

**Reversed and Remanded and Opinion filed February 28, 2002.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-00083-CV**

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**IRENE KOCH d/b/a  
K & K TRUCK AND AUTO, Appellant**

**V.**

**GRIFFITH-STROUD CONSTRUCTION  
& LEASING COMPANY, Appellee**

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**On Appeal from the 129th District Court  
Harris County, Texas  
Trial Court Cause No. 99-12562**

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**OPINION ON REHEARING**

Appellant's motion for rehearing is granted, the opinion issued in this case on June 21, 2001 is withdrawn, and the following opinion is issued in its place.

Irene Koch d/b/a K&K Truck and Auto ("Koch") appeals a summary judgment in favor of Griffith-Stroud Construction and Leasing Co. ("Griffith-Stroud") on the ground that Griffith-Stroud's motion for summary judgment failed to prove as a matter of law that

Koch's claims for conversion and Deceptive Trade Practices Act ("DTPA") violations were barred by the statute of limitations. We reverse and remand.

Koch leased business premises (the "premises") from Griffith-Stroud. After Koch allegedly defaulted on her lease payments, Griffith-Stroud demanded that she either cure the default or vacate the premises. When Koch did neither, Griffith-Stroud changed the locks on the premises (the "lockout"), and Koch subsequently sued Griffith-Stroud for conversion and DTPA violations.

Griffith-Stroud filed a motion for summary judgment asserting that Koch's claims were barred by the two year statute of limitations because both accrued on the date of the lockout, more than two years before suit was filed. Koch filed no response to the motion, and the trial court granted Griffith-Stroud a take-nothing summary judgment.

On appeal, Koch contends that: (1) the lockout was not the act of conversion or deceptive trade practice that commenced the running of limitations because it is undisputed that the lockout was lawful; and (2) Griffith-Stroud's motion for summary judgment proved no other date on which limitations began to run. We agree.

A party moving for summary judgment on limitations grounds must prove, among other things, when the cause of action accrued. *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 566 (Tex. 2001). In this case, the thrust of Koch's complaint was not the lockout but Griffith-Stroud's alleged subsequent failure to credit the value of the personal property it seized from her against the rent balance and refund the difference:

Although [Griffith-Stroud] held a landlord's lien on said property . . . [it] was not entitled to convert [Koch's] property to its own use and profit. The landlord's lien . . . did not confer on [Griffith-Stroud] the right to take [Koch's] personal property and hold it indefinitely without sale, credit or payment of any surplus . . . [Koch] is entitled to have the sale proceeds or the value of the property, credited against the [arrear], if any, for rent and to have any surplus paid to [Koch].

[Koch] again demanded that [Griffith-Stroud] return the property to her, less any amount of [rent] due. [Griffith-Stroud] refused.

The fair [market] value of [Koch's] property . . . was . . . \$97,310.

Because Griffith-Stroud's motion for summary judgment did not identify or prove the date(s) on which the alleged failure to credit and refund occurred, summary judgment was not properly granted on the statute of limitations. Accordingly, the judgment of the trial court is reversed, and the case is remanded to the trial court for further proceedings.

/s/     Richard H. Edelman  
          Justice

Judgment rendered and Opinion filed February 28, 2002.

Panel consists of Justices Anderson, Fowler, and Edelman.

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