IN THE COURT OF APPEALS OF IOWA

No. 6-699 / 06-0095
Filed September 21, 2006

ALCOA EMPLOYEES AND COMMUNITY CREDIT UNION,
Plaintiff-Appellant,

vs.

SCOTT A. TOOLEY and MELISSA J. TOOLEY,
Defendants-Appellees.

Appeal from the Iowa District Court for Scott County, David H. Sivright, Judge.

Plaintiff appeals the summary judgment entered in favor of defendants. **AFFIRMED.**

R. Craig Oppeln of Allbee, Barclay, Allison, Denning & Oppel, P.C., Muscatine, for appellant.

Kyle D. Williamson of Williamson Law Office, Davenport, for appellee Scott Tooley.

Melissa J. Tooley, Davenport, pro se.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

The question presented for us in this appeal is when the statute of limitations begins to run on a written promissory note: the date of default or the date the proceeds from the sale of the collateral are credited to the account?

The facts are undisputed. Scott and Melissa Tooley borrowed $26,000 from the Alcoa Employees and Community Credit Union and provided the credit union the title to a motor vehicle as collateral. The Tooleys failed to make timely monthly payments on the loan and a notice of the right to cure default was given to them on June 17, 1993. The Tooleys failed to cure their default and the credit union repossessed the vehicle in January 1994. The net proceeds from a subsequent sale of the vehicle were applied to the loan balance on November 30, 1994.

On October 26, 2004, the credit union filed an action to recover monetary damages associated with the Tooleys' deficiency. The Tooleys raised the ten-year statute of limitations as a defense. *See* Iowa Code § 614.1(5) (2003). The district court found the statute of limitations began running at the time of default and therefore had expired in January 2004. The court therefore granted summary judgment in favor of the Tooleys. We review rulings on motions for summary judgment for errors at law. *Sain v. Cedar Rapids Cmty. Sch. Dist.,* 626 N.W.2d 115, 121 (Iowa 2001).

The credit union argues the Tooleys' account was open and the last item that occurred on the account was when the proceeds from the sale were applied to the loan balance on November 30, 1994. We disagree. Iowa Code section 614.5 provides, "When there is a continuous, open, current account, the cause of

action shall be deemed to have accrued on the date of the last item therein . . . ." Although the application of the sale proceeds was the last item to occur on the account, by then the account was no longer open. A "continuous, open current account" is one which is not interrupted or broken, not closed by settlement or otherwise, and is a running, connected series of transactions. *Griffith v. Portlock*, 233 Iowa 492, 498, 7 N.W.2d 199, 202 (1942). After default, a secured party "may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure." Iowa Code § 554.9601(1)(a). Any such action essentially closes the account. As our supreme court has explained:

> One of the reasons why the statute of limitations does not commence to run against an open, current, continuous account, is that the obligation of the debtor is to pay the balance which remains after the account is closed, and not each item as it is rendered from day to day, or from month to month. It is the constantly varying balance which is the debt. When the account is closed, by settlement or otherwise, it becomes an account stated, and a new promise, either express or implied, arises to pay the ascertained amount.

Porter v. Chicago, I. & D. Ry., 99 Iowa 351, 355, 68 N.W. 724, 725 (1896). Accordingly, an account is closed when the debt becomes an ascertained amount. When the credit union declared the loan in default and repossessed the vehicle, the debt became an account stated. The credit union's cause of action to enforce the promissory note accrued and the statute of limitations began to run with Tooleys' default on the loan. *See Krotz v. Sattler,* 586 N.W.2d 336, 339-40 (Iowa 1998). The district court so found and therefore did not err in granting summary judgment in favor of the Tooleys.

AFFIRMED.