In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

[redacted]	)	No. ED109169
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	Honorable Lorne J. Baker
[redacted]	)	
	)	
	)	
Respondents.	)	FILED: May 4, 2021

[redacted] ("Appellant") appeals the entry of summary judgment in favor of [redacted] ("Respondents") as to Appellant's petition for damages arising out of a residential lease agreement. According to Appellant, the trial court erred in concluding the claim was time-barred because it improperly applied the five-year statute of limitations set forth in section 516.120(1)[1] instead of the ten-year statute of limitations established by section 516.110(1). The judgment is affirmed.

Factual and Procedural Background

On July 2, 2007, Respondents entered into a residential lease agreement with [redacted] ("[redacted] The lease provided, in relevant part:

> 11. REIMBURSEMENT: The Tenant shall promptly reimburse the Lessor for loss, damage, government fines, or costs of repairs or service on the premises due to a violation of the lease or rules, improper use of the premises, fixtures, appliances, or

[1] All statutory references are to RSMo (2016).

> facilities, or negligence of the Tenant or Tenant's guests or occupants. The Lessor is not liable for, and Tenant shall pay for repairs, replacement costs, and damage to the following if occurring during the lease term or any renewal period: (1) damage to doors, windows, or screens; (2) damage from windows or doors left open; and (3) damage for wastewater stoppages caused by improper objects in lines determined to be originating from lines exclusively servicing your residence.
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> . . . .
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> 21. CONDITION OF THE PREMISES AND ALTERATIONS: . . . . The Tenant must use customary diligence in maintaining the residence and not damaging or littering the common areas. . . . Tenant's breach of this clause shall be considered Tenant abuse and Tenant shall reimburse Lessor for all costs of repair upon demand.
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> . . . .
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> 23. REPAIRS AND MAINTENANCE: Tenant agrees to pay the Lessor for the reasonable cost of repairs, maintenance or any injury, defacement and damage to the premises, fixtures, and appliances therein, caused by the Tenant, his family, guests or invitees, ordinary wear excepted.

On July 28, 2008, Respondents terminated the lease and vacated the premises. The following week, [redacted] mailed Respondents a "statement of damages," which asserted Respondents owed [redacted] $633.00 for expenses arising from repairs, maintenance and cleaning completed after Respondents vacated the premises. Respondents denied they ever received the statement, and they did not pay the requested amount.

[redacted] later assigned its claim to Appellant, which filed this action on January 15, 2017—more than eight years after Respondents terminated the lease—seeking the principal amount of $633.00 plus prejudgment interest and attorney's fees. Respondents sought summary judgment on the basis that the action was barred by the five-year statute of limitations set forth in section 516.120(1). The trial court entered summary judgment in favor of Respondents, and this appeal follows.

Standard of Review

"Summary judgment is only proper if the moving party establishes that there is no genuine issue as to the material facts and that the movant is entitled to judgment as a matter of law." *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 452 (Mo. banc 2011). In considering an appeal from the trial court's entry of summary judgment, we "review the record in the light most favorable to the party against whom judgment was entered." *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). "The facts contained in affidavits or otherwise in support of a party's motion are accepted as true unless contradicted by the non-moving party's response to the summary judgment motion." *Green v. Fotoohighiam*, 606 S.W.3d 113, 115 (Mo. banc 2020) (quoting *Goerlitz*, 333 S.W.3d at 452-53). Review on appeal "is essentially de novo." *ITT*, 854 S.W.2d at 376. "The propriety of summary judgment is purely an issue of law." *Id*.

Discussion

Appellant contends the trial court erred in entering summary judgment in favor of Respondents because it improperly applied the five-year statute of limitations in section 516.120(1) instead of the ten-year statute of limitations in section 516.110(1). According to Appellant, its petition was timely filed because the ten-year statute of limitations applies in that Appellant was not seeking damages for breach of contract but was instead seeking to enforce a promise for the payment of money.

Missouri has two statutes of limitations generally relating to contract actions. *See Hughes Dev. Co. v. Omega Realty Co*., 951 S.W.2d 615, 616 (Mo. banc 1997). Section 516.120(1), the primary statute of limitations for contract disputes, provides that "[a]ll actions upon contracts, obligations or liabilities, express or implied" must be brought within five years. Section

516.110(1) provides an exception: "An action upon any writing, whether sealed or unsealed, for the payment of money or property" must be brought within ten years. *See Rolwing v. Nestle Holdings, Inc.*, 437 S.W.3d 180, 182 (Mo. banc 2014). In other words, section 516.110(1)'s ten-year limitation period "applies when a plaintiff files suit to enforce a written promise to pay money." *Id.* at 183. "The plain language of section 516.120(1), however, applies generally to all breach of contract actions, including written contracts containing a promise for the payment of money or property." *Id.* at 182.

"[T]he essence of a promise to pay money is that it is an acknowledgment of an indebtedness, an admission of a debt due and unpaid." *DiGregorio Food Prods., Inc. v. Racanelli*, 609 S.W.3d 478, 481 (Mo. banc 2020) (alteration in original) (quoting *Martin v. Potashnick*, 217 S.W.2d 379, 381 (Mo. 1949)). "[T]he promise to pay money must arise from the writing's explicit language; extrinsic evidence cannot supply the promise." *Id*. Stated another way, "once it is shown that the writing is for the payment of money and that the writing contains a promise to pay money, the exact amount to be paid or other detail of the obligation may be shown by extrinsic evidence—but not the promise itself." *Cmty. Title Co. v. Stewart Title Guar. Co.*, 977 S.W.2d 501, 502 (Mo. banc 1998).

Resolution of this case turns on whether the lease provisions relating to repairs, maintenance and cleaning actually contain a written promise to pay money—"an acknowledgment of an indebtedness, an admission of a debt due and unpaid." *DiGregorio Food Prods.*, 609 S.W.3d at 481 (quoting *Martin*, 217 S.W.2d at 381). Appellant claims the ten-year statute of limitations applies because the lease contained "explicit language" of Respondents' promise to pay—specifically that Respondents "shall pay," "agree[] to pay" and "shall reimburse" for repairs, maintenance and cleaning. But nowhere in the lease provisions at issue is there an

acknowledgment of a debt or an admission that a debt is due and unpaid. *See id*. All of the promises to pay money with regard to repairs, maintenance and cleaning were conditional; in order for the promises to be effective, Appellant must first show repairs, maintenance and cleaning were necessary and that Respondents are liable for those expenses. Paragraph 11 of the lease provided Respondents would reimburse for "loss, damage, government fines, or costs of repairs or service on the premises *due to a violation* of the lease or rules, *improper use* of the premises, fixtures, appliances, or facilities, or *negligence* of [Respondents or their] guests or occupants." (emphasis added). That paragraph further provides that Respondents would pay for repairs or replacement costs *if* damage to certain parts of the property occurred during the lease term. Paragraph 21 required Respondents to use "customary diligence" in maintaining and not damaging the property and states that Respondents' "*breach of this clause* shall be considered Tenant abuse and [Respondents] shall reimburse [redacted] for all costs of repair upon demand." (emphasis added). Paragraph 23 stated that Respondents would be required to pay the reasonable costs of repairs "*caused by* [Respondents or their] family, guests or invitees, ordinary wear excepted." (emphasis added).

The lease provisions at issue did not contain an unconditional promise to pay money. *See Van Stratten v. Friesen*, 841 S.W.2d 750, 752 (Mo. App. S.D. 1992). Because the lease did not acknowledge a debt with regard to repairs, maintenance and cleaning and admit that such a debt was due and unpaid, the five-year statute of limitations in section 516.120(1) applies, and Appellant's claim is time-barred. *See id*. The trial court properly entered summary judgment in favor of Respondents.

Conclusion

For the foregoing reasons, the judgment is affirmed.

MICHAEL E. GARDNER, Judge

Gary M. Gaertner, Jr., P.J., concurs.
Philip M. Hess, J., concurs.