

IN THE SUPREME COURT OF OHIO

VITANTONIO, INC., et al.,

Appellees,

v.

GARY BAXTER, Executor of the estate of  
William Vitantonio, Deceased,

Appellant

Case No. 06-952

On Appeal from the Lake County Court  
of Appeals, Eleventh Appellate District

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REPLY BRIEF OF APPELLANT GARY BAXTER, EXECUTOR OF ESTATE OF WILLIAM  
VITANTONIO, DECEASED

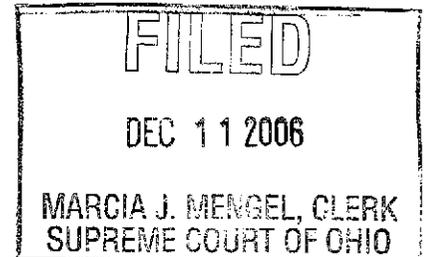
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**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
REPLY ARGUMENT .....	1
<b>Proposition of Law I:</b> .....	1
<b>R.C. 2305.19, the savings statute, does not apply     to actions on rejected claims against an estate.</b> .....	2
CONCLUSION .....	2
PROOF OF SERVICE .....	3

**TABLE OF AUTHORITIES**

Page

CASES:

Allen v. McBride, 105 Ohio St.3d 21, 2004-Ohio-7112 ..... 1, 2

STATUTES:

R.C. 2107.76(B) ..... 1, 2

R.C. 2117.06 ..... 1

R.C. 2117.12 ..... 1

**Proposition of Law I - R.C. 2305.19, the savings statute, does not apply to actions on rejected claims against an estate.**

**REPLY ARGUMENT**

The Appellees rely, to a great extent, on this Court's decision in *Allen v. McBride*, 105 Ohio St.3rd 21, 2004-Ohio-7112. What the Appellees failed to address, however, is the distinction between typical litigation and the litigation of a claim which is a part of the larger administration of a decedent's estate. The Appellees also ignore the effect of R.C. 2107.76(B) and its limitation on the application of the savings statute.

The claims procedure begins with the presentation of a claim within six months from the date of death. R.C. 2117.06. The claim must be dealt with within thirty days thereafter and, a rejected claim must be brought as a suit within two months of rejection. R.C. 2117.12. The administration of the estate is, effectively, "wrapped around" the claim action. Unlike most litigation, which, is so to speak, free standing, actions on a rejected claim become a component of the estate administration.

The repercussions from the claim action are felt throughout the estate administration. Most directly, the fiduciary's duties are impeded awaiting the outcome of the claim action. Secondly, the beneficiaries must either await the termination of the claim action to receive any distribution or run the risk of disgorging that distribution if the results of the claim action necessitate the return of a distribution.

Finally, the factor which clearly separates the claim action from other litigation, is the fact that other creditors must similarly await distribution while the claim action is pending. While it may be justifiable to have the fiduciary and beneficiaries suffer a delay, as they are direct parties to the estate, creditors, and for that matter taxing authorities, should not be inordinately delayed in receiving payment of their claims. The statutory language of R.C. 2117.12, states that claims not

filed within two months are “forever barred”. This suggests that the legislature intended for that two-month period to be absolute and not extended by application of the savings statute.

Appellees have also relied on the court of appeals’ discussion, in this case, that R.C. 2107.76(B) was then “purposed legislation”. Previously it could have been argued that as the savings statute has no apparent exceptions, it is a statute of broad application and should be applied universally. That was suggested by this Court in *Allen v. McBride, supra*. The actions of the legislature, however, have now limited that application.

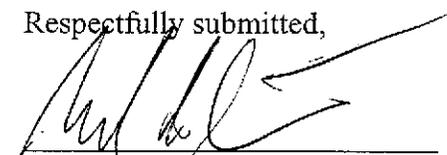
In a will contest, the primary parties of interest are the beneficiaries. Either one document or another will be held valid or, if there is no valid will, then there will be intestate administration. If the savings statute is inapplicable to a will contest, then in an action on a rejected claim it should certainly be inapplicable. In a claim action not only are the interests of the fiduciary and the beneficiaries involved, but the interests of third party creditors hang in the balance as well.

The legislature has clearly demonstrated its position with respect to a will contest. This Court is urged to treat an action on a rejected claim similarly.

### CONCLUSION

Appellant urges this Court to reverse the decision of the Eleventh Appellant District.

Respectfully submitted,



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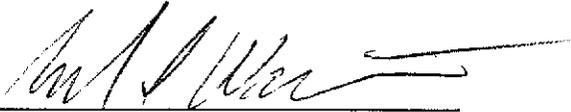
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**PROOF OF SERVICE**

I certify that a copy of this Reply Brief of Appellant Gary Baxter, Executor of Estate of William Vitantonio, Deceased was sent by ordinary United States mail on December 8, 2006, to the following:

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