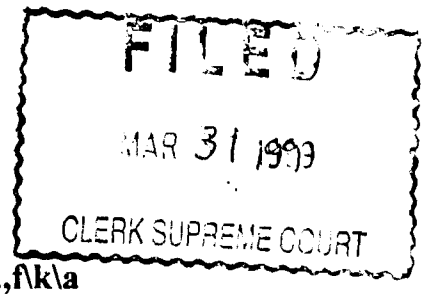
IN THE COURT OF APPEALS OF IOWA

No. 8-647 / 98-124

JAMES W. MEYER

Plaintiff-Appellant,

vs.



QUALITY HEALTH CARE SPECIALISTS CORP., f\k\a QUALITY DEVELOPMENT CO., INC., and EVANS LUMBER AND CONSTRUCTION, INC.,

Defendants-Appellees.

Appeal from the Iowa District Court for Franklin County, Stephen P. Carroll, Judge.

The plaintiff appeals from the district court's grant of summary judgment in the defendants' favor. **AFFIRMED.**

Gregory T. Racette of Hopkins & Huebner, P.C., Des Moines, for appellant.

Carol Wendel of Neiman, Stone, McCormick & Wendl, P.C., West Des Moines, for appellee Quality Health Care Specialists Corp.

David L. Riley of Yagla, McCoy & Riley, P.L.C., Des Moines, for appellant Evans Lumber and Construction, Inc.

Considered by Vogel, P.J., Zimmer, J., and Habhab, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HABHAB, S.J.

James Meyer appeals the decision of the district court granting summary judgment to defendants in this tort suit. He claims there is not sufficient evidence to show the statute of repose found in Iowa Code section 614.1(11) should apply in this case. He also claims section 614.1(11) is unconstitutional. We affirm on appeal.

In 1978, Quality Development Company, Inc.[1], entered into a contract in which it agreed to build a nursing home for Sheffield Care Center, Inc., in Sheffield, Iowa. A ribbon-cutting ceremony to open the nursing home was held on October 21, 1979. Evans Lumber and Construction, Inc., which had been hired to perform much of the actual construction work, received a final payment from Quality on November 20, 1979.

James Meyer was employed as a maintenance person at the Sheffield Care Center. On June 20, 1995, Meyer was injured while attempting to change a fuse. On April 3, 1997, Meyer filed a tort suit against Quality and Evans Lumber claiming the fuse box was improperly grounded.

Defendants raised as an affirmative defense the claim that the action was barred by the statute of repose found in Iowa Code section 614.1(11). This section provides:

> In addition to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and

---

[1] Quality Development is now known as Quality Health Care Specialists Corporation. We will refer to both companies as Quality.

> for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death. However, this subsection does not bar an action against a person solely in the person's capacity as an owner, occupant, or operator of an improvement to real property.

Iowa Code §614.1(11) (1995). Defendants filed motions for summary judgment claiming Meyer's injury occurred more than fifteen years after the fuse box was installed, and thus, his action was barred by section 614.1(11). Terry Evans, the president of Evans Lumber, filed an affidavit stating the company's work at the nursing home was completed by November 23, 1979.

The district court granted the motions for summary judgment. The court found the evidence indicated everything Evans Lumber did relative to the electrical system occurred more than fifteen years before April 3, 1997, the date the suit was filed. The court also found section 614.1(11) was not unconstitutional. Meyer has appealed.

I. Summary judgment is proper only when the entire record before the court shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Bob McKiness Excavating & Grading, Inc. v. Morton Bldgs., Inc.*, 507 N.W.2d 405, 408 (Iowa 1993). The interpretation of Iowa Code section 614.1(11) is a legal question, properly resolvable by summary judgment. *See Jarnagin v. Fisher Controls Int'l, Inc.*, 573 N.W.2d 34, 36 (Iowa 1997).

II. Plaintiff contends section 614.1(11) violates the special legislation provisions of article III, section 30 of the Iowa Constitution. In pertinent part, article III, section 30 provides:

> [I]n all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state;
> * * *

Plaintiff believes the statute creates an improper classification between those who are injured by improvements to real property within fifteen years and those who are injured after fifteen years. He also believes there is an improper classification between those who are immune from suit under the statute and those who are not immune (owners, occupants, or operators).

To determine whether a statute constitutes special legislation in violation of article III, section 30 of the Iowa Constitution, courts use traditional equal protection analysis. *See Utilicorp United, Inc. v. Iowa Utilities Bd.*, 570 N.W.2d 451, 455-456 (Iowa 1997). Under this test, the classification must be sustained unless it is patently arbitrary and bears no rational relationship to a legitimate governmental interest. *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 334 N.W.2d 290, 294 (Iowa 1983). If there is any reasonable ground for the classification and it operates equally upon all within the same class, there is no violation of article III, section 30. *John R. Grubb, Inc. v. Iowa Housing Fin. Auth.*, 255 N.W.2d 89, 96 (Iowa 1977) (Citing *Richards v. City of Muscatine*, 237 N.W.2d 49, 61 (Iowa 1975); *Dickinson v. Porter*, 240 Iowa 393, 400, 35 N.W.2d 66, 72 (1948)).

The Iowa supreme court has held section 614.1(11) does not violate the equal protection clauses of the federal and Iowa Constitutions. *Krull v. Thermogas Co.*, 522 N.W.2d 607, 615 (Iowa 1994). Where a classification survives an equal protection challenge, it will also survive a special legislation challenge under article

III, section 30. *In re Chicago,* 334 N.W.2d at 294. This is because the same test is used for both analyses. *Utilicorp,* 570 N.W.2d at 456. Because the supreme court has already determined section 614.1(11) will withstand an equal protection challenge, we conclude it does not violate the special legislation provision of article III, section 30.

III. Meyer claims section 614.1(11) violates the equal protection clause found in article I, section 6 of the Iowa Constitution. He recognizes the supreme court has held section 614.1(11) will withstand an equal protection challenge. *See Krull,* 522 N.W.2d at 615. We note much of plaintiff's argument is the same as that advanced in *Krull.* In upholding the constitutional issue raised in *Krull* our supreme court stated:

> Not surprisingly, the cases go both ways on the constitutional issue Mapco raises. *Compare Fujioka v. Kam,* 55 Haw. 7, 9-13, 514 P.2d 568, 570-72 (1973) (statute of repose protected licensed building professionals but not owners; held that (1) classification was not based on reasonable consideration of differences between the two classes and (2) such classification had no fair and substantial relation to the object of the legislation) *with Sedar v. Knowlton Constr. Co.,* 49 Ohio St.3d 193, 203-05, 551 N.E.2d 938, 948-49 (1990) (holding that such classification was based on valid distinction). *Sedar* collects the jurisdictions that have upheld such statutes against equal protection challenges and those jurisdictions are many. *See Sedar,* 49 Ohio St.3d at 203 n. 8, 551 N.E.2d at 948 n. 8. In addition, on this issue the United States Supreme Court has dismissed appeals from state courts for lack of a substantial federal question. *See, e.g., Ellerbe v. Otis Elevator Co.,* 618 S.W.2d 870 (Tex.Civ.App. 1981), *appeal dismissed,* 459 U.S. 802, 103 S.Ct. 24, 74 L.Ed.2d 39, *reh'g denied,* 459 U.S. 1059, 103 S.Ct. 478, 74 L.Ed.2d 625 (1982).
>
> A local federal district court upheld section 614.1(11) against a federal and Iowa equal protection challenge. *Patel v. Fleur De Lis Motor Inns, Inc.,* 771 F.Supp. 961 (S.D.Iowa 1991) (mem.). In *Patel,* the district court found a "rational basis for the legislature's decision to

> exclude owners, occupants, and operators from the protection afforded others who improve real property." *Id.* at 968. The rationale, which we adopt, is this:
>
> > Owners have continuing control of the premises and are responsible for their repair and maintenance. In contrast, architects and builders have no control over the premises once they are turned over to the owner.
>
> *Id.* (citation omitted). *See also McKiness,* 507 N.W.2d at 410 (applying same rationale to section 614.1(11) in context of due process challenge).
>
> We should also point out that property owners have a defense if they did not know nor had any reason to anticipate the unsafe or defection condition of the premises. *Capener v. Duin,* 173 N.W.2d 80, 85 (Iowa 1969). If they do know about the condition, the liability potential should remain to prompt them to correct it.
>
> We find additional rationale in *McKiness.* There we said that for due process purposes the legislature could reasonably have decided that
>
> > [t]he lapse of time between completion of an improvement and initiation of suit often results in the unavailability of witnesses, memory loss and a lack of adequate records. Another problem particularly critical is the potential application of current improved state-of-the-art standards to cases where the installation and design of an improvement took place many years ago.
>
> *McKiness,* 507 N.W.2d at 410 (citation omitted).
>
> For all these reasons, we conclude section 614.1(11) does not violate the equal protection provisions of either constitution.

Krull, 522 N.W.2d at 614-615. Plaintiff asks us to revisit this issue. This we cannot do. We note the decision in *Krull* has been upheld several times since it was decided. *See Jarnagin,* 573 N.W.2d at 36; *Tallman v. W.R. Grace & Co.,* 558 N.W.2d 208, 210 (Iowa 1997); *Buttz v. Owens-Corning Fiberglas Corp.,* 557 N.W.2d 90, 92 (Iowa 1996).

IV. Plaintiff asserts summary judgment was not proper because there was a genuine issue of material fact concerning whether the improvement to the real

property which caused the injury was completed more than fifteen years before the suit was filed. He claims the building might not have actually been completed when the ribbon-cutting ceremony took place on October 31, 1979. He points out Evans Lumber installed a folding door in May 1980.

Section 614.1(11) is a statute of repose. *Buttz*, 557 N.W.2d at 91. A statute of repose terminates any right of action after a specified time has elapsed, regardless of whether or not there has as yet been an injury. *Bob McKiness*, 507 N.W.2d at 408. The fifteen-year period of repose found in section 614.1(11) begins to run with the date of the occurrence of the act or omission alleged to have been the cause of the injury. *Id.* at 409.

The suit in the present case was filed on April 3, 1997. In order to escape the fifteen-year statute of repose, there would need to be evidence the fuse box in question was installed after April 3, 1982. The evidence shows work on the nursing home was completed in 1979. Terry Evans testified the folding doors were an extra item which were not part of the original contract. However, even if work had been done during 1980, there is still no evidence to show work was being performed as late as 1982. There is no genuine issue of material fact concerning whether the fuse box was installed more than fifteen years before the present suit was filed. We determine summary judgment was proper in this case.

We affirm the decision of the district court granting summary judgment to

defendants because plaintiff's suit is barred by the fifteen-year statute of repose found in section 614.1(11).

AFFIRMED.