

Copycat Courts



The Statute of Limitations Period for TDCA Claims

By Mitchell J. Armstrong*

I. Introduction

Assessing whether a claim is time barred by a statute of limitations is a critical step before any legal claim is made. There is little value in investigating claims and marshalling evidence if the claim can no longer be acted upon. Statutes of limitations are valuable because they deter old controversies from being litigated that may no longer be fit for full investigation. It is also a weighty legal tool because a potential plaintiff may no longer seek redress whatsoever if a claim is barred by limitations. Because of the importance of statutes of limitations, disputes often arise over when a limitation

Regarding the latter, the statute of limitations period for claims under the Texas Fair Debt Collection Practices Act (“TDCA”) warrants close scrutiny. This article will address the statute of limitations period for a TDCA claim, why courts use a certain limitations period, the TDCA tie-in provision for the Deceptive Trade Practices Act (“DTPA”), an amendment to the TDCA, and what the statute of limitations period should be for TDCA claims.

II. TDCA: What it is and its Limitations Period

The TDCA, or Chapter 392 of the Texas Finance Code defines terms related to debt collection, prohibits harmful methods of debt collection such as threats or coercion, and creates a statutory basis for causes of action involving debt collection.¹ The TDCA lacks an express statute of limitations, so courts have looked to other statutory authorities and to case law to determine what the limitations period should be.² This article will look at a few state and federal court cases to see how the limitations period has been interpreted. This section will demonstrate that there are several decisions that have found that period to be two years.

State court case law on the TDCA limitations period is thin, and its analysis of what the limitations period should be equally slim. One of the few state court cases that have brought up the TDCA limitations period is *Galindo v. Snoddy*.³ In *Galindo*, the Plaintiff, Galindo, made both TDCA and DTPA claims. The court stated that the parties agreed “that the two-year statute of limitations applies to all of Galindo’s claims” and cited Tex. Civ. Prac. & Rem. Code Ann § 16.003(a).⁴ Section 16.003 states that “a person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues.”⁵ The full legal analysis of the limitations period was that short declaration that the parties were in agreement about it. Whatever the cause for this analysis, because there is no explanation for why the court chose §16.003 as the authority for the limitations period, this case and others like it offer poor authority for future cases on this subject. As we will see in the following paragraph discussing the TDCA in federal courts, § 16.003 is frequently cited in reference to the limitations period of the TDCA, perhaps due to a broad reading of the word “property” to include debt.

Case law on the TDCA limitations period is more plentiful in the federal courts, however federal court analysis of the limitations period is also scarce, with one notable exception discussed below. The following two cases were in federal district courts and are significant only because they lead back to what appears to be the origin of the current standard for the TDCA limitations period. First, in *Baker v. U.S. Bank* the court stated that “[t]he statute of limitations for a TDCA claim is two years.”⁶ The court in *Baker* quoted the court in *Bashore v. Bank of AM* in making this assertion.⁷ The court in *Bashore*, in turn, relied on the opinion in *Duzich v. Marine Office of Am Corp*, a state court case.⁸

Unlike the courts in *Baker* and *Bashore*, in *Duzich* the Texas Court of Appeals did not cite any case law to determine the limitations period for TDCA claims, and instead relied solely on statutory authority. The court held that for “allegations of negligence, gross negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, and unfair debt collection practices[,] [e]ach of these causes have two-year statutes of limitations.”⁹ The court in *Duzich* created a legal knot by listing the authorities for these claims in a string citation. The court cited Tex. Civ. Prac. & Rem. Code Ann. § 16.003, Tex. Rev. Civ. Stat. Ann. § 5069–11.11, and Tex. Bus. & Com. Code Ann. § 17.565.¹⁰ Because *Duzich* is a state case and has not received a

negative treatment in a higher state court, it is still good law.

Although the following case is merely persuasive in state courts, the court in *Vine v. PLS Financial Services* offers a relatively thorough analysis of the authorities cited by the court in *Duzich*, and best explains how the limitations periods of the TDCA and DTPA should be interpreted. The court in *Vine* did not come to the same conclusions as the court in *Duzich*. Addressing the authorities cited in *Duzich* regarding the limitations period of TDCA claims, the court in *Vine* noted that because the statutes cited for the allegations were listed in a string citation, it was not clear which statutory provision applied to which type of claim, so the court evaluated the merits of each statute.¹¹

First, the court addressed Tex. Bus. & Com. Code Ann. § 17.565, outlining the two-year statute of limitations for the DTPA, and concluded that because the TDCA claim was brought independently of the DTPA, the statute was inapplicable.¹² Second, the court stated that Tex. Rev. Civ. Stat. § 5069 was repealed in 1997 and that because “the Texas Finance Code does not contain a statute of limitations. . . as it currently stands this code section provides no support whatsoever for a two-year statute of limitations on claims for unfair debt collection practices.”¹³

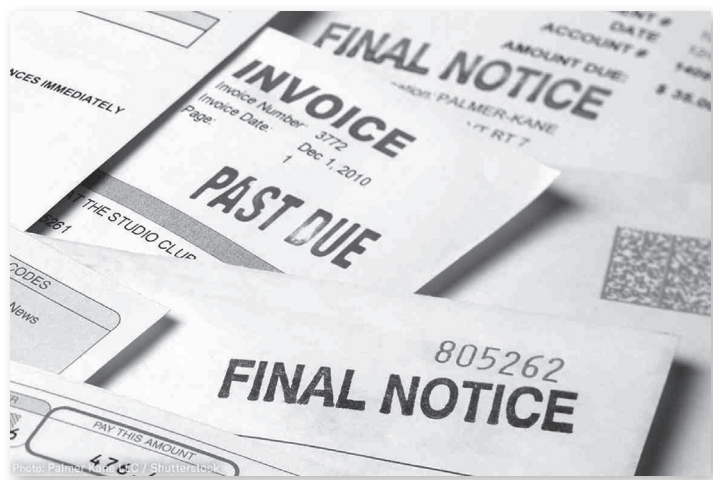
Third, regarding Tex. Civ. Prac. & Rem. Code § 16.003, the court argued that the code’s “language does not apply to a suit for the type of unlawful debt collection practices that are at issue here.”¹⁴ The court explained that the § 16.003 language regarding trespass, conversion of personal property, personal injury, forcible entry, and forcible detainer could not have been intended to be encompassed by “debt collection” unless “defined enormously broadly.”¹⁵ The court in *Vine* thus concluded that the two-year limitations period was inappropriate “[w]ithout a clear indication from Texas state courts or the Texas legislature that debt collection practices were meant to fall with § 16.003’s ambit.”¹⁶

Absent a clear position on the issue by Texas courts, the court in *Vine* opted for the four-year residual statute of limitations period, describing it as a “more appropriate” limitations period than the two year period invoked in *Duzich* and the cases that relied on it.¹⁷ Texas Civil Practice and Remedies Code §16.051 provides a residual limitations period for “[e]very action for which there is no express limitations period, except an action for the recovery of real property, [that] must be brought not later than four years after the day the cause of action accrues”¹⁸ Ordinarily, if a statute does not contain an express statute of limitations period, courts will apply the residual four year statute of limitations. Because the TDCA does not have an explicit statute of limitations listed, it may be argued that the *Vine* court was correct in concluding that the residual statute of limitations should apply.

While *Vine* has not been overruled, the Fifth Circuit also addressed the limitations period of TDCA claims in *Clark v. Deutsche Bank National Trust Company*.¹⁹ The *Clark* opinion was published six days after *Vine*’s, so the lower court did not cite to the Fifth circuit opinion. The Fifth circuit followed the path of previous lower court decisions and concluded that the TDCA has a two-year limitations period, citing *Galindo* and § 16.003.²⁰

Although the *Vine* court’s decision is merely persuasive authority in state courts (and is in direct conflict with the *Clark* decision) it makes reasonable arguments against the two-year limitations period. Due to the lack of case law supporting and explaining the current limitations period, the line of reasoning used

State court case law on the TDCA limitations period is thin, and its analysis of what the limitations



in *Vine* could produce favorable results for an attorney seeking to challenge the current application of the law.

III. TDCA and the DTPA Tie-In Provision

The DTPA is a consumer protection law meant to protect against “false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.”²¹ As stated previously, Section 17.565 of the Business and Commerce Code sets out the limitations period for DTPA claims, which means that unlike the TDCA, the DTPA has an express limitations period of two years.²² The code states, in part, that “[a]ll actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice.”²³

The TDCA contains a tie-in provision for the DTPA. Section 392.404 of the TDCA states that “[a] violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.”²⁴ In other words, if a person has a claim under the TDCA, they also have a separate claim under the DTPA.

Due to the TDCA’s lack of an express limitations period, it may be unclear what effect the DTPA’s limitations period may have on TDCA claims. Conveniently, the court in *Vine* also addressed the interplay between the TDCA and DTPA regarding limitations periods. Regarding pure TDCA claims brought independently of the DTPA, as stated previously the court in *Vine* found the DTPA limitations period inapplicable.²⁵ This approach makes sense because, absent a clear statutory authority, it would be absurd to arbitrarily apply the limitations period controlling one type of claim to another.

Regarding tie-in claims, the courts in *Vine* and *Bashore* both concluded that the two-year statute of limitations was applicable to TDCA claims that were tied into the DTPA.²⁶ This means that when making a DTPA claim through the TDCA tie-in provision, the tied in DTPA claim is constrained by the restrictions that accompany ordinary, independent DTPA claims. The TDCA claim, however, would still exist independent of the DTPA under the suggested four-year limitations period.

IV. 2019 Amendment to the TDCA

In 2019, the Texas Legislature passed the Fair Consumer Debt Protection Act.²⁷ This act added section 392.307 to Chapter 392 of the finance code.²⁸ Section 392.307 states, in part, that “A debt buyer may not, directly or indirectly, commence an action against or initiate arbitration with a consumer to collect a consumer debt after the expiration of the applicable limitations period provided by Section 16.004, Civil Practice and Remedies Code, or Section 3.118, Business & Commerce Code.”²⁹ This provision is the only portion of the TDCA that explicitly references a statute of limitations period.³⁰

The significance of this amendment is manifold because it raises several issues. First, § 16.004 of the Civil Practices and Remedies Code states that “[a] person must bring suit on the following actions not later than four years after the day the cause of action accrues: (1) specific performance of a contract for the conveyance of real property; (2) penalty or damages on the penal clause of a bond to convey real property; (3) debt; (4) fraud; or (5) breach of fiduciary duty.”³¹ Second, Section 3.118 of the Business & Commerce Code states that “an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.”³² If the current application of the limitations period remains unchanged, then it seems that a debtor making a claim under the TDCA would be limited to a two-year limitation period while a debt buyer would have between an additional two to four years to make a claim. It seems absurd that an act that is primarily used to prevent hostile debt collector action would have such unequal terms that benefit collectors more than debtors.

Attorneys seeking to challenge the applicability of the two-year limitations period could argue that the 2019 amendment makes it clear that it would be an absurd result for debtors to have a shorter limitations period than collectors in a statute meant to protect debtors. Attorneys seeking to uphold the two-year limitations period in light of previously discussed criticisms against it could argue that the 2019 amendment suggest that the legislature is aware of issues with the TDCA and that it would have lengthened the limitations period by statute if it disagreed with how courts have been applying the law.

V. What Should the Statute of Limitations for TDCA Claims Be?

The residual limitations period provision states that “every action for which there is no express limitations period has a limitations period of four years.”³³ By the unambiguous language of the text, the TDCA does not have an express limitations period. Therefore, the residual statute of limitations period should be the limitations period used by the courts. The absence of a statute of limitations period does not *ipso facto* mean that the legislature did not contemplate a limitations period and refrain from implementing one. Due to the strong language of the residual statute of limitations statute, courts should view the absence of a limitations period in the TDCA as the legislature invoking the residual statute of limitations period.

VI. Conclusion

Despite the clear language of The Texas Civil Practice and Remedies Code §16.051, the residual statute of limitations, courts have erred in using the two-year statute of limitations period for pure TDCA claims. DTPA tie-in claims arising from TDCA claims are rightly limited to a two-year limitations period. Of all of the courts that have discussed the limitations period of TDCA claims, the court in *Vine* provided the best construction.

The court's opinion in *Vine* that allows for a four-year statute of limitations period for pure TDCA claims and a two-year statute of limitations period for DTPA tie-in claims should be adopted in future cases.

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1 TEX. FIN. CODE ANN. § 392.001 *ET SEQ.*

2 *Id.*

3 *See* Galindo v. Snoddy, 415 S.W.3d 905 (Tex. App.—Texarkana 2013, no pet.)

4 *Id.* at 911.

5 TEX. CIV. PRAC. & REM. CODE ANN. §16.003(A).

6 Baker v. U.S. Bank, N.A., 2017 U.S. Dist. LEXIS 45417 (N.D. Tex. Mar. 10, 2017) (Quoting Bashore v. Bank of Am., 2012 WL 629060 (E.D. Tex. 2012).

7 *Bashore v. Bank of AM*, 2012 WL 629060 (E.D. Tex. 2012).

8 *Id.*

9 Duzich v. Marine Office of Am. Corp., 980 S.W.2d 857 (Tex. App.—Corpus Christi, 1998).

10 *Id.* at 872.

11 Vine v. PLS Fin. Svcs, Inc., 2018 WL 456031 (W.D. Tex. 2018).

12 *Id.* at *16.

13 *Id.* at *17.

14 *Id.*

15 *Id.*

16 *Id.*

17 *Id.*

18 Tex. Civ. Prac. & Rem. Code Ann. §16.051

19 *See* Clark v. Deutsche Bank National Trust Company, 719 Fed. Appx. 341 (5th Cir. 2018).

20 *Id.*

21 V.T.C.A., BUS. & C. § 17.44.

22 TEX. BUS. & COM. CODE ANN. § 17.565.

23 *Id.*

24 TEX. FIN. CODE ANN. § 392.404.

25 *Vine*, *supra* note 11.

26 *Id.* at *9, *Bashore*, *supra* note 7, at *6.

27 *See* TEX. FIN. CODE ANN. § 392.307.

28 *Id.*

29 *Id.*

30 *Id.*

31 TEX. CIV. PRAC. & REM. CODE ANN. §16.004.

32 V.T.C.A., BUS. & C. § 3.118

33 TEX. CIV. PRAC. & REM. CODE ANN. §16.051.