

Intervision Systems Technologies, Inc. v. InterCall, Inc.

Case Number

A-14-0916

Call Date

September 16, 2015

Case Time

9:30 AM

Case Audio

[Download Audio](#)

Case Summary

A-14-0916, Intervision Systems Technologies, Inc. v. Intercall, Inc. (Appellant)

Douglas County, District Court Judge Peter C. Bataillon

Attorney for Appellant: Patrick R. Guinan (Erickson | Sederstrom, P.C. LLO)

Attorney for Appellee: Luke T. Deaver (Person, DeWald & Deaver, P.C., L.L.O.)

Civil Action: Breach of contract

Action Taken by Trial Court: The district court entered judgment for Intervision Systems Technologies in the amount of \$73,852.76 in damages plus prejudgment interest at the rate of 2.142 percent.

Assignments of Error on Appeal: Intervision Systems assigns that the district court erred in finding that a notice clause in the contract was unenforceable as a statute of limitations clause, and in receiving evidence of a court file from a prior case. InterCall on its counterclaim assigns that the district court applied an erroneous interest rate to damages.

Extended Case Summary (for Educational Purposes):

A-14-0916, Intervision Systems Technologies, Inc. v. Intercall, Inc. (Appellant)

Douglas County, District Court Judge Peter C. Bataillon

Attorney for Appellant: Patrick R. Guinan (Erickson | Sederstrom, P.C. LLO)

Attorney for Appellee: Luke T. Deaver (Person, DeWald & Deaver, P.C., L.L.O.)

Civil Action: Breach of contract

Action Taken by Trial Court: The district court entered judgment for Intervision Systems Technologies in the amount of \$73,852.76 in damages plus prejudgment interest at the rate of 2.142 percent.

Assignments of Error on Appeal: Intervision Systems assigns that the district court erred in finding that a notice clause in the contract was unenforceable as a statute of limitations

clause, and in receiving evidence of a court file from a prior case. InterCall on its counterclaim assigns that the district court applied an erroneous interest rate to damages.

Facts: Intervision Systems entered into a service contract with InterCall. Under this contract, Intervision Systems committed to spend at least \$8,000 per year on InterCall's telephone conferencing services. In return, InterCall agreed to charge Intervision Systems a lower rate per minute, and to not change that rate during the existence of the contract.

The parties agree that InterCall incorrectly entered Intervision Systems' account into its computer system, and on January 1, 2011, began to charge Intervision Systems \$0.25 per minute even though it had agreed to charge only \$0.05 per minute under the contract. InterCall again added erroneous fees and rate increases to Intervision Systems' account in January 2012 and May 2012. These rate increases caused InterCall to bill Intervision Systems approximately \$76,870.30 more than it should have under the contract rates over the course of 2011 and 2012.

However, Intervision Systems did not dispute the rate increases until March 2013. At that time, InterCall admitted its error and corrected the charges from January and February 2013, but refused to return the overpayments from 2011 and 2012 because of a 'look back' clause in the service contract that required Intervision Systems to notify InterCall of any billing disputes within 30 days of the date of the invoice. The contract stated that Intervision Systems agreed to any charges it did not dispute within 30 days.

The district court ruled that the 'look back' clause in the service contract was unenforceable in Nebraska because this clause is a 'statute of limitations' clause. (A 'statute of limitations' is a law that states the amount of time that a party has to bring a certain type of lawsuit.) In this case, Intervision Systems brought this lawsuit because InterCall breached its contract by charging a higher rate per minute than it agreed to charge. Under the breach of contract statute of limitations, a party would have 5 years to file a claim. The district court held that the contract requiring notice of a claim within 30 days effectively overrides the 5-year time window that Nebraska law allows to bring a breach of contract claim and, therefore, should not be enforced because of Nebraska case law disapproving contract clauses that modify the statute of limitations.

InterCall argues on appeal that the 'look back' clause is not a statute of limitations clause because it does not change the amount of time that Intervision Systems could bring its lawsuit. Instead, it argues that the 'look back' provision is better understood as a remedies or discovery clause. InterCall argues that this contract provision was bargained for and understood by both parties and that the court should not invalidate it because of Nebraska public policy against courts allowing parties to escape the terms to which they agreed in a contract by invalidating a clause. InterCall also argues that even if the clause is interpreted as a 'statute of limitations' clause, it should still be upheld as a valid part of the contract.

Although the district court entered judgment for Intervision Systems, Intervision Systems cross-appeals the interest rate that the district court applied to its damages. Intervision Systems argues that the district court was correct in its interpretation of the notice clause, but that the district court erred in awarding the lower interest rate for unliquidated damages and instead should have applied the higher interest rate for liquidated damages.

Case Location

Concordia University

Panel Text

Irwin, Inbody and Riedmann, Judges
