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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-504

Charles H. Rolfes,
Appellant,

vs.

Absolute Print Graphics, Inc., et al.,
Respondents.

Filed December 12, 2011
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CV105410

Jaren L. Johnson, Benepartum Law Group, P.A., Edina, Minnesota (for appellant)

Alain M. Baudry, Martin S. Fallon, Rachel M. Bowe, Maslon, Edelman, Borman & Brand, LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Larkin, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant challenges a district court's award of summary judgment on his claims against respondents, arguing that genuine issues of material fact exist as to when appellant knew or should have known of the breach of contract, thereby precluding summary judgment based on the statute of limitations. Because the undisputed evidence

shows that respondents breached any alleged contract no later than early 2002, when appellant either knew or should have known of the breach, and appellant did not initiate the current action until January 2009, we affirm.

FACTS

This appeal arises out of an award of summary judgment in favor of respondents Absolute Print Graphics, Inc. (Absolute) and Kevin Mergens on claims of breach of contract, promissory estoppel, equitable estoppel, specific performance, accounting, and misrepresentation brought by appellant Charles H. Rolfes. The undisputed facts are as follows.

In about June 2001, Rolfes began working for Absolute, a Minnesota corporation founded by Mergens. At the time Rolfes was hired, Mergens allegedly orally promised him a 40% ownership interest in Absolute. Mergens denies making any such promise and denies the existence of any agreement for Rolfes to receive a 40% ownership interest. There is no writing to show that a contract was formed or intended.

Rolfes believed that Absolute was profitable in 2001. He did not, however, ask for a share of those profits, stating that he thought Mergens should first recoup the money that he had invested in the company. Rolfes believed that Absolute was again profitable in 2002. In February 2003, when Rolfes did not receive an Internal Revenue Service Schedule K-1 or a share of Absolute's 2002 profits, he approached Mergens to discuss the matter. Mergens told him that he would not receive a share of the profits because he was not an owner of the company.

In subsequent years, Absolute similarly did not distribute a share of profits to Rolfes. Instead, Absolute consistently paid Rolfes his salary, later augmented with sales commissions, and provided him with employee health insurance and retirement benefits. Absolute never provided a Schedule K-1 to Rolfes, but instead provided him with an Internal Revenue Service W-2 form representing employee compensation for each tax year.[1]

On January 21, 2009, Rolfes commenced this lawsuit against Absolute and Mergens. Respondents moved for summary judgment arguing that (1) the claims were barred under the applicable statute of limitations; (2) the claims were barred under the doctrine of estoppel; (3) Rolfes, who had not disclosed his alleged corporate ownership during his bankruptcy proceedings, had forfeited the claims and lacked standing to bring the suit; and (4) as a matter of law, the alleged contract was too vague and indefinite to be enforceable. The district court concluded that Rolfes's cause of action accrued in early 2002 when he did not receive a Schedule K-1 or a share of Absolute's 2001 profits. Based on this conclusion, the lawsuit was filed after the six-year statute of limitations had lapsed, and the district court dismissed the complaint in its entirety. This appeal follows.

D E C I S I O N

A motion for summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled

[1] Rolfes completed an Internal Revenue Service W-4 form for employee tax withholding when he began his employment in June 2001.

to judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from an award of summary judgment, a reviewing court asks two questions: (1) whether there are any genuine issues of material fact and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). An appellate court reviews both questions de novo, viewing the evidence in the light most favorable to the party against whom judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002); *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). An award of summary judgment will be affirmed if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

The parties agree that the applicable statute of limitations is expressed in Minn. Stat. § 541.05 (2010). The statute provides that actions "upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed" or "for relief on the ground of fraud" must be commenced within six years. Minn. Stat. § 541.05, subd. 1(1), (6). The sole question before us on appeal is when the six-year statute of limitations began to run.

A statute of limitations begins to run when "the cause of action accrues." Minn. Stat. § 541.01 (2010). In other words, the limitations period "begins to run . . . when the plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief can be granted." *Antone v. Mirviss*, 720 N.W.2d 331, 335 (Minn. 2006). "This showing is minimal; the plaintiff need only allege facts sufficient to state a claim, which occurs when it is possible that *any evidence* consistent with the plaintiff's

theory might be produced to establish each element of the tort." *Ames & Fischer Co. v. McDonald*, 798 N.W.2d 557, 562 (Minn. App. 2011) (emphasis added), *review denied* (Minn. July 19, 2011).

Issues involving the construction and application of statutes of limitations are questions of law, which an appellate court reviews de novo. *Benigni v. Cnty. of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998). Specifically, "[t]he date a claim accrues and the statute of limitations begins to run is a question of law that we review de novo." *Oganov v. Am. Family Ins. Group*, 767 N.W.2d 21, 24 (Minn. 2009).

I.

"A cause of action for breach of contract generally accrues at the time of the alleged breach." *Jacobson v. Bd. of Trustees of the Teachers Ret. Ass'n.*, 627 N.W.2d 106, 110 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Aug. 15, 2001). "This is true even when actual damages resulting from the breach do not occur until some time afterwards or when the aggrieved party was ignorant of the facts constituting the breach." *Id.*

Rolfes alleges that his oral contract with respondents entitled him to a 40% ownership interest in Absolute. The Internal Revenue Code requires that every S-corporation[2] file a return stating the names and addresses of all persons owning stock in the corporation during the taxable year, as well as the amount of money and other property distributed to each shareholder. I.R.C. § 6037(a) (2006). The corporation is

[2] "The earnings or losses of a subchapter S corporation pass through to its shareholders and are reported by the shareholders on their individual tax returns." *Hubbard Cnty. Health & Human Servs. v. Zacher*, 742 N.W.2d 223, 225 (Minn. App. 2007).

also required to provide “each person who is a shareholder at any time during such taxable year a copy of such information shown on such return.” I.R.C. § 6037(b) (2006). It is undisputed that Rolfes did not receive nor did Absolute issue this form, known as a Schedule K-1, for tax-year 2001 or any year thereafter.

When Rolfes did not receive a share of the corporate profits or a Schedule K-1 for the 2001 tax year, he was on notice that Absolute had breached its alleged contract with Rolfes by not giving him a 40% ownership interest in the firm. Rolfes was therefore able to allege sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief could be granted. *See Thomas B. Olson & Assocs. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008) (“A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant.”), *review denied* (Minn. Jan. 20, 2009). Rolfes’s breach-of-contract and promissory-estoppel claims therefore accrued no later than early 2002, and the six-year statute of limitations expired in early 2008. *See* Minn. Stat. § 541.01 (stating statute of limitations begins to run when claim accrues).

Because Rolfes did not commence his action until January 19, 2009, the district court did not err by ruling that the claim was barred by the applicable statute of limitations and granting respondents’ motion for summary judgment.

II.

Rolfes also challenges the district court’s award of summary judgment on his misrepresentation and equitable-estoppel claims, arguing that the statute of limitations

had been tolled as a result of fraudulent concealment. While such claims are still governed by the six-year limitations period, "the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud." Minn. Stat. § 541.05, subd. 1(6) (2010). To establish fraudulent concealment, a plaintiff must prove that (1) there was an affirmative act or statement that concealed a potential cause of action; (2) that statement was known to be false or was made in reckless disregard of its truth; and (3) the concealment could not have been discovered by reasonable diligence. *Haberle v. Buchwald*, 480 N.W.2d 351, 357 (Minn. App. 1992), *review denied* (Minn. Aug. 4, 1992).

Rolfes states that he did not know of the breach until being affirmatively told in 2003 that he was not an owner of Absolute. However, as discussed above, Rolfes did not receive the required Schedule K-1 for tax-year 2001, nor did he receive a share of Absolute's 2001 profits. And he provides no explanation as to why he should not have learned of the breach when he did not receive either the Schedule K-1 or his profit share.[3] Rolfes confirmed that he understood that owners of S-Corporations receive Schedule K-1's. And while he stated that he did not expect to receive a share of the 2001 profits, he believed that he was entitled to them under the contract.

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[3] At oral argument, Rolfes argued that the alleged contract did not provide that he would receive a share of the 2001 profits. But this assertion is belied by the complaint, in which Rolfes seeks an order awarding him "40% of the net profits of [Absolute] *since April 2001*," and Rolfes' deposition testimony, in which he claimed that he was entitled to a 40% share of the 2001 profits. (Emphasis added). The undisputed evidence in the record therefore compels the conclusion that any alleged contract called for Rolfes to receive a 40% ownership interest in Absolute effective when he began his employment in 2001. We therefore conduct our analysis accordingly.

Based on this knowledge, especially in the absence of any evidence that respondents fraudulently concealed the alleged breach, Rolfes was on notice that respondents had breached the alleged contract in early 2002. Under these circumstances, the district court did not err by concluding that Rolfes's claims were brought outside of the limitations period and by entering summary judgment in favor of respondents.

Because we affirm the district court's award of summary judgment on statute-of-limitations grounds, we need not address respondents' alternative theories supporting summary judgment.

Affirmed.