

**IN THE COURT OF APPEALS OF IOWA**

No. 7-625 / 07-0318  
Filed November 29, 2007

**GENE AKERS,**  
Plaintiff-Appellee,

**vs.**

**OAK HILL PLANTATION, L.C., and  
RICHARD L. WALTERS,**  
Defendants-Appellants.

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**OAK HILL PLANTATION, L.C., and  
RICHARD L. WALTERS,**  
Counterclaim Plaintiffs-Appellants,

**vs.**

**GENE AKERS,**  
Counterclaim Defendant-Appellee.

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Appeal from the Iowa District Court for Dallas County, Gregory A. Hulse,  
Judge.

Oak Hill Plantation, L.C. appeals from the district court order entering  
judgment in favor of Gene Akers on his breach of contract claim. **AFFIRMED.**

Randy Hefner and Matthew J. Hemphill of Hemphill & Bergkamp, P.C.,  
Adel, for appellants.

A. Zane Blessum, Winterset, and Catherine K. Levine, Des Moines, for  
appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**EISENHAUER, J.**

The defendant, Oak Hill Plantation, L.C. (Oak Hill), appeals from the district court order entering judgment in favor of the plaintiff, Gene Akers, on his breach of contract claim. Oak Hill contends the court erred because the statute of frauds invalidated the contract. Our review is for correction of errors at law. *Kolkman v. Roth*, 656 N.W.2d 148, 151 (Iowa 2003) (“We review a decision by the district court to admit oral evidence of a contract under an exception to the statute of frauds for corrections of errors at law.”).

Akers entered into an oral contract with Oak Hill to raise hay on some property owned by Oak Hill until the land could be developed. Akers was to provide the machinery, fuel, and labor and the parties would split ownership of the resulting crop in half. These facts are undisputed. The parties, however, disagree as to the length of the contract and how the hay was to be sold. Akers claims the contract was for four to seven years. Oak Hill argues the contract was for one year with an option to renew. It also claims Akers was to buy its half of the hay or sell it and give the proceeds to Oak Hill.

In 2004, Akers mowed and baled the hay on Oak Hill’s property. He attempted to sell Oak Hill’s half but was unable to and left half the bales of hay on the property. The following year, Akers was informed Oak Hill had decided to rent the land to someone else. Akers filed a small claim against Oak Hill in October 2005, alleging breach of contract and wrongful termination of a farm lease.<sup>1</sup> The case was removed to district court.

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<sup>1</sup> The wrongful termination of farm lease claim was dismissed by Akers at trial.

Following trial in November 2006, the district court entered judgment in favor of Akers on his breach of contract claim and awarded him \$8400 plus interest. Oak Hill filed a motion to reconsider, which the court denied. On appeal, Oak Hill contends Akers's breach of contract claim must fail because the contract violates the statute of frauds.

"The statute of frauds, which is no more than a rule of evidence, governs, not the validity of a contract, but only the manner in which one may be proven." *Garland v. Brandstad*, 648 N.W.2d 65, 71 (Iowa 2002). It does not render oral promises invalid. *Harriott v. Tronvold*, 671 N.W.2d 417, 422 (Iowa 2003). Iowa Code section 622.32(4) (2005) bars evidence of oral contracts that are not to be performed within a year. However, enforcement of such contracts is not barred where the existence of the contract is not denied in the pleadings. Iowa Code § 622.34.

In its ruling, the district court held:

In this case there was a general denial of Plaintiff's small claims action seeking recovery for the breach of contract. Defendants' counterclaim, however, was premised on Akers's breach of a contract between Defendant and Plaintiff implying the contract did exist. Further, even though the claims of Plaintiff's original action for breach of contract were denied, Plaintiff's amended petition was never denied.

The district court concluded that Oak Hill admitted the existence of an oral contract and therefore evidence as to its terms was admissible. This portion of the district court's ruling was in error. Although Oak Hill counterclaimed based on breach of contract, it did not concede the oral contract was for a period of more than a year. Rather, it raised the statute of frauds as an affirmative defense. The affirmative defense states, "Evidence of the existence of the oral

contract . . . Gene Akers (“Plaintiff”) relies upon, to the extent Plaintiff claims said contract was for a term of five to seven years, is not competent because of the Statute of Frauds.” This is sufficient, unless an exception applies, to bar evidence regarding the existence of a contract that cannot be performed within a year.

The court found the promissory estoppel exception to the statute of frauds applied. Oak Hill contends this was in error. We reject its claim. The doctrine of promissory estoppel is available to remove an oral real estate contract from the statute of frauds. *Kolkman v. Roth*, 656 N.W.2d 148, 152 (Iowa 2003). It does not eviscerate the statute of frauds but only applies to circumvent the statute when necessary to prevent an injustice. *Id.* at 156. The party asserting the exception must prove:

(1) a clear and definite promise; (2) the promise was made with the promisor'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.

*Id.* The district court found the preceding elements were clearly proven. We defer to its fact findings if supported by substantial evidence. Iowa R. App. P. 6.14(6)(a). Oak Hill does not dispute the fact findings, but instead argues this case involves a “farm/lease contract,” and therefore Akers was required to prove he was a tenant, and not just a cropper. *See Dopheide v. Schoeppner*, 163 N.W.2d 360, 362 (Iowa 1968). This argument was never brought before the district court and therefore will not be considered for the first time on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

We conclude the district court erred in finding the statute of frauds did not apply because Oak Hill admitted the existence of an oral contract allowing evidence of its terms to be introduced at trial. However, the court properly determined the promissory estoppel exception to the statute of frauds applied. Accordingly, we affirm the judgment in favor of Akers.

**AFFIRMED.**