

CASE NOTE:  
The Oregon Supreme Court Holds that ORS 12.080(4)  
Incorporates a “Discovery Rule”

By: Dan Hasson, Shareholder

In *Rice v. Rabb*, 354 Or721, 320 P3d 554 (January 30, 2014), the Oregon Supreme Court considered the issue of whether ORS 12.080(4), the six-year statute of limitations applicable to conversion and replevin claims, incorporates a “discovery rule.” *Rice* arose out of a dispute regarding possession of an outfit acquired by the Queen of the Pendleton Round-Up in 1930. The outfit was passed down, until its then-owner agreed to have it displayed at the Pendleton Round-Up and Happy Canyon Hall of Fame. In April 2000, the defendant went to the Hall of Fame and demanded the outfit. The Hall of Fame complied with the defendant’s demand and turned over the outfit. In 2007, the plaintiff, who was legally blind, discovered the outfit had been turned over to the defendant. After the defendant refused the plaintiff’s demand to return the outfit, the plaintiff brought an action for conversion and replevin. The defendant moved to dismiss the action pursuant to ORCP 21A(9), arguing that it was time-barred by the six-year limitation period set forth in ORS 12.080(4). The trial court granted the motion to dismiss, and the Court of Appeals affirmed. *Rice v. Rabb*, 251 Or App 603, 284 P3d 1178 (2012).

On appeal, the plaintiff argued that the action was not time-barred because ORS 12.080(4) incorporates a discovery rule by application of ORS 12.010, which provides that, for purposes of calculating the period of limitation, causes of action shall be commenced “after the cause of action shall have accrued.” The plaintiff contended that because she did not have actual or constructive knowledge that the outfit had been taken by the defendant until 2007, the trial court had erred in dismissing her claim as untimely. The Oregon Supreme Court held that despite the fact that the text of ORS 12.080(4) did not contain a discovery rule, a discovery rule was nonetheless incorporated into the statute because ORS 12.080(4) falls within the purview of ORS 12.010. In so holding, the court rejected the defendant’s arguments that ORS 12.080(4) did not contain a discovery rule because the legislature knows how to insert such language directly into a statute, but did not do so in drafting ORS 12.080(4). The court explained that there were numerous cases where the Oregon Supreme Court had determined that a discovery rule applied to statutes of limitations despite the absence of express discovery language in those statutes. The court further noted that many of those cases also involved statutes that also fell under the purview of ORS 12.010. Concluding that the plaintiff’s allegations sufficiently alleged that she neither knew nor should have known of the elements of her conversion and replevin claims until 2007, the *Rice* court reversed the Court of Appeals and remanded the case to the circuit court for further proceedings.