

Weyh v. Gottsch

Case Number

S-18-0192

Case Audio

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October 30, 2018

Court Number

Sarpy

Case Location

Lincoln

Case Summary

S-18-0192 David Weyh v. Barry Gottsch (Appellant)

Sarpy County District Court, Judge Stefani Martinez

Attorneys: Cathy S. Trent-Vilim, Daniel P. Chesire, Brian J. Brislen, Adam R. Feeney (Lamson, Dugan and Murray, L.L.P.) --- Molly J. Miller, Patrick J. Sullivan, Travis M. Jacott (Adams & Sullivan, P.C., L.L.O.) (Appellant)

Civil: Breach of contract; Declaratory judgment; Fraudulent misrepresentation; Money had and received; Fraudulent concealment; Constructive trust; Breach of duty of good faith

Proceedings below: The trial court found that Appellant breached the Agreement by charging rents for Appellant-owned properties and the payment of a salary, thus not paying Appellee what was owed to him. Pursuant to the breach, the district court awarded prejudgment interest to Appellee at 12% per annum. The trial court further found that Appellee's claim for money had and received was proven by Appellee. The trial court also found in favor of Appellee on the claim of breach of duty of good faith. The trial court determined that Appellant did not fraudulently misrepresent or conceal information from Appellee and determined that Appellee did not meet his burden to sustain the cause of action of constructive trust. The trial court found that the statute of limitations, as pled by Appellant as an affirmative defense, was not applicable to this matter and allowed the claims to stand. Appellant filed petition to bypass, which was granted by the Supreme Court.

Issues: Whether the trial court erred in finding: 1) The requisite statute of limitations does not apply to Appellee's breach of contract claim; 2) That all of Appellee's causes of action accrued in late 2014; 3) That Appellee is entitled to prejudgment interest exclusively under Neb. Rev. Stat. § 45-104; 4) That Appellee is entitled to prejudgment interest per annum from 2007 while also finding that Appellee's causes of action did not accrue until 2014; 5) That rent and salary paid were not terms in the agreement; 6) That the terms of rent for Appellant's property is void under the statute of frauds; 7) By making the comparison of the parties' previous hunting operation to the Agreement as support of its conclusion that rent for Appellant-owned properties was not a term of the agreement; 8) By excluding evidence in the form of expert testimony offered by Appellant which substance was shown by Appellant's offer of proof; 9) That Appellee is entitled to judgment under the theory of money had and received; 10) That Appellee is entitled to judgment under the theory of breach of the implied

duty of good faith and fair dealing.
