

# 16-3852

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*In the*  
**United States Court of Appeals**  
**For the Third Circuit**

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ANDREW PANICO,

*Plaintiff-Appellant,*

– v. –

PORTFOLIO RECOVERY ASSOCIATES,

*Defendant-Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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## SUPPLEMENTAL APPENDIX

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This memorandum of law is respectfully submitted on behalf of Portfolio Recovery Associates, LLC (“PRA”), by its counsel, in support of its motion for an order granting PRA summary judgment and dismissing Plaintiff Andrew Panico’s (“Plaintiff”) Complaint, in its entirety, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

## I. INTRODUCTION

This case involves a collection action brought by PRA in New Jersey state court to recover a delinquent account that PRA purchased from an underlying creditor. PRA filed suit against Plaintiff in 2014 on the account that was considered delinquent as of June 18, 2010. Dkt. No. 28, ¶ 10.<sup>1</sup> The underlying debt was governed by a written contract with a Delaware choice of law provision. *Id.* at ¶ 8. Plaintiff now argues that PRA did not file its collection action against Plaintiff within the Delaware statute of limitations, which Plaintiff claims applied to the underlying collection action. For purposes of this motion only, PRA will presume that Plaintiff’s allegation as to the applicable state law and statute of limitation is correct.<sup>2</sup> Plaintiff reaches this conclusion by claiming that although the Delaware statute of limitations applied to the underlying collection suit, its associated tolling provision, Del. Code Ann. tit. 10, § 8117 (“§ 8117”), did not. By entering into an agreement governed by Delaware law, Plaintiff cannot escape the necessary result that Delaware’s three-year statute of limitations is tolled under certain specific circumstances, which are present in this case.

Plaintiff brought this suit alleging that PRA’s collection action was filed after the applicable statute of limitations in violation of the Fair Debt Collection Practices Act

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<sup>1</sup> The parties agreed to a joint stipulation of facts for purposes of this motion only. The facts in this memorandum are drawn from that stipulation.

<sup>2</sup> Regardless of whether Delaware law or New Jersey law applies, PRA’s underlying collection lawsuit was timely. Under New Jersey law, a six-year statute of limitations applies to collection actions and PRA brought its action well within this time period. *See* N.J. Stat. § 2A:14-1.