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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2015-CP-32-0768

Wells Fargo Bank, N.A., as Trustee on behalf of Madison Avenue Manufactured Housing Contract Trust 2002-A, Manufactured Housing Contract Asset-Backed Certificates, Series 2002-A by Green Tree Servicing, LLC as servicer for Greenpoint Credit,

Plaintiff,

vs.

Timothy Locklear and Elizabeth C. Locklear,

Defendants.

**ORDER DISMISSING
PLAINTIFF'S CLAIM**

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MAY 09 2016

SC Court of Appeals

RETHA A. CARRICO
CLERK OF COURT
LEXINGTON, SC

2016 MAY 28 AM 11:15

FILED

This matter came before me on the motion of Defendant Elizabeth C. Locklear (hereinafter "the Defendant") to dismiss the Plaintiff's claim in the above-captioned action. The Defendant moved for dismissal on three grounds: 1) that complaint shows that the statute of limitations bars the Plaintiff's claim, 2) that the complaint fails to allege facts sufficient to support a conclusion that the Plaintiff has standing to bring its claim, and 3) that the complaint does not allege that the conditions have been met under the document entitled "Notice of Surrender of Secured Property" (attached to the complaint) that would provide for the existence of the claim the complaint seeks to assert. Since the statute of limitations bars the Plaintiff's claim and that issue is dispositive of the motion to dismiss, the court need not rule on the other issues and grants the Defendant's motion.

Per the complaint, this is an action seeking collection of a deficiency amount owed after the voluntary repossession of a mobile home. Generally, the statute of limitations for "an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520" is three years. S.C. Code Ann. § 15-3-530(1). This case does not implicate S.C. Code Ann. § 15-3-520. An affidavit attached to the complaint (and, thus, a part of the complaint per Rule 10(c), SCRPC) gives the last date that payment was made on the monetary obligation the Plaintiff has sued upon as August 29, 2011. The Plaintiff filed this action on February 27, 2015, more than three years since the breach of the contract sued upon occurred.

The Plaintiff argued that the governing statute of limitations is not S.C. Code Ann. § 15-3-530(1) but is, rather, S.C. Code Ann. § 36-2-725, a six-year statute of limitations for breach of a contract for the sale of goods governed by Chapter 2 of South Carolina's version of the Uniform Commercial Code. The Defendant countered that the agreement at issue is a secured transaction and that, therefore, it is outside the scope of Chapter 2.

The complaint, especially in the document attached to it entitled "**RETAIL INSTALLMENT CONTRACT, SECURITY AGREEMENT, WAIVER OF TRIAL BY JURY AND AGREEMENT TO ARBITRATION OR REFERENCE OR TRIAL BY JUDGE ALONE**," describes, in numerous places, the nature of its subject agreement as a secured transaction, with the creditor having a security interest in the subject mobile home. Further, in the "affidavit of debt" attached to the complaint in this case, under "[t]he type of debt is," a box is checked beside the words "Note and Security Agreement/ Promissory Note / Retail Installment Contract[.]" There is no other reasonable conclusion to draw from the complaint but that the agreement subject of this action is a security agreement, which "means an agreement that creates or provides for a security interest." S.C. Code Ann. § 36-9-102(74). This is critical to the analysis of whether S.C. Code Ann. § 36-2-725 or S.C. Code Ann. § 15-3-530(1) is the governing statute of limitations.

The Defendant brought to the court's attention orders by South Carolina Circuit Judges Gee and Dennis in Autovest, L.L.C. v. Portia Smith, etc., Case No 2014-CP-40-1484, and Coastal Fed. Credit Union v. Angel Latoria Brown, Case No. 2014-CP-10-1827, respectively. The conclusion of both of those orders was that the applicable statute of limitations when a creditor seeks a judgment for the deficiency balance owing after repossession and sale of property under a security agreement is S.C. Code Ann. § 15-3-530(1) and not S.C. Code Ann. § 36-2-725.

In S.C. Code Ann. § 36-2-102, the General Assembly has provided that Chapter 2 of the South Carolina UCC "does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction[.]" The South Carolina Reporter's Comments to S.C. Code Ann. § 36-2-102 state that "[e]xpressly excluded are transfers of a security interest in goods which are covered by Article 9, Secured Transactions." Chapter 2 is where S.C. Code Ann. § 36-2-725 is located.

In the Autovest order, Judge Gee discussed N.C. Natl. Bank v. Holshouser, 38 N.C. App. 165, 247 S.E.2d 645 (N.C. App. 1978), in which the North Carolina Court of Appeals addressed, under North Carolina law, a statute of limitations question like the one posed by the instant case. Noting North Carolina's version of the UCC's statutory and comment language that is virtually identical to the South Carolina language quoted above, the Holshouser court held:

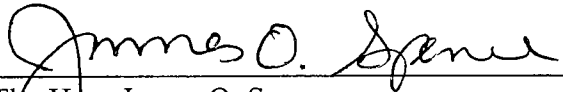
Since the purchase money security agreement signed and sealed by the defendant is a creature of Article 9 (G.S. § 25-9-107(a)) and is outside the provisions of Article 2 (although encompassing a sale of a motor vehicle), we hold that the provisions of G.S. § 25-2-725 are inapplicable to this transaction beyond its pure sales aspects, and that Article 9 is paramount in reference to the security aspects of the transaction. . . . Article 9 contains no statute of limitations applicable to this action, so we look to prior law and determine that G.S. § 1-47(2) is applicable.

Id. at 169.

Like the North Carolina Article 9, South Carolina's UCC Article 9 contains no statute of limitations. Under South Carolina law, "[g]enerally, the limitations laws do not apply unless made expressly applicable." S.C. Mental Health Commn. v. May, 226 S.C. 108, 117, 83 S.E.2d 713, 717 (1954). Accordingly, since S.C. Code Ann. § 36-2-725 is made expressly not to apply to this secured transaction, the court looks to what statute of limitations has been made expressly applicable: the three-year limitation on "an action upon a contract, obligation, or liability, express or implied," provided in S.C. Code Ann. § 15-3-530(1). It is inescapable, based on the allegations of the complaint, that this action was brought outside the three-year time limit under S.C. Code Ann. § 15-3-530.

It is therefore hereby ORDERED that the Plaintiff's claim is dismissed with prejudice as against Defendant Elizabeth Locklear. Defendant Timothy Locklear has not sought dismissal of the Plaintiff's claim. Accordingly, the Plaintiff's claim remains pending as against Defendant Timothy Locklear, and Defendant Elizabeth Locklear's counterclaims also remain pending.

AND IT IS SO ORDERED.


The Hon. James O. Spence
Master-in-Equity for Lexington County

Robin K. Reibold
Court Reporter

3