

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNIS GOODMAN,

Claimant,

vs.

RUPP TIRE SHOP,

Employer,

CONTINENTAL WESTERN  
INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

File No. 5045203

A P P E A L

D E C I S I O N

**FILED**

SEP 18 2015

WORKERS' COMPENSATION

On September 9, 2014, the deputy issued a ruling on a motion for summary judgment determining that the claimant's statute of limitations had run barring any recovery. The claimant's petition against the defendants was dismissed.

By moving for summary judgment, defendants had the burden of showing that there was no genuine issue of material fact and they were entitled to judgment as a matter of law. Iowa R.Civ.P. 237(c); Tasco, Inc. v. Winkel, 281 N.W.2d 280, 282 (Iowa 1979). The reviewing body must view the entire record in the light most favorable to the parties opposing the motion. Tasco, 281 N.W.2d at 282.

On October 31, 2014, claimant filed a timely appeal brief arguing that the defendant had, among other things, waived the statute of limitations defense by failing to affirmatively plead the defense. In defendants' answer, filed October 10, 2013, there is no assertion of any affirmative defenses. In the prayer, there is a request for a dismissal of the claimant's petition.

On December 18, 2014, defendants filed a timely brief in resistance and argued that the grant of summary judgment was appropriate.

The petition was filed on September 19, 2013, and the answer on October 10, 2013. There were no other pre-answer motions and no other pleadings or motions from the parties until the July 30, 2014, motion for summary judgment.

When the defendants answered the petition, no statute of limitations defense was included. As a result, the claimant argues that the defendant has waived the defense.

Iowa Rule of Civil Procedure 1.419 requires that any defense which admits the facts of the adverse pleading that seeks to avoid their legal effect must be specially pleaded. Iowa R. Civ. Proc. 1.419. A statute of limitations defense is considered to be an affirmative one.

In Pride v. Petersen, 173 N.W.2d 559, 554 (Iowa 1970), the court held that while the bar of limitations is primarily an affirmative defense to be specially asserted in a separate division of the responsive pleadings, in a situation where it is obvious from the uncontroverted facts, a defense of limitations may be properly raised by motion to dismiss under the Iowa Rules of Civil Procedure.

The Iowa Court of Appeals addressed this potential waiver in Lopez – Penaloza v State, 804 N.W.2d 537, 541 (Iowa Ct. App. 2011). In that particular case, the State filed a resistance to the defendants' application for post-conviction relief and raised the statute of limitations defense, therefore, the court rejected the waiver argument.

Rule 1.412 governs motions to dismiss. A motion to dismiss must be filed within 20 days after the service of an answer or pre-answer. A failure to state a claim upon which any relief can be granted should be contained in a pre-answer motion. Iowa R. Civ. Proc. 1.421.

The defendants have two opportunities to raise a statute of limitations defense; first, in a pre-answer motion and second, in a separate division in the answer itself. Failure to do either results in a waiver. Dutcher v. Randall Foods, 546 N.W.2d 889, 893 (Iowa 1996)

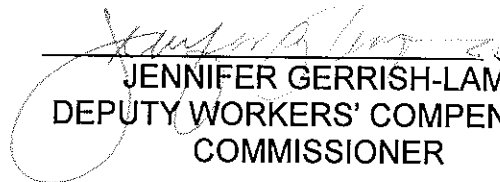
In their brief, defendants argue that the defense was formally raised in the Motion for Summary Judgment, which is essentially an amendment to the pleadings. The rules state that an amendment can be made as a matter of course at any time before the party's discovery is closed, which would be October 20, 2014. However, no such amendment was actually made and the defendants do not provide any case law that supports its statement that a Motion for Summary Judgment should be considered an amendment to the pleadings. A motion for summary judgment is a motion before the court to issue a dispositive ruling. Motions are applications for relief to the court whereas pleadings are the initiation of a lawsuit and the response thereto and the two are differentiated in the rules. See, e.g., Iowa Admin. R. 876 4.9(2) and 4.9(3).

Defendants seek a dismissal based on strict compliance with deadlines yet wish a looser interpretation of the rules to accommodate a failure to plead an affirmative defense, but did not provide legal justification for such a position.

Therefore the summary judgment is REVERSED.

This matter is returned to the deputy commissioner docket of this division for further proceedings.

Signed and filed this 18<sup>th</sup> day of September, 2015.

  
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JENNIFER GERRISH-LAMPE  
DEPUTY WORKERS' COMPENSATION  
COMMISSIONER

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