9-19-2016

Baughman v. Wells Fargo Bank, N.A. Appellant's Reply Brief 2 Dckt. 43640

IN THE SUPREME COURT OF THE STATE OF IDAHO

NATHON A. BAUGHMAN and MELISSA K. KEMPTON-BAUGHMAN, husband and wife,

Plaintiffs-Appellants-Cross Respondents,

vs.

WELLS FARGO BANK, N.A.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; CHEVY CHASE BANK, F.S.B., and CAPITAL ONE, N.A., U.S. BANK, N.A., Trustee for Master Adjustable Rate Mortgage Trust Pass Through Certificates, Series 2007-3

Defendants-Respondents-Cross Appellants,

and

MORTGAGE ASSET SECURITIZATION TRANSACTIONS, INC.; UBS REAL ESTATE SECURITIES INC.; ET AL.

Defendants.

Supreme Court Docket No: 43640-2015
Kootenai County No.: CV-2013-4852

REPLY BRIEF OF DEFENDANTS/RESPONDENTS/CROSS-APPELLANTS

Appeal from the District Court of the First Judicial District of the State of Idaho In and for the County of Kootenai

Honorable Lansing L. Haynes Presiding

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I. INTRODUCTION

Defendants/Respondents/Cross-Appellants (collectively "Defendants")[1] have previously set forth the facts and procedural background of this case in their Combined Response Brief and Opening Brief ("Defendants' Combined Brief"). Defendants intend this Reply Brief to address only those issues related to Defendants' Appeal. However, the Appellants/Cross-Respondents Nathon A. Baughman and Melissa K. Baughman (collectively "Baughmans") Combined Reply and Response Brief ("Baughmans' Combined Brief") does not clearly identify many of the issues but rather overlaps arguments frequently. Therefore, if this Reply Brief appears to treat an issue outside the parameters of the Defendants' appeal, that is only because Defendants have been unable to untangle the arguments in the Baughmans' Combined Brief and find it necessary to respond.

The only issue on cross-appeal ("Cross Appeal Issue") is: "Whether the District Court erred by holding that the statute of limitations to foreclose a deed of trust, as set forth in Idaho Code §§ 5-214A and 45-1515, begins to run upon acceleration of the promissory note secured by the deed of trust." R. Vol. III, p. 812, ¶ 3. The Baughmans apparently only address the Cross Appeal Issue in Section II.1. of the Baughmans' Combined Brief, so this Reply Brief is primarily focused on that particular section. *Baughmans' Combined Brief*, pp. 6-14.

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[1] The Appellants' Opening Brief references these parties inconsistently as either "Defendants" or "Respondents." *Compare Opening Brief*, p. 6 § I.A. *to* § I.B. The Baughmans' Combined Brief uses the term "Banking Entities" to describe the same parties.

II. ARGUMENT

A. The Baughmans Offer No Interpretation of the Idaho Statute to Support their Position on the Appropriate Statute of Limitations Trigger Under a Deed of Trust.

The Cross Appeal Issue is inextricably entwined with Idaho Code §§ 5-214A and 45-1515, which together form the statute of limitations for enforcing a deed of trust. Defendants' initial briefing of the Cross Appeal Issue sets forth in great detail the tenets of statutory interpretation and the legislative history for Idaho Code § 5-214A. *See Defendants' Combined Brief* § III.A.(1), pp. 8-20. As far as Defendants have been able to find, the language in Idaho Code § 5-214A is unique.[2] Despite this, the Baughmans offer no guidance to this Court relating to statutory interpretation. Nor do the Baughmans dispute any of the principles of interpretation set forth by Defendants.

The Baughmans fail to contest or even address the Defendants' following arguments:

1. Enforce the Terms of the Contract.

The contract between the parties contains a hard definition of "Maturity Date" as March 1, 2047. The contract does not define Maturity Date to include the due date after premature acceleration, as it could have and as some instruments actually do. This Court should enforce the contract of the parties as written. *Defendants' Combined Brief* § III.A.(1)(a), pp. 10-12, and authorities cited therein.

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[2] Defendants did not audit the statutes of limitations in all 50 states. However, Defendants found a few states with language similar to the Idaho statute *before* its last amendment. *See, e.g.,* Or. Rev. Stat. § 88.110 (Oregon); Minn. Stat. § 541.03 (Minnesota); Cal. Civ. Code § 882.020 (California). No statutes could be found with identical language to the Idaho statute with *Westlaw* word searches.

2. Use the Plain Meaning of the Statute.

This Court should interpret Idaho Code § 5-214A according to its plain meaning. The plain meaning requires that the term "maturity date" in the statute be interpreted within the context of the entire statute. Maturity date therefore means *stated maturity date*. Here, the Maturity Date stated in the obligation is March 1, 2047. Again, the contract does not state that Maturity Date includes a date due after acceleration. *Defendants' Combined Brief* § III.A.(1)(b), pp. 12-14.

3. Do Not Render Statutory Language Meaningless.

If the Court finds Idaho Code § 5-214A ambiguous, it may use other principles of statutory interpretation. One of those principles is that a statute must not be interpreted in a way that makes some language meaningless. If the term "maturity date" in the first sentence of the statute includes maturity after default and acceleration, the entire second sentence of the statute has no point. This results because the second sentence already triggers the statute of limitations after default (and therefore, always upon acceleration) *only if* no other maturity date is stated. [3] *Defendants' Combined Brief* § III.A.(1)(c)(i), pp. 14-15.

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[3] Where a specific maturity date is stated (i.e., a situation that does not apply to demand notes), acceleration *only* happens *after* default. Under automatic acceleration clauses, default and acceleration always happen together. Under optional acceleration clauses it is possible that a default exists without acceleration. On the other hand, acceleration cannot exist unless an event of default also exists. So unless the contract states otherwise, every time there is acceleration, there has already been a default.

4. Legislative History Supports Defendants' Interpretation.

This Court may also look to legislative history to aid in statutory interpretation. The legislative history of Idaho Code § 5-214A indicates that the legislature intended a statute of limitations trigger on default only if the obligation does not state a maturity date. The obligation here clearly states the Maturity Date is March 1, 2047, and therefore the statute of limitations trigger for the deed of trust is not default but March 1, 2047. *Defendants' Combined Brief* § III.A.(1)(c)(ii), pp. 15-16.

5. Interpret Deed of Trust Statutes' Language Consistently.

The term "maturity date" contained in Idaho Code § 5-214A does not mean "due by reason of default" because otherwise the legislature would have used this language—as it did in another section of the deed of trust statutes. Another section of the Idaho deed of trust statute regarding redemption, Idaho Code Section 45-1506, uses the terms "due by reason of default" and "acceleration." If the legislature had intended these concepts to trigger the statute of limitations for deeds of trust, it would have used the same words. It did not. *Defendants' Combined Brief* § III.A.(1)(c)(iii), pp. 17-18.

6. A Long Statute of Limitations is Consistent with Idaho Law and Policy.

Due to the unique circumstances of this case, the statute of limitations for enforcing the promissory note is not an issue.[4] This case only involves the statute of limitations to foreclose a

[4] The Baughmans received a bankruptcy discharge of the unsecured portion of the debt, which otherwise could have been recovered by a deficiency action on the promissory note under Idaho Code § 45-1512. Therefore, Defendants are only seeking to enforce the deed of trust which survives the bankruptcy. *Defendants' Combined Brief*, p. 8, n. 51.

deed of trust. A long statute of limitations for an interest in real property is consistent with Idaho law and policy. *Defendants' Combined Brief* § III.A.(1)(c)(iv), pp. 18-20.

To illustrate this point further, other states likewise have law and policy that support a long statute of limitations to foreclose a deed of trust. For example, under California common law, there was historically "no time limitation on the exercise of the power of sale in a deed of trust." *Ung v. Koehler*, 135 Cal. App. 4th 186, 190, 37 Cal. Rptr. 3d 311, 312 (2005) (emphasis added). This changed in 1982 with the enactment of new California legislation that currently permits nonjudicial foreclosure of a deed of trust up to 60 years after the date of recording the deed of trust. Specifically, California Civil Code Section 882.020 states in pertinent part:

> (a) Unless the lien of a mortgage, deed of trust, or other instrument that creates a security interest of record in real property to secure a debt or other obligation has earlier expired pursuant to Section 2911, the lien expires at, and is not enforceable by action for foreclosure commenced, power of sale exercised, or any other means asserted after, the later of the following times:
>
> (1) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is ascertainable from the recorded evidence of indebtedness, 10 years after that date.
>
> (2) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is not ascertainable from the recorded evidence of indebtedness, or if there is no final maturity date or last date fixed for payment of the debt or performance of the obligation, 60 years after the date the instrument that created the security interest was recorded.

Cal. Civ. Code § 882.020.

Idaho law, which does not allow quiet title against an unpaid deed of trust, is remarkably similar to California common law, which provided that a deed of trust had no statute of

limitations even if the underlying note did. *See Trusty v. Ray*, 73 Idaho 232, 236, 249 P.2d 814, 817 (1952); *see also Defendants' Combined Brief*, p. 19 (citing Idaho cases holding that a mortgagor cannot quiet title where he has not tendered payment on his loan). Even after enacting a statute of limitations, California still allows 60 years for foreclosure. This period is longer than the maximum limitation period proposed by Defendants here, five years from the stated maturity date which equates to 45 years after execution of the deed of trust. Both Idaho and California law reflect a policy that the conveyance instrument of real property (deed of trust) lives longer than the negotiable instrument (promissory note) it secures.

Notably, the California statute also clearly provides that the maturity date or last day of payment must be ascertainable from the public record. The acceleration date after default, being an unknown future event, could not be ascertainable from record unless arguably a notice of default was recorded. California law here is consistent with the interpretation proposed by Defendants that the term "maturity date" in the statute necessarily means the clearly defined *stated* maturity date.

Overall, interpreting Idaho Code § 5-214A to provide for a statute of limitations five years after a note's stated maturity date (here, March 1, 2047) is consistent with the law and policy in Idaho and other states. This is true even where, as in this case, the statute of limitations would not bar foreclosure of the deed of trust until over 40 years after breach of the promissory note.

B. The Case Law Cited by the Baughmans Predates the Idaho Deed of Trust Statute of Limitations, is Distinguishable, or Supports Defendants' Position.

The Baughmans' Combined Brief cites a handful of cases that purport to support their position on the Cross Appeal Issue. However, upon closer analysis all the cited authorities fail to support the Baughmans' arguments for one reason or another. Some of the Baughmans' cases actually support the Defendants' position. This section briefly sets forth most of the cases cited in the Baughmans' Combined Brief which are patently inapplicable for a variety of reasons. Many of the cases below apply to analysis of the statute of limitations under a promissory note, which is not the issue before this Court.

a. *United States v. Dos Cabezas Corp.*, 995 F.2d 1486, 1490 (9th Cir. 1993) (*Baughmans' Combined Brief*, pp. 6-7), is cited for the proposition that an automatic acceleration upon default starts a statute of limitation. The premise cited is dicta because the case deals with the statute of limitations for a *post foreclosure* deficiency action, not the exercise of a power of sale or foreclosure. In fact, in making that distinction, this case actually held that "[t]he foreclosure action itself is not subject to any limitations period." *Id.* The statute of limitations under the promissory note is different than that under the deed of trust. Further, the quotation addresses automatic acceleration and limitations on installment payments, neither of which is an issue in this case.

b. *Martin v. Pioneer Title Co. of Ada Cty.*, No. 96438, 1993 WL 381101, at *2 (Idaho Dist. July 8, 1993) (*Baughmans' Combined Brief*, p. 10), is cited for the proposition that the running of the statute of limitations on a deed of trust is triggered by a default. This case

involved the extended statute of limitations under federal law where a receiver is appointed by the Federal Savings and Loan Insurance Corporation ("FSLIC"). The case did not address the issue here and did not distinguish between a default under the note and deed of trust. The primary issue was whether the assignee of a note was subject to the same statute of limitations as the FSLIC, which is clearly not an issue in this case.

c. *Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of California*, 522 U.S. 192, 209, 118 S. Ct. 542, 552, 139 L. Ed. 2d 553 (1997) (*Baughmans' Combined Brief*, p. 10), involved a unique statute of limitations under federal pension law that specifically states it runs from the date the cause of action arose. By its express terms, the Idaho limitation on deeds of trust only runs from the date of the cause of action if there is no stated maturity date.

d. *Canadian Birkbeck Inv. & Sav. Co. v. Williamson*, 32 Idaho 624, 186 P. 916, 918 (1920) (*Baughmans' Combined Brief*, pp. 10-11), is cited for the proposition that the accrual of the cause of action starts the statute of limitations. This case is from 1920, before enactment of the current statute, when the general statute of limitations for contracts applied. *See* C.S.1919 § 6609, now codified at Idaho Code § 5-216.[5] That statute did state that accrual of the cause of action started the running of the limitation period but it no longer applies to deeds of trust in Idaho. In addition, the case involved an automatic acceleration clause on real property located in Canada.

[5] *See* Addendum to this Brief.

e. *Gebrueder Heidemann, K.G. v. A.M.R. Corp.*, 107 Idaho 275, 688 P.2d 1180 (1984) (*Baughmans' Combined Brief*, p. 11), is cited because it "deals with a deed of trust without a maturity date."[6] In fact, this case dealt with a mortgage, not a deed of trust. Further, the Court found that the mortgage had become valueless, and therefore allowed an action on the note without foreclosure. The limitations analysis was about the promissory note, not the mortgage.

f. *In re Solutia Inc.*, 379 B.R. 473, 484 (Bankr. S.D.N.Y. 2007) (*Baughmans' Combined Brief*, p. 11), is cited for the proposition that acceleration changes the maturity date. This case applies federal bankruptcy law and New York law to the issue of whether an automatic acceleration clause was effectively de-accelerated under the terms of a trust indenture. For the purpose of the analysis, the New York bankruptcy court found it necessary to distinguish the "Stated Maturity Date" from the accelerated due date. *Id.* at 478.

g. *Am. Mut. Bldg. & Loan Co. v. Kesler*, 64 Idaho 799, 137 P.2d 960, 962 (1943) (*Baughmans' Combined Brief*, pp. 11-12), is given as a citation for the statement: "It is black letter law that the maturity date of a loan is advanced when the loan is accelerated." This case analyzed the statute of limitations to enforce a promissory note *after* foreclosure of the deed of trust. The limitation on enforcement of a promissory note is not an issue in this case. Also, the case was decided before the statute relevant here was enacted.

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[6] The Baughmans' Combined Brief does not clearly explain the argument intended to be supported by this statement. In the same paragraph, the Baughmans cite *Elliott v. Darwin Neibaur Farms*, 138 Idaho 774, 69 P.3d 1035 (2003). However, the premise for which *Elliott* is cited is even less clear and therefore, not addressed here.

h. *Gov't of the Virgin Islands v. Brown*, 221 F.2d 402, 405 (3d Cir. 1955) (*Baughmans' Combined Brief*, p. 12), is cited for a definition of maturity when applied to commercial paper. Once again, the issue in this appeal involves the limitations period for the limitation on the promissory note, is not an issue in this appeal. Additionally, the primary issue in *Brown* related to negotiable instrument law for presentment and notice of dishonor pursuant to a municipal ordinance in the U.S. Virgin Islands.

C. The Baughmans Completely Fail to Address the Notification Component of Acceleration.

The District Court held that acceleration of the promissory note must ". . . clearly and unequivocally put the Baughmans on notice that the Note was being accelerated." R. Vol. III, p. 631 (emphasis added). Yet, the Baughmans continue to insist that acceleration must have happened upon some secret date cryptically noted in a file deep in the bowels of internal records maintained by Defendants. *Compare Baughmans' Combined Brief*, pp. 9-10, *with In re Crystal Properties, Ltd., L.P.* 268 F.3d 743, 749 (9th Cir. 2001) ("[A] party having an option to declare a note due and payable cannot simply by his own secret intention, never disclosed by act or word, claim that he declared the note due and payable.") (citations omitted). The Baughmans' position here ignores the requirement that the Baughmans receive notification of acceleration. As far as Defendants can tell, the Baughmans do not ever take the position that the District Court was wrong in finding that clear and unequivocal notification was an element of acceleration.

Moreover, the case law cited in the Baughmans' Combined Brief supports the District Court analysis that clear and unequivocal notification is a required element of acceleration. *See,*

e.g., In re Crystal Properties, Ltd., L.P, 268 F.3d 743; *Baughmans' Combined Brief*, p. 8. The specific terms of the promissory note in *Crystal Properties* required acceleration before imposition of default interest. The question in *Crystal Properties* was whether and when acceleration occurred allowing the lender to charge default interest. The court found that under California law, " . . . even when the terms of a note do not require notice or demand as a prerequisite to accelerating a note, the holder must take affirmative action *to notify the debtor* that it intends to accelerate." *Id.* at 749 (emphasis added). The *Crystal Properties* court cited several decisions finding that notification is a required element, in some instances even if the contract language provides that the debtor *waives* notice of acceleration. *Id.* at 749-750 (citing *United States v. Cardinal*, 452 F. Supp. 542, 547 (D. Vt. 1978) ("The law is well settled that where the acceleration of the installment payments in cases of default is optional on the part of the holder, then the entire debt does not become due on the default of payment but affirmative action by the creditor must be taken to make it known to the debtor that he has exercised his option to accelerate, even though the note itself, as is the case here, *waives notice of demand.*") (emphasis in original); (citing *Moresi v. Far W. Servs., Inc.*, 291 F. Supp. 586, 588 (D. Haw. 1968) ("It is well established that to exercise an option to accelerate the maturity of a note the holder must take some affirmative action that evidences its intention to accelerate. . . This requirement applies even where the note provides for acceleration 'without notice.'").

After setting forth the analysis of the applicable law, the *Crystal Properties* court went on to analyze several notices sent to the debtor before the notice of default was recorded. The court found that each of the notices were ineffective to give the debtor clear and unequivocal notice of

acceleration. Notably, the court found that a notice merely threatening future action in the event of non-payment did not constitute acceleration. *Id.* at 752. Similarly, the District Court here found that the January 22, 2008 notice sent to the Baughmans ". . . was to inform the Baughmans that they had failed to make scheduled monthly payments, to provide the amount of payments in arrears, to demand payment and to warn the Baughmans that failure to catch up on the payments could result in acceleration of the Note." R. Vol. III, p. 631. This demand sent to the Baughmans was unambiguous and not effective to accelerate the Note. *Id.*

Significantly, the *Crystal Properties* court and the parties all agreed that the act of recording the notice of default was legally sufficient to accelerate the note and thus trigger the default interest provision. *Crystal Properties*, 268 F.3d at 747. The District Court here would agree, having found that "[s]uch recording would clearly and unequivocally provide notice of acceleration." R. Vol. III, pp. 9-10, n. 3. In the event that this Court disagrees that the Idaho statute of limitations to enforce a deed of trust specifically runs from the stated maturity date, it must find that acceleration happened no earlier than the recordation of the notice of default.

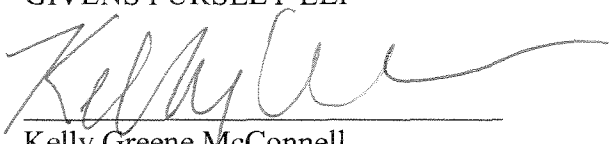
III. CONCLUSION

The irony here is striking. The Baughmans believe that their act of ignoring Defendants' attempts to receive payment gives the Baughmans an argument for avoiding the entire debt. The Baughmans have successfully avoided all responsibility for any deficiency owing after the foreclosure by obtaining a bankruptcy discharge. Now, the Baughmans believe they are entitled to have the property restored to them, which would effectively result in a million dollar windfall. Defendants believe that the law and equity clearly point to the same result.

Defendants respectfully request that this Court affirm the District Court's grant of their Motion for Summary Judgment allowing the judicial foreclosure, affirm the District Court's denial of the Baughmans' Partial Motion for Summary Judgment, award Defendants their attorney's fees and costs on appeal, and for such other relief as this Court deems equitable.

DATED this 19th day of September, 2016.

GIVENS PURSLEY LLP



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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2016, I caused to be served a true and correct copy of the foregoing document to the persons listed below the method indicated:

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§ 6609. [4052] Action on written contract. Within five years:

An action upon any contract, obligation or liability founded upon an instrument in writing. [R. S. § 4052.]

Hist. (See C. C. P. '81, § 156) R. S. § 4052, reen. R. C. ib., reen. C. L. ib.

Comp. leg.—Cal. Same except time is four years: C. C. P. 1872, § 337; as amended: Kerr's C. ib.

N. D. Analogous: C. C. P. § 7374.

Cited: Aikens v. Wilson (1900) 7 I. 12, 59 P. 932; Western Loan etc. Co. v. Smith (1906) 12 I. 94, 85 P. 1084; Sterrett v. Sweeney (1908) 15 I. 416, 98 P. 418, 128 A. S. R. 68, 20 L. R. A. (N. S.) 963; Miller v. Lewiston Nat. Bk. (1910) 18 I. 124, 143, 108 P. 901; Dern v. Olsen (1910) 18 I. 358, 110 P. 164, Ann. Cas. 1912A 1, L. R. A. (N. S.) 1915B 1016; Bates v. Cap. S. Bk. (1910) 18 I. 429, 433, 110 P. 277; Bashor v. Beloit (1911) 20 I. 592, 597, 119 P. 55; Anthes v. Anthes (1912) 21 I. 305, 308, 121 P. 553; Tritthart v. Tritthart (1913) 24 I. 186, 133 P. 121; Gaffney v. Royal Neighbors of America, 31 I. 549, 174 P. 1014 (and see § 6594 *supra*).

§ 6610. [4053] Action on oral contract. Within four years:

An action upon a contract, obligation or liability not founded upon an instrument of writing. [R. S. § 4053.]

Hist. (See C. C. P. '81, § 157) R. S. § 4053, reen. R. C. ib., reen. C. L. ib.

Comp. leg.—Cal. Different, time two years: C. C. P. 1872, § 339; subd. 1 as amended: Kerr's C. ib.

N. D. Analogous: C. C. P. § 7375.

Cited: Chemung M. Co. v. Hanley (1904) 9 I. 786, 77 P. 226; Bates v. Cap. S. Bk. (1910) 18 I. 429, 433, 110 P. 277; Bashor v. Beloit (1911) 20 I. 592, 597, 119 P. 55; Hillock v. Idaho etc. Co. (1912) 22 I. 440, 126 P. 612, 42 L. R. A. (N. S.) 178; Tritthart v. Tritthart (1913) 24 I. 186, 133 P. 121; McLeod v. Rogers (1916) 28 I. 412, 154 P. 970; Boise Dev. Co. v. Boise (1917) 30 I. 675, 167 P. 1032; Weil v. Defenbach (1918) 31 I. 258, 170 P. 103.

Action by county: An action by a county to recover from the clerk of court, auditor and recorder, moneys illegally allowed by the county commissioners to the clerk, etc., and fees illegally collected by the clerk, etc., from the county is barred after four years. Bannock Co. v. Bell (1901) 8 I. 1, 65 P. 710.

An action by the county to recover from one who has not paid for recording instruments the full amount of fees prescribed by statute is not an action "upon a liability created by statute" but an action upon a contract, obligation or liability, not founded upon an instrument of writing." Lincoln Co. v. Twin Falls etc. Co. (1913) 23 I. 432, 139 P. 788.

Claims against state: A contract claim against the state will be deemed barred by the statute of limitations in a proceeding in the supreme court for a recommendatory decision advising the payment of such claim where the same is over 10 years past due and no excuse is shown for the delay of the claimant in presenting it. Small v. S. (1904) 10 I. 1, 76 P. 765. (See § 149.)

§ 6611. [4054] Statutory liabilities, trespass, trover, replevin and fraud. Within three years:

1. An action upon a liability created by statute, other than a penalty or forfeiture.
2. An action for trespass upon real property.
3. An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.
4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake. [R. S. § 4054.]

Hist. (See C. C. P. '81, § 153) R. S. § 4054, reen. R. C. ib., reen. C. L. ib.

Comp. leg.—Cal. Same: C. C. P. 1872, § 338: Kerr's C. ib.

N. D. Analogous: C. C. P. § 7375.

Cited: Cantwell v. McPherson (1893) 3 I. 721, 34 P. 1095, Chemung M. Co. v. Hanley (1904) 9 I. 786, 77 P. 226; Bates v. Cap. S. Bk. (1910) 18 I. 429, 433, 110 P. 277; Canady v. Coeur d'Alene L. Co. (1911) 21 I. 77, 93, 120 P. 830; (In brief of counsel) Stoltz v. Scott (1912) 23 I. 104; (erroneously as § 454) Olympia etc. Co. v. Kerns (1913) 24 I. 481, 498, 135 P. 255; Pindel v. Holgate (1915) 221 F. 342, 137 C. C. A. 158, 349, Ann. Cas. 1916C 983; Collman v. Wanamaker (1915) 27 I. 342, 346, 149 P. 292; Weil v. Defenbach, 31 I. 258, 170 P. 103.

Statutory liabilities: An action against the sureties of an officer to recover an amount allowed to said officer for services after the expiration of his term of office is within the provisions of this section. Ada Co. v. Ellis (1897) 5 I. 233, 48 P. 1071.

When one county is carved out of a portion of another and adjustment and settlement of all accounts is made, the liability of one county to the other is created by statute and an action to enforce such liability must be brought within three years. Canyon Co. v. Ada Co. (1897) 5 I. 686, 51 P. 748.

West's Idaho Code Annotated
Title 5. Proceedings in Civil Actions in Courts of Record
Chapter 2. Limitation of Actions

I.C. § 5-216

§ 5-216. Action on written contract

Currentness

Within five (5) years:

An action upon any contract, obligation or liability founded upon an instrument in writing.

The limitations prescribed by this section shall never apply to actions in the name or for the benefit of the state and shall never be asserted nor interposed as a defense to any action in the name or for the benefit of the state although such limitations may have become fully operative as a defense prior to the adoption of this amendment.

Credits

S.L. 1939, ch. 244, § 1.

Codifications: C.C.P. 1881, § 156; R.S. 1887, R.C. 1909, and C.L. 1919, § 4052; C.S. 1919, § 6609; I.C. § 5-216.

I.C. § 5-216, ID ST § 5-216
Current through the 2016 Second Regular Session of the 63rd Idaho Legislature.

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