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3 DREW COURT  
MONMOUTH BEACH, NJ 07750  
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BANK OF AMERICA, N.A.,

Plaintiff-Respondent,

v.

THOMAS MAHER,

Defendant-Petitioner,

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SUPREME COURT OF NEW  
JERSEY

DOCKET NO.: 089438

ON PETITION FROM:  
APPELLATE DIVISION,  
DOCKET NO. A-001708-22T01  
DECIDED ON APRIL 12, 2024

SAT BELOW:  
HON. SUMNERS  
HON. ROSE

ON APPEAL FROM:  
SUPERIOR COURT OF NEW  
JERSEY, LAW DIVISION,  
MONMOUTH COUNTY  
DOCKET NO. L-0054-21

CIVIL ACTION

**RECEIVED**

JUN 26 2024  
SUPREME COURT  
OF NEW JERSEY

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PETITION FOR CERTIFICATION AND APPENDIX

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On the Petition  
Thomas Maher, Pro Se



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## SHORT STATEMENT OF MATTER INVOLVED

In 2017, US Bank filed a foreclosure complaint naming the parties as defendants. US Bank requested Default against Plaintiff as Defendant contested the foreclosure action. US Bank obtained a final judgment and had the Sheriff sell the property, satisfying its judgment and extinguishing Plaintiff's mortgage. Plaintiff brought a civil action on the Note against Defendant on January 7, 2021, pleading that the contract was breached, accelerated, and charged off on March 23, 2015. Defendant denied the assertion and pleaded the two Statute of Limitations laws in his Affirmative Defenses. Plaintiff testified that the last payment received from Defendant was not on March 23, 2015, but on July 25, 2014. Plaintiff was to file its complaint by July 25, 2020, to avoid the N.J.S.A. 12A:3-118(a) and N.J.S.A. 2A:14-1 Statutes of Limitations but filed it on January 7, 2021. Plaintiff moved for summary judgment, and Defendant cross-moved for dismissal. Plaintiff argued that the Statutes of Limitations trigger date is its charged-off date, March 23, 2015. Defendant argued that the Statute of Limitations trigger date is the last payment; Plaintiff's acceleration amount of \$785,259.21 was as of July 25, 2014, the date of the last payment. The Trial Court denied Defendant's motion and entered a summary judgment in favor of Plaintiff in the amount of \$785,259.21, plus costs. The Appellate Division affirmed.

## **THE QUESTIONS PRESENTED**

1. This case presents questions relating to whether the six-year limitations period began to run on the charge-off date, the due date, or the last payment date; when Plaintiff's cause of action against Defendant accrued?

## **THE ERRORS COMPLAINED OF**

The statute of limitations period begins when the plaintiff's cause of action accrues, meaning the date upon which the plaintiff is first able to maintain the cause of action in court or when the plaintiff first becomes aware of the default. Lenders do not get to pick the date when the statute of limitations begins. Plaintiff used the charge-off date but accelerated from the last payment date.

## **REASONS WHY CERTIFICATION SHOULD BE ALLOWED**

A home equity loan is usually a second mortgage or a junior lien. So, the first mortgage, or senior line, takes priority in a foreclosure. If the home equity lender gets to set the date via charge-off, it can wait ten years and take the

home by declaring it charged off the loan, in which the homeowner will lose their equity. In this case, Plaintiff, represented by counsel, knew of the foreclosure action and Sheriff's Sale and did nothing.

**Point 1 - The lower courts erred on the Statute of Limitations (Da339, 2T)**

An action to enforce a note would not exist except for default by the borrower. A breach of a valid contract gives rise to a cause of action. Becker v. Kelsey, 157 A. 177 (N.J. Sup. Ct. 1931). Plaintiff filed the Complaint, misstating that Defendant defaulted on March 23, 2015 (**Da2**). Plaintiff testified in its Interrogatory Answers that Defendant's last payment was not on March 23, 2015, but on July 25, 2014 (**Da231**). The Payment History supports the last payment for July 25, 2014, and the acceleration date and amount (**Da314**).

Defendant pleaded to two Statutes of Limitations in the Affirmative Defense in the Answer: (1) Plaintiff's claims are barred by the New Jersey Uniform Commercial Code's Statute of Limitations. Under N.J.S.A. 12A:3-118(a) runs six years after the last payment. (2) Plaintiff pleaded Defendant executed a contract (Note) to repay a sum of money. Plaintiff further pleaded Defendant breached the contract (Note). Under New Jersey law (N.J.S.A. 2A:14-1), the



Statute of Limitations for breach of contract is six years, and a cause of action accrues when a plaintiff knows or should know of its existence. Plaintiff pleaded it has records of Defendant's last payment.

A statute of limitations aims to penalize dilatoriness and serve as a measure of repose. Caravaggio v. D'Agostini, 166 N.J. 237, 765 A.2d 182 (2001). Both Statutes of Limitations bar Plaintiff's claims. Plaintiff is time-barred from enforcing the Note. Plaintiff was to file its Complaint within the six-year limit by July 25, 2020, at the very least by August 25, 2020. Plaintiff filed the complaint on January 7, 2021, misstating that Defendant's last payment was March 23, 2015. Plaintiff testified in its answers to Defendant's Interrogatories that Defendant's last payment was on July 25, 2014. Plaintiff was represented by counsel on September 24, 2019, according to the alleged Notice of Acceleration. Plaintiff is time-barred.

## CONCLUSION

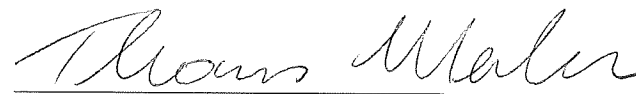
For all the foregoing reasons, the Petition for Certification should be granted.

**CERTIFICATION OF DEFENDANT**

The undersigned petitioner hereby certifies that this petition presents substantial questions for resolution by this Court and that the petition is filed in good faith and not for purposes of delay.

Respectfully submitted,

Dated: June <sup>25</sup>24, 2024

  
Thomas Maher, Pro Se