

2007

Gene V. Crawford, Sherry T. Crawford, Val-Dev, L.L.C. v. CBS Outdoor, Inc., National Advertising Company : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

GENE V. CRAWFORD, SHERRY T.	:	Case No. 20070380-CA
CRAWFORD dba "Val-Dev, L.L.C.,"	:	
Plaintiffs/Appellants,	:	
vs.	:	
CBS OUTDOOR, INC., NATIONAL	:	
ADVERTISING COMPANY,	:	
Defendants/Appellees.	:	

BRIEF OF APPELLEES

ON APPEAL FROM A JUDGMENT
OF THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
HONORABLE VERNICE TREASE

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Company

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STATEMENT OF JURISDICTION

This Court has jurisdiction under UCA § 78-2a-3(2)(j).

STATEMENT OF CASE

The sum and substance of this action is Appellants' (the "Crawfords") claim that National Advertising Company ("NAC," now CBS Outdoor, Inc.) breached the Lease by failing to remove its sign at the end of the Lease term. At the very latest, this would have been February 1, 2007. (¶13, R. 12) However, the Crawfords contend that the Lease was early terminated in accordance with ¶9. (¶9, R. 11) According to the Crawfords, this was in accordance with three "Notices" dated April 23, June 10 and August 7, 1996, respectively. (¶¶10-12, R. 12) Therefore, according to the Crawfords, NAC should have removed its sign "by no later than October 23, 1996." (¶2, R. 74) (emphasis added)

This last does not appear in either iteration of the Crawfords' Complaint (RR. 1-7, 10-16). Obviously anticipating objection on the basis of the statute of limitations, the Crawfords did their utmost not to state when was the Lease termination. For this, the Court has to look at the record of the prior case between these parties (No. 960906952), part of which is attached to the record of this case.¹

¹ It is worth noting that the previous action generated four (4) appeals to this Court: Nos. 20050110, 20020717, 20000850 and 980238.

Attached as Exhibit J to the Crawfords' Memorandum Opposing Motion to Dismiss (R. 71), are the Findings of Fact and Conclusions of Law from the prior case. The Court can see that the district court held a trial on the very claims that the Crawfords are making in this case. The net result was a judgment against NAC in the amount of \$109,632.91 (R. 75).²

What is important for this case is the basis for the judgment:

7. Pursuant to paragraph 9, on April 23, 1996, the Crawfords notified [NAC] that its sign must be removed from the Property (the "April 23 Notice").

8. On June 10, 1996, the Crawfords notified [NAC] a second time that its sign must be removed from the Property (the "June 10 Notice").

9. On July 25, 1996, the Crawfords delivered to [NAC] a copy of the building permit for the construction referenced in the April 23 Notice and the June 10 Notice (the "Building Permit").

10. On August 7, 1996, the Crawfords notified [NAC] a third time that its sign must be removed from the Property (the "August 7 Notice"). The April 23 Notice, the June 10 Notice and the August 7 Notice are referred to collectively as the "Notices."

....

16. Despite receiving the Notices, [NAC] did not remove its sign from the Property. Instead, [NAC] obtained a competing permit (which has been ruled to be "null and void") and erected the Sign. By doing so, [NAC] precluded the Crawfords from: (a) allowing another

² The judgment was reversed by this Court in Case No. 20050110 (R. 77).

entity to erect an outdoor advertising sign on the Property; and (b) collecting a monthly rental fee from that entity. The Crawfords were precluded from doing so until May of 2003.

....

18. The Crawfords were ready, willing and able to enter into the Second Lease as of November of 1996, but were precluded from doing so by [NAC's] failure to remove its sign from the Property in accordance with the Notices and paragraph 9 of the Lease.

(RR. 73-74)

The net result of these Findings were the Conclusions in ¶¶2-3:

2. Pursuant to paragraph 9, [NAC] was required to remove its sign from the Property within 90 days of receiving written notice of termination and a copy of the building permit. Thus, [NAC] was required to remove its sign from the Property by no later than October 23, 1996.

3. [NAC] breached the Lease, and the implied covenant of good faith and fair dealing, by not removing its sign from the Property by October 23, 1996.

(R. 74) (emphasis added)

On the basis of these Findings and Conclusions, the Crawfords were awarded damages “from November of 1996 to May of 2003.” (R. 75, ¶4)

Thus, according to the Crawfords, NAC breached the Lease on October 23, 1996 when it failed to remove its sign in response to the Notices. The statute of

limitations started to run from there. Therefore, the claims stated in this case were time-barred by October 24, 2003 (at the very latest).³

Despite the fact that the Crawfords claim damages from November 1, 1996, they claim that the statute of limitations did not start to run until “August 2, 2002, at the earliest (when the trial court first found the Crawford’s [sic] Permit valid)....” (Brief of Appellants Gene and Sherry Crawford, pg. 14) The Crawfords’ argument on this score is summed up on pg. 13:

However, the Crawfords could not bring their claims until they could first prove they were legally entitled to collect rent. They could not collect rent until they first erected a sign, which required a valid permit. Thus, until their permit was validated, the Crawfords were [not]⁴ legally entitled to damages from [NAC] for the lost rent.

Never mind the legal fallacies of this argument.⁵ It is obvious that the Crawfords claimed they had a valid sign permit back in 1996:

[NAC] applied for its permit on April 30, 1996. [R. 30] The Crawfords applied for their permit on March 5, 1996, and the Crawfords’ Permit was issued on March 29, 1996. *Id.* Thus, at the time Murray City issued [NAC’s] Permit, the Crawfords held a valid permit that precluded the issuance of [NAC’s] Permit. *Id.*

Brief of Appellants Gene and Sherry Crawford, pg. 8

³ The Crawfords have acknowledged that some of their claims have shorter limitation periods (four (4) and three (3) years, respectively). Brief of Appellants Gene and Sherry Crawford, n.1, pp. 14-15.

⁴ Actually, we are guessing at this addition. However, the Crawfords’ argument makes no sense without it.

⁵ They are addressed in Argument (below).

This boils the Crawfords' argument down to its essence: Despite the existence of all the elements of their claims, back in 1996, the claims had not accrued and were not remediable until the district court made a threshold determination that the Crawfords' permit was valid and that determination was upheld on appeal by this Court. (Brief of Appellants Gene and Sherry Crawford, pp. 11-12) The Court will see that there is absolutely no authority for this startling and ridiculous proposition.

SUMMARY OF ARGUMENT

All the elements of the Crawfords' claims were in existence, and remediable, from and after October 23, 1996, which is when the statute of limitations started to run. This is conclusively demonstrated by the fact that the Crawfords were awarded damages on this very claim from and after November 1, 1996. This action was not filed until ten (10) years later, and the longest limitation period applicable to the Crawfords' claims is six (6) years. There is absolutely no authority for the proposition that the accrual of the statute of limitations was delayed until the district court made some kind of threshold determination on the claims. Therefore, all of the Crawfords' claims are time-barred.

ARGUMENT

I. ALL THE ELEMENTS OF THE CRAWFORDS' CLAIMS WERE IN EXISTENCE, AND REMEDIABLE, FROM AND AFTER OCTOBER 23, 1996, WHICH IS WHEN THE STATUTE OF LIMITATIONS BEGAN TO RUN.

There is nothing wrong with the Crawfords' citation of applicable authority. (Brief of Appellants Gene and Sherry Crawford, pp. 12-13) The problem is with its application to the facts of this case: "[T]he Crawfords could not bring their claims until they could first prove they were legally entitled to collect rent. They could not collect rent until they first erected a sign, which required a valid permit. Thus, until their permit was validated, the Crawfords were [not] legally entitled to damages from [NAC] for lost rent." (*Id.* at pg. 13)

It is this last that creates the problem in this case. It is certain that the Crawfords' sign permit needed to be validated as a precondition to an award of damages, but there is no explanation why this could not have been done with the filing of an action back in 1996. It is certain that the Crawfords claimed a valid sign permit back on March 29, 1996. (Brief of Appellants Gene and Sherry Crawford, pg. 8) In fact, they went so far as to state: "Thus, at the time Murray City issued [NAC's] Permit, the Crawfords held a valid permit that precluded the issuance of [NAC's] Permit." (*Id.*)

This could have been determined back in 1996. In fact, it was determined back in 1996 with the filing of NAC's action (Case No. 960906952):

In October of 1996, [NAC] sued for a declaratory judgment that its permit was valid. On December 6, 1996, before the Crawfords had been made parties to the lawsuit, the trial court granted summary judgment for [NAC] and ruled that the Crawfords' Permit was invalid....

(Brief of Appellants Gene and Sherry Crawford, pg. 8) (citations omitted)

The Crawfords moved for reconsideration of this determination, but their motion was denied. (Brief of Appellants Gene and Sherry Crawford, pg. 8) At this point they joined the action and moved for summary judgment, but their motion was denied. (*Id.*) The district court entered final judgment in NAC's favor, but the judgment was reversed on appeal (Case No. 980238-CA) and the case remanded to the district court. (*Id.*)

"After remand, the Crawfords filed a second motion for summary judgment to validate their permit. [NAC] cross-moved for summary judgment. In a minute entry dated January 13, 2000, the trial court granted the Crawfords' motion and denied [NAC's] motion." (Brief of Appellants Gene and Sherry Crawford, pg. 9) (citations omitted)

This determination was not made final and appealable (Case No. 20000850-CA) until August 28, 2000. (Brief of Appellants Gene and Sherry Crawford, pg. 9) (citations omitted) According to the Crawfords: “This was the first time the court ruled that the Crawfords’ Permit was valid.” (*Id.*)

The net effect was this Court’s determination (Case No. 20020717-CA) that the trial court decision was correct. The Court’s Memorandum Decision was filed October 9, 2003. (RR. 64-65)

As this Court knows (Case No. 20050110-CA), the Crawfords waited until remand before taking action to assert a claim against NAC for breach of the Lease. (Brief of Appellants Gene and Sherry Crawford, pg. 10) In making its published decision on appeal (RR. 77-87), this Court made the following statement of particular relevance to this case:

We note that the Crawfords’ contention that they could not file their claim for breach of contract and damages until the court found their permit to be valid makes little sense. The Crawfords could have filed their claim as part of their original complaint and simply requested that the trial court bifurcate the proceedings. Such action would have eliminated the present procedural morass.

2006 UT App 75, ¶26 n.18

This is the simplest answer to the Crawfords’ contention: It has already been decided on appeal. The Crawfords had no answer for the question in the

previous appeal (Case No. 20050110-CA), and they have no answer now. They could have filed their claim for damages, in the previous action, at any time before entry of final judgment. (Even later, under URCP 59 & 60.) It is too late to do so, by separate action, now.

There can be no question that: “Generally, a cause of action accrues when ‘it becomes remediable in the courts, that is when the claim is in such condition that the courts can proceed and give judgment if the claim is established.’” *State v. Huntington-Cleveland Irrigation Co.*, 2002 UT 40, ¶23, 52 P.3d 1257 (*quoting State Tax Comm’n v. Spanish Fork*, 100 P.2d 575, 577 (Utah 1940)) There is recognition that claims need to be established, but that follows, does not precede, the accrual of the cause of action for statute of limitations purposes.

The Crawfords’ argument becomes quite circular, and even more ridiculous: A cause of action accrues when it becomes remediable, but it is not remediable until it has been remedied.

It is easy to see the kind of mischief that would be caused by establishment of such a ridiculous principle. Claims would never become stale so long as there was one element left to be litigated. Theoretically, a defendant could force the litigation of all elements, at the same time, but that would turn the normal order of

things on its head. Plaintiffs are responsible for prosecuting their claims, not defendants.

All this leaves is the accrual of the Crawfords' claim for damages because it is certain that "[a] breach of contract claim requires four essential elements of proof, one of which is damages." *Eleopulos v. McFarland & Hullinger, L.L.C.*, 2006 UT App 352, ¶10, 145 P.3d 1157 (citing *Bair v. Axiom Design, L.L.C.*, 2001 UT 20, ¶14, 20 P.3d 388)

The Crawfords claimed to have terminated the Lease under ¶9. The date for termination was October 23, 1996. (¶¶2-3, R. 74) Therefore, from and after that date, the Crawfords claimed they were "damaged by NAC's breach of the Lease. Specifically, the Crawfords were precluded from erecting their own sign on the Property and, therefore, were precluded from collecting revenues from entities or individuals who would place advertisements for their businesses on the sign." (¶20, R. 13)

There is no denying that the Crawfords claim damages "from November of 1996 to May of 2003." (¶4, R. 75) They have made plain that they make the same damage claim in this case. (Brief of Appellants Gene and Sherry Crawford, pg. 12)

Therefore, under all the Crawfords' authorities, their claims "accrued" on October 23, 1996. The statute of limitations on the longest of those claims ran

back on October 23, 2003. The district court was correct in dismissing this action on the basis of the statute of limitations.

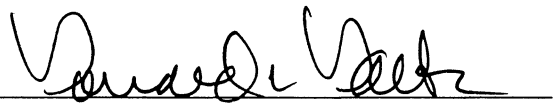
CONCLUSION

The Crawfords tried filing these time-barred claims in the prior case (Case No. 960906952). By that time (December 23, 2003), it was the only way to have them heard (under the “relation back” principle of URCP 15(c)). This was the subject of the last prior appeal (Case No. 20050110-CA), and the Crawfords’ efforts were rejected as untimely. Their effort is even more unavailing in this case. The statute of limitations, on the latest of the Crawfords’ claims, ran on October 23, 2003.

For the foregoing reasons, the judgment of the trial court (RR. 105-06) should be AFFIRMED.

DATED this 19th day of December, 2007.

DALTON & KELLEY, PLC

By 
Donald L. Dalton
Attorneys for Appellees

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that true and correct copies of the within and foregoing "Brief of Appellees" were mailed, First Class, postage prepaid, this 24th day of December, 2007, to:

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