

OREGON LAW UPDATE

Discovery Rule Read Into Statutes That “Accrue”

case in point...

From the desk of Jeff Eberhard: Oregon’s “discovery rule” states that a claim doesn’t “accrue” for purposes of triggering the statute of limitations clock until after a plaintiff discovered, or should have discovered, the injury. However, the existence of a discovery rule cannot be assumed, but rather must be embodied in the applicable statute of limitations. The Oregon Supreme Court recently held that the ORS 12.080(4), which is silent as to whether the discovery rule applies, is subject to the discovery rule by virtue of ORS 12.010 with the interpretation of the word “accrue” to mean “discovery.”

Claims Pointer: Claims for conversion (wrongful taking) and replevin (recovery of property) “accrue” under ORS 12.080(4) by virtue of ORS 12.010 when plaintiff knows or reasonably should know the elements of such claims. This effectively extends the period for a plaintiff to bring a conversion or replevin claim.

Rice v. Mary Rabb, CV091445, 2014 WL 503594 (Or. Jan. 30, 2014)

Plaintiff Rice (“Owner”) inherited a “Queen Outfit” that was used in the 1930 “Queen of the Pendleton Round-Up” show. At some point, Lieuallen, an acquaintance, approached the Owner requesting that she give the outfit to her. The Owner initially declined, but ultimately decided to display the outfit at the Pendleton Round-Up and Happy Canyon Hall of Fame (“Hall of Fame”). The Owner gave the outfit to Lieuallen to be delivered to the Hall of Fame but did not gift or transfer ownership of the outfit to Lieuallen. In 2000, defendant Rabb, who is an heir of Lieuallen, went to the Hall of Fame and demanded return of the outfit on behalf of Lieuallen. The Hall of Fame promptly complied with Rabb’s request, and gave her the outfit. The Owner, who is legally blind, was unaware that the outfit had been removed from the Hall of Fame until 2007, more than six years after the act. The Owner then demanded that Rabb return the outfit, and Rabb refused.

In 2009, the Owner brought an action against Rabb and the Hall of Fame for conversion (wrongful taking of the outfit) and replevin (recovery of the outfit). Rabb responded by filing a motion to dismiss the Owner’s complaint based on the fact that the complaint had not been commenced within the time allowed by statute. Rabb argued that the six-year limitation period began to run when Rabb obtained the outfit from the Hall of Fame in 2000 and that the Owner’s action was time-barred because she filed her complaint more than six years after this occurred. The trial court and Court of Appeals agreed with Rabb and dismissed the Owner’s complaint.

The Owner appealed to the Oregon Supreme Court arguing that the applicable statute of limitations, ORS 12.080(4), incorporates a discovery rule because it is subject to ORS 12.010, which states that the statute of limitations commences “after the cause of action shall have accrued.” Under prior Oregon case law, an action does not “accrue” until an injury is discovered or should have been discovered. Based on this rule, the Owner contended that her cause of action did not “accrue” until she had actual or constructive knowledge that Rabb had removed the outfit from the Hall of Fame in 2007, not when Rabb gained possession in 2000. Therefore, her action filed in 2009 was brought within the time limit allowed by law. The Oregon Supreme Court agreed with the Owner and held that ORS 12.080(4) incorporates a discovery rule, thereby extending the clock of the statute of limitations for claims of conversion and replevin to when a plaintiff knows or reasonably should know the elements of his or her claim.



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