

IN THE COURT OF APPEALS OF IOWA

No. 7-023 / 96-0161

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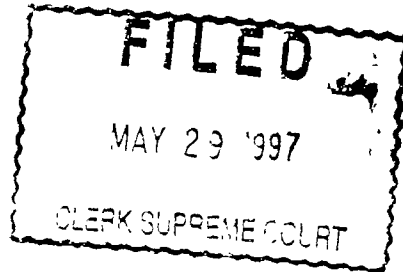
KARL GABELMANN,

Appellant,

vs.

NFO, INC.,

Appellee.



Appeal from the Iowa District Court for Story County, Joel E. Swanson, Judge.

Plaintiff appeals a district court ruling granting defendant's motion for judgment notwithstanding verdict on plaintiff's claim against defendant for its failure to pay him accrued housing allowances and moving expenses. **AFFIRMED.**

Stephen N. Greenleaf of Lynch, Greenleaf & Michael, L.L.P., Iowa City, for appellant.

Gayla R. Harrison of Johnson, Hester, Walter & Harrison, L.L.P., Ottumwa, for appellee.

Heard by Habhab, C.J., and Huitink and Vogel, JJ.

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HABHAB, C.J.

NFO, Inc., is a non-profit corporation formerly known as National Farmers Organization and is based in Ames, Iowa. The company provides marketing services and information related to grain and livestock products. Karl Gabelmann began employment with NFO in 1973, when its operation was centered in Corning, Iowa. In his position as a regional supervisor of field staff, he was in charge of a nineteen-county area. Shortly after he began work for NFO, he signed an offer of employment which set forth his position and salary and outlined travel allowances for food and lodging. The offer did not provide for moving expenses or housing allowances.

In 1975, Gabelmann transferred to Corning at the request of his supervisor, Brynolf Grahn, although his family remained in Spencer. Gabelmann accepted the transfer and believed NFO had agreed to pay his moving expenses and an \$80 monthly housing allowance. NFO paid for his food and lodging before his family joined him in Corning in 1976. Gabelmann then made a request for these expenses but did not receive payment for them.

In 1982, Gabelmann wrote a memorandum to his supervisor regarding the moving expenses and housing allowance. Grahn responded by stating the company had a salary freeze and had reverted to four-day weeks in order to cut expenses. In 1986, Gabelmann prepared a requisition form requesting the payment of \$11,329.01 in delinquent payments. He received no response. Gabelmann did not raise the issue again until July 1993, after his employment with NFO was terminated.

Gabelmann commenced the present action in 1994. He claimed he had a contract with NFO to pay the moving expenses and monthly housing allowance. NFO denied the claims and filed an affirmative defense of statute of limitations. NFO moved for summary judgment in April 1995 claiming there was no meeting of the minds to establish a contract between the parties. The district court denied the motion.

NFO subsequently filed a second motion for summary judgment claiming the lawsuit was barred by the statute of limitations. The district court refused to consider the motion since it was filed only forty-one days prior to trial. The case proceeded to trial. At the close of Gabelmann's evidence, NFO filed a motion for directed verdict on the basis of Gabelmann's failure to establish a meeting of the minds, failure to establish a claim under Iowa Code chapter 91A, and failure to bring the claim before expiration of the statute of limitations. The district court granted directed verdict on the claim pursuant to Iowa Code chapter 91A and overruled the remainder.

At the close of all the evidence, NFO renewed its directed verdict motion. The district court again overruled the motion on the contract and statute of limitations issues and submitted the case to the jury. The jury was not given instructions regarding the statute of limitations and returned a verdict in favor of Gabelmann in the amount of \$22,000.

NFO filed a motion for judgment notwithstanding the verdict, motion for new trial, and a motion for remittitur. The district court ruled the jury's verdict was not supported by the evidence, especially since Gabelmann had requested \$17,069.01 and

was awarded \$5000 over that amount. The court ruled the jury's verdict was a result of jury passion. Additionally, the court ruled Gabelmann had not established a "meeting of the minds" and, moreover, the statute of limitations barred his claim. The court entered judgment in favor of NFO. Gabelmann has appealed.

Gabelmann argues his claim is timely. He notes he raised the issue of payment several times over the course of his employment. He contends his claim is not barred because his housing allowance was on an open, continuous account and his cause of action did not accrue until his employment with NFO was terminated.

Gabelmann argues there is substantial evidence in the record to support the jury's verdict. He asserts NFO's president gave Grahn oral permission to offer a housing allowance to him. He further argues despite NFO's claim that no payments could be made until the proper requisition forms had been completed, he commonly received repayment for expenses without filing requisition forms.

I. Judgment Notwithstanding the Verdict. Our review is for correction of errors at law. Iowa R. App. P. 4 When reviewing the district court's grant of judgment notwithstanding the verdict, we consider whether the evidence, taken in the light most favorable to the nonmoving party, shows the movant was entitled to a directed verdict at the close of all the evidence. *Baysden v. Hitchcock*, 553 N.W.2d 901, 903 (Iowa App. 1996). Additionally, we look to see if the evidence on an issue was sufficient to generate a jury question. *Id.*

NFO maintains a five-year statute of limitations for unwritten contracts applies to Gabelmann's claim. *See* Iowa Code ch. 614.1(4) (1993). It contends this statute of limitations began to run in June 1976, as in May of that year Gabelmann clearly expected to be paid the allotment and expenses. NFO asserts the five-year statute of limitations expired in 1981. NFO also maintains if a two-year statute of limitations applies, it expired in 1978.

Gabelmann argues, as his claim is one for wages, a two-year statute of limitations is applicable. *See* Iowa Code ch. 614.1(8) (1993). He contends the agreement for moving expenses and housing allowance constituted a continuous, open account pursuant to Iowa Code section 614.5. He argues his cause of action did not begin to accrue until termination of his employment with NFO, and thus his claim is timely.

After reviewing the evidence in the light most favorable to Gabelmann, we find Iowa Code section 614.5 to be inapplicable to the case at hand. Furthermore, we find the applicable statute of limitation began to accrue in 1976. The record reflects although Gabelmann requested an \$80 monthly housing allowance begin in May 1976, the issue as to whether the parties agreed to the housing allotment was contested. Gabelmann received no reply from NFO from his 1976 request and did not raise this issue again until 1982.

In *Schulte v. Wageman*, 465 N.W.2d 285 (Iowa 1991), our supreme court stated the following in regard to statutes of limitation:

Statutes of limitation are justified by necessity and convenience. They have always vexed the philosophical mind since it is difficult to fit them neatly into a completely logical and symmetrical system of law. They represent expedients, rather than principles. They are practical and pragmatic devices used to spare our courts from the added burden from the litigation of stale claims, and the citizen from the need to defend after memories have long since faded, witnesses have died or disappeared, and evidence lost.

Schulte, 465 N.W.2d at 287. The court went on to note:

[Statutes of limitation] are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the avoidable and unavoidable delay. . . . They represent a public policy about the privilege to litigate.

Id. (citing *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314, 65 S. Ct. 1137, 1142, 89 L. Ed. 1628, 1635 (1945)).

Even reviewing the evidence in the light most favorable to Gabelmann, we find under application of either the two- or five-year statute of limitation,¹ it expired well before 1994 (the year in which Gabelmann commenced the present action) as it began to accrue in 1976. Thus, we hold Gabelmann's claim is time-barred.

II. Miscellaneous. As we have found Gabelmann's claim is time-barred, we need not address his remaining contentions.

AFFIRMED.

¹ We pass on the issue of whether the two- or five-year statute of limitation is applicable as Gabelmann's claim is time-barred under either statute. In addition, if NFO's ability to pay is an issue, we find Gabelmann's claim is time-barred under application of either statute of limitation as NFO's ability to pay was evident in 1988.