SUPREME COURT OF MONTANA

Boyne USA, Inc. v. Lone Moose Meadows, LLC and Lone Moose Meadows Condominiums Unit Owners Association, Inc., 2010 MT 133, 356 Mont. 408

235 P.3d 1269 (2010) · No. DA 09-0580 · Decided June 9, 2010

SUMMARY

The Supreme Court of Montana held that a Lift Operations Agreement required Lone Moose Meadows to pay Boyne USA $50,000 annually for depreciation beginning with the 2002–2003 ski season, regardless of whether Boyne owned the lift. The court also held that the judgment was procedurally sufficient and that the prevailing-party attorney-fee provision covered fees incurred on appeal. The judgment was affirmed and remanded for determination of appellate attorney fees.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Michael E. Wheat; Chief Justice Mike McGrath; Justice James C. Nelson; Justice Patricia O. Cotter; Justice Jim Rice; Justice W. William Leaphart; Justice Brian Morris
JURISDICTION	Montana
DECIDED	June 9, 2010
DOCKET	DA 09-0580
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from summary judgment for Boyne in a breach-of-contract action concerning depreciation payments under a lift operations agreement.
STANDARD OF REVIEW	The court reviewed the grant of summary judgment de novo under the standards of M. R. Civ. P. 56 and did not defer to the district court's judgments or decisions.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Lone Moose Meadows, LLC, Lone Moose Meadows Condominiums Unit Owners Association, Inc. v. Boyne USA, Inc.

TOPICS

breach of contract · contract interpretation · summary judgment · attorney fees · appellate procedure

PRACTICE AREAS

contract law · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether the Lift Operations Agreement required Lone Moose to pay Boyne $50,000 annually for depreciation beginning with the 2002-2003 ski season.
2. Whether a proper money judgment was entered even though the district court's ruling did not initially specify a total dollar amount.
3. Whether Boyne was entitled to reasonable attorney fees incurred on appeal under the agreement's prevailing-party fee provision.

HOLDINGS

1. The unambiguous contract required Lone Moose to pay Boyne $50,000 annually for the depreciation component beginning with the 2002-2003 ski season, regardless of whether Boyne owned the lift at that time.
2. Lone Moose could not obtain reversal based on the lack of an initially specified total dollar amount because it knew the contractual amount, participated in the subsequent stipulation and proceedings, and failed to timely object.
3. When a contract provides that the prevailing party is entitled to reasonable attorney fees arising from litigation under the contract, the provision includes reasonable attorney fees incurred on appeal.

KEY QUOTATIONS

> *"Where the language of an agreement is clear and unambiguous and, as a result, susceptible to only one interpretation, the duty of the court is to apply the language as written."* (¶ 14)

> *"Our job is to ascertain and declare what is in terms or in substance contained in the contract, not to insert what has been omitted or to omit what has been inserted."* (¶ 17)

> *"Today we clarify that if a contract includes a provision stating that a prevailing party is entitled to reasonable attorney fees arising from litigation under the contract, appellate attorney fees are included under the provision."* (¶ 26)

FACTUAL BACKGROUND

In 1999, Boyne and Lone Moose entered a Lift Operations Agreement under which Boyne would operate Lone Moose's ski lift and Lone Moose would pay the operating expenses. The agreement stated that Lone Moose would not be required to pay the depreciation component of operating expenses until the 2002-2003 ski season, and Exhibit D listed annual depreciation of $50,000. When Boyne demanded depreciation payments beginning in that season, Lone Moose refused, contending that depreciation was payable only after Boyne owned or replaced the lift.

PROCEDURAL HISTORY

Boyne sued Lone Moose in February 2008 for failing to make contractual depreciation payments. The Fifth Judicial District Court, Madison County, denied Lone Moose's summary-judgment motion and granted Boyne's cross-motion, ruling that Lone Moose owed $50,000 annually beginning with the 2002-2003 ski season. The Supreme Court of Montana affirmed the merits ruling and remanded for determination and award of Boyne's reasonable appellate attorney fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Fifth Judicial District Court to determine and award Boyne's reasonable attorney fees incurred on appeal.

CASES CITED

- PPL Mont., LLC v. State, 2010 MT 64, ¶¶ 84-85, 355 Mont. 402, 229 P.3d 421
- Carelli v. Hall, 279 Mont. 202, 209, 926 P.2d 756, 761 (1996)
- Doble v. Bernhard, 1998 MT 124, ¶ 19, 289 Mont. 80, 959 P.2d 488
- Deschamps v. Treasure State Trailer Court, 2010 MT 74, ¶ 28, 356 Mont. 1, 230 P.3d 800
- Garrison v. Averill, 282 Mont. 508, 514, 938 P.2d 702, 706 (1997)
- State v. Burke, 2005 MT 250, ¶ 18, 329 Mont. 1, 122 P.3d 427
- R.C. Hobbs Enter., LLC v. J.G.L. Distrbg., Inc., 2004 MT 396, ¶¶ 49-50, 325 Mont. 277, 104 P.3d 503
- Transaction Network v. Wellington Techs., 2000 MT 223, ¶¶ 38-39, 301 Mont. 212, 7 P.3d 409
- Majers v. Shining Mountains, 230 Mont. 373, 381, 750 P.2d 449, 454 (1988)
- Hoven v. Amrine, 224 Mont. 15, 18-19, 727 P.2d 533, 535 (1986)
- Diehl & Assocs. v. Houtchens, 180 Mont. 48, 53, 588 P.2d 1014, 1017 (1979)
- Peschel Family Trust v. Colonna, 2003 MT 216, ¶ 45, 317 Mont. 127, 75 P.3d 793
- Eschenbacher v. Anderson, 2001 MT 206, ¶ 51, 306 Mont. 321, 34 P.3d 87
- Quigley v. Acker, 1998 MT 72, ¶¶ 46-47, 288 Mont. 190, 955 P.2d 1377
- Chamberlin v. Puckett Constr., 277 Mont. 198, 210, 921 P.2d 1237, 1244 (1996)
- Wise v. Sebena, 248 Mont. 32, 40, 808 P.2d 494, 499 (1991)
- Smith v. Johnson, 245 Mont. 137, 145, 798 P.2d 106, 111 (1990)
- Lauderdale v. Grauman, 223 Mont. 357, 359, 725 P.2d 1199, 1200 (1986)
- In re Marriage of Bolstad, 203 Mont. 131, 135, 660 P.2d 95, 97 (1983)