

CLAIM OF CADLEROCK PROPERTIES : JUDICIARY COMMITTEE
JOINT VENTURE, L.P. :
: STATE OF CONNECTICUT
:
: H. J. NO. 61
:
: MARCH 20, 2009

**WRITTEN TESTIMONY IN SUPPORT OF CLAIM
OF CADLEROCK PROPERTIES JOINT VENTURE, L.P.**

The Claimant, Cadlerock Properties Joint Venture, L.P., respectfully submits its written testimony in support of its claim seeking permission to bring a slander of title lawsuit (the "Claim") against the Commissioner of Environmental Protection (the "Respondent"). Although the Claim was rejected on the grounds that it was not timely filed, the statute of limitations related to this tort did not begin to run until the Respondent rejected the Claimant's demand to modify an Order affecting the property at issue. Because the Respondent's rejection of the demand took place within one year of the filing of the Claim, the Claim was timely and should be heard by the Claims Commissioner.

The Claimant's slander of title claim concerns a particular order (the "Order") that the Respondent issued in 1997 with regard to a 325-acre parcel of real property in Willington and Ashford (the "Site"). The Order was recorded on the land records of both towns on December 28, 1998. Before the Claimant took possession of the Site, it was divided into twelve separate, abutting lots. The Order affects the entire Site. However, in a recent environmental assessment of the Site by the United States Department of Environmental Protection that was assembled in January 2007, evidence of contamination was found on just four of these twelve lots.

The scope of the Order has had the effect of causing any potential buyer of a single lot to be lawfully obligated to clean up the entire Site and comply with the other terms and conditions of the Order, even if the purchased lot has never been found to be contaminated.

Since the date the Respondent first issued the Order, the Claimant has been unable to sell or lease any portion of the Site, including the uncontaminated lots. The Claimant listed the Site with a local realtor, but to no avail. For example, the Claimant was approached by two different parties interested in leasing an uncontaminated lot for the purpose of erecting a cellular tower. On May 3, 2001, the Claimant entered into a lease agreement with Tower Ventures, Inc. This lease was terminated in December, 2001 after Tower Ventures, Inc. learned of the Order. Similarly, in February, 2003, AT&T Wireless approached the Claimant regarding a potential lease for the erection of a cellular tower on the Site. AT&T did not go forward with the lease after learning of the Order. A number of persons interested in purchasing the uncontaminated lots approached the Claimant's realtor concerning their interest in the uncontaminated lots. However, once those persons had learned of the Order, they immediately lost interest.

The issuance of the Order and its recording on the Willington and Ashford land records constitutes a publication to the world of the statements contained therein. These statements are false, and remain false, in that eight of the twelve lots have never been proven by the Respondent to contain solid waste or pollutants. Moreover, the statements contained in the Order were made with malice in that the Respondent acted with reckless disregard for the rights of Cadlerock when it issued the Order and caused it to be recorded on the Willington and Ashford land records and against the uncontaminated lots. The presence of the Order on the Willington and Ashford land records has resulted in monetary damages to the Claimant, including but not limited to lost income and diminution of property value.

Although the Order was placed on the Willington and Ashford land records on December 28, 1998, the Claimant's slander of title claim is not barred by the statute of limitations set forth in Conn. Gen. Stat. § 4-148(a), as such claims do not begin to run until the defendant

relinquishes its claim against the plaintiff's property.

The Claims Commissioner based his decision to deny the Claim solely on the argument raised by the Respondent that the Claim was untimely filed and was, therefore, barred by the statute of limitations. The Respondent's argument misses the mark, as it fails to identify the correct moment when the Claim accrued. According to the Respondent, the Claim accrued either when the Claimant recorded the Order on the land records on December 28, 1998, or when the Connecticut Supreme Court affirmed the validity of the Order on January 20, 2000. In either scenario, the Claimant argues, the Claim is barred by any one of a number of possible applicable statutes of limitations.

Contrary to the Respondent's argument, the tort of slander of title does not begin to accrue until the defendant fails to withdraw the alleged published falsehood after a demand by the property owner:

"Slander of title is a *tort* whereby the plaintiff's claim of title [to] land or other property is disparaged by a letter, caveat, mortgage, lien or some other written instrument" (Emphasis added). D. Wright, J. Fitzgerald & Ankerman, Connecticut Law of Torts (3d Ed. 1991) § 167, p. 447. A cause of action for slander of title consists of "any false communication which results in harm to interests of another having pecuniary value" (Internal quotation marks omitted.) OSP, Inc. v. Aetna Casualty & Surety Co., 256 Conn. 343, 359 n. 15, 773 A.2d 906 (2001). See generally 5 Restatement (Second), Torts § 623A (1981). In other words, slander of title is a falsehood published to third parties that is not withdrawn after a demand by the titleholder, which impugns the basic integrity or creditworthiness of an individual or a business.

Bellemare v. Wachovia Mortgage Corp., 284 Conn. 193, 202 (2007).

Here, the Claimant's slander of title claim did not begin to accrue until the Claimant's demand that the Order be modified was expressly rejected by the Respondent. That rejection

occurred on May 29, 2007, when Assistant Attorney General John M. Looney, on behalf of the Respondent, rejected the Claimant's demand to modify the Order, as expressed in a letter from the Claimant's counsel to the Respondent dated May 2, 2007.

The holding of the Supreme Court in Bellemare is consonant with the entry in the legal treatise Corpus Juris Secundum, Limitations of Actions, § 199, Libel and Slander. As stated therein, although the statute of limitations for defamation actions generally begins to run when the defamatory statement is published, a slander of title action "may not begin to run until the defendant relinquishes his or her claim against the plaintiff's property."

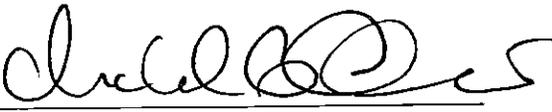
Consequently, because the Claimant's slander of title claim did not begin to accrue until May 27, 2007, when the Claimant expressly rejected the Claimant's demand that the Order be modified, the Claim, which is dated January 2, 2008, is well within the one-year statute of limitations set forth in Conn. Gen. Stat. § 4-148(a).

It is the Claimant's understanding from the Judiciary Committee staff that the complete file related to this matter will be made available to the members of the Judiciary Committee. Nonetheless, for the sake of convenience, the Claimant respectfully submits and appends hereto the following documents as exhibits:

- A: Claimant's demand letter to the Respondent dated May 2, 2007;
- B: Respondent's rejection of Claimant's demand dated May 29, 2007;
- C: Corpus Juris Secundum, § 199, Libel and Slander.

Respectfully submitted,

THE CLAIMANT, CADLEROCK PROPERTIES
JOINT VENTURE, L.P.

By 

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May 2, 2007

Gina McCarthy, Commissioner
Department of Environmental Protection
79 Elm Street, Third Floor
Hartford, CT 06106

**Re: 392-460 Squaw Hollow Road, (Route 44) Ashford/Willington, CT/DEP Order No.
SRD-088**

Dear Commissioner McCarthy:

I represent the interests of Cadlerock Properties Joint Venture, L.P., owner of 392-460 Squaw Hollow Road (aka Route 44), located in the towns of Ashford and Willington, CT. This property consists of 12 subdivided, abutting lots totaling approximately 325 acres.

On August 15, 1997, your predecessor, Sidney J. Holbrook, issued Order No. SRD-088 ("the Order"), which alleges that the entire property is contaminated with hazardous materials, further ordering my client to remove all solid waste from the site and to investigate the existing and potential degree of soil, ground water and surface water contamination. I have enclosed a copy of the Order for your review. On December 28, 1998, the Order was recorded in the town land records of Ashford and Willington against the entire property.

Subsequent to the issuance of the Order, my client retained HRP Associates to conduct an evaluation of the site and to determine the extent of the contamination and to estimate the cost to clean up the site. HRP's most recent report has determined the cost to further investigate and remediate the site is between \$1,145,000.00-\$3,030,800.00. We disagree with the findings of HRP and the DEP. Furthermore, you should note that my client had no part in any of the alleged contamination that may exist on the property. To the extent there is contamination, it was contaminated by individuals known to the DEP, yet no action has ever been taken against them.

EXHIBIT A

DEP

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As part of HRP's investigation, it has been determined that only four of the twelve lots allegedly contain contamination. It has never been proven that the remaining lots are contaminated. However, because the Order was recorded against all twelve lots, it has rendered the "remaining lots" worthless.

Cadlerock Properties Joint Venture, L.P. has made numerous attempts to lease the "remaining lots" for commercial purposes. They have also made numerous attempts to sell the "remaining lots". Each and every time an interested person learns of the Order they simply walk away as the Order would require the purchaser of any one "remaining lot" to become obligated to comply with the terms and conditions of the Order as it pertains to the "contaminated lots". This has caused my client great financial harm. The Order has caused an unconstitutional taking of the "remaining lots" and we most respectfully request that your office take whatever steps are necessary to modify the Order as issued so that it does not encompass the "remaining lots" and to release the "remaining lots" from the Order recorded against the Willington and Ashford land records. According to HRP, the "remaining lots" are identified as follows:

Ashford List No. 08600, Map 43, Block A, Lot 19 ("Lot 19")
Ashford List No. 08700, Map 43, Block A, Lot 27 ("Lot 27")
Ashford List No. 08800, Map 43, Block A, Lot 14 ("Lot 14")
Ashford List No. 09100, Map 43, Block A, Lot 13 ("Lot 13")
Ashford List No. 09300, Map 43, Block A, Lot 3 ("Lot 3")

According to HRP, the following lots are allegedly contaminated:

Ashford List No. 08900, Map 43, Block A, Lot 6 ("Lot 6")
Ashford List No. 09000, Map 43, Block A, Lot 7 ("Lot 7")
Ashford List No. 08400, Map 43, Block A, Lot 9 ("Lot 9")
Ashford List No. 08500, Map 43, Block A, Lot 8 ("Lot 8")
Willington List No. 04800, Map 6, Block 011, Lot 00 ("Lot 00")
Willington List No. 04900, Map 6, Block 011, Lot 0A ("Lot 0A").

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I would appreciate a formal reply within 30 days. Unless we hear from you, it is my client's intention to pursue alternative remedies.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a central vertical stroke, positioned below the text "Very truly yours,".

Edward C. Taiman, Jr.

ECT/he

cc: Jon Gluckner

RICHARD BLUMENTHAL
ATTORNEY GENERAL



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Office of The Attorney General
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May 29, 2007

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RE: *DEP Order No. SRD-088*
Cadlerock Properties Joint Venture, L.P. - Ashford and Willington Property

Dear Attorney Taiman:

The Connecticut Department of Environmental Protection has forwarded a copy of your May 2, 2007 letter to this office for a response as the Attorney General's office is assisting the DEP in this matter.

As you know, Order No. SRD-088 is a final order of the agency which was ultimately upheld by the Connecticut Supreme Court in 2000 in *Cadlerock Properties Joint Venture, L.P. v. Commissioner of Environmental Protection*, 253 Conn. 661. As a final order, Cadlerock Properties Joint Venture, L.P. cannot now dispute the agency's findings of fact.

In order for the Department of Environmental Protection (DEP) to release its order for all or some of the lots that make up the site as defined in Order No. SRD-088, your client must provide DEP with sufficient documentation to demonstrate that an appropriate investigation has been performed and the agency's Remediation Standard Regulations have been complied with. Once this information is provided to DEP, it will be able to determine if your client's request is appropriate.

Very truly yours,

A handwritten signature in black ink that reads "John M. Looney".

John M. Looney
Assistant Attorney General

cc: Honorable Gina McCarthy

EXHIBIT B

Corpus Juris Secundum
Database updated December 2007
Limitations of Actions

by Paul Coltoff, J.D.; Jill Gustafson, J.D.; John R. Kennel, J.D., of the
National Legal Research Group; Jack K. Levin, J.D.; Carmela Pellegrino, J.D.;
Eric C. Surette, J.D.

VI. Accrual of Particular Rights of Action

B. Torts

2. Injuries to Person

Topic Summary; References; Correlation Table

§ 199. Libel and slander

West's Key Number Digest

West's Key Number Digest, Limitations of Actions ↪ 55(1), 95(1), (6), 104(1), (2)

A cause of action for libel or slander generally accrues, so as to start the running of limitations, at the time of the publication.

As a general rule, a cause of action for libel or slander accrues, so as to start the running of limitations, at the time of publication[FN1] and not on the date of discovery of the wrong,[FN2] or when the alleged injury occurred.[FN3] Thus, the statute of limitations on defamation actions generally begins to run when the defamatory statement is published.[FN4]

In the absence of fraudulent concealment of a cause of action,[FN5] this rule may apply even though the person defamed has no knowledge of the publication until sometime afterwards.[FN6] Under the discovery rule, however, the statute of limitations with respect to libel and slander begins to run when the person defamed first learns or reasonably should have learned of the publication of the defamatory material.[FN7]

Where a cause of action is based upon a defamatory matter appearing in a publication, the statute of limitations commences to run upon the first general distribution of the publication to the public,[FN8] and any subsequent appearances or distributions of copies of the original publication neither create fresh causes of action nor toll the applicable statute of limitations. [FN9] Thus, the earliest date on which the allegedly defamatory information is substantially and effectively communicated to a meaningful mass of readers is the determinative factor on the issue of the date of publication,[FN10] and the date on the cover of the publication is not controlling regarding the commencement of the statutory period of limitation.[FN11]

Republication.

A republication of a defamatory material is a separate cause of action which starts the statute of limitations running anew.[FN12]

Slander of title.

The statute of limitations applicable to an action for slander of title may not begin to run until the defendant

relinquishes his or her claim against the plaintiff's property.[FN13]

The statute of limitations on a claim for slander of title based on the filing of a mechanic's lien does not begin to run when the contractor first files its lien, but only when property is sold at a reduced price, when special damages sustained by the property owner can be ascertained.[FN14]

CUMULATIVE SUPPLEMENT

Cases:

A libel claim arises on the date the defamatory statement was published, and the one-year statute of limitations runs from that date. Qparaugo v. Watts, 884 A.2d 63 (D.C. 2005).

[END OF SUPPLEMENT]

[FN1] U.S.--Fidelity & Deposit Co. of Maryland v. Smith, 730 F.2d 1026 (5th Cir. 1984).

N.Y.--Pico Products, Inc. v. Eagle Comtronics, Inc., 96 A.D.2d 736, 465 N.Y.S.2d 628 (4th Dep't 1983).

Ohio--Rainey v. Shaffer, 8 Ohio App. 3d 262, 456 N.E.2d 1328 (11th Dist. Lake County 1983).

Tex.--McHenry v. Tom Thumb Page Drug Stores, 696 S.W.2d 664 (Tex. App. Dallas 1985), dismissed, (Feb. 19, 1986).

[FN2] N.Y.--Memory's Garden, Inc. v. D'Amico, 84 A.D.2d 892, 445 N.Y.S.2d 45 (3d Dep't 1981).

R.I.--Mikaelian v. Drug Abuse Unit, 501 A.2d 721 (R.I. 1985).

[FN3] Ala.--Harris v. Winter, 379 So. 2d 588 (Ala. 1980).

[FN4] U.S.--Muzikowski v. Paramount Pictures Corp., 322 F.3d 918 (7th Cir. 2003) (applying Illinois law).

Libel claim

The statute of limitations on a libel claim, which stemmed from an allegation that a mortgagee allowed a foreclosure to remain open on the public records even after the mortgagor sold its interest in the mortgage, was one year from the date of publication.

U.S.--Stringer v. Lijnve, 92 Fed. Appx. 818 (2d Cir. 2004).

Single publication rule

(1) Under the single publication rule, the publication of a single defamatory item, such as a book or article, even if sold in multiple copies, and in numerous places, at various times, gives rise to only one cause of action which arises when the finished product is released by the publisher for sale.

U.S.--Van Buskirk v. The New York Times Co., 325 F.3d 87 (2d Cir. 2003) (applying New York law).

(2) With respect to the statute of limitations for defamation under the "single-publication rule," which holds that

for any single edition of a newspaper or book, there is but a single potential action for a defamatory statement contained in the newspaper or book, no matter how many copies of the newspaper or the book were distributed, publication generally occurs on the first general distribution of the publication to the public, regardless of when the plaintiff secured a copy or became aware of the publication.

Cal.--Shively v. Bozanich, 31 Cal. 4th 1230, 7 Cal. Rptr. 3d 576, 80 P.3d 676 (2003), as modified, (Dec. 22, 2003).

[FN5] U.S.--Clay v. Equipax, Inc., 762 F.2d 952 (11th Cir. 1985).

Mich.--Arent v. Hatch, 133 Mich. App. 700, 349 N.W.2d 536 (1984).

As to tolling statutes of limitations due to fraudulent concealment, generally, see § 118.

[FN6] Mich.--Jawkins v. Justin, 109 Mich. App. 743, 311 N.W.2d 465 (1981).

Ignorance of publication

Neb.--Lathrop v. McBride, 209 Neb. 351, 307 N.W.2d 804 (1981).

[FN7] U.S.--Adler v. American Standard Corp., 538 F. Supp. 572 (D. Md. 1982).

Mo.--Jones v. Pinkerton's Inc., 700 S.W.2d 456 (Mo. Ct. App. W.D. 1985).

Or.--White v. Gumsey, 48 Or. App. 931, 618 P.2d 975 (1980).

Discovery rule not applicable

(1) The equities allowing the discovery rule to apply to hidden communications did not apply to a statement contained in a book distributed to the public, notwithstanding the confidential nature of private publications republished in the book.

Cal.--Shively v. Bozanich, 31 Cal. 4th 1230, 7 Cal. Rptr. 3d 576, 80 P.3d 676 (2003), as modified, (Dec. 22, 2003).

(2) The discovery rule does not apply to the statute of limitations for slander.

Tenn.--Quality Auto Parts Co., Inc. v. Bluff City Buick Co., Inc., 876 S.W.2d 818 (Tenn. 1994).

As to the discovery rule, generally, see § 116.

[FN8] U.S.--Fleury v. Harper & Row, Publishers, Inc., 698 F.2d 1022 (9th Cir. 1983).

Ruley v. Nelson, 106 F.R.D. 514, 2 Fed. R. Serv. 3d 469 (D. Nev. 1985).

Pa.--Graham v. Today's Spirit, 503 Pa. 52, 468 A.2d 454, 41 A.L.R.4th 535 (1983).

[FN9] Ill.--Founding Church of Scientology of Washington, D. C. v. American Medical Ass'n, 60 Ill. App. 3d 586, 18 Ill. Dec. 5, 377 N.E.2d 158 (1st Dist. 1978).

Minn.--Church of Scientology of Minnesota v. Minnesota State Medical Ass'n Foundation, 264 N.W.2d 152 (Minn. 1978).

[FN10] U.S.--Morrissey v. William Morrow & Co., Inc., 739 F.2d 962, 39 Fed. R. Serv. 2d 837 (4th Cir. 1984); Wildmon v. Hustler Magazine, Inc., 508 F. Supp. 87 (N.D. Miss. 1980).

Cal.--Strick v. Superior Court, 143 Cal. App. 3d 916, 192 Cal. Rptr. 314 (2d Dist. 1983).

[FN11] U.S.--Morrissey v. William Morrow & Co., Inc., 739 F.2d 962, 39 Fed. R. Serv. 2d 837 (4th Cir. 1984).

Cal.--McGuinness v. Motor Trend Magazine, 129 Cal. App. 3d 59, 180 Cal. Rptr. 784 (2d Dist. 1982).

[FN12] U.S.--Oberman v. Dun & Bradstreet, Inc., 586 F.2d 1173 (7th Cir. 1978).

Reprint in paperback edition

N.Y.--Rinaldi v. Viking Penguin, Inc., 52 N.Y.2d 422, 438 N.Y.S.2d 496, 420 N.E.2d 377 (1981).

[FN13] U.S.--Warren v. Bank of Marion, 618 F. Supp. 317 (W.D. Va. 1985).

[FN14] Utah--Valley Colour, Inc. v. Beuchert Builders, Inc., 944 P.2d 361 (Utah 1997).

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CJS LIMITATION § 199
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