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Buckskin Properties, Inc. v. Valley County
Appellant's Cross Respondent's Reply Brief Dckt.
38830

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IN THE SUPREME COURT OF THE STATE OF IDAHO

BUCKSKIN PROPERTIES, INC. an Idaho Corporation, and TIMBERLINE DEVELOPMENT, LLC, an Idaho Limited Liability Company,

Plaintiffs/Appellants/Cross-Respondents,

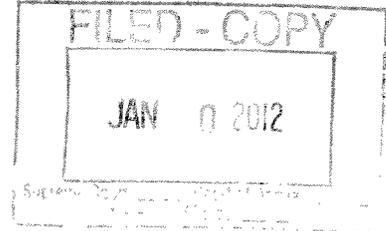
vs.

VALLEY COUNTY, a political subdivision of the State of Idaho.

Defendant/Respondent/Cross-Appellant..

Supreme Court No. 38830-2011

Case No. CV-2009-554-C



Reply

APPELLANTS'/CROSS-REONDENTS' BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT AND FOR THE COUNTY OF VALLEY

HONORABLE MICHAEL R. MCLAUGHLIN, DISTRICT JUDGE, PRESIDING

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I. STATEMENT OF THE CASE

For the sake of brevity, Cross-Respondents Buckskin Properties, Inc. and Timberline Development, LLC (collectively “Buckskin”) adopt and incorporate here the Statement of the Case set forth in its Appellant’s Brief, filed with the Court on November 21, 2011. Valley County filed a Notice of Cross Appeal indicating that it intended to cross-appeal the district court’s denial of its petition for costs and attorney fees below. R. Vol. III, p. 605. As set forth here, Valley County was not entitled to an award of attorney fees below and the district court correctly denied its petition.

II. ISSUES PRESENTED ON CROSS-APPEAL

Pursuant to Idaho Appellate Rule 35, Cross-Respondent Buckskin asserts as an additional issue on cross-appeal:

- i. Cross-Respondent is Entitled to an Award of Attorney Fees on Cross-Appeal.

III. ARGUMENT

A. Valley County has not sufficiently supported its cross-appeal for the district court’s denial of its petition for attorney fees below.

Valley County’s has not supported its cross-appeal for a reversal of the district court’s determination on attorney fees below. An argument on appeal for an award of attorney fees that is not sufficiently supported by facts or legal argument is subject to denial. *Cowles Pub. Co. v. Kootenai County Bd. of County Com’rs*, 144 Idaho 259, 266, 159 P.3d 896, 903 (2007).

In its *Respondent’s Brief/Cross-Appellant’s Brief*, pp. 46-49, Valley County makes absolutely no effort to distinguish between its claim for attorney fees on appeal and its cross-appeal seeking a reversal of the district court’s decision to deny its request for attorney fees below. As a result, it is impossible to know whether Valley County’s arguments on appeal are directed at attorney fees on appeal or its cross-appeal.¹ Additionally, nowhere in its arguments in support of attorney fees does Valley County mention the district court’s decision below, or discuss the basis for

the district court's denial or why the denial was in error. Having failed to provide sufficient factual or legal support for its cross-appeal, Valley County's cross-appeal challenging the district court's decision to deny its petition for attorney fees below should be denied. *See Cowles Pub. Co. v. Kootenai County Bd. of County Com'rs*, 144 Idaho at 266, 159 P.3d at 903 (this Court denied request for attorney fees because requesting party failed to provide argument or authority to support its request).

B. The district court correctly denied Valley County's petition for an award of attorney fees in the proceedings below.

Assuming this Court believes that Valley County has provided sufficient argument and authority to support the issue it raises on cross-appeal, Buckskin asserts that Valley County's cross-appeal should not be granted for the reasons set forth below. Valley County claims an entitlement to attorney fees on appeal and below under Idaho Code section 12-117, and perhaps Idaho Code section 12-121. Valley County is not entitled to an award of attorney fees on appeal under either statutory attorney fees provision.

1. **Valley County is not Entitled to an Award of Attorney Fees Under Idaho Code Section 12-117.**
 - a. **Buckskin's pursuit of its claims below was made in good faith and was not without a reasonable basis in fact or law.**

Idaho Code section 12-117 provides that in a judicial proceeding involving a governmental entity, the prevailing party is entitled to an award of reasonable attorney fees if the court finds that the other party acted without a reasonable basis in fact or law. The purpose of this statute is: (1) to deter arbitrary or groundless action by the government agency; and (2) to provide a remedy for financial burdens attempting to correct mistakes made by the governmental agency. *Reardon v. Magic Valley Sand and Gravel, Inc.*, 140 Idaho 115, 118, 90 P.3d 340, 343 (2004). A party acts

¹ Buckskin addressed Valley County's request for attorney fees on appeal in its Reply Brief.

without a reasonable basis in fact or law only when the party's pursuit of its claims is frivolous, without foundation or unreasonable. *Karr v. Bermeosolo*, 142 Idaho 444, 449, 129 P.3d 88, 93 (2005).

The district court's decision to deny Valley County's petition for an award of attorney fees below establish that Buckskin did not pursue its claims frivolously. Specifically, the district court recognized that:

Both parties spent a significant amount of time briefing the statute of limitations issue and it was not clear from the outset of the litigation exactly when the statute of limitations began to run. Although the Court ultimately determined under the summary judgment standard that October 25, 2004 was the latest possible date when the statute of limitations could have started to run, there was a legitimate issue of law that was in dispute. Therefore, the Court finds that the Plaintiffs were acting with a reasonable basis in fact or law and deny the Defendant's request for attorney fees.

R. Vol. III, pp. 583-84. As set forth above, Valley County has provided no argument to dispute this determination by the district court. Valley County's own efforts to identify multiple dates that it believes may have triggered the statute of limitations for Buckskin's inverse condemnation claim exemplify the genuine dispute in this case regarding that matter. *See Respondent's Brief*, pp. 23-24.

The fact that the district court ultimately settled on an accrual date different than any of those proposed by Valley County further illustrates that Buckskin pursued its claims below in good faith. See R. Vol. III, p. 490. As established by existing Idaho law: "[t]he actual date of taking, *although not readily susceptible to exact determination*, is to be fixed at the point in time at which the impairment, of such a degree and kind as to constitute a substantial interference with plaintiff's property interest, *becomes apparent*." *Wadsworth v. Dept. of Transp.* 128 Idaho 439, 442, 915 P.2d 1, 4 (Idaho, 1996) (emphasis added). Valley County's arguments below that Buckskin's inverse condemnation claims were clearly outside of the statute of limitations is unpersuasive on the question of whether Buckskin acted without a reasonable basis in fact or law in pursuing its claims below.

In arguing for attorney fees in its appellate briefing, Valley County suggests that Buckskin proceeded with its claims below despite settled precedent on the question of accrual of the statute of limitations and suggests that Buckskin improperly failed to appeal a number of the defenses raised by Valley County below. Buckskin met each of Valley County's defenses head-on in the proceedings below. Even so, Buckskin had no obligation to appeal issues not decided by the district court below or favorable to Buckskin.² As the district court correctly determined, Valley County's defense for failure to exhaust administrative remedies did not apply to Buckskin's claims because Valley County acted illegally in implementing and collecting impact fees without an Idaho Developmental Fee Act ("IDIFA") ordinance. R. Vol. III, p. 491-92. Since the district court found against Valley County on its other defenses and because it limited its ultimate decision below to the statute of limitations, there was no reason for Buckskin to appeal any of the defenses raised by Valley County below.

b. Valley County is not entitled to an award of attorney fees under Idaho Code section 12-121.

Valley County is not entitled to an award of costs or fees under Idaho Code section 12-121 either. Under this section, only a prevailing party is entitled to an award of attorney fees. I.C. § 12-121. Rule 54 clarifies that attorney fees are awarded only when a claim is pursued or defended frivolously, unreasonably or without merit. I.R.C.P. 54(e)(1). Attorney's fees awards under section 12-121 are discretionary. *Chisholm v. Twin Falls County*, 139 Idaho 131, 136, 75 P.2d 185, 190 (2003). Given the parties involved in this case, Idaho Code section 12-117 should be the controlling attorney fees statute in this case. Nonetheless, Valley County's cross appeal on the district court's

² Again, these arguments alleging Buckskin's failure to appeal certain issues have nothing to do with whether the district court erred in denying Valley County's petition for attorney fees below. Valley County's arguments on this point are more relevant to its request for attorney fees on appeal.

denial of its attorney fees petition below is without merit under Idaho Code section 12-121 for the same reasons set forth above.

C. Buckskin is entitled to an award of attorney fees on cross-appeal.

Pursuant to Idaho Appellate Rule 35, Buckskin asserts as an additional issue on cross-appeal its entitlement to an award of attorney fees on cross-appeal. The same standards set forth above, including under Idaho Code section 12-117, apply to Buckskin's claim for attorney fees on cross-appeal. As Buckskin argues above, Valley County makes absolutely no effort to address the district court's decision below to deny its petition for attorney fees or to provide legal or factual support as to why that decision was in error. Rather, any arguments Valley County makes in its Respondents/Cross-Appellant's Brief appear to focus on the reasons it believes it is entitled to an award of attorney fees on appeal. *See Respondent's/Cross-Appellant's Brief*, pp. 46-49. As a result of its failure, Valley County's cross-appeal should be denied and Buckskin is entitled to an award of attorney fees on cross-appeal because Valley County's failure to support its cross-appeal with legal or factual argument renders its cross-appeal frivolous.

III. CONCLUSION

For all of the reasons set forth above, Valley County's cross-appeal should be denied.

DATED this 20th day of January, 2012.

EVANS KEANE LLP

By Victor Villegas
Victor Villegas, Of the Firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

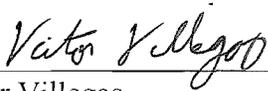
I HEREBY CERTIFY that on this 20th day of January, 2012, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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