COURT OF APPEALS
DECISION
DATED AND RELEASED

June 12, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

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No. 96-3297

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MCADAMS, INC.,

PLAINTIFF-APPELLANT,

V.

TRANSPORTATION INSURANCE CO.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: MICHAEL B. TORPHY, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

DYKMAN, P.J. McAdams, Inc. (McAdams) appeals from a summary judgment in favor of its insurer, Transportation Insurance Co. (TIC). The issue is whether TIC's contractual two-year statute of limitations is valid. The trial court concluded that it was and dismissed McAdams's lawsuit as untimely. We agree and therefore affirm.

McAdams operates several Pick-N-Save grocery stores. Like many grocery stores, it accepts coupons from its customers. It used to send these coupons to Coupon Clearing Service (CCS), which, for a small fee, sent coupons to the issuing companies, received the proceeds and remitted the amount it received to McAdams.

In the fall of 1991, McAdams sent approximately $364,000 in coupons to CCS, but CCS failed to remit any proceeds to McAdams and ultimately filed a petition in bankruptcy. McAdams had commercial crime coverage with TIC and prepared a claim. When the claim was denied, McAdams began this suit. The trial court dismissed McAdams's complaint because McAdams had not commenced this action within two years of its loss. McAdams appeals.

We have repeated summary judgment methodology many times and need not do so again. *See* ***In re Cherokee Park Plat***, 113 Wis.2d 112, 115-16, 334 N.W.2d 580, 582-83 (Ct. App. 1983). Suffice it to say that we use a *de novo* standard of review. ***Kafka v. Pope***, 194 Wis.2d 234, 240, 533 N.W.2d 491, 493 (1995).

The parties have made a historical review of § 631.83, STATS., much of which is found in ***Villa Clement, Inc. v. National Union Fire Ins. Co.***, 120 Wis.2d 140, 353 N.W.2d 369 (Ct. App. 1984). Though McAdams concedes that it did not begin this action within the two-year period specified by its policy with TIC, it argues that this action is governed by § 631.83(1)(d), which provides a six-year statute of limitations for actions on insurance policies unless another statute of limitation is applicable. TIC concedes that this action was commenced within six years of McAdams's loss, but responds that § 631.83(1)(a) provides for a

twelve-month statute of limitation for actions on fire insurance policies. Because TIC believes that its policy is a fire insurance policy, it concludes that this lawsuit is time-barred.

McAdams contends that the "policy" is not one but five policies, only one of which is a fire insurance policy. Since the commercial crime coverage under which it makes this claim does not contain fire coverage, McAdams argues that this suit is not governed by the one-year (or contractually greater) limit of § 631.83(1)(a), STATS. McAdams also argues that the cases broadly interpreting the term "fire insurance policy" found in § 631.83(1)(a) did not involve the theft of intangibles. Using the history of the one-year statute of limitations, McAdams concludes that TIC's commercial crime coverage is not "fire insurance," and therefore it properly commenced this action within six years of its loss.

McAdams is correct in stating that the various coverages it obtained from TIC are found in different "sections" or parts of the documents that TIC calls its "policy." But we are not convinced that this makes those documents five policies rather than one. The initial declarations pages refer to the policy as "Your Mercantile Risk Package." Other declarations pages appear throughout the policy, but they are used as endorsements or schedules. Many show that they are a part of a unified document. For instance, the section under which McAdams made its claim is entitled: "Commercial Crime Coverage Part." A line on that declaration reads: "Coverage Forms Forming Part Of This Coverage Part." The premium of $8,964.00 is prefaced by: "Premium for this coverage part." Throughout the policy, only one policy number is used. There is only one policy term.

This policy covers several grocery stores. The annual premium is $103,456.00. Of necessity, the policy is organized into sections. The sections are

called "parts," which suggests strongly that they are parts of a whole, or a single policy. One of the endorsements notes: "This endorsement changes *the* policy. Please read it carefully." (Emphasis added.) We conclude that the TIC coverage is a single policy and that fire coverage is a part of the policy.

Section 631.83(1)(a), STATS., provides:

> STATUTORY PERIODS OF LIMITATION. (a) *Fire insurance.* An action on a fire insurance policy must be commenced within 12 months after the inception of the loss. This rule also applies to riders or endorsements attached to a fire insurance policy covering loss or damage to property or to the use of or income from property from any cause, and to separate windstorm or hail insurance policies.

In ***Villa Clement***, we concluded that the term "fire insurance policy" in § 631.83(1)(a) was a far broader term than the name implies. We said: "We will … presume that the legislature was aware, when it enacted sec. 631.83(1)(a), that 'fire insurance' had been treated in prior statutes and case law as a generic term for property indemnity insurance covering a broad spectrum of perils." ***Villa Clement***, 120 Wis.2d at 147, 353 N.W.2d at 372.

McAdams asserts that ***Villa Clement*** can be distinguished because it, and other decisions reaching the same conclusion,[1] dealt with claims based upon damage to tangible personal property. That may be true, but § 631.83(1)(a), STATS., uses the term "property," not "tangible property." "'Property' includes real and personal property." Section 990.01(31), STATS. "'Personal property' includes money, goods, chattels, things in action, evidences of debt and energy."

[1] *E.g.*, ***Borgen v. Economy Preferred Ins. Co.***, 176 Wis.2d 498, 500 N.W.2d 419 (Ct. App. 1993); ***Skrupky v. Hartford Fire Ins. Co.***, 55 Wis.2d 636, 201 N.W.2d 49 (1972); ***Riteway Builders, Inc. v. First Nat'l Ins. Co.***, 22 Wis.2d 418, 126 N.W.2d 24 (1964).

Section 990.01(27). "Property" is "commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, *tangible or intangible*, visible or invisible, real or personal…." BLACK'S LAW DICTIONARY 1216 (6th ed. 1990) (emphasis added).

We conclude that the word "property" found in § 631.83(1)(a), STATS., is broad enough to cover the value of the coupons misappropriated. We need not decide whether the coupons or their value are tangible or intangible property. Either way, they are "property."

McAdams also argues that this case is distinguishable from ***Villa Clement*** because the TIC policy is a comprehensive mercantile risk package, not a relatively simple builders all-risk policy like the policy found in ***Villa Clement***. But this is another way of arguing that the TIC policy is not one policy but five. We have already addressed that argument.

We recognize that the analysis of § 631.83(1)(a), STATS, that McAdams now advocates could have been followed by the courts interpreting the statute. It is true that when the legislature changed from a statutory fire insurance policy and adopted § 631.83(1)(a), it was not necessary for courts to define the term "fire insurance" broadly. But that is what the supreme court did in ***Riteway Builders, Inc. v. First Nat'l Ins. Co.***, 22 Wis.2d 418, 126 N.W.2d 24 (1964). ***Villa Clement*** expanded on that definition, concluding that the term "fire insurance" was a generic term encompassing all types of property indemnity insurance. ***Villa Clement,*** 120 Wis.2d at 148, 353 N.W.2d at 373. We lack the power to overrule, withdraw or modify our prior published decisions. ***Cook v. Cook***, 208 Wis.2d 166, 190, 560 N.W.2d 246, 256 (1997). "Modify" is a broad term. Were we to adopt the approach that McAdams now requests, we would

undoubtedly be modifying ***Villa Clement***, if not overruling that case directly or by implication. We cannot do so.

We conclude, therefore, that § 631.83(1)(a), STATS., applies here. Though this statute sets out a one-year statute of limitations, the TIC policy's two-year statute of limitations is nonetheless valid because § 631.83(3)(a) only prohibits insurance policy clauses that limit the time for beginning an action on the policy to a time less than that authorized by statute. The TIC policy increased the statutory one-year statute of limitations to two years. McAdams concedes that it began this action more than two years after the inception of its loss. Therefore, the trial court correctly dismissed its complaint.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.