

No. 1-12-1574

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ADVANCED CREDIT, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10MI179646
)	
SAMUEL LINARES,)	The Honorable
)	Sidney A. Jones,
Defendant-Appellee.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

Held: Where applicable statute of limitation is 10-year limitation rather than 3-year limitation, and the 10-year time period has not yet elapsed, statute of limitation does not require dismissal of cause. Cause reversed and remanded.

¶ 1 Appellant Advanced Credit, Inc., appeals from an order of the circuit court entering judgment in favor of appellee Samuel Linares and dismissing with prejudice its first amended complaint against appellee. For the following reasons, we reverse.

¶ 2

BACKGROUND

¶ 3 All information herein is taken from motions, orders, and filings in the court below. No evidentiary hearing was held. On August 2, 2002, plaintiff and defendant executed a promissory note in the amount of \$8,000 at 20% interest per annum. The Note provided:

"FOR VALUE RECEIVED, the undersigned * * * promises to pay Advanced Credit Inc. * * * the sum of Eight Thousand Dollars (\$8,000) with interest thereon at the rate of 20 percent (20%) per annum on the unpaid balance from the above date until fully paid. The repayment of this note (including principal and interest) is due UPON DEMAND.

1. This note may be prepaid in whole or in part without penalty. * * *

2. In the event of the failure to make any payments when due, the holder of this Note may declare the entire principal balance and accrued interest immediately due and payable. Any overdue payment shall bear interest at the increased rate of 20 percent (20%) per annum or the maximum rate permitted by law, whichever is lower.

3. All parties to this Note, including the Undersigned and any endorsers or guarantors jointly and severally waive presentment, notice of dishonor and diligence in collecting and all

agree to remain fully obligated under the terms of the Note even if, without notice, the time for payment is extended: or the Note is renewed or modified; or one of the parties is released or discharged; or the release or substitution of any collateral [*sic*] given as security for the payment of the Note.

4. If this note is not paid promptly in accordance with its terms, the Undersigned agrees to pay all costs of collection, including reasonable attorney fees. In the event that any judgment is obtained under this Note, the Undersigned waives, to the extent permissible under law, the benefit of any law exempting their property, or any part of it."

¶ 4 On December 1, 2004, plaintiff made demand for payment of the note. Defendant did not pay the note on demand. Years later, on August 25, 2010, plaintiff filed its complaint in the circuit court to enforce the demand note.¹ The complaint alleged that the parties had entered into the promissory note in August 2002 for the amount of \$8,000, that plaintiff demanded payment in December 2004, and that the amount due, including principal and interest, and giving defendant "credit for all payments made" as of filing the amended complaint was \$20,192. Through the amended motion, plaintiff requested the court to enter judgment in its favor and order defendant to pay \$20,192 plus additional interest of \$2.67 per day, as well as attorney fees

¹On July 3, 2011, plaintiff filed an amended verified complaint in which the indebtedness amount was made current. It is the numbers from this amended complaint we use here.

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and costs.

¶ 5 In response, defendant filed an answer and affirmative defense, alleging that plaintiff's cause of action was predicated upon a demand note as defined in the Illinois Uniform Commercial Code (810 ILCS 5/3-104, *et seq.* (West 2010)) and was, therefore, governed by a three-year statute of limitation. As such, argued defendant, plaintiff's cause of action accrued on December 1, 2004, when it filed its demand, but plaintiff waited to file its complaint until August 25, 2010, missing the applicable three-year statute of limitation, and its cause of action was therefore barred. Specifically, defendant alleged:

"1 The Promissory Note attached to Plaintiff's Complaint as Exhibit A states 'The repayment of this note (including principal and interest) is due on demand'

2 Because the Promissory Note is 'due on demand' it is a negotiable instrument governed by the Uniform Commercial Code 810 ILCS 5/3-104(a)(2), 5/3-104(a)(3), and 5/3-104(e)

3 810 ILCS 5/3-108(a) states 'A promise or order is 'payable on demand' if it (1) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment'

4 810 ILCS 5/3-118(g) states "Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or

like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this Section must be commenced within 3 years after the cause of action accrues.

5 The cause of action accrued on December 1, 2004

6 The Complaint was filed on August 25, 2010.

7 More than three (3) years elapsed from the date

when the cause of action accrued"

¶ 6 The court entered judgment on behalf of defendant, dismissing plaintiff's complaint with prejudice. In so doing, it noted: "the three year statute of limitations and not the ten year statute of limitation is applicable to the facts of the case." Plaintiff filed a motion to reconsider, which the court denied, stating:

"This matter coming to be heard pursuant to Plaintiff's motion to reconsider the court order dated December 12, 2011 wherein the Court dismissed the Plaintiff's complaint with prejudice, finding that the 3 year statute of limitations under 810 ILCS 5/3-118(g) and not the 10 year statute of limitations, under 735 ILCS 5/13-206, applied to the facts of the Complaint, the court being fully advised in the premises,

IT IS ORDERED that the motion to reconsider is denied, the Court holding that 810 ILCS 5/3-118(g) applies to the facts

alleged in the complaint."

Plaintiff appeals.

¶ 7

ANALYSIS

¶ 8 On appeal, plaintiff contends that his cause of action on the promissory note is not barred by any statute of limitation. Specifically, plaintiff argues that, while both section 3-118 of the Illinois Uniform Commercial Code (810 ILCS 5/3-118 (West 2010) (section 3-118)) and section 13-206 of the Illinois Code of Civil Procedure (735 ILCS 5/13-206 (West 2010) (section 13-206)) apply to promissory notes, section 13-206 is more specific in its application to a promissory note such as the instrument in question, and, therefore, it is the section applicable to this cause. Accordingly, argues plaintiff, section 3-118 is inapplicable to this action on the promissory note and the 10-year statute of limitations set forth in section 13-206 applies instead.

A note which states "payable on demand" is a demand note and is due and payable immediately upon execution. 810 ILCS 5/3-108 (2010); *Theodosakis v. Austin Bank of Chicago*, 93 Ill. App. 3d 634, 637 (1981) ("An instrument which contains an unconditional promise to pay a sum certain which does not contain a fixed or determinate future time of payment constitutes an engagement to pay the note on demand."). A cause of action against the maker of a demand note accrues upon its date, or, if no date is stated, on the date of issue. *Theodosakis*, 93 Ill. App. 3d at 637. The section 13-206 statute of limitation is 10 years, while the section 3-118 statute of limitation is 3 years. 735 ILCS 5/13-206 (West 2010); 810 ILCS 5/3-104(a) (West 2010).

¶ 9 "[W]here two statutes of limitation arguably apply to the same cause of action, the one which more specifically relates to the action must be applied." *Continental Casualty Co. v.*

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American National Bank and Trust Co., 329 Ill. App. 3d 686, 700 (2002). Which statute of limitation applies is a question of law which this court reviews *de novo*. *Travelers Casualty & Surety Co. v. Bowman*, 229 Ill. 2d 461, 466 (2008) ("The applicability of a statute of limitations to a cause of action presents a legal question we review *de novo*.").

¶ 10 Section 13-206 of the Code provides, in pertinent part:

"Ten year limitation. Except as provided in Section 2-725 of the 'Uniform Commercial Code', [] actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing and actions brought under the Illinois Wage Payment and Collection Act shall be commenced within 10 years next after the cause of action accrued; but if any payment or new promise to pay has been made, in writing, on any bond, note, bill, lease, contract, or other written evidence of indebtedness, within time of such payment or promise to pay. For purposes of this Section, with regard to promissory notes dated on or after the effective date of this amendatory Act of 1997, a cause of action on a promissory note payable at a definite date accrues on the due date or date stated in the promissory note dated on or after the effective date of this amendatory Act of 1997, if a demand for payment is made to the maker of the demand promissory note, an action to enforce the obligation of a party to pay the demand

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promissory note must be commenced within 10 years after the demand. An action to enforce a demand promissory note is barred if neither principal nor interest on the demand promissory note has been paid for a continuous period of 10 years and no demand for payment has been made to the maker during that period." 735 ILCS 5/13-206 (West 2010).

¶ 11 Section 3-118 of the Uniform Commercial Code provides, in pertinent part:

"Statute of limitations.

* * *

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii.) For breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this Section must be commenced within 3 years after the cause of action accrues." 810 ILCS 5/3-118(g) (2010).

¶ 12 Plaintiff contends that, while both statutes could arguably apply to the promissory note at issue in this case, the appropriate one to apply is section 13-206 because it is more specific than section 3-118(g). We agree. Section 13-206 makes specific reference to demand promissory notes and to a demand for payment thereunder. See 735 ILCS 5/13-206 (West 2010) ("[A]ctions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other

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evidences of indebtedness in writing, shall be commenced within 10 years next after the cause of action accrued;" and "An action to enforce a demand promissory note is barred if neither principal nor interest on the demand promissory note has been paid for a continuous period of 10 years and no demand for payment has been made to the maker during that period."). Section 5/3-118(g), on the other hand, requires parties to interpret what is a negotiable instrument under Section 3-104(a) of the Uniform Commercial Code.² See 810 ILCS 5/3-102 (defining the subject

²Section 3-104(a) of the Uniform Commercial Code defines "negotiable instrument" as:

" 'negotiable instrument' means an unconditional promise or order to pay a fixed amount of money with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of any obligor." 810 ILCS 5/3-104(a) (West 2010).

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matter of Article III of the UCC: "this section applies to negotiable instruments"). Then, having determined that the promissory note in question is indeed a negotiable instrument, turn to section 3-118(g), which refers, generally, to the enforcement of an "obligation, duty, or right" arising under the Illinois Uniform Commercial Code. See 810 ILCS 5/3-118(g) (2010) ("(g) Unless governed by other law regarding claims for indemnity or contribution, an action * * * to enforce an obligation, duty, or right arising under this Article and not governed by this Section must be commenced within 3 years after the cause of action accrues."). Unlike section 13-206, section 3-118(g) does not refer specifically to a demand note, and, accordingly, applying the statute of limitation therein requires further interpretation that the "obligation" referred to in section 3-118(g) is, in fact, a demand promissory note.

¶ 13 As previously noted, where two statutes of limitation arguably apply to the same cause of action, the statute of limitation which most specifically relates to the action in question is the one that must be applied. See *Continental Casualty Co.*, 329 Ill. App. 3d at 700. Such is the case here, and we find that section 13-206, which makes specific reference to demand promissory notes and to situations in which demand for payment thereunder has been made, is the statute of limitation which more specifically relates to this cause of action. For this reason, we reverse the decision of the circuit court dismissing this cause, and we remand for further proceedings in this matter.

¶ 14 CONCLUSION

¶ 15 For all of the foregoing reasons, the decision of the circuit court of Cook County is

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reversed, and this cause is remanded for further proceedings.

¶ 16 Reversed and remanded.