

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Mangus Coal Co. v. Christopher Jennings

No. 16-0199 (Preston County 12-C-63) · No. No. 16-0199 (Preston County 12-C-63) · Decided November 18, 2016

SUMMARY

The West Virginia Supreme Court of Appeals affirmed summary judgment dismissing derivative claims arising from corporate transactions, including a real-property conveyance, based on the applicable two-year statute of limitations. The court rejected petitioners' arguments that fraudulent concealment and adverse domination tolled the limitations period, concluding that they had sufficient information to pursue litigation more than two years before filing suit.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	November 18, 2016
DOCKET	No. 16-0199 (Preston County 12-C-63)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed the Circuit Court of Preston County's order granting respondents' renewed motion for summary judgment and dismissing the remaining derivative claims as barred by the statute of limitations.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Mangus Coal Co., Jesse A. Jennings, Franklin M. Jennings v. Christopher Jennings, Doris Jennings, Darlene Murray

TOPICS

statute of limitations

summary judgment

fiduciary duty

corporate law

appellate procedure

PRACTICE AREAS

corporate law

commercial litigation

civil procedure

real estate

QUESTIONS PRESENTED

1. Whether the circuit court properly granted summary judgment on the remaining derivative claims after determining that the claims were barred by the two-year statute of limitations.
2. Whether alleged fraudulent concealment or adverse domination created a genuine issue of material fact sufficient to toll the statute of limitations.

HOLDINGS

1. Summary judgment was proper because there was no genuine issue of material fact regarding petitioners' discovery of the alleged wrongdoing, and the remaining claims were barred by West Virginia's two-year statute of limitations.
2. A circuit court's entry of summary judgment is reviewed de novo, and summary judgment is appropriate when no genuine issue of material fact exists and factual inquiry is unnecessary to apply the law.

KEY QUOTATIONS

“Upon careful review of the record, we agree with the circuit court that there is no genuine issue of material fact regarding the discovery of the alleged wrongdoing, and that petitioners’ remaining claims are barred by the statute of limitations as contained in West Virginia Code § 55-2-12.” (at 3)

“Having reviewed the order entered on February 4, 2016, we hereby adopt and incorporate the circuit court’s well-reasoned findings and conclusions as to the assignment of error raised in this appeal.” (at 3)

FACTUAL BACKGROUND

Petitioners were minority shareholders of Mangus Coal Company, while respondents were majority shareholders and officers. The claims arose from, among other matters, an October 3, 2007, sale of Preston County real property, an alleged breach of fiduciary duty, and related corporate transactions. Petitioners knew of the property conveyance by 2008 or 2009, and one petitioner threatened litigation at a January 5, 2009, stockholders meeting, but they did not file suit until March 15, 2012.

PROCEDURAL HISTORY

Petitioners, minority shareholders of Mangus Coal Company, filed an original complaint in 2012 asserting derivative and individual claims arising from several corporate transactions. After discovery, the circuit court dismissed the individual claims and several counts, then granted respondents' renewed motion for summary judgment on the remaining derivative claims, concluding that the claims were barred by the two-year statute of limitations. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Andrick v. Town of Buckhannon, 187 W. Va. 706, 421 S.E.2d 247 (1992)
- Clark v. Milam, 192 W. Va. 398, 452 S.E.2d 714 (1994)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS Mangus Coal Co., et. al., FILED Plaintiffs Below, Petitioners November 18, 2016 RORY L. PERRY II, CLERK vs) No. 16-0199 (Preston County 12-C-63) SUPREME COURT OF APPEALS OF WEST VIRGINIA Christopher Jennings, et. al., Defendants Below, Respondents MEMORANDUM DECISION Petitioners Mangus Coal Co., Jesse A. Jennings, and Franklin M. Jennings, by counsel Jeremy B. Cooper, appeal the February 4, 2016, order of the Circuit Court of Preston County, Business Court Division, that granted respondent's motion for summary judgment.

Respondents, Christopher Jennings, Doris Jennings, and Darlene Murray, by counsel William C. Brewer and J. Tyler Slavey, filed a response. Petitioners did not file a reply. This Court has considered the parties' briefs and the record on appeal.

The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error.

For these reasons, a memorandum decision affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure. Petitioners are minority shareholders of Mangus Coal Company, Inc., ("Mangus").

The original complaint in this matter was filed March 15, 2012, and alleged derivative and individual causes of action against respondents who are the majority shareholders and officers of Mangus. Petitioners' complaint stemmed from the following four transactions: (1) an October 3, 2007, sale of real property in Preston County; (2) an April 12, 2008, lease from Respondent Christopher Jennings to a third party; (3) a 2002 timber sale; and (4) an allegation that Respondent Christopher Jennings breached a fiduciary duty by failing to make reasonable efforts for Mangus to obtain release of certain DEP permits, which took place at some time before the October 3, 2007, conveyance of property.

Respondents moved to dismiss the original complaint, and petitioners filed an amended complaint, which asserted the following six causes of action: (1) breach of fiduciary duties; (2) breach of implied covenant of good faith and fair dealing; (3) unjust enrichment; (4) conversion; (5) breach of contract; and (6) civil conspiracy. Following an extensive discovery period, respondents filed a Motion for Summary Judgment in which they sought the dismissal of all claims.

In a March 20, 2015, order following mediation, the circuit court granted the summary judgment motion in part, and completely dismissed any and all claims asserted by petitioners in their individual capacity. The circuit court also dismissed counts two, three, and five of the 1 amended complaint, and all claims against Respondent Darlene Murray, save the civil conspiracy claim.

The circuit court held in abeyance its ruling on whether petitioners' remaining derivative claims¹ for breach of fiduciary duty, conversion, and civil conspiracy were barred by the statute of limitations, and ordered the parties into mediation.

After an unsuccessful mediation, respondents filed a renewed motion for summary judgment. In their renewed motion, respondents argued that the remaining claims were barred by the statute of limitations. Respondents asserted that the evidence showed that petitioners knew of the transactions that were the subject of the suit, prior to 2010, but did not file suit until March of 2012.

In response, petitioners asserted that the statute of limitations was tolled because respondents fraudulently concealed information, prevented them from discovering any wrongdoing prior to 2010, and that under the doctrine of adverse domination, the statute of limitations was tolled as long as no one knew of or was willing to redress the misconduct. Following a hearing, the circuit court granted respondents' motion.

The circuit court held that there was no genuine issue of material fact regarding the discovery of the alleged wrongdoing, and that all of the transactions were subject to the two-year statute of limitation period contained in West Virginia Code § 55-2-12.

The circuit court dismissed the remaining claims against respondents. Petitioners now appeal to this Court, arguing that the circuit court erred in finding that the statute of limitations barred their remaining causes of action against respondents. Petitioners assert a sole assignment of error, claiming that the trial court erred in granting the motion for summary judgment.

We have held, "[a] circuit court's entry of summary judgment is reviewed de novo." Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). In addition, "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syllabus Point 3, *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va.

160, 133 S.E.2d 770 (1963).” Syllabus Point 1, *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992). Syl. Pt. 2, 192 W.Va. at 190, 451 S.E.2d 756. Petitioners limit their argument to the October 3, 2007, conveyance of real property. Petitioners present the same argument that they presented below, claiming that, under the doctrine of adverse domination and fraudulent concealment, the statute of limitations were 1 The remaining claims were the derivative claims of Mangus Coal Company for civil conspiracy against all of the respondents, as contained in count six of the complaint; breach of fiduciary duty as contained in count one; conversion against respondents Christopher Jennings and Doris Jennings as contained in count four of the complaint; and unjust enrichment against Christopher Jennings as contained in count three of the indictment.

2 tolled2. Petitioners claim that while they were aware of the sale of the property, they were not aware of any misconduct, until 2010. To support this assertion, petitioners claim that as early as February 27, 2009, Petitioner Franklin Jennings requested a full accounting of all income, profits and sales of the corporation, and that subsequent to that request, Petitioner Franklin Jennings made two other requests to respondents through his counsel.

Petitioner argues that, based upon this evidence, a jury could reasonably determine that petitioners were unaware of the misconduct until a period of time within two years of the filing of the complaint. The circuit court held that there was no genuine issue of material fact regarding the discovery of the alleged wrongdoing, and held that all of the transactions were subject to the two-year statute of limitations period contained in West Virginia Code § 55-2-12.

Regarding the October 3, 2007, sale of real property, the circuit court found that petitioners had clear, actual knowledge of the conveyance of the property shortly after the transaction took place, and noted that petitioners had not provided any evidence that the sale was for less than market value.

The circuit court found that in a September 23, 2008, letter to Respondent Doris Jennings, Petitioner Franklin Jennings wrote that he was aware of the 2007 land transfer. In addition, Franklin Jennings acknowledged in his deposition that he became aware of the sale in 2008, or 2009. Also, during the January 5, 2009, stockholders meeting, Petitioner Franklin Jennings threatened to sue respondents regarding the matters at issue in the complaint.

The circuit court found further that, although petitioners claimed that the statute of limitations was tolled at the time petitioners learned of the transactions, they were armed with sufficient information to pursue litigation, and therefore the statute of limitations barred petitioners’ claims. Upon careful review of the record, we agree with the circuit court that there is no genuine issue of material fact regarding the discovery of the alleged wrongdoing, and that petitioners’ remaining claims are barred by the statute of limitations as contained in West Virginia Code § 55-2-12.

The circuit court's order reflects its thorough analysis of the grounds raised in respondent's motion for summary judgment. Having reviewed the order entered on February 4, 2016, we hereby adopt and incorporate the circuit court's well-reasoned findings and conclusions as to the assignment of error raised in this appeal.

The Clerk is directed to attach a copy of the circuit court's order to this memorandum decision. For the foregoing reasons, we affirm. Affirmed. 2 See syllabus point one of *Clark v. Milam*, 192 W.Va. 398, 452 S.E.2d 714 (1994).

In West Virginia the doctrine of adverse domination tolls statutes of limitation for tort claims against officers and directors who acted adversely to the interests of the company and against lawyers and accountants, owing fiduciary duties to the company, who took action contributing to the adverse domination of the company. *Id.* 3 ISSUED: November 18, 2016 CONCURRED IN BY: Chief Justice Menis E. Ketchum Justice Robin Jean Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Allen H. Loughry II 4