

Las Vegas Fetish & Fantasy v. Ahern Rentals
124 Nev. Adv. Op. No. 26
May 8, 2008¹

Remedies- Unclean Hands Doctrine

Summary:

Appeal from a district court grant of summary judgment and an award for costs and attorney fees in a contract action.

Disposition/Outcome:

Affirmed. The unclean hands doctrine did not bar Respondent Ahern's recovery because Nevada law requires both egregious conduct and serious harm resulting from the conduct. The district court did not abuse its discretion in awarding attorney fees where it considered failure to timely file an opposition as an admission that Respondent Ahern's motion was meritorious. The district court's award of costs to Ahern was proper because NRS 18.110 allows a party to enter a memorandum of costs before judgment is entered.

Factual and Procedural History:

Appellant Las Vegas Fetish & Fantasy Ball, Inc. (LVFF) hosts an annual Halloween party. For its 1998 Halloween Ball, it hired Signature Events (Signature) to coordinate the ball, including negotiating contracts with vendors. Under a contract between Signature and LVFF, Signature acted on behalf of LVFF and entered into an agreement with Ahern. Ahern was to provide tents, tables, canopies and other materials for the 1998 ball.

Ahern never received payment from Signature. Ahern sought payment from LVFF after Signature went out of business, and LVFF's president made several payments to Ahern. When Ahern's president indicated he would stop making payments and intended to declare bankruptcy, Ahern filed suit against LVFF alleging breach of contract, unjust enrichment, and monies due and owing. LVFF filed an answer and a counterclaim for abuse of process, alleging Ahern improperly pursued its breach of contract claim and willfully misrepresented the nature of Ahern and LVFF's relationship.

LVFF moved for summary judgment arguing that no contract existed between Ahern and LVFF and that Ahern had fabricated evidence. In its opposition, Ahern conceded it could not prove privity of contract. The district court granted in part and denied in part LVFF's motion for summary judgment. At trial, the jury returned a verdict in LVFF's favor on its abuse of process claim for \$1. The district court granted Ahern's motions for attorney fees and costs.

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Discussion:

LVFF raised three issues on appeal: (1) the unclean hand doctrine should have foreclosed Ahern from recovering for unjust enrichment; (2) the district court abused its discretion in awarding attorney fees; and (3) the district court abused its discretion in awarding costs.

LVFF argued that the abuse of process verdict conclusively established unclean hands and that an “intentional torfeasor” was always barred from equitable remedy.² The court clarified the unclean hands doctrine by establishing a two-factor analysis: (1) the conduct must be egregious; and (2) the conduct must cause serious harm. The Unclean hands doctrine will only bar equitable relief where the egregiousness of the conduct that causes serious harm weighs against granting relief. The Court concluded that the \$1 award for abuse of process indicated the harmlessness of Ahern’s actions and therefore did not cause LVFF any serious harm.

LVFF contended that the district court abused its discretion in awarding attorney fees under EDCR 2.20(b) when LVFF failed to file a timely opposition. The Nevada Supreme Court found nothing in the record to support abuse of discretion and affirmed the award.

Although NRS 18.110 states that a memorandum of costs must be filed “within 5 days after the entry of judgment,” this established a deadline for filing the memorandum and a party can properly file a memorandum and recover costs when they file before judgment is entered. The award of costs was appropriate where Ahern filed before judgment was entered.

Conclusion:

Ahern’s conduct was neither egregious nor seriously harmful and therefore unclean hands does not bar its recovery. The district court did not abuse its discretion in awarding costs and attorney fees.
