

Cite as 2023 Ark. App. 156  
**ARKANSAS COURT OF APPEALS**  
DIVISION III  
No. CV-22-216

NP191, LLC

APPELLANT

Opinion Delivered March 15, 2023

V.

DEBRA BRANCH

APPELLEE

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT, FOURTH  
DIVISION  
[NO. 60CV-20-5614]

HONORABLE HERBERT WRIGHT,  
JUDGE

REVERSED AND REMANDED

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**STEPHANIE POTTER BARRETT, Judge**

Appellant, NP191, LLC, appeals from an order granting summary judgment in the Pulaski County Circuit Court in favor of appellee, Debra Branch. On appeal, NP191 argues that it was reversible error for the circuit court to grant summary judgment to Branch upon a finding that Arkansas Code Annotated section 16-56-111(a) (Repl. 2005) barred its action to enforce its mortgage when there was no acceleration of the note.

*I. Relevant Facts*

NP191, LLC, successor in interest to Nationwide Bank, filed a complaint in the Pulaski County Circuit Court against the appellee, Debra Branch, and the Secretary of the U.S. Department of Housing and Urban Development (HUD) on October 7, 2020, seeking foreclosure on a certain promissory note and mortgage executed by Branch to Nationwide

on April 29, 2011. NP191 alleges that Branch purchased her property by warranty deed on March 16, 2000. On April 29, 2011, Branch entered into a credit agreement that established a \$47,000 line of credit with Nationwide for home improvements. Branch could draw all or part of the available funds during the term of the agreement. A payment schedule was set out in the agreement, including how interest rates would be determined annually on the outstanding balance. The agreement set out 240 monthly payments that could be adjusted annually to be paid on the outstanding balance at the start of the repayment period.

The complaint alleges that Branch had defaulted on a promissory note and mortgage with Nationwide Bank on October 9, 2015, when she made her last payment and now owes a principal sum of \$46,619.75 together with accrued interest thereon from the date of default until paid, a reasonable attorney's fee, title expenses, late charges, and costs. NP191 alleges that on October 7, 2019, it purchased the promissory note and mortgage from NAMC, which had purchased the note and Mortgage from Nationwide prior to NP191. There was no acceleration of the debt owed to Nationwide at any time from the original default on July 14, 2013, until the complaint was filed by NP191 on October 7, 2019, seeking foreclosure on the property subject to its mortgage.

NP191 also sued the Secretary of Housing and Urban Development alleging that it (HUD) may claim an interest in the subject property based on a deed of trust in its favor filed of record on June 5, 2014, but that any claim, right, title, or interest by virtue of the deed of trust is junior, subordinate, and inferior to any and all claims, right, title, and interest of NP191. The HUD Secretary filed an answer to the complaint on January 24, 2021,

asserting that HUD had a lien on the subject property because of a deed of trust filed subsequent to that of Nationwide on June 5, 2014. The Secretary did not participate further.

Branch filed an answer to NP191's complaint on November 25, 2020. Branch admitted that NP191 is authorized to do business in the State of Arkansas, that she is a resident of the state, and that the real property subject to this suit is situated in Pulaski County. Branch admitted that she acquired the real property by warranty deed on March 16, 2000. Branch denied the remaining allegations.

Branch filed a motion for summary judgment on October 26, 2021, which was heard on December 15 along with NP191's cross-motion for summary judgment. Branch alleges in her motion that she made her last payment to Nationwide on July 14, 2013. Branch states that it is undisputed that NP191 acquired the debt on October 7, 2019, as successor to NAMC, who acquired it from Nationwide. Branch argues that there is no genuine issue of a material fact, and as a matter of law, NP191 is barred by Arkansas Code Annotated section 16-56-111(a) from a judgment of foreclosure and for past-due payments. NP191 alleged in its response to the motion for summary judgment that there was a genuine issue of material fact and therefore that her motion should be denied. In NP191's cross-motion for summary judgment, it alleged that summary judgment must be granted to it since the debt was on an alleged installment contract as established by the pleadings, NP191's brief, the affidavit of Kathleen Brisendine, and her deposition. NP191 conceded in oral arguments that the five-year statute of limitations on actions on written contracts precluded it from seeking past-due installments prior to October 7, 2015. Further, it agreed that Branch's last payment on the

loan was July 14, 2013, not October 9, 2015, as alleged in the complaint. NP191 admits those payments due prior to October 7, 2015, are barred.

There was no dispute by the parties that this was a written contract governed by the five-year statute of limitations as set forth in Arkansas Code Annotated section 16-56-111(a). The circuit court determined that the statute of limitations began to run on Branch's initial breach of the contract, which was July 14, 2013. The circuit court further found that the statute of limitations had lapsed before NP191 became the successor in interest on the note and was barred from foreclosure or collecting on debt.

## II. *Standard of Review*

The parties filed competing motions for summary judgment. Summary judgment may be granted only when there are no material issues of fact to be litigated, and the moving party is entitled to judgment as a matter of law. See *Washington Cnty. v. Bd. of Trs. of the Univ. of Ark.*, 2016 Ark. 34, 480 S.W.3d 173. When parties file cross-motions for summary judgment, as they did in this case, they essentially agree that there are no material facts remaining, and summary judgment is appropriate means of resolving the case. *Shriners Hosps. for Children v. First Methodist Church of Ozark*, 2018 Ark. 216, 547 S.W.3d 716. In deciding issues of law, our standard of review is de novo. De novo review means that the entire case is open for review. A circuit court's conclusion on a question of law is reviewed de novo and is given no deference on appeal. *First Nat'l Bank of Izard Cnty. v. Old Republic Nat'l Title Ins. Co.*, 2022 Ark. App. 440, 655 S.W.3d 108.

### III. *Applicable Law*

Arkansas Code Annotated section 16-56-111(a) states, “[A]ctions to enforce written obligations, duties or rights . . . shall be commenced within five (5) years after the cause of action shall accrue.” The parties agree that this statute controls in this case, and they each seek judgment as a matter of law to their respective positions. A cause of action accrues when the plaintiff could have first maintained the action to successful conclusion. *Dupree v. Twin City Bank*, 300 Ark. 188, 191, 777 S.W.2d 856, 858 (1989). NP191 did not pursue a cause of action until October 7, 2020, when it filed suit to enforce the promissory note and to foreclose on Branch’s mortgage. A cause of action accrues the moment the right to commence an action comes into existence, and the statute of limitations runs from that time. *Ray & Sons Masonry Contractors, Inc. v. U.S. Fid. & Guar. Co.*, 353 Ark. 201, 216, 114 S.W.3d 189, 198 (2003).

This suit involves a written credit agreement providing for a line of credit. This agreement differs from what might be considered a traditional promissory note and mortgage contract in that monthly payments are subject to change annually based on economic climate as set forth in the contract. In this instance, the credit agreement calls for 240 monthly payments and specifically sets out that all principal and interest will be paid by these monthly installments. The term of the loan was thirty years with the last payment to be made April 29, 2041. The fact that these payments may change annually does not destroy the character of a debtor-creditor relationship or that this is an installment contract. The agreement satisfies the elements of an installment contract. *See Karnes v. Marrow*, 315 Ark. 37, 44, 864

S.W.2d 848, 851(1993); *Linke v. Kirk*, 204 Ark. 393, 162 S.W.2d 39 (1942); *Pennington v. BHP Billiton Petroleum (Fayetteville), LLC*, 2021 Ark. 179, 631 S.W.3d 555.

The rule announced in *Linke* and later applied in *Karnes* held that a deficiency judgment following foreclosure could not include any underpayments exceeding five years from when the lawsuit was filed. Both cases hold that the statute of limitations begins each time a borrower fails to meet a monthly obligation under a promissory note, assuming the five-year statute of limitations has not expired from the date the creditor can recover the last installment.

The *Pennington* decision was in response to the U. S. District Court for the Eastern District of Arkansas presenting a certified question on whether Arkansas law prevents plaintiffs from pursuing their breach-of-contract claims when the first breach occurred outside the statute-of-limitations period. In answer to the certified question, the court concluded that a separate statute-of-limitations period began as each monthly royalty payment became due. The court stated that “[t]ypically, for contracts that require installment payments like promissory notes, we have held that a discrete cause of action arises from each underpayment.” *Pennington*, 2021 Ark. 179, at 3–4, 631 S.W.3d at 557.

NP191 may collect underpayments extending back five years but no further because installment payments are separate causes of action when the underpayment occurs. NP191 admits all underpayments beyond the five-year limitations period are barred and cannot be collected. See *Riley v. Riley*, 61 Ark. App. 74, 964 S.W.2d 400 (1998). Thus, all payments due

prior to October 7, 2015, are barred pursuant to Arkansas Code Annotated section 16-56-111(a).

Here, the record shows that the circuit court failed to correctly consider NP191's argument that each individual payment constituted a separate cause of action as held in previous cases where installment contracts have enunciated this principal. Therefore, we hold that the circuit court erred when it granted summary judgment to Branch. The clear, unambiguous rule enunciated in the cases cited above is that when the debt is to be paid in installments, the statute of limitations runs against each installment from the time it becomes due.

Reversed and remanded.

ABRAMSON and GRUBER, JJ., agree.

*Wilson & Associates, PLLC*, by: *H. Keith Morrison*, for appellant.

*Wallace, Martin, Duke, and Russell, PLLC*, by: *Valerie L. Goudie*, for appellee.