IN THE COURT OF APPEALS OF IOWA

No. 1-904 / 11-0802
Filed February 1, 2012

JOHN BYL,
Plaintiff-Appellant,

vs.

CORNIE VAN BEEK and
HARRIET VAN BEEK,
Defendants-Appellees.

Appeal from the Iowa District Court for Sioux County, Jeffrey A. Neary, Judge.

A plaintiff appeals a summary judgment ruling concluding his collection action is barred by the statute of frauds. **AFFIRMED.**

William H. Larson, Brian L. Yung, and Timothy A. Clausen of Klass Law Firm, L.L.P., Sioux City, for appellant.

John De Hoogh of Wolff, Whorley, De Hoogh & Schreurs, Sheldon, for appellee Harriet Van Beek.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

John Byl appeals a summary judgment ruling concluding his collection action is barred by the statute of frauds.

I. Background Facts and Proceedings

Byl, doing business as Ideal Auto, sold thirteen vehicles to Cornie Van Beek pursuant to written agreements. When Cornie defaulted on his payments, Byl sued Cornie and Cornie's wife, Harriet Van Beek.

Harriet moved for summary judgment on the ground that she did not sign the purchase agreements and the statute of frauds and certain other statutes accordingly barred the action against her. Byl responded with an affidavit attesting that Harriet verbally promised to help repay the outstanding debt. This promise, he argued, prevented or estopped Harriet from relying on the absence of her signature on the written purchase agreements.

The district court granted summary judgment in favor of Harriet after finding that none of the purchase agreements were signed by Harriet, Harriet did not guaranty the payments in writing, and Byl's affidavit did not establish a legal basis for liability. The court subsequently entered a default judgment against Cornie in the amount of $52,137.45. Byl appealed the summary judgment ruling in favor of Harriet following the entry of the default judgment against Cornie.

II. Timeliness of Appeal

As an initial matter, Harriet asserts that Byl's notice of appeal was untimely, thereby depriving this court of jurisdiction. *See* Iowa R. App. P. 6.101(1)(*b*) (stating notice of appeal must be filed within thirty days after the filing of a final order or judgment in order for it to be considered timely); *Hills Bank &*

Trust Co. v. Converse, 772 N.W.2d 764, 771 (Iowa 2009) (stating an untimely notice of appeal deprives court of subject matter jurisdiction to hear the appeal).

There is no question Byl filed his notice of appeal more than thirty days after the district court entered its summary judgment ruling in favor of Harriet. *See Nuzum v. State*, 300 N.W.2d 131, 133 (Iowa 1981) (stating summary judgment ruling dispositive of entire case is a final adjudication from which appeal must be taken). But the claim against Harriet did not dispose of the entire case. That claim was directly related to the claim against Cornie, which was only resolved three months after the entry of summary judgment against Harriet. *See Bennett v. Ida County*, 203 N.W.2d 228, 233–34 (Iowa 1972) ("If the claimed basis of liability of the dismissed defendants is connected with or so related to the claimed basis of liability of the remaining defendants so that one may affect the other, a judgment as to the discharged defendants is ordinarily not appealable until the issues as to the remaining defendants are settled." (citation omitted)). Byl appealed within thirty days of the entry of default judgment against Cornie. For that reason, we conclude the notice of appeal was timely and we proceed to the merits.

III. Merits

"A district court properly grants summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 717 (Iowa 2001).

Byl contends his affidavit in resistance to Harriet's summary judgment motion generated issues of material fact on his promissory estoppel argument. According to the affidavit, Byl went to the Van Beeks' home on an undisclosed

date to discuss repayment of the outstanding balance. During that meeting, the parties discussed the possibility of collateralizing the debt with Harriet's equitable interest in certain unnamed property. Cornie and Harriet agreed to pay Byl $1000 per month and 10% interest on the unpaid balance for the vehicles. The Van Beeks defaulted on those payments.

On appeal, Byl reiterates that Harriet's verbal promise to pay is a basis for recovery against her even though she did not sign the purchase agreements. Harriet counters that Byl's affidavit is irrelevant as, in her view, promissory estoppel is not an exception to the statutory defenses she raised.

Precedent stands in the way of Harriet's legal argument, as the Iowa Supreme Court has held that two of the statutes on which she relies, Iowa Code sections 622.32 and 554.2201 (2009), are subject to a promissory estoppel exception. *See Warder & Lee Elevator, Inc. v. Britten*, 274 N.W.2d 339, 342 (Iowa 1979).

Section 622.32 provides that no evidence of certain contracts is competent unless it is in writing and signed by the party against whom enforcement is sought. Section 554.2201(1) requires contracts for goods with a price of over $500 to be in writing. In *Warder*, the court stated, "[W]e have long recognized promissory estoppel as a means of defeating the general statute of frauds in § 622.32." *Id.* The court also stated that 554.2201 should not be read as requiring a different result. *Id.*

In light of *Warder*, Byl is correct that promissory estoppel is an exception to the doctrines articulated in sections 622.32 and 554.2201. However, this

conclusion does not aid Byl, because we are persuaded that he did not generate an issue of material fact on his promissory estoppel claim.

A party asserting promissory estoppel as an exception to the statute of frauds must prove:

> (1) a clear and definite promise; (2) the promise was made with the promissor's clear understanding that the promisee was seeking assurance upon which the promisee could rely and without which he would not act; (3) the promisee acted to his or her substantial detriment in reasonable reliance on the promise; and (4) injustice can be avoided only by enforcement of the promise.

Kolkman v. Roth, 656 N.W.2d 148, 156 (Iowa 2003) (citation omitted). "[S]trict proof" is required of all the elements. *Id.* "This includes strict proof of a promise that justifies reliance by the promissee." *Id.*

Byl could not meet this exacting standard, as his affidavit did not generate an issue of material fact on the first or fourth promissory estoppel elements. With respect to the first element, a clear and definite promise, the affidavit did not indicate when the oral agreement was made. On the fourth element, avoidance of injustice, Byl essentially had to show that he did not have an adequate remedy if the verbal promise was not enforced. *See Warder*, 274 N.W.2d at 343. He could not make this showing, as he had recourse against Cornie and, indeed, availed himself of that avenue by obtaining a default judgment against him.

As Byl could not prevail as a matter of law on his assertion of a promissory estoppel exception to sections 622.32 and 554.2201, those defenses entitled Harriet to summary judgment. To hold otherwise would allow the exception to

swallow the rule. *Kolkman*, 656 N.W.2d at 156–57 (stating "the doctrine is carefully applied").[1]

In light of our conclusion, we need not address the applicability of Harriet's additional statutory defense under section 535.17.[2]

We affirm the district court's grant of summary judgment in favor of Harriet Van Beek.

AFFIRMED.

[1] Byl also appears to suggest on appeal that the original purchase agreements could serve as the basis of a promissory estoppel claim. As noted, those original agreements made no mention of Harriet and, for that reason, they do not assist Byl.

[2] That section provides:

> A credit agreement is not enforceable in contract law by way of action or defense by any party unless a writing exists which contains all of the material terms of the agreement and is signed by the party against whom enforcement is sought.

Iowa Code § 535.17(1).