



Fifth Circuit Holds that Statute of Limitations Extended by Cross-Collateralization Clause

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January 2019

Under the Mississippi law a deficiency suit must be brought “within one-year from the date of the foreclosure or sale” of the collateral. See Miss. Code Ann. § 15-1-23. The United States Court for the Fifth Circuit has recently confirmed that when the indebtedness is secured by multiple pieces of collateral the statute of limitations does not begin to run until after the disposition of all the collateral. See *Volvo Financial Services v. Williamson*, No. 18-60229, 2018 WL 6333781 (5th Cir. Dec. 5, 2018).

The borrower purchased eight commercial trucks between April 2014 and June 2015. In order to finance the purchases, he executed a separate note and security agreement for each truck in favor of the secured lender. Each note included a cross-collateralization clause that provided:

Security Interest: In order to secure (i) payment of the Indebtedness, all other debts and obligations at any time owed by Borrower to Lender or its affiliates, and (ii) complete and full performance of any Loan Party’s obligations to Lender under the Loan Documents, now existing or at any time entered into, Borrower hereby grants to Lender a security interest in and to the equipment described above (the “Equipment”), together with all present and future attachments ... “Loan Documents” means this Note; all other loans made by, or other obligations of Borrower to Lender or any affiliate of Lender ... and all other agreements or documents evidencing, guaranteeing, securing, or otherwise relating to this Note, as any or all of such documents may be executed or amended from time to time.

Following the borrower’s default, the secured lender repossessed the trucks between February 2016 and March 2017. The lender then sent the borrower eight separate demand letters for the outstanding deficiency owed on each truck. Following the borrower’s failure to pay, the lender filed suit in April 2017 to recover the deficiency due on all eight notes. The borrower argues that the deficiencies owed on four of the notes was barred by the one-year statute of limitations. The district court disagreed, and entered summary judgment in favor of the secured lender for the full amount on all eight notes, interest, and attorney’s fees.

On appeal, the Fifth Circuit affirmed. The borrower argued that the statute of limitations began to run on each note after each truck was sold, while the lender argued that because all eight notes were secured by all eight trucks the statute of limitations only commenced after the last truck was repossessed and sold. The Fifth Circuit found that the statute of limitations was “ambiguous” when multiple separate pieces of collateral secured the entire underlying indebtedness. Finding no controlling authority, the Court made an *Erie* guess noting that under Mississippi law a statute of limitations should be interpreted to “minimize uncertainty” about when it commences and expires. When multiple pieces of collateral were involved the Court found that “foreclosure or sale of all the property could span or surpass the length of the one-year limitations period, requiring the foreclosing party to bring multiple actions.” Thus, it held that “the sale of all property securing a note must be complete to trigger the statute of limitations.” The Court bolstered its holding finding that “the defaulting party would [also] have a chance to cure his default as to the rest of the property, thereby preventing a total foreclosure on sale.”

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