

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

9-9-2019

Gregory v. Stallings Appellant's Reply Brief Dckt. 46818

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Gregory v. Stallings Appellant's Reply Brief Dckt. 46818" (2019). *Idaho Supreme Court Records & Briefs, All*. 7875.

https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7875

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

JON GREGORY,)	No. 46818
)	
Petitioner-Appellant,)	Bingham County Case No.
)	CV-2017-1651
vs.)	
)	
RICHARD STALLINGS, and)	
EILEEN STALLINGS)	
)	
Respondent-Appellee.)	

PETITIONER'S REPLY BRIEF

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

JUDGE DARREN B. SIMPSON
District Judge

JARED M. HARRIS
Baker & Harris
266 W. Bridge St.
Blackfoot, Idaho 83221

DAVID N PARMENTER
NATHAN D. RIVERA
Parmenter Rivera LLP
P.O. Box 700
Blackfoot, Idaho 83221
(208)785-5618

ATTORNEY FOR
RESPONDENT-APPELLEE

ATTORNEYS FOR
PETITIONER-APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....I

TABLE OF AUTHORITIES..... II

STATEMENT OF THE CASE 1

Nature of The Case 1

Statement of the Facts and Course of Proceedings..... 1

ISSUE PRESENTED..... 4

SUMMARY OF THE ARGUMENT..... 5

ARGUMENT 5

I. THIS COURT SHOULD REVERSE THE LOWER COURT’S DECISION BECAUSE STALLINGS HAS FAILED TO REFUTE GREGORY’S ASSERTION THAT SUMMARY JUDGMENT WAS IMPROPER. 5

A. Standard of Review 6

B. Gregory disputes when payment by Stallings was supposed to occur, and accordingly disputes when the breach of contract occurred and when the statute of limitations began to accrue. 7

C. The statute of limitations is not violated because the court should apply a “discovery rule,” based in precedent, to Gregory’s case. 9

D. Even if the breach occurred when Stallings received the money, equitable estoppel applies in this case..... 10

CONCLUSION..... 12

TABLE OF AUTHORITIES

Cases

Balivi Chem. Corp. v. Indus. Ventilation, Inc., 131 Idaho 449, 958 P.2d 606 (Ct. App. 1998)..... 6

Lockheed Martin Corp. v. Idaho State Tax Comm'n, 142 Idaho 790, 134 P.3d 641 (2006). 6

McCormack v. Caldwell, 152 Idaho 15, 266 P.3d 490 (Ct. App. 2011)..... 9

Swafford v. Huntsman Springs, Inc., 163 Idaho 209, 409 P.3d 789 (2017)..... 7, 8, 9

Statutes and Court Rules

I.R.C.P 56 6

STATEMENT OF THE CASE

Nature of The Case

Appellant appeals the district court's decision to dismiss his petition for rehearing on the defendants' motion for summary judgment. He seeks reversal of the decision. See Jon Gregory's Affidavit in Support of Motion for Reconsideration and exhibits attached to Petitioner's Brief.

Statement of the Facts and Course of Proceedings

This case centers on the Stallings, hereafter Appellee or Stallings failure to pay Jon Gregory, hereafter Appellant or Gregory for the sale of a property which both parties agreed to develop. Gregory purchased a two-acre parcel of land in Rexburg, Idaho for development of student housing or other university housing development for \$205,000. However, he needed the other two-acres to develop the project. In September 2007, Stallings contacted Gregory, expressing interest in purchasing the other two-acre parcel and going in as joint ventures in the development of the project. Stallings obtained a bank loan in order to finance their share of the purchase of the other two acres, for around the same price \$205,000. As the parties were working on the development in 2008, the market in residential and commercial properties crashed, causing economic turmoil in the United States

and particularly to the parties in this case. Century mortgage advised Gregory they could not provide a draw for construction work and essentially went out of business. Summit Development had done some initial work but were unable to complete the project. Gregory also owned an adjacent but separate property known as G's Dairy Delights, LLC and took the proceeds from that sale and invested them in the project (of approximately \$292,629.00), to keep the venture viable. He began working to try and sell the property to recoup the investments that he, Appellees, and others had invested in the properties and joint venture. He was able to locate a buyer, Rockwell Court Limited Partnership, who was willing to purchase the property. Then, on February 2, 2009, Gregory transferred his interest to his parcel to Pioneer Point LLC, a company established to develop the property. Later, on December 8, 2010, Pioneer Point LLC and the Stallings entered into a construction loan with Century Mortgage Company to finance a portion of the construction, with the work to be completed seven calendar months from that date. On the same day, Pioneer Point LLC and the Stallings signed a promissory note of \$945,000 to multiple lenders with an agreement to pay the note within six months, or by June 10, 2009, with the option to extend up for another six months.

On May 2, 2012, Pioneer Point LLC transferred what had been Mr. Gregory's property to Richard Stallings. Then, on November 14, 2012, Stallings, through attorney Garrett Sandow, told Gregory that he planned on taking two draws from a sell of both parcels and would give Mr. Gregory the remaining balance, which was \$106,000 on the first draw and \$150,000 on the second draw, **Exhibit M**. The Stallings sold both parcels of property on December 21, 2012 to Rockwell Court LP for \$1,086,438.89. After that sale, all the mortgage investors other than the parties were paid back their initial investments.

On September 9, 2013, Gregory was informed by Garrett Sandow, through email, that Richard Stallings no longer intended to pay Gregory the balance of those draws, **Exhibit I**. Mr. Sandow advised Gregory that he had four years from the date of the notice to file suit against Stallings, which was the first time Stallings had ever advised Gregory he did not plan on paying him. Until that date Gregory had understood, from prior representations by Stallings that he would get his money, albeit at the "end of the line". **Exhibit M**, dated November 14, 2012 establishes that Gregory would get his funds in two separate draws following closing- one of \$106,000.00 and a second draw of \$150,000.00. **Exhibit N**, dated

December 27, 2012 sets forth the amount that Stallings proposed paying Gregory \$155,482.28, over the next few months. Gregory fully anticipated that the draws were still forthcoming, because of Stallings assurances, and the buyer was paying out additional amounts after closing as the development progressed. Not all the funds were paid at closing, but some were withheld as the development was completed by the buyer. In addition, Stallings had advised Gregory that he would be the last to be paid, and Gregory knew the buyer was still finishing the development stage.

Therefore, the first he knew of Stallings decision not to pay anything occurred on September 9, 2013. On September 6, 2017, Gregory sued the Stallings for breach of contract. The district court dismissed the case on summary judgment, finding an oral contract did exist, but that Gregory was barred from bringing suit due to the four-year statute of limitations on oral contracts. On January 18, 2019, the district court denied Gregory's motion for reconsideration. Gregory timely appealed.

ISSUE PRESENTED

Did the court err in denying Gregory's motion for reconsideration of summary judgement when Gregory produced enough evidence of a genuine dispute of a material fact, that there was not a statute of limitation violation, and when estoppel would otherwise govern?

SUMMARY OF THE ARGUMENT

Gregory has demonstrated that a dispute of material fact exists concerning the breach of contract date and subsequently that a statute of limitations violation exists. The lower court should have used a reasonable time for performance standard when determining the breach, because no time for performance was specified in the contract. Further the court have used a discovery rule, as it has in precedent, in determining the breach of contract. Finally, equitable estoppel should have been applied in this case based on the misrepresentations of Stallings. Because Stallings has failed to adequately rebut these assertions, this Court should reverse the lower court's summary judgment.

ARGUMENT

I. THIS COURT SHOULD REVERSE THE LOWER COURT'S DECISION BECAUSE STALLINGS HAS FAILED TO REFUTE

GREGORY'S ASSERTION THAT SUMMARY JUDGMENT WAS IMPROPER.

Gregory previously argued reversal was warranted for three reasons: (1) there is a dispute of material fact of when the contract was breached; (2) a discovery rule should be applied in this case, and (3) at the very least equitable estoppel should be applied in this case. Stallings have responded to each point, but these responses fail to demonstrate that reversal of summary judgment is not warranted.

A. Standard of Review

This Court's standard of review of summary judgment is the same as the district court's review and is governed by I.R.C.P 56. *Balivi Chem. Corp. v. Indus. Ventilation, Inc.*, 131 Idaho 449, 450, 958 P.2d 606, 607 (Ct. App. 1998). This Court must determine if the documents on file with the Court illustrate a genuine dispute of material fact. *Id.* Further all reasonable inferences that can be drawn from the record must be drawn in favor of nonmoving party, Gregory. *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006).

B. Gregory disputes when payment by Stallings was supposed to occur, and accordingly disputes when the breach of contract occurred and when the statute of limitations began to accrue.

Because an action on a contract breach accrues at the time of breach, the heart of this matter is when that breach occurred. Since this decided on summary judgment, this Court must determine if there was a genuine dispute of material fact regarding when that breach occurred.

Stallings conceded that if there was an agreement than that agreement was to “share profits equally after consideration and repayment of their original respective investments.” Particularly conspicuous in this language is the lack of timeframe of when these monies would be distributed to each party. The absence of this language is not particularly problematic to the contract because the law fills this gap. When a time for performance is not specified, reasonable time is allotted for that performance. *Swafford v. Huntsman Springs, Inc.*, 163 Idaho 209, 213, 409 P.3d 789, 793 (2017). The question remains when that reasonable time expired and the action accrued.

Gregory has presented evidence that he was within that reasonable time frame based on his reliance on information that was communicated to him from

Stallings through attorney, Garrett Sandow. Gregory believed he would be paid after all debts were paid back by Stallings. This is not only reasonable but expected when closing out a failed joint venture.

Stallings dismisses Gregory's contention that breach occurred within a reasonable time for Stallings' performance at the time of Gregory's discovery. Stallings indicates: "Gregory's discovery of the breach is not when the breach occurred..." (Respondent's Brief p. 9). However, in a contract like this where no time is stated, discovery is an easy way for the court to measure the breach when there is no other time to pinpoint the breach. This court has done this before. *Swafford*, 163 Idaho at 213 409 P.3d at 793. The only evidence presented that Stallings was not going to follow through with the contract, was the email to Gregory from Sandow. The contract had no time specification, so in summary judgment should be liberal in construing the latest the breach could have occurred.

There is little support to the proposition that the breach could have only occurred when Stallings received the payout in 2012 and thus the contract action accrued. In fact, "a cause of action generally accrues 'when a party may maintain a lawsuit against another.'" a cause of action generally accrues "when a party may

maintain a lawsuit against another.” *McCormack v. Caldwell*, 152 Idaho 15, 20, 266 P.3d 490, 495 (Ct. App. 2011) (quoting *Western Corp. v. Vanek*, 144 Idaho 150, 151, 158 P.3d 313, 314 (Ct. App. 2008)). In this case, the contract did not indicate when each party could maintain suit. Consequently, the law fills that gap, which in this case is reasonable time for performance. A reasonable time standard is one usually determined by a fact finder. Since there is no evidence that Gregory’s contention of when the breach occurred is so unreasonable that a fact finder could not find that Gregory’s contention was the actual time of breach, this court should overturn the lower court’s summary judgment.

C. The statute of limitations is not violated because the court should apply a “discovery rule,” based in precedent, to Gregory’s case.

Gregory does not ask this court to apply any rule outside its precedent, but instead requests that discovery rule based in precedent be applied in this case. In another summary judgment case, this court determined that the latest it could reckon the date of contract breach was the date of discovery of the breach. *Swafford*, 163 Idaho at 213 409 P.3d at 793. This was, of course, based on the perhaps limited factual record that was produced for the purposes of summary

judgment. However, this rule make sense if there is not a clear time of breach, as in Gregory's case which was previously discussed.

Even if this Court does not want to apply a discovery rule to the merits of this case, it should still do so in the determination of summary judgment. Parties in this case have not completed discovery, so with the limited record on hand, this Court should defer to latest possible date of breach. Here, that is date Gregory discovered the breach. Accordingly, this court should find the statute of limitations were not violated or, at the very least, there is a genuine dispute of material fact regarding when the breach occurred and dismissal on summary judgment is improper.

D. Even if the breach occurred when Stallings received the money, equitable estoppel applies in this case.

Simply put, the requirements for equitable estoppel are: A person (1) knowingly made false representation; that (2) was intended to be relied on; (3) with the other party unable to discover the truth; and which (4) the other party relied on to his detriment. *Ferro v. Society of St. Pius X*, 143 Idaho 538, 540, 149 P.3d 813, 815 (2006). Gregory established these requirements in regard to Stallings' actions.

Stallings actions seem to indicate that when he told Gregory to expect two payments after a payout to outside parties, he was never intending to live up to those statements. It is unclear they Stallings would make those statements without the intent for Gregory to rely on them. It is clear, Gregory suffered monetary damage from his reliance on these statements. Finally, though Gregory was the one who transferred his interest in the property, he no longer had access to the financial information that would put him on notice of the misrepresentation.

Gregory did pursue his case with due diligence based on the statute of limitations defined to him by an attorney. Though that attorney was mistaken, that does not mean that Gregory was not acting with due diligence.

At the very least, whether equitable estoppel applies in this case is a genuine issue of material fact which would require this Court to overturn the lower court's holding.

CONCLUSION

Stallings failed to adequately rebut Gregory's arguments that show the summary judgement should be overturned. Based on the evidence and argument presented herein, Gregory respectfully requests that this Court overturn the decision of the district court.

DATED this 5nd day of SEPT. 2019.



DAVID N. PARMENTER, ESQ
Attorney for the Petitioner/Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 5th day of SEP. 2019, served two true and correct copies of the foregoing APPELLANT'S REPLY BRIEF, by placing the copies in the United States mail, postage prepaid, addressed to:

JARED M. HARRIS
Baker & Harris
266 W. Bridge St.
Blackfoot, Idaho 83221