

COURT OF APPEAL, FIRST DISTRICT, DIVISION 2, CALIFORNIA

Dacey v. Taraday

Dacey v. Taraday, 196 Cal.App.4th 962, 126 Cal.Rptr.3d 804, 11 Cal. Daily Op. Serv. 7580, 2011 Daily Journal D.A.R. 9082 (Cal. App. 2011) · No. A125080, A125670

SUMMARY

****Key Legal Topics:**** Partnership dissolution; assignment of contingent fee cases; breach of contract; statute of limitations under Code of Civil Procedure § 366.2 (claims against decedent); creditor's claim requirements in probate; waiver; prejudgment interest. ****Holdings:**** The dissolution agreement unambiguously assigned the flood cases to Goldstein, giving the estate authority to renegotiate fee agreements. Dacey's breach of contract claim was not barred by CCP § 366.2 because the decedent did not breach before death—the administrator's post-death breach triggered the claim, and the statute applies only when the decedent committed the wrongful act or owed an enforceable debt at death. The estate waived the creditor's claim defense by failing to raise it independently in the trial court. Prejudgment interest on a written contract accrues from the date of breach under Probate Code § 11423(b) and Civil Code § 3289(b), not from the probate court's order.

CASE DETAILS

COURT	Court of Appeal, First District, Division 2, California
WRITING FOR THE COURT	Lambden, J.; Kline, P.J.; Richman, J.
JURISDICTION	California
DOCKET	A125080, A125670
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from judgment after bifurcated bench trial; cross-appeal by administrator.
STANDARD OF REVIEW	De novo for statutory interpretation and contract interpretation.
PRECEDENTIAL VALUE	Published
PARTIES	John J. Dacey, William Taraday, as Administrator v. William Taraday et al., John J. Dacey

TOPICS

- civil procedure
- appellate procedure
- probate procedure
- contracts
- statute of limitations

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the dissolution agreement assigned the flood cases to Goldstein or kept them as partnership assets.
2. Whether Dacey's failure to file a creditor's claim in probate bars his breach of contract claim.
3. Whether Code of Civil Procedure section 366.2 bars Dacey's breach of contract claim as untimely.
4. Whether prejudgment interest accrues from the date of breach or from the probate court's order.

HOLDINGS

1. The dissolution agreement clearly and unambiguously assigned the flood cases to Goldstein, with Dacey and Baruh retaining only a contractual right to a percentage of the fee recovery.
2. The estate waived this issue on appeal because it was not presented as an independent defense in the trial court.
3. Section 366.2 does not apply because the debt was not enforceable against Goldstein while he was alive and the breach occurred after his death.
4. Under Probate Code section 11423, subdivision (b), interest accrues from the date of breach because the debt is based on a written contract, and Civil Code section 3289(b) provides a 10% rate from breach.

KEY QUOTATIONS

“Accordingly, we hold that section 366.2 does not apply in the present case where the debt was not enforceable against Goldstein while he was alive and the breach of the contract occurred after Goldstein's death.” (at 986)

“the court found the language of the dissolution agreement to be 'clear and unambiguous' and 'not reasonably susceptible to any other interpretation.’” (at 974)

“Under the plain meaning of Probate Code section 11423, subdivision (b), the lower court correctly ordered interest at the rate of 10 percent from the time that the breach of the dissolution agreement occurred.” (at 988)

FACTUAL BACKGROUND

John Dacey and Burton Goldstein were partners in the law firm GB&G, which handled inverse condemnation flood cases with Desmond. In 1990, GB&G dissolved, and the dissolution agreement assigned the flood cases to Goldstein, specifying percentage shares of any fee recovery for Dacey and Baruh. Goldstein died in 2001; the flood cases settled in 2004. The estate administrator, Taraday, renegotiated the fee split with Desmond, reducing the estate's share, and paid nothing to Dacey. Dacey sued for breach of contract and other claims.

PROCEDURAL HISTORY

Dacey filed a civil action against Taraday (as administrator and individually) and others for breach of contract, rescission, conversion, and replevin. The trial court granted partial summary adjudication, held a bifurcated

bench trial, and entered judgment in favor of Dacey on his breach of contract claim against the estate but against him on all other claims. Dacey appealed, and the estate cross-appealed from the breach of contract judgment.

DISPOSITION

affirmed

CASES CITED

- Paterno v. State of California, 74 Cal.App.4th 68 (1999)
- Varney v. Superior Court, 10 Cal.App.4th 1092 (1992)
- Nathanson v. Superior Court, 12 Cal.3d 355 (1974)
- Boyle v. CertainTeed Corp., 137 Cal.App.4th 645 (2006)
- Falahati v. Kondo, 127 Cal.App.4th 823 (2005)
- Falkner v. Hendy, 107 Cal. 49 (1895)
- Burmester v. McNear, 42 Cal.App. 527 (1919)
- Satterfield v. Garmire, Satterfield v. Garmire, 65 Cal.2d 638 (1967)
- Katz v. A.J. Ruhlman & Co., 69 Cal.App.2d 541 (1945)
- Estate of Sturm, 246 Cal. Rptr. 852, Estate of Sturm, 201 Cal.App.3d 14 (1988)
- Estate of Yool, 151 Cal.App.4th 867 (2007)
- Bradley v. Breen, 73 Cal.App.4th 798 (1999)
- Battuello v. Battuello, 64 Cal.App.4th 842 (1998)
- Wagner v. Wagner, 162 Cal.App.4th 249 (2008)
- Shewry v. Begil, 128 Cal.App.4th 639 (2005)
- Romano v. Rockwell Internat., Inc., 14 Cal.4th 479 (1996)
- Kroff v. Larson, 167 Cal.App.3d 857 (1985)
- Ferraro v. Camarlinghi, 161 Cal.App.4th 509 (2008)
- Norgart v. Upjohn Co., 21 Cal.4th 383 (1999)
- Dawes v. Rich, 60 Cal.App.4th 24 (1997)
- Collection Bureau of San Jose v. Rumsey, 24 Cal.4th 301 (2000)
- Amwest Surety Ins. Co. v. Wilson, 11 Cal.4th 1243 (1995)
- Chambers v. Farnham, 182 Cal. 191 (1920)
- Shapiro v. Board of Directors, 134 Cal.App.4th 170 (2005)
- Day v. City of Fontana, 25 Cal.4th 268 (2001)
- Martinez v. Combs, 49 Cal.4th 35 (2010)
- Boblitt v. Boblitt, 190 Cal.App.4th 603 (2010)
- Hamilton v. Asbestos Corp., 22 Cal.4th 1127 (2000)
- Doe v. City of Los Angeles, 42 Cal.4th 531 (2007)
- Coalition of Concerned Communities, Inc. v. City of Los Angeles, 34 Cal.4th 733 (2004)

- Miklosy v. Regents of University of California, 44 Cal.4th 876 (2008)

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