April Enterprises, Inc. v. KTTV

147 Cal. App. 3d 805
Court of Appeals of California, Second Appellate District, Division Seven
October 5, 1983

APRIL ENTERPRISES, INC., Plaintiff and Appellant, v. KTTV et al., Defendants and Respondents. Civ. No. 66885. Opinion by Johnson, J., with Schauer, P. J., and Thompson, J., concurring. Hurley & Grassini, Hurley, Grassini & Wrinkle, Ronald Wrinkle and Lawrence P. Grassini for Plaintiff and Appellant. Gibson, Dunn & Crutcher, Dean Stern and Jeffrey R. Kelleher for Defendants and Respondents.

JOHNSON, J.

The plaintiff, April Enterprises, (April) appeals from a judgment dismissing its complaint without leave to amend. Three issues are presented on appeal: first, whether plaintiff has pleaded a cause of action for breach of the implied covenant of fair dealing in a contract; next, whether plaintiff has pleaded a cause of action for breach of fiduciary duty of a joint venturer; and, finally, whether either cause of action is barred by applicable statutes of limitations. We hold, first, April's complaint sufficiently alleges both causes of action; and, secondly, the statute of limitations was tolled on both causes of action until April reasonably could have discovered the injury at issue.

Factual and Procedural Background[1]

In 1965 April entered into a written contract with respondents, KTTV and Metromedia, Inc., (Metromedia/KTTV) for production of the “Winchell-Mahoney Time” television show (hereinafter referred to as the show.) The contract set forth the rights of the parties with respect to the show's production and syndication. Under section 4 of the agreement respondents owned all of the videotapes of the show. Section 17, dealing with future syndication, provided that both parties had the right to initiate syndication of the show with third parties and that each party was to receive 50 percent of the net profits from any resulting syndication. Subsection C of section 17 provided respondents could erase the videotape of each show six months after its original broadcast.

In 1968 respondents sent April a new contract which, if accepted, would implement the syndication clause of the 1965 contract by conferring upon respondents the exclusive right to initiate syndication for a limited period of time. April signed the contract and returned it to respondents.

The new 1968 contract altered the rights of the parties in several respects. With respect to respondents, they no longer had the right to erase the videotapes of the show. They had the exclusive right to initiate syndication but that exclusivity was limited to the time in which the contract remained in effect. It follows that under the new agreement April could not initiate syndication at all.[2] Also, April's compensation was

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[1] Since this appeal is based on judgments on the pleadings and of nonsuit on the opening statement, the allegations of the complaint and opening statement are assumed to be true. Consequently, many of the “facts” recited in this opinion will be subject to proof in later proceedings.

[2] As we explain later, however, once the 1968 contract expired April's rights to initiate syndication were reinstated.

changed: the 1968 contract provided that April would be paid 20 percent of the syndication revenue, rather than the 50 percent compensation April was to receive under the earlier agreement.

The 1968 contract provided for automatic termination in five years, or earlier if the shows were not broadcast for a certain period of time.

April alleges that some time in 1969 it attempted to negotiate syndication agreements with various third parties and in that connection offered to purchase the videotapes of the show from respondents. We assume these negotiations were entered even though April had no right to initiate syndication while the 1968 contract remained in effect.

Between November of 1969 and March of 1970, presumably in response to April's efforts to purchase the tapes, respondents wrote two letters to April offering to buy the exclusive rights to broadcast and license the show for another two years on terms different from those in the 1968 contract. In the second of the two letters, dated March 31, 1970, respondents also warned April the videotapes would be erased unless April accepted respondents' new terms. There is no record of any response by April to these letters.

April alleges that in 1976 it discovered the video tapes had actually been erased at some unknown date. Shortly after this discovery, April filed suit. The first amended complaint set forth three causes of action: breach of contract; breach of fiduciary duty of a joint venturer; and intentional interference with prospective advantage. April is no longer pursuing the third cause of action.

Respondents demurred on two grounds: (1) the complaint failed to state a cause of action for breach of fiduciary duty or for breach of contract; and (2) both causes of action were barred by the statute of limitations. The demurrer was overruled.

At trial respondents moved for a judgment on the pleadings on basically the same grounds as the demurrer. This motion initially was denied. After rejecting April's proposed second amended complaint, however, the court reversed itself and granted the motion as well as respondents' motion for a judgment of nonsuit after April's opening statement.

Discussion

We consider first the standard of appellate review applicable where motions for judgment on the pleadings and judgment of nonsuit on the opening statement have been granted. It is well settled that review of a judgment on the pleadings is confined to the face of the pleading under attack and all facts alleged in the pleading must be accepted as true.^ Similarly, review of a judgment of nonsuit on the opening statement accepts as proved all of the facts alleged in the opening statement and "must indulge in all favorable inferences reasonably arising from those facts." (*Smith v. Roach* (1975) 53 Cal.App.3d 893, 897 citing *Cole v. State of California* (1970) 11 Cal.App.3d 671, 674; *Timmsen v. Forest E. Olson, Inc* . (1970) 6 Cal.App.3d 860, 867-868.)

In its first amended complaint April alleges breach of the 1965 contract only. In counsel's opening statement, however, reference is made to both the 1965 and the 1968 agreements.[3] Thus, for purposes of reviewing the order granting judgment on the

[3] The 1968 agreement also is alleged in the second amended complaint tendered by the plaintiff at trial but rejected by the trial judge.

pleadings we consider only the earlier agreement and accept all matters pleaded as true.^ For purposes of reviewing the judgment of nonsuit, however, we consider both agreements, accept as true all facts stated in counsel's opening statement, and draw all reasonable inferences in favor of April.~

[The court discussed its holding that April Enterprises has stated a cause of action for breach of the implied covenant of fair dealing. – Ed.]

April Has Also Stated a Cause of Action for Breach of Fiduciary Duty by a Joint Venturer.

A. *Judgment on the Pleadings.*

In its complaint April alleged that the negotiations leading to creation of the 1965 contract created a joint venture. In the opening statement counsel also referred to the 1968 contract. April's position apparently is that both the 1965 and 1968 contracts merely implemented an over-arching oral joint venture arrangement between the parties.

Respondents contend neither contract, nor any oral agreement, created a joint venture; they proffer two arguments in support of this contention. First, the clause in the 1965 contract labelling April as an independent contractor coupled with the contract's integration clause negates the existence of a joint venture. And, second, the contract taken as a whole details the rights and duties of the parties in such a fashion that it negates every element necessary to the creation of a joint venture. We disagree.

"A joint venture ... is an undertaking by two or more persons jointly to carry out a single business enterprise for profit." (*Nelson v. Abraham* (1947) 29 Cal.2d 745, 749.) The elements necessary for its creation are: (1) joint interest in a common business; (2) with an understanding to share profits and losses; and (3) a right to joint control.^ "Such a venture or undertaking may be formed by parol agreement [citations], or it may be assumed as a reasonable deduction from the acts and declarations of the parties [citations]." (*Nelson v. Abraham* , *supra.* , 29 Cal.2d 745, 749-750.) Whether a joint venture actually exists depends on the intention of the parties.^

Here, it cannot be determined as a matter of law that the complaint fails to allege facts supporting creation of a joint venture. April argues that the common enterprise to seek syndication of the show after it was produced and originally telecast was a joint venture and we find that the first amended complaint sufficiently alleges such a relationship. The requisite joint interest in a common business is supplied by the allegations that the parties planned to coproduce the shows in order to exploit the market for its syndication and that each contributed its own unique talents in furtherance of this objective. The requisite joint control is supplied by the allegation that each party agreed to have equal rights to initiate syndication of the show.

We also disagree with respondents' assertion that the requirement of sharing profits and losses is not met in the instant case. The 1965 contract provides that April and Metromedia each receive 50 percent of the profit derived from any syndication of the show. April alleges in its complaint that the parties also intended to share losses in the same proportion. Since the intention to share losses may be inferred from a contract provision to share profits,^ the joint venture action is not defeated by the 1965 contract's failure to specifically provide for the unlikely eventuality that syndication of the show would be a losing proposition. Moreover, where a joint venture involves the contribution of capital by one party and services by the other, neither party is required to reimburse the other for losses sustained. In the event of loss, the party contributing capital loses his capital and the one contributing labor loses the value of his efforts.^ Consequently, if the evidence at trial establishes that in practical effect the parties intended to share losses even though April's losses would be in the form of loss of its labor and Metromedia's would be in the form of lost capital, the difference in the type of loss sustained would not defeat a finding of joint venture.

Respondents next argument, that the contract's labelling of April as an independent contractor forecloses a finding of joint venture, fails since the conduct of the parties may create a joint venture despite an express declaration to the contrary.^

We note that where evidence is in dispute the existence or nonexistence of a joint venture is a question of fact to be determined by the jury.^ Consequently, whether a joint venture was actually created in the instant case is a question of fact to be decided at trial.^ For purposes of this appeal, however, we hold the complaint alleged facts sufficient to support a cause of action for breach of fiduciary duty of a joint venturer.

B. *Judgment of Nonsuit*.

Respondents nevertheless contend that any joint venture that may have been created by the 1965 contract was negated in 1968 because the agreement entered into that year gave Metromedia the exclusive right to license and syndicate, thereby removing the requisite control from April.[6] It also provided that April would be paid on the basis of gross receipts, and, according to respondents, if the parties intended to share losses as well as profits April would have been paid on the basis of net receipts. We address these arguments as they relate to the order granting respondents' motion for nonsuit.

As we noted earlier, our view of the 1968 contract is that it merely implemented the earlier joint venture during the period in which it remained in effect. Moreover, the 1968 contract strengthens April's assertion of an oral agreement of joint venture if it is construed as representing a written implementation of decision to "take turns" syndicating the show, i.e., respondents had exclusive rights to syndicate until the 1968 agreement terminated, at which time exclusive rights to initiate syndication vested in April.

A joint venture continues until the purpose for which it was formed has been accomplished or it is expressly extinguished.^ And a subsequent agreement between joint venturers which merely provides for a different distribution of profits does not change the relationship unless it also expressly extinguishes the earlier agreement.^

There is no evidence before this court that one of the purposes of the joint venture-to exploit the market for syndication of the television show-has been accomplished. Indeed, the 1968 agreement evidences the parties intended to "take turns" initiating syndication, with April's turn coming after the 1968 contract terminated. Neither is there evidence of express extinguishment. Thus, the 1968 agreement, absent evidence that

[6] According to the terms of the 1968 contract, however, Metromedia's exclusive rights to initiate syndication were time limited. Metromedia had exclusive rights only until the 1968 contract expired. Once that happened Metromedia's exclusive syndication rights were exhausted and April was left with the remaining rights to initiate syndication of the show.

may be introduced at trial to the contrary, does not defeat the cause of action based on joint venture and granting the judgment of nonsuit was also error.~

[The court next discussed KTTV's contention that the action was time barred by the statute of limitations. The court applied the discovery rule to hold that the action was not time barred on the face of the pleadings or the opening statement. The court went on to note that, at trial, the fact finder would determine whether April exercised due diligence in discovering the injury. If the April's allegations of lack of knowledge of the injury were sustained, then April could not be accused of having failed to use reasonable and proper diligence to enforce the claim. –Ed.]

Conclusion

This case cries out for a full development of the facts through a trial of the action. Applying the standards of review for judgment on the pleadings and nonsuit, we find the first amended complaint, the second amended complaint and the partial opening statement all state causes of action for breach of contract and breach of joint venture. The allegations of the answer and various motions and briefs filed by Metromedia may tend to undermine one or both of these causes of actions. But these allegations are not properly considered on a motion for judgment on the pleadings or a nonsuit. Similarly, applying those same standards of review, we find nothing in April's pleadings which raises a statute of limitations defense. Once again it is the allegations of Metromedia's answers, motions and briefs which suggest the possibility April's action may be barred. And once again it is not appropriate to take these allegations into consideration on a motion for judgment on the pleadings or nonsuit.

Accordingly, this judgment could have been reversed without reaching a number of the issues decided in this opinion. However, we desire to avoid a game of judicial ping pong between trial and appellate court, if at all possible. Thus, we felt it important to dispose of some particularly knotty legal problems which we anticipate may be raised by likely configurations of the facts as might emerge early in the proceedings after remand.

Disposition

The judgment is reversed and remanded for further proceedings consistent with the views expressed in this opinion.

Legend: ~ *matter omitted* ^ *citation matter omitted*

References to "appellant" changed to "April" throughout, without specific notation.