

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT
PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MIDLAND FUNDING LLC, a foreign entity, *Plaintiff/Appellee*,

v.

LISA GALLEGOS, *Defendant/Appellant*.

No. 1 CA-CV 15-0734
FILED 10-25-2016

Appeal from the Superior Court in Maricopa County
No. CV2015-090657
The Honorable David King Udall, Judge

AFFIRMED

COUNSEL

Bursey & Associates PC, Tucson
By Peter M. Balsino, Barry Bursey
Counsel for Plaintiff/Appellee

Lisa Gallegos, Glendale
Defendant/Appellant

MIDLAND v. GALLEGOS
Decision of the Court

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Randall M. Howe joined.

K E S S L E R, Judge:

¶1 Lisa Gallegos seeks reversal of summary judgment against her in an action for collection of credit card debt. She argues the superior court erred by applying the wrong statute of limitations. For the reasons stated below, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 In January 2015, Midland Funding LLC (“Midland”) filed this action against Gallegos for breach of contract stemming from a 2010 default on Gallegos’ credit card debt. Gallegos did not deny the allegations in Midland’s complaint. Instead, she asserted the statute of limitations had expired, relying on the three-year limitations period provided by Arizona Revised Statute (“A.R.S.”) section 12-543 (2016).¹ Midland moved for summary judgment, arguing in part that the six-year limit in A.R.S. § 12-548 (2016) applied. In opposition to the motion, Gallegos asserted the three-year limit applied because Midland’s cause of action accrued in July 2010 and A.R.S. § 12-548 was not effective until 2011. The court granted Midland’s motion for summary judgment.

¶3 Gallegos timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1) (2016).

DISCUSSION

¶4 Gallegos argues the superior court erred by applying the six-year statute of limitations in A.R.S. § 12-548 instead of the three-year statute of limitations in A.R.S. § 12-543.² Gallegos contends A.R.S. § 12-548 did not

¹ We cite the current version of statutes unless changes material to this decision have occurred.

² Section 12-543 provides, in relevant part, that “[t]here shall be commenced and prosecuted within three years after the cause of action

MIDLAND v. GALLEGOS
Decision of the Court

apply to Midland's complaint because the Legislature did not amend A.R.S. § 12-548 until 2011. She asserts A.R.S. § 12-543 applied because it was in effect at the time of the 2010 default.

¶5 We review a grant of summary judgment de novo, viewing the facts in a light most favorable to the party against whom summary judgment was granted. *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Tr. Fund*, 201 Ariz. 474, 482, ¶ 13 (2002) (citation omitted). Summary judgment is appropriate only when the facts produced in support of the proponent's claims "have so little probative value [given the quantum of evidence required] . . . that reasonable people could not agree with the conclusion advanced." *Id.* at ¶ 14 (internal quotation marks and citations omitted).

¶6 Before July 2011, the six-year statute of limitations in A.R.S. § 12-548 applied only to actions for debt where the indebtedness was evidenced by or founded upon "a contract in writing executed within the state." *See* Laws 2011, Ch. 57, § 1. However, in 2011, the Legislature amended § 12-548 to include actions where the indebtedness was evidenced by or founded upon a credit card. *Id.*

¶7 When the Legislature amends a statute of limitations, an "action barred by pre-existing law is not revived by amendment of such law enlarging the time in which such action may be commenced." A.R.S. § 12-505(A) (2016). However, if an action is "not barred by pre-existing law, the time fixed in an amendment of such law shall govern the limitation of the action." A.R.S. § 12-505(B) (emphasis added). "Barred by pre-existing law" as used in A.R.S. § 12-505 means "at the time of the statutory amendment." *Rutherford v. Babcock*, 168 Ariz. 404, 406 (App. 1991).

¶8 Here, the parties agree Midland's cause of action accrued in July 2010. The Legislature amended A.R.S. § 12-548 in 2011, before the expiration of the three-year statute of limitations in A.R.S. § 12-543. Thus, the six-year limitation period of A.R.S. § 12-548 governs pursuant to A.R.S.

accrues, and not afterward . . . actions . . . [f]or debt where the indebtedness is not evidenced by a contract in writing." Section 12-548 provides, in relevant part, that "[a]n action for debt shall be commenced and prosecuted within six years after the cause of action accrues, and not afterward, if the indebtedness is evidenced by or founded on either . . . [a] contract in writing that is executed in this state . . . [or a] credit card as defined in § 13-2101, paragraph 3, subdivision (a)."

MIDLAND v. GALLEGOS
Decision of the Court

§ 12-505(B), and the superior court did not err in granting summary judgment.

CONCLUSION

¶9 For the reasons stated above, we affirm the superior court's judgment.



AMY M. WOOD • Clerk of the Court
FILED: AA