SUPREME COURT OF WYOMING

Capshaw v. Schieck

44 P.3d 47 (Wyo. 2002), 2002 WY 54 · No. No. 01-35 · Decided April 10, 2002

SUMMARY

The Wyoming Supreme Court reviewed a breach-of-contract dispute arising from the sale of a corporation and the sellers' contractual indemnification obligation for a reduced net operating loss carryforward. The court held that the trial court did not abuse its discretion in admitting testimony concerning future profits and that sufficient evidence supported future damages. However, it held that the trial court improperly relied on an expert calculation based on incorrect tax-return computations and remanded for entry of judgment in the reduced amount of $12,101.31.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Voigt, Justice; Lehman, C.J.; Golden, J.; Hill, J.; Kite, J.; Voigt, J.
JURISDICTION	Wyoming
DECIDED	April 10, 2002
DOCKET	No. 01-35
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Sellers appealed from a final judgment awarding buyers $32,160.75 in damages for breach of an indemnification provision in a stock purchase agreement.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion. Sufficiency-of-the-evidence findings are upheld when supported by any evidence, with favorable inferences drawn for the prevailing party. In the absence of a properly authenticated transcript, the appellate court gives deference to the trial court's findings concerning evidentiary issues.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential
PARTIES	Gloria J. Capshaw, Judy G. Capshaw, a/k/a Judy G. Roesler v. E. Tim Schieck, Diane E. Schieck, John D. Kerns, Allyson A. Kerns, Rocky Mountain Cementers, Inc.

TOPICS

breach of contract · tax deductions · damages · evidence · appellate procedure

PRACTICE AREAS

contract law · tax law · evidence · damages · appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly admitted lay and expert testimony concerning the corporation's future profits over objections based on lack of foundation and the best evidence rule.
2. Whether the trial court could award damages based on tax returns that were prepared using an incorrect application of Internal Revenue Code § 382.
3. Whether the evidence was sufficient to support future damages for lost tax benefits despite the absence of precise evidence of future taxable income.

HOLDINGS

1. The trial court did not abuse its discretion by admitting the buyers' testimony concerning the likelihood of future corporate profits. The testimony was rationally based on the witnesses' perceptions and was not offered to prove the contents of a writing, so the best evidence rule did not apply.
2. The trial court erred by relying on the buyers' expert's $50,086 damage calculation because the calculation was based on tax returns that improperly applied Internal Revenue Code § 382. The proper damages award, supported by the sellers' expert's calculation, was $12,101.31.
3. The evidence was sufficient to support the trial court's finding that the corporation would have future profits and would sustain a loss from the reduction of its net operating loss carryforward, even though the buyers did not present a precise forecast of future taxable income.

KEY QUOTATIONS

> *"We affirm, but remand for entry of a judgment consistent herewith."* (44 P.3d at 48)

> *"Damages must be proven with a reasonable degree of certainty, and a court may not resort to speculation or conjecture in determining the proper amount to award."* (44 P.3d at 52)

> *"Because the corporation accountant's methods were incorrect ... the CPA expert's calculations of $50,086.00 cannot be accurate."* (44 P.3d at 55)

FACTUAL BACKGROUND

The sellers sold all shares of Rocky Mountain Cementers, Inc. to the buyers for $250,000 after representing that the corporation had a $203,614 net operating loss carryforward. An IRS audit disallowed deductions and reduced the carryforward by $160,633, and the buyers sought indemnification under the stock purchase agreement. The corporation had taxable income in several years, but the parties' experts disagreed about the resulting tax loss and the proper application of Internal Revenue Code § 382.

PROCEDURAL HISTORY

The buyers sued after the sellers refused to indemnify them for losses allegedly caused by an IRS reduction of the corporation's net operating loss carryforward. The trial court granted partial summary judgment establishing the sellers' liability, then conducted a damages trial and entered judgment for $32,160.75. The Wyoming Supreme Court held that the trial court erred in calculating damages and remanded for entry of judgment in the reduced amount of $12,101.31.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for entry of a judgment in favor of the buyers in the amount of $12,101.31, rather than the $32,160.75 previously awarded.

CASES CITED

- JBC of Wyoming Corp. v. City of Cheyenne, 843 P.2d 1190, 1195 (Wyo. 1992)
- Wagon Wheel Village, Inc. v. Harris, 993 P.2d 323, 325 (Wyo. 1999)
- Sannerud v. Brantz, 879 P.2d 341, 345 (Wyo. 1994)
- Cottonwood Valley Ranch, Inc. v. Roberts, 874 P.2d 897, 899 (Wyo. 1994)
- McCabe v. R.A. Manning Construction Co., Inc., 674 P.2d 699, 705 (Wyo. 1983)
- Brockett v. Prater, 675 P.2d 638, 641 (Wyo. 1984)
- Vaughn v. State, 962 P.2d 149, 151 (Wyo. 1998)
- Gaines v. Doby, 794 P.2d 566, 570 (Wyo. 1990)
- Blake v. State, 933 P.2d 474, 477 (Wyo. 1997)
- Salt River Enterprises, Inc. v. Heiner, 663 P.2d 518, 520 (Wyo. 1983)
- Sun Land & Cattle Co. v. Brown, 394 P.2d 387, 389 (Wyo. 1964)
- R.C.R., Inc. v. Rainbow Canyon, Inc., 978 P.2d 581, 586 (Wyo. 1999)
- Kendrick v. Barker, 2001 WY 2, ¶ 12, 15 P.3d 734, 738-39 (Wyo. 2001)
- Town of Wheatland v. Bellis Farms, Inc., 806 P.2d 281, 284 (Wyo. 1991)
- Sun Ridge Development, Inc. v. City of Cheyenne, 787 P.2d 583, 589 (Wyo. 1990)
- Bowker v. Bowker, 795 P.2d 1215, 1218 (Wyo. 1990)
- Pine Creek Canal No. 1 v. Stadler, 685 P.2d 13, 19 (Wyo. 1984)