

SUPREME COURT OF ALASKA

Alderman v. Iditarod Properties, Inc.

104 P.3d 136 (Alaska 2004) · No. S-10975 · Decided December 30, 2004

SUMMARY

The Supreme Court of Alaska considers an appeal involving unpaid rent arising from an oral rental agreement, following earlier litigation concerning trademark infringement. The court holds that the rent claim was not barred by res judicata or the statute of limitations, and that any error in admitting prior sworn testimony was harmless. It affirms the award of past-due rent and prejudgment interest but reverses and remands the enhanced attorney's fee award.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Carpeneti, Justice; Bryner, Chief Justice; Matthews, Justice; Eastaugh, Justice; Fabe, Justice
JURISDICTION	Alaska
DECIDED	December 30, 2004
DOCKET	S-10975
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a superior court judgment entered after a bench trial awarding Iditarod unpaid rent, attorney's fees, costs, and prejudgment interest. The appellants challenged the denial of summary judgment, admission of prior sworn testimony, enhanced attorney's fees, and prejudgment interest.
STANDARD OF REVIEW	Res judicata and statute-of-limitations issues are reviewed de novo; accrual-date factual findings are reviewed for clear error; evidentiary rulings are reviewed for abuse of discretion, with independent review of the legal standard; attorney's-fee awards are reviewed for abuse of discretion, and interpretation of the Alaska Civil Rules is reviewed independently; the accrual date for prejudgment interest is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Caleb Alderman, Barbara Alderman, Alaska Guestours, Inc., dba Fourth Avenue Theater Trolley Tours v. Iditarod Properties, Inc., dba

TOPICS

breach of contract res judicata statute of limitations hearsay attorney fees

PRACTICE AREAS

contract law civil procedure appellate procedure evidence attorney's fees prejudgment interest

QUESTIONS PRESENTED

1. Whether the separate action to recover unpaid rent was barred by res judicata because the rent claim could have been asserted in the earlier trademark-infringement action.
2. Whether the rent action was barred by the applicable statute of limitations.
3. Whether admission of Francis Gallela's prior sworn testimony was reversible hearsay error.
4. Whether the superior court abused its discretion by enhancing attorney's fees under Alaska Civil Rule 82 based on settlement offers, allegedly weak defenses, and alleged bad faith.
5. Whether the superior court correctly calculated prejudgment interest.

HOLDINGS

1. The rent action was not barred by res judicata because the trademark-infringement and unpaid-rent claims arose from separate transactions, required different proof, and involved separate injuries and harms.
2. The second rent action was timely under AS 09.10.240 because the original rent claim was timely and the prior judgment was vacated on procedural, nonmerits grounds.
3. Any error in admitting Francis Gallela's prior sworn testimony was harmless because there was no reasonable likelihood that the evidence appreciably affected the superior court's decision.
4. The superior court erred by enhancing attorney's fees; settlement negotiations could not be considered under Rule 82, the defenses were not shown to be unreasonable, and the record did not establish litigation bad faith. The case was remanded for a Rule 82 fee award without enhancement.
5. The superior court correctly awarded prejudgment interest and avoided a double recovery by crediting prior payments and interest and excluding the period during which Iditarod possessed the prior judgment.

KEY QUOTATIONS

“The actions for trademark infringement and breach of an oral rental contract are separate and distinct causes of action.” (141)

“The only method by which fees may be enhanced for failure to accept an offer of judgment is found in Civil Rule 68.” (144)

“We conclude that the superior court erred in awarding Iditarod enhanced attorney's fees and remand this issue for imposition of Rule 82 attorney's fees without enhancement.” (145)

FACTUAL BACKGROUND

The Aldermans operated trolley tours under an oral arrangement with Iditarod involving use of space at the Fourth Avenue Theatre and payment of fifteen percent of specified tour revenues as rent. After the business relationship deteriorated, the Aldermans moved their office and used the name Fourth Avenue Theater Trolley Tours, leading to an earlier trademark-infringement action. The rent claim was later litigated in a separate action, where the superior court found that the parties had agreed to payment of fifteen percent of gross revenue and awarded Iditarod the unpaid balance, prejudgment interest, and attorney's fees.

PROCEDURAL HISTORY

In an earlier action, Iditarod obtained a judgment for trademark infringement and unpaid rent, but the Alaska Supreme Court vacated the rent award because the rent claim had been added after the close of evidence and substantially prejudiced the Aldermans. Iditarod then filed a new action for unpaid rent. The superior court denied summary judgment based on res judicata and the statute of limitations, conducted a bench trial, awarded rent and prejudgment interest, and awarded enhanced attorney's fees. The Supreme Court affirmed the rent and prejudgment-interest awards, reversed the enhanced-fee award, and remanded for calculation of fees without enhancement.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the superior court to award attorney's fees under Alaska Civil Rule 82 without enhancement; the awards of past-due rent and prejudgment interest remain affirmed.

CASES CITED

- Alderman v. Iditarod Properties, Inc., 32 P.3d 373 (Alaska 2001)
- State, Department of Commerce & Economic Development, Division of Insurance v. Schnell, 8 P.3d 351, 359 (Alaska 2000)
- Jenkins v. Daniels, 751 P.2d 19, 21 (Alaska 1988)
- John's Heating Service v. Lamb, 46 P.3d 1024, 1031 (Alaska 2002)
- Dodson v. Dodson, 955 P.2d 902, 905 (Alaska 1998)
- Hawley v. State, 614 P.2d 1349, 1361 (Alaska 1980)
- Landers v. Municipality of Anchorage, 915 P.2d 614, 616 n. 1 (Alaska 1996)
- Plumber v. University of Alaska, Anchorage, 936 P.2d 163, 166 (Alaska 1997)
- Dixon v. Pouncy, 979 P.2d 520, 523 (Alaska 1999)
- Tope v. Christianson, 959 P.2d 1240, 1244 (Alaska 1998)

- McElroy v. Kennedy, 74 P.3d 903, 908 (Alaska 2003)
- Smith v. Stratton, 835 P.2d 1162, 1165 (Alaska 1992)
- Earthmovers of Fairbanks, Inc. v. State, Department of Transportation & Public Facilities, 765 P.2d 1360, 1363 (Alaska 1988)
- Crosby v. Hummell, 63 P.3d 1022, 1028 (Alaska 2003)
- Dobos v. Ingersoll, 9 P.3d 1020, 1024 (Alaska 2000)
- Alderman v. Iditarod Properties, Inc., 32 P.3d 373, 380 (Alaska 2001)
- Liimatta v. Vest, 45 P.3d 310, 313, 321 (Alaska 2002)
- Van Dort v. Culliton, 797 P.2d 642, 645 (Alaska 1990)
- Doyle v. Peabody, 781 P.2d 957, 962 (Alaska 1989)
- Day v. Moore, 771 P.2d 436, 438-39 (Alaska 1989)
- Myers v. Snow White Cleaners & Linen Supply, Inc., 770 P.2d 750, 752-53 (Alaska 1989)
- Marathon Oil Co. v. ARCO Alaska, Inc., 972 P.2d 595, 605 (Alaska 1999)
- Cole v. Bartels, 4 P.3d 956, 961 n. 24 (Alaska 2000)
- Hoffman Construction Co. of Alaska v. U.S. Fabrication & Erection, Inc., 32 P.3d 346, 355 (Alaska 2001)
- In the Matter of H.C., 956 P.2d 477, 480 n. 7 (Alaska 1998)
- Native Village of Eklutna v. Board of Adjustment for Municipality of Anchorage, 995 P.2d 641, 646 (Alaska 2000)

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