student's negligent supervision claim accrued no later than the October 24, 1995 date that the sensitive information

was uploaded by the professor and was governed by the two-year statute of limitations set forth in the State Tort Claims Act at Neb. Rev. Stat. § 81-8,227(1). *Id.* Neb. Rev. Stat. § 81-8,227(1) lacks a discovery rule provision and provides:

Every tort claim permitted under the State Tort Claims Act shall be forever barred unless within two years after such claim accrued the claim is made in writing to the State Claims Board in the manner provided by such act. The time to begin suit under such act shall be extended for a period of six months from the date of mailing of notice to the claimant by the board as to the final disposition of the claim or from the date of withdrawal of the claim from the board under section 81-8,213 if the time to begin suit would otherwise expire before the end of such period.

Id. at 470. Thus, the student's claim became barred two (2) years after the sensitive materials were published on or before October 24, 1995, but the student's claims were not filed until September 23, 1998. *Id.* In reviewing the statute of limitations defense alleged by the University and Board of Regents, the Supreme Court held:

If Shlien's actual discovery of her injury in June 1997 was within 2 years of the date the papers were uploaded, then Shlien did not timely file her State claim. If, however, June 1997 was more than 2 years after the date the papers were uploaded and the date Shlien should have discovered her injury was also more than 2 years after the date the papers were uploaded, then by virtue of application of the discovery rule, the statute of limitations did not begin to run until the date Shlien discovered or should have discovered her injury.

Id. at 476 (Emphasis added).

In his analysis of the discovery rule in Nebraska, University of Nebraska School of Law Professor John Lenich has explained the rule's application as follows:

[Under statutorily adopted versions of the discovery rule], the discovery rule does not apply if the party discovered or reasonably could have discovered its injury within the original limitations period. **The same is true of the judicially created discovery rule.**

John Lenich, 5 Neb. Prac., Civil Procedure § 5:27 (March 2018 Update) (Emphasis added).

For discovery of an injury to occur, “it is not necessary that a plaintiff have knowledge of the exact nature or source of a problem in order to “discover” an injury—a plaintiff need only know that a problem existed.” *Guinn v. Murray*, 286 Neb. 584, 597, 837 N.W.2d 805, 817 (2013)(citing *Gering–Ft. Laramie Irr. Dist. v. Baker*, 259 Neb. 840, 612 N.W.2d 897 (2000)). “A limitation period may begin to run even though the full nature and extent of the damages are not known.” *Reinke Mfg. Co. v. Hayes*, 256 Neb. 442, 453, 590 N.W.2d 380, 390 (1999).

Here, the discovery rule does not apply, because the undisputed evidence demonstrates that Appellants actually discovered their alleged injuries before the one-year statute of limitations period provided in Neb. Rev. Stat. § 76-2,120(12) expired. The following undisputed evidence proves that Appellants had actual knowledge of all alleged injuries within the one-year limitations period:

1. **Water Leak through Cracks between Log Cabin Logs:** On March 29, 2016, Mr. Woledge performed a Whole Home Inspection of the Arlington Home at Appellant Schulze's Request. (E8, 128:61, 61). Later, on March 29, 2016, Appellants received and reviewed the Inspection Report stating Mr. Woledge's findings from the Whole Home Inspection. ((E8, 128-129:61, 61). The Inspection Report states the following regarding the Arlington Home's exterior walls:

Further evaluation. Common cracks up to 1/8” were found in the exterior walls at the time of the inspection. Some lower sections of log veneer covering the box joist areas has openings and allows water the penetrate behind and possible enter into the structure. Recommend further evaluation and repairs. **Holes and or penetrations were noted and should be sealed to prevent future/further moisture penetration/deterioration and or pest/insect intrusion.**

(E8, p. 14 to E13:61, 61).

Prior to May 2, 2016, Appellants observed a “huge leak in the egress window and the leak underneath the kitchen window”. (E9, 57-58:61, 61). Appellant Schulze purchased Vulkem caulk from Home Depot on May 1, 2016 and May 2, 2016 to be applied around the windows by Appellant Fleuren for the purpose of preventing future water intrusions. (E9, 57-60:61, 61). Appellant Fleuren applied the Vulkem caulking to the windows of the Arlington Home on May 1, 2016 and May 2, 2016. (E9, 57-58:61, 61). Further, on May 9, 2016, Appellants received and signed the amended Disclosure Statement stating, “Water has leaked in through gaps in logs.” (E8, 105-107:61, 61). Moreover, Appellants recorded video footage of water entering through cracks in the log veneer in July and August of 2016. (E9, 79:61, 61). Thus, Appellants acknowledged through their testimony that they had actual knowledge of water leaking through the Arlington Home’s log veneer before the one-year limitation period expired.

2. **Water Leaks at Windows:** Appellants received and signed the amended Disclosure Statement on May 9, 2016 disclosing, “Water has leaked in windows during heavy storms.”

(E8, 105-107:61, 61). Appellants videotaped footage of water leaking into the home through windows during July and August of 2016. (E9, 79:61, 61). As a result, Appellants have testified that they had actual knowledge of water leaking through the windows at the Arlington Home approximately one year before the limitations period lapsed.

3. **Exterior Stone Stairs:** On March 29, 2016, Appellants received and reviewed the Inspection Report prepared by Mr. Wooledge stating:

Safety Hazard. Steps have loose treads and the potential to break loose from supporting blocks. Recommend further evaluation and repair.

(E8, 169-170:61, 61). Later, on May 9, 2016, Appellants discussed the exterior stone stairs with Mr. Wooledge. (E8, 138-139:61, 61). Appellant Schulze has described the conversation with Mr. Wooledge regarding the exterior stone stairs as follows:

Q. Did he tell you that day that he'd injured his leg?

A. Yes. He said he hit—that the piece flew up in the air and hit him in the front part of his shin and fell down to the lower level of the step. He said that's a danger, it's a safety hazard, and it needs to be fixed.

(E8, 138:20-139:61, 61). Accordingly, Appellants had actual knowledge regarding a problem with the exterior stone stairs no later than March 29, 2016.

4. **Retaining Wall:** Appellants received and reviewed the Inspection Report on March 29, 2016 stating:

Further evaluation. The retaining wall appeared to be leaning at the time of the inspection. Does not appear to have been backfilled with crushed rock/gravel for drainage. Recommend further evaluation and repairs as needed.

(E8, 170-171:61, 61). On approximately August 26, 2016, Appellant Schulze requested and received from Legacy Landscape & Supply, LLC, a bid for \$18,523.00 in repair work at the Arlington Home and stating:

Existing retaining wall is not built properly, missing a proper footing, proper backfill, doesn't now have a sock, no Geo-Grid, **this wall is faulty on every level of proper wall construction.**

(Emphasis added)(E8, 33-35:61, 61). The undisputed evidence establishes that Appellants possessed actual knowledge regarding a problem with the retaining wall on March 29, 2016 and August 26, 2016.

5. **Septic System:** Appellants allege that they have sustained \$10,585.00 in damages “[t]o repair the defective work to the septic system and bring it to code.” (T298). On July 20, 2016, Mr. Robinson prepared the Robinson Letter discussing alleged “violations” and “noncompliance issues” at the Arlington Home. (E8, 199-200:61, 61). The Robinson Letter states, among other things, that:

The septic tank installed must be checked and verified for size and installed to Title 124 of NE Dept. of Environmental standards with drain field sized for added bedroom. The septic system must be installed and serviced by a State of NE licensed Septic installer. The house does not have a kitchen sink disposal or an oversized tub which would have an effect on the size of the septic system.

(E8, 199-200:61, 61). Upon completing the Robinson Letter on July 20, 2016, Mr. Robinson telephoned Appellants, and Appellants traveled to the Washington County

Courthouse and picked up the Robinson Letter. (E8, 200:61, 61). As a result, Appellants had actual knowledge of the “problem” with the septic system on or about July 20, 2016.

6. **Alleged Building Code Violations and Notice of Notice of Noncompliance:** As set forth above, Plaintiffs were provided with a copy of the Robinson Letter on or about July 20, 2016 detailing “violations” and “noncompliance issues” at the Property, including a description of all relevant building code violations and a statement that “[o]n June 11, 2011 a Notice of Noncompliance was filed with the Register of Deeds stating the house had not been built in compliance with Washington County Codes.” (E8, 199-200:61, 61). Appellants therefore possessed actual knowledge on or about July 20, 2016 of all relevant, alleged building code violations and the Notice of Noncompliance recorded with the Washington County Register of Deeds.

Consistent with the undisputed evidence, Appellants concede in their Replacement Brief that they filed this action after “discovering [their alleged] legal losses on June 2, 2016, well within the tort of tolling on statutes of limitations [sic] of property disclosures”. (Appellants’ Replacement Brief, p. 11). The undisputed evidence proves that Appellants had actual knowledge of all alleged injuries approximately nine (9) months before the one-year statute of limitations set forth in Neb. Rev. Stat. § 76-2,120(12) expired no later than the end of April 2017, and the discovery rule does not apply. The District Court correctly held that Appellants’ claims under Neb. Rev. Stat. § 76-2,120 were time-barred, and the District Court’s Order (Neb. Rev. Stat. § 76-2,120 Limitation of Action) should be affirmed in all respects.

III.

THE DISTRICT COURT CORRECTLY HELD THAT APPELLANTS CANNOT, AS A MATTER OF LAW, BE GRANTED RELIEF AGAINST NP DODGE IN THEIR COMMON LAW CLAIMS.

The District Court correctly concluded that NP Dodge cannot, as a matter of law, be liable to Appellants based upon purported breaches of common law duties by Mr. Rasmussen in his capacity as a real estate licensee. Appellants alleged common law claims against NP Dodge that include fraudulent misrepresentation, negligent misrepresentation, and fraudulent concealment based upon Mr. Rasmussen's relationship with NP Dodge. (T31-36). However, Nebraska law is clear: real estate licensees cannot be liable under common law claims. In 1994, the Nebraska Legislature enacted Neb. Rev. Stat. § 76-2401, *et seq.*, and made the following findings:

The Legislature finds, determines, and declares that (1) the application of the common law of agency to the relationships between real estate brokers or salespersons and persons who are sellers, landlords, buyers, or tenants of rights and interests in real property has resulted in misunderstandings and consequences that are contrary to the best interests of the public, (2) the real estate brokerage industry has a significant impact upon the economy of the State of Nebraska, and (3) **it is in the best interests of the public to codify in statute the relationships between real estate brokers or salespersons and persons who are sellers, landlords, buyers, or tenants of rights and interests in real property.**

See Neb. Rev. Stat. § 76-2401. Consistent with its findings in § 76-2401 that the application of common principals to real estate agency relationships has caused “misunderstandings” “contrary to the best interests of the public”, the Legislature enacted the following:

Sections 76-2401 to 76-2430 **shall supersede the duties and responsibilities of the parties under the common law**, including fiduciary responsibilities of an agent to a principal, except as provided in subsection (6) of section 76-2422. Sections 76-2401 to 76-2430 shall be construed broadly to accomplish their purposes.

See Neb. Rev. Stat. § 76-2429(Emphasis added).

In *Ruble v. Reich*, 259 Neb. 658, 668–70, 611 N.W.2d 844, 852–53 (2000), the Nebraska Supreme Court reviewed, among other things, a Court’s dismissal of a claim brought by a seller against the seller’s limited agent and affiliated broker for breach of fiduciary duty based upon the agent’s failure “to disclose” to the seller that the parties’ purchase agreement provided that closing was to occur after August 31, 1996. *Id.* In *Ruble*, the Supreme Court explained:

In 1994, the Legislature adopted a statutory system regulating the relationship between real estate agents or salespersons and persons who are sellers, landlords, buyers, or tenants of rights and interests in real property. See Neb.Rev.Stat. § 76–2401 to 76–2430. The Legislature established that the sections of the new codified system “**shall supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a principal.**”

In applying Neb. Rev. Stat. §§ 76-2401 to 76-2430, the Supreme Court held that a real estate licensee may only be liable for acts or omissions in breach of a duty set forth in §§ 76-2401 to 76-2430. See *Ruble v. Reich*, 259 Neb. 658, 670, 611 N.W.2d 844, 853 (2000).

NP Dodge’s relationship with Mr. Rasmussen is based completely upon their Independent Contractor Agreement in which Mr. Rasmussen agreed to perform work on behalf of NP Dodge entirely within Mr. Rasmussen’s capacity as a real estate licensee. (E7, 1:36, 36). Mr. Rasmussen

and NP Dodge do not have any relationship other than that defined in the Independent Contractor Agreement. (E7, 1:36, 36). NP Dodge's relationship with the transaction in which Appellants purchased from Bear Homes arises exclusively from the Listing Agreement in which NP Dodge agreed to provide licensed real estate services to Bear Homes to find a purchaser for the Arlington Home. (E7, 1:36, 36). Thus, NP Dodge may only be liable to Appellants, as a matter of law, to the extent, if any, that Mr. Rasmussen breached a duty as a real estate licensee representing the seller, Bear Homes, in the subject transaction.

Applying the *Ruble* holding here, NP Dodge cannot be liable to Appellants unless Mr. Rasmussen, as the seller's limited agent, breached a duty he owed to Appellants, as the buyers, as set forth in the statute defining a seller's agent's duties at Neb. Rev. Stat. § 76-2417. Neb. Rev. Stat. § 76-2417(3)(a)-(b) defines Mr. Rasmussen's duty, as the limited seller's agent, to Appellants as follows:

(3)(a) A licensee acting as a seller's or landlord's agent **owes no duty or obligation to a buyer, a tenant, or a prospective buyer or tenant, except that a licensee shall disclose in writing to the buyer, tenant, or prospective buyer or tenant all adverse material facts actually known by the licensee.** The adverse material facts may include, but are not limited to, adverse material facts pertaining to: (i) Any environmental hazards affecting the property which are required by law to be disclosed; (ii) the physical condition of the property; (iii) any material defects in the property; (iv) any material defects in the title to the property; or (v) any material limitation on the client's ability to perform under the terms of the contract.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer, tenant, or prospective buyer or tenant

and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.

(Emphasis added). Appellants have filed common law claims against NP Dodge separate from Mr. Rasmussen's statutory duty as the seller's agent to disclose "in writing to [Appellants] all adverse material facts actually known by [Mr. Rasmussen]." Accordingly, like the plaintiff in *Ruble*, NP Dodge cannot be liable under any common law causes of action purportedly arising from Mr. Rasmussen's work as a real estate licensee, and District Court correctly dismissed Appellants' common law claims against NP Dodge.

CONCLUSION

The District Court correctly held that the Settlement Agreement personally accepted by Appellants while on the record in open Court constitutes an enforceable contract and enforced it. Appellants' appeal is derived entirely from Appellants' buyers' remorse as they have not and cannot cite any evidence or legal authority based upon which the District Court erred in finding that the Settlement Agreement is an enforceable contract and enforcing its terms.

In addition, the District Court correctly concluded that Appellants' claims alleged pursuant to Neb. Rev. Stat. § 76-2,120 are barred under the one-year statute of limitations set forth at § 76-2,120. Indeed, the undisputed evidence demonstrates that Appellants failed to timely file their claims within one year following the date that Appellants took "possession" of the Arlington Home or the "conveyance" of the Arlington Home to Appellants. Again, Appellants have not and cannot cite any evidence or legal authority demonstrating a genuine issue of material fact or that NP Dodge was not entitled to judgment as a matter of law. Appellants baldly claim in their Replacement Brief that their claim under Neb. Rev. Stat. § 76-2,120 should be salvaged based upon Nebraska's common law discovery rule even though they acknowledge that that they had

discovered “[their alleged] legal losses on June 2, 2016, well within the tort of tolling on statutes of limitations [sic] of property disclosures”—approximately ten months before the limitation period ended. (Appellants’ Replacement Brief, p. 11). Likewise, Appellants have not and cannot identify any evidence or legal authority based upon which there is a genuine issue of material fact or refuting that NP Dodge was not entitled to judgment as a matter of law.

Similarly, the record and Appellants’ Replacement Brief are completely void of any evidence or legal authority demonstrating that they have alleged common law claims arising from NP Dodge’s performance of licensed real estate activities upon which relief may be granted as a matter of law.

Appellants’ appeal lacks any merit, and the relevant Orders entered by the District Court should be affirmed in all respects.

SUBMITTED this 7th day of April, 2020.

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Appellee / Defendant.

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IN THE NEBRASKA COURT OF APPEALS

NO. A-19-0901

AMY SCHULZE and
PAUL FLEUREN,

Appellants,

vs.

MATT RASMUSSEN; BEAR HOMES,
P.C.; OLD REPUBLIC NATIONAL
TITLE INSURANCE COMPANY;
MIDWEST TITLE, INC.; and,
NP DODGE REAL ESTATE SALES, INC.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF WASHINGTON COUNTY, NEBRASKA
Honorable JOHN E. SAMSON, Judge

APPELLEE NP DODGE REAL ESTATE SALES, INC.'S BRIEF

AFFIDAVIT OF SERVICE

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The undersigned, being first duly sworn upon oath, deposes and states that a copy of Appellee NP Dodge Real Estate Sales, Inc.'s Brief was served upon the following via first class, United States mail, postage prepaid, on the 7th day of April, 2020:

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Appellee / Defendant.

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SUBSCRIBED, SWORN and ACKNOWLEDGED to before me by
ANDREW M. HOLLINGSEAD on this 7th day of April, 2020.



Stephanie C. Myres
NOTARY PUBLIC

Certificate of Service

I hereby certify that on Tuesday, April 07, 2020 I provided a true and correct copy of this *Brief of Appellee NP Dodge* to the following:

Amy J Schulze (Self Represented Litigant) service method: **First Class Mail**

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