

IN THE UTAH COURT OF APPEALS

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Greg Anderson,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070739-CA
v.)	
)	
<u>T. Richard Davis</u> and John Does)	F I L E D
1 through 10,)	(March 13, 2008)
)	
Defendants and Appellee.)	2008 UT App 86

Third District, Salt Lake Department, 070904196
The Honorable Kate A. Toomey

Attorneys: Greg Anderson, Roosevelt, Appellant Pro Se
T. Richard Davis and Thomas B. Price, Salt Lake City,
for Appellee

Before Judges Bench, Billings, and McHugh.

BENCH, Judge:

Plaintiff Greg Anderson appeals the decision of the trial court granting summary judgment in favor of Defendant T. Richard Davis. On appeal, Plaintiff claims that the trial court erred in its determination that the statute of limitations had not run on Defendant's contractual claims. Plaintiff also contends, because Defendant's contractual claims were barred by the statute of limitations, that Defendant's conduct, namely the filing of the Notice of Default against the property and "forcing Plaintiff to defend the title to his property," amounted to a violation of the Wrongful Lien Act and constructive fraud, respectively.

An action "upon any contract, obligation, or liability founded upon an instrument in writing" may be brought within six years. Utah Code Ann. § 78-12-23(2) (Supp. 2007). Generally, "when contract obligations are payable by installments, the statute of limitations begins to run only with respect to each installment when it becomes due." Nilson-Newey & Co. v. Utah Res. Int'l, 905 P.2d 312, 316 (Utah Ct. App. 1995) (citing Johnson v. Johnson, 31 Utah 408, 88 P. 230, 231-32 (1906)). An obligee would generally be prevented from initiating recovery

efforts for installments due more than six years prior.¹ Where, however, the installment contract calls for the entire balance to become due on some specific future date, and the obligee has done nothing to legally accelerate the future payments, the statute of limitations begins to run only after the obligor defaults on the final due date. See Vreede v. Koch, 380 S.E.2d 615, 617-18 (N.C. Ct. App. 1989).

Here, the contract required that the "entire principal and accrued interest shall be due and payable" on the same date as the final scheduled installment. Further, despite the missed installment payments, the trust deed's optional acceleration clause was never invoked. Defendant's actions to foreclose on the property were therefore initiated well within the six year statute of limitations, which began to run on June 1, 2006--the date that the final installment was due. Because Defendant's claims concerning wrongful liens and constructive fraud are based on the premise that Defendant's contractual claims are barred by the statute of limitations, our decision that the contractual claims are not so barred disposes of these secondary claims as well.

Plaintiff's claims concerning Defendant's duties as a trustee and requests for sanctions against Defendant in his capacity as counsel are without merit and we therefore do not address them.

Affirmed.

Russell W. Bench, Judge

WE CONCUR:

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

1. This action stems from Defendant's attempts to foreclose on the property covered in the installment contract. Defendant has not attempted to recover any of the defaulted payments or the total outstanding balance on the note.