

SUPREME COURT OF COLORADO

Mesa Sand & Gravel Co. v. Landfill, Inc.

776 P.2d 362 (Colo. 1989) · Decided June 26, 1989

SUMMARY

The Colorado Supreme Court held that a nonbreaching party may recover prejudgment interest at eight percent annually under section 5-12-102(1)(b) for a breach of contract, without proving that the breaching party obtained a gain or benefit. The court further held that the contractual breach constituted wrongful withholding even though Mesa retained a right to excavate the gravel itself. The court reversed and remanded for an award of prejudgment interest from July 29, 1983, through October 19, 1984.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Volland
JURISDICTION	Colorado
DECIDED	June 26, 1989
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mesa sought Colorado Supreme Court review of the Colorado Court of Appeals' decision affirming the denial of prejudgment interest in Mesa's breach-of-contract action.
STANDARD OF REVIEW	De novo review of the interpretation and application of section 5-12-102, C.R.S., governing prejudgment interest.
PRECEDENTIAL VALUE	published precedential opinion of the Colorado Supreme Court
PARTIES	Mesa Sand & Gravel Co. v. Landfill, Inc.

TOPICS

[breach of contract](#)[damages](#)[statutory interpretation](#)[legislative intent](#)[remedies](#)

PRACTICE AREAS

[contracts](#)[remedies](#)[statutory interpretation](#)

QUESTIONS PRESENTED

1. Whether a prevailing party seeking prejudgment interest under section 5-12-102(1)(b) must prove that the party withholding money or property obtained a gain or benefit.
2. Whether a nonbreaching party may recover eight-percent prejudgment interest under section 5-12-102(1)(b) for a breach of contract from the time of breach.
3. Whether Landfill's failure to excavate the gravel constituted wrongful withholding even though Mesa retained a contractual right to excavate the gravel itself.

HOLDINGS

1. A claimant electing prejudgment interest under section 5-12-102(1)(b) need not prove that the withholding party recognized a gain or benefit from the money or property withheld.
2. A nonbreaching party may recover prejudgment interest at eight percent annually under section 5-12-102(1)(b) from the time of the breach.
3. Landfill's failure to perform its contractual duty to excavate the gravel to bedrock constituted wrongful withholding under section 5-12-102 and entitled Mesa to prejudgment interest.

KEY QUOTATIONS

"We therefore apply a liberal construction to the statute and conclude that the General Assembly intended section 5-12-102(1)(b) to permit a non-breaching party to recover prejudgment interest of eight percent annually from the time of the breach." (365-66)

"Regardless of whether Mesa could have removed the gravel from the site, Landfill had a duty to remove the gravel to bedrock and breached the contract by failing to do so." (366)

FACTUAL BACKGROUND

Landfill operated a solid-waste disposal landfill and gravel-mining site under a special use permit. Under a September 30, 1975 contract, Landfill was required to excavate gravel to bedrock, while Mesa was to pay ten cents per ton and retained a right to enter the property and excavate gravel itself. Landfill filled the site without excavating to bedrock, and the district court found that this conduct breached the contract and caused Mesa \$209,055 in damages.

PROCEDURAL HISTORY

Mesa sued Landfill in Boulder County District Court for breach of contract after Landfill failed to excavate gravel to bedrock. The district court found a breach and awarded Mesa \$209,055 in damages but denied prejudgment interest. The court of appeals affirmed, and the Colorado Supreme Court granted Mesa's cross-petition for certiorari while denying Landfill's petition.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the district court with directions to award Mesa prejudgment interest under section 5-12-102(1)(b) from July 29, 1983, through October 19, 1984.

CASES CITED

- Mesa Sand & Gravel Co. v. Landfill, Inc., 759 P.2d 757 (Colo. App. 1988)
- Isbill Associates, Inc. v. City & County of Denver, 666 P.2d 1117 (Colo. App. 1983)
- Bassett v. Eagle Telecommunications, Inc., 750 P.2d 73 (Colo. App. 1987)
- Bjorkman by Bjorkman v. Steenrod, 762 P.2d 706, 707 (Colo. App. 1988)
- People v. District Court, 713 P.2d 918, 921 (Colo. 1986)
- In re R.C., 775 P.2d 27, 29 (Colo. 1989)
- Elliott Elec. Supply Co. v. Adolfson & Peterson, Inc., 765 P.2d 1079, 1081 (Colo. App. 1988)
- Engelbrecht v. Hartford Accident & Indem. Co., 680 P.2d 231, 233 (Colo. 1984)
- Cooper v. Peoples Bank & Trust, 725 P.2d 78, 81 (Colo. App. 1986)
- Benham v. Manufacturers & Wholesalers Indem. Exch., 685 P.2d 249, 254 (Colo. App. 1984)
- Hott v. Tillotson-Lewis Constr. Co., 682 P.2d 1220, 1223 (Colo. App. 1983)
- Passarelli v. Schoettler, 742 P.2d 867, 872 (Colo. 1987)
- W.H. Woolley & Co. v. Bear Creek Manors, 735 P.2d 910, 912 (Colo. App. 1986)
- National Sur. Corp. v. Citizens State Bank, 734 P.2d 663, 665 (Colo. App. 1986)
- Lowell Staats Mining Co. v. Pioneer Uravan, Inc., 645 F. Supp. 254, 259 (D. Colo. 1986)
- Davis Cattle Co. v. Great W. Sugar Co., 393 F. Supp. 1165 (D. Colo. 1975), aff'd, 544 F.2d 436 (10th Cir. 1976), cert. denied, 429 U.S. 1094 (1977)
- Acme Delivery Serv., Inc. v. Samsonite Corp., 663 P.2d 621, 625-26 (Colo. 1983)