

**IN THE DISTRICT COURT OF KEYA PAHA COUNTY, NEBRASKA**

**SANDHILL OIL CO., INC., a Nebraska corporation,**

Plaintiff,

vs.

**GARY ROSS and CONNIE ROSS, husband and wife; PHYLLIS IRVIN, Trustee, Flat Top Trust; ALL WAYS, INC., a Nebraska corporation, GARY ROSS, registered agent; and GARY ROSS, Trustee,**

Defendants.

Case No. 2942

**JUDGMENT ON THE PLEADINGS**

**DATE OF HEARING:** January 19, 2001.  
**DATE OF RENDITION:** January 19, 2001.  
**DATE OF ENTRY:** Date of filing by court clerk (§ 25-1301(3)).  
**TYPE OF HEARING:** In chambers at Ainsworth, Brown County, Nebraska.  
**APPEARANCES:**  
For plaintiff: Warren R. Arganbright.  
For defendants: W. Gerald O’Kief without defendants.  
**SUBJECT OF ORDER:** Defendants’ motion for judgment on the pleadings.  
**PROCEEDINGS:** At the hearing, these proceedings occurred:

Arguments of counsel were heard. Pronouncement of decision was made. A trial docket entry was dictated with instructions to the clerk at Ainsworth for e-mail transmission and transcription by the clerk at Springview.

**FINDINGS:** The court finds and concludes that:

1. The motion should be granted for the reasons stated in paragraphs 1, 2, and 5 of the motion.
2. NEB. REV. STAT. § 36-710 (Reissue 1998) provides for extinguishment of the cause of action four years after the transfer was made or the obligation incurred. The plaintiff’s second amended petition shows that the transfers were made on June 25, 1995, and recorded on July 3, 1995. The four-

year period after the transfer ended no later than July 3, 1999. Even if not considered as made until recorded, more than four years elapsed before the commencement of the case. The second amended petition also shows that the obligations were incurred over a period ending on January 20, 1996. The four-year period after the obligations were incurred ended on January 20, 2000. This case was commenced on March 21, 2000. Under either theory, the cause of action extinguished before the plaintiff commenced this action.

3. Although § 36-710 provides for a “discovery” exception, the operative petition shows the inapplicability of that provision. Obviously, the transfer could reasonably have been discovered when the deeds were filed in the public records on July 3, 1995. The timing of the obligations was clearly within the plaintiff’s knowledge when incurred and not properly the subject of a “discovery” exception.

4. If there was any reasonable possibility that the defect could be corrected, the court would allow the plaintiff to amend its petition. However, the plaintiff was allowed to file the second amended petition to be sure that the dates of the obligations were correct, having discussed with counsel the importance thereof in applying the statute of limitations. There is no reason to believe that these allegations would change. The operative petition must be dismissed with prejudice at plaintiff’s cost.

5. The court does not consider the matters set forth in paragraphs 3 and 4 as not determined by the pleadings, and not determinable on a motion for judgment on the pleadings.

**JUDGMENT:** IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The motion is granted.
2. JUDGMENT is hereby entered on the pleadings in favor of the defendants and against the plaintiff for dismissal of the plaintiff’s petition with prejudice at plaintiff’s cost.

Signed in chambers at Ainsworth, Nebraska, on January 19, 2001.  
DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- 9 Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- Mail postcard/notice required by § 25-1301.01 within 3 days stating “Amended Petition dismissed with prejudice at plaintiff’s cost”.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- If not already done, immediately transcribe trial docket entry dictated in open court and transmitted by e-mail from Brown Co CDC to Keya Paha Co CDC.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.

Mailed to:

BY THE COURT:

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William B. Cassel  
District Judge