

1 **FACTS**

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3 The Claimant, David A. Duncan, filed Proof of Claim No. 1756 for \$1,000,000 in
4 principal and \$285,124 in interest. He maintains that he was the rightful winner of a ticketed
5 gaming event promoted by Bashas' in approximately September, 2003.

6 When Mr. Duncan presented his ticket, it was declared not to be entitled to any prize
7 money. That notification occurred on or about September 30, 2003.

8 Since that date, Mr. Duncan has not filed suit in any court to have his rights declared
9 (until filing his claim in this bankruptcy case).

10 Bashas' filed a voluntary Chapter 11 case in the U.S. Bankruptcy Court for the District
11 of Arizona on July 12, 2009.

12 Thereafter, creditors were advised to file their claims on or before October 12, 2009.
13 Mr. Duncan filed his claim on October 9, 2009. It was therefore timely filed.

14
15 **PROCEDURE**

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17 The Debtor challenges Mr. Duncan's proof of claim on substantive and procedural
18 grounds. FED. R. BANKR. P. 3007(a). The procedural grounds are that applicable statutes of
19 limitations had passed by the time the Bashas' entities filed bankruptcy petitions.

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21 **DISCUSSION--STATUTES OF LIMITATION**

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23 Before the court can reach the merits of the controversy before it, it must determine
24 whether the applicable statutes of limitations have passed. If so, any claim under applicable state
25 or federal law would be time-barred.

26 As the court understands Mr. Duncan's claim and pleadings, he has asserted rights
27 under:

1 In Arizona, suit on a written contract carries a six-year statute of limitations.
2 ARS § 12-548. Here, the cause of action accrued on September 30, 2003 (Proof of Claim).

3 Before the six-year limitations period expired, Bashas' filed Chapter 11 on July 12,
4 2009. Upon that filing, the automatic stay of 11 U.S.C. § 362(a) prevented Mr. Duncan from
5 commencing suit on the claim. A kind of tolling period occurred thereafter. See 11 U.S.C. § 108(c).
6 Although Mr. Duncan could have sought stay relief to commence his action in state court, he instead
7 took advantage of the claim provisions of the Bankruptcy Code to file a timely proof of claim.
8 Thus, he has elected to have the merits of the controversy decided by this court.

9 The court finds and concludes that the applicable statute of limitations, for bringing
10 an action upon a written contract, had not expired when the bankruptcy case was filed. The
11 substantive issues of Mr. Duncan's proof of claim require a trial on the merits.

12
13 **CONCLUSION**
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15 Bashas' objections to Claim No. 1756, filed by David A. Duncan, are SUSTAINED
16 on his theories under the Lanham Act, the Arizona Consumer Fraud Act and the Criminal Code.
17 Bashas' objection to Mr. Duncan's Claim No. 1756, on statute of limitations grounds, based upon
18 contract principles, is OVERRULED.

19 The Clerk shall convert this matter to an adversary proceeding, and issue the
20 appropriate trial scheduling order.

21
22 DATED AND SIGNED ABOVE.
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24 COPIES to be sent by the Bankruptcy Notification
25 Center ("BNC") to the following:

26 Michael McGrath, Attorney for Debtors
27 Michael Carmel, Attorney for Debtors
28 David A. Duncan, Claimant
Office of U.S. Trustee