

IN THE SUPREME COURT OF THE STATE OF NEVADA

T.I.P. HOLDINGS CORPORATION, A
NEVADA CORPORATION,

Appellant,

vs.

MARK E. FLATEBO, EXECUTOR OF
THE ESTATE OF BETTY L. FLATEBO,
DECEASED,

Respondent.

No. 44222

FILED

APR 19 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Edwards*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a district court order dismissing a complaint in a contract action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

The sole issue on appeal is whether the district court, in dismissing appellant T.I.P. Holdings' (T.I.P.'s) complaint as untimely, applied the correct statute of limitations to T.I.P.'s claims for specific performance and breach of contract. Betty Flatebo executed a contract in December 1999 agreeing to sell her interest in a parcel of land to T.I.P. Mrs. Flatebo became ill and passed away in June 2000 without completing escrow. Respondent Mark Flatebo, her husband and the executor of her estate, failed to submit Mrs. Flatebo's will to probate until March, 2004. Letters testamentary were issued on April 14, 2004. T.I.P. filed a creditor's claim against Mrs. Flatebo's estate in May 2004, requesting that Mr. Flatebo perform the 1999 land sale contract.¹ After this claim was

¹The creditor's claim requested only specific performance and did not mention monetary damages.

rejected, T.I.P. filed suit in district court seeking specific performance and monetary damages for breach of contract.

Mr. Flatebo filed a motion to dismiss under NRCP 12(b)(5), arguing that T.I.P.'s claim was barred by the statute of limitations. The district court granted the motion, finding that T.I.P.'s action was barred by NRS 11.275(1) and NRS 11.310(2). T.I.P. appeals, arguing that the district court misapplied the statute of limitations.

Application of NRS 11.275(1)

The district court erred in relying upon NRS 11.275(1) to bar T.I.P.'s causes of action. NRS 11.275(1) states that "no action can be maintained against an estate for which letters of administration have not been issued unless it is commenced within 3 years next after the death of the decedent." Mr. Flatebo argues that NRS 11.275(1) is an absolute bar to T.I.P.'s claims because the claims were filed more than three years after his wife's death and before letters testamentary were issued. We disagree.

The language of NRS 11.275, unlike other provisions relating to claims against estates, refers only to letters of administration and does not mention letters testamentary. Letters of administration are issued where no executor is named in the decedent's will or the decedent dies intestate.² By contrast, when a will submitted to probate designates an executor, the court issues letters testamentary.³

The omission of letters testamentary from the section demonstrates that the legislature did not intend this statute of limitations to apply to wills that name an executor. The legislative history of NRS

²NRS 139.010-150.

³NRS 138.010.

11.275, as well, indicates that the statute was meant to provide protection against future suits against estates not subject to the normal probate procedure, including estates held in joint tenancy or in trust.⁴

In this case, Mr. Flatebo, is a named executor in the will. Therefore, NRS 11.275 does not apply and the district court erred in relying upon the statute to bar T.I.P.'s suit.

Application of NRS 11.310(2)

The district court correctly dismissed T.I.P.'s action for specific performance under NRS 11.310(2), but erred in concluding the statute bars T.I.P.'s action for monetary damages.

Under NRS 11.310(2), interested parties have one year after letters testamentary or letters of administration are issued to bring suit against the decedent's estate. However, the statute expressly states that "no real estate of a deceased person shall be liable for his debts . . . unless letters testamentary or of administration be granted within 3 years from the date of the death of such decedent."⁵ T.I.P.'s request for specific performance necessarily seeks to hold Mrs. Flatebo's real estate liable; therefore this claim is barred because letters testamentary were not granted within three years of her death.

However, T.I.P.'s claim for damages is not barred by NRS 11.310(2) because this claim does not seek to hold the real estate liable per

⁴Hearing on S.B. 354 before the Assembly Judicial Comm., 61st Leg. (Nev., May 2, 1979), at 10.

⁵NRS 11.310(2)(b).

se.⁶ Instead, T.I.P. seeks compensation from Mrs. Flatebo's estate based on the breach of the real estate sale contract. Thus, because T.I.P. brought its claim for damages within one year of the issue of letters testamentary, and as its claim for breach of contract is not otherwise barred, its damage claim should not have been dismissed pursuant to NRCP 12(b)(5).⁷

Conclusion

We conclude that the district court properly dismissed T.I.P.'s specific performance claim pursuant to NRS 11.310(2)(b) but erred in applying NRS 11.275 and NRS 11.310(2) as a basis to dismiss T.I.P.'s claim for breach of contract damages. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN

⁶Nothing in this order prevents Mr. Flatebo from renewing his motion to dismiss based upon T.I.P.'s failure to seek monetary damages when it filed its initial creditor's claim.

⁷T.I.P. also claimed that NRS 11.190, which establishes a six-year statute of limitations for actions based on a written agreement, should supersede the above limitation periods and permit the lawsuit to go forward. This claim is unavailing because NRS 11.190 does not apply to claims "further limited by specific statute." NRS 11.310(2) limits claims against a decedent's estate, therefore it supersedes this general statute.

PART AND REVERSED IN PART, AND WE REMAND this matter to the district court for further proceedings consistent with this order.

Douglas J.
Douglas

Becker J.
Becker

Parraguirre J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Stanley W. Pierce
George Foley Sr.
Law Offices of John P. Foley
Clark County Clerk