

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2009-000927-001 DT

04/13/2010

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT  
T. Melius  
Deputy

CAPITAL ONE BANK

PAUL D GUGLIELMO

v.

ROBERT RUFFCORN (001)  
DIANE RUFFCORN (001)

RICHARD N GROVES

REMAND DESK-LCA-CCC  
SAN TAN JUSTICE COURT

RECORD APPEAL RULE / REMAND

**Lower Court Case No. CC2008186529RC**

The San Tan Justice Court entered a judgment against Defendants-Appellants Robert and Diane Ruffcorn (Defendants) in a breach of contract action. Defendants contend the trial court erred when it found that a 6-year statute of limitations period applied to their case. For the reasons stated below, this Court reverses the judgment.

**I. FACTUAL BACKGROUND.**

On May 4, 2004, Plaintiff-Appellee Capital One Bank (Plaintiff) extended Defendants a line of credit and issued them a credit card. Defendants' last payment to Plaintiff was a check written on November 8, 2004, and credited to their account on November 26, 2004. Defendants' account became delinquent on January 22, 2005. On August 21, 2008, Plaintiff filed a Complaint alleging Defendants breached the contract by defaulting on their payment obligations; Plaintiff asserted Defendants owed \$1,549.82 at the time of the filing of the Complaint. On October 14, 2008, Defendants filed a Motion For Summary Judgment, wherein they argued Plaintiff's cause of action was time barred by the 3-year statute of limitations. Plaintiff filed a Response, wherein it argued the 6-year statute of limitations should apply. The trial court denied Defendants' Motion. On April 27, 2009, the trial court held a bench trial. The parties stipulated to the amount owed and boiled the matter down to a single issue: whether the statute of limitations in the present case was 3 or 6 years. Based on the evidence presented, the trial court entered judgment in favor of Plaintiff on July 27, 2009. On August 3, Defendants filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

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II. ISSUE: WAS THERE ANY EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING OF A WRITTEN CONTRACT.

Four factors determine whether a claim is time-barred: (1) When did the plaintiff's cause of action accrue; (2) what is the applicable statute of limitations period; (3) when did the plaintiff file the claim; and (4) was the running of the limitations period suspended or tolled for any reason. *Taylor v. State Farm Mut. Auto. Ins. Co.*, 182 Ariz. 39, 41, 893 P.2d 39, 41 (Ct. App. 1994), *vacated in part on other grounds* by 185 Ariz. 174, 913 P.2d 1092 (1996). The only issue in the present case is the applicable statute of limitations period. Plaintiff maintains the controlling statute is A.R.S. § 12-548, which provides as follows:

An action for debt where indebtedness is evidenced by or founded upon a *contract in writing* executed within the state shall be commenced and prosecuted within 6 years after the cause of action accrues, and not afterward.

(Emphasis added.) According to Plaintiff, because the cause of action accrued on January 22, 2005, Plaintiff had until January 22, 2011, to file a complaint. In the present case Plaintiff filed a complaint on August 21, 2008. Defendants contend Plaintiff failed to prove Defendants' debt was "evidenced by or founded upon a contract in writing," and, therefore, the controlling statute is A.R.S. § 12-543(1), which provides as follows:

There shall be commenced and prosecuted within 3 years after the cause of action accrues, and not afterward, the following actions:

1. For debt where the indebtedness is not evidenced by a contract in writing.

Defendants argue there was insufficient evidence to support the trial court's judgment. In reviewing the sufficiency of the evidence, the appellate court should determine whether substantial evidence supports the factual findings, viewing the facts in the light most favorable to sustaining those findings, and reviewing any conflicting evidence in favor of sustaining those findings. *See State v. Bearup*, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009). An appellate court will not reverse unless there is a complete absence of probative facts to support the verdict. *State v. Soto-Fong*, 187 Ariz. 186, 928 P.2d 610 (1996). Based on the affidavit of Richard Napolitano,<sup>1</sup> a legal recoveries manager for Plaintiff, and the other exhibits admitted in evidence, this Court concludes there was no evidence of a written contract. Accordingly, the applicable statute of limitations period is 3 years. Plaintiff's lawsuit is therefore untimely.

III. CONCLUSION.

Based on the foregoing, this Court concludes that the trial court erred, as there was insufficient evidence to support its judgment.

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<sup>1</sup> Telephonic deposition taken April 21, 2009, p. 32, l. 13 to p. 33, l. 6.  
Docket Code 512

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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**IT IS THEREFORE ORDERED** reversing the judgment of the San Tan Justice Court.

**IT IS FURTHER ORDERED** remanding this matter to the San Tan Justice Court for all further appropriate proceedings.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court this date.

/s/ Crane McClennen  
THE HON. CRANE MCCLENNEN  
JUDGE OF THE SUPERIOR COURT

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