FILED
APR 30 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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| **TIES & THINGS, INC.,** | ) | |
| Plaintiff-Appellant, | ) | Filed April 30, 1985 |
| vs. | ) | |
| **UNIVERSAL SURETY COMPANY,** | ) | 5-63<br>84-1037 |
| Defendant-Appellant. | ) | |

Appeal from the Iowa District Court for Benton County - August F. Honsell, Judge.

Plaintiff appeals a summary judgment in favor of defendant. AFFIRMED.

R. Ronald Pogge of Hopkins & Huebner, Des Moines, Iowa, for plaintiff-appellant.

Richard G. Hileman, Jr., and Lawrence E. Blades of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, Iowa, for defendant-appellee.

Heard by Oxberger, C.J., Schlegel, and Hayden, JJ.

**SCHLEGEL, J.**

Plaintiff, Ties and Things, Inc., appeals a summary judgment in favor of defendant, Universal Surety Co. We affirm.

Plaintiff sued to recover on a surety bond issued by defendant to Early Iron & Metal, Inc. (Early Iron), in September of 1978. Plaintiff was, for a short time in 1978, a subcontractor for Early Iron. That relationship was terminated at the direction of the railroad company that had contracted with Early Iron. Plaintiff's suit is for payment for work performed by plaintiff as a subcontractor of Early Iron.

The trial court granted defendant's motion for summary judgment, ruling that the action was barred by two statutes of limitations: the one-year statute of limitations found in the surety contract and the two-year statute of limitations found in Iowa Code section 496A.102 (1981).

Section 496A.102 provides that suits against a corporation must be commenced within two years of the time that the corporation is dissolved or expires. Early Iron's corporate existence expired on November 21, 1979, when the Secretary of State cancelled its certificate of incorporation. See Iowa Code § 496A.130 (1979). Plaintiff's petition in this case was filed March 2, 1982, after the section 496A.102 limitations period had expired.

Under the rule announced in State v. Bi-States Construction Co., 269 N.W.2d 455, 457-58 (Iowa 1978), a surety is allowed to assert a section 496A.102 statute of limitations defense when such a defense would be available to the surety's principal. Because defendant's principal—Early Iron—could assert such a defense to a claim filed in March of 1982, defendant can also raise that defense.

Plaintiff argues that the rule in Bi-States does not apply in this case because plaintiff obtained a default judgment against Early Iron in an action that was timely filed. That argument would have merit if the default judgment had a preclusive effect upon the defendant. The trial court ruled, however, that the

default judgment had no preclusive effect upon defendants. Plaintiff concedes that the default judgment has no preclusive effect. We therefore fail to see any reason why the Bi-States rule does not apply. The trial court correctly ruled that plaintiff's claim is barred by section 496A.102.

Plaintiff also argues that the trial court erred in ruling that the one-year statute of limitations found in the surety contract bars this action. Plaintiff claims that the trial court improperly limited the meaning of the term "winding up" — found in Iowa Code § 496A.130 — when making its ruling. The proper construction of "winding up" is critical to plaintiff's claim because the surety contract limitations period was triggered when Early Iron ceased work on its contract with the railroad company. If "winding up" is construed as plaintiff requests, it is possible Early Iron did not cease work on the contract until May 18, 1981, in which case plaintiff's action was commenced before the contractual statute of limitations expired.

We need not reach this issue, however. There is no evidence in the record that the surety contract was meant to waive the statutory limitations period found in section 496A.102 of the Iowa Code. Thus, our ruling that plaintiff's claim is barred by that section is dispositive of this case.

AFFIRMED.