STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0584

Scott Trebelhorn, d/b/a Trebelhorn & Associates,
Appellant,

vs.

Abhishek Agrawal,
Respondent,

RTS Financial Group, LLC,
Respondent.

Filed November 20, 2017
Affirmed
Rodenberg, Judge

Sibley County District Court
File No. 72-CV-15-112

Christopher J. Heinze, Anthony D. Johnson, Kirsten J. Libby, Libby Law Office, P.A., St. Paul, Minnesota (for appellant)

Brian W. Rude, Minneapolis, Minnesota (for respondent Abhishek Agrawal)

Zachary J. Crain, Nilan Johnson Lewis, P.A., Minneapolis, Minnesota (for respondent RTS Financial Group, LLC)

Considered and decided by Florey, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

S Y L L A B U S

The four-year statute of limitations in Article II of the Uniform Commercial Code (UCC) applies to claims arising from a sale-of-goods transaction styled as a suit on an account stated.

O P I N I O N

RODENBERG, Judge

Appellant Scott Trebelhorn, d/b/a Trebelhorn & Associates, appeals from the district court's grant of summary judgment dismissing his claims against respondents Abhishek Agrawal (Agrawal) and RTS Financial Group, LLC (RTS). He argues that (1) the Supply Agreement signed by the parties is ambiguous concerning whether Agrawal is a party to it; (2) his account-stated claim is subject to a six-year, not a four-year, statute of limitations; and (3) the district court erred in granting summary judgment to RTS based on its summary disposition of the claims against respondent Agrawal. We affirm.

FACTS

On December 15, 2006, Agrawal signed a written Credit Application and Personal Guarantee Form (Credit Application). The Credit Application authorized appellant to obtain credit information on Agrawal and obligated Agrawal to pay "all outstanding obligations" resulting from appellant's extension of credit.

Two weeks later, on December 29, 2006, appellant and "Abhishek Agrawal d/b/a AKSK Financial Corp d/b/a BP/Super Stop & Wash" (referred to as "Dealer" throughout the agreement) signed a written "Supply Agreement." Under the Supply Agreement, appellant agreed to deliver petroleum products to Agrawal's gasoline station in Belle Plaine. The Supply Agreement contained terms regarding volume and pricing, and a merger clause stating, "This document and any attachments comprise the entire agreement between the parties and there are no oral or written agreements, pertaining to the sale of any product which is the subject matter of this Agreement, superseding this Agreement."

Section 6(b) of the Supply Agreement stated that "[e]ach of the individuals signing on behalf of Dealer shall be jointly, severally and personally liable for all financial obligations of Dealer hereunder." The Supply Agreement was signed by "Dealer—Abhishek Agrawal" and "Jobber—Scott Trebelhorn."

After the Supply Agreement was signed, appellant sold petroleum to Agrawal. In April 2010, appellant delivered three shipments of petroleum. Agrawal sold the fuel at his gas station, but did not pay for it as agreed. On May 14, 2010, appellant, by mail, sent Agrawal a notice of default of the Supply Agreement. Appellant also hired RTS to collect the outstanding balance of $58,630.30 from AKSK Financial Corp. (AKSK). RTS negotiated a settlement with AKSK whereby AKSK was to pay $34,000 to release the claims against it. Agrawal signed the written settlement agreement on behalf of AKSK. The agreement provided that appellant would "no longer hold AKSK Financial Corp. liable for additional amounts, but reserves its right of recourse against the guarantor." RTS also sent Agrawal a letter stating that RTS would not further pursue Agrawal or AKSK regarding these claims.

Appellant sued Agrawal on December 26, 2014, asserting claims for breach of contract, account stated, and promissory estoppel/unjust enrichment. Appellant also sued RTS for breach of contract, alleging that RTS breached its agreement with appellant by communicating with Agrawal while negotiating with AKSK.

On July 1, 2016, Agrawal moved for summary judgment, arguing that appellant's claims against him were barred by the statute of limitations. The district court granted Agrawal's motion. In its order, the district court found that the Supply Agreement

unambiguously provided that Agrawal is a party to it and that claims arising under the agreement are governed by the UCC's four-year statute of limitations, which had expired by the time the summons and complaint was served on Agrawal. The district court held that appellant could not sue Agrawal under the Credit Application because that agreement was superseded by the Supply Agreement's merger clause, and that appellant's account-stated claim, like the Supply Agreement, is subject to the UCC's four-year statute of limitations.

On October 13, 2016, appellant filed a notice of appeal from the district court's summary dismissal of his claims against Agrawal. RTS then moved for summary judgment on October 17, 2016, arguing that appellant had not produced any evidence of damages in his claim against RTS. On November 4, 2016, appellant responded to RTS's motion for summary judgment, seeking to reserve arguments on the motion while his appeal against Agrawal was pending. We dismissed appellant's appeal from the partial judgment pending final resolution of appellant's remaining claims. On February 10, 2017, the district court granted RTS's motion for summary judgment and dismissed the last of appellant's claims.

Appellant appealed from the judgment dismissing all of his claims.

ISSUES

I. Did the district court err in determining that the Supply Agreement unambiguously shows that Agrawal is a party to it?

II. Did the district court err in concluding that all of appellant's claims are subject to a four-year period of limitations?

III. Did the district court err in summarily dismissing appellant's claims against RTS?

ANALYSIS

Appellant challenges the district court's separate summary dismissals of his claims against both Agrawal and RTS. Summary judgment is granted when "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 to a judgment as a matter of law." Minn. R. Civ. P. 56.03. "On appeal from summary judgment, we must review the record to determine whether there is any genuine issue of material fact and whether the district court erred in its application of the law." *Dahlin v. Kroening*, 796 N.W.2d 503, 504-05 (Minn. 2011). We view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

I.

Appellant first contends that the district court erred in granting summary judgment to Agrawal because the language of the Supply Agreement is ambiguous as to whether Agrawal is a party to that agreement, creating genuine issues of material fact for trial. If Agrawal is not a party to the Supply Agreement, which the parties agree involves a sale of goods, then Agrawal's liability would be under the earlier agreement wherein he guaranteed payment for the debts of AKSK.

"Whether language in a contract is plain or ambiguous is a question of law that we review de novo." *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016).

Additionally, "[w]hen the intent of the parties can be determined from the writing of the contract, the construction of the instrument is a question of law for the court to resolve, and this court need not defer to the district court's findings." *Alpha Real Estate Co. v. Delta Dental Plan*, 671 N.W.2d 213, 221 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Jan. 20, 2004).

In construing contracts, we look to the language of the contract to determine the parties' intent. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). "A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003) (quoting *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997)). Parol evidence may be considered to determine intent when a contract's language is ambiguous. *Dykes*, 781 N.W.2d at 582. In contrast, we enforce the agreement of the parties as expressed in the language of the contract when it is unambiguous. *Id.* "If a contract is unambiguous, the contract language must be given its plain and ordinary meaning, and shall be enforced by the courts even if the result is harsh." *Denelsbeck*, 666 N.W.2d at 346-47 (quotation omitted). "We construe a contract as a whole and attempt to harmonize all of its clauses." *Storms, Inc.*, 883 N.W.2d at 776 (citing *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525 (Minn. 1990)).

The district court found that the Supply Agreement is "unambiguous in showing the parties' intent that Agrawal is personally a party to the agreement." The district court pointed to three specific areas in the contract that indicated the parties' intent to include Agrawal as a party. First, the Supply Agreement states that it is an agreement "between

Abhishek Agrawal d/b/a AKSK Financial Corp d/b/a BP/Super Stop & Wash . . . (hereinafter referred to as 'Dealer'); and Scott Trebelhorn d/b/a Trebelhorn & Associates, or his assignee (hereinafter referred to as 'Jobber')." Second, section 6(b) of the Supply Agreement states that "[e]ach of the individuals signing on behalf of Dealer shall be jointly, severally, and personally liable for all financial obligations of Dealer hereunder." Third, the signature line is labeled "Dealer—Abhishek Agrawal" and was signed individually by Agrawal.

While there is some ambiguity in other parts of the Supply Agreement, we agree with the district court that the agreement is unambiguous in its expression that Agrawal is a party to it. Section 6(b) clearly and unambiguously makes the individual signing the document "personally liable for all financial obligations of Dealer." The signature line reveals that Agrawal was the only individual who signed on behalf of Dealer. Since the contract explicitly included and bound any individual signing for Dealer, it binds Agrawal.

Minnesota law also supports the conclusion that Agrawal is a party to the Supply Agreement. A comaker is a party to a contract, while a guarantor is not. *Twin City Co-op Credit Union v. Bartlett*, 266 Minn. 366, 369, 123 N.W.2d 675, 677 (1963). A person is a comaker if the contract personally binds that person, jointly and severally, with a principal. *Id.* at 370-71, 123 N.W.2d at 678. A guarantor, on the other hand, is one whose promise "is collateral to a primary or principal obligation on the part of another and which binds the obligor to performance in the event of nonperformance by such other, the latter being bound to perform primarily." *Id.* at 369, 123 N.W.2d at 677. Accordingly, Agrawal is a comaker, not a guarantor, under the Supply Agreement. He is jointly, severally, and

personally liable for Dealer's obligations under section 6(b) of the Supply Agreement. Although appellant seeks to distinguish *Twin Cities Co-Op Credit Union* because it involved a negotiable instrument and not a contract, the supreme court has held that "between the immediate parties a negotiable instrument is merely a contract" and will be interpreted using the same rules that are applied to contracts. *Leininger v. Anderson*, 255 N.W.2d 22, 31 (Minn. 1977).

Appellant also argues that AKSK, and not Agrawal individually, performed under the Supply Agreement, meaning that Agrawal is not a party to the contract in his individual capacity. Appellant also points to the settlement agreement and RTS's letter to Agrawal, both from May 2010, to support his assertion that Agrawal's indebtedness was different than that of AKSK. Regardless of whether these contentions are true, the law does not allow a party to demonstrate ambiguity in an otherwise unambiguous contract by extrinsic evidence. *Am. Bank of St. Paul v. Coating Specialties, Inc.*, 787 N.W.2d 202, 205 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010). Instead, "the [unambiguous] contract language must be given its plain and ordinary meaning, and shall be enforced by the courts even if the result is harsh." *Denelsbeck*, 666 N.W.2d at 346-47. Here, the Supply Agreement unambiguously provides that Agrawal is a party to it.

II.

Next, appellant argues that the district court erred in applying the UCC's four-year statute of limitations to his account-stated claim. He argues that the appropriate limitations period is six years. Appellant posits that, even if the account-stated claim is merely a reframed breach-of-contract claim, a six-year statute of limitations applies to it. Minn.

Stat. § 541.05, subd. 1 (2016). He further argues that his account-stated claim is different from his breach-of-contract claim because it has different elements and different remedies. Finally, appellant argues that no authority supports the district court's holding that the applicable statute of limitations is four years rather than six years.

A. The district court correctly determined that the Credit Application merged with and was superseded by the Supply Agreement and that the four-year statute of limitations bars claims against Agrawal under the Supply Agreement.

Appellant contends that his breach of contract and account-stated claims against Agrawal individually arise from the personal guarantee in the Credit Application, and not from the Supply Agreement.

Extrinsic evidence beyond the four corners of a contract is inadmissible to explain the meaning of a contract that is unambiguous and fully integrated. *Alpha Real Estate Co. v. Delta Dental Plan*, 664 N.W.2d 303, 312 (Minn. 2003). As such, when an agreement is put in writing, "parol evidence is ordinarily inadmissible to vary, contradict, or alter the written agreement." *Id.* (quoting *Hruska v. Chandler Assocs.*, 372 N.W.2d 709, 713 (Minn. 1985)). Generally, "[a] merger clause establishes that the parties intended the writing to be an integration of their agreement." *Alpha Real Estate Co.*, 664 N.W.2d at 312.

Here, the Supply Agreement contains a merger clause in section 12 stating that "[t]his document and any attachments comprise the entire agreement between the parties and there are no oral or written agreements, pertaining to the sale of any product which is the subject matter of this Agreement, superseding this Agreement." This clause explicitly states that there are no other agreements regarding the subject matter of the Supply Agreement. The Credit Application and the Supply Agreement both refer to the same

subject matter—the delivery of petroleum products and liability to pay for the same. As such, the merger clause in section 12 of the Supply Agreement merged any other agreement related to such sales—including the Credit Application—into the Supply Agreement. Once the Supply Agreement was signed, and because Agrawal was a party to it, the Credit Application was no longer individually enforceable against Agrawal. The district court was correct in concluding that the merger clause in the Supply Agreement rendered the earlier document of no further legal effect.

B. Appellant's account-stated claim, which arises out of the same underlying facts as the breach-of-contract claim, is subject to the UCC's four-year statute of limitations.

The district court determined that the Supply Agreement is governed by the UCC because its predominant purpose was the sale of petroleum products, a sale of goods. Therefore, claims arising from the Supply Agreement are subject to the UCC's four-year statute of limitations under Minn. Stat. § 336.2-725(1) (2016). On appeal, appellant does not challenge the district court's predominant-purpose determination. Rather, appellant asserts that his account-stated claim is subject to a six-year statute of limitations even if the four-year limitations period on his breach-of-contract claim has expired. Minn. Stat. § 541.05, subd. 1. Both respondents argue that appellant's account-stated claim is a restated version of his breach-of-contract claim, to which the four-year period of limitations should apply.[1]

[1] Respondents also argue that appellant's account-stated claim fails as a matter of law regardless of the applicable limitations period. Because this issue was not raised in the district court, we do not consider it here.

We review de novo the interpretation and application of a statute of limitations. *Ford v. Minneapolis Pub. Sch.*, 874 N.W.2d 231, 232 (Minn. 2016). When determining which statute of limitations applies to a cause of action, "we examine the essence or gravamen of the action." *Weavewood, Inc. v. S & P Home Inv., LLC*, 821 N.W.2d 576, 581 (Minn. 2012) (quotation omitted). Put differently, "we examine the real nature of the action to determine the authority and responsibilities of a court with respect to a claim." *Giersdorf v. A & M Constr., Inc.*, 820 N.W.2d 16, 21 (Minn. 2012) (quotation omitted). Statutory limitations periods "cannot be manipulated by the relief sought" or by emphasizing the nature of the remedy proposed. *Portlance v. Golden Valley State Bank*, 405 N.W.2d 240, 242 (Minn. 1987).

Appellant argues that his account-stated claim is not a reframed breach-of-contract claim because it "has different elements and different remedies" than the breach-of-contract claim. Minnesota law, however, does not allow us to determine the applicable statute of limitations based on the nature of the remedy; the applicable limitations period is determined by the nature of the wrong. *Portlance*, 405 N.W.2d at 242-43. As such, our task is to examine the nature of the wrong alleged to determine the appropriate limitations period.

Here, the essence of appellant's allegations is that Agrawal did not pay for the petroleum products he bought and for which he agreed to pay. In his original complaint, appellant asserted breach of contract, account stated, and unjust enrichment claims as possible avenues of recovery for this nonpayment. But the only wrong of which appellant complains is that Agrawal failed to pay for the petroleum products.

Appellant argues that there is no Minnesota law supporting the district court's application of the UCC's four-year limitations period to his account-stated claim. Minnesota cases have not addressed the question of whether an account-stated claim, premised on the same underlying facts as a sale-of-goods transaction governed by the UCC, is subject to the UCC's four-year limitations period. This is therefore an issue of first impression in Minnesota.

The district court, in its very thorough and well-reasoned memorandum, cited a number of cases from foreign jurisdictions to which it looked for guidance in the absence of Minnesota cases on the issue. Many of these cited cases reflect circumstances similar to those present here. For example, a plaintiff asserted claims of breach of contract, unjust enrichment, and account stated against a defendant based on nonpayment for the delivery of goods by the plaintiff in *Herba v. Chichester*, 301 A.D.2d 822, 823 (N.Y. App. Div. 2003). In *Herba*, like here, the plaintiff claimed that, while his breach-of-contract claim was subject to the UCC's four-year limitations period, his unjust enrichment and account-stated claims should have been governed by a six-year statute of limitations. 301 A.D.2d at 822-23. The New York Appellate Division, however, disagreed; it held that, because all three claims were "based on the same allegations, i.e. nonpayment by [the defendant] for the delivery of goods by plaintiff," all three causes of action were governed by the UCC's four-year statute of limitations. *Id.* at 823. In a case involving similar facts and decided in the same year as *Herba*, the supreme court for Rensselaer County, New York, recognized that other state courts had "taken the position that a claim for an account stated or other claim on an account does not allow [a] plaintiff to circumvent the statute of limitations set

forth in [the] UCC [. . .] where the underlying transaction or contract involved the sale of goods," and adopted that position. *Troy Boiler Works, Inc. v. Sterile Techs., Inc.*, 777 N.Y.S.2d 574, 577 (Sup. Ct. 2003).

Likewise, the District Court for the Western District of Michigan held more recently that the applicable statute of limitations in a case involving claims for breach of contract, unjust enrichment, and account stated was four years under the UCC when the "true nature" of the action was a claim for breach of contract and the "action was expressly based on [a] failure to perform under the terms of a written agreement." *Harden v. Autovest, L.L.C.*, No. 1:15-CV-34, 2015 WL 4583276, at *2-3 (W.D. Mich. July 29, 2015).

These cases, along with others cited by the district court, stand for the proposition that when the underlying basis of a claim is a transaction involving the sale of goods, the claim is subject to the UCC's four-year period of limitations. These holdings are consistent with the purposes listed in the comment to Minn. Stat. § 336.2-725, that the goal of the UCC is "[t]o introduce a uniform statute of limitations for sales contracts," and that Article 2 "takes sales contracts out of the general laws limiting the time for commencing contractual actions and selects a four year period as the most appropriate to modern business practice." This position has been widely adopted by courts in other states. *See, e.g.*, *Greer Limestone Co. v. Nestor*, 332 S.E.2d 589, 594 (W. Va. 1985) (holding that "[i]t is generally held that the statute of limitations contained in the UCC . . . supersedes any general statute of limitations with regard to transactions involving the sale of goods"). We are unaware of any contrary authority.

Appellant's account-stated claim is based on the same facts and alleges the same harm as his breach-of-contract claim; both causes of action arise out of the claim that Agrawal failed to pay for the petroleum products delivered to his gasoline station. Agrawal's obligation is governed by the Supply Agreement—a contract for the sale of goods—which is subject to the UCC's four-year limitations period. We hold that the same statute of limitations applies to appellant's account-stated claim.

Appellant's claim against Agrawal accrued when Agrawal failed to pay for the petroleum that was delivered in April of 2010. At the latest, the claim accrued when appellant sent Agrawal notice of default of the Supply Agreement on May 14, 2010. Appellant did not serve the summons and complaint on Agrawal until December 26, 2014. As such, appellant did not sue Agrawal within the applicable four-year limitations period. His claims are therefore barred, and the district court did not err in summarily dismissing appellant's claims against Agrawal on this basis.

III.

Finally, appellant argues that the district court's grant of summary judgment to RTS must be reversed because it was "wholly based on the district court's September 14, 2016 order" dismissing appellant's claim against Agrawal. In essence, appellant argues that, if the grant of summary judgment to Agrawal was erroneous, then the summary judgment for RTS is also erroneous.

Appellant's claim against RTS is for breach of contract. The essential elements of a breach-of-contract claim are "(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and

(3) breach of the contract by the defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). We have held that "[l]iability for breach of contract requires proof that damages resulted from or were caused by the breach." *Border State Bank of Greenbush v. Bagley Livestock Exch., Inc.*, 690 N.W.2d 326, 336 (Minn. App. 2004).

Appellant's entire claim against RTS is premised on RTS having prevented appellant from recovering from Agrawal because of its dealings on appellant's behalf to obtain a partial recovery from AKSK. Whatever claims appellant might have had against Agrawal are, as discussed above, barred by the statute of limitations. As such, appellant is unable to demonstrate any damages occasioned by RTS, even if there was a breach by RTS. The district court did not err in summarily dismissing appellant's claims against RTS.

D E C I S I O N

Because the Supply Agreement unambiguously provides that Agrawal is a party to it, and because appellant's account-stated claim is subject to the UCC's four-year statute of limitations, the district court did not err in summarily dismissing appellant's claims against Agrawal. Because any claim appellant might have had against Agrawal is barred by the applicable statute of limitations, the district court did not err in similarly dismissing appellant's claims against RTS.

Affirmed.