

COURT OF APPEALS RULES THAT RECEIVERSHIP ACTIONS ARE NOT SUBJECT TO NOTICE OF CLAIM REQUIREMENTS

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UMB Bank, NA v. Parkview School, Inc.

Arizona Court of Appeals, Division One

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In a recent opinion by the Arizona Court of Appeals, the court concluded that actions for appointing receivers are not subject to Arizona's Notice of Claim statute. The ruling also addressed whether the action was time-barred under the one-year statute of limitations for actions against public entities and whether the superior court was obligated to follow a prior out-of-state ruling.

Park View School, Inc., which is a nonprofit corporation that operates two charter schools in Arizona, was having difficulty making debt service payments on a secured loan funded by bond proceeds. UMB Bank was the successor trustee for the loan. UMB and Park View could not agree on forbearance terms, after which UMB filed a petition in Minnesota probate court (where its corporate office is located) for trust administration for the loan. Park View moved to dismiss this action, which the Minnesota court denied, and authorized UMB to exercise all of its rights and remedies, including rejecting Park View's proposed forbearance agreement and to initiate proceedings in the appropriate jurisdiction for the appointment of a receiver.

UMB Bank then filed an action for a receiver in Arizona against Park View. Park View moved to dismiss arguing that as a charter school, it was a public entity and UMB had to comply with Arizona's Notice of Claim Statute, § 12-821.01 before filing suit. It also argued that the action was untimely under the one-year statute of limitations that applies to government entities. The superior court denied the motion to dismiss, holding no notice of claim was required because "the only relief presently before the Court is appointment of a receiver," and that the action was not time-barred even assuming application of the one-year limitations period because UMB alleged ongoing failures to make installment payments. UMB then appealed.

The Arizona Court of Appeals explained that the notice of claim statute applies only when monetary damages are sought, but not to claims for declaratory or injunctive relief. However, if the claim for declaratory or injunctive relief is "merely a predicate" to a damages claim, then the notice of claim statute still applies. Under this analysis, the Court concluded that a receivership is an equitable remedy which did not seek money and was thus not subject to the notice of claim requirements. Park View argued that the notice of claim nevertheless applied because in the complaint, UMB explained that Park View owed it a past-due debt. The Court agreed that if a party is seeking to collect on past-due debt, the notice of claim statute would apply. However, the record in this case did not show that the receivership was merely a predicate to a damages claim. UMB had requested the receivership for the prospective protection of the bondholders. The superior court even limited the receiver to making current debt payments only, not any past-due debt that UMB may have requested. Thus, the claim was not barred under the notice of claim statute.

The Court also concluded that the action was timely under the one-year statute of limitations because the cause of action was premised on non-credit-card debt that was scheduled to be repaid in installments. The action accrues on the due date of each matured but unpaid installment and also on the date a creditor exercises the optional acceleration clause. Thus, although the older defaults could not form a proper basis for the action, the action was timely as to

any defaults that occurred within one year of the complaint.

Finally, the court found that the superior court properly deferred to the prior Minnesota ruling. The superior court believed the prior exclusive jurisdiction doctrine required it to view the Minnesota court's ruling as preclusive. Under the doctrine, if parallel state and federal actions involve the same property, the court that takes possession of the property has exclusive jurisdiction. The court of appeals noted that Arizona never adopted the prior exclusive jurisdiction doctrine in a published decision, and that the doctrine normally dealt with federal and state actions rather than two state actions. However, it believed the logic of the doctrine was compelling and concluded that it would be "illogical, impractical, and inequitable" for the superior court not to follow the Minnesota court's ruling, especially considering that Park View participated in the previous suit.

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