IN THE SUPREME COURT OF THE STATE OF NEVADA

LFC MARKETING GROUP, INC., A CALIFORNIA CORPORATION, D/B/A BRANDT COMMERCIAL SIGNS, Appellant, vs. WILLIAM PATTERSON CASHILL, INDIVIDUALLY, Respondent.	No. 43107
LFC MARKETING GROUP, INC., A CALIFORNIA CORPORATION, D/B/A BRANDT COMMERCIAL SIGNS, Appellant, vs. WILLIAM PATTERSON CASHILL, INDIVIDUALLY, Respondent.	No. 43508

FILED

JAN 24 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a consolidated appeal from a district court order dismissing an action for abuse of process and a post-judgment order awarding attorney fees.[1] Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

Appellant LFC Marketing Group, Inc., d/b/a Brandt Commercial Signs (LFC), sued respondent William Patterson Cashill for

[1]This court consolidated the following two appeals: (1) Docket No. 43107, which seeks to reverse the district court order granting summary judgment and dismissing the case, and (2) Docket No. 43508, which seeks to reverse the district court's subsequent order granting motion for attorney's fees. LFC Marketing Group v. Cashill, Docket Nos. 43107/43508 (Order Consolidating Appeals, May 22, 2007).

08-01823

abuse of process for the wrongful filing of a writ of attachment.[2] The parties participated in arbitration, which resulted in a decision in favor of Cashill. When LFC requested a trial de novo, the district court dismissed the suit on the ground that it was time barred. Without specifying which statutory provision it relied on, the district court found that LFC brought its claim beyond the two-year statute of limitation period and concluded that the statute of limitation for an abuse of process claim involving a writ of attachment begins to run from the date the district court issues the writ. Accordingly, the district court granted summary judgment dismissing the abuse of process claim. Thereafter, pursuant to NAR 20(B)(2)(a), the district court awarded Cashill attorney fees.[3] LFC timely appealed.

DISCUSSION

On appeal, LFC argues that the statute of limitation for an abuse of process claim should begin to run when the underlying litigation concludes. LFC contends that its cause of action for abuse of process accrued when this court held that the writ of attachment was excessive, not when the writ was issued. We disagree.

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[2]The writ of attachment was issued by the district court in August of 1998. Thereafter, on March 8, 2002, this court held that the writ was excessive and remanded the matter to the district court.

[3]See NAR 20(B)(2)(a) (providing that if a "party requesting the trial de novo fails to obtain a judgment that exceeds the arbitration award by at least 20 percent of the award, the non-requesting party is entitled to its attorney's fees and costs associated with the proceedings following the request for trial de novo").

When a dispute concerns a pure question of law, as it does here, this court reviews de novo."[4]

Nevada appears to have no statute or case law that specifically addresses the statute of limitation for the intentional tort of abuse of process.[5] Generally, in tort actions, a cause of action accrues when the wrongful conduct occurs and the party sustains an injury for which there is a legal remedy.[6] However, the statute of limitation on torts does not run until "the aggrieved party knew, or reasonably should have known, of the facts giving rise to damage or injury."[7] Thus, in abuse of process claims, the discovery of injury and its cause signify the accrual point from which the statute of limitation runs.[8]

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[4]Matter of Halverson, 123 Nev. ___, ___, 169 P.2d 1161, 1172 (2007).

[5]Ion Equipment Corp. v. Nelson, 168 Cal. Rptr. 361, 364 (Ct. App. 1980). LFC argued in the district court that a three-year statute of limitation is applicable to this case pursuant to NRS 11.190(3)(c). On appeal, LFC does not contest the district court's application of a two-year statute of limitation. Thus, this court does not reach the issue. Moreover, since the subject matter of the alleged abuse of process—the second writ of attachment—occurred in August 1998 and the action was brought in 2002, well past three years from the date the writ was issued, it is inconsequential which statute of limitation is appropriate.

[6]Peterson v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990).

[7]G and H Assocs. v. Ernest W. Hahn, Inc., 113 Nev. 265, 272, 934 P.2d 229, 233 (1997).

[8]Kappel v. Bartlett, 246 Cal. Rptr. 815, 822 (Ct. App. 1988) (concluding that the statute of limitation for abuse of process involving a writ of attachment begins when the writ is issued and the writ attaches to the subject property of the writ).

Here, assuming that Cashill wrongfully initiated the writ of attachment in an abuse of legal process as LFC claims, the injury occurred in August of 1998, when the district court issued the writ that froze LFC's funds. From that time forward, until the district court discharged the writ in 2002 following this court's remand, LFC could not access certain of its funds. Moreover, LFC's president acknowledged in his deposition that he believed at the time the district court issued the writ that Cashill had wrongfully filed the writ to withhold LFC's money. Because LFC discovered in August of 1988 the purported wrongful conduct by Cashill, i.e., the writ of attachment, and because LFC became aware of the injury when its assets were frozen, we conclude that the statute began to run at that time and LFC had until August of 2000 to bring an abuse of process claim. Instead, LFC waited until 2002 to bring the claim, nearly nineteen months after the statute of limitation had lapsed. Thus, we conclude that the district court properly dismissed the claim on the ground that it was time barred.

LFC argues that it could not file an abuse of process action against Cashill at the time the district court issued the writ because a writ is presumed valid. Thus, LFC argues that it had to wait for this court's determination that the writ was excessive. We disagree. The validity of the writ is not the focus of an abuse of process claim. In an abuse of process claim, "[t]he purpose for which the process is used, once it is issued, is the only thing of importance."[9] The simple fact that an action is

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[9]W. Page Keeton et al., Prosser and Keeton on Torts § 121, at 897 (5th ed. 1984).

still pending is not a bar to a claim of abuse of process.[10] Unlike an action for malicious prosecution where a plaintiff must prevail in the underlying litigation, an action for abuse of process does not require that the initial action terminated successfully.[11] Consequently, as it is unnecessary for the plaintiff to prove that the proceeding has terminated in his favor.[12] Therefore, LFC did not have to wait until this court's writ proceedings were concluded to bring its abuse of process claim.

The fact that the district court properly issued the second writ, or even that the writ was upheld by this court in favor of Cashill is immaterial, so long as the writ was misused for any purpose other than that which it was designed to accomplish.[13] A reversal by this court does not necessarily render the underlying claim an abuse of process.

CONCLUSION

We conclude that the statute of limitation for an abuse of process claim begins to run when the district court issues the writ and the

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[10]Moffett v. Commerce Trust Company, 283 S.W.2d 591, 599 (Mo. 1955); see also Barozzi v. Benna, 112 Nev. 635, 637, 918 P.2d 301, 302 (1996) (holding that "the frivolousness of a claim is determined at the time the claim is filed"); Brownsell v. Klawitter, 306 N.W.2d 41, 45 (Wis. 1981) (holding that an action for abuse of process may proceed without termination of action alleged to constitute abuse of process).

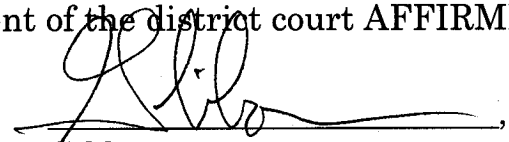
[11]LaMantia v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002

[12]Moffett, 283 S.W.2d at 599.

[13]Id.; see also Pourny v. Maui Police Dept., County of Maui, 127 F. Supp. 2d. 1129, 1153 (D. Haw. 2000) (holding that whether the defendant had a validly issued order is not the focus in an abuse of process action; the focus is whether the defendant used the order for an ulterior purpose).

writ attaches to the subject property.[14] We further conclude that a successful outcome of the underlying litigation is not necessary to establish a cause of action for an abuse of process claim. Therefore, the district court properly dismissed LFC's abuse of process claim on the ground that it was time barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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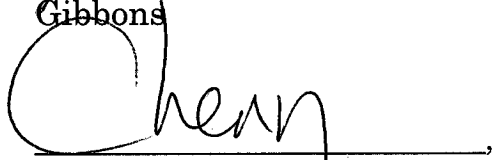

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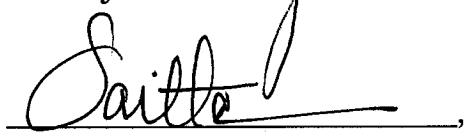

, J.
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cc: Second Judicial District Court Dept. 9, District Judge
Robert G. Berry, Settlement Judge
Mushkin, Hafer, Rasmussen & Singer
Laxalt & Nomura, Ltd./Reno
Washoe District Court Clerk

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[14]LFC also argues that it is entitled to a refund of its attorney fees should this court hold that the statute of limitation in an abuse of process action involving a writ of attachment begins to run when this court reverses the writ. In light of our conclusion, we reject LFC's argument.