FILED
AUG 31 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MICHAEL W. FARNHAM,

Appellant,

v.

STATE AUTOMOBILE & CASUALTY UNDERWRITERS,

Appellee.

Filed August 31, 1978

574
2-60482

Appeal from Polk District Court - Gibson C. Holliday, Judge.

Appeal from judgment for defendant fire insurance company based upon trial court's finding that plaintiff's action on insurance policy was barred by both statutory and contractual periods of limitation. Affirmed.

J. Blaine Phipps, of Phipps, LeTourneau & Anderson, Des Moines, for appellant.

Burns H. Davison, II, of Jones, Hoffmann & Davison, Des Moines, for appellee.

Submitted to Donielson, Acting C.J., Snell, Oxberger and Carter, JJ.

PER CURIAM

This is an appeal from a judgment for defendant based on trial court's finding that plaintiff's action is barred by both the statutory and contractual period of limitations on the claim. We affirm.

Plaintiff's action seeks to recover on a contract of fire insurance with the defendant company. By agreement of the parties, a separate trial was held on the issue of whether plaintiff's claim is barred because not commenced within one year as required by both the terms of the policy and § 515.138, The Code. It is not disputed that the fire in question occurred on December 27, 1972, and that the present action was not commenced until December 31, 1974. Both parties concede that the applicable one year period of limitations commences to run from the date of the fire. See, e.g., Olson Enterprises, Inc. v. Citizens Ins. Co., 255 Iowa 141, 121 N.W.2d 510 (1963).

The issues presented in the trial court were (a) whether the defendant company, by its conduct, waived the statute of limitations; or (b) whether it made an offer of settlement which could bind it when accepted after the running of the period of limitations. The trial court found adversely to plaintiff on said issues, concluded that the claim was barred, and dismissed the action.

We perceive the issue on this appeal to be whether the trial court was compelled to make a finding favorable to the plaintiff on the factual issues presented. When a trial court in a law action denies recovery because of plaintiff's failure to carry the burden of proof we will not interfere on appeal unless we find that the party carried such burden as a matter of law. Roland A. Wilson v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976). The evidence in the plaintiff's favor must be so overwhelming that only one reasonable inference could be drawn. On review we examine the evidence in the light most favorable to the judgment. Roland A. Wilson v. Forty-O-Four Grand Corp., supra at 925; Harper v. Cedar Rapids Television Co., 244 N.W.2d 782, 787 (Iowa 1976).

Plaintiff's evidence tended to show that on December 26, 1973, one day prior to the expiration of the period of limitations, the defendant company offered to settle the disputed fire insurance claim for $7500. Plaintiff, at this time, was demanding $11,000 as the loss payable under the policy. The testimony of the lawyer negotiating for the plaintiff on this occasion indicated that at this time he advised the lawyer negotiating

for the defendant company that if plaintiff could settle certain claims with third parties within this $7500 figure the offer was acceptable. Following these events on December 26, 1973, neither plaintiff nor his lawyer again communicated with defendant or its attorney until June 4, 1974, when a letter was sent confirming that settlement of the third party claim now permitted plaintiff to accept the $7500 offer.

Defendant's evidence consisted primarily of the testimony of the lawyer representing it in the negotiations alluded to by plaintiff. This testimony contrasted with plaintiff's evidence as to several material matters. Defendant's attorney testified that the discussions in question took place on December 20, 1973, that at said time plaintiff was demanding $11,000 and defendant was offering only $6500 firm for damage to the insured structure, with a possible addition of not more than $1000 based on plaintiff establishing to defendant's satisfaction the extent of fire related damage to plaintiff's inventory, if any. Defendant's attorney testified that at the conclusion of this meeting it was understood that the parties would await the result of the action of defendant's claims committee on plaintiff's $11,000 demand, which committee would meet on December 26, 1973. He testified that on that date the committee declined to meet that demand, that he informed plaintiff's attorney of this fact by telephone, and that he heard no more about the matter until the letter of June 4, 1974, previously described. He further testified that no information was furnished to defendant by plaintiff which would permit it to evaluate the $1000 inventory loss involved in the negotiations.

In reviewing the evidence most favorably to the judgment we must conclude that while the trial court might have found on the evidence presented that the defendant company had waived its right to invoke the statute of limitations for a reasonable period of time to permit plaintiff time to negotiate the third party claims involved, it was not compelled to so find as a matter of law. Similarly, while the trial court might have found that the defendant company had a viable offer of settlement outstanding which was not withdrawn prior to the time that it was accepted by plaintiff, it was not required to render such a finding. The evidentiary facts which must form the basis for either of these ultimate findings are sufficiently in dispute that circumstances contrary to plaintiff's contentions might reasonably be inferred by the trier of fact.

We have considered all contentions advanced by the plaintiff on this appeal and we find no basis for reversal.

AFFIRMED.