ORIGINAL

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 089438

BANK OF AMERICA, N.A.,

Plaintiff-Respondent,

V.

THOMAS MAHER,

Defendant-Appellant.

CIVIL ACTION

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION,

SAT BELOW:
HON. LISA ROSE
HON. THOMAS W. SUMNERS, JR.
DOCKET NO. A-1708-22

RESPONSE IN OPPOSITION TO DEFENDANT-APPELLANT'S PETITION FOR CERTIFICATION AND APPENDIX FOR PLAINTIFF-RESPONDENT BANK OF AMERICA, N.A.

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July 3, 2024

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PRELIMINARY STATEMENT

This matter concerns a simple breach of contract action. Plaintiff-Respondent's predecessor, Countrywide Bank, N.A., extended a $1,000,000.00 line of credit to Defendant-Appellant on May 11, 2006, which was secured by Defendant-Appellant's former residence located at 37 Ocean Avenue, Monmouth Beach, NJ 07750. Thereafter, Countrywide Bank, N.A. was merged into Bank of America, N.A.; Plaintiff-Respondent then became the holder of the loan agreement in question.

The Contract memorializing Countywide Bank, N.A.'s extension of credit to Defendant-Appellant was an installment contract with an optional acceleration clause. Defendant-Appellant submitted monthly minimum payments under the loan agreement until July 25, 2014, after which he ceased making payments on his line of credit. Plaintiff-Respondent subsequently exercised its right to charge-off and accelerate Defendant-Appellant's loan on March 23, 2015. Plaintiff-Respondent then filed a complaint alleging one count of breach of contract by Defendant-Appellant on January 7, 2021.

Plaintiff-Respondent filed an amended motion for summary judgment, in which it presented a prima facie case of breach of contract to the Law Division. In response, Defendant-Appellant admitted entering into and breaching the operative contract (the "Contract") Defendant-Appellant produced no competent

evidence or argument challenging Plaintiff-Respondent's claims at summary judgment. The Law Division granted summary judgment to Plaintiff-Respondent, finding that Plaintiff-Respondent's claim accrued upon the charge-off and acceleration of Defendant-Appellant's account, and not upon the date of Defendant-Appellant's last payment; Plaintiff-Respondent timely filed the Complaint in this matter within the six-year accrual period; that separate senior creditor US Bank's foreclosure action did not strip Plaintiff-Respondent of its right to enforce the Contract; and that Defendant-Appellant's objections to Plaintiff-Respondent's claim in this matter, as memorialized in Defendant-Appellant's third cross-motion to dismiss/cross-motion for summary judgment, were neither supported by the record nor applicable law.

The Appellate Division upheld the Law Division's order granting Plaintiff-Respondent summary judgment and denying Defendant-Appellant's third cross-motion to dismiss/cross-motion for summary judgment, and denied Defendant-Appellant's subsequent motion for reconsideration. Plaintiff-Respondent asserts that the Appellate Division's judgment is final and well-justified, and Defendant-Appellant's petition for certification does not present a question of general public importance that must be settled by the Supreme Court.

PROCEDURAL HISTORY

Plaintiff filed its complaint alleging one count of breach of contract by Defendant on January 7, 2021. (**Pa40–Pa71**). Defendant filed his first cross-motion to dismiss Plaintiff's complaint on April 7, 2022. (**Pa116–Pa168**). Plaintiff filed its response in opposition to Defendant's motion to dismiss on April 13, 2022. (**Pa169**). The Law Division denied Defendant's motion for dismissal on April 22, 2022. (**Pa178; Pa399**).

Defendant filed his answer on May 9, 2022. (**Pa179–Pa186**). Plaintiff filed its first motion for summary judgment on June 10, 2022. (**Pa189–Pa190**). Defendant then filed his second cross-motion to dismiss the complaint on August 16, 2022. (**Pa255–Pa288**). The Law Division issued an order denying Plaintiff's first motion for summary judgment and Defendant's second motion to dismiss on November 4, 2022.[1] (**Pa317–Pa326; Pa368–Pa377**).

Plaintiff subsequently filed its amended motion for summary judgment on November 7, 2022.[2] (**Pa327–Pa328**). Defendant then filed his third cross-

[1] The hearing on these motions was transcribed and recorded into transcript 1T, which is dated 11/04/2022.

[2] In accordance with N.J. Ct. R. 2:6-1(a)(2), Plaintiff-Respondent has included the damages affidavit it filed in support of its motion for amended summary judgment in its Supreme Court appendix. Defendant-Appellant omitted the exhibits to the damages affidavit that Plaintiff-Respondent filed in support of its amended motion for summary judgment from his appendix before the Law Division. The damages affidavit, which authenticates the documents associated with Defendant-Appellant's account, shows that Plaintiff-Respondent brought a prima facie claim of breach of contract before the Law Division. Plaintiff-Respondent believes this pleading meets the exception to the general rule barring the inclusion of briefs in support of and in opposition to summary judgment in Plaintiff-Respondent's appendix. Plaintiff-Respondent has included the damages affidavit in its entirety in its Supreme Court appendix. (**Pa1–34**).

motion to dismiss, also styled as Defendant's cross-motion for summary judgment, on December 27, 2022.[3] (**Pa35–Pa39; Pa338–Pa356**). Plaintiff filed its response in opposition to Defendant's third motion to dismiss and its response to Defendant's counterstatement of material facts on December 28, 2022. (**Pa357–Pa359**). The Law Division issued an order granting Plaintiff's motion for summary judgment and denying Defendant's third cross-motion to dismiss on January 6, 2023. (**Pa378– Pa387**).[4]

Defendant-Appellant filed a notice of appeal on January 13, 2023. (**Pa361– Pa367**). The Appellate Division then issued an order granting Defendant-Appellant's notice of appeal on March 1, 2023. (**Pa409**).

The Appellate Division issued a per curiam opinion affirming the Law Division's order granting Plaintiff's motion for summary judgment and denying Defendant's third cross-motion to dismiss on April 12, 2024. Bank of Am., N.A. v. Maher, No. A-1708-22, 2024 WL 1597749, (N.J. Super. Ct. App. Div. Apr. 12,

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[3] In accordance with N.J. Ct. R. 2:6-1(a)(2), Plaintiff-Respondent notes it has included Defendant-Appellant's third cross-motion to dismiss, which is also styled as Defendant-Appellant's cross-motion for summary judgment in some portions of the Law Division's order, in Plaintiff-Respondent's supplemental appendix. Defendant-Appellant's appendix does not include Defendant-Appellant's third motion to dismiss in its entirety. Defendant-Appellant's third cross-motion to dismiss shows that neither of the arguments raised in Point 2 of Defendant-Appellant's brief before the Appellate Division were before the Law Division. As Defendant-Appellant's third cross-motion to dismiss is not included in Defendant-Appellant's appendix in its entirety and is necessary to fully understand Plaintiff-Respondent's arguments in opposition to the petition for certification, Plaintiff-Respondent believes this pleading meets the exception to the general rule barring the inclusion of briefs in support of and in opposition to summary judgment in Plaintiff-Respondent's appendix.

[4] The hearing on these motions was transcribed and recorded into transcript 2T, which is dated 1/6/2023.

2024) (**Da3–Da11**). Defendant-Appellant filed a motion for reconsideration on April 17, 2024. The Appellate Division issued an order denying Defendant-Appellant's motion for reconsideration on May 2, 2024. (**Da12**).

Defendant-Appellant filed a notice of petition for certification on May 13, 2024. Defendant-Appellant filed a Notice of Motion for Leave to File the Petition for Certification as Within Time and Brief in Support Thereof, and the Petition for Certification on June 25, 2024.[5] Plaintiff-Respondent was served with Defendant-Appellant's Notice of Motion for Leave to File the Petition for Certification as Within Time and Brief in Support Thereof, as well as Defendant-Appellant's Petition for Certification on June 26, 2024.

COUNTERSTATEMENT OF FACTS

Countrywide Bank, N.A. extended a Home Equity Line of Credit to Defendant-Appellant on or about May 11, 2006. (**Pa6–Pa16**). This line of credit was secured by a Mortgage. (**Pa18–Pa23**). Effective March 12, 2007, Countrywide Bank, N.A., converted to a federal savings bank with the resulting title of Countrywide Bank, FSB. (**Pa25**). Effective April 27, 2009, Countrywide Bank, FSB, converted to a national bank with the resulting title of Countrywide Bank, N.A., and merged into and under the charter and title of Plaintiff-

[5] Plaintiff-Respondent notes that per Defendant-Appellant's admission, his petition for certification was due for filing on or before June 3, 2024.

Respondent. (**Pa25**). As a result of said merger, Plaintiff-Respondent became the owner and holder of the Contract and the Mortgage. (**Pa25**).

Defendant-Appellant made one draw of $991,888.00 from his line of credit on or about May 17, 2006. (**Pa27**). From the date of this draw until his last monthly payment on July 25, 2014, Defendant-Appellant generally complied with the repayment terms of the Contract. (**Pa6–Pa16; Pa27–Pa34**). However, Defendant-Appellant ceased making monthly payments on his line of credit after the aforementioned final payment dated July 25, 2014, leaving his account with an outstanding balance of $785,259.21. (**Pa34**). Thereafter, on March 23, 2015, Plaintiff-Respondent exercised its right under the Contract to charge-off Defendant-Appellant's account and accelerate his balance of $785,259.21. (**Pa12–Pa13; Pa34**).

LEGAL ARGUMENT

I. THE APPELLATE DIVISION DID NOT ERR IN UPHOLDING THE LAW DIVISION'S FINDING THAT PLAINTIFF-RESPONDENT'S COMPLAINT WAS TIMELY FILED.
(Raised Below: Pa317–Pa326; Pa378–Pa387; Da3–Da11)

The Appellate Division did not err in affirming the Law Division's finding that Plaintiff-Respondent timely filed its breach of contract action against Defendant-Appellant, as both the record before the Law Division and binding precedent supported the Law Division's finding that Plaintiff-Respondent's

cause of action accrued on the date Defendant-Appellant's debt was charged-off and accelerated: March 23, 2015. Defendant-Appellant now petitions this Court for certification to determine if Plaintiff-Respondent's cause of action accrued on the aforementioned date of charge-off and acceleration, or on the earlier date of Defendant-Appellant's last payment: July 25, 2014. Defendant-Appellant's arguments in service of certification are entirely unsupported. In contrast, the Appellate Division's opinion is supported by binding precedent, is not in conflict with any other Appellate Division or Supreme Court decision, and is final. The interest of justice does not require this Court to grant certification on the question of whether the Appellate Division's opinion was made in error.

"Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons." R. 2:12-4. If an appellate court determines "that some or all of the arguments made are without sufficient merit to warrant discussion in a written opinion[,] then and in any such case the judgment or

order under appeal may be affirmed without opinion and by an order quoting the applicable paragraph of this rule." R. 2:11-3(e)(1)(E).

New Jersey's summary judgment standard provides that "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.." R. 4:46-2(c). An appellate court assessing the validity of an order granting summary judgment will consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995).

"The factual findings of a trial court are reviewed with substantial deference on appeal, and are not overturned if they are supported by 'adequate, substantial and credible evidence.'" Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014) (quoting Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 293 (2001)). "[B]are conclusions" and "unsubstantiated inferences and feelings" are insufficient to defeat a motion for summary judgment. Cortez v. Gindhart, 435 N.J. Super. 589, 606 (App. Div. 2014) (citing Brae Asset Fund, L.P. v. Newman, 327 N.J.Super. 129, 134 (App. Div. 1999).

To establish a breach of contract claim, a plaintiff must prove: the parties entered into a contract, containing certain terms; the plaintiff performed what was required under the contract; defendant did not fulfill its obligation under the contract; and defendant's breach caused a loss to plaintiffs. Pollack v. Quick Quality Restaurants, Inc., 452 N.J. Super. 174, 188 (App. Div. 2017) (citing Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016); Model Jury Charge (Civil) § 4.10A "The Contract Claim—Generally" (May 1998)). Breach of contract claims in New Jersey must be asserted within six (6) years of their accrual. See N.J.SA. § 2A:14-1.[6]

"The plain language of the contract is the cornerstone of the interpretive inquiry; 'when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result.'" Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 616 (2020) (quoting Quinn v. Quinn, 225 N.J. 34, 45 (2016)). When a contract specifies that a debt may become accelerated at the creditor's option after default of payment, the statute of limitations will run from the date of maturity or acceleration specified in the contract. Moline Plow Co. v. Webb, 141

[6] In his brief before the Appellate Division, Defendant-Appellant asserted that Plaintiff-Respondent's Complaint was subject to the limitations period set forth in either N.J.S.A. § 12A:3-118(a) or N.J.S.A. § 2A:14-1. Plaintiff-Respondent notes that N.J.S.A. § 12A, et. seq., governs only commercial transactions; as this matter concerns consumer debt, N.J.S.A. § 12A:3-118(a) is not applicable.

U.S. 616, 626–27 (1891).[7] If a contract is repayable in installments and contains an optional acceleration clause, then a claim for the breach of that contract accrues upon acceleration. Fed. Deposit Ins. Corp. v. Valencia Pork Store Inc., 212 N.J. Super. 335, 339 (Law. Div. 1986), *rev'd*,[8] 225 N.J. Super. 110 (App. Div. 1988). "[A] missed payment is insufficient to constitute a total breach of an installment contract or agreement unless accompanied by anticipatory repudiation indicating a failure to perform future obligations specified in the contract." In re Est. of Balk, 445 N.J. Super. 395, 401 (App. Div. 2016).

Defendant-Appellant's specious arguments fail to demonstrate the Law Division's or Appellate Division's error in finding there was no issue of material fact as to the date of accrual of Plaintiff-Respondent's claims. First, Defendant-Appellant implies that Plaintiff-Respondent, a junior lienholder, lost its right to enforce the Contract when a senior lienholder successfully pursued foreclosure

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[7] While Moline Plow Club concerned a Texas dispute and largely relied on Texas law to inform its holding, it has been cited by federal and state courts, including a New Jersey trial court, to support the notion that when a loan contract contains an optional acceleration clause, the creditor's cause of action for breach of contract will accrue when the creditor elects to accelerate the debt. See McIntyre v. Andrews, 17 F.2d 865, 867 (7th Cir. 1927); Feucht v. Keller, 104 F.2d 250, 252 (D.C. Cir. 1939); Duval v. Skouras, 44 N.Y.S.2d 107, 111 (Sup. Ct. 1943), *aff'd*, 46 N.Y.S.2d 888 (App. Div. 1944), and *aff'd*, 61 N.Y.S.2d 379 (App. Div. 1946); and Fed. Deposit Ins. Corp. v. Valencia Pork Store Inc., 212 N.J. Super. 335, 338 (Law. Div. 1986), *rev'd on other grounds*, 225 N.J. Super. 110 (App. Div. 1988).

[8] The Law Division's order in Fed. Deposit Ins. Corp. v. Valencia Pork Store Inc., 212 N.J. Super. 335, 339 (Law. Div. 1986) was reversed by the Appellate Division on the grounds that the Law Division's holding was premised on a misrepresentation made by a principal of the initial equipment lessor, whose obligations were later assigned to the FDIC. See Fed. Deposit Ins. Corp. v. Valencia Pork Store, Inc., 225 N.J. Super. 110, 115 (App. Div. 1988). The Appellate Division's opinion did not disturb the Law Division's finding that the applicable limitations period did not start until all payments had become due upon either maturity or the acceleration of lessee's obligations. Id., 225 N.J. Super at 113.

of the property that collateralized Plaintiff-Respondent's loan. (**Db5; Db7**). The Law Division found that the U.S. Bank foreclosure barred Plaintiff-Respondent from enforcing its junior mortgage, but did not extinguish Defendant-Appellant's underlying debt. Defendant-Appellant raised the same implication before the Appellate Division. The Appellate Division did not address this implication in its opinion. (**Da3-Da11**).

Defendant-Appellant has never cited precedent in support of his contention that Plaintiff-Respondent's claims under the Contract were extinguished US Bank foreclosed on the collateral property, or that the foreclosure has any bearing on the date on which Plaintiff-Respondent's breach of contract claim accrued. Defendant-Appellant has also made no argument before this Court that the Law Division's finding on this issue was in error. The Appellate Division did not err in declining to address Defendant-Appellant's argument concerning US Bank's 2017 foreclosure. See R. 2:11-3(e)(1)(E).

Similarly, Defendant-Appellant implies that Plaintiff-Respondent's "admission" that Defendant-Appellant's last payment was made on July 25, 2014, undermines the Appellate Division's holding that Plaintiff-Respondent's claim for breach of contract accrued upon the charge-off and acceleration of Defendant-Appellant's debt. (**Db5; Db8**). Defendant-Appellant asserts that Plaintiff-Respondent "misstat[ed]" the date of Defendant-Appellant's last

payment was March 23, 2015—the date on which Plaintiff-Respondent charged-off and accelerated Defendant-Appellant's due and owing balance—during the proceedings. (**Db8**). Defendant-Appellant raised this issue before the Appellate Division, which declined to address it. (**Da3-Da11**).

Plaintiff-Respondent has not disputed that Defendant-Appellant's final payment was made on July 25, 2014, and has maintained that it charged-off and accelerated Defendant-Appellant's account on March 23, 2015, throughout these proceedings. (**Pa40–Pa43**). Defendant-Appellant demonstrates nothing but his own confusion over why Plaintiff-Respondent's claim for breach of contract accrued on the date his balance was charged-off and accelerated, and not on the date of his final payment. These "[b]are conclusions" and "unsubstantiated inferences and feelings" were insufficient to challenge the validity of the Law Division's order granting summary judgment. Cortez v. Gindhart, 435 N.J. Super. 589, 606 (App. Div. 2014). The Appellate Division did not err in declining to address this point. See R. 2:11-3(e)(1)(E).

Defendant-Appellant's lone substantive argument disputing the Law Division's order and Appellate Division's opinion is that Plaintiff-Respondent's "cause of action accrue[d] when [Plaintiff-Respondent] knew or should have known of its existence." (**Db7–Db8**). Defendant-Appellant offers no precedent or statute to corroborate this argument. (**Db8**). In contrast, both the Law

Division's order and the Appellate Division's opinion are supported by the evidence of record and binding precedent. The Law Division did not err in finding Plaintiff-Respondent was entitled to summary judgment, and the Appellate Division did not err in affirming the Law Division's order. (**Pa386–Pa387; Da7–Da9**).

As a threshold matter, the Law Division and the Appellate Division each found that the Contract contained an optional acceleration clause. (**Pa386; Da9**). The plain language of the Contract states Defendant-Appellant's line of credit was payable via monthly installments, and contained an optional acceleration clause. Per Section 4(E) of the Contract, Defendant-Appellant was required to "pay . . . the Minimum Payment due for each billing cycle." (**Pa9**). Section 12(B)(3) of the Contract gives Plaintiff-Respondent the right to "declare all sums owing under this Agreement . . . to be immediately due and payable." (**Pa13**). Defendant-Appellant presented no evidence or precedent demonstrating that there was an issue of material fact as to the validity of the Contract's optional acceleration clause. See Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995); and (**Pa35-Pa39; Pa338–Pa356**).

The Law Division found Plaintiff-Respondent made a prima facie case for breach of this Contract at the trial level. Plaintiff-Respondent presented evidence before the Law Division showing: (i) that the parties entered into the

Contract;[9] (ii) that Plaintiff-Respondent became the holder of the Contract and Mortgage after Countrywide, N.A.'s merger with Bank of America, N.A.;[10] (iii) that Plaintiff-Respondent and/or its predecessor-in-interest advanced funds to Defendant-Appellant under the Contract;[11] (iv) that Defendant-Appellant breached the repayment terms of the Contract;[12] and (v) that as a result Plaintiff-Respondent suffered $785,259.21 in damages. See Pollack v. Quick Quality Restaurants, Inc., 452 N.J. Super. 174, 188 (App. Div. 2017) (citing Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016) and Model Jury Charge (Civil) § 4.10A "The Contract Claim—Generally" (May 1998); see also **(Pa4; Pa34)**. Plaintiff-Respondent also demonstrated that, after Defendant-Appellant's breach, it exercised its option under the Contract to charge-off Defendant-Appellant's account and accelerated the balance remaining on Defendant-Appellant's account for payment in full on March 23, 2015, and filed its breach of contract claim within six years of the charge-off and acceleration of Defendant-Appellant's account. See N.J.S.A. § 2A:14-1 **(Pa3–Pa4; Pa34)**.

For his part, Defendant-Appellant admitted entry into the Contract and to

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[9] See **(Pa2–Pa3; Pa6–Pa16)**.

[10] See **(Pa3; Pa25)**.

[11] See **(Pa2–Pa3; Pa27–Pa34)**.

[12] See **(Pa3–Pa4; Pa27–Pa34)**.

his breach of the Contract before the Law Division, and presented no substantial evidence or precedent showing that Plaintiff-Respondent accelerated his debt on any date earlier than March 23, 2015. See R. 4:46-2(c); see also Pollack v. Quick Quality Restaurants, Inc., 452 N.J. Super. at 188 (App. Div. 2017); and (**Pa34–Pa39; Pa343–Pa344**). Moreover, Defendant-Appellant cited no law in support of his contention that Plaintiff-Respondent's claim accrued on the date of his last payment. See Cortez v. Gindhart, 435 N.J. Super. 589, 606 (App. Div. 2014) (citing Brae Asset Fund, L.P. v. Newman, 327 N.J.Super. 129, 134 (App. Div. 1999). As Defendant-Appellant admitted to the core facts supporting Plaintiff-Respondent's breach of contract claim, and only submitted unsubstantiated arguments concerning the date of accrual in opposition to Plaintiff-Respondent's amended motion for summary judgment, the Law Division correctly found Plaintiff-Respondent was entitled to summary adjudication. See Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995); (**Pa386–Pa387**).

The Appellate Division did not err in affirming the Law Division's finding that Plaintiff-Respondent was entitled to summary judgment and that, due to the Contract's optional acceleration clause, Plaintiff-Respondent's underlying breach of contract claim did not accrue until Plaintiff charged-off and accelerated Defendant-Appellant's remaining balance. See Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). While Defendant-Appellant now asserts

that Plaintiff-Respondent blithely "pick[ed] the date when the statute of limitations begins",[13] the body of binding precedent concerning the effect of an optional acceleration clause on the date of accrual of a creditor's breach of contract claim mandates that Plaintiff-Respondent's claim accrued on the date of charge-off and acceleration, and not the date of Defendant-Appellant's final payment.

The Supreme Court of the United States has held when a contract specifies that a debt may become accelerated at the creditor's option after default of payment, the statute of limitations will run from the date of maturity or acceleration specified in the contract. Moline Plow Co. v. Webb, 141 U.S. 616, 626 (1891). The courts of this State have previously adopted the Moline Plow Co. Court's reasoning and found that if a contract is repayable in installments and contains an optional acceleration clause, then a claim for the breach of that contract accrues upon acceleration. See Fed. Deposit Ins. Corp. v. Valencia Pork Store Inc., 212 N.J. Super. 335, 339 (Law. Div. 1986), *rev'd on other grounds*, 225 N.J. Super. 110 (App. Div. 1988). The United States Supreme Court's holding in Moline Plow Co. and the Law Division's holding in Valencia Pork Store, Inc., support the Appellate Division's holding that, due to the Contract's optional acceleration clause, Plaintiff-Respondent's cause of action for breach

[13] See **(Db6)**.

of contract accrued on the date the debt was charged-off and accelerated; Plaintiff-Respondent's complaint was timely filed; and the Law Division's order granting summary judgment was therefore lawful. See Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 616 (2020) (quoting Quinn v. Quinn, 225 N.J. 34, 45 (2016)) ; N.J.SA. § 2A:14-1; and Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995).

In re Est. of Balk, 445 N.J. Super., 395, 401 (App. Div. 2016) also supports the Appellate Division's holding that Plaintiff-Respondent's breach of contract claim did not accrue on the date of Defendant-Appellant's last payment. Under Balk, failure to make a payment under an installment contact "is insufficient to constitute a total breach of [the contract] unless accompanied by anticipatory repudiation indicating a failure to perform future obligations specified in the contract." Id., 445 N.J. Super. at 401. No evidence submitted before the Law Division or the Appellate Division indicates that any of Defendant-Appellant's missed payments were accompanied by an anticipatory repudiation. There was and is no material dispute as to the fact that Defendant-Appellant's missed payments lacked concurrent anticipatory repudiation. See R. 4:46-2(c). The Appellate Division therefore did not err in finding that Plaintiff-Respondent's claim for breach of contract did not accrue upon Defendant-Appellant's failure to make a monthly required payment on July 25, 2014. See In re Est. of Balk,

445 N.J. Super., 395, 401 (App. Div. 2016).

Plaintiff-Respondent's and Defendant-Appellant's pleadings before the Law Division showed that there is no genuine issue of material fact as to Defendant-Appellant's liability for breach of the Contract and the date of the accrual of Plaintiff-Respondent's claims under the Contract. See R. 4:46-2(c); Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). (**Pa1–Pa39; Pa343–Pa344**). The Law Division's order finding that Plaintiff-Respondent's claim accrued not on the date of Defendant-Appellant's final payment, but on the date of the charge-off and acceleration of Defendant-Appellant's debt, is supported by the record and by binding precedent. See Moline Plow Co. v. Webb, 141 U.S. 616, 626 (1891); Fed. Deposit Ins. Corp. v. Valencia Pork Store Inc., 212 N.J. Super. 335, 339 (Law. Div. 1986); and In re Est. of Balk, 445 N.J. Super., 395, 401 (App. Div. 2016). (**Pa1–Pa16; Pa34**). The Appellate Division's final judgment affirming the Law Division's order was not rendered in error. See R. 4:46-2(c).

Conversely, Defendant-Appellant has failed to meet his burden of demonstrating why certification is necessary. Before the Law Division, Defendant-Appellant admitted to entering into the Contract and subsequently breaching the Contract, and presented only unsubstantiated claims in opposition to Plaintiff-Respondent's assertion that its claims under the Contract accrued on

the date of the charge-off and acceleration of Defendant-Appellant's debt. See Cortez v. Gindhart, 435 N.J. Super. 589, 606 (App. Div. 2014) (**Pa35– Pa39; Pa343–Pa344**). Defendant-Appellant has recycled the same underbaked rebuttals before the Appellate Division and now before this Court in his quixotic effort to have the Law Division's order reversed. (**Db5–Db8**). Defendant-Appellant has not provided this Court with any proper basis to find that the Appellate Division erred in affirming the Law Division's findings of fact and law. See Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995); Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014) (quoting Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 293 (2001)). Further, Defendant-Appellant has presented no evidence or law to this Court showing that the Appellate Division's opinion is in conflict with any other Supreme Court or Appellate Division opinion, or that the interest of justice requires this Court to grant Defendant-Appellant certification. See R. 2:12-4.

Under N.J.S.A. § 2A:14-1, Plaintiff-Respondent was required to file the instant complaint within six-years of the accrual of its claim for the full balance due under the Contract. Plaintiff-Respondent's claim for the full $785,259.21 balance due under the Contract did not automatically accrue simply because Defendant-Appellant missed a monthly payment installment or two. See In re Est. of Balk, 445 N.J. Super., 395, 401 (App. Div. 2016). That micro-default

alone, unaccompanied by an anticipatory repudiation, would give Plaintiff-Respondent nothing more than a micro-claim for the missed monthly payment. Plaintiff-Respondent's claim for Defendant-Appellant's full $785,259.21 due and owing balance accrued and become viable upon the charge-off of the debt and acceleration of Defendant-Appellant's future monthly payment installments on March 23, 2015. Thus, Plaintiff-Respondent had until March 23, 2021, to file its Complaint in compliance with the statute of limitations. The Appellate Division therefore did not err in holding that Plaintiff-Respondent satisfied the six-year limitations period when it filed the complaint on January 7, 2021. The Appellate Division's order affirming the Law Division's finding is supported by established New Jersey precedent, is not in conflict with any other Appellate Division or Supreme Court decision, and is final. Certification of Defendant-Appellant's challenge to the Appellate Division's order is therefore unwarranted.

CONCLUSION

Plaintiff-Respondent therefore respectfully asks that this Court deny Defendant-Appellant's petition for certification.

Respectfully submitted,
/s/ Adam J. Beedenbender
Adam J. Beedenbender
Register No. 325682020

Dated: July 3, 2024.