IN THE COURT OF APPEALS OF IOWA

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9-207
88-781

AGRI '76 INDUSTRIES, INC.,)
Plaintiff-Appellant,)
vs.)
AID INSURANCE COMPANY,)
Defendant-Appellee.)

Appeal from the Iowa District Court for Washington County (CL 1753-1085), James D. Jenkins, Judge.

The plaintiff appeals dismissal of its cause of action against defendant. **AFFIRMED.**

John E. Nolan, of Rate, Nolan, Joen & Parsons, Iowa City, for the plaintiff-appellant.

William F. Fanter and Marsha K. Ternus, of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for the defendant-appellee.

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

SACKETT, J.

We are asked to resolve a series of issues stemming from a claim of plaintiff-appellant Agri '76 Industries, Inc. that their insurer, defendant-appellee Aid Insurance Company, failed to pay all claims arising from wind and hail damages to plaintiff's building.

Plaintiff owned real estate in Wellman, Iowa, insured by the defendant insurer under a Standard Fire Insurance Policy. The policy included coverage for damage to buildings due to windstorm or hail subject to policy conditions, limitations and exclusions.

On May 19, 1983, plaintiff reported to defendant's agent the building had storm damage on April 14, 1983. Defendant's adjuster examined the building on May 25, 1983. He observed what he felt was old hail damage and wind damage. On August 30, 1983, plaintiff submitted an estimate for repairs to the entire roof. Defendant's adjuster offered partial payment of the loss. The roofer made repairs.

On April 6, 1984, the adjuster issued a final Proof of Loss representing two payments made on the claim on March 23, 1984, and April 6, 1984. On June 28, 1984, the adjuster received a letter disputing the adjustment.

On October 17, 1985, plaintiff filed a petition in seven counts against defendant for compensatory and punitive damages and attorney fees. Prior to trial a count of plaintiff's petition alleging a violation of the Unfair Claims Practices Act was dismissed and defendant's motion for Summary Judgment was sustained on a breach of contract claim and on a holding that the one year statute of limitations barred plaintiff's claim for breach of the policy. Plaintiff's counts for alleged breach of a verbal promise to fix the roof; breach of the duty of good faith and fair dealing; negligent breach of duty to act with skill, care and diligence; and bad faith, remained.

Twelve days before trial and six months after the pleadings were closed by Pre-Trial Order, plaintiff sought leave to add a count to its petition to plead the doctrine of estoppel as a defense to the policy's statute of limitations. This amendment was denied. A later attempt to assert the estoppel issue by an amendment to conform with the proof was also denied. At the close of plaintiff's evidence the court sustained defendant's motion for directed verdict on all remaining counts of plaintiff's petition and dismissed plaintiff's action. Plaintiff has appealed.

I.

Plaintiff contends the trial court ruling dismissing its claim under Iowa Code section 507B should be overruled. Plaintiff acknowledges the trial court followed the dictates of Seeman v. Liberty, 322 N.W.2d 35, (Iowa 1982). Plaintiff contends we should overrule Seeman. We affirm the trial court on this issue.

II.

Plaintiff contends the trial court abused its discretion in overruling its motion to amend to include promissory estoppel. We find no abuse of discretion on this issue. See AMCO Ins. Co. v. Stammer, 411 N.W.2d 709, 714 (Iowa App. 1987).

III.

Plaintiff contends there was substantial evidence to support its count of a verbal promise to repair and it should have been submitted to the jury. In order to recover for breach of an oral contract plaintiff must prove (1) the existence of an oral contract, (2) the existence of consideration, (3) the terms of the oral contract, (4) that plaintiff has done what the oral contract requires, (5) that the contract has been breached, and (6) the amount of damage. Muchmore Equip., Inc. v. Grover, 315 N.W.2d 92, 101 (Iowa 1982); Palmer v. Albert, 310 N.W.2d 169, 172 (Iowa 1981); Roland A. Wilson & Assoc. v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976); Dullard v. Schafer, 251 Iowa 274, 281, 100 N.W.2d 422, 427 (1960); Carmichael v. Stone, 243 Iowa 904, 905, 54 N.W.2d 454, 454 (1952).

Defendant contends there was not substantial evidence of an enforceable oral agreement because there is no evidence of consideration. Plaintiff contends there was evidence they relied on defendant to take care of the roof and defendant's adjuster promised to take care of the storm damage. Defendant contends this is not sufficient evidence because it shows nothing more than a promise to do what the defendant is already obligated to do.

A party's promise to pay something it is already obligated to pay is not, standing alone, consideration. Lovlie v. Plumb, 250 N.W.2d 56, 62 (Iowa 1977); Anderson v. Lundt, 200 Iowa 1265, 1270, 206 N.W. 657, 659 (1925); Insurance Agents, Inc. v. Abel, 338 N.W.2d 531, 535 (Iowa App. 1983). There was not substantial evidence to support submission of plaintiff's claim of breach of oral contract.

IV.

Plaintiff contends the trial court erred in dismissing its claim for bad faith and negligent performance. Plaintiff also argues the issue of attorney fees should have been submitted to the jury. Plaintiff cites no authority in support of these arguments. We refuse to consider them on appeal. Inghram v. Dairyland Mut. Ins. Co., 215 N.W.2d 239, 239 (Iowa 1974).

V.

Plaintiff filed a supplemental brief in which it raised the issue of the constitutionality of the one-year period for filing claims under the policy. This issue was not raised at the trial court level. We will not consider issues for the first time on appeal. Thomas Truck & Caster Co. v. Buffalo Caster & Wheel Corp., 210 N.W.2d 532, 535 (Iowa 1973).

AFFIRMED.