

IN THE SUPREME COURT OF OHIO

SKY BANK – OHIO BANK REGION, : CASE NO.2008-0900  
Appellant : On Appeal from the  
vs. : Logan County Court of Appeals,  
: Third Appellate District  
MAXINE F. SPILLER, :  
Appellee. :

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REPLY BRIEF OF APPELLANT  
SKY BANK – OHIO BANK REGION

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## STATEMENT OF THE FACTS

Appellee Maxine F. Spiller's ("Mrs. Spiller") Statement of Facts emphasizes Mrs. Spiller's ownership of the Savings Certificate in question, but offers no facts of relevance to the application of R.C. § 1109.69 herein. Mrs. Spiller essentially argues that, in the face of her testimony to not having received the money, the burden shifts to Appellant Sky Bank – Ohio Bank Region ("Sky") to prove otherwise. Absent R.C. § 1109.69(F) that might be true; however, the legislature struck a different balance to protect banks from stale claims on old accounts where the documents relating to them are long gone. That legislative balance requires dismissal of her claim.

## ARGUMENT

**PROPOSITION OF LAW NO. 1: ANY CLAIM BROUGHT AGAINST A BANK BASED ON, OR THE DETERMINATION OF WHICH WOULD DEPEND UPON, THE CONTENTS OF RECORDS FOR WHICH A PERIOD OF RETENTION OF PRESERVATION AS SET FORTH IN R.C. § 1109.69(A) AND (B) MUST BE BROUGHT WITHIN THE PERIOD OF TIME FOR WHICH SUCH RECORD MUST BE RETAINED OR PRESERVED.**

R.C. § 1109.69(A) imposes time frames during which Ohio banks must retain their records. In conjunction therewith, R.C. § 1109.69(F) bars any suit against an Ohio bank "based on, or the determination of which would depend upon, the contents of records" as to which the applicable period of retention has passed. Under the statute, any claim against an Ohio bank must be brought before the time for retaining the relevant records expires. After that point, the claim is time-barred as a matter of law.

This Court has already endorsed strict application of the statute in *Abraham v. National City Bank Corp.* (1990), 50 Ohio St.3d 175, 177, 553 N.E.2d 619, 621. While the Court recognized "the potential for harsh results under the clear mandate of the statute," it made clear

that resolution of any such harshness must be made by the legislature, not the judiciary. *Id.* at 178, 553 N.E.2d at 622. The statute must be applied on its terms, not the basis of the perceived equities or inequities of a given case.

The evidence presents two alternative “date[s] of completion” by which to apply the statute, both of which result in barring Mrs. Spiller’s claim. First, Sky’s predecessor issued the Savings Certificate on June 10, 1975. Mrs. Spiller commenced suit in 2005, twenty years after the date of issuance. Applying the statute to the date of issuance, the action must be dismissed as time-barred.

To evade this result, Mrs. Spiller relies on the decision in *Brentlinger v. Bank One of Columbus, N.A.* (2002), 150 Ohio App.3d 589, 782 N.E.2d 648 for the proposition that the statute does not apply to automatically renewing savings certificates. *Brentlinger* presumes an automatically renewing savings certificate remains active and unpaid unless the bank can document the date of closure. This holding, however, requires banks to retain the very records R.C. § 1109.69 states can be safely destroyed throwing the legislative scheme out of balance.

*Brentlinger* should be rejected by this Court. R.C. § 1109.69 does not provide for the exception found by *Brentlinger*; hence, it runs afoul of the statute. Further, *Brentlinger* cannot stand against this Court’s ruling in *Abraham*. Therein, this Court barred a claim for payment of a passbook savings account where the only document available was the passbook itself. The owner of the account testified that she had never withdrawn the money or otherwise closed the account. No other documents existed except an annual account listing which revealed no open accounts for the plaintiff. *Abraham*, 50 Ohio St. 3d at 176-77, 553 N.E.2d at 620-21. On those facts, the Supreme Court affirmed dismissal of the lawsuit as time barred under the predecessor to R.C. § 1109.69(F). *Id.* at 177, 553 N.E.2d at 621. Thus, the Court applied the statute to the

only documented date available and dismissed the claim as time-barred, even though (1) a passbook savings account never “expires” and (2) the owner testified she had never withdrawn the money. Both the statute itself and *Abraham* then require rejection of *Brentlinger*.

Second, as an alternate date for application of the statute, Sky’s All Account Listing shows that Mrs. Spiller did not have any interest-bearing account with Sky’s predecessor at any time after December 31, 1992. Stated inversely, any accounts owned by Mrs. Spiller had to have been closed no later than December 31, 1992. Using that as the latest possible date for application of the statute, Mrs. Spiller commenced her action more than thirteen years later, far too late under the applicable time frame.

To evade this date, Mrs. Spiller dismisses the All Account Listing as a “self serving” document on which the Court cannot rely. To the contrary, the undisputed testimony at trial established that the All Account Listing was prepared for purposes of reporting interest income to the Internal Revenue Service. (Tr. II at 25-26, Supp. at 109-10.) It is not a self-serving document.<sup>1</sup>

Mrs. Spiller ultimately takes two mutually-inconsistent positions in her opposition. On the one hand, she criticizes Sky for not being able to produce documents establishing the exact date of closure for the Savings Certificate. Yet, she then simply rejects as unreliable the one document found by Sky that establishes the account had been closed by 1993. Mrs. Spiller cannot have it both ways. The All Account Listing provides a legitimate, alternate date for application of the statute to bar Mrs. Spiller’s claim as a matter of law. *See Abraham*, 50 Ohio St.3d at 176-77, 553 N.E.2d at 620-21.

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<sup>1</sup> Notably, Mrs. Spiller did not object to the All Account Listing at trial, either as to its authenticity or its relevancy. (Tr. II at 23-24, Tr. III at 109-10, Supp. at 107-08, 242-43.)

Lastly, Mrs. Spiller does not address whatsoever the serious lack of certainty created by *Brentlinger* and the lower court's ruling here. While the Ohio Bankers League, as *amicus curae*, has outlined serious policy and practical concerns created by *Brentlinger*, Mrs. Spiller simply ignores them. Those concerns should not be so cavalierly dismissed. In addition to being contrary to the plain language of the statute, the exception created by *Brentlinger* and embraced by the lower court imperils the certainty and reliability of Ohio's banking industry both for the public and the governing regulatory authorities. Hence, it should be rejected.

**CONCLUSION**

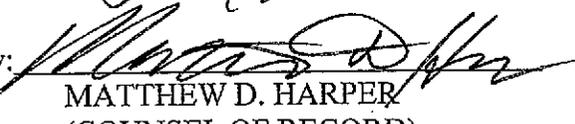
For these reasons, the Court of Appeals ruling should be reversed and Mrs. Spiller's claims should be dismissed as time-barred under R.C. § 1109.69(F).

Respectfully submitted,

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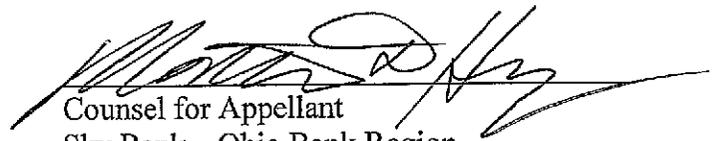
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**PROOF OF SERVICE**

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