IN THE SUPREME COURT OF THE STATE OF NEVADA

EMPLOYERS INSURANCE COMPANY OF NEVADA, A NEVADA CORPORATION F/D/B/A EMPLOYERS INSURANCE COMPANY OF NEVADA, A MUTUAL COMPANY,
Appellant,
vs.
EMPLOYCO SERVICES, LTD., D/B/A EMPLOYCO,
Respondent.

No. 51878

ORDER OF REVERSAL

This is an appeal from a district court order granting a motion for judgment on the pleadings in a contract action. Eighth Judicial District Court, Clark County; David Wall, Judge. The issue is whether the six-year statute of limitations in NRS 11.190(1)(b) has run on a claim for unpaid workers' compensation insurance premiums. The district court concluded that it had and entered judgment on the pleadings or, in the alternative, summary judgment in favor of the insured. We reverse.

The parties dispute when the "final audit" and respondent Employco's alleged breach of duty occurred. Appellant Employers Insurance Company of Nevada (EICON) argues that the breach did not occur until December 31, 2001, when EICON concluded its "final audit" of ~~Employco's~~ payroll records; according to EICON, this "final audit" could not have occurred before November 12, 2001, because Employco did not provide its payroll records to EICON until then. See Kennedy Contracting, Inc. v. Traveler's Ins. Co., 866 So. 2d 1264, 1265 (Fla. Dist. Ct. App. 2004) (holding that a cause of action could not accrue "until the amount of liability for the years of membership became liquidated").

Employco contends that the breach occurred when it failed to pay EICON's invoice of January 19, 2001, which refers to the "final audit" as already a fait accompli. If Employco is correct, the six-year statute of limitations for suit for breach of a contract in writing has run.

The pleadings do not refer to either the January 19 or the December 31, 2001 invoice, or to the date of the final audit. Nor do they append the written contract to which both the complaint and answer refer. While we do not agree that issuing a credit on an account due restarts an already triggered statute of limitations under NRS 11.200, see Havas v. Long, 85 Nev. 260, 263, 454 P.2d 30, 32 (1969), superseded on other grounds by amendments to NRCP 12 as stated in Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 6 P.3d 982 (2000), there nonetheless appear to be genuine issues of material fact—assuming, as the parties do, that nonpayment of premiums due after completion of a "final audit" is the breach—as to when the breach of duty to pay premiums occurred.

Because matters not referred to in the pleadings were presented and disputed, this did not qualify as a motion for judgment on the pleadings, Lumbermen's Underwriting v. RCR Plumbing, 114 Nev. 1231, 1234, 969 P.2d 301, 303 (1998), but rather, was a motion for summary judgment.[1] Without affidavits or competent proof to explicate the documents submitted in support of and opposition to the motion, we cannot agree that no material issue of fact appears respecting the date of

[1]Although unauthenticated documents cannot be considered in a summary judgment motion, Orr v. Bank of America, NT & SA, 285 F.3d 764, 773 (9th Cir. 2002), the parties here dispute the meaning rather than the authenticity of the documents. The arguments reveal that these documents are not as clear on their face as the parties contend.

the alleged breach in this case. Since the statute of limitations question depends on when the breach occurred, we reverse and remand for further motion practice and/or trial on this and any other issues that remain. See, e.g., Bonicamp v. Vazquez, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004).

REVERSED and REMANDED.

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. David Wall, District Judge
Ara H. Shirinian, Settlement Judge
Dubowsky Law Office, Chtd.
Brownstein Hyatt Farber Schreck, LLP
Eighth District Court Clerk