

# SUPREME COURT OF RHODE ISLAND

## Bowden v. Gofax, Inc.

776 A.2d 1066 (R.I. 2001) · Decided June 18, 2001

### SUMMARY

The Rhode Island Supreme Court held that Gofax, Inc. waived its statute-of-limitations defense by failing to raise it in its answer or earlier motion to dismiss. The court denied and dismissed the appeal, affirmed the order appointing a receiver to preserve possible corporate assets, and remanded the papers to the Superior Court.

### CASE DETAILS

|                       |                                                                                                                                                     |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Rhode Island                                                                                                                       |
| WRITING FOR THE COURT | Full Court sitting in conference                                                                                                                    |
| JURISDICTION          | Rhode Island                                                                                                                                        |
| DECIDED               | June 18, 2001                                                                                                                                       |
| DISPOSITION           | affirmed                                                                                                                                            |
| PROCEDURAL POSTURE    | Gofax appealed a Rhode Island Superior Court order appointing a receiver to preserve corporate assets for enforcement of a North Carolina judgment. |
| PRECEDENTIAL VALUE    | Published opinion; precedential                                                                                                                     |
| PARTIES               | Gofax, Inc. v. Stephen Bowden                                                                                                                       |

### TOPICS

statute of limitations affirmative defenses appellate procedure civil procedure remedies

### PRACTICE AREAS

civil procedure appellate procedure corporate law remedies commercial litigation

### QUESTIONS PRESENTED

- Whether Gofax waived the statute of limitations defense by failing to plead it in its answer or raise it in its earlier motion to dismiss.
- Whether the Rhode Island Superior Court properly appointed a receiver to determine whether Gofax continued to operate as a business entity.

## HOLDINGS

1. A statute of limitations is an affirmative defense that is waived when it is not pleaded or timely raised. Because Gofax failed to assert the defense in its answer, initial motion to dismiss, or earlier enforcement proceedings and raised it only after execution had failed and a receivership petition had been filed, Gofax waived the defense.
2. The order appointing a receiver was affirmed, and the receiver was permitted to determine whether Gofax continued to operate as a business entity.

## KEY QUOTATIONS

*“We conclude that under these circumstances Gofax waived the affirmative defense of statute of limitations.”*  
(1067)

*“Therefore, the defendant’s appeal is denied and dismissed. The order appointing the receiver is affirmed and the receiver may proceed to determine whether Gofax continues to operate as a business entity.”* (1067)

## FACTUAL BACKGROUND

Bowden obtained a North Carolina judgment against Gofax for unpaid fax-machine commissions, interest, and attorney's fees. Gofax's Rhode Island certificate of incorporation had been revoked, but Gofax did not raise the revocation-based limitations defense in the North Carolina action or in its Rhode Island motion to dismiss the enforcement proceeding. After execution on the judgment was returned unsatisfied, Bowden petitioned for appointment of a receiver, and Gofax asserted the defense for the first time at that stage.

## PROCEDURAL HISTORY

Bowden obtained a North Carolina judgment against Gofax for unpaid commissions, interest, and attorney's fees, and the judgment was affirmed by the North Carolina Court of Appeals. After Bowden sought enforcement in Rhode Island and an execution was returned unsatisfied, he petitioned for appointment of a receiver. Gofax raised the Rhode Island corporate-certificate-revocation statute of limitations for the first time in response to the receivership petition. The Superior Court found the defense waived, appointed a receiver, and the Supreme Court affirmed.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The papers were remanded to the Rhode Island Superior Court, and the receiver could proceed to determine whether Gofax continued to operate as a business entity.

## CASES CITED

- LaBounty v. LaBounty, 497 A.2d 302, 305 (R.I. 1985)
- Boghossian v. Ferland Corp., 600 A.2d 288, 290 (R.I. 1991)

