

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LPP MORTGAGE LTD,

Plaintiff-Appellant,

v

ROBERT C. MYERS,

Defendant-Appellee.

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UNPUBLISHED  
November 9, 2004

No. 249086  
Calhoun Circuit Court  
LC No. 02-003310-CK

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the order dismissing its complaint on statute of limitations grounds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On March 22, 1985, Myers Food Center obtained a loan in the amount of \$409,000 from the Small Business Administration (SBA). A promissory note was executed, and defendant signed an SBA guaranty in which he assumed personal liability for the indebtedness. The note was to be repaid in monthly installments for a twenty-year period.

In February 1996, Myers Food Center executed an agreement with the SBA and Old Kent Bank regarding the sale of property owned by the business. The guarantors acknowledged their inability to pay their indebtedness. After the sale, the SBA found that the proceeds were insufficient to pay the total debt. In a letter dated February 25, 1997, the SBA informed defendant that the loan had an unpaid balance of \$67,997.05 as of that date.

Plaintiff acquired the note from the SBA and filed this action on August 15, 2002. Defendant pleaded affirmative defenses of the statute of limitations, laches, and usury. Plaintiff moved for summary disposition under MCR 2.116(C)(10). The court found that the documents indicated that the SBA must have accelerated the debt by May 23, 1996. The statute of limitations began to run at that time, and plaintiff's action was not filed within the six-year limitations period.

MCL 600.5807(8) provides for a six-year limitations period for breach of contract actions. The acceleration of a note triggers the running of the limitations period with regard to guaranty contracts. *Diversified Financial Systems, Inc v Schanhals*, 203 Mich App 589, 592; 513 NW2d 210 (1994).

The note indicates that no partial prepayments of the loan may be made. If the loan is prepaid in full, an additional amount was required to reimburse the holder for its costs. Upon nonpayment of any part of the indebtedness, the holder is empowered to sell all or part of the collateral and to apply the proceeds to the debt. The parties reached another agreement, providing for the sale of real estate collateral, and the discharge of a mortgage held by Old Kent Bank. There is no provision in the agreement addressing the status of the SBA loan if the proceeds were insufficient, other than to state that the SBA would discharge its mortgage only upon full payment of the amounts due.

A May 29, 1996, letter from defendant's counsel indicates that the SBA added a prepayment penalty that rendered the proceeds from the sale insufficient to satisfy the debt. The trial court found that a prepayment penalty could only be assessed if the SBA had accelerated the total amount due. This is a reasonable conclusion given the limited amount of information supplied by the parties. There is no showing that the trial court erred in finding that the statute of limitation had run before plaintiff brought this action.

Plaintiff also argues that the statute of limitations was extended when the other guarantors made payments after the debt was accelerated. However, plaintiff failed to make this argument below, and the issue is not preserved for appellate review. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 533; 672 NW2d 181 (2003).

Affirmed.

/s/ Christopher M. Murray  
/s/ David H. Sawyer  
/s/ Michael R. Smolenski