

**IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

FRANCO SORO, an individual; MYRA  
TAIGMAN-FARRELL, an individual;  
ISAAC FARRELL, an individual;  
KATHY ARRINGTON, an individual;  
and AUDIE EMBESTRO, an individual;

Supreme Court Case No: 72086

District Court Case No: A-13-  
679511-C

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
in and for the COUNTY OF CLARK, and  
the HONORABLE JERRY A. WIESE,  
District Court Judge,

Respondents,

And

AMERICA FIRST FEDERAL CREDIT  
UNION, a federally chartered credit union,

Real Party in Interest.

**FILED**

FEB 01 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**PETITION FOR REHEARING**

**REID RUBINSTEIN & BOGATZ**  
I. SCOTT BOGATZ, ESQ.  
Nevada Bar No. 3367  
JAIMIE STILZ, ESQ.  
Nevada Bar No. 13772  
300 South 4th Street, Suite 830  
Las Vegas, Nevada 89101  
Telephone: (702) 776-7000  
Facsimile: (702) 776-7900

**CV3 LEGAL**  
CHARLES M. VLASIC III, ESQ.  
Nevada Bar No. 11308  
3016 W. Charleston Blvd., Suite 170  
Las Vegas, Nevada 89102  
Telephone: (702) 551-1178  
Facsimile: (702) 551-1178  
cvlasic@cv3legal.com  
*Attorneys for Petitioners*

sbogatz@rrblf.com  
jstilz@rrblf.com

*Attorneys for Petitioners*

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

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**REID ■ RUBINSTEIN ■ BOGATZ**

300 South 4<sup>th</sup> Street, Suite 830

Las Vegas, Nevada 89101

702.776.7000 | FAX: 702.776.7900

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3  
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1    **I. INTRODUCTION**<sup>1</sup>

2            Recently, this Court issued a decision (the “December 27 Order”)  
3 regarding Petitioners’ underlying Writ Petition, and upheld the District Court’s  
4 denial of Petitioners’ Motion to Dismiss. This decision, however, was made  
5 without consideration of several important points of law and facts. Petitioners  
6 therefore respectfully request this Court reconsider the December 27 Order and  
7 reverse the District Court’s denial of Petitioners’ Motion to Dismiss.

8            Specifically, Petitioners believe the following two points were not  
9 considered in the December 27 Order. First, the Bullington case upon which this  
10 Court relies requires this Court to look at both legislative intent **and** public policy  
11 when determining extraterritorial application of Utah statutes. Since statutes of  
12 limitation are important matters of public policy, the statute of limitations portion  
13 of Utah Code Ann. § 57-1-32 must be extended extraterritorially.

14            Second, unlike the cases relied upon by this Court in reaching its decision,  
15 the parties here specifically agreed to subject themselves to Utah law, including  
16 the statute of limitations contained within Utah Code Ann. § 57-1-32. This valid,  
17 binding choice of law provision was neither present in nor taken into account by  
18 the Bullington or Nevaras courts, but should be given due weight here.

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20            \_\_\_\_\_  
21            <sup>1</sup> Unless otherwise noted, the capitalized terms herein have the same meaning  
ascribed to them in Petitioners’ Opening Brief and Reply Brief.

1           Based upon the foregoing, and as set forth in more detail below, Petitioners  
2 respectfully request this Court to review the overlooked arguments below, grant  
3 this Petition for Rehearing, and reverse the District Court’s denial of Petitioners’  
4 Motion to Dismiss. In the event this Court directs AFCU to answer this Petition  
5 for Rehearing, Petitioners respectfully request this Court permit leave for  
6 Petitioners to file a Reply in support of this Petition.

7 **II.   LEGAL ARGUMENT**

8           **A.   STANDARD FOR PETITIONS FOR REHEARING**

9           Pursuant to NRAP 40(c)(2), this Court may consider a rehearing in the  
10 following circumstances: (A) When the Court has overlooked or  
11 misapprehended a material fact in the record or a material question of law in the  
12 case, or (B) When the Court has overlooked, misapplied or failed to consider a  
13 statute, procedural rule, regulation or decision directly controlling a dispositive  
14 issue in the case.<sup>2</sup>

15           In the instant case, rehearing is necessary and appropriate pursuant to  
16 NRAP 40(c)(2) because, respectfully, it appears this Court has overlooked or  
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18 <sup>2</sup> See, e.g., Am. Cas. Co. of Reading, Pa. v. Hotel and Rest. Employees and  
19 Bartenders Intern. Union Welfare Fund, 113 Nev. 764, 766, 942 P.2d 172, 174  
20 (1997); City of N. Las Vegas v. 5th & Centennial, 130 Nev. Adv. Op. 66, 331  
21 P.3d 896, 898 (2014); see also Bahena v. Goodyear Tire & Rubber Co., 126 Nev.  
606, 609, 245 P.3d 1182, 1184 (2010) (noting that “a petition for rehearing will  
be entertained only when the court has overlooked or misapprehended some  
material matter, or when otherwise necessary to promote substantial justice.”).

1 misapprehended a material question of law in this case and a material fact in the  
2 record – specifically, the application of the Bullington case analysis to the  
3 extraterritorial reach of the statute of limitations portion of Utah Code Ann. §  
4 57-1-32, as well as the impact of the valid, binding Utah choice-of-law provision.

5 **B. A REHEARING SHOULD ISSUE BECAUSE UNDER**  
6 ***BULLINGTON*, UTAH’S STATUTE OF LIMITATIONS**  
7 **WOULD STILL APPLY.**

8 Rehearing is necessary and appropriate pursuant to NRAP 40(c)(2)  
9 because with all due respect, the Court overlooked an important second part of  
10 the applicable case law analysis, which requires the Court to look at public policy  
11 in addition to legislative intent to determine whether the statute at issue ought to  
12 be applied extraterritorially. If public policy so requires – as it does here – the  
13 statute must be applied extraterritorially even if the legislative intent does not  
14 indicate extraterritorial reach.

15 **1. The Utah Supreme Court’s *Bullington* Decision Requires**  
16 **This Court To Analyze Both Legislative Intent *And* Public**  
17 **Policy To Determine Extraterritorial Application Of Utah**  
18 **Code Ann. § 57-1-32.**

19 In reaching its determination that Utah’s statute of limitations does not  
20 apply in this matter, this Court relied upon a prior decision from the Utah  
21 Supreme Court, Bullington v. Mize, 25 Utah 2d 173, 178, 478 P.2d 500, 503  
(1970), which this Court found to stand for the proposition that Utah Code Ann.

1 § 57-1-32 does not apply extraterritorially. See December 27 Order at p. 11.

2 Pursuant to Bullington, however, there are actually **two** aspects that must  
3 be considered in determining whether a Utah statute will be extended  
4 extraterritorially – *first*, whether the language of the statute expresses a  
5 legislative intent to extend its protection extraterritorially, and *second*, whether  
6 public policy exists that would be contravened if the statute is not applied  
7 extraterritorially. 25 Utah 2d at 178, 478 P.2d at 503-04 (“[W]hether a forum  
8 statute would be applied to protect a defendant sued on a deficiency relating to  
9 foreign land, must depend on the interpretation of the statute in the light of its  
10 policy.” (citing *Conflicts of Law* § 232, 2(a)(2), p. 611)).

11 In discussing the second portion of the above analysis with respect to Utah  
12 Code Ann. § 57-1-32, the Bullington Court noted that:

13 The traditional test used in determining whether the public policy of  
14 the forum prevents the application of otherwise applicable conflict-  
15 of-laws principles was well expressed by Justice Cardozo in *Loucks*  
16 v. *Standard Oil Co. of New York*, 224 N.Y. 99, 120 N.E. 198, to the  
effect that foreign law will not be applied if it ‘would violate some  
fundamental principle of justice, some prevalent conception of good  
morals, some deep-rooted tradition of the common weal.’

17 Id. at 179, 478 P.2d at 504 (internal citations omitted).

18 The Bullington Court then went on to discuss whether enforcing the situs  
19 – Texas – law, rather than extending the forum – Utah – law extraterritorially,  
20 would violate fundamental Utah jurisprudence. Id. at 180, 478 P.2d at 504. The  
21



1 Bullington Court ultimately concluded that allowing the deficiency judgment  
2 amount in accordance with Texas law would not violate Utah public policy. Id.  
3 at 180, 478 P.2d at 504-05. Critically, the Bullington Court focused exclusively  
4 on the deficiency judgment amount statutory provision, without analysis or  
5 reference to the statute of limitations component, in discussing and deciding no  
6 public policy violation would occur. See id.

7 Here, a determination regarding extraterritorial application of Utah Code  
8 Ann. § 57-1-32 must include both the first and second parts of the Bullington  
9 analysis. The December 27 Order erroneously focuses exclusively on the first  
10 half of the Bullington analysis, addressing the Utah legislature's intent with  
11 respect to Utah Code Ann. § 57-1-32 without any reference to the second portion  
12 of Bullington. See December 27 Order at pp. 11-13. Given that the December  
13 27 Order specifies this Court will look to a chosen jurisdiction's courts to see if  
14 they have already determined the statute's extraterritorial reach "and, if so, apply  
15 that ruling,"<sup>3</sup> it is necessary for this Court to apply both steps of the Bullington  
16 analysis, rather than just the first half.

17 Since the Bullington Court, when analyzing the second step of the process,  
18 focused only on the deficiency amount provision and did not address the statute  
19 of limitations portion of Utah Code Ann. § 57-1-32, this Court must therefore

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20 \_\_\_\_\_  
21 <sup>3</sup> See December 27 Order at p. 9.

1 look to whether special public policy circumstances necessitate extraterritorial  
2 enforcement of Utah Code Ann. § 57-1-32 regardless of legislative intent.

3           2.     Utah Law Holds Statutes Of Limitation Constitute  
4                   Important Matters Of Public Policy, Thereby Requiring  
5                   Extraterritorial Application Of The Statute Of  
6                   Limitations Contained Within Utah Code Ann. § 57-1-32.

7           As discussed above, pursuant to Bullington, even if legislative intent does  
8 not indicate a Utah statute is meant to be applied extraterritorially, the Court must  
9 assess whether failure to extend the statute extraterritorially would violate  
10 fundamental Utah jurisprudence. Id. at 180, 478 P.2d at 504. If so, it is necessary  
11 to extend the Utah statute at issue. Id. The Bullington Court, in assessing  
12 extraterritorial application of Utah Code Ann. § 57-1-32, did not discuss or weigh  
13 public policy regarding the statute of limitations provision. Id. at 180, 478 P.2d  
14 at 504-05. Rather, the Bullington Court narrowly focused on the public policy  
15 implications of the statute’s deficiency judgment amount provision. See id.

16           Other Utah courts, though, have long held that statutes of limitation are  
17 important matters of public policy. See Falkenrath v. Candela Corp., 780 Utah  
18 Adv. Rep. 25, 374 P.3d 1028, 1031 (Utah Ct. App. 2016); Ireland v.  
19 Mackintosh, 22 Utah 296, 61 P. 901, 902 (1900) (stating that  
20 construction/interpretation of a statute of limitations “which will most effectually  
21 accomplish the purpose of the statute should be adopted. The purpose of the

1 statute is the same both in cases involving the title to tangible property, and in  
2 cases relating to the enforcement of the obligations of contracts.”); Kuhn v.  
3 Mount, 13 Utah 108, 44 P. 1036, 1037 (1896); Horton v. Goldminer's Daughter,  
4 785 P.2d 1087, 1091 (Utah 1989), abrogated on other grounds; see also Hirtler  
5 v. Hirtler, 566 P.2d 1231, 1231 (Utah 1977) (finding a contractual waiver of  
6 statutes of limitation was violative of public policy and therefore void). Utah  
7 courts have noted that statutes of limitation are public policy matters because  
8 “the law has long recognized the need ‘to prevent the enforcement of stale  
9 claims,’” reiterating that

10 [A]t some point in time after the defendant has become liable for  
11 damages he must, in fairness, be protected from suit . . . because of  
12 the drying up or disappearance of evidence that might have been  
13 used in the defense, because of the desirability of security against  
old claims brought by persons who have slept on their rights, or  
because the judicial system may not be able to handle stale claims  
effectively.

14 Falkenrath, 780 Utah Adv. Rep. 25, 374 P.3d at 1031 (citing 4 Am. Jur. *Trials* §  
15 441(2) (2016)).

16 Here, the public policy importance of statutes of limitations necessitate  
17 extraterritorial application of the statute of limitations contained within Utah  
18 Code Ann. § 57-1-32. Unlike the deficiency judgment amount provision, the  
19 three-month limitation provision of Utah Code Ann. § 57-1-32, as a statute of  
20 limitations, carries significant public policy weight. See Falkenrath, 780 Utah  
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1 Adv. Rep. 25, 374 P.3d at 1031; Ireland, 22 Utah 296, 61 P. at 902; Kuhn, 13  
2 Utah 108, 44 P. at 1037; Horton, 785 P.2d at 1091; Hirtler, 566 P.2d at 1231.

3 Indeed, Utah jurisprudence requires the statute of limitations provision to be  
4 constructed in a way that accomplishes its purpose, i.e. preventing the  
5 enforcement of stale claims. See Ireland, 22 Utah 296, 61 P. at 902; Falkenrath,  
6 780 Utah Adv. Rep. 25, 374 P.3d at 1031. Failure to extend the statute of  
7 limitations extraterritorially would thus violate fundamental Utah jurisprudence.

8 As such, the second part of the Bullington analysis requires that the statute of  
9 limitations portion of Utah Code Ann. § 57-1-32 be extended extraterritorially  
10 due to the public policy considerations. Bullington, 25 Utah 2d at 180, 478 P.2d  
11 at 504. Accordingly, rehearing of the December 27 Order declining to extend  
12 Utah Code Ann. § 57-1-32 extraterritorially is necessary.

13 3. Unlike *Bullington* and *Nevaras*, The Parties Here  
14 Specifically Agreed To The Statute Of Limitations In  
Utah Code Ann. § 57-1-32.

15 As this Court noted, the Bullington decision did not touch upon the statute  
16 of limitations portion of Utah Code Ann. § 57-1-32. The Bullington Court was  
17 focused upon whether a Texas resident could pursue a Colorado resident for a  
18 deficiency resulting from the sale of property in Texas. Id. at 175, 478 P.2d at  
19 500-01. There was no choice of law provision involved; the parties in Bullington  
20 had not agreed to abide by and comply with Utah law. See generally id.

1           The other case this Court relies upon, Nevares v. M.L.S., 2015 UT 34, 345  
2 P.3d 719 (Utah 2015), also addressed matters entirely unrelated to statutes of  
3 limitations or contractual choice of law provisions. Rather, the Nevares Court  
4 looked at whether parental rights were foreclosed under Utah Code Ann. § 78B–  
5 6–111, and found the statute did not apply to sexual activity between non-Utah  
6 citizens outside of Utah. 2015 UT 34, 345 P.3d at 722.

7           In contrast here, the parties already agreed to extraterritorial application of  
8 the statute of limitations contained in Utah Code Ann. § 57-1-32. Specifically,  
9 unlike Bullington and Nevares, the instant action revolves around a valid,  
10 bargained-for agreement with a choice of law provision, requiring any action to  
11 exist within the realm of Utah’s laws. Neither the Bullington nor Nevares courts  
12 considered the implication of an agreement to proceed in accordance with Utah’s  
13 statutes when reaching their decisions. Indeed, the Nevares Court had to clarify  
14 that Utah statutes do not seek out individuals in other states to impose their  
15 requirements, because the parties involved had not made any agreement to  
16 comply with Utah law. See id. at 2015 UT 34, 345 P.3d at 722.

17           Here, though, the parties deliberately availed themselves of the laws of  
18 Utah, and sought to be subject to Utah’s statutes. Determining the parties are  
19 subject to Utah law *except for* the statute of limitations, despite the existence of  
20 a valid choice-of-law provision, is an absurd result unsupported by the pertinent  
21

1 Utah case law.<sup>4</sup> Accordingly, for this additional reason Utah Code Ann. § 57-1-  
2 32 must be extended extraterritorially and a rehearing should issue.

3 **III. CONCLUSION**

4 Based on the foregoing, Petitioners respectfully request this Court to grant  
5 this Petition for Rehearing and reverse the District Court’s denial of Petitioners’  
6 Motion to Dismiss. In the event this Court directs AFCU to answer this Petition  
7 for Rehearing, Petitioners also respectfully request that this Court permit leave  
8 for Petitioners to file a Reply in support of this Petition.

9 Dated this 16th day of January, 2018.

10 **REID RUBINSTEIN & BOGATZ**

**CV3 LEGAL**

11 By: /s/ Jaimie Stilz, Esq.

By: /s/ Charles M. Vlasic III, Esq.

12 I. SCOTT BOGATZ, ESQ.

CHARLES M. VLASIC III, ESQ.

13 Nevada Bar No. 3367

Nevada Bar No. 11308

JAIMIE STILZ, ESQ.

3016 W. Charleston Blvd., Ste 170

14 Nevada Bar No. 13772

Las Vegas, Nevada 89102

300 South 4<sup>th</sup> Street, Suite 830

Telephone: (702) 551-1178

15 Las Vegas, Nevada 89101

Facsimile: (702) 551-1178

Telephone: (702) 776-7000

cvlasic@cv3legal.com

16 Facsimile: (702) 776-7900

*Attorneys for Petitioners*

sbogatz@rrblf.com

jstilz@rrblf.com

*Attorneys for Petitioners*

17  
18  
19 <sup>4</sup> Such a result would also be unsupported by Nevada law as well. See NRS  
20 11.020 (stating in relevant part that “[w]hen a cause of action has arisen in  
21 another state, or in a foreign country, and by the laws thereof an action thereon  
cannot there be maintained against a person by reason of the lapse of time, an  
action thereon shall not be maintained against the person in this State.”).

**CERTIFICATE OF COMPLIANCE**

1  
2 1. I hereby certify that this Petition for Rehearing complies with the  
3 formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP  
4 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

5 [X] This Petition has been prepared in a proportionally spaced typeface  
6 using Microsoft Word 2010 in Times New Roman 14-point font.

7 2. I further certify that this Brief complies with the page or type-volume  
8 limitations of NRAP 32(a)(7)(C) because it:

9 [X] Does not exceed 10 pages.

10 3. Finally, I hereby certify that I have read this Petition for Rehearing,  
11 and to the best of my knowledge, information, and belief, it is not frivolous or  
12 interposed for any improper purpose. I further certify that this Petition for  
13 Rehearing complies with all applicable Nevada Rules of Appellate Procedure.

14 Dated this 16th day of January, 2018.

15 REID RUBINSTEIN & BOGATZ

16 By: /s/ Jaimie Stilz, Esq.

17 I. Scott Bogatz, Esq.  
Nevada Bar No. 3367  
18 Jaimie Stilz, Esq.  
Nevada Bar No. 13772  
300 South 4<sup>th</sup> Street, Suite 830  
19 Las Vegas, Nevada 89101  
Telephone: (702) 776-7000  
20 *Attorneys for Petitioners*  
21

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of January, 2018, our office served a copy of the foregoing **PETITION FOR REHEARING** upon each of the following parties by depositing a copy of the same in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, to the following:

The Honorable Jerry A. Wiese  
Eighth Judicial District Court  
Department 30  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
*Respondent*

Stanley W. Parry, Esq.  
Timothy R. Mulliner, Esq.  
Matthew D. Lamb, Esq.  
BALLARD SPAHR, LLP  
One Summerlin  
1980 Festival Plaza Drive, Suite 900  
Las Vegas, NV 89135  
*Attorneys for Real Party in Interest*

/s/ Kristee Kallas  
An employee of Reid Rubinstein & Bogatz