Insights

Indiana Supreme Court Rejects Imposition of "Rule of Reasonableness" on the Statutes of Limitations Applicable to a Lender's Pursuit of a Defaulted Mortgage Installment Promissory Note

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In a pair of decisions issued February 17, 2020, the Indiana Supreme Court ruled in favor of lenders in issuing guidance regarding the statutes of limitations applicable to a lender's pursuit of a defaulted promissory note and a defaulted mortgage.

In *Blair v. EMC Mortgage, LLC*, the Indiana Supreme Court unanimously ruled that a lender's foreclosure suit on a defaulted mortgage promissory note was timely where the lender brought suit within six years following the maturity of the promissory note.

The Court noted that "[a] closed installment contract, such as a mortgage or promissory note, is one in which a borrower agrees to make a series of payments to a lender on specific dates." In *Blair*, the borrowers executed a promissory note and mortgage on two parcels of real estate; the promissory note was to be paid in monthly installments over 15 years, beginning in February 1993. The promissory note gave the holder the option to accelerate the debt after a default and to require immediate payment on the full amount due. The borrowers made their last payment on the promissory note in June 1995; the promissory note later was assigned to EMC Mortgage, LLC ("EMC"). Although the note matured on Jan. 1, 2008, EMC didn't sue the borrowers to recover on the promissory note and to foreclose the mortgage until July 3, 2012 (i.e., within four years following maturity).

In rejecting the borrowers' argument that EMC had violated the applicable Indiana statutes of limitation in pursuing its rights under the defaulted promissory note and mortgage and had waited an unreasonable amount of time in pursuing its rights, the Indiana Supreme Court noted that "[t]wo statutes of limitations apply when a lender sues for payment upon a promissory note". First, Ind. Code §34-11-2-9, the general statute of limitations for "action[s] upon promissory notes", states that such an action (for promissory notes executed after August 31, 1982) "must be commenced within six (6) years after the cause of action accrues." Second, Indiana's enactment of the Uniform Commercial Code ("UCC") provides, in Ind. Code §26-1-3.1-118(a), that "an action to enforce the obligation of a party to pay a note payable at a definite time" must be brought either "within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date."

Finding that "these statutes' plain language shows that they are not mutually exclusive when applied to an action on a promissory note," the Court ruled that Ind. Code §34-11-2-9 "addresses accrual of a cause of action in very general terms," while Ind. Code §26-1-3.1-118(a) "addresses it more specifically". Thus, "[s]uits to enforce obligations under [closed installment] contracts are subject to multiple statutes of limitations", so that there are three possible points in time when the statute of limitations could have been triggered: (1) as each installment payment became due; (2) upon an exercise of the optional acceleration clause, had EMC chosen to accelerate; or (3) upon loan maturity. Noting that "[i]mportant legal differences between closed installment contracts and open accounts counsel against treating them identically for purposes of statutes of limitations" and finding "no need to impose a rule of reasonableness when a lender sues for payment on a closed installment contract", the Indiana Supreme Court affirmed the trial court's ruling in favor of EMC's timely pursuit of its defaulted promissory note and a defaulted mortgage against the borrowers.

Similarly, in *Collins Asset Group, LLC v. Alialy*, the Indiana Supreme Court unanimously ruled that a lender's pursuit of a defaulted mortgage promissory note within one year following the lender's acceleration of the promissory note was timely. In *Alialy*, the borrower executed a promissory note and mortgage to be paid in monthly installments over 25 years, beginning in September 2007. The promissory note gave the holder the option to accelerate the debt after a default and to require immediate payment of the full amount owed. The borrower stopped making payments on the promissory note in July 2008, and Collins Asset Group, LLC ("CAG"), thereafter acquired the promissory note. In October 2016, CAG accelerated the debt, demanding payment in full from the borrower; when the borrower failed to pay, CAG sued to recover on the promissory note in April 2017.

In rejecting the borrower's argument that CAG's suit on the promissory note was untimely, the Court noted that promissory notes accompanying a mortgage are negotiable instruments, and often contain acceleration clauses giving a lender "the option to fast-forward to the note's maturity date and immediately demand payment in full if the borrower fails to pay one or more installments". Citing its decision in *Blair*, the Court noted that under Indiana law, "two statutes of limitations apply equally when a lender sues for payment upon a promissory note", and that "[u]nder either statute, there are multiple accrual dates for causes of action". Declining the borrower's request that the Court find that CAG had delayed an unreasonable amount of time in pursuing its rights under the promissory note, the Court ruled that CAG "could recover equally under either statute because it filed suit within six years of acceleration" and that "we will not impose an additional rule of reasonableness on a lender's ability to bring an action upon a closed installment contract".

Takeaways: *Blair* and *Alialy* represent the Indiana Supreme Court's refusal to impose a loose court-created "rule of reasonableness" on a lender's pursuit of a default under a closed mortgage installment promissory note, with the Court instead emphasizing that under the Indiana statutory scheme, a lender timely can pursue a defaulted mortgage installment promissory note either (1) as each installment payment becomes due, (2) upon an exercise of the optional acceleration clause, if the lender chooses to accelerate, or (3) upon loan maturity.

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