IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-0643
Bremer County Case No. CVCV005656

DENVER SUNSET NURSING HOME,
Appellant/Plaintiff

vs.

CITY OF DENVER, IOWA
Appellee/Defendant

APPEAL FROM THE IOWA DISTRICT COURT
FOR BREMER COUNTY
The Honorable Chris C. Foy

APPELLANT'S FINAL BRIEF

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ROUTING STATEMENT

The Appellant believes this case may be properly transferred to the Court of Appeals because it involves the application of existing legal principles. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

The City of Denver ("the City") overcharged the Denver Sunset Nursing Home ("the Nursing Home") for electricity over a period of nearly 29 years starting in 1985, resulting in a financial gain to the City of $996,194.03. (See Denver Sunset Home Electric Meter Change, App. 255; see Letter from Steven K. Duggan, C.P.A. (June 1, 2017), App. 59–71.) After the City's electric meter was installed at the Nursing Home and the meter's "multiplier" was misapplied by the City and its personnel, the Nursing Home was billed for 200% of its actual electricity usage from May 22, 1985 until about approximately March 24, 2014. (See Electric Meter Replacement Project, App. 212; see Deposition of Larry Zars at 30:21–31:20, App. 210–11.) After learning of the errors during a board of directors meeting on September 19, 2016, the Nursing Home brought the instant suit. (See Bd. of Dirs. Meeting (Sept. 19, 2016), App. 252.)

About three months later, on December 20, 2016, the Nursing Home filed its Petition and Jury Demand against the City. (See Pet. for Declaratory J. and Jury Demand (Dec. 20, 2016), App. 7–9.) The Nursing Home asserted several theories for relief therein, including requests for (i) recovery for "public utility duress," (ii) damages for the City's "intentional conduct," (iii) relief via a declaratory judgment, and (iv) a jury trial. (See id.) The City answered the Nursing Home's suit, and it generally denied liability for the past overcharges. (See Answer to Pet. for Declaratory J. (Jan. 3, 2017), App. 35–37.) The City admitted that "charges for electrical service have been miscalculated," but the City expressly denied that it owed the Nursing Home "reimbursement in an amount equal to its excess billing together with interest on each payment." (See id. at ¶¶ 3–5.)

Discovery commenced. (See generally Docket.) The Nursing Home later amended its Petition to add the claims of "unjust enrichment" and "breach of contract" against the City, among other causes of action. (See Amended & Substituted Pet. for Declaratory J. (June 5, 2017), App. 75–77.) The amendment was granted by the district court, and the City filed its Answer, once again denying liability for the complete, past overcharges.

(See Order (July 22, 2017), App. 172–73; see Answer to Amended & Substituted Pet. for Declaratory J. (July 18, 2017), App. 169–71.)

On May 19, 2017, the City moved for summary judgment on several grounds, including its argument that the Nursing Home's damages should be limited "to five years prior to the date suit was filed." (See Mot. for Summ. J. at ¶ 6 (May 19, 2017), App. 10.) In support of its position, the City relied upon Iowa Code chapter 614 as well as 199 Iowa Administrative Code chapter 20. (See Memo. of Law in Support of City's Mot. for Summ. J. at 8 (May 19, 2017).)

In response, the Nursing Home filed its resistance and a cross-motion for summary judgment on June 5, 2017. (See Mot. for Partial Summ. J & Resistance to Def.'s Mot. for Summ. J. (June 5, 2017), App. 24–27.) Therein the Nursing Home requested a grant of summary judgment on the issue of the City's liability only; the Nursing Home based this request upon the City's admissions that it billed the Nursing Home "for twice the amount of electricity actually supplied to and used by [the Nursing Home]." (See id. at ¶ 1, App. 24.) The Nursing Home further alleged that any claimed statute of limitations was tolled because *inter alia* "the errors related to the City's [electric] meter were unknown until 2014 when [City of Denver Electric

Superintendent] Larry Zars discovered them during his inspection" and because "[t]he entire installation of electrical service, including the meter and the multiplier, was performed by the City." (See Br. in Support of Mot. for Partial Summ. J. & Resistance at 9 (June 5, 2017).)

In its November 30, 2017 Order, the district court granted summary judgment, in part, as to each party. (See Order Granting Summ. J. (Nov. 30, 2017), App. 185–90.) The district court first made a factual finding that the City's employee(s) or "someone who was associated with" the City "assigned an incorrect rate multiplier for the meter" located at the Nursing Home. (See id. at 1, App. 185.) As a result, the district court found that the City charged and the Nursing Home paid for twice as much electricity as it actually used. (See id. at 2, 4, App. 186, 188 ("Due to the use of the wrong rate multiplier, the Utility charged and Plaintiff paid for twice as much electricity as it actually used.").) The district court further stated, "There is nothing in the summary judgment record to indicate or suggest that either party . . . knew or should have known that [the City] was using an incorrect rate multiplier or was overcharging [the Nursing Home]" at any time prior to March 24, 2014. (See id. at 2, App. 186.)

In its legal analysis, the district court determined that the Nursing Home's claim was, at its core, "founded on basic contract principles." (See id. at 4, App. 188 ("Even though there is no written contract between the parties, the claim asserted in this case by Plaintiff is most accurately characterized as contractual in nature.").) The district court further determined the Nursing Home was entitled to a money judgment against the City. (See id. at 4–5, App. 188–89.) However, the district court ruled that Iowa Code section 614.1(4) "limits what [the Nursing Home] can recover to the overcharges it paid within five years of December 20, 2016, when it commenced this action." (See id. (emphasis added).) The district court thus entered judgment in favor of the Nursing Home and against the City "in the amount of $47,917.96, together with interest at an annual rate of 3.5 percent from and after December 20, 2016" plus costs. (See id. at 5, App.189.)

In its Rule 1.904 pleadings, the Nursing Home reiterated its position that any statutes of limitation were tolled by the discovery rule as well as by the doctrine of fraudulent concealment. (See Mot. to Reconsider, Amend & Enlarge (Dec. 13, 2017), App. 191–203.) The Nursing Home further argued that summary judgment was wholly inappropriate because fact issues were present and because the district court had ruled on several of the parties'

issues *sua sponte*, without briefing or a full, evidentiary record provided by the litigants. (See, e.g., Mot. to Reconsider Proposed Ruling on Mots. for Summ. J. at ¶¶ 3–6 (Sept. 1, 2017), App. 176.)

In its final decision, the district court denied that the Nursing Home was entitled to any additional recovery under the discovery rule, under the fraudulent concealment doctrine, or for its claim of unjust enrichment. (See Order Denying Mot. to Reconsider (Mar. 26, 2018), App. 258–60.) The stated rationale of the district court's decision was that "there is no precedent in Iowa for applying the discovery rule to claims of the type being asserted by Plaintiff." (See id. at 2, App. 259.) The district court specifically stated:

> The longest period that the discovery rule tolled the accrual of the claim in any of the cases cited by Plaintiff was 12 years. In contrast, Plaintiff asks that the Court apply the discovery rule in this case to toll the accrual of certain portions of its claim against Defendant for more than 30 years.

(See id. at 1, App 258.) As a result, the district court ruled as follows: "Section 614.1(4) restricts the recovery to which Plaintiff is entitled in this case, regardless whether its claim is characterized as a cause of action for breach of an unwritten contract or for unjust enrichment." (See id.) The Nursing Home now appeals these decisions. (See Notice of Appeal (Apr. 12, 2018), App. 261–63.)

STATEMENT OF FACTS

The Parties

The Nursing Home is an Iowa nonprofit corporation that owns and operates a licensed nursing home in Denver, Iowa. (See Amended & Substituted Pet. for Declaratory J. at ¶ 1 (June 5, 2017) [hereinafter "Pet."], App. 75; see Answer to Amended & Substituted Pet. for Declaratory J. at ¶ 1 (July 18, 2017) [hereinafter "Answer"], App. 169.) The Nursing Home is a community-based organization that is governed by a nine-member, volunteer board of directors. (See Aff. of Larry Stumme at ¶ 2 (June 5, 2017) [hereinafter "Stumme Aff."], App. 72.) It was formed in 1964 and opened for business in February 1965. (See id.) The Nursing Home is licensed by the State of Iowa as a "Nursing Facility" and "Skilled Nursing Facility," and it has the capacity for 31 residents. (See Pet. at ¶ 1, App. 75; see Answer at ¶ 1, App. 169; see Stumme Aff. at ¶ 3, App. 72.)

The City owns, operates, and provides utilities, including electricity, which it sells to residents. (See Pet. at ¶ 2, App. 75; see Answer at ¶ 2, App. 169.) The City provides the only electric utility service that is available to the Nursing Home. (See Stumme Aff. at ¶ 5, App. 72; see Iowa Util. Bd., "Town Provider List," p. 35 (Apr. 30, 2015), App. 30, available at

https://iub.iowa.gov/sites/default/files/files/misc/town-provider-list.pdf.) A "Town Provider List" published by the Iowa Utility Board notes that "Denver Municipal" is the one and sole electric service provider for the City. (See Iowa Util. Bd., "Town Provider List," p. 35 (Apr. 30, 2015), App. 30; see also Order Granting Summ. J. at 1 (Nov. 30, 2017), App. 185 ("Defendant operates a municipal utility which is the sole public source of electricity . . . within its incorporated area.").)

The City determines the amounts it charges its customers, like the Nursing Home, for electricity, and it declares those rates for new and existing customers. (See DenverSunset 3, App. 49 (setting out the electricity charges declared by the City).) The City also creates and sends out monthly billing statements for the electricity used by each of its customers. (See, e.g., DenverSunset 4–6, App. 50–52 (summary of monthly electric charges).) In this case, the City admits that it miscalculated the bills for the Nursing Home. (See Pet. at ¶ 3, App. 75; see Answer at ¶ 3, App. 169 ("It is admitted that Plaintiff's charges for electrical service have been miscalculated.").)

History of the Electric Meter at the Nursing Home

Electric meters within the City of Denver are the property of the City and not of the customer on whose property the meters are affixed. (See Dep.

of Larry Farley at 12:10–25, 19:8–21:22, 34:12–25, App. 215–19; see Dep. of Linda Krueger at 21:15–22:22, App. 238–39; see Dep. of Jeff Joerger at 11:6–12:3, App. 233–34; see Dep. of Larry Zars at 19:1–20:23, App. 208–09.). In fact, no customer is allowed to make any changes in the meter; nor does a customer like the Nursing Home read the meter and report electricity usage to the City. (See Dep. of Larry Farley at 12:10–25, 19:8–21:22, 34:12–25, App. 215–19; see Dep. of Linda Krueger at 21:15–22:22, App. 238–39; see Dep. of Jeff Joerger at 11:6–12:3, App. 233–34; see Dep. of Larry Zars at 19:1–20:23, App. 208–09.) The electric meter for the Nursing Home's property is solely owned, maintained, and controlled by the City. (See Stumme Aff. at ¶ 8, App. 73; see City's Answer to Interrogatory No. 2, App. 45 (listing the personnel who serviced the City's meter at the Nursing Home from 1985–2014); see City's Answer to Interrogatory No. 3, App. 46 (indicating that the City tested the electricity meter for accuracy on September 15, 1998).)

In the Nursing Home's known history, the City has never required the Nursing Home to measure its own electricity usage or self-report its electricity usage. (See Stumme Aff. at ¶ 7, App. 72–73.) It is the understanding of Larry Stumme, the Nursing Home's President, that the City

and its personnel are responsible for accurately metering and billing the Nursing Home's electricity. (See id.) This has been the course of dealing between the Nursing Home and the City since at least May 22, 1985. (See id.; see City's Answer to Interrogatory No. 2, App. 45 (listing the personnel who read the City's meter at the Nursing Home from 1985–2014).)

The Nursing Home Expansion - 1985

In 1985, the Nursing Home built an addition to its facility. (See Stumme Aff. at ¶ 9, App. 73.) That construction was completed on or about July 15, 1985. (See id.; see Plaintiff's Answer to Interrogatory No. 2, App. 45.) As part of the 1985 addition, a new electric meter was installed at the Nursing Home. (See Record of Watthour Meter, App. 240.)

The Nursing Home did not furnish the meter, install the meter, test the meter, or hire any person to perform any of those tasks on the Nursing Home's behalf; the City did all this. (See id.; see Stumme Aff. at ¶¶ 10–11, App. 73; see City's Answer to Interrogatory Nos. 2–4, App. 45–47.) The City's meter, installed in 1985, was solely owned, monitored, serviced, and used by the City to bill the Nursing Home for electricity used. (See, e.g., City's Answer to Interrogatory Nos. 2–3, App. 45–46.) Despite the then-unknown errors in the meter's multiplier, the Nursing Home paid each and

every electricity bill issued by the City during this period. (See Stumme Aff. at ¶ 6, App. 72.)

The Citywide Commercial Meter Replacement - 2014

On March 24, 2014, the City undertook a citywide commercial meter replacement program. (See Aff. of Larry Farley at ¶¶ 7–8 (May 19, 2017) [hereinafter "Farley Aff."], App. 54.) The City's Electrical Superintendent, Larry Zars ("Zars"), reviewed the electric meter at the Nursing Home and its wiring at that time. (See id.) Zars determined that the multiplier for the City's meter at the Nursing Home was incorrect. (See id.) According to Zars, "the measured electricity should have been subject to a multiplier of 40 rather than 80." (See Aff. of Larry Zars at ¶¶ 6–10 (May 19, 2017) [hereinafter "Zars Aff."], App. 56–57.) "Essentially, the multiplier should have been cut in half due to the chosen method of wiring." (See id.)

The electric meter at the Nursing Home was replaced on April 22, 2014, with a new meter and multiplier that correctly reflected the Nursing Home's electricity usage. (See Dep. of Larry Zars at 30:21–31:20, App. 210–11; see Electric Meter Replacement Project (Mar. 24, 2014), App. 212; see Timeline, App. 213; see Dep. of Larry Farley at 42:13–21, App. 220.) However, as a consequence of the incorrect multiplier, from the period of

approximately May 22, 1985 and continuing until 2014, the City overcharged the Nursing Home on its electricity bill. (See Pet. at ¶ 3, App. 75; see Answer at ¶ 3, App. 169; see Farley Aff. at ¶¶ 4–8, App. 53–54; see Zars Aff. at ¶¶ 7–10, App. 57.)

Revelation of the Overcharges to the Nursing Home

The Nursing Home was not aware of the overcharges until 2016. (See Bd. of Dirs. Meeting Minutes (Sept. 19, 2016), App. 31.) Notably, the "80" multiplier that was the root and origin of the excessive bill was not stated anywhere on the physical meter that was installed at the Nursing Home for those nearly three decades. (See Dep. of Jeff Joerger at 12:6–13:4, App. 234–35.) Nor was the "80" multiplier stated on the customer bills that were generated by the City and sent to the Nursing Home in the ordinary course. (See Dep. of Linda Krueger at 20:15–21:7, App. 237–38; see also Record of Watthour Meter, App. 240 ("Meter card" used by the City).)

Incidentally, Ron Milius ("Milius"), the part-time maintenance man for the Nursing Home and former mayor of Denver, was within earshot of Zars, the City Electrician, who was conducting a city wide inspection and replacement of meters in early 2014. (See Dep. of Ron Milius at 14:17–16:2, App. 242–44.) Milius overheard Zars and Zars' co-employee, Jeff Joerger,

discussing the meter at the Nursing Home. (See id.) Milius heard in 2014 that the Nursing Home had been paying double bills for a long period of time. (See id.) Upon learning this, Zars assured Milius that Zars would "report it to Mr. Farley [the City Administrator] and go from there." (See id. at 17:16–18:6, App. 245–46.)

When no resolution from the City was forthcoming, Milius took it upon himself to contact City Administrator Larry Farley ("Farley") to see what he was going to do about the double billing. (See id. at 18:7–19:1, App. 246–47.) Milius went to city hall several times to get an update on the matter. (See id.) Milius did not tell the Administrator of the Nursing Home or anyone on the Nursing Home board because he trusted that Farley would take care of the problem. (See id. at 19:8–20:2, 30:1–19, App. 247–48, 251 ("I guess it basically boils down to a little trust from Mr. Farley that he would get something taken care of.").)

Milius heard no response from Farley, beyond Farley's repeated assurances that the City would "look into it." (See id. at 19:8–20:21, App. 247–48 ("[H]e said he would look into it for me and he would let me know what's going on. Well, I never did hear anything"), 30:8–14, App. 251 (discussing Milius' repeated visits).) After two-and-a-half years, Milius

eventually got tired of waiting, and he again approached Farley to see if the Nursing Home could buy a generator through the City and have the City Electrician's hook it up "for nothing" as a payback for the overcharging. (See id. at 20:3–21, App. 248.) Farley replied to Milius that Farley would need to take that matter up with city council. (See id.) However, record does not disclose that Farley took the issue to city council at that time. (See generally Record.)

Eventually, word got back to Milius that the City was unwilling to assist the Nursing Home with its generator purchase due to the "expense to the City." (See Dep. of Ron Milius at 20:18–21:6, App. 248–49.) Upon hearing this, Milius replied that he would need to tell the Nursing Home what the City had done. (See id. at 20:25–21:10, App. 248–49.) He did so. (See Bd. of Dirs. Meeting Minutes (Sept. 19, 2016), App. 31.)

After learning about the excessive charges at that September 2016 meeting, the board of the Nursing Home decided to pursue legal action, and on December 20, 2016 this lawsuit was filed in Bremer County District Court seeking the full amount of the overcharge for electricity from 1985 to 2014. (See Letter from the Nursing Home to the City (Oct. 19, 2016), App. 257; see Pet. for Declaratory J. and Jury Demand (Dec. 20, 2016), App. 32–

34.) Thus, the Nursing Home filed its action against the City within 3 months and 1 day of learning about the overcharges. (Compare Bd. of Dirs. Meeting Minutes (Sept. 19, 2016), App. 31 with Pet. for Declaratory J. and Jury Demand (Dec. 20, 2016), App. 32–34.)

ARGUMENT

The district court erred in awarding only partial judgment to the Nursing Home for the nearly 29 years of excessive billing committed by the City. The Court should reverse the district court's decisions for two reasons. First, the Nursing Home's claim against the City—whether sounding in contract or in unjust enrichment—is subject to the discovery rule, which entitles the Nursing Home to complete relief. Second and alternatively, there are genuine issues of material fact regarding the City's statute-of-limitations affirmative defense, so summary judgment on this issue is inappropriate. This Brief discusses each point in turn.

I. THE NURSING HOME'S CLAIM AGAINST THE CITY IS SUBJECT TO THE DISCOVERY RULE.

Preservation of Error

This issue has been preserved for appellate review. See Iowa R. App. P. 6.103. The Nursing Home raised and submitted the issue to the district court, which materially affected the final decision, and district court made a

ruling on the issue. (See Mot. for Partial Summ. J & Resistance to Def.'s Mot. for Summ. J. at ¶ 12 (June 5, 2017), App. 26–27; See Mot. to Reconsider, Amend & Enlarge at ¶ 33–35 (Dec. 13, 2017), App. 201–02; see Order Denying Mot. to Reconsider (Mar. 26, 2018), App. 258–60.)

Scope and Standard of Review

Appellate courts review summary judgment rulings for errors at law. Kern v. Palmer Coll. of Chiropractic, 757 N.W.2d 651, 657 (Iowa 2008). The statute of limitations is normally an affirmative defense to be raised by the pleadings, and the burden is upon the one so pleading to establish it by proof. See Pride v. Peterson, 173 N.W.2d 549, 553 (Iowa 1970) and authorities listed therein. However, a plaintiff claiming the application of the delayed discovery rule has the burden of proving it. Estate of Montag v. TH Agric. & Nutrition Co., Inc., 509 N.W.2d 469, 470 (Iowa 1993). On summary judgment, the court "view[s] the record in the light most favorable to the nonmoving party and allow[s] that party all reasonable inferences that can be drawn from the record." Wernimont v. Wernimont, 686 N.W.2d 186, 189 (Iowa 2004).

Argument

The Court should reverse the decisions of the district court because the district court erred in its refusal to apply the discovery rule to this dispute. The Nursing Home's claim against the City is undoubtedly subject to the discovery rule, which the Court should find entitles the Nursing Home to complete relief. This is true whether the cause of action sounds in unjust enrichment or in contract.

A. The Discovery Rule Applies to Chapter 614 Limitation Periods.

The Court should reverse the district court and find that the discovery rule applies to this action. To review, the district court found that the Nursing Home's claim against the City for electricity overcharges was governed by Iowa Code section 614.1(4), that is, the five-year statute of limitations for unwritten contracts and for "all other actions." (See Order Granting Summ. J. at 4 (Nov. 30, 2017), App. 188 (concluding that "the outcome of this case is governed by Iowa Code Section 614.1(4)").) The district court concluded that Iowa Code section 614.1(4) controlled regardless of whether the claim was one for unjust enrichment or one for breach of an unwritten contract. (See id.) At the same time, the district court specifically observed that the Nursing Home was unaware of the City's

overcharges for decades. (See Order Granting Summary Judgment at 2 (Nov. 30, 2017), App. 186 ("There is nothing in the summary judgment record to indicate or suggest that either party . . . knew or should have known that [the City] was using an incorrect rate multiplier for the meter or was overcharging [the Nursing Home] . . . at any time between May 22, 1985 and March 24, 2014.") (emphasis added).)

Yet, despite these conclusions, the district court refused to apply the discovery rule to toll the accrual of the Nursing Home's cause of action. (See id.; see Order Denying Mot. to Reconsider (Mar. 26, 2018), App. 258–60.) This was legal error. See Vachon v. State, 514 N.W.2d 442, 445 (Iowa 1994) and authorities cited therein ("Where a statute of limitations uses the term 'accrued' with regard to when the statute begins to run, the discovery rule applies."); cf. Iowa Code § 614.1 (2016) ("Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared") (emphasis added).

Briefly, the discovery rule provides that "a claim does not accrue until the plaintiff knows or in the exercise of reasonable care should have known both the fact of the injury and its cause." Woodroffe v. Hasenclever, 540

N.W.2d 45, 47 (Iowa 1995); accord State v. Wilson, 573 N.W.2d 248, 253 (Iowa 1998) ("In civil cases, under the discovery rule, the statute of limitations begins to run when the injured party has actual or imputed knowledge of the facts that would support a cause of action."). The Iowa Supreme Court has repeatedly held that the discovery rule can create exceptions to Iowa Code chapter 614 limitations periods. See Vachon, 514 N.W.2d at 445–46. As explored in great detail by the Court in Callahan v. State, 464 N.W.2d 268 (Iowa 1990), this exception stems from a least of couple of factors, including that Iowa Code chapter 614 is concerned with when a particular claim "accrues," and that "public policy" may support application of the discovery rule in a given scenario. See 464 N.W.2d at 270 (discussing "accrual" of claims), 272 (concluding that "adoption of the discovery rule in this case is consistent with that public policy and furthers the remedial purpose of the tort claims act").

The Iowa Supreme Court has, at various times, collected cases demonstrating the breadth of the discovery rule's application in Iowa. See, e.g., id. at 270; Brown v. Ellison, 304 N.W.2d 197, 200 (Iowa 1981). Although certainly not an exhaustive list, cases involving application of the discovery rule include the following:

- Chrischilles v. Griswold, 150 N.W.2d 94 (Iowa 1967) (negligence)
- Franzen v. Deere & Co., 377 N.W.2d 660 (Iowa 1985) (products liability)
- Brown v. Ellison, 304 N.W.2d 197 (Iowa 1981) (oral contract –warranty claims)
- Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256 (Iowa 1980) (workers' compensation)
- Cameron v. Montgomery, 225 N.W.2d 154 (Iowa 1975) (legal malpractice)
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- Speight v. Walters Dev. Co., Ltd., 744 N.W.2d 108 (Iowa 2008) (implied warranty)
- Kendall/Hunt Publ'g Co. v. Rowe, 424 N.W.2d 235 (Iowa 1988) (breach of fiduciary duty)
- Hallett Constr. Co. v. Meister, 713 N.W.2d 225 (Iowa 2006) (fraud)
- Rieff v. Evans, 630 N.W.2d 278 (Iowa 2001) (various claims including conversion, waste, equitable relief, breach of fiduciary duty, and intentional interference with business relationships)

- K & W Elec., Inc. v. State, 712 N.W.2d 107 (Iowa 2006) (inverse condemnation)

An examination of Iowa cases reveals several uniting principles that underpin the discovery rule and its application. But, as an important threshold matter, the Iowa Supreme Court has specifically declared that the discovery rule applies "[w]here a statute of limitations uses the term 'accrued' with regard to when the statute begins to run. . . ." Vachon, 514 N.W.2d at 445. Thus, by determining that Iowa Code section 614.1(4) governs this dispute, it is fair to say the district court simultaneously determined the "discovery rule" question: When placed in issue, Iowa Code chapter 614 claims will necessarily entail an analysis of discovery rule. See id. The district court erred in ruling otherwise, and this Court should therefore reverse the lower court's decisions.

B. Application of the Discovery Rule to This Dispute Is Consistent with the Purposes of the Rule Itself.

More fundamentally, it is appropriate to apply the discovery rule in this case based upon the rationales often analyzed by the Iowa Supreme Court. Cf. Rathje v. Mercy Hosp., 745 N.W.2d 443, 448–63 (Iowa 2008) (discussing the purposes and the goals of the discovery rule in Iowa and in other jurisdictions). First, the Nursing Home was "excusably unaware" of

the City's excessive billing. Second, the Nursing Home had a "right to rely" on the City to accurately monitor, calculate, and bill for the electrical service it provided. Third and finally, the nature of unjust enrichment and purpose of related regulations in the Iowa Administrative Code demonstrate that public policy supports application of the discovery rule in this case, so that the Nursing Home is afforded complete relief. The Court should reverse the district court's decisions for any one of these three reasons.

The Nursing Home was "excusably unaware" of the City's excessive billing.

First, a core rationale of the discovery rule is that "a statute of limitations should not defeat the remedy of one who has not slept on his rights but has simply been excusably unaware of his cause of action." See Baines, 223 N.W.2d at 202 (citing Flynn v. Lucas Cnty. Mem'l Hosp., 203 N.W.2d 613, 616 (Iowa 1973)) (emphasis added); see also Rathje, 745 N.W.2d at 461, 463 (observing that the "objective of the discovery rule" is to "prevent the limitations period from commencing when blameless plaintiffs are unsuspecting of a possible claim"); accord Urie v. Thompson, 337 U.S. 163, 170, 69 S.Ct. 1018, 1025, 93 L.Ed. 1282 (1949) ("We do not think the humane legislative plan intended such consequences to attach to blameless ignorance.").

In this case, there is no dispute that the Nursing Home was factually, reasonably, and excusably unaware that the City was double-charging the facility for electricity for nearly 29 years. In fact, the district court considered the summary judgment record and made the following finding that addresses this very point:

> There is nothing in the summary judgment record to indicate or suggest that either party or any of their respective officers, employees, representatives or agents knew or should have known that [the City] was using an incorrect rate multiplier for the meter or was overcharging [the Nursing Home] for the electricity supplied to and used at its long-term care facility at any time between May 22, 1985 and March 24, 2014.

(See Order Granting Summ. J. at 2 (Nov. 30, 2017), App. 186 (emphasis added).) The record provides abundant support for this conclusion. For example, it is undisputed that electricity meters within the City are the property of the City and not of the customer on whose property the meters are affixed. (See Dep. of Larry Farley at 12:10–25, 19:8–21:22, 34:12–25, App. 215–19; see Dep. of Linda Krueger at 21:15–22:22, App. 238–39; see Dep. of Jeff Joerger at 11:6–12:3, App. 233–34; see Dep. of Larry Zars at 19:1–20:23, App. 208–09.) The City essentially acknowledges that installation of the meter and calculation of the multiplier was a matter beyond the Nursing Home's purview or responsibility. (See, e.g., City's Answer to Interrogatory Nos. 2–4, App. 39–41. In fact, no customer is even

allowed to make any changes in the meter; nor does a customer like the Nursing Home read the meter and report electricity usage to the City. (See Dep. of Larry Farley at 12:10–25, 19:8–21:22, 34:12–25, App. 215–19; see Dep. of Linda Krueger at 21:15–22:22, App. 238–39; see Dep. of Jeff Joerger at 11:6–12:3, App. 233–34; see Dep. of Larry Zars at 19:1–20:23, App. 208–09.)

In short, the record demonstrates that City was responsible for furnishing the meter, installing the meter, testing the meter, and monitoring the meter. (See, e.g., Stumme Aff. at ¶¶ 10–11, App. 73; see City's Answer to Interrogatory Nos. 2–4, App. 39–41.) It is therefore difficult to reconcile the district court's finding and the evidence in this case with the district court's ultimate conclusion, i.e., that the discovery rule was inapt. The Nursing Home was most assuredly "unaware" of the overcharges caused by the multiplier, and "excusably" so. Cf. Baines, 745 N.W.2d at 201–02; Rathje, 745 N.W.at 451–52.

To further emphasize this point, consider that the Nursing Home could not even lawfully access the meter to investigate it. (See, e.g., Dep. of Farley at 20:11–22, App. 217 ("Do you know if customers or anyone can access the meter and is authorized to make changes to it? A. No customer

that I'm aware of is authorized to make changes to the electric meter."); Dep. of Joerger at 11:14–12:3, App. 233–34 (discussing the "meter seal" that the City places on every meter, which "only the City is authorized to remove").) Aside from the obvious safety risk of the Nursing Home conducting its own electric meter investigation (see, e.g., Dep. of Farley at 20:11–22, App. 217), the Nursing Home emphatically could not investigate the meter multiplier problem without running afoul of the City Code. See City of Denver Code of Ordinances § 14.04.240 ("Tampering Prohibited. It is unlawful for any person to tamper with . . . any electric meter, or interfere therewith, and the meters and their connections shall be under the sole control of the City and the property thereof."). This further supports application of the rule. Finally, it is significant that the City itself had long failed recognize the multiplier problem despite its unfettered access to the meter, the meter card, and the associated records.

Thus, the Court should find that the discovery rule applies to this dispute based on the rationale that the Nursing Home was excusably unaware of its cause of action. The facts of the case fully demonstrate that the Nursing Home was "blamelessly ignorant" of the City's excessive billing—even the City and its Electric Superintendent profess to have been

unaware of it. The Court should therefore reverse the district court's decisions.

The Nursing Home had a "right to rely" on the City to accurately bill for electrical service.

Second, the Court should find the discovery rule applies in this case because the Nursing Home had a right to rely on the City and its personnel to accurately monitor, calculate, and bill for the electrical service the City provided. The Iowa Supreme Court has observed that application of the discovery rule is often premised upon a "right to rely" on the statements and the superior knowledge and skill of another. See, e.g., Brown, 304 N.W.2d at 201; Baines, 223 N.W.2d at 202–03 (discovery rule applicable where injured patient had a right to rely on physician's statements and advice); Dudden v. Goodman, 543 N.W.2d 624, 626–28 (Iowa Ct. App. 1995) (discovery rule applicable where plaintiff-executor had a right to rely on defendant-attorney's "superior skill and knowledge").

For example, while discussing the application of the discovery rule for breach of an oral contract, the court in Brown v. Ellison, discussed the basic "right to rely" as follows:

> There are close similarities between professional malpractice suits, in which the discovery rule is generally applied, and express and implied warranty cases. Malpractice

> actions are premised on an implied contract to use the standard of care reasonably expected from a professional. Negligent breach of that standard of care gives rise to a cause of action. We believe that a buyer has a similar right to rely on the warranty of the seller of a product or service. In the area of malpractice this very reliance underlies the reason for the application of the discovery rule. In express or implied warranty situations the buyer is in a position of inferior knowledge similar to that of a client or patient in the cases of professional malpractice.

304 N.W.2d at 201 (emphasis added). The discovery rule thus flows from an acknowledgement that, for certain causes of action, the claimant often looks to and relies upon the representations of the future defendant, in the first instance. Cf. Dudden, 543 N.W.2d at 628 ("From the inception, [the plaintiff-executor] had a right to rely on defendant's superior knowledge and this right continued until at least the early part of 1990.").

Where human frailty, genuine ignorance, or some other factor would prevent the prospective defendant from openly admitting his or her actionable mistake, the discovery rule can preserve the cause of action until alternative, independent advice is provided. Cf. id. ("[T]he earliest date the estate could be charged with knowledge of the existence of the cause of action was early in 1990 when the visit with the accountant took place. It was then [plaintiff] was urged to seek another legal opinion."); see also Baines, 223 N.W.2d at 202–03 ("A rule which would invariably charge a

patient with knowledge of malpractice at the time the injury was first perceived would punish the patient who relies upon his doctor's advice and place a premium on skepticism and distrust.") (internal citations and quotations omitted).

Likewise in this case, the Nursing Home had every right to rely on the City to accurately calculate the bills that it sent out every month. The representations made by the City on each and every utility bill were based on the City's sole and exclusive responsibility to purchase, install, maintain, and monitor the meters. The City has dedicated electricians and staff to oversee the electric service it provides. The City is a "repeat player" that issues many, many bills to customers each month. The City has specialized knowledge of the electrical service is provides. The Nursing Home, as a single customer, possesses none of these advantages.

Consider also that the "80" multiplier that was the root and origin of the excessive bill was not stated anywhere on the physical meter that was installed at the Nursing Home for those nearly three decades. (See Dep. of Jeff Joerger at 12:6–13:4, App. 234–35.) Nor was the "80" multiplier stated on the customer bills that were generated by the City and sent to the Nursing Home in the ordinary course. (See Dep. of Linda Krueger at 20:15–21:7,

App. 237–38 ("Q. On the customer's bill is the multiplier stated anywhere? A. No. Q. So that's a number that your office sees and your office only? A. Yes."); see also Record of Watthour Meter, App. 240 ("Meter card" possessed only by the City).) Finally, regarding the specialized skill and knowledge that can create "reasonable reliance," the Court should consider that the City's Electric Superintendent even saw fit to confer with a "meter expert, Larry Chapman," before determining the multiplier was wrong. (See Aff. of Zars at ¶ 10, App. 57.)

It follows, therefore, that the Nursing Home had a "right to rely" on the City to accurately monitor and bill for electricity. To put it another way, if the City lacked the independent resources to fully appreciate its errors, then certainly the Nursing Home should not be saddled with a higher responsibility to find and understand these same errors. See Brown, 304 N.W.2d at 201 (claimants' "position of inferior knowledge" regarding well drilling and well defects supported application of the discovery rule). Thus, the Court should reverse the district court's ruling and apply the discovery rule to this dispute.

Application of the discovery rule is consistent with public policy.

Finally, the Court should find the discovery rule applies in this case because it is consistent with the public policies expressed in the Iowa Code, Iowa Administrative Code, and the doctrine of unjust enrichment. See Callahan, 464 N.W.2d at 272 (discussing the public policy rationale for adopting the discovery rule). Although an exhaustive review of the posture of this case vis-à-vis other statutory schemes is not necessary here, it is important to note that the Nursing Home's grievance occupies unique legal territory. The City is the sole public source of electricity for homes, businesses, schools, and other institutions located within its incorporated area. (See Order Granting Summ. J. at 1 (Nov. 30, 2017), App. 185.) Thus, the City has a *de facto* monopoly on the Nursing Home's electricity. In the event that a dispute arises between a utility provider, like the City, and a captive customer, like the Nursing Home, the customer is unable to "take its business elsewhere" or exercise some form of "free choice" on the open market.

Assuredly, Iowa Code chapter 476, "Public Utility Regulation," and the related provisions of 199 Iowa Administrative Code chapter 20 represent a legislative attempt to mitigate the unequal positions of the parties in this

respect. Certain provisions of 199 Iowa Administrative Code chapter 20 actually mandate refunds to utility customers when an overbilling dispute occurs. See, e.g., Iowa Admin. Code r. 199-20.4(14)(e) (2016) ("*Overcharges.* When a customer has been overcharged as a result of incorrect reading of the meter, . . . incorrect connection of the metering installation or other similar reasons, the amount of the overcharge shall be adjusted, refunded or credited to the customer.") (emphasis added). As noted, rule 20.4(14)(e) requires a refund; it is mandatory, not permissive.

These and other refunds can be ordered by the Iowa Utilities Board pursuant to this legislation. See id. Unfortunately for the parties here, the Board's authority over refunds under Iowa Code section 476.3(1) does not extend to the City because it is a municipally-owned utility. See Iowa Code § 476.1(B)(1). The City acknowledges in its briefing that the Board's authority is constrained in this way. (See Def.'s Memo. of Law in Support of Mot. for Summ. J. at 4 (May 19, 2017) ("[T]he Board's authority over refunds under Iowa code §476.3(1) does not extend to Denver, which is a municipally-owned utility.").)

Thus, the Nursing Home is a sort of double-outlier. It lacks the freedom of choice to deal with other utility providers, and it also lacks

certain legislative and administrative protections that would be available to other utility customers. At the same time, the Nursing Home serves a decidedly vulnerable population, and due to the medical needs of the Nursing Home's elderly residents, any period of discontinued electric service represents a serious threat. (See Aff. of Stumme at ¶ 14, App. 73.)

Especially where, as here, the parties do not have a written contract, the claim of unjust enrichment becomes particularly apt. (See Def.'s Memo. of Law in Support of Mot. for Summ. J. at 7 (May 19, 2017) (noting that "[t]he parties do not have a written contract").) Iowa Supreme Court has described the claim of unjust enrichment as "deeply engrained in our law" and "widely applied"; it takes root in "the most basic legal concept of preventing injustice." See State, Dept. of Human Servs. ex rel. Palmer v. Unisys Corp., 637 N.W.2d 142, 149 (Iowa 2001) (citing I George E. Palmer, The Law of Restitution § 1.1, at 2, 5 (1978).) Unjust enrichment "not only cuts across many areas of the law, such as contract and tort, 'but it also occupies much territory that is its sole preserve.' It is a theory to support restitution, with or without the existence of some underlying wrongful conduct." Id. at 149–50 (citations omitted).

The theory of restitution is not based upon compensation to the plaintiff for its damages. Rather, unjust enrichment endeavors to disgorge from the defendant any benefits that it unfairly received and retained. See id. at 154 n.1. "The doctrine of unjust enrichment is based on the principle that a party should not be permitted to be unjustly enriched at the expense of another or receive property or benefits without paying just compensation." See id. at 154.

Considered together, the above legal concepts demonstrate a public policy in favor of applying the discovery rule to a dispute such as this. The Nursing Home's legal remedies are undeniably restrained. Yet, it is undisputed that courts may exercise its jurisdiction in equity where there is no adequate remedy at law. Iowa Waste Sys., Inc. v. Buchanan Cnty., 617 N.W.2d 23, 30 (Iowa Ct. App. 2000). This is sometimes cited as a prerequisite to equity jurisdiction. See Unisys Corp., 637 N.W.2d at 154 n.2. ("The adequacy of a legal remedy is a general limitation on the exercise of equity jurisdiction and is properly considered when restitution is sought in equity, but no independent principle exists that restricts restitution to cases where alternative remedies are inadequate.") (citation omitted).

Where a statute of limitations effectively cuts off or limits a plaintiff's legal remedy, it follows that the equitable power of "unjust enrichment" should extend to protect the balance of the uncompensated wrong through restitution. See Restatement (First) of Restitution § 1 (1936) ("A person who has been unjustly enriched at the expense of another is required to make restitution to the other."). This is similar to the Iowa Supreme Court's rationale in adopting the discovery rule for various claims—it mitigates against harsh and inequitable consequences that might flow from strict application of Iowa Code chapter 614. Cf., e.g., Baines, 223 N.W.2d at 202 (noting that "a statute of limitations should not defeat the remedy of one who has not slept on his rights but has simply been excusably unaware of his cause of action"); Rathje, 745 N.W.2d at 463 (observing that the "objective of the discovery rule" is to "prevent the limitations period from commencing when blameless plaintiffs are unsuspecting of a possible claim").

The flexible concept of "natural justice and equity," Unisys Corp., 637 N.W.2d at 154 n.1, is acknowledged even by the administrative rules formerly referenced and relied upon by the City in its briefing below. (See Memo. of Law in Support of City's Mot. for Summ. J. at 8 (May 19, 2017).)

Consider again 199 Iowa Administrative Code rule 20.4(14)(e), which states, in its entirety:

> *Overcharges*.
>
> When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation or other similar reasons, the amount of the overcharge shall be adjusted, refunded or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill shall not exceed five years unless otherwise ordered by the board.

Notably, this regulation both (i) requires refunds for up to five years' worth of overcharges and (ii) grants the Board discretion to order a corrective "refund" or "credit" for overcharges—refunds that may be unlimited by either the passage of time or the duration of the overcharges. See id.; see Mid-Iowa Cmty. Action, Inc. v. Iowa State Commerce Comm'n, 421 N.W.2d 899, 901 (Iowa 1988) ("[W]e interpret this rule as not only allowing but compelling the board to order the refund of overcharges and illegally collected revenue."); see also Oliver v. Iowa Power & Light Co., 183 N.W.2d 687 (Iowa 1971). To put it another way, the regulation admits of circumstances where the Iowa Utility Board might "otherwise order[]" a refund well beyond a five-year horizon. Moreover, the regulation itself bases

its restitution period on the erroneous overcharge itself, not based on the date an aggrieved customer petitioned for relief from the erroneous bill.

All these factors support application of the discovery rule to this case as one for unjust enrichment. It is untenable to limit the Nursing Home's recovery to five years from the filing of suit in the instant court action when parallel regulations (legally unavailable to the Nursing Home) through the Iowa Utility Board would require restitution of five years' worth of overcharges at a minimum. The preeminence of the flexible notion of restitution supports the finding that it is a policy of the State of Iowa that such benefits cannot be unjustly retained by a utility.

For these reasons, the Court should reverse the district court and should find that the discovery rule tolled the Nursing Home's claim against the City for overcharges that began May 22, 1985. There is no dispute that the Nursing Home was unaware of the overcharges until 2016. (See Bd. of Dirs. Meeting (Sept. 19, 2016), App. 252.) There is no dispute that the Nursing Home instituted suit only months later. (See Pet. for Declaratory J. and Jury Demand (Dec. 20, 2016), App. 7–9.) The Court should rule accordingly.

II. GENUINE ISSUES OF MATERIAL FACT ON THE STATUTE-OF-LIMITATIONS DEFENSE PREVENT SUMMMARY JUDGMENT AGAINST THE NURSING HOME.

Preservation of Error

This issue has been preserved for appellate review. See Iowa R. App. P. 6.103. The Nursing Home raised and submitted the issue to the district court, which materially affected the final decision, and the district court made a ruling on the issue. (See Mot. for Partial Summ. J & Resistance to Def.'s Mot. for Summ. J. at ¶ 12 (June 5, 2017), App. 27; See Mot. to Reconsider, Amend & Enlarge at ¶ 36 (Dec. 13, 2017), App. 202; see Order Denying Mot. to Reconsider (Mar. 26, 2018), App. 258–68.)

Scope and Standard of Review

Appellate courts review summary judgment rulings for errors at law. Kern, 757 N.W.2d at 657 (citation omitted). "A party is entitled to summary judgment when the record shows no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Id. (citing Iowa R. Civ. P. 1.981(3)). On summary judgment, "[t]he court views the record in the light most favorable to the nonmoving party." Id. (citation omitted). A court does not weigh the evidence, but simply determines whether a reasonable jury faced with the evidence presented could return a

verdict for the nonmoving party. Clinkscales v. Nelson Secs., Inc., 697 N.W.2d 836, 841 (Iowa 2005).

Whether a claim in a civil case is barred by the statute of limitations should be determined by the factfinder, unless the issue is so clear it can be resolved as a matter of law. See Murtha v. Cahalan, 745 N.W.2d 711, 717–18 (Iowa 2008) ("These inquiries—what constitutes the injury and its cause and when the plaintiff is charged with knowledge of such injury and its cause—are highly fact-specific. . . . [They] cannot be resolved as matters of law . . . but must be resolved as factual issues.").

Argument

Alternatively, the Court should reverse the decisions of the district court because there are genuine issues of material fact on the City's statute-of-limitations affirmative defense. These fact issues preclude any grant of summary judgment against the Nursing Home that would restrict the Nursing Home's right to complete relief from the City for its decades-long overcharges. Specifically, the record demonstrates fact issues regarding both the "fraudulent concealment" doctrine and the Nursing Home's "estoppel" argument. This Section addresses each point in turn.

A. A Reasonable Factfinder Could Determine That the City Fraudulently Concealed Its Overcharges After 2014.

The Court should reverse the district court's ruling on summary judgment because a reasonable factfinder could determine that the City's statute-of-limitations defense is overcome by the City's fraudulent concealment of its overcharges. "[F]raudulent concealment can toll the applicable statute of limitations." Rieff, 630 N.W.2d at 290. To toll the statute of limitations, a plaintiff must demonstrate that the defendant "affirmatively concealed the facts on which the plaintiff would predicate the cause of action." Id. (internal citations and quotations omitted). Because the Nursing Home made this showing in the proceedings below, the district court erred in ruling against the Nursing Home on summary judgment and in canceling the trial of this case.

Briefly, the Nursing Home can demonstrate fraudulent concealment based upon the inaction of the City immediately following its 2014 discovery of both (i) the double-billing itself and (ii) the source of the double-billing, i.e., the meter multiplier. (See, e.g., Timeline, App. 213.) The trier of fact could find that the City actively concealed from the Nursing Home any and all information regarding its errors from at least March 24, 2014, when the City realized the decades-long overcharge, until September

2016, when the City engaged in a flutter of activity to protect against a potential legal action by the Nursing Home. (See id.)

The trier of fact could find that, had it not been for the happenstance presence of Milius in the basement of the Nursing Home on March 24, 2014, the overcharge would likely never have been disclosed by the City. (See Dep. of Milius at 14:7–16:8, 17:16–20, App. 242–45; see Timeline, App. 213; see Dep. of Farley at 42:13–45:19, 53:7–54:1, App. 220–25 ("Q. So back in 2014 it was your understanding that the multiplier was wrong and was charging Denver Sunset Nursing Home double for electricity? A. Yes."), 59:9–25, App. 227 (indicating that City Administrator Larry Farley's first contact with the Nursing Home about the overcharges was September 20, 2016), 66:5–67:25, App. 228–29 (Farley advising Milius that the City was still "[l]ooking into it and collecting the data") (emphasis added), 68:25–69:12, App. 230–31 (Farley's admission that, at the time he met with Milius, the City "had already looked" at the historical data that "confirmed" the overcharge) (emphasis added), 53:7–22, App. 224 (double billing was previously confirmed by Chapman in 2014), 69:13–21, App. 231 (contacting legal counsel).)

On September 20, 2016—one day after Milius made his report to the Nursing Home—City Administrator Farley approached the President of the Nursing Home's board with an offer of $105,119.85 in exchange for a release of liability. (See Timeline, App. 213.) On October 4, 2016, the City's offer of $105,119.85 was presented to the board. (See Bd. of Dirs. Special Meeting (Oct. 4, 2016), App. 256.) A reasonable finder of fact could determine that the City only "revealed" its excessive charges after former mayor Milius essentially forced his hand. A reasonable finder of fact could infer the City's intention was to hide its errors and to retain the benefits that it unjustly received, and that the City intended to do so for the maximum possible duration.

Undoubtedly, if the Nursing Home knew what the City knew in early 2014, then the Nursing Home would have exercised its legal rights to remedy the situation. (See Bd. of Dirs. Meeting (Sept. 19, 2016), App. 252 (immediately deciding, upon learning about the overcharges, to engage the City about "what the City would offer . . . as restitution for 28 years of being charged double the cost on our electrical bills"); see Pet. for Declaratory J. and Jury Demand (Dec. 20, 2016), App. 7–9.) These facts engender a triable dispute over whether the City "actively concealed" both the fact and the

cause of the overcharge. See Rieff, 630 NW 2d at 290; see also Christy v. Miulli, 692 N.W.2d 694, 700–02 (Iowa 2005). Thus, the lower court's summary acceptance of the City's statute-of-limitations defense is inappropriate. See Clinkscales, 697 N.W.2d at 841. The Court should therefore reverse and remand for further proceedings.

B. A Reasonable Factfinder Could Determine That the City Is Estopped from Asserting the Statue-of-Limitations Defense.

Finally, the Court should reverse the district court's ruling on summary judgment because a reasonable factfinder could determine that the City is estopped from asserting its statute-of-limitations defense. Equitable estoppel is one of the recognized defenses to the application of the statute of limitations. See Beeck v. Aquaslide 'N' Dive Corp., 350 N.W.2d 149, 157 (Iowa 1984); Coachman Indus., Inc. v. Sec. Trust & Sav. Bank of Shenandoah, 329 N.W.2d 648, 650–51 (Iowa 1983). The court in Meier v. Alfa-Laval, Inc., 454 N.W.2d 576 (Iowa 1990) set out the elements of equitable estoppel as follows:

> (1) The defendant has made a false representation or has concealed material facts; (2) the plaintiff lacks knowledge of the true facts; (3) the defendant intended the plaintiff to act upon such representations; and (4) the plaintiff did in fact rely upon such representations to his prejudice.

454 N.W.2d at 578–79 (citing Coachman, 329 N.W.2d at 650).

In this case, the record amply demonstrates each element of equitable estoppel, and a fact question is engendered such that summary judgment is inappropriate. In addition to the facts discussed above, the central evidence of estoppel is that the City prepared and sent flawed bills to the Nursing Home each month. By the City's own admission in this case, it miscalculated the charges to the Nursing Home. (See Pet. at ¶ 3, App. 75; see Answer at ¶ 3, App. 169 ("It is admitted that Plaintiff's charges for electrical service have been miscalculated.").) Obviously, an incorrect statement of charges is a "false statement."

As explored in Section I, *supra*, a reasonable factfinder could determine that the Nursing Home "lack[ed] . . . knowledge of the true facts." DeWall v. Prentice, 224 N.W.2d 428, 430 (Iowa 1974). Indeed, the Nursing Home could not fully investigate the meter multiplier problem based on the City's exclusive authority over the same. There can also be no serious dispute but that the City intended the Nursing Home to rely on the representations it made in the nearly 29 years' worth of electric bills. That is, the City undoubtedly expected payment by the Nursing Home, in due course, and in the amount stated and billed. See id. at 431 ("Significantly, the doctrine of equitable estoppel is designed to prevent fraud and injustice

and may come into play whenever a party cannot in good conscience gainsay his prior acts or assertions.").

Lastly, the evidence is clear that the Nursing Home relied upon the bills provided by the City, to the Nursing Home's great prejudice and detriment. The Nursing Home paid each and every bill presented by the City from 1985 to 2014. (See Stumme Aff. at ¶ 6, App. 72.) Reliance on statements from the City has cost the Nursing Home nearly $1,000,000.00 in overcharges and interest. (See Letter from Steven K. Duggan, C.P.A. (June 1, 2017), App. 59–71.) A reasonable fact finder could determine that the City is therefore estopped from asserting a statute-of-limitations defense because the City's own false statements and errors caused the matter to languish, undiscovered, while the Nursing Home's legal rights were slowly eroded by time. The Court should therefore reverse the district court's grant of summary judgment on this basis and remand the case for trial.

CONCLUSION

For these reasons, Plaintiff-Appellant, Denver Sunset Nursing Home, respectfully requests that this Court reverse the decisions of the district court.

REQUEST FOR ORAL ARGUMENT

Appellant requests oral argument on the issues appealed in this case. Notice of this request is hereby given to Randall H. Stefani and Maria E. Brownell, attorneys for Appellee-City of Denver, Iowa.

CERTIFICATE OF COST

The undersigned certifies that the cost for printing or duplicating necessary copies of this brief in final form was **$0.00**.

/s/ Erich Priebe

CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this Brief contains 9,580 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally-spaced typeface using Microsoft Word in Times New Roman size 14 font.

Respectfully submitted,

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CERTIFICATE OF FILING

The undersigned certifies that on the 17th day of August, 2018, the undersigned electronically filed this document using the Electronic Document Management System.

/s/ Erich Priebe

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on the 17th day of August, 2018.

By: ____U.S. Mail ____Fax
____Hand Delivered ____UPS
____Federal Express ____E-mail
__X__EFC or EDMS System Participant (Electronic Service)

Signature: *Erich D. Priebe*