

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**WORLD O WORLD CORPORATION,
Plaintiff,**

v.

**Case No. 14-143355-CK
Hon. James M. Alexander**

**IRINA UDOVICHENKO
d/b/a EASY LOANS, INC.,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition. This case involves a choice of law dispute governing the applicable statute of limitations. Plaintiff’s complaint alleges that Defendant defaulted on a promissory note executed in August 2005 for a parcel of real property located in Putman, Florida. Plaintiff alleges that it loaned Defendant \$52,000 in exchange for Defendant’s promise to repay the loan in monthly installment payments for fifteen years. This loan was secured by a mortgage on the property.

Defendant stopped making loan payments in October 2007 and has failed to otherwise satisfy the debt. As a result, Plaintiff filed the present Complaint to recover the outstanding balance, plus interest, late fees, costs, and attorney fees.

Defendant now seeks summary disposition under MCR 2.116(C)(7), which determines whether a claim is barred, among other grounds, because of “state of limitations.” MCR 2.116(C)(7). The Court accepts the plaintiff’s well-pleaded allegations as true and construes them in the plaintiff’s favor unless the allegations are contradicted by documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Huron Tool & Eng’g Co v*

Precision Consulting Services, Inc, 209 Mich App 365, 376-77; 532 NW2d 541 (1995). In response, Plaintiff seeks summary disposition under (I)(2).

Defendant argues that Florida state law governs the dispute in this case because of the following provision found in the note:

This note with interest is secured by a mortgage on real estate, of even date herewith, made by the maker hereof in favor of the said payee, and shall be construed and enforced according to the laws of the State of Florida.

Defendant argues that because Florida law applies, Plaintiff's action is barred by Florida's five year statute of limitations because it's "[a] legal or equitable action on a contract, obligation, or liability founded on a written instrument." FL Stat 95.11(2)(b). Defendant argues that the tolling of the statute of limitations period began when Defendant first failed to pay the November 1, 2007 payment. Defendant reasons that this failure to pay implicated tolling because of two acceleration provisions found within the note.

The pre-printed acceleration language in the note states:

In the event of default under this note, the unpaid balance of the principal sum of the debt evidenced by this note and interest thereon shall immediately become due and payable, and the mortgage securing such debt shall become subject to foreclosure proceedings, at the election of the holder.

If default be made in the payment of any of the sums or interest mentioned herein or in said mortgage, or in performance of any of the agreements contained herein or in said mortgage, then the entire principal sum and accrued interest shall **at the option of the holder** hereof become at once due and collectible without notice, time being of the essence... (emphasis added).

In response, Plaintiff argues that Florida's statute of limitations is inapplicable because Michigan law has made it clear that Michigan's **procedural** law will apply even if another state is selected as the substantive choice of law within a contract. *Turcek v Amerifund Financial*, 272 Mich App 341 (2006); *McDougall v Schanz*, 461 Mich 15 (1999). And Plaintiff argues that statutes of limitations are procedural in nature – not substantive. *Staff v Johnson*, 242 Mich App

521 (2000). The Court agrees. These cases stand for the notion that Michigan procedural law will apply even if the parties chose a different state's substantive law in their contract.

Finally, Plaintiff argues that Michigan's ten year statute of limitations applies because the current action is founded upon the mortgage of real estate. MCL 600.5807(4). The cited statute provides that "[t]he period of limitations is 10 years for actions founded upon covenants in deeds and mortgages of real estate." Again, the Court agrees.

In the alternative, Defendant argues that her failure to pay in October 2007 resulted in the default that accelerated the remaining principal amount of the note. And as a result, Defendant argues, Michigan's six-year statute of limitations bars this October 2014 lawsuit. Initially, the Court notes that the 10-year limitations period applies to this lawsuit – not six years.

Additionally, assuming arguendo that the six-year limitations period applied, Defendant's October 2007 default did not automatically accelerate the note and start the clock. Rather, the parties contracted that Plaintiff had the option to accelerate the note upon Defendant's default. And Plaintiff did not choose to do so until this lawsuit was filed. As a result, this lawsuit does not run afoul of any statute of limitations.

The statute of limitations governing the promissory note is procedural in nature. Thus, Michigan law applies and the period to bring an action is ten years. This action was brought within that time frame.

For the above reasons, the Court DENIES Defendant's motion for summary disposition under MCR 2.116(C)(7).

IT IS SO ORDERED.

March 18, 2015
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge