

MISSOURI COURT OF APPEALS

EASTERN DISTRICT

APPEAL NO. ED 107613

DI GREGORIO FOOD PRODUCTS, INC.,
a Missouri corporation,

Plaintiff/Respondent,

vs.

JOHN RACANELLI,
an individual,

Defendant/Appellant.

**APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI
CAUSE NO.: 16SL-CC04484
THE HONORABLE THEA A. SHERRY, CIRCUIT JUDGE**

**REPLY BRIEF OF APPELLANT
JOHN RACANELLI**

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POINT RELIED ON

II. THE PARTIES' CONTRACT IS GOVERNED BY § 400.2-725, MISSOURI'S FOUR-YEAR STATUTE APPLICABLE TO CONTRACTS FOR THE SALE OF GOODS.

- A. Di Gregorio acknowledges that the parties' contract is a contract for the sale of goods.**
- B. Di Gregorio does not argue against application of Missouri's Four-Year Statute.**
- C. Even if the Invoices contained a written promise to pay, Di Gregorio's claim would still be time-barred under Missouri's Four-Year Statute of Limitations.**

ARGUMENT

Appellant respectfully suggests that the reply of the Respondent is not properly directed. In this Appeal, Appellant John Racanelli is not arguing that he had no contract with Respondent Di Gregorio Food Products, Inc. Rather, he argues that Di Gregorio is time-barred from enforcing whatever contract Racanelli may have had with Di Gregorio. The question on this Appeal, therefore, is not whether John Racanelli entered into a contract with Di Gregorio. The question, instead, is what statute of limitations governs that contract.

The evidence and arguments now before the Court demonstrate that the parties' contract is governed by the Four-Year Statute contained in Section 400.2-725 of Missouri's Revised Statutes and not by the Ten-Year Statute contained in Section 516.110(1). Since the parties agree that Di Gregorio filed its claim more

than six years after the date on which it accrued, the claim was filed too late. It is time-barred, and the Judgment below should be reversed.

I. THE PARTIES' CONTRACT IS GOVERNED BY § 400.2-725, MISSOURI'S FOUR-YEAR STATUTE APPLICABLE TO CONTRACTS FOR THE SALE OF GOODS.

A. Di Gregorio acknowledges that the parties' contract is a contract for the sale of goods.

In its Reply in Opposition, Di Gregorio points out that the “subject matter” of the parties’ contract is “the food products identified in each invoice.” (Opp. Br. p. 8). These “food products” are “goods” as defined by the Uniform Commercial Code. Mo. Rev. Stat. § 400.2-105(1) (“Goods’ means all things (especially manufactured goods) which are moveable”). Thus, by acknowledging that “food products” are the “subject matter” of the contract at issue, Di Gregorio necessarily acknowledges that the parties’ contract is a contract for the sale of goods.

As a contract for the sale of goods, the parties’ contract for the sale of “food products” is subject to Missouri’s version of Article 2 of the Uniform Commercial Code. Mo. Rev. Stat. § 400.2-101 (“This article shall be known and may be cited as ‘Uniform Commercial Code – Sales.’”). The U.C.C. requires that all actions for the breach of any contract for the sale of goods “must be commenced within four years after the cause of action accrued.” Mo. Rev. Stat. § 400.2-725. Di Gregorio

did not commence his claim against Racanelli until more than six years after the date on which the claim accrued. This claim, therefore, is barred by Missouri statute. *Id.*

B. Di Gregorio does not argue against application of Missouri's Four-Year Statute.

In his opening brief, Appellant John Racanelli argued that his contract with Di Gregorio was governed by Missouri's version of the Uniform Commercial Code and that, therefore, the claim asserted is time-barred under section 400.2-725. (Appellant's Br. pp. 13-14). Remarkably, Di Gregorio does not disagree. (Resp. Br.). Respondent's Brief contains no argument opposing or addressing this point in Appellant's Brief. Consequently, there is no reason Missouri's Four-Year Statute should not apply in this case.

C. Even if the Invoices contained a written promise to pay, Di Gregorio's claim would still be time-barred under Missouri's Four-Year Statute of Limitations.

In Respondent's Brief, Di Gregorio argues that the parties' contract is governed by the Ten-Year Statute under Section 516.110(1), which applies to "written promises to pay money or property". Mo. Rev. Stat. § 516.110(1). In support of this argument, Di Gregorio attempts to convince the Court that the invoices attached to the Complaint constitute "written promises" by John Racanelli to pay for the goods that Di Gregorio delivered.

There are several problems that Di Gregorio faces in making this argument. (App. Br. pp. 8-11). These problems include the fact that Racanelli signed none of the invoices. At trial, Di Gregorio also admitted both that his company has “no written contract” with Racanelli and that none of the invoices indicate any promise by anyone to pay for any of the goods delivered. (Tr. 33:9-16; 57:4-6).

Di Gregorio contends that a promise to pay should be “logically inferred” from “the face of the invoices.” (Resp. Br. pp. 11-12). Inferring a promise to pay, however, is very different than reading a promise to pay. If one must “infer” a promise from the invoices, that means that one is unable to read a promise within those invoices. Thus, the undisputed evidence and Respondent’s own arguments clearly show that the invoices do not contain “a written promise to pay.” Section 516.110(1), therefore, does not apply.

Nevertheless, even if the invoices were a written promise by John Racanelli to pay for the Di Gregorio food products, the invoices would constitute no more than a written contract to pay for the sale of goods. The Ten-Year Statute under section 516.110(1) still would not apply to such a contract. Such a contract, rather, would be governed by the Four-Year Statute contained in section 400.2-725 R.S.Mo.

CONCLUSION

Nothing contained in Respondent's Brief is sufficient to overcome the authorities and arguments Racanelli has presented on appeal. The admitted facts of this case establish that Di Gregorio's claims below are time-barred. The trial court erred in ruling otherwise, and this Court should reverse.



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CERTIFICATE OF COMPLIANCE

COMES NOW counsel for Appellant John Racanelli and for the Certificate of Compliance, states as follows:

1. The undersigned does hereby certify that Appellant’s Reply Brief includes the information required by Rule 55.03.
2. The undersigned does hereby certify that Appellant’s Reply Brief complies with the limitations contained in Rule 84.06(b) and contains 922 words.
3. Microsoft Word 2010 was used to prepare Appellant’s Reply Brief.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Clerk of the Court this 30th day of October, 2019 to be served by operation of the Court's electronic filing system upon the following:

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