

Mertola, LLC v. Santos

Full Citation: Mertola, LLC v. Santos, No. CV-17-0109-PR, 2018 WL 3595915 (Ariz. July 27, 2018).

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Opinion's Author: Justice Brutinel

Joined By: Chief Justice Bales, Vice Chief Justice Pelander, Justices Timmer, Bolick, Gould, and Lopez.

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: Alberto Santos and his wife Arlene Santos (collectively, "Santos") acquired a credit card from Washington Mutual Bank (hereafter "Bank"). Under the Bank's Account Agreement for the credit card, if Santos failed to pay any amount due (monthly minimum payments with interest), the Bank had the right to declare the Account balance immediately due and payable without any notice of acceleration.

Starting in August 2007, Santos repeatedly made late minimum payments to the Bank. Beginning in February 2008, Santos stopped making his minimum monthly payments altogether and effectively defaulted. Even though he made a \$50 payment in August 2008, that payment was less than the minimum due and did not fix the default.

The Bank charged off the account and Mertola, a debt collector, acquired Santos' debt. On July 18, 2014, Mertola sued for breach of the Account Agreement, seeking the entire outstanding balance of \$17,066.91, which included the accrued interest on the account.

Procedural History: The case is currently before the Arizona Supreme Court. At the trial level, Santos moved for summary judgment, arguing that Mertola's claim was barred by the six-year statute of limitations applicable to credit-card debt under A.R.S. § 12-548(A)(2). According to Santos, the Bank's cause of action to recover the entire debt accrued after the first missed payment in February of 2008. Santos maintained that a missed payment gives the creditor the right to sue only for that payment and that the cause of action for the entire debt could not accrue until the creditor accelerated the debt.

Judge Aimee Anderson granted Santos' motion for summary judgment. The court found that "all of the breaches" alleged by Mertola "occurred more than six years prior" to it filing this action to collect the outstanding balance.¹

Mertola appealed the granted motion of summary judgment at the Arizona Court of Appeals. The court of appeals reversed the trial court's decision and agreed with Mertola that Santos' missed payments, by themselves, gave the creditor the right to sue only for those payments. Relying on *Navy Federal Credit Union v. Jones*² and *Baseline Financial*

¹ Mertola, LLC v. Santos, No. CV-17-0109-PR, 2018 WL 3595915, at *5 (Ariz. July 27, 2018) (quoting Mertola LLC v. Santos, No. CV 2014-051213, 2015 WL 9702608, at *1 (Ariz. Super. Ct. Nov. 25, 2015)).

² 930 P.2d 1007 (Ariz. Ct. App. 1996).

Services v. Madison,³ the court of appeals held that “the bank could not sue to collect the outstanding balance on the account unless and until [Santos] failed to comply with a demand for payment in full or a notice by the lender (or, later, by Mertola) that it was accelerating the debt.”⁴

Accordingly, the court found that the cause of action accrued with each installment and that Santos, per the Account Agreement, had agreed that the Bank could delay the commencement of the limitations period by not explicitly invoking the acceleration clause. Because the Bank never notified Santos and because the Bank nor Mertola ever made a demand for payment in full, the court concluded that the statute of limitations did not bar Mertola’s action.⁵

The Arizona Supreme Court granted review to decide when the statute of limitations commences on credit-card debt subject to an optional acceleration clause.

Issue: Under A.R.S. § 12-548, a cause of action for credit card debt must be commenced within six years after the action accrues, and not afterward, if the indebtedness is evidenced by or founded on a credit card. Does a cause of action to collect the entire outstanding balance of credit card debt, subject to an optional acceleration clause, accrue when the first default occurs?

Holding: Yes. Even if the optional acceleration clause is not exercised, the cause of action to collect the entire outstanding debt of a credit card accrues as of the date of Santos’ first missed payment, not when the creditor chooses to exercise the acceleration clause.⁶ Thus, the cause of action accrues when the first default occurs, and the creditor first has the ability to collect the entire payment

Disposition: The court of appeals’ opinion is vacated and the trial court’s summary judgment in favor of Santos is affirmed.

Rule: When a credit-card contract contains an optional acceleration clause, a cause of action to collect entire outstanding debt accrues upon default: that is, when the debtor first fails to make a full, agreed-to minimum monthly payment.⁷ A debtor may cure a default if the creditor accepts a payment of arrearages that brings the account current consistent with the parties’ contract. Partial repayment, however, does not cure the default or reset the limitations period.⁸

³ 287 P.3d 321 (Ariz. Ct. App. 2012).

⁴ *Mertola*, 2018 WL 3595915, at *3 (quoting *Metrola, LLC v. Santos*, 390 P.3d 812, 814 (Ariz. Ct. App. 2018)).

⁵ *Id.* at *1.

⁶ *Id.* at *1.

⁷ *Id.* at *4.

⁸ *Id.*

Reasoning:

- **Closed accounts versus open accounts.** The court had an issue treating credit-card contracts like closed-accounts or close-end installment contracts. The court explained that in closed accounts (like those in the *Navy Federal* and *Baseline* holdings), all of the payment factors are essentially known: the principle amount of the debt is fixed, and there is also a defined schedule of payment that specifies the size of each payment and when the payment falls due.⁹ By contrast, credit-card contracts are constantly in flux and the payment factors can change constantly: the amount of consumer debt is unknown at the outset, the amount and date of monthly payments fluctuate depending on certain factors, and making only the minimum payment will increase the amount of interest to be paid as well as the time it takes to repay the balance.¹⁰ Because a closed-account is essentially a fixed contract with known factors, a cause of action for the entire balance will accrue no later than the agreed-on-date.¹¹ This is not the case for credit-card contracts.¹² The court agreed with the Ohio Supreme Court, which had previously concluded that “credit-card accounts are more properly categorized as open accounts.”¹³ Therefore, the court declined to apply the *Navy Federal/Baseline* holdings to credit-card debt.¹⁴
- **Power to the creditor.** The court continued to categorize credit-card accounts as open accounts, explaining that the date when “the entire debt will become due is uncertain and may not occur until far in the future.”¹⁵ The court found that a creditor would be given “unilateral power to extend the statutory limitation period and permit interest to continue to accrue” if a cause of action on debt does not accrue until the creditor exercises his right to accelerate.¹⁶ This would essentially eliminate the purpose of the statute of limitations, which is to protect defendants from stale claims.¹⁷ The court declined to extend such unilateral power and found two reasons why a credit-card company has less incentive than a closed-account creditor to accelerate a debt: (1) interest rates increase upon default, so when acceleration is delayed, the total amount owed increases, and therefore, this makes selling the debt to a third-party more profitable if the creditor waits to collect, and (2) debt on a closed account is often secured by collateral, which requires the creditor to accelerate the debt to exercise their rights.¹⁸ Credit-card debt is normally unsecured.¹⁹

⁹ *Id.* at *3.

¹⁰ *Id.*

¹¹ *Id.* at *4.

¹² *Id.*

¹³ *Id.* at *3 n.1 (quoting *Jarvis v. First Resolution Mgmt. Corp.*, 983 N.E.2d 380, 389 (Ohio Ct. App. 2012)).

¹⁴ *Id.* at *3–4.

¹⁵ *Id.* at *4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

- **Bright-line rule.** The court wanted, and was able to create, a bright-line rule that established a clear accrual date and also respected the contract rights of creditors to choose not to accelerate credit-card debt.²⁰ Essentially, this decision allows creditors to wait to accelerate a debt for up to six years following a default.²¹ Parties are still free to negotiate repayment of debt and contractually define default.²² This rule also permits parties to cure the default and stop the statute of limitations from running through negotiations to settle the debt.²³

²⁰ *Id.* at *22

²¹ *Id.*

²² *Id.*

²³ *Id.*