**IN THE COURT OF APPEALS OF IOWA**

No. 5-610 / 95-0220

**RUTH K. HOLLEY,**

Appellant,

**vs.**

**STATE FARM FIRE & CASUALTY COMPANY,**

Appellee.

FILED
JUN 27 1996
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge.

Plaintiff insured appeals the district court's ruling granting defendant insurer a summary judgment on plaintiff's breach of insurance coverage and bad faith claims on a homeowners policy. **AFFIRMED.**

Ronald D. Arispe, Clear Lake, for appellant.

John B. Grier of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

**HUITINK, J.**

Ruth Holley appeals the district court's ruling granting State Farm Fire & Casualty Companies' motion for summary judgment in her action to recover homeowner's insurance benefits. We affirm.

Holley's home was damaged by fire on August 2, 1993. At the time, Holley was insured under a State Farm homeowner's insurance policy. The insurance policy contained a provision requiring Holley to bring an action against State Farm within twelve months after the date of loss. The policy also included a conformity to state law provision preempting the terms of the policy in the event of any conflict between the policy terms and applicable state law.

Holley submitted a claim to State Farm shortly after the fire occurred and State Farm paid her over $48,000 for damages to the home's structure and over $22,000 for damage to its contents. State Farm refused to pay any additional amounts for content damages because Holley allegedly failed to supply necessary documentation to support her claim. In February 1994, Holley was notified that State Farm would not consider her claim for additional content damages because she had failed to comply with the terms of the policy requiring additional documentation. Holley sent State Farm additional documentation regarding unpaid content damages in May 1994. State Farm informed her that the February 1994 letter denying her claim was its final determination on the merits of her claim.

In a subsequent letter dated July 21, 1994, State Farm's counsel informed Holley of its explicit denial of her remaining claim and further stated:

> Even though Ms. Holley's claim is denied, I understand there is always the possibility of a suit. State Farm does not want to be involved with a lawsuit with your insured. Please discuss the matter with her. I have no authority to make any offers; however, to avoid suit, State Farm may be willing to pay a nuisance settlement to avoid having to defend on a claim.

Holley responded with a letter dated August 10 proposing a $12,000 settlement of her claim. State Farm refused to consider any settlement, indicating Holley's claim was barred by the one-year limitation provision contained in the policy. Under the terms of the policy, the one-year limitation period expired on August 2, 1994.

Holley filed a petition in October 1994 asserting State Farm breached her insurance policy and acted in bad faith in denying her claim for additional content damages. State Farm filed an answer including the contract limitation defense and later filed a motion for summary judgment. The district court granted State Farm's motion determining that the policy's one-year limitation provision was applicable to bar Holley's claim and that Holley had not established a fact issue on her equitable estoppel claim. Holley appeals.

We review the district court's order granting summary judgment for correction of errors at law. Iowa R. App. P. 4. Entry of summary judgment is appropriate only if there exists no genuine issue of material fact. *Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the

nonexistence of a material fact. *Id.* A fact issue is generated if reasonable minds can differ on how the issue should be resolved. *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986). If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Milne*, 424 N.W.2d at 423. This procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Gott*, 387 N.W.2d at 343.

Holley first contends the district court erred in determining the policy's one-year limitation period barred her claim. She claims that because Iowa Code section 614.1(5) establishes a ten-year limitation period for commencement of suit on written contracts, her policy's one-year limitation period is invalid. *See* Iowa Code § 614.1 (5)(1993). She maintains this difference in limitation periods constitutes a conflict between her insurance policy and state law and that, as a result, the ten-year limitation period should control pursuant to the policy's conformity with state law provision. We disagree.

Iowa Code section 515.138 sets forth standard policy provisions and permissible variations for fire insurance contracts. This statute specifically provides fire insurance policies may require that suits for fire-related losses be brought within twelve months of the date of loss. *See* Iowa Code § 515.138 (1993). The standard provision regarding these shortened periods reads as follows:

> No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months after inception of the loss.

This provision is identical to the twelve-month limitation provision contained in Holley's policy, and its validity has been upheld by our supreme court in other cases. *See Thomas v. United Fire and Cas. Co.* 426 N.W.2d 396, 397 (Iowa 1988); *Stahl v. Preston Mut. Ins. Co.*, 517 N.W.2d 201 (Iowa 1994). Accordingly, we find no conflict between the policy's twelve-month limitation and the ten-year statute of limitations. We affirm on this issue.

Holley's second contention is that she was lulled into delaying this action by the representations made in the July 21, 1994 letter her lawyer received from State Farm's attorney. She argues that as a result State Farm should be equitably estopped from relying on the policy's twelve-month limitation as a defense to her claim.

To succeed on an equitable estoppel theory, the party seeking to invoke this theory must establish: (1) a false representation or concealment of material facts; (2) lack of knowledge of true facts on the part of the actor; (3) intention of the party making the representation that the actor act on the representation; and (4) reliance thereon by the actor to the actor's prejudice and injury. *Walters v. Walters*, 203 N.W.2d 376, 379 (Iowa 1973). Mere denial of liability is not a sufficient act which estops an insurer from raising a limitations defense. *Stahl*, 517 N.W.2d at 204.

We agree with the district court's conclusion there is no evidence that State Farm's attorney misrepresented or concealed any material fact. In the absence of any evidence indicating State Farm's lawyer knew State Farm was unwilling to consider a reasonable settlement offer or that he lacked authority to investigate this possibility, we are compelled to agree with the district court that there are no genuine issues of material fact remaining. The judgment of the district court is affirmed.

**AFFIRMED.**