

IN THE COURT OF APPEALS OF IOWA

No. 9-192 / 98-991
Filed April 30, 1999

DAVID LOVE,
Appellant,

vs.

IOWA MUTUAL INSURANCE COMPANY,
Appellee.

Appeal from the Iowa District Court for Black Hawk County, James L.
Beeghly, Judge.

David Love appeals the district court order granting summary judgment for the
defendant on his breach of contract and bad faith claims. **AFFIRMED.**

Eric W. Johnson of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C.,
Waterloo, for appellant.

James R. Hellman and Carolyn A. Rafferty of Dutton, Braun, Staack, &
Hellman, P.L.C., Waterloo, for appellee.

Heard by Sackett, C.J., and Vogel and Zimmer, JJ.

VOGEL, J.

David Love appeals the district court order granting summary judgment in favor of the defendant on his breach of contract and bad faith claims. We affirm.

Background facts. On February 14, 1995, Love sustained loss to his residence and personal property as a result of a fire. Love notified his insurer, Iowa Mutual Insurance Company, and an adjustor examined the site immediately after the fire. Under the terms of the policy, Love was required to provide a complete inventory of his damaged personal property with supporting documentation and a sworn proof of loss statement within sixty days. In addition, any legal action arising out of the policy had to be commenced within one year of the loss. Love did submit partial proofs of loss for repairs to his home, specifically excluding any personal property, which Iowa Mutual accepted and paid. However, Love did not submit an inventory for his personal property within the sixty-day period and never provided a sworn proof of loss. Iowa Mutual subsequently denied Love's claim.

On September 29, 1997, Love filed an action against Iowa Mutual for breach of contract and bad faith. The district court granted Iowa Mutual's motion for summary judgment and Love now appeals.

Scope of review. We review a summary judgment ruling for error. *Anderson v. Miller*, 559 N.W.2d 29, 31 (Iowa 1997). We examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law. *See Id.*; Iowa R. Civ. P. 237(c). In doing so, we view the

facts in the light most favorable to the party opposing the motion for summary judgment. *Anderson*, 559 N.W.2d at 31.

Terms of contractual limitations. Love contends that the district court erred in granting summary judgment for Iowa Mutual. He contends that Iowa Mutual's actions clearly generate a fact issue as to whether they waived or should be equitably estopped from asserting the contractual time limitations on his claim. In support, Love points to Iowa Mutual's initial refusal to pay claims directly to Love due to his pending divorce and alleged interest of his estranged wife; Iowa Mutual's acceptance of his claims for damage to the house outside of the sixty-day limitation; and Iowa Mutual's engagement in continual negotiations for the submission of his personal property claim after the sixty-day period had expired.

"Waiver" is the voluntary relinquishment of a known right, and rests on intention, while "estoppel" rests on misleading conduct. *See In re Property Seized from Sykes*, 497 N.W.2d 829, 832 (Iowa 1993); *Bishop v. Keystone Area Educ. Agency*, 275 N.W.2d 744, 753 (Iowa 1979). None of Love's allegations show a clear intent by Iowa Mutual to give up their rights under the one-year statute of limitations, therefore he fails to establish a waiver. *See Folkers v. Britt*, 457 N.W.2d 578, 581 (Iowa 1990). Nor does Love succeed in establishing the elements of equitable estoppel. To prove equitable estoppel Love must show, by clear and convincing evidence: a false representation or concealment of material facts by Iowa Mutual; lack of knowledge on his own part; intention by Iowa Mutual that the representation

or concealment be acted on, and reliance by Love to his prejudice. *See Morgan v. American Family Mut. Ins. Co.*, 534 N.W.2d 92, 100 (Iowa 1995); *Hicks v. Franklin County Auditor*, 514 N.W.2d 431, 441 (Iowa 1994). Again, Love does not allege any false representation or concealment by Iowa Mutual regarding the one-year statute of limitations. Furthermore, Love cannot claim that he lacked knowledge of the limitation as it was clearly delineated in the policy. The application of similar contractual provisions limiting the time to commence legal action has been consistently upheld by our supreme court. *See Morgan*, 534 N.W.2d at 99-100; *Stahl v. Preston Mut. Ins. Ass'n*, 517 N.W.2d 201, 202-05 (Iowa 1994); *Thomas v. United Fire & Cas. Co.*, 426 N.W.2d 396, 399 (Iowa 1988). In addition, because Iowa Mutual had an objectively reasonable basis for denying the claim, Love's bad faith claim must also fail. *See Morgan*, 534 N.W.2d at 96.

While we believe Iowa Mutual may have waived their sixty-day limitation for accepting Love's personal property claim,¹ we cannot say the same for the one-year contractual statute of limitations. Love's policy clearly provided: "Suit Against Us. No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss." Love did not file his action until September 29, 1997, some two and a half years after the fire on February 14,

¹ Iowa Mutual continued to remind Love that he needed to submit an inventory of his personal property loss even after the expiration of the sixty-day term. In a letter dated November 2, 1995, Iowa Mutual informed Love that they would welcome the anticipated submission of his personal property loss, but would accept that information "with reservation."

1995. Viewing all the facts in the light most favorable to Love, we find that he fails to establish that Iowa Mutual waived the one-year statute of limitations or should be equitably estopped from asserting the defense.

Having considered all issues properly before us on appeal, we hereby affirm the district court order granting summary judgment in favor of Iowa Mutual Insurance Company.

AFFIRMED.