



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**JTF AVIATION HOLDINGS INC, et al. v. CLIFTONLARSONALLEN  
LLP, CV-19-0209  
247 Ariz. 78 (opinion);  
2019 WL 3035199 (mem. decision)**

**PARTIES AND COUNSEL:**

*Petitioners/Plaintiffs/Appellants:* JTF Aviation Holdings Inc (“JTF”) and Jeremy T. Freer, (collectively, “Plaintiffs”).

*Respondent:* CliftonLarsonAllen LLP (“CLA”)

*Amicus Curiae:* Arizona Society of Certified Public Accountants

**FACTS:**

CLA is a national accounting firm that entered into a December 2013 engagement letter (“December Engagement Letter”) agreeing to provide auditing services to JTF, a company started and wholly owned by Jeremy T. Freer. The December Engagement Letter required CLA to prepare the audit under generally accepted accounting principles (“GAAP”). It included a Minnesota choice of law clause, and limited any legal proceeding to 24 months after delivery of the audit, regardless of the date at which a claim might be discovered. CLA delivered to JTF a 2013 audit on February 3, 2014.

In June 2014, JTF and Freer agreed to sell the company to Vistria Group LLP (“Vistria”) for \$80,000,000. In September 2014, Vistria sued JTF and Freer alleging they fraudulently induced it to purchase JTF at an inflated price because the financials did not conform to GAAP. Vistria specifically alleged that the 2013 audit resulted in an inflated 2014 earnings before interest, taxes, depreciation, and amortization (“EBITDA”) figure of \$40,800,000 when the EBITDA was only \$11,000,000. JTF and Freer settled with Vistria in September 2016 and sued CLA in Maricopa County Superior Court on April 10, 2017. The parties filed cross motions for summary judgment, and the trial court found that the claims were time-barred under the terms of the December Engagement Letter.

In its memorandum decision, the Arizona Court of Appeals held that under Minnesota law, the 24-month limitation was to be enforced as written, notwithstanding Minnesota’s statutory six-year professional malpractice statute of limitations, and affirmed the dismissal of the Plaintiffs’ claims against CLA.

In a separately filed published opinion, the Court of Appeals held that under the “closely-related-party doctrine,” Freer was bound by a 24-month contractual limitations period

specified in the December Engagement Letter, notwithstanding the fact that he was not a signatory of the agreement.

**ISSUES:**

Whether the Court of Appeals erred by concluding that a contractual repose provision can preclude non-parties from asserting tort claims that do not arise out of the contractual relationship.

**Definitions:**

**Statute of Limitations:** The period of time in which a lawsuit can be brought, generally based on when an injury occurs and is (or reasonably should have been) discovered.

**Statute of Repose:** A period of time beyond which an action cannot be brought, regardless of when the cause of action accrues.

*See Albano v. Shea Homes Ltd. P'ship*, 227 Ariz. 121, 127 ¶¶ 23-24 (2011). Although statutes of limitations are generally considered procedural, a statute of repose defines a substantive right. *Id.*

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