

**IN THE COURT OF APPEALS OF IOWA**

No. 6-237 / 05-0953

Filed May 24, 2006

**FRONTIER LEASING CORPORATION,**  
Plaintiff-Appellant,

**vs.**

**JAMES RIVER COUNTRY STORE and GEORGE L. ROBERTS**  
**and MYLES GOGER, Individually,**  
Defendants-Appellees.

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Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

The plaintiff appeals from the district court's order granting the defendants' motion to dismiss. **AFFIRMED.**

Edward McConnell of Edward N. McConnell, P.L.C., West Des Moines, for appellant.

James River Country Store c/o Myles Goger, pro se, Crozet, Virginia, for appellees.

Considered by Sackett, C.J., and Vogel and Mahan, JJ

**VOGEL, J.**

Frontier Leasing Corporation (Frontier) appeals from the district court's order granting a motion to dismiss by the defendants, James River Country Store and George Roberts and Myles Groger individually. Because we agree with the district court that the statute of limitation on Frontier's claim has run, we affirm the order for dismissal.

In October 1999, Frontier's predecessor in interest, Liberty Leasing Company, entered into an equipment lease agreement with the defendant, James River Country Store, for an ATM terminal. The agreement provided in pertinent part:

*Default.* You will be in default under this lease if any of the following happen: (a) we do not receive any lease payment within five (5) days after its due date; (b) you or any of your guarantors break any promises in this lease or any guaranty; (c) you or any of your guarantors become insolvent, liquidate or dissolve, merge, transfer substantially all of your stock or assets, stop doing business or assign your rights or property for the benefit of creditors; (d) a petition is filed by or against you or any of your guarantors under any bankruptcy or insolvency law; (e) you or *any of your guarantors dies* or have a guardian appointed; or (f) without our written permission in advance, you try to move, sell, transfer, pledge, part with possession, sublet or put a lien on any equipment.

(emphasis added).

In February 2000, one of the guarantors under the lease, George Roberts, died.<sup>1</sup>

The defendant ceased making lease payments on April 11, 2000. After that time, it appears that the supplier under the equipment lease, Credit Card Center (CCC)

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<sup>1</sup> Roberts was also one of the two partners of the defendant entity, James River Country Store.

made several payments to Liberty allegedly on behalf of the defendants,<sup>2</sup> two in June 2000, one in August 2000, and one in December 2000. No further payments were made under the lease, and Liberty considered the defendants to be in default in January 2001 due to nonpayment.

Frontier did not file suit against the defendants until September 30, 2004. In February 2005, the defendants filed a motion to dismiss based on the running of the statute of limitations. The district court entered its order granting dismissal based upon its finding that George Roberts's death in February 2000 constituted a default under the lease, triggering the four-year limitation under Iowa Code section 554.13506 (1999), which then ran in February 2004. Frontier appeals.

We review a district court ruling on a motion to dismiss for correction of errors at law. *Kingsway Cathedral v. Iowa Dept. Of Transp.*, 711 N.W.2d 6, 7-8 (Iowa 2006). A motion to dismiss admits the well-pleaded facts in the petition, but not the conclusions, and should only be granted if there is no state of facts conceivable under which a plaintiff might show a right of recovery. *Id.*

Under the applicable statute of limitations, a claim for default of a lease must be filed within four years of the accrual of the cause of action. Iowa Code § 554.13506 (1). "A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. *Id.* at § 554.13506(2). The district court determined that the statute requires beginning the period of limitation from the first default, even in the event of

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<sup>2</sup> The defendants disputed that CCC made any payments on their behalf, as they did not consent to these payments.

multiple defaults. Therefore, although the defendants eventually defaulted by nonpayment, the first default occurred with the death of the guarantor, George Roberts. The parties do not dispute that Liberty had notice of Roberts's death shortly thereafter. The district court found this amounted to an accrual of their cause of action for default under the terms of the lease and section 554.13506. Frontier argues on appeal that there is a difference between the "time of default" and an "event of default," however, we find no basis for this distinction in section 554.13506 as affecting the statute of limitations. Nor does the lease agreement contain language, as Frontier suggests, giving Liberty or Frontier the right to "declare" or determine when a default occurs. Frontier cites no authority to support its position. The contractual default language is unconditional and clearly states that a default occurs under any of the instances enumerated above, and from that point forward, Liberty or Frontier had the right to exercise its remedies under the lease. We agree that Roberts's death was a default as defined under the lease that began the four-year limitation period, and thereby conclude the district court correctly dismissed Frontier's cause of action against the defendants as time-barred under section 554.13506. We affirm.

**AFFIRMED.**