

SUPREME COURT OF NEVADA

Schwartz v. Wasserburger, 117 Nev. 703

30 P.3d 1114 (2001) · No. No. 35916 · Decided September 17, 2001

SUMMARY

The Nevada Supreme Court addresses when the statute of limitations begins to run for a contract claim based on anticipatory repudiation. It holds that under NRS 11.190(1)(b), the claim accrues on the contractual performance date unless the plaintiff elects to sue earlier, in which case accrual occurs on the filing date. The court reverses the dismissal of Renee Schwartz's survival action and remands for reinstatement.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Maupin, C.J.; Agosti, J.; Rose, J.
JURISDICTION	Nevada
DECIDED	September 17, 2001
DOCKET	No. 35916
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The personal representative appealed the district court's dismissal of a contract action as barred by the six-year statute of limitations.
STANDARD OF REVIEW	The accrual and application of the statute of limitations were reviewed as questions of law.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential.
PARTIES	Renee R. Schwartz, as personal representative of Leslie C. Schwartz's estate v. John T. Wasserburger, individually and as trustee of the John T. Wasserburger Family Trust, John T. Wasserburger Family Trust, Desert Leasing, Desert Sales and Leasing, Inc., a revoked Nevada corporation, John T. Wasserburger and John W. Arneson, as trustees of Desert Leasing, Inc., a revoked Nevada corporation

TOPICS

- anticipatory repudiation
- statute of limitations
- breach of contract
- probate procedure
- appellate procedure

PRACTICE AREAS

Contracts

Civil procedure

Statute of limitations

Probate and estate administration

Appellate procedure

QUESTIONS PRESENTED

1. When does a cause of action accrue for statute-of-limitations purposes when a written contract is wholly anticipatorily repudiated before the date set for performance?
2. Whether NRS 11.310(1) required the personal representative to bring the decedent's surviving contract action within one year after the decedent's death, notwithstanding the unexpired underlying limitation period.
3. Whether the district court's dismissal of the action as time barred should be reversed.

HOLDINGS

1. Under NRS 11.190(1)(b), a cause of action involving a wholly anticipatory repudiation accrues on the date performance is due, unless the plaintiff elects to sue on the anticipatory breach earlier; in that event, accrual is accelerated to the date the plaintiff files suit.
2. NRS 11.310(1) does not require a personal representative to bring a surviving claim within one year after the decedent's death when the underlying limitation period remains unexpired; it provides an additional mechanism for preserving claims nearing expiration.

KEY QUOTATIONS

“We therefore hold that under NRS 11.190(1)(b), a cause of action in contract cases involving a wholly anticipatory repudiation accrues either on the date that performance under the contract is due or, if the plaintiff so elects, on the date that the plaintiff sues upon the anticipatory breach.” (30 P.3d at 1116)

“NRS 11.310(1) simply provides a mechanism for preserving decedents' claims for which prescriptive periods are nearing expiration.” (30 P.3d at 1117)

FACTUAL BACKGROUND

On June 19, 1992, Leslie C. Schwartz agreed to sell his partnership interest in Desert Leasing to the John T. Wasserburger Family Trust, with payment in six-month installments. On March 24, 1993, the Trust notified Schwartz that it would suspend further payments based on alleged false inducements, and Schwartz filed suit on May 13, 1993, before the next installment was due. After Schwartz died in 1996, Renee Schwartz pursued the surviving contract claim; she filed a new complaint on April 13, 1999, but the district court held that the six-year limitation period had begun on the date of repudiation and had expired.

PROCEDURAL HISTORY

Leslie Schwartz initially sued after the Trust repudiated a purchase agreement before the next installment was due. After Schwartz died, Renee Schwartz pursued the claim, initially in her individual capacity, and dismissed and refiled the action after the original action was subject to mandatory dismissal under NRCP 41(e). The district court dismissed the second complaint as untimely, reasoning that the limitations period began on the date of

repudiation, and denied applications to amend or substitute Renee Schwartz as the estate's representative. The Nevada Supreme Court reversed and remanded for reinstatement of the action.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the district court's dismissal order and remand with instructions to reinstate Renee Schwartz's action against the Trust.

CASES CITED

- Lighthouse v. Great W. Land & Cattle Corp., 88 Nev. 55, 493 P.2d 296 (1972)
- Bemis v. Estate of Bemis, 114 Nev. 1021, 967 P.2d 437 (1998)
- Finnell v. Bromberg, 79 Nev. 211, 381 P.2d 221 (1963)
- Kinsey v. United States, 852 F.2d 556, 558 (Fed. Cir. 1988)
- Penn-Ohio Steel Corp. v. United States, 354 F.2d 254, 272-73 n. 35, 173 Ct. Cl. 1064 (1965)
- Romano v. Rockwell International, Inc., 14 Cal. 4th 479, 59 Cal. Rptr. 2d 20, 926 P.2d 1114 (1996)
- Taylor v. Johnston, 15 Cal. 3d 130, 123 Cal. Rptr. 641, 539 P.2d 425 (1975)
- Franconia Associates v. United States, 43 Fed. Cl. 702, 709 (1999)
- Union Sugar Co. v. Hollister Estate Co., 3 Cal. 2d 740, 47 P.2d 273 (1935)
- Clayton v. Gardner, 107 Nev. 468, 813 P.2d 997 (1991)
- Rickards v. Hutchinson, 18 Nev. 215, 4 P. 702 (1884)
- Schwartz v. Stock, 26 Nev. 155, 65 P. 357 (1901)