

2006

John K. Crowley v. Chris Black : Reply Brief of Appellant

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Crowley v. Black*, No. 20060712 (Utah Court of Appeals, 2006).

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IN THE UTAH COURT OF APPEALS

JOHN K. CROWLEY,

Plaintiff/Appellant,

vs.

CHRIS BLACK,

Defendant/Appellee.

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REPLY BRIEF
OF APPELLANT

: Case No. 2006-0712 CA

AN APPEAL FROM A FINAL JUDGMENT AND ORDER OF THE THIRD
JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, SALT
LAKE DEPARTMENT, The Hon. Glenn K. Iwasaki, Judge Presiding.
(Trial Court Case No. 02-090-4266 CV)

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FILED
UTAH APPELLATE COURTS
MAR 14 2007

ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

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JOHN K. CROWLEY,

Plaintiff/Appellant,

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	:	
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Plaintiff/Appellant John Crowley, by and through counsel, Brian M. Barnard, submits the following **REPLY BRIEF OF APPELLANT**:

ISSUES PRESENTED & PRESERVED

Appellee Black's claim that attorney fees and pre-judgment interest were not prayed for or presented below is not accurate.¹ The trial court heard plaintiff's request for attorney fees at the close of trial. Transcript, 106:19-23. The trial court heard and considered plaintiff's motion for new trial which included plaintiffs' request for attorney fees. Record 90-91. The trial court heard and considered plaintiff's request for pre-judgment interest in reviewing the proposed Findings of Fact, Conclusions of Law

¹ The Complaint recites parties' written lease and a provision regarding attorney fees. Record 1-5, Complaint, ¶¶ 4-6. The complaint recites that plaintiff has incurred attorney fees. Record 1-5, Complaint ¶ 14. Finally, the amount prayed for includes an estimated amount for attorney fees. Record 1-5, Complaint, Prayer, p. 3.

and defendant's objection thereto. Record 110-111; 116; 128-129.

The trial court did not deny plaintiff's request for attorney fees because they were not prayed for in the Complaint. *See* Record 90-92; 128-129. Similarly, the trial court did not deny plaintiff's request for pre-judgment interest because it was not prayed for in the Complaint. *See* Record 110-111; 128-129.

The issues on appeal were presented to and considered by the trial court and properly preserved for this appeal.

SUMMARY OF REPLY ARGUMENT

John Crowley sued Chris Black seeking damages for breach of a written rental agreement. Crowley sought \$5,538.00 in the Complaint. After a bench trial, the Hon. Glenn Iwasaki, judge awarded Crowley \$4,679.26 in damages.

The written rental agreement provided that Crowley as the prevailing party in a lawsuit against his former tenant Black would be awarded attorney fees. The trial court orally ruled there was no prevailing party. The trial court refused to award attorney fees to Crowley. The trial court made insufficient findings to justify the denial of an award of attorney fees.

Crowley was the successful party to the litigation; he was awarded the bulk of damages sought in his complaint. Crowley was the prevailing party and the trial court erred in not awarding attorney fees to Crowley.

The damages suffered by Crowley as a result of Black's misconduct were specific

and easily calculated with certainty as to when they were incurred. Crowley sought and was entitled to prejudgment interest. The trial court refused to award prejudgment interest to Crowley. The trial court made insufficient findings to justify the denial of prejudgment interest.

Because damages were incurred in a certain amount and on certain dates, plaintiff was entitled to and should have been awarded prejudgment interest. The trial court erred in not awarding prejudgment interest.

REPLY ARGUMENT

I. THE TRIAL COURT'S DENIAL OF PREJUDGMENT INTEREST IS LEGAL ERROR BECAUSE LOSSES INCURRED ARE PRECISE SUMS FIXED AT A DEFINITE TIME.

The law in Utah on this issue is clear:

Where the damage is complete and the amount of the loss is fixed as of a particular time, and that loss can be measured by facts and figures, interest should be allowed from that time . . . and not from the date of judgment. On the other hand, where damages are incomplete or cannot be calculated with mathematical accuracy, such as in the case of personal injury, wrongful death, defamation of character, false imprisonment, etc., the amount of the damages must be ascertained and assessed by the trier of the fact at the trial, and in such cases prejudgment interest is not allowed.

Canyon Country Store v. Bracey, 781 P.2d 414, 422 (Utah 1989) (*quoting* First Sec. Bank of Utah v. J.B.J. Feedyards, Inc., 653 P.2d 591, 600 (Utah 1982)); *see also* Bellon v. Malnar, 808 P.2d 1089, 1097 (Utah 1991). The foregoing was recently confirmed by this

Court in Bennett v. Huish, __ P.3d __, 2007 UT App. 19, ¶¶ 42 et seq. (Ut. Ct. App. 2007).

The amount of damages incurred by Crowley are in sums certain and because they originated at a definite time, interest “can be calculated with mathematical accuracy.” Coalville City v. Lundgren, 930 P.2d 1206, 1212 (Utah Ct. App. 1997). The trial court determined that upon moving out in November 2001, Black had caused damage, beyond normal wear and tear, in the amount of \$ 4,679.26. The court determined this amount after trial where plaintiff Crowley presented the court with receipts, invoices and testimony indicating that plaintiff had expended money repairing the residence damaged by Black. Exhibits “P-4” - “P-8.”

In Bennett v. Huish, __ P.3d __, 2007 UT App. 19 (Ut. Ct. App. 2007), plaintiff sought \$27,955.98 in his complaint but was awarded only \$18,643.98 after trial. Id., ¶ 42. That disparity did not result in plaintiff being denied pre-judgment interest. Id., ¶ 45.

Crowley’s loss is definite and fixed as to both amount (\$4,679.26) and time (November 2001). These two facts allow for the calculation of prejudgment interest “with mathematical accuracy.” *See City of Coalville, supra*. As such, the court below committed legal error in denying plaintiff’s request for prejudgment interest.

The trial court’s denial of prejudgment interest is accorded no deference and will be reviewed for correctness. Lefavi v. Bertoch, 2000 UT App. 5, ¶ 23, 994 P.2d 817. On appeal a denial of prejudgment interest is reviewed for correctness as a question of law. Bennett v. Huish, __ P.3d __, 2007 UT App. 19, ¶¶ 42 et seq. (Ut. Ct. App. 2007)(“A trial

court's decision to grant or deny prejudgment interest presents a question of law which we review for correctness." *quoting Smith v. Fairfax Realty, Inc.*, 2003 UT 41, ¶ 16, 82 P.3d 1064 (quotations and citation omitted)).

Here, the trial court heard and considered plaintiff's request for prejudgment interest in reviewing the proposed Findings of Fact, Conclusions of Law and defendant's objections thereto. Record at 116. A claim for prejudgment interest is a statutory claim. Utah Code Ann. § 15-1-1 (1953 as amended). In appropriate cases, such interest is awarded as a matter of law. *Id.*

Plaintiff Crowley produced evidence and exhibits² at trial which proved: (1) the existence of damages in certain dollar amounts which were attributed to defendant's breach of the lease agreements³; and (2) the breaches of the lease agreements occurred on a fixed date.⁴ The trial resulted in damages fixed at an amount certain (\$4,679.26) and a fixed date (December 2001) of plaintiff's losses. Thus, the criteria for an award of

² The Exhibits introduced at trial included receipts for work performed to repair the damages caused by defendant. Exhibits "P-4" - "P-8." Those Exhibits provide the exact date and the exact amount of money paid for each repair. *Id.*

³ See Conclusions of Law ¶ 3 ("**Defendant breached the lease agreement ...**"); See also Conclusions of Law ¶ 10 ("**Plaintiff should be awarded . . . total money damages of \$4,679.26**) (*emphasis added*).

⁴ See Findings of Fact ¶¶ 7-12 ("Defendant terminated the lease and vacated the premises **in December 2001.** * * * During the term of the lease, extensive damage occurred to the home and premises, beyond normal wear and tear. That was a breach of the lease.")(*emphasis added*).

prejudgment interest were met and plaintiff was entitled to such interest award *as a matter of law*. See Coalville, *supra* at 1212.

A legal claim for prejudgment interest need not be specifically plead and proved at trial by a plaintiff.⁵ Black cites no authority to support such a claim.

The trial court erred in denial of plaintiff's prejudgment interest claim.

II. THE TRIAL COURT ERRONEOUSLY DENIED ATTORNEY FEES TO PLAINTIFF DESPITE DEFENDANT'S CONTRACTUAL BREACH.

Whether a party is the prevailing party is a question for the trial court, and depends in large measure on the context of each case. See R.T. Nielson Co. v. Cook, 40 P.3d 1119, 1126-27 (Utah 2002). Therefore, "it is appropriate to leave this determination to the sound discretion of the trial court." Id. Considerations for the trial court include, but are not limited to,

(1) contractual language, (2) the number of claims, counterclaims, cross-claims, etc., brought by the parties, (3) the importance of the claims relative to each other and their significance in the context of the lawsuit as a whole, and (4) the dollar amounts attached to and awarded in connection with the various claims.

Id. In the case at bar, the trial court's analysis failed to adequately address the R.T. Nielson Co. factors and failed to make the necessary findings; its determination that neither party prevailed falls outside the controlling law.

⁵ In similar fashion, Utah Rule of Civil Procedure 54 (d) and (e) provide for award of court costs and *post*-judgment interest and recite no condition that a complaint specifically plead for such relief.

The court below summarily denied plaintiff Crowley's request for attorney's fees based solely on its determination that the damages actually awarded to plaintiff (\$4,679.26) fell short of the damages requested (\$5,538.00), there was no prevailing party. This oral observation by the trial court comprises the entirety of its prevailing party analysis. The failure of the trial court to make any findings make appellate review difficult, if not impossible. *See Cabrera v. Cottrell*, 694 P.2d 622, 624 (Utah 1985)(*stating* "an award [or denial] of attorneys fees must generally be made on the basis of findings of fact supported by evidence and appropriate conclusions of law.").

The award of attorney fees and the determination of which litigant is the prevailing party for purposes of awarding such fees are decisions left to the discretion of the trial court. *See R.T. Nielson Co. v. Cook*, 40 P.3d 1119, 1126-27 (Utah 2002). However, in exercising the discretionary authority to award or deny attorney fees, the court's decision must be supported by adequate findings of fact and appropriate conclusions of law. *See Utahns for Better Dental Health-Davis Inc. v. Davis County Comm'n*, 121 P.3d 39, 41 (Utah Ct. App. 2005). In denying plaintiff's request for attorney fees, the Court below failed to support its decision with the requisite findings and failed to adhere to the analytical frameworks approved by the appellate courts for determining which party prevailed.

The mere fact that plaintiff was not awarded every dollar prayed for is not sufficient for the trial court to determine that plaintiff was not the prevailing party.

Utahns for Better Dental, *supra*. The trial court's oral discussion is devoid of any legal authority for the proposition that attorney fees must be denied when a litigant's recovery is less than originally prayed for. *See* Tr. Transcr. 106: 1-25. The controlling authority requires more analysis in a prevailing party determination. *See, e.g., R.T. Nielson Co. v. Cook*, 40 P.3d 1119, 1126-27 (Utah 2002); *see also Mountain States Broadcasting Co. v. Neale*, 783 P.2d 551, 555 (Utah Ct. App. 1989).

The trial court's sparse analysis orally expressed at close of trial is inadequate under either R.T. Nielson or Mountain States Broadcasting.⁶ Appellee fails to cite legal authority to show that the trial court had any basis for or properly supported its exercise of discretion.⁷

⁶ The Court's prevailing party/attorney fees analysis is limited to:

Based upon this analysis, the Court finds that while you may have prevailed on certain aspects of it, you certainly did not prevail to the total amount that you're asking for. The court finds that under these particular circumstances, there is no prevailing party. As such, no attorney's fees will be granted.

Tr. Transcr. 106: 19-23.

⁷ The few cases cited by defendant/appellee deal *not* with the sufficiency of a court's prevailing party/ attorney fees analysis but, rather, with the calculation of *an amount* for attorney fees. Appellee's Brief at 10. These cases are not helpful nor pertinent to the case at bar in which there was no *calculation* as to an amount of attorney's fees. The trial court never progressed to a point where fee amounts were considered. There was a total denial of attorney fees with little or no explanation from the court as to which facts or law supported such a conclusion. This lack of articulated, reasoned analysis runs afoul of principles announced in Utahns for Better Dental, R.T. Nielson, and Mountain States, *supra*. Defendant/appellee's cited cases do not vitiate this abuse of discretion.

CONCLUSION AND RELIEF

ATTORNEY FEES

The trial court provided little explanation in its oral ruling as to the factual or legal reason for the denial of an award of attorney fees. The trial court entered inadequate findings of fact and conclusions of law regarding attorney fees.

Plaintiff was the prevailing party because a judgment for past due rent, lost rent and for damages to the rental property was awarded to plaintiff at trial.

Based upon the written lease, as the prevailing party, plaintiff is entitled to and should have been awarded attorney fees and out of pocket expenses incurred in the successful pursuit of this action.

PREJUDGMENT INTEREST

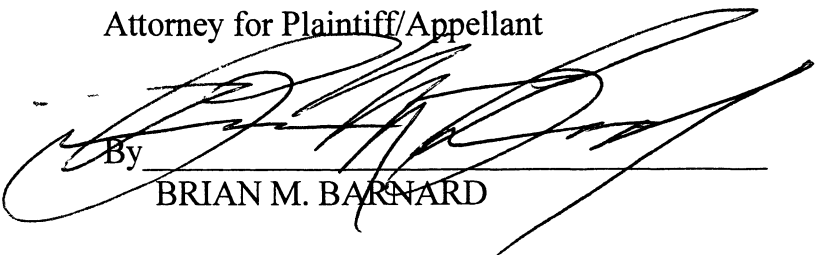
In this landlord and tenant dispute, Plaintiff was awarded special damages for unpaid rent, for lost rent, and for damage caused to plaintiff's rental property during defendant's occupancy. All those damages are in amounts certain established by evidence or receipts showing payment made by plaintiff in 2001 and early 2002.

With clear and specific factual information, plaintiff's special damages as set by the Court below were measured by "facts and figures" or "calculated with mathematical accuracy." Under these circumstances, the plaintiff is entitled, as a matter of law, to prejudgment interest.

This Court should rule that plaintiff is entitled to attorney fees and prejudgment interest. This matter should be remanded to the trial Court with a determination that plaintiff Crowley is the prevailing party and is entitled to an award of attorney fees and is entitled to an award of pre-judgment interest. Plaintiff should be granted his costs and attorney fees incurred on appeal.

DATED this 15th day of MARCH 2007.

UTAH LEGAL CLINIC
Attorney for Plaintiff/Appellant

By 
BRIAN M. BARNARD

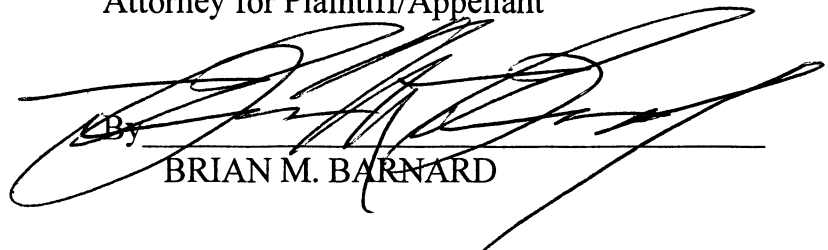
CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed two (2) true and correct copies of the foregoing REPLY BRIEF OF APPELLANT to:

RANDALL T. GAITHER
Attorney for Defendant/Appellee
159 West 300 South Street, Ste. 105
Salt Lake City, Utah 84111

on the 15th day of MARCH 2007, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC
Attorney for Plaintiff/Appellant

By 
BRIAN M. BARNARD