

REMARKABLE “RESOLUTIONS”

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Cases and disputes are sometimes settled without fanfare, but with the New Year upon us, we wanted to share some of the more remarkable “Resolutions” that the lawyers from Kraftson Caudle have been involved with over the years:

Documented Distortion

A witness mysteriously produces a document (a drawing) at trial that has never been produced before. He explains why it was lost and only recently found. It is the key to the defendant’s case. With this document, Kraftson Caudle’s general contractor client and plaintiff has little chance of prevailing. The defendant affirms and reaffirms the authenticity of the document under oath multiple times. The only problem with the document is that a small notation buried within the document bears the unmistakable initials of the contractor’s company name - a company that had no affiliation with the Project when the drawings were purportedly created. There is no way the drawing would, or could, have referenced the contractor’s company name. When the notation is identified during cross-examination by the Kraftson Caudle lawyer, the defendant’s counsel immediately asks for a recess. The case settles minutes later for the full amount (in excess of \$5 million) plus attorneys’ fees.

Hat Trick

The parties are at an impasse during mediation. The Kraftson Caudle lawyer’s contractor client built a 25,000 square-foot home for a wealthy assisted-living facility developer. The settlement offers and demands are firmly entrenched. It is a matter of pride not to move further. The bright idea - put five numbers in a hat - the lowest being the owner’s last offer, the highest being the contractor’s last demand, with the other three amounts equally spaced between, and pick the settlement amount out of the hat! Some call this “baseball.” Both sides agree. The hitch - who is going to pull out the number. While the parties haggle over this seemingly minor detail for about two hours, the parties lose their nerve and settle for the midpoint without ever drawing a number. (Footnote: I really wish we could have drawn the number!)

Wordy Witness

The Kraftson Caudle lawyer is cross-examining the defendant’s key witness during a two day trial. According to her testimony, she - the owner’s property manager - never approved the contractor’s invoices and never agreed to pay the amounts sought. While the cross-examination is testy at times, given that the evidence suggests she is fabricating testimony, the witness never recants, stays cool and sticks to her guns. An unexpected recess is called by the judge and the parties exit to the courthouse hallway.

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During the recess, the witness approaches the contractor's president - with whom she maintains a good relationship - and says, "you guys should have been paid, I don't know why we are here." Just before cross-examination is set to resume, the contractor's lawyer is informed of this interesting conversation. Cross-examination reopens with the contractor's lawyer asking the same witness, "Did you just tell my client in the hallway that he should have been paid and that you don't know why we are here?" An extremely red faced and now perspiring witness, after a long pause, says "No." Shortly after that, the jury found for the contractor and awarded it every penny - plus interest. I guess they did not know why they had to be there either!

Detrimental Discourse

Kraftson Caudle's general contractor client is in a million dollar dispute with a nationally owned food services company over the construction of its central food distribution facility. The parties are at odds and the contractor threatens to sue. The owner asks that suit be delayed so the parties can mediate. The contractor reluctantly agrees. Mediation is unsuccessful and, interestingly, the owner's counsel states that they had actually filed suit the day before the mediation in the locale of their choosing - their home turf. The owner's lawyer smugly says they will "crush" the contractor on its home turf and will have "no mercy." The contractor immediately files its own lawsuit in the locale of the Project, a locale that will likely be unfriendly to the owner and its counsel. The owner files a motion to dismiss contractor's lawsuit based upon the "First to File" rule - a rule that states when two parties sue in different locales, the later filed lawsuit will usually be dismissed. The nasty e-mail exchanges from owner's counsel are included as part of the record. While the motion is pending, the decision makers are able to resolve the dispute - but the case will not be dismissed until payment is made. Months go by while the owner delays payment. While the owner is still delaying payment, the court denied the owner's motion and goes to great lengths to chastise the owner and its counsel for their inappropriate conduct and, further, sends the opinion to the local federal court of the owner's counsel for, "further action." Not surprisingly, the overdue payment from the owner comes within days and the case is quickly dismissed.

These are but a few of the interesting stories of the types of cases and resolutions the attorneys at Kraftson Caudle have had the opportunity to be involved with. We look forward to many more of these success stories. We hope all of you have had a joyous holiday and continue to have a happy, healthy and very prosperous New Year!

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