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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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First Financial Bank, )

No. 12-CV-1380-PHX-PGR

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Plaintiff, )

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vs. )

**ORDER**

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Kasson & Company, LLC, et al., )

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Defendants. )

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Before the Court is Plaintiff’s Motion to Dismiss. (Doc. 29.) Plaintiff seeks to dismiss the matter with prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

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On July 12, 2006, Irwin Union Bank (“IUB”) and Defendant Kasson & Company, LLC, executed a Promissory Note in the amount of \$4,048,000.00. Defendant John M. Kasson Jr. executed the Promissory Note on behalf of Kasson & Company. Kasson, individually and as co-trustee of Defendant John M. Kasson Jr. 1995 Living Trust , executed a Guaranty of the Promissory Note. Kasson & Company defaulted on the Promissory Note when the Note matured on July 12, 2008.

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On September 18, 2009, IUB was declared insolvent by the FDIC and became subject to an FDIC receivership. Plaintiff acquired the Promissory Note from the FDIC.

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On June 27, 2012, Plaintiff filed a complaint alleging breach of contract. (Doc. 1.) Defendants filed a Motion for Summary Judgment on February 7, 2013, asserting, among

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1 other arguments, that Plaintiff's claim is untimely and barred by Arizona's statute of repose,  
2 A.R.S. § 33-814. (Doc. 21.)

3 Plaintiff did not file a response to the summary judgment motion. Instead, on February  
4 13, 2013, Plaintiff offered to dismiss this matter with prejudice. (Doc. 29, Ex. 1.) Defendants  
5 refused unless Plaintiff agreed to pay their attorneys' fees and costs. (*Id.*) Plaintiff refused.  
6 (*Id.*) Plaintiff subsequently offered a stipulation allowing each party to file a petition for  
7 attorneys' fees. (*Id.*, Ex. 2.) Defendants did not reply, and on April 4, 2013, Plaintiff filed the  
8 pending Motion to Dismiss. (Doc. 29.)

9 In response, Defendants request that the Court grant their Motion for Summary  
10 Judgment and award them reasonable attorneys' fees and costs under A.R.S. § 12-341.01.<sup>1</sup>  
11 (Doc. 30.) Defendants argue in the alternative that if the Court grants Plaintiff's Motion to  
12 Dismiss, they should be granted attorneys' fees as the successful party. (*Id.*)

13 Plaintiff replies that the issue of attorneys' fees is not properly before the Court. (Doc.  
14 33.) The Court agrees. To the extent that either party wishes to pursue an award of attorneys'  
15 fees and costs, the Court will consider whether such an award is appropriate upon filing of  
16 a motion in compliance with LRCiv. 54.2.

17 Accordingly,

18 IT IS HEREBY ORDERED granting Plaintiff's Motion to Dismiss (Doc. 29). This  
19 case is dismissed in its entirety with prejudice.

20 IT IS FURTHER ORDERED that any motion for attorneys' fees shall be filed no later  
21 than May 28, 2013.


22 IT IS FURTHER ORDERED denying Defendants' Motion for Summary Judgment  
23 (Doc. 21).  
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27 <sup>1</sup> Section 12-341.01 provides for a discretionary award of attorney's fees to the  
28 prevailing party in an action arising out of contract.

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IT IS FURTHER ORDERED denying as moot Plaintiffs' Motion for Service by  
Publication (Doc. 13) and Motion for Entry of Default (Doc. 15).

DATED this 14<sup>th</sup> day of May, 2013.

  
Paul G. Rosenblatt  
United States District Judge