

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOZSEF ZORITY, M.D.,
Appellant,
vs.
EUGENE EISENMAN, M.D., LIMITED,
Respondent.

No. 42414

FILED

DEC 20 2005

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ruben*
DEPUTY CLERK

This is an appeal from two district court orders issued in a breach of contract case dismissing the third-party plaintiff's claims for failure to meet the four-year statute of limitations found in NRS 11.190(2)(c), and awarding attorney fees and costs under NRS 18.010 and NRS 18.020 in favor of the third-party defendant. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Sunrise Hospital and Medical Center (Sunrise) filed an action against Dr. Jozsef Zority for repayment of money pursuant to a recruitment agreement. Zority filed a third-party complaint against Eugene Eisenman, M.D., Limited (Eisenman Ltd.) for indemnification based on an oral agreement to repay the money. Eisenman Ltd. filed a motion to dismiss the third-party complaint arguing that it was time barred. As the parties are familiar with the facts, we do not recite them further except as needed.

The district court dismissed the third-party complaint for failure to meet the four-year statute of limitations and granted attorney fees. Zority appeals, claiming that his cause of action against Eisenman Ltd. did not accrue until after June 12, 2002, when Sunrise sent Zority a letter stating that it had completed its audit of his guarantee period and

that he owed repayment. We agree and reverse the judgment of the district court on both orders and remand the case for further proceedings.

The statute of limitations

The district court dismissed Zority's third-party complaint because it found that the four-year statute of limitations contained in NRS 11.190(2)(c) bars all claims against Eisenman Ltd. NRS 11.190(2)(c) provides a four-year limitation for claims based on a contract or agreement not founded on a writing.¹ Whether the statute of limitations has run on an action depends on the date when the cause of action accrues. For indemnity cases, the general rule is that a cause of action accrues when "the indemnitor fails to perform in accordance with the contract."² A question of when a cause of action accrues presents a question of law, which this court reviews de novo.³

In the present case, the terms of the recruitment agreement between Zority and Sunrise expressly state that "[a]t the end of the Guarantee Period, an audit of Physician's financial records shall be performed by a representative of Hospital to determine Physician's 'Net Collectible Revenue' for the Guarantee Period." That agreement also provides a formula to determine the net collectable revenue and states that "repayment shall be due and payable immediately unless Physician

¹We decline to address Zority's other arguments that his claims for breach of contract and breach of the covenant of good faith and fair dealing are based on a written contract and, therefore, have a six-year statute of limitations.

²Sanchez v. Alonso, 96 Nev. 663, 668, 615 P.2d 934, 937 (1980).

³See Milton v. State, Dep't of Prisons, 119 Nev. 163, 164, 68 P.3d 895, 895 (2003).

requests a deferred payment plan,” not to exceed six months without the issuance of a promissory note from the physician to the hospital.

Eisenman Ltd. argues that because Zority was capable of ascertaining the amount of debt owed to Sunrise when the guarantee period ended on June 30, 1997, the claim accrued and the statute of limitations started to run at that time. We disagree. The fact that Zority was capable of determining the amount owed based on the formula provided in the recruitment agreement is irrelevant. The express terms of the agreement require an audit by a Sunrise representative to determine the exact amount of the debt. The record indicates that Sunrise did not complete its audit and notify Zority until June 12, 2000, when it sent Zority a letter demanding repayment by November 30, 2000. Thus, the debt became fixed, certain, and due as of Sunrise’s June 12, 2000, letter.

Thereafter, Zority demanded payment from Eisenman Ltd. under the oral agreement for indemnity and the employment agreement guaranteeing him a \$150,000 annual salary, and Eisenman Ltd. refused to pay. We therefore conclude that Zority’s claims arose when Eisenman Ltd. refused to pay the obligation. Thus, the first amended third-party complaint filed on March 4, 2002, was well within the four-year statute of limitations contained in NRS 11.190(2)(c).⁴

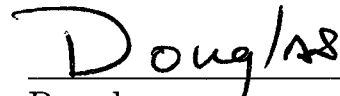
⁴Eisenman Ltd. also cites to Nevada Power Co. v. Monsanto Co., 955 F.2d 1304, 1309 (9th Cir. 1992), and Black & Decker v. Essex Group, 105 Nev. 344, 345, 755 P.2d 698, 699 (1989), for the proposition that one joint tortfeasor may seek indemnification from another joint tortfeasor. However, these cases involve tort liability, not a contractual obligation.


Attorney Fees


Because Zority's claims were not time barred by the applicable statute of limitations, Eisenman was not a prevailing party under NRS 18.010 or NRS 18.020. Therefore, we further conclude that the district court's award of attorney fees and costs was in error.

Having concluded that the district court erred by dismissing Zority's third-party complaint and awarding attorney fees and costs in this case, we decline to address the remaining arguments on appeal. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Hon. Kathy A. Hardcastle, District Judge
Sklar, Warren, Conway & Williams, LLP
Bailus Cook & Kelesis
Clark County Clerk