STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0401

Old Republic Surety Company,
Respondent,

vs.

Weinerman and Associates LLC,
Defendant,

Mark Bugni, et al.,
Appellants.

Filed November 22, 2021
Affirmed
Kirk, Judge[*]

Dakota County District Court
File No. 19HA-CV-20-469

Jonathon D. Nelson, Gurstel Law Firm, P.C., Golden Valley, Minnesota (for respondent)

Nicholas N. Sperling, Anna M. Koch, Trepanier MacGillis Battina, P.A., Minneapolis, Minnesota; and

Gregory M. Miller, Miller Law Office P.A., Oakdale, Minnesota (for appellants)

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Kirk, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this dispute regarding personal liability for a surety-bond contract, two appellant-indemnitors challenge the district court's award of summary judgment in favor of respondent's contract claim. We affirm.

FACTS

In July 2011, defendant Weinerman and Associates LLC (WA) contracted for a surety bond (bond) with respondent Old Republic Surety Company (Old Republic). The purpose of the bond was to ensure that WA was in compliance with the Minnesota Department of Commerce (MNDoC) requirements for debt collection.

Two of WA's officers, appellants Mark Bugni and Beth Trautman (appellants) signed an indemnity agreement (agreement) with Old Republic as part of the bond application. WA agreed "[t]o pay [Old Republic] the premiums as long as liability shall continue under the bond and until evidence of termination of liability is furnished satisfactory to [Old Republic]." Appellants agreed to indemnify Old Republic for any payments made under the bond. The bond took effect on July 1, 2011. After July 1, 2011, the bond would "remain in effect until the earlier of the expiration of the [p]rincipal's license as a collection agency or cancellation of this bond by the [s]urety."

In 2014, both the expiration of WA's license and the cancellation of the bond occurred. In February 2016, the district court entered an order on verified petition for appointment of receiver (order). The purpose of the order was to liquidate WA's remaining assets. The record does not contain the reports generated in connection with the order.

However, MNDoC did make subsequent claims on the bond that were paid by Old Republic. In January 2018, MNDoC sold and assigned "all rights, title and interest of [MNDoC] in and to the claims" to Old Republic.

In September and November 2019, Old Republic served appellants with a summons and complaint for breach of contract. The parties filed cross-motions for summary judgment. The district court granted Old Republic's motion for summary judgment. This appeal followed.

DECISION

Summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. On appeal from summary judgment, a reviewing court questions "whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp.*, 790 N.W.2d 167, 170 (Minn. 2010). This court reviews both questions de novo, viewing "the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Breach of contract

Appellants first argue that summary judgment was not appropriate because Old Republic's breach-of-contract claim was time barred. "A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract." *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014). "In

order to state a claim for breach of contract, the plaintiff must show (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011) (citation omitted). "The statute of limitations begins to run on a claim when the cause of action accrues." *Id.* at 832 (quotation omitted). A breach-of-contract claim "accrues immediately on a breach, though actual damages resulting therefrom do not occur until afterwards." *Bachertz v. Hayes-Lucas Lumber Co.*, 275 N.W. 694, 697 (Minn. 1937) (quotation omitted).

Here, appellants argue that the bond expired in July 2012; thus, a breach-of-contract claim was time barred because it did not commence prior to July 2018. Old Republic served appellants a summons and complaint in September and November 2019. However, Old Republic made multiple payments to MNDoC beginning in 2016 and ending prior to 2018. These payments were for claims against the bond dating back to WA's actions prior to Old Republic's revocation of the bond. Appellants failed to indemnify Old Republic for these payments.

On January 10, 2018, MNDoC released and assigned all payments made on the bond to Old Republic. The agreement states, in part "being effective as the date hereof, unless there is no abandonment of breach of, delay or default in the performance of the obligations contracted in or covered in such bond or of this agreement or any other agreement with [Old Republic.]" Because the nature of the agreement would require the surety to make payments on behalf of the principal, a cause of action for a breach-of-contract claim could not accrue until after a payment request by the surety was refused by the principal.

Therefore, the district court was correct in concluding that Old Republic's breach-of-contract claim, accrued after Old Republic made payments under the bond in 2016 and was not time barred.

Unjust enrichment

Appellants raised a cursory argument that Old Republic's unjust-enrichment claim was also time barred. However, appellants failed to adequately brief this issue. We decline to address this inadequately briefed issue. *See Meriwether Minn. Land & Timber, LLC v. State*, 818 N.W.2d 557, 564 (Minn. App. 2012). But even if addressed, an unjust-enrichment claim would fail because of the existence of a valid contract. *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012).

Personal liability

Appellants argue that the district court erred in concluding that they were personally liable under the agreement. Appellants contend that they were not parties to the surety contract and cannot have any collective liability under it. An indemnity clause is a "contractual provision in which one party agrees to answer for any specified or unspecified liability or harm that the other party might incur." *Black's Law Dictionary* 919 (11th ed. 2019). "The rules governing the requisites, validity and construction of contracts are applicable to indemnity agreements." *Am. Druggists' Ins. Co. v. Shoppe*, 448 N.W.2d 103, 104 (Minn. App. 1989).

Here, there is no dispute that a valid contract was executed for the bond. However, appellants argue that the bond was for a one-year term which expired in July 2012. In support of this argument, appellants suggest that section I of the agreement is controlling.

In relevant part, section I states: "Application is hereby made to [Old Republic] for a bond of suretyship, in the penalty of $60,000 for the term of 1 year, beginning July 1, 2011 in favor of State of Minnesota." However, a single-year term would conflict with the applicable statute, which states: "the commissioner of commerce shall require each collection agency licensee to file and maintain in force a corporate surety bond . . . in a sum of at least $50,000 . . . ." Minn. Stat. § 332.34 (2020). Because appellants are liable under the express agreement to indemnify Old Republic, we reject any claims of liability under a joint-lability theory.

Neither of the conditions set forth in the MNDoC bond application (application) for termination were met until 2014—two years after appellants' suggested termination date. The language of the bond states that "[t]his bond shall be one continuing obligation, and the liability of the [s]urety for the aggregate of any and all claims which may arise." The bond further states that the aggregate of the claims "shall in no event exceed the amount of the penalty hereof, regardless of the number of years the bond is in force or the number of claims made against this bond." Section III of the agreement states: "The undersigned . . . request [Old Republic] to become [s]urety for and furnish the above bond and such other bond(s) as may now or hereafter be requested on behalf of the named [a]pplicant including any continuation, substitution, extension or alteration thereof." Section III of the agreement is a continuation of section I for any future contingencies or agreements. The bond states: "This bond shall become effective on July 1, 2011, and shall remain in effect until the earlier of the expiration of the [p]rincipal's license as a collection agency or cancellation of this bond by the [s]urety." Therefore, based on the plain language of the

agreement and the bond, the bond was a continuing obligation required to operate as a debt collection agency in the state of Minnesota.

Based on the language of the agreement, appellants personally guaranteed the bond, which was in effect from 2011 to 2014. Because the validity of the contract is not in question, the plain language of the agreement shows that appellants bound themselves as indemnifiers and are personally liable for the bond. The continuation language of the bond and the payment of annual premiums demonstrates that the claim that the bond was for a single year has no merit. Therefore, the district court was correct in awarding summary judgment in favor of Old Republic.

Affirmed.