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# Gene V. Crawford and Sherry T. Crawford, VAL-DEV, L.L.C. v. CBS Outdoor, Inc. and National Advertising Company : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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<p>GENE V. CRAWFORD AND SHERRY T. CRAWFORD, dba VAL-DEV, L.L.C.,</p>	<p>Case No. 20070380-CA</p>
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Appellants,

vs.

CBS OUTDOOR, INC. AND NATIONAL  
ADVERTISING COMPANY,

Appellees.

---

REPLY BRIEF OF APPELLANTS  
GENE AND SHERRY CRAWFORD

---

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

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I. ARGUMENT

CBS and National do not dispute the authority cited by the Crawfords. In fact, they acknowledge that it is accurately summarized and applicable to this case. See Brief of Appellees at 6. Thus, the parties agree that: (1) the statute of limitations on a claim does not begin to run until that claim has accrued; (2) a claim accrues when the courts can proceed and give judgment if the claim is established; (3) therefore, a claim accrues upon the happening of the last event necessary to complete the cause of action; (4) thus, a statute of limitations does not begin to run until all the elements that must be proven by the plaintiff at trial are existing and may be established; (5) the four essential elements of a breach of contract claim include entitlement to damages; and (6) consequently, a plaintiff cannot sustain a breach of contract claim if it cannot prove entitlement to damages. See State v. Huntington-Cleveland Irrigation Co., 2002 UT 75, ¶¶ 17 & 24, 52 P.3d 1277; Hill v. Allred, 2001 UT 16, ¶ 15, 28 P.3d 1271; Eleopulos v. McFarland & Hullinger, L.L.C., 2006 UT App 352, ¶¶ 10, & 18, 145 P.3d 1157; Bair v. Axiom Design, L.L.C., 2001 UT 20, ¶ 14, 20 P.3d 388. The parties also agree that the statute of limitations on the Crawfords' claims did not begin to run until their permit was validated. See Brief of Appellees at 6 ("It is certain that the Crawfords' sign permit needed to be validated as a precondition to an award of damages . . . ."). However, they disagree on the on the date this occurred.

CBS and National argue it occurred on March 29, 1996. In support of this argument, CBS and National state that the Crawfords "claimed" a valid sign permit on

March 29, 1996. See id. However, a mere assertion by the Crawfords is insufficient. This is particularly true because the trial court ruled that the Crawfords' Permit was invalid, denied the Crawfords' motion for reconsideration, and denied the Crawfords' subsequent motion for summary judgment on this issue. See id. at 6-7.

In sum, the Crawfords' assertion that they held a valid permit was rejected by the trial court in 1996. Thus, at that time, the Crawfords could not establish one of the essential elements of the claims; their entitlement to damages. Thus, the statute of limitations on the Crawfords' claims did not begin to run as a result of their judicially-rejected assertion regarding the validity of their permit, as argued by CBS and National.

Instead, because the trial court ruled that National, not the Crawfords, held a valid permit, this ruling had to be reversed and the Crawfords' Permit had to be judicially validated before the Crawfords were legally entitled to recover damages. CBS and National agree. See Brief of Appellees at 6 ("It is certain that the Crawfords' sign permit needed to be validated as a precondition to an award of damages . . . ."). Although the trial court stated it would do so in a minute entry dated January 13, 2000, it vacated this minute entry. R. 45, 48. And although the trial court entered an order indicating that the Crawfords' Permit was valid on August 28, 2000, that order was reversed. R. 51-52, 55-57.

It was not until August 2, 2002, that the trial court entered an order validating the Crawfords' Permit that was not reversed. R. 59-62. Thus, this was the first time

Crawfords could establish all of the elements of their claims, including their entitlement to damages. Consequently, this was the date on which the statute of limitations applicable to the Crawfords' claims began to run.

CBS and National argue that a passage from this Court's prior decision supports their position. See Brief of Appellees at 8. In that passage, this Court indicates that the Crawfords could have filed their claims and then requested that the trial court bifurcate proceedings. See National Advertising Co. v. Murray City Corp., 2006 UT App 75, ¶ 26 n.18 (R. 86-87). However, bifurcation would not have been necessary if the Crawfords' Permit had been validated and, therefore, their entitlement to damages had been established. Thus, the passage relied upon by CBS and National appears to acknowledge that an essential element of the Crawfords' claim was not in existence at that time. As noted above, this element was not established until August 2, 2002.

## II. CONCLUSION

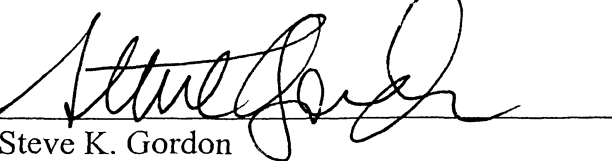
If the Crawfords had filed their claims at any time prior to August 2, 2002, any proceedings on those claims would have been stayed pending the outcome of the permit issue. Appellees have acknowledged that "[t]his is no doubt true." See Appellant's Brief (Case No. 200501110) at 10. By doing so, Appellees have acknowledged that all of the elements the Crawfords had to prove – including entitlement to damages – were not existing and could not be established until August 2, 2002. Prior to that time, Crawfords' claims were not remediable. Thus, as a matter of law, the statutes of limitation on the Crawfords' claims began to run on that date, at the earliest. See Huntington, 2002 UT 75,



¶¶ 17 & 24; Hill, 2001 UT 16, ¶ 15; Eleopulos, 2006 UT App 352, ¶¶ 10, 18; Bair, 2001 UT 20, ¶ 14. Accordingly, the longest applicable statute of limitations ran on August 1, 2008. See Utah Code Ann. § 78-12-23 (2) (establishing a six-year limitation period on claims for breach of a written contract); CIG Exploration, Inc. v. State, 2001 UT 37, ¶ 20, 24 P.3d 966 (holding that the six year statute of limitations in Utah Code Ann. § 78-12-23 (2) applies to claims for breach of the implied covenant of good faith and fair dealing when the implied covenant is founded on a written contract). Consequently, the Crawfords respectfully request that this Court reverse the trial court's Order Granting Motion to Dismiss.

Dated January 28, 2008.

DURHAM JONES & PINEGAR, P.C.

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2008, I caused two copies of the foregoing  
BRIEF OF APPELLANTS to be mailed, postage prepaid, to:

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A handwritten signature in black ink, appearing to read "Donald L. Dalton", is written over a horizontal line.