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Gregory v. Stallings Respondent's Brief Dckt. 46818

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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

JON GREGORY,

Petitioner-Appellant,

v.

RICHARD STALLINGS, and EILEEN STALLINGS,

Respondents-Appellee.

Supreme Court Docket No. 46818
Bingham County Case No. CV-2017-1651

RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

Jared M. Harris
BAKER & HARRIS
266 W Bridge St
Blackfoot, ID 83221
efiling@bakerharrislaw.com

ATTORNEY FOR RESPONDENT-APPELLEE

David N. Parmenter
Nathan D. Rivera
PARMENTER RIVERA LLP
PO Box 700
Blackfoot, ID 83221
parlaw@gmail.com

ATTORNEYS FOR PETITIONER-APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF CASES AND AUTHORITIES 3

STATEMENT OF CASE 5

- I. Nature of Case. 5
- II. Factual and Procedural Background. 5

ISSUE PRESENTED ON APPEAL 6

ISSUE ASSERTED BY APPELLEES 6

STANDARD OF REVIEW 7

ARGUMENT 7

- I. Is There a Factual Issue as to When the Breach Occurred? 7
- II. Discovery Rule. 9
- III. Equitable Estoppel. 10

ATTORNEY'S FEES ON APPEAL 12

CONCLUSION 13

TABLE OF CASES AND AUTHORITIES

RULES

Idaho Appellate Rule 41(a) 12

Idaho Code § 5-217 9

Idaho Code § 5-218(4) 9

Idaho Code § 5-219(4) 9

Idaho Code § 12-120(3) 6, 12

AUTHORITIES

Browning v. Browning, 136 Idaho 691, 696 39 P.3d 631, 636 (2001) 12

Ferro v. Society of St. Pius X, 143 Idaho 538, 540-41, 544, 149 P.3d 813, 815, 819 (2006) 10, 11-12

Heileson v. Cook, 108 Idaho 236, 238, 697 P.2d 1250, 1252 (Ct. App. 1985) 9-10

J.R. Simplot Company v. Chemetics International, Inc. 126 Idaho 532, 887 P.2d 1039 (1994) 12

Knudson v. Agee, 128 Idaho 776, 918 P.2d 1221 (1996) 12

La Bella Vita, LLC v. Shuler, 158 Idaho 799, 80-85, 353 P.3d 420, 425-26 (2015) . 7

Maroun v Wyreless Systems, Inc., 141 Idaho 604, 114 P.3d 974 (2005) 11

Mason v. Tucker & Associates, 125 Idaho 429, 436, 871 P.2d 846, 853 (Ct. App. 1994) 7-8

McCormack v. Cadwell 152 Idaho 15, 20, 266 P.3d 490, 495 (2011) (Ct. App. rev. den) 9

Peterson v. Gentillon, 154 Idaho 184, 189, 296 P.3d 390, 395 (2013) 8

Singleton v. Pitchon, 102 Idaho 588, 590, 635 P.2d 254, 256 (1982) 8

Spence v. Howell, 126 Idaho 763, 890 P.2d 714 (1995) 9, 10

Swafford v. Huntsman Springs, Inc., 163 Idaho 209, 214, 409 P.3d 789, 794 (2017) 9, 12

Western Corp. v. Vanek 144 Idaho 150, 151, 158 P.3d 313, 314 (Ct. App. 2008) . . 8

STATEMENT OF CASE

I. Nature of the Case.

This appeal arises from a dispute over an alleged contract between Plaintiff/Appellant, Jon Gregory (hereinafter "Gregory") and Defendants/Appellees, Richard Stallings and Eileen Stallings (hereinafter "Stallings"). Gregory asserts that Stallings owe him for Gregory's portion of the proceeds from a sale of some real property. This brief assumes, for argument purposes, that Stallings and Gregory reached an agreement for the development of some real property.

II. Factual and Procedural Background.

1. On or about the September 27, 2007, Stallings purchased a piece of property of approximately 2 acres located in Madison County Idaho. (R p. 57).
2. The property was contiguous to property owned by Jon Gregory. (R p. 57).
3. Gregory asserts that the parties were to develop the properties and equally divide the profits. (R p. 127).
4. Gregory transferred his property to Pioneer Point, LLC on or about February 11, 2009. (R p. 58).
5. On or about May 2, 2012 Pioneer Point, LLC transferred Gregory's property to Stallings.(R p. 58).
6. That on or about December 21, 2012 the Stallings sold his property and the property that he had received from Pioneer Point, LLC. (R p. 58).

7. On or about August 27, 2013 Stallings sent an email indicating that Stallings was not going to pay any monies to Gregory. This email was forwarded to Gregory's attorney and was received by Gregory on September 9, 2013. (R p. 85, 99).

8. On or about September 6, 2017 Gregory filed a lawsuit against Stallings asserting three causes of action - breach of contract, breach of applied contract, and quantum meruit/quasi contract. (R p. 10-16).

9. Gregory asserted as a Defense to this matter that the statue of limitations had expired in this matter. (R p. 48).

10. Stallings moved for summary judgment on the statute of limitations issue which motion was granted and sustained on reconsideration by the Honorable Darren B Simpson, District Court Judge.

ISSUE PRESENTED ON APPEAL

The primary issue raised by this appeal is whether Judge Simpson properly ruled that the statute of limitations had run on this claim.

ISSUE ASSERTED BY APPELLEES

Stallings requests an award of attorney's fees and costs in this matter pursuant to Idaho Code § 12-120(3).

STANDARD OF REVIEW

This Court's review is the same as the District Court's review and is governed by Idaho Rule of Civil Procedure 56. La Bella Vita, LLC v. Shuler, 158 Idaho 799, 80-85, 353 P.3d 420, 425-26 (2015).

ARGUMENT

In his appeal, Gregory asserts that there is a factual issue as to when a breach of contract occurred, that this Court should create a discovery rule to a contract claim, and that equitable estoppel should apply. As set forth below, these arguments each fail. Each argument will be addressed in turn.

I. Is There a Factual Issue as to When the Breach Occurred?

Stallings acknowledge that when a breach occurred on a contract is a factual matter. Simply because the determination of when a breach occurred is a factual matter does not automatically mean it is contested. Gregory does not dispute that he should have been paid when the sale of the property closed on December 27, 2012. There is no factual dispute as to when the breach occurred here. Stallings did not have the right, under the terms of the alleged contract, to dictate to Gregory when Gregory would get paid. The breach occurred when Gregory had the right to get paid and did not get paid, December 27, 2012.

The statute of limitations begins to run when a breach occurred. "A cause of action for breach of contract accrues upon a breach even though no damage may incur until later." Mason v. Tucker

& Associates, 125 Idaho 429, 436, 871 P.2d 846, 853 (Ct. App. 1994) see also v. Cadwell 152 Idaho 15, 20, 266 P.3d 490, 495 (2011) (Ct. App. rev. den) ("[A] cause of action generally accrues 'when a party may maintain a lawsuit against another.'") (quoting Western Corp. v. Vanek 144 Idaho 150, 151, 158 P.3d 313, 314 (Ct. App. 2008)); Peterson v. Gentillon, 154 Idaho 184, 189, 296 P.3d 390, 395 (2013) (quoting Singleton v. Pitchon, 102 Idaho 588, 590, 635 P.2d 254, 256 (1982)) ("The statute of limitations also begins to run following the accrual of a cause of action and statute of limitations may only be asserted as a bar after the expiration of the statutory period following the accrual of the cause of action.")

In this matter (assuming that an agreement was reached) the agreement was that the parties were to "share profits equally after consideration and repayment of their original respective investments."(R p. 127) That agreement would have been breached on December 21, 2012 when Stallings received funds and did not pay Gregory. This is when the cause of action accrued. Nowhere in that "agreement" was there an agreement that Stallings would receive all of their funds first and that only after Stallings was completely paid was Gregory to receive any monies. Gregory could have brought this lawsuit immediately after December 21, 2012 when Stallings received any funds from the sale of the property.

Gregory makes the argument that the breach did not occur until he discovered it. Specifically, he states "Gregory has presented evidence that the breach occurred when he discovered Stalling's

intent not to pay him." (Petitioner's Brief p. 9). However, Gregory's discovery of the breach is not when the breach occurred, and does not create a fact issue as to when the breach occurred.

The statute of limitations started running on December 21, 2012, when Stallings failed to pay, not on September 9, 2013, when Gregory acknowledges receipt of the August 27, 2013 email (R p.99) informing Gregory that he would not be paid. Idaho Code § 5-217 provides for a four year statute of limitations for breach of an oral contract. Accordingly, any suit should have been initiated by December 21, 2016. Because the lawsuit was not filed until September 6, 2017, it is barred.

II. Discovery Rule.

Gregory requests that this Court create a discovery rule in connection with a breach of contract. This bold request is contrary to the established precedent. The Court of Appeals has previously held:

> However, McCormick does not point to us, and we have not found, any Idaho authority allowing discovery exceptions for the running of the statute of limitation other than those authorized by Idaho Code §§ 5-218(4) and 5-219(4) which are inapplicable here. In deference to the authority of the Idaho Legislature to draft discovery exceptions onto to statute of limitations when it elects to do so, the Idaho Supreme Court has declined to recognize additional discovery exceptions.

McCormack v. Cadwell 152 Idaho 15, 20, 266 P.3d 490, 495 (Ct. App. (2011) rev. den).

This Court in Swafford v. Huntsman Springs, Inc., 163 Idaho 209, 214, 409 P.3d 789, 794 (2017) focused on when the breach occurred, not when it was discovered. Similarly, Heileson v. Cook, 108 Idaho 236, 697 P.2d 1250 (Ct. App. 1985) and Spence v. Howell, 126 Idaho 763, 890 P.2d 714 (1995) do not establish a discovery rule. In Heileson v. Cook, 108 Idaho 236, 238, 697 P.2d

1250, 1252 (Ct. App. 1985) the Court noted that the statute of limitations would begin to run when the partnership had been wound up, which was factually disputed. Spence also does not support the proposition that there is a discovery rule. In Spence the jury determined the factual issue of when the breach occurred. Spence v. Howell, 126 Idaho 763, 771, 890 P.2d 714, 722 (1995). In this matter, there is no disputed fact as to when Stallings received monies and did not pay those to Gregory - December 27, 2012.

This Court should not judicially legislate a discovery rule exception to a breach of contract statute of limitation.

III. Equitable Estoppel.

It is significant to note that Gregory did not plead for any relief under the theory of equitable estoppel, nor did Gregory seek to amend his complaint to assert a claim for equitable estoppel. Because it was not pled, it is difficult to know how Gregory would have claimed to have met the elements of equitable estoppel. The elements of equitable estoppel are:

> 1) a false representation or concealment of a material fact with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not know or could not discover the truth; (3) that the false representation or concealment was made with the intent that it be relied upon; and (4) that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice.

Ferro v. Society of St. Pius X, 143 Idaho 538, 540, 149 P.3d 813, 815 (2006). In the briefing on appeal, Gregory attempts to fill in the elements necessary for the application of equitable estoppel. However, his efforts fail. As to the first issue (a false representation or concealment of a material fact

with actual or constructive knowledge of the truth) Gregory states, "First it appears that Stallings told Gregory that he would send him payment for the sale, while never intending to follow through with that promise." (Petitioner's Brief p. 13) This statement is not an actionable misrepresentation. As stated by this Court in Ferro, 143 Idaho at 544, 149 P.3d at 819:

> Generally, a statement about a future event does not constitute a misrepresentation. Maroun v Wyreless Systems, Inc., 141 Idaho 604, 114 P.3d 974 (2005). A misrepresentation must be as to a past or existing fact. Id. A statement that an act will occur is actionable if it is proved that the speaker made the promise without intending to keep it. Id.

In this matter, it appears that at the time the statements were made about future payments to Gregory, that Stallings fully intended to comply with those statements (R p. 101 and 104), and did not change his mind until August 27, 2013. (R p. 99). Second, Gregory could have discovered that the sale had occurred and that monies had been paid to Stallings. Note that it was Gregory that transferred his interest in the property to other entities. (R p. 58) Third, there were no false representations made with intent that they be relied upon. Finally, Gregory did not rely on the representations to his determent. Most significantly, equitable estoppel is not applicable in this matter, because as of September 9, 2013, Gregory knew that Stallings was not going to pay him any monies.

Even if equitable estoppel had been pled, it is not applicable in this matter because Gregory clearly learned of any alleged concealed facts within adequate time to bring the lawsuit prior to the running of the statute of limitations. In Ferro v. Society of St. Pius X, 143 Idaho 538, 540-41, 149

P.3d 813, 815 (2006)(emphasis added) this Court explained some limitations on the application of equitable estoppel and the statute of limitations:

> Equitable estoppel does not eliminate, toll, or extend the statute of limitations. J.R. Simplot Company v. Chemetics International, Inc. 126 Idaho 532, 887 P.2d 1039 (1994). It merely bars a party from asserting the statute of limitations as a defense. That bar does not last forever, however. It only lasts for a reasonable time after the party asserting equitable estoppel discovers or reasonably could have discovered the truth. Knudson v. Agee, 128 Idaho 776, 918 P.2d 1221 (1996) (estoppel did not bar defendants from relying on the stature of limitations where Plaintiff learned of an allegedly concealed fact within adequate time to bring the lawsuit prior to the run of the statute of limitations); ... Once the party claiming the estoppel discovers the truth with respect to the alleged misrepresentations upon which the estoppel is based, that party must act with due diligence in asserting the claim.

According to Gregory, Gregory was notified on September 9, 2013 by an email dated August 27, 2013, (R p. 85 and 99) that Stallings did not intend to pay him any monies. Waiting for four (4) years is not acting with due diligence in asserting the claim. Accordingly, the defense of equitable estoppel does not apply.

ATTORNEY'S FEES ON APPEAL

Stallings seek an award of attorney's fees and costs pursuant to Idaho Appellate Rule 41(a) and Idaho Code § 12-120(3). See Browning v. Browning, 136 Idaho 691, 696 39 P.3d 631, 636 (2001). Gregory brought suit seeking damages for breach of contract. The gravamen of this matter is a commercial transaction, the commercial development of a piece of property. Swafford v. Huntsman Springs, Inc., 163 Idaho 209, 214, 409 P.3d 789, 794 (2017). Stallings sought and obtained an award of attorney's fees from Judge Simpson because this matter is based on contract.

Accordingly, pursuant to Idaho Code § 12-120(3) Stallings is entitled to an award of attorney's fees and costs on appeal.

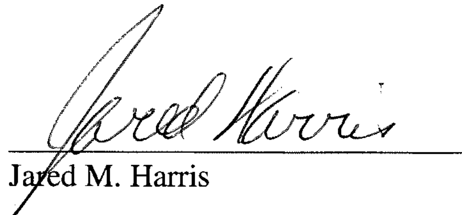
CONCLUSION

It is clear in this matter that the statute of limitations on this oral agreement expired on December 21, 2016. Gregory's lawsuit filed September 6, 2017 is barred. There is no factual dispute as to when any alleged breach occurred - December 21, 2012. This Court should follow the precedent set and not judicially legislate a discovery exception to contract claims. Equitable estoppel is not applicable to this matter primarily because Gregory had over three (3) years to timely file this claim and chose not to do so.

Accordingly, Gregory's appeal should be dismissed and Stallings should be awarded attorney's fees and costs in this matter.

Respectfully Submitted this 20th day of August, 2019.

BAKER & HARRIS



Jared M. Harris

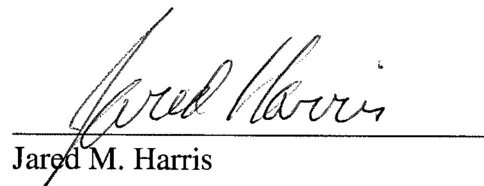
CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2019, I served a true and correct copy of the following-described document on the attorney listed by the method indicated.

Document Served: **RESPONDENT'S BRIEF**

Person(s) Served: David N. Parmenter
Nathan D. Rivera
PARMENTER & RIVERA, LLP
53 South Shilling
Blackfoot, ID 83221
Fax No. (208) 785-4858
parlaw@gmail.com

( ) Mail
( ) Hand Delivered
(X) iCourt Email



Jared M. Harris