IN THE COURT OF APPEALS OF IOWA

No. 3-871 / 13-0280
Filed October 23, 2013

MICHAEL M. SELLERS,
Plaintiff-Appellant,

vs.

INTERSTATE POWER AND LIGHT COMPANY
a/k/a ALLIANT ENERGY CORPORATION,
Defendant-Appellees.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge.

Michael Sellers appeals from the district court's grant of a motion for summary judgment in favor of Interstate Power and Light Company, a/k/a Alliant Energy Corporation. **AFFIRMED.**

Trent W. Nelson and Michael M. Sellers of Sellers, Haraldson, and Binford, Des Moines, for appellant.

Mark A. Roberts and Dawn M. Gibson of Simmons Perrine Moyer Bergman, P.L.C., Cedar Rapids, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

POTTERFIELD, P.J.

Michael Sellers appeals from the district court's grant of summary judgment in favor of Interstate Power and Light Company, a/k/a Alliant Energy Corporation (Alliant). He argues the grant of this motion was improper as Alliant lost its right to enforce its agreement with him, Alliant would be unjustly enriched if allowed to recover, and that genuine issues of material fact exist to preclude summary judgment. We affirm, finding the ten-year statute of limitations for written contracts does not bar Alliant's recovery and Sellers' remaining arguments are not preserved for our review.

I. Facts and proceedings.

Michael Sellers sought to develop a tract of land in Newton, Iowa. He signed an Electric Facilities Extension Agreement with Alliant Energy on November 23, 2000 to provide electricity to the development. Under this agreement, Sellers was to advance funds to Alliant of $31,190.06, which represented the cost of construction for Alliant to provide electricity to the proposed development. Alliant was to hold these funds and use them to refund Sellers the amounts paid by residents of the development for electricity during a ten-year period. At the end of this period, Alliant would own whatever advanced funds were not refunded to Sellers.

After the agreement was signed, Sellers was unable to make the advance payment, and Alliant agreed to modify the contract to allow for Sellers to provide a bond in the same amount in lieu of the cash advance. Merchants Bonding Company issued a bond in Sellers' favor for this purpose. During the next ten years, development of the Newton land did not progress and no refunds were

earned or paid. In October 2011, Alliant contacted Sellers to collect on the bond; Sellers notified Alliant of his intent not to pay. Sellers filed an action for declaratory and injunctive relief, seeking to prevent Alliant from collecting on the bond. Sellers argued that any action by Alliant fell outside the ten-year statute of limitations for written contracts, that he was fraudulently induced into entering into the contract, and that Alliant could not recover on the bond due to the doctrine of laches. Both parties moved for summary judgment. The district court granted the motion in favor of Alliant, finding the ten-year statute of limitations did not bar recovery, as the cause of action did not accrue until after the ten years had passed. Sellers appeals.

II. Analysis.

> We review a grant of summary judgment for the correction of errors at law.
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> Our review of an appeal from a summary judgment ruling takes two steps. First, we examine the entire record to determine whether genuine issues of material fact exist; if no factual dispute exists, we determine whether the district court correctly applied the law. Summary judgment is properly granted if the only controversy concerns the legal consequences flowing from undisputed facts. Application of a statutory limitation period to undisputed facts involves a pure question of law.

Diggan v. Cycle Sat, Inc., 576 N.W.2d 99, 102 (Iowa 1998) (internal citations omitted).

A. Statute of limitations.

Iowa Code section 614.1 (2011) sets the statute of limitations for contract actions. It reads, "Actions may be brought within the times herein limited, respectively, after their causes accrue . . . those founded on written contracts . . . within ten years." Iowa Code § 614.1. Sellers argues the cause of action

accrued at the time of the contract, when he failed to make the advance payment in cash. Alliant argues the cause of action could not accrue until the ten years passed and the extent of any repayment required for the developed property was known.

"The general rule is that a cause of action accrues when the aggrieved party has a right to institute and maintain a suit. In the case of a contract dispute, that right accrues and the limitations period begins running upon breach of the contract." *Diggan*, 576 N.W.2d at 102 (internal citations and quotation marks omitted). The original agreement stated Sellers would advance $31,190.06 to Alliant to cover the costs of construction. Both parties agreed a bond would be posted to cover the advance amount. Over a period of ten years, the parties agreed Sellers would be refunded this money to the extent of customer attachments to the developed electrical services. Only at the end of this period would "any and all monies remaining unrefunded in the hands of [Alliant] . . . become the sole property of [Alliant]." Alliant was not entitled to the bond until after the money became its property. At the time it was entitled to this money, Sellers prevented Alliant from collecting on the bond. The district court correctly held this date was when Alliant sustained a right to institute and maintain a suit. *See id.*

B. Unjust enrichment.

Sellers next argues Alliant would be unjustly enriched by its recovery on the bond, as eventually homes will be built and it will eventually receive return on its installation. This issue was not raised before the district court; the district court also did not consider the issue in its ruling. We therefore find Sellers'

unjust enrichment argument is not preserved for our review. *Cooksey v. Cargill Meat Solutions Corp*., 831 N.W.2d 94, 98–99 (Iowa 2013).

C. Summary judgment.

Sellers' final argument is the court erred overall in granting summary judgment, arguing issues of material fact exist including: whether a modification occurred, whether the issuance of a bond constituted payment, whether the bond and agreement are individual contracts, whether Alliant unjustly benefits from the terms of the agreement, whether the contract was an on-demand payment agreement, and whether a provision of the contract undermines Alliant's claims.

In his motion for summary judgment, Sellers wrote, "The parties appear to agree as to the facts of this case and the only question to be determined is whether the statute of limitations for written contracts applies." Sellers received a ruling precisely on that issue.

> [T]he mere mention of a subject in a petition for declaratory action does not open the door to resolution of any and all hypothetical issues. Instead, the issues decided by the district court should be limited to those directly or impliedly raised by the pleadings or litigated with the consent of the parties. There must be a live case or controversy that is actually being litigated in order for a court to declare the rights of the parties.

Stew-Mc Dev., Inc. v. Fischer, 770 N.W.2d 839, 848 (Iowa 2009). Further, parties are generally estopped from asserting an inconsistent position in a subsequent proceeding. *Wilson v. Liberty Mut. Group*, 666 N.W.2d 163, 166 (Iowa 2003). Finally, Sellers' argument before us on appeal raises issues which were once again not brought before or ruled upon by the district court. *See Cooksey*, 831 N.W.2d at 98–99.

AFFIRMED.