IN THE COURT OF APPEALS OF IOWA

No. 2-093 / 91-1058

C. ALLEN RICE,

Appellant,

vs.

HAROLD E. CARPENTER TRUST and HAROLD S. CARPENTER, Trustee,

Appellees.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Rice appeals from the district court's dismissal of his petition on the ground it was barred by the applicable five-year statute of limitation. **REVERSED AND REMANDED.**

Edward N. McConnell of Babich & Nickerson, Des Moines, for appellant.

Jeffrey W. Courter and Thomas H. Burke of Whitfield, Musgrave & Eddy, Des Moines, for appellees.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

C. Allen Rice and Lyle Carpenter were business associates. Each owned fifty percent of the shares of C & J Leasing Corporation and C & J Management Corporation. Rice asserts he and Lyle Carpenter had made an oral agreement that each would have a right of first refusal if the other wished to transfer or dispose of any shares.

Between 1984 and 1986 Lyle Carpenter faced serious financial problems. He wished to protect his C & J Leasing and C & J Management shares from his creditors. Accordingly, in November 1984 he transferred his shares to the Harold E. Carpenter Trust for $15,000. After receiving a discharge in bankruptcy in September 1986, Lyle reacquired the shares from the trust for slightly more than the 1984 transfer price of $15,000.

On March 1, 1991, Rice filed the present petition against the Harold E. Carpenter Trust and its trustee, Harold S. Carpenter. Rice's suit complained of the trust's role in the transactions. Rice asserted causes of action for fraudulent misrepresentation, fraud, intentional interference with contract, and intentional interference with prospective business advantage.

The defendants moved to dismiss Rice's petition on the ground it was barred by the applicable five-year statute of limitation. The defendants noted the initial stock

transfer occurred in November 1984, more than six years before Rice's petition.

Rice has appealed from the dismissal of his petition. He accepts that the applicable statute of limitation period is five years and the discovery rule should be used to determine when the five-year period begins to run.

SCOPE OF REVIEW: We review for corrections of errors at law. Iowa R. App. P. 4. A motion to dismiss is sustainable only when the pleadings make certain the pleader has failed to state a claim on which relief can be granted under any state of facts provable under the allegations. Rittscher v. State, 352 N.W.2d 247, 250 (Iowa 1984). On a motion to dismiss for failure to state a cause of action, the pleadings should be construed in the light most favorable to the pleader, with doubts resolved in his favor and the challenged allegations accepted as true. Prouty v. Clayton County, 264 N.W.2d 761, 763 (Iowa 1978). Although the defense of statute of limitations should be asserted by a responsive pleading, such defense may be raised when the uncontroverted facts on the face of the petition show the claim for relief was barred when the action was commenced. Davis v. State, 443 N.W.2d 707, 708 (Iowa 1989).

MOTION TO DISMISS: We consider whether the trial court was correct in dismissing Rice's action because the statute of limitations had run. Rice asserts the discovery rule

was improperly applied to the facts of this case. He argues he used reasonable diligence in keeping track of the ownership of the shares, and made all inquiries warranted by the facts. He contends he received false assurances from Lyle and his representatives until March 1986.

The district court dismissed Rice's petition on the ground it was barred by the five-year statute of limitation. Under the discovery rule, the statute of limitations begins to run when the injured person discovers or in the exercise of reasonable care should have discovered the allegedly wrongful act. Franzen v. Deere and Co., 377 N.W.2d 660, 662 (Iowa 1985), (citing Chrischilles v. Griswold, 260 Iowa 453, 462, 150 N.W.2d 94, 100 (1967)). In addition, the person is charged with knowing on the date of the incident what a reasonable investigation would have disclosed. Franzen v. Deere, at 662. The period begins at the time the person is on inquiry notice. Id.

The court used the discovery rule to determine when the statute of limitation period began to run. The facts set forth in the petition state that on or about December 1984 Rice was told by the accountant for C & J Leasing that the stock may have been sold. The petition also states that in January, 1986 Lyle Carpenter filed bankruptcy and did not list any ownership interest in the corporations. In

addition, in that same time period, certain bank creditors contacted Rice and demanded to know the status of ownership of all shares of C & J Leasing Corp., C & J Management Corp., and C & R Publishing Corporation stock. The court held in the exercise of due diligence, Rice should have been on inquiry notice at least by January 1986 that Lyle Carpenter's shares might have been transferred. Throughout 1985, however, Lyle Carpenter claimed he owned the stock. In January 1986, after being contacted by bank creditors regarding who owned the stock, Rice, through his attorney, asked Lyle if he still owned the stock. Viewing the evidence in the light most favorable to the plaintiff, Lyle's answer must have been favorable to Rice. If Lyle's answer was that he did not own the stock, Rice would have no reason to inquire further. However, O'Malley indicated the books in March 1986 would reveal Lyle still owned the stock.

The relationship of a business partnership suggests that a reasonable person would assume his partner was telling the truth unless he has reason to disbelieve his partner. No such reason was evidence in this case. If the books indicated Lyle was owner in March 1986, a reasonable person would inquire no further. We therefore reverse the trial court and remand for further proceedings.

Each party will pay his own attorney's fees. Costs are taxed to the appellee.

REVERSED AND REMANDED.

Sackett, J., concurs; Habhab, J., dissents.

HABHAB, J. (dissenting)

I respectfully dissent. I would affirm the trial court. It is clear to me from the underlying facts that appellant's petition was properly dismissed for his claim is barred by the applicable five-year statute of limitations.