

**COMMONWEALTH OF THE  
NORTHERN MARIANA  
ISLANDS, The Economic  
Development Loan Fund  
vs.  
Cristobal and Rita INOS**

**Appellate No. 81-9018  
Civil Action No. 81-05  
District Court NMI  
Appellate Division**

**Decided July 1, 1983**

**1. Statute of Limitations - Bills  
& Notes**

The applicable six-year statute of limitations does not bar recovery of any installment of principal or interest due six years before the filing of the complaint where the note is secured by real property and contains an acceleration clause making the entire amount of principal and interest payable at the option of the holder. 6 T.T.C. §305 [1 C.M.C. §2505].

**2. Statute of Limitations - Bills  
& Notes**

The statute of limitations for foreclosure of a secured promissory note containing an acceleration clause making the entire amount of principal and interest payable at the option of the holder began to run when the holder exercised its option under the acceleration clause by filing suit before the maturity date of the note. 6 T.T.C. §305 [1 C.M.C. §2505].



1 mortgage and reverse on the grounds the statute of limitations  
2 does not act as a bar to the foreclosure by appellant.

3 I

4 FACTS

5 On July 10, 1974, Cristobal S. Inos and Rita H. Inos  
6 executed a promissory note and a mortgage securing the note in  
7 favor of the Economic Development Loan Fund (EDLF). The  
8 promissory note was for \$9,100 payable in 96 equal monthly  
9 installments of \$115.21 with interest at 5% per annum. The  
10 first installment was to have been made on February 10, 1975.  
11 The note and mortgage were made for a term of 8 years with a  
12 maturity date of January 10, 1983.

13 Appellants brought an action to foreclose on the note and  
14 mortgage on June 22, 1981, after defendants defaulted on the  
15 first 77 of 96 installments provided under under the note and  
16 mortgage.

17 On August 6, 1981, defendants filed a motion for summary  
18 judgment, admitting the debt and the fact no payment had been  
19 made thereon but alleging the action was barred by the statute  
20 of limitations. EDLF filed a cross-motion for summary  
21 judgment supported by affidavit.

22 The motions were heard on September 16, 1981. The trial  
23 judge granted defendants' motion as to each installment on the  
24 note that fell due more than 6 years prior to the filing of  
25 EDLF's action; granted EDLF's motion for those installments on  
26 the note not falling due more than 6 years prior to the time  
27 EDLF filed their complaint; and denied EDLF the right to  
28 foreclose on its mortgage applying a six-year statute of

1 limitations.

2 II

3 DISCUSSION

4 The trial court held the statute of limitations on the  
5 note and mortgage began to run immediately upon default of the  
6 first installment of the note. Certain installments under the  
7 note and foreclosure of the mortgage were barred under the  
8 six-year statute of limitations found applicable under 6  
9 T.T.C. §305.

10 The note in question provides in part:

11 "If default be made in the payment when due of any  
12 installment, then the whole sum of principal and  
13 interest shall become immediately due and payable  
at the option of the holder of this Note without  
notice."

14 Section 10 of the Mortgage provides:

15 "If any default shall be made in the payment of any  
16 principal installment, interest, or charges or other  
17 debts secured thereby . . . the mortgagee may elect,  
without notice, to enforce all debts secured hereby  
by foreclosure or otherwise . . ."

18 A. The Note

19 [ ] The trial court relied upon Trigg v. Arnott, 22 C.A.2d  
20 455 (1937) and 12 Am.Jur.2d Bills and Notes §1047 in reaching  
21 its conclusion the six-year statute of limitations barred  
22 plaintiff from recovering on any installment of principal or  
23 interest due on or before June 22, 1975. We feel the trial  
24 court erred in failing to consider the present note is secured  
25 by real property and contains an acceleration clause making  
26 the entire amount of principal and interest payable at the  
27 option of EDLF.

28 "Without some affirmative action on the part of the

1 holder of a note containing an optional acceleration  
2 clause the statute of limitations is not set in  
3 motion for the theory of the statute is that the  
4 creditor has the full statutory period, whatever that  
5 may be, on any day of which he may of his own volition  
6 commence an action." Trigg v. Arnott, 22 C.A.2d at 458.

7 Although the Trigg case goes on to hold certain  
8 installments were barred by the four-year statute applicable,  
9 the Trigg case dealt with an unsecured note. Hunt v. Smyth,  
10 25 C.A.3d 807, 831, Fn. 7 (1972) states the rule from Trigg  
11 that failure to collect installment obligations on an  
12 unsecured transaction may bar the collection of such  
13 installments. The court then distinguished such an occurrence  
14 from the facts present before it and stated the rule is  
15 inapplicable because of the security present. See also  
16 Sullivan v. Shannon, 25 C.A.2d 422 (1938).

17 In the instant case, the note was not due to mature until  
18 January 10, 1983, or at an earlier date at EDLF's option.  
19 EDLF exercised that option by filing the instant proceedings;  
20 it was at that time the statute of limitations began to run.

21 B. The Mortgage

22 [2] The court below held foreclosure was barred by the  
23 statute of limitations which began to run upon the first  
24 missed installment payment. The mortgage is simply the  
25 security for the underlying debt and gives EDLF the decision  
26 as to whether to foreclose or not. For the reasons discussed  
27 in the foregoing section, we feel the foreclosure action was  
28 not barred.

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III

CONCLUSION

Since we find the action not barred by any statute of limitations we need not reach the other issues presented on appeal. We reverse and remand for further proceedings consistent with this opinion.

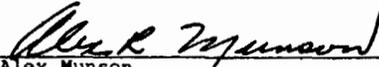
Dated: *July 1, 1983*



Alfred Laureta, Judge  
United States District Court



Earl B. Gilliam, Judge  
United States District Court



Alex Munson  
Designated Judge