IN THE SUPREME COURT OF THE STATE OF NEVADA

THE CADLE COMPANY II, INC., AN OHIO CORPORATION,
Appellant,
vs.
SUSAN FOUNTAIN, F/K/A SUSAN FOUNTAIN TASSONE,
Respondent.

No. 49488

FILED

FEB 26 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment and dismissing as time-barred the underlying action to recover money due under a promissory note. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

On appeal, appellant Cadle Company II, Inc. argues the district court erred when it found CIT Group/Consumer Finance, Inc.'s (CIT) voluntary dismissal of its 1996 suit against respondent Fountain did not revoke the promissory note's acceleration.

DISCUSSION

This court reviews a district court's grant of summary judgment de novo, without deference to the lower court's findings. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (citations omitted). Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Id. (citations omitted). "When reviewing a motion for summary judgment, the evidence, and any reasonable

inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Id. (citations omitted).

"[W]here contract obligations are payable by installments, the limitations statute begins to run only with respect to each installment, when due, unless the lender exercises his or her option to declare the entire note due." Clayton v. Gardner, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991) (citations omitted). Courts will seldom allow lenders to accelerate a contract obligation unless the "acceleration [is] exercised in a manner so clear and unequivocal that it leaves no doubt as to the lender's intention." Id. (quoting United States v. Feterl, 849 F.2d 354, 357 (8th Cir. 1988)). Therefore, some "affirmative action by the creditor must be taken to make it known to the debtor that [the creditor] has exercised his option to accelerate." Feterl, 849 F.2d at 357.

On November 18, 1996, CIT exercised its right to accelerate the remaining balance due on respondent's promissory note and it filed a complaint in the Second Judicial District Court of the State of Nevada, Washoe County, seeking to judicially foreclose on the deed of trust securing the note. The holder of the first deed of trust foreclosed upon respondent's marital residence, resulting in a trustee's sale of the home on November 26, 1997. On April 8, 1998, CIT and respondent stipulated to a voluntary dismissal of CIT's case without prejudice.

We conclude that the district court did not err when it granted respondent's motion for summary judgment. Because an affirmative act is necessary to accelerate a mortgage, the same is needed to decelerate. Accordingly, a deceleration, when appropriate, must be clearly communicated by the lender/holder of the note to the obligor. Here, if CIT intended to revoke the acceleration of the debt due under the note, it

should have done so in a writing documenting the changed status. The voluntary dismissal did not decelerate the mortgage because it was not accompanied by a clear and unequivocal act memorializing that deceleration. Although the district court found that the statute of limitations began to run when CIT filed its lawsuit on November 18, 1996, we conclude that the statute of limitations began running from the date of the default and therefore expired in February of 2002. Appellant is still time-barred from bringing its action.[1]

Because we conclude that the district court did not err when it granted respondent's motion for summary judgment, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

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[1]We have considered appellant's argument that CIT's voluntary dismissal of the 1996 suit revoked the promissory note's acceleration as a matter of law pursuant to NRCP 41(a). However, NRCP 41(a), without more, does not constitute an affirmative act, which we find is required to revoke acceleration of a promissory note. We have also considered appellant's arguments that CIT was entitled to revoke its acceleration of the promissory note because respondent did not detrimentally rely on the acceleration and that public policy requires respondent repay the promissory note. Given our conclusion that an affirmative act is required to revoke acceleration of a promissory note, these arguments do not change our decision and do not warrant discussion.

cc: Hon. Patrick Flanagan, District Judge
Lester H. Berkson, Settlement Judge
Woodburn & Wedge
Maupin, Cox & LeGoy
Washoe District Court Clerk