COURT OF APPEALS
DECISION
DATED AND FILED

December 10, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2576 **Cir. Ct. No. 2010CV190**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JAMES M. TADISCH,

PLAINTIFF-RESPONDENT,

V.

MARTIN S. TADISCH AND JOANN TADISCH,

DEFENDANTS-APPELLANTS,

DENMARK AGRICULTURAL CREDIT CORP.,

DEFENDANT.

APPEAL from a judgment of the circuit court for Kewaunee County: DENNIS J. MLEZIVA, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. In 1980, Martin and Joann Tadisch orally agreed to transfer their farm to their son, James, if he stayed and worked on the farm after

his high school graduation. The trial court found that the breach occurred in 2000, but went undiscovered until 2009 or 2010, when Martin told James he was going to sell the farm to a third party. On appeal, the Tadisches' sole argument is that, given the court's finding of a breach in 2000, James' claim is barred by the six-year contract statute of limitations contained in WIS. STAT. § 893.43.[1]

¶2 We conclude the circuit court erred by applying the "discovery rule," which is inapplicable to toll the statute of limitations in contract actions. Nonetheless, we independently conclude the breach first occurred in May 2009, when James was told that the farm would be sold to a third party. Consequently, James' action, which was commenced on September 17, 2010, was timely.

BACKGROUND

¶3 On September 17, 2010, James filed suit against the Tadisches to enforce an oral agreement. James alleged that when he graduated high school in 1980, the Tadisches had promised to transfer ownership of their farm to him if he stayed on the farm to work.[2] No specific date was set for the transfer.

¶4 At trial, James testified he lived and worked on the farm for thirty years, until 2010 when Martin told him not to do any cropping. Between 2000 and 2005, the parties made several attempts to transfer the farm. In 2000, the parties met with an attorney who prepared a transfer plan that was ultimately rejected by both Martin and James. A second lawyer developed a transfer plan in 2003 but

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] The farm does not include a 116-acre parcel that was acquired in 1987.

stopped responding to messages before the parties could sign the documents. A third lawyer committed suicide before the transfer could be completed. The plan developed by a fourth lawyer was rejected by a lending institution with an interest in the property. Nonetheless, James continued living and working on the farm. In 2009, Martin told James he was selling the farm to a third party.

¶5 The circuit court awarded the farm to James, reserving a life estate for the Tadisches. There was no dispute about the existence of the contract, and the court reached its decision on equitable grounds. It observed that James had worked on the farm for thirty years and contributed his income and assets from other jobs to support its operation.

¶6 Although the Tadisches disputed at trial that they had breached the agreement, the circuit court observed that their responsive pleading admitted they refused to transfer ownership to James and were going to sell the farm to others. The court specifically found the Tadisches had breached the agreement when they "did not follow through with the farm transfer starting in 2000, at the time that they first conferred with a lawyer to do the farm transfer …." However, it found that James did not discover the breach until 2009, when his father informed him that he would be selling the farm to a third party.

DISCUSSION

¶7 The Tadisches' sole argument on appeal is that, given the circuit court's findings, James' action is time-barred by WIS. STAT. § 893.43. Under that section, an action based upon a contract must be commenced within six years after the cause of action accrues. ***Id.*** "A cause of action for breach of contract accrues on the date of the breach, not the date the breach is discovered." ***Segall v. Hurwitz***, 114 Wis. 2d 471, 490, 339 N.W.2d 333 (Ct. App. 1983); *see also* ***CLL***

Assocs. Ltd. P'Ship v. Arrowhead Pac. Corp., 174 Wis. 2d 604, 611, 497 N.W.2d 115 (1993) (discovery rule, which tolls the statute of limitations governing tort claims, does not apply to actions for breach of contract). The circuit court erred when it determined that James' failure to discover the breach until years later tolled the statute of limitations.[3]

¶8 Despite the circuit court's error, we conclude that James' action was timely. *See* ***Vanstone v. Town of Delafield***, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995) (we may affirm on grounds other than those relied on by the circuit court). The existence of a breach and, by extension, the date of the breach, are questions of law. *See* ***Elliott v. Donahue***, 169 Wis. 2d 310, 316, 485 N.W.2d 403 (1992).

¶9 The circuit court's determination that the breach first occurred in 2000 is not supported by its factual findings. The parties did not specify a date by which transfer of the farm had to be complete. The Tadisches met with attorneys several times between 2000 and 2005 to carry out the transfer. As the circuit court recognized, and as the Tadisches conceded before the circuit court, "Martin Tadisch's meeting[s] with the attorneys clearly indicate[d] his intent to comply with the agreement …." If the Tadisches intended to carry out the transaction as late as 2005, they could not have breached the contract in 2000.

[3] The circuit court did not specifically place the application of this "discovery rule" in the statute of limitations context, instead issuing a blanket rejection of the Tadisches' affirmative defenses at the conclusion of its decision. Because the court relied on its earlier findings to support this blanket rejection, however, we construe the court to have been applying the discovery rule to the Tadisches' statute of limitations defense.

¶10 Instead, the breach first occurred in May 2009, when Martin unequivocally informed James that he would not be receiving the farm. At trial, James testified that on Memorial Day in 2009, Martin again told James he could have the farm. The following week, Martin told James he was "selling the farm to Wakker [a third party]" for $5,260 per acre. Martin continued, "I'm getting $2 million, you are getting shit." Martin then repeatedly asked, "What am I going to do with my $2 million?" as he walked away from James. Martin's statements in May 2009 were as clear an indication of an intent not to perform as has ever been spoken. Thus, James' action was timely filed under WIS. STAT. § 893.43 in September 2010.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.