

SUPREME COURT OF WASHINGTON

Feature Realty, Inc. v. Kirkpatrick & Lockhart Preston Gates Ellis, LLP

164 P.3d 500 (Wash. 2007) · No. No. 79967-9 · Decided August 9, 2007

SUMMARY

The Washington Supreme Court held that Feature Realty's California dismissal was voluntary and unilateral under Washington's two-dismissal rule, CR 41(a)(4), because Feature obtained it through an ex parte request rather than a stipulation or court order. The court further held that the rule barred Feature's claims against Preston Gates Ellis and extended to Jerry Neal because he was in privity with the firm, affirming dismissal of the action.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Bridge, J.; Gerry L. Alexander, C.J.; Charles W. Johnson, J.; Barbara A. Madsen, J.; Tom Chambers, J.; Susan Owens, J.; Mary E. Fairhurst, J.; James M. Johnson, J.; Kenneth H. Kato, J. Pro Tem
JURISDICTION	Washington
DECIDED	August 9, 2007
DOCKET	No. 79967-9
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from a Spokane County Superior Court order granting defendants' motion for summary judgment and dismissing the malpractice action under Washington's two-dismissal rule, CR 41(a)(4). The Washington Supreme Court accepted direct review after transferring the case from the Court of Appeals.
STANDARD OF REVIEW	The court reviewed the summary judgment dismissal and interpretation and application of CR 41(a)(4) de novo.
PRECEDENTIAL VALUE	published and precedential Washington Supreme Court decision
PARTIES	Feature Realty, Inc., Mission Springs, Inc., now d/b/a Canyon Construction NW, Inc., Jack Krystal, as trustee of the KM Family Trust, Russell V. Lugli, individually and as co-trustee of the Lugli Family Trust, the Nikki Trust, and the Alpha Trust v. Kirkpatrick &

TOPICS

default res judicata summary judgment forum non conveniens personal jurisdiction

PRACTICE AREAS

civil procedure appellate procedure torts commercial litigation

QUESTIONS PRESENTED

1. Whether Feature's ex parte request for dismissal of the California action was a unilateral and voluntary dismissal under CR 41(a)(4), despite the California court's prior rulings on personal jurisdiction and forum non conveniens.
2. Whether the two-dismissal rule barred Feature's claims against Neal even though Neal was not named in the California request for dismissal.
3. Whether defendants were estopped from asserting that the California dismissal was voluntary because they had sought dismissal-related relief in California.

HOLDINGS

1. A plaintiff's ex parte request for dismissal is a unilateral and voluntary dismissal under CR 41(a)(4) when it is not based on a stipulation or court order, and the court does not inquire into the plaintiff's subjective or objective intent in obtaining it.
2. A defendant may benefit from the two-dismissal rule when that defendant is in privity with a defendant against whom the plaintiff obtained two voluntary dismissals.
3. Defendants were not estopped from asserting the two-dismissal rule because their motions to quash service and for an indefinite stay did not demand dismissal of the California action.

KEY QUOTATIONS

“the plain language of the “two dismissal” rule of CR 41(a)(4) does not allow for court discretion” (164 P.3d at 503)

“it operates as a nondiscretionary adjudication upon the merits when the dismissals at issue are unilaterally obtained by the plaintiff.” (164 P.3d at 503)

“We do not inquire into the plaintiff's intent in obtaining the dismissal, and thus we look solely at the method by which the plaintiff obtained the dismissal in order to determine whether it was unilateral.” (164 P.3d at 505)

FACTUAL BACKGROUND

Feature retained Jerry Neal and attorney Terrence Butler in connection with litigation concerning a proposed Spokane development and later sued them and their law firm for malpractice. Feature first filed the malpractice action in California, then filed an ex parte request for dismissal after the California court had ruled on personal jurisdiction and forum non conveniens issues. Feature subsequently voluntarily dismissed an initial King County action and refiled, prompting defendants to invoke Washington's two-dismissal rule.

PROCEDURAL HISTORY

Feature filed a legal-malpractice action in California. After the California court granted a motion to quash service for lack of personal jurisdiction and an indefinite stay based on forum non conveniens, Feature unilaterally requested dismissal of the California action. Feature later voluntarily dismissed an initial King County action and refiled in King County. After transfer to Spokane County, the trial court granted summary judgment based on the two-dismissal rule and dismissed the action; the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Mission Springs, Inc. v. City of Spokane, 134 Wash. 2d 947, 954 P.2d 250 (1998)
- Feature Realty, Inc. v. City of Spokane, 331 F.3d 1082, 1093 (9th Cir. 2003)
- Spokane County v. Specialty Auto & Truck Painting, Inc., 153 Wash. 2d 238, 103 P.3d 792 (2004)
- Burnet v. Spokane Ambulance, 131 Wash. 2d 484, 498, 933 P.2d 1036 (1997)
- Sutton Place Dev. Co. v. Abacus Mortgage Inv. Co., 826 F.2d 637, 640 (7th Cir. 1987)
- Hughes Supply, Inc. v. Friendly City Elec. Fixture Co., 338 F.2d 329, 330 (5th Cir. 1964)
- Dee-K Enters., Inc. v. Heveafil Sdn. Bhd., 177 F.R.D. 351, 355 (E.D. Va. 1998)
- Randall v. Merrill Lynch, 820 F.2d 1317, 1319-20 (D.C. Cir. 1987)
- ASX Inv. Corp. v. Newton, 183 F.3d 1265, 1267 (11th Cir. 1999)
- Poloron Prods., Inc. v. Lybrand Ross Bros. & Montgomery, 534 F.2d 1012, 1017 (2d Cir. 1976)
- Loubier v. Modern Acoustics, Inc., 178 F.R.D. 17, 20 (D. Conn. 1998)
- Island Stevedoring, Inc. v. Barge, CCBI, 129 F.R.D. 430, 432 (D.P.R. 1990)
- Lake at Las Vegas Investors Group, Inc. v. Pacific Malibu Development Corp., 933 F.2d 724, 726-728 (9th Cir. 1991)
- Kuhlman v. Thomas, 78 Wash. App. 115, 120-121, 897 P.2d 365 (1995)
- Woodley v. Myers Capital Corp., 67 Wash. App. 328, 337, 835 P.2d 239 (1992)