

COA Opinion: Payments made after abatement of parole condition for restitution extends period of limitations for default judgment

14. April 2010 by Julie Lam

On April 13, 2010, the Court of Appeals published a per curiam opinion in [Arkin Distributing Co. v. Jones](#), No. 287932, reversing the trial court's order granting defendant's motion to quash execution of a default judgment against her. This case arises out of defendant's embezzlement while employed by plaintiff as its bookkeeper. In 1991, plaintiff obtained a default judgment in the civil action against defendant for failure to defend the action. The trial court granted plaintiff constructive trusts in bank accounts, real property, and other assets owned by defendant and her husband.

Defendant pleaded nolo contendere to 24 counts of embezzlement by an agent or trustee over \$100 under MCL § 750.174 in separate criminal proceedings. In 1995, defendant was sentenced to 4-to-10 years in prison with parole conditioned on restitution of \$537,432.10. Defendant was released from prison one-and-a-half years later, with a condition of her parole that she make monthly payments of at least \$200. Defendant was released from parole in 2003, but continued to make monthly payments of \$230 to plaintiff until 2008.

When defendant's husband died in 2007, defendant received additional assets. Plaintiff began collection proceedings pursuant to the default judgment it had obtained in 1991. The Court of Appeals concluded that the payments defendant made after she was discharged from parole extended the 10-year period of limitations under MCL § 600.5809(3) on the default judgment. The Court of Appeals determined that the payments to plaintiff until 2008, despite the abatement of the parole condition for restitution, served to extend the period of limitations through 2018.