

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

1-29-2009

Summary of *Stalk v. Mushkin*, 125 Nev. Adv. Op. No. 3

Jennifer K. Koonce
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the **Torts Commons**

Recommended Citation

Koonce, Jennifer K., "Summary of *Stalk v. Mushkin*, 125 Nev. Adv. Op. No. 3" (2009). *Nevada Supreme Court Summaries*. 385.

<https://scholars.law.unlv.edu/nvscs/385>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

***Stalk v. Mushkin*, 125 Nev. Adv. Op. No. 3
(January 29, 2009)¹**

TORT – STATUTE OF LIMITATIONS

Summary

Appeal from a district order granting summary judgment for intentional interference with prospective business advantage, intentional interference with contractual relations, and breach of fiduciary duty.

Disposition/Outcome

Affirmed the district court's grant of summary judgment on the claims for intentional interference with prospective business advantage and contractual relations. Reversed district court's grant of summary judgment on the claim for breach of fiduciary duty arising from the attorney-client relationship.

Factual and Procedural History

Attorney Michael Mushkin served as legal counsel to Michelle Stalk and her company, Urban Construction Company, LLC (Urban Construction) and to Allan Bird and his corporation, Real Property Services Corporation (RPSC). In May of 2001, Mushkin represented Stalk and Urban Construction in its defense of various mechanics' lien matters. During the litigation of the mechanic's lien claims, Mushkin began representing RPSC in an employment wrongful termination action. Mushkin filed a motion to dismiss or for summary judgment on behalf of RPSC. In that motion, he argued that the employee alleging wrongful termination was actually an employee of Urban Construction and that Stalk had made the decision to terminate that employee. Mushkin further contended that Stalk and Urban Construction were indispensable parties to the suit. The district court denied RPSC's motion. Thereafter, the employee submitted an amended complaint in January 2002, naming Urban Construction as a defendant to the action. Stalk settled with the employee for \$2000, but it was at the settlement conference in May 2003 that she discovered that Urban Construction became a party to the wrongful termination action because of Mushkin's motion for summary judgment.

During this time, Urban Construction and RPSC had a business relationship spanning 30 years in the development of parcels of real property. Specifically, they were parties to several contracts for the performance of construction services; however in a letter dated June 7, 2001, Bird terminated Urban Construction as general contractor for RPSC.

Stalk and Urban Construction filed suit against Mushkin on August 24, 2004, claiming negligence, intentional interference with prospective business advantage, intentional interference with contractual relations, and breach of fiduciary duty. Claims for intentional interference with

¹ By Jennifer K. Koonce

prospective business advantage and intentional interference with contractual relations arose out of allegations that Mushkin had prompted a friend to bid on the construction projects that Urban Construction had contracted with RPSC to complete, and thus, it was Mushkin's actions that caused RPSC to terminate its contracts with Urban Construction in June of 2001. On the other hand, Stalk and Urban Construction premised the breach of fiduciary duty claim on Mushkin's actions in moving for summary judgment in the employment action, and thus, notifying the employee that Stalk and Urban Construction were indispensable defendants.

The district court granted summary judgment on the negligence cause of action for failure to state a claim. As to remaining claims, the court granted summary judgment on grounds that they were time-barred by the two-year statute of limitations under N.R.S. 11.190(4)(e)². Stalk and Urban Construction appealed the grant of summary judgment as to the claims for intentional interference with prospective business advantage, intentional interference with contractual relations, and breach of fiduciary duty.

Discussion

Stalk and Urban Construction contended that both intentional interference claims were subject to the four year statute of limitations under N.R.S. 11.190(2)(c)'s because damage is to "intangible or inchoate interests in obtaining future benefits."³ In contrast, Mushkin defended that the district court properly applied the two-year statute of limitation under N.R.S. 11.190(4)(e).⁴ Mushkin argued in the alternative that because a contract right is personal property, N.R.S. 11.190(3)(c)'s three-year limitation applied.⁵ Mushkin asserted that summary judgment was proper under either statute because Stalk and Urban Construction filed their complaint more than three years after the statute of limitations had begun to run.

The Court considered the fact that Nevada has separate statutes that govern injuries to persons and injuries to property, providing a split in authority as to which statute of limitations applies for the intentional interference claims that this case addresses. Accordingly, in determining the statute of limitations applicable to claims for intentional interference with prospective business advantage and contractual relations, the Court examined the true nature of those claims. In particular, the Court found that compensation for these claims address damages to business interests which may include intangible rights and assets as well as those incidental to business ownership. As such, the Court found that these interests were personal property. Because business interests are personal property, the Court concluded that intentional interference with these business interests are not actions for injuries to a person, but actions for taking personal property. The Court determined that N.R.S. 11.190(4)(e) applies only to personal injury and wrongful death actions.⁶ Accordingly, intentional interference with business interests

² NEV. REV. STAT. § 11.190(4)(e) (2007). In particular, §11.190 outlines the period of limitations for actions in Nevada not involving real property. *Id.* § 11.190.

³ NEV. REV. STAT. § 11.190(2)(c) (2007).

⁴ NEV. REV. STAT. § 11.190(4)(e) (2007).

⁵ *Id.* § 11.190(3)(c).

⁶ *Hanneman v. Downer*, 871 P.2d 279, 287 n.8 (1994); NEV. REV. STAT. § 11.190(4)(e) (2007).

is governed by the three-year statute of limitations of N.R.S. 11.190(3)(c) pertaining to injury of personal property.⁷

The district court applied the incorrect statute, but its grant of summary judgment in favor of Mushkin for claims of intentional interference with prospective business advantage and with contractual relations was proper under the three-year statute of limitations in N.R.S. 11.190(3)(c).⁸ Specifically, Stalk and Urban Construction filed their suit on August 26, 2004, and the statute of limitations began running when Bird terminated its contracts with Urban Construction by the letter dated June 7, 2001. Therefore, because the statute of limitations had run prior to Stalk and Urban Construction filing this action, their claims were time-barred under N.R.S. 11.190(3)(c).⁹ The Court found that the district court properly entered summary judgment on these two claims although on different grounds.

Stalk and Urban Construction, in their breach of fiduciary duty claim, contended that Mushkin breached his fiduciary duty to them by disclosing information adverse to their interests while in the capacity of their attorney and also representing RPSC in the employment discrimination suit. In particular, they allege that he breached his duties of undivided loyalty and confidentiality when he provided information in the employment action that subjected them to tort liability. Stalk, Urban Construction, and Mushkin argued that the breach of fiduciary claim is governed by N.R.S. 11.190(3)(d)'s three-year statute of limitations governing fraud claims.¹⁰ However, the Court found that the breach of fiduciary duty claim was based on duties of Mushkin that would not exist but for the attorney-client relationship. Therefore, the Court considered Stalk and Urban Construction's breach of fiduciary duty claim as essentially a claim for legal malpractice. The Court held that N.R.S. 11.207(1)¹¹ sets forth the statute of limitations for legal malpractice actions and thus, for claims alleging a breach of fiduciary duty arising out of an attorney-client relationship. On the other hand, N.R.S. 11.190(3)(d) sets forth the statute of limitations for claims of fraud, specifically claims for breach of fiduciary duty based on non-attorney client relationships.¹² As a result, the district court's application of N.R.S. 11.190(4)(e) as to the breach of fiduciary duty claim was in error.¹³ The Court further found that genuine issues of material fact existed regarding the date that the statute of limitations had begun to run

⁷ NEV. REV. STAT. § 11.190(3)(c) (2007).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* § 11.190(3)(d).

¹¹ NEV. REV. STAT. § 11.207(1) (2008). Actions for breach of duty or contract against an attorney "must be commenced within 4 years after the plaintiff sustains damage or within 2 years after the plaintiff discovers or . . . should have discovered the material facts which constitute the cause of action, whichever occurs earlier." *Id.*

¹² *Id.* § 11.190(3)(d).

¹³ *Id.* § 11.190(4)(e).

on the claim for breach of fiduciary duty. Therefore, the district court erred by entering summary judgment on that claim.

Conclusion

The Court concluded that claims for intentional interference with prospective business advantage and intentional interference with contractual relations are subject to the three-year statute of limitations outlined in N.R.S. 11.190(3)(c) because they are claims for injury to personal property.¹⁴ Although the district court applied the incorrect statute, summary judgment was appropriate, and the Court affirmed the ruling because these claims were time-barred by the three-year statute of limitations in N.R.S. 11.190(3)(c).¹⁵

The Court found that the district court had ruled in error that summary judgment was appropriate regarding Stalk and Urban Construction's breach of fiduciary duty claim under N.R.S. 11.190(4)(e)'s two-year statute of limitations.¹⁶ Because the breach of fiduciary duty claim in this case is a claim akin to legal malpractice, N.R.S. 11.207(1) is the applicable statute.¹⁷ Summary judgment was not appropriate because genuine issues of material facts existed as to when the statute of limitations began to run. Therefore, the Court reversed the grant summary judgment as to the breach of fiduciary duty claim and remanded the matter to the district court.

¹⁴ *Id.* § 11.190(3)(c).

¹⁵ *Id.*

¹⁶ *Id.* § 11.190(4)(e).

¹⁷ *Id.* § 11.207(1).