SUPREME COURT OF APPEALS OF WEST VIRGINIA

Gaddy Engineering Company v. Bowles Rice McDavid Graff & Love, LLP, and J. Thomas Lane

Gaddy Engineering Co. v. Bowles Rice McDavid Graff & Love, LLP, 231 W. Va. 577 (2013) · No. No. 12-0206 · Decided June 14, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for Bowles Rice McDavid Graff & Love, LLP and J. Thomas Lane in a dispute over an alleged fee-sharing agreement with Gaddy Engineering Company. The court held that the doctrine of impracticability excused performance of the alleged agreement and found no attorney-client relationship supporting professional negligence. It also concluded that Gaddy's fraud claim failed because it was based on an alleged unperformed promise rather than a misrepresentation of an existing or past fact.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Davis; Ketchum; Loughry
JURISDICTION	West Virginia
DECIDED	June 14, 2013
DOCKET	No. 12-0206
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the circuit court's orders granting respondents summary judgment on claims arising from an alleged fee-sharing agreement, including breach of contract, professional negligence, negligence, gross negligence, negligent misrepresentation, fraud, conversion, promissory estoppel, unjust enrichment, and quantum meruit.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. It should be granted only when there is no genuine issue of material fact and inquiry into the facts is unnecessary to clarify application of the law.
PRECEDENTIAL VALUE	Published West Virginia Supreme Court of Appeals opinion; precedential.
PARTIES	Gaddy Engineering Company v. Bowles Rice McDavid Graff & Love, LLP, J. Thomas Lane

TOPICS

impossibility of performance | breach of contract | fraud | quantum meruit | standard of review

PRACTICE AREAS

Contracts | Torts | Appellate Procedure | Commercial Litigation

QUESTIONS PRESENTED

1. Whether the doctrine of impracticability excused performance of the alleged fee-sharing agreement after the land companies elected to remain in the Tawney class action.
2. Whether an attorney-client relationship existed between Gaddy and the respondents so as to support a professional negligence claim.
3. Whether Gaddy's fraud claim could succeed based on an alleged unperformed promise to share prospective legal fees.
4. Whether Gaddy's negligence, gross negligence, intentional-breach, negligent-misrepresentation, conversion, promissory-estoppel, unjust-enrichment, and quantum-meruit claims could survive summary judgment.

HOLDINGS

1. Under the doctrine of impracticability, a party seeking excuse from contractual performance must show that a supervening event made performance impracticable, that the event's nonoccurrence was a basic assumption of the contract, that the impracticability occurred without the party's fault, and that the party did not expressly or impliedly agree to perform despite the impracticability. The land companies' decision to remain in the Tawney class action satisfied the doctrine on the undisputed record, so summary judgment on the contract claim was proper.
2. The undisputed facts established a relationship between a law firm representing clients and a litigation-support service provider, not an attorney-client relationship between Gaddy and respondents. Accordingly, summary judgment on Gaddy's professional-negligence claim was proper.
3. Fraud ordinarily must be based on an intentional misrepresentation of a past or existing fact, not merely on an unperformed promise or representation concerning a future occurrence, unless the promisor lacked the intention to perform when the promise was made. Gaddy presented no evidence of an intentional misrepresentation of a past or existing fact, so summary judgment on fraud was proper.
4. Claims whose alleged duties and liability arise solely from the parties' contract, or which duplicate the breach-of-contract claim, cannot proceed as independent tort claims under the gist-of-the-action doctrine. Gaddy's negligence, gross-negligence, intentional-breach, and negligent-misrepresentation claims were contract-based and therefore failed.
5. Summary judgment was proper on Gaddy's conversion, promissory-estoppel, unjust-enrichment, and quantum-meruit claims. Gaddy lacked a title or right to possession of the disputed legal fees, failed to prove the alleged fee-sharing promise, failed to establish the circumstances required for unjust enrichment, and offered no verifiable proof of compensable work beyond the $74,275 invoice.

KEY QUOTATIONS

> *"Under the doctrine of impracticability, a party to a contract who claims that a supervening event has prevented, and thus excused, a promised performance must demonstrate each of the following: (1) the event made the performance impracticable; (2) the nonoccurrence of the event was a basic assumption on which the contract was made; (3) the impracticability resulted without the fault of the party seeking to be excused; and (4) the party has not agreed, either expressly or impliedly, to perform in spite of impracticability that would otherwise justify his nonperformance."* (577)

> *"Fraud cannot be predicated on a promise not performed. To make it available there must be a false assertion in regard to some existing matter by which a party is induced to part with his money or his property."* (577)

FACTUAL BACKGROUND

Gaddy Engineering and Bowles Rice, through J. Thomas Lane, agreed to jointly evaluate potential royalty-underpayment claims for land companies. Gaddy alleged that Lane later agreed to pay it one-third of any legal fees Bowles Rice received from representing the land companies in litigation against Columbia Natural Resources. The land companies instead joined the Tawney class action, eliminating the contemplated independent litigation, and the record showed that Gaddy's documented work primarily consisted of pre-litigation claim evaluations. Gaddy rejected payment of a $74,275 invoice and sued for additional compensation and tort and contract-based relief.

PROCEDURAL HISTORY

Gaddy filed suit in the Circuit Court of Roane County on May 14, 2010. The circuit court denied respondents' motion to dismiss based on the alleged illegality of the fee-sharing arrangement, but later granted summary judgment on the breach-of-contract claims on September 19, 2011, and on the remaining claims on January 12, 2012. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Waddy v. Riggleman, 216 W. Va. 250, 606 S.E.2d 222 (2004)
- Frederick Mgt. Co. v. City Nat'l Bank, 228 W. Va. 550, 723 S.E.2d 277 (2010)
- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Aetna Casualty & Surety Co. v. Federal Insurance Co., 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Croston v. Emax Oil Co., 195 W. Va. 86, 464 S.E.2d 728 (1995)
- Love v. Teter, 24 W. Va. 741 (1884)
- Lengyel v. Lint, 167 W. Va. 272, 280 S.E.2d 66 (1981)
- Star v. Rosenthal, 884 F. Supp. 2d 319 (E.D. Pa. 2012)
- Backwater Properties, LLC v. Range Resources-Appalachia, LLC, 2011 WL 1706521 (N.D. W. Va. 2011)

- Lockhart v. Airco Heating & Cooling, Inc., 211 W. Va. 609, 567 S.E.2d 619 (2002)
- Cochran v. Appalachian Power Co., 162 W. Va. 86, 246 S.E.2d 624 (1978)
- Goldstein v. Elk Lighting, Inc., 2013 WL 790765 (M.D. Pa. 2013)
- Highmark West Virginia, Inc. v. Jamie, 221 W. Va. 487, 655 S.E.2d 509 (2007)
- Corder v. Countrywide Home Loans, Inc., 2011 WL 289343 (S.D. W. Va. 2011)
- Thompson Development, Inc. v. Kroger Co., 186 W. Va. 482, 413 S.E.2d 137 (1991)
- Annon v. Lucas, 155 W. Va. 368, 185 S.E.2d 343 (1971)
- Copley v. Mingo County Board of Education, 195 W. Va. 480, 466 S.E.2d 139 (1995)
- Kiser v. Caudill, 215 W. Va. 403, 599 S.E.2d 826 (2004)
- Estate of Tawney v. Columbia Natural Resources, Civil Action No. 03-C-10E (Roane County Circuit Court)