

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

AUSBERTO R. GALO and JINNY ERUNGEL,
Appellants,
v.
BANK OF HAWAII,
Appellee.

Cite as: 2019 Palau 1
Civil Appeal Nos. 18-025 & 18-026
Appeal from Civil Case Nos. 17-120 & 17-154

Decided: January 21, 2019

Counsel for Appellants Charles K. Greenfield
Counsel for Appellee Michael A. White

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
KATHERINE A. MARAMAN, Associate Justice

Appeal from the Trial Division, the Honorable Oldiais Ngiraikelau, Presiding Justice, in Civil Action No. 17-120, and the Honorable Lourdes F. Materne, Associate Justice, in Civil Action No. 17-154.

OPINION

PER CURIAM:

[¶ 1] This appeal is a consolidation of two separate cases. Appellants are co-signers of Promissory Notes that have defaulted and resulted in Stipulated Judgments holding them jointly and severally liable for the remaining balance on the respective Notes. They appeal the Trial Division’s denial of their Motions to Dismiss on statute of limitations’ grounds. For the reasons set forth below, we **AFFIRM**.

FACTS

[¶ 2] Although consolidated for this appeal, this case involves two separate claims. Both actions deal with Promissory Notes between non-parties as the borrowers, Appellants as the co-signers, and Bank of Hawaii as the lender. For clarity, we discuss the facts of each case separately.

I. Appellant Galo

[¶ 3] Appellant Ausberto R. Galo is the cosigner on a Promissory Note issued by Appellee to Sara Basilio. The Promissory Note and an Amendment to the Promissory Note were signed by Appellant Galo and Ms. Basilio on July 28, 2005, and the Note holds each of them jointly and severally liable for the loan. Complaint Ex. A, *Bank of Hawaii v. Basilio*, Civil Action No. 17-120 (filed April 11, 2017) [hereinafter Galo Complaint]. All of the payments on the Note were made exclusively by Ms. Basilio, with the last payment made on January 26, 2016. *See* Declaration of Tammy Lynn Horita ¶ 4, *Bank of Hawaii v. Basilio*, Civil Action No. 17-120 (filed June 26, 2017). On April 11, 2017, Appellee filed a lawsuit against Appellant Galo and Ms. Basilio claiming the Note was in default and seeking to hold them jointly and severally liable for the remaining balance.¹

[¶ 4] Ms. Basilio and Appellee agreed to a Stipulated Judgment in the amount of \$5,230.13 plus an annual interest of 9%. Appellant Galo filed a Motion to Dismiss, asserting that his cause of action accrued on July 28, 2005, and therefore the April 11, 2017 lawsuit was barred by the six year statute of limitations. The Trial Division denied the motion and held Appellant Galo jointly and severally liable for the Stipulated Judgment.

II. Appellant Erungel

[¶ 5] Appellant Jinny Erungel is the cosigner on a Promissory Note issued by Appellee to Kebesei Mongami. The Promissory Note and an Amendment to the Promissory Note were signed by Appellant Erungel and Mr. Mongami

¹ Appellee specifically requested a judgment declaring Appellant Galo and Ms. Basilio jointly and severally liable for “the principal sum of \$1,821.75; unrecovered interest in the amount of \$2,518.25; interest on the principal sum from March 18, 2017, at the rate of 16.0% per annum; late charges in the amount of \$487.88; and attorney’s fees in the amount of \$273.26.” Galo Complaint ¶ 6.

on September 20, 2007, and the Note holds each of them jointly and severally liable for the loan. Complaint Ex. A, *Bank of Hawaii v. Mongami*, Civil Action No. 17-154 (filed April 11, 2017) [hereinafter Erungel Complaint]. All of the payments on the Note were made exclusively by Mr. Mongami with the last payment made on March 24, 2016. See Declaration of Tammy Lynn Horita ¶ 4, *Bank of Hawaii v. Mongami*, Civil Action No. 17-154 (filed June 16, 2017). Appellee filed a lawsuit against Appellant Erungel and Mr. Mongami on April 11, 2017 asserting that the Note was in default and seeking to hold them jointly and severally liable for the remaining balance.²

[¶ 6] Appellant Erungel filed a Motion to Dismiss, asserting that his cause of action accrued on September 20, 2007, and therefore the April 11, 2017 lawsuit was barred by the six year statute of limitations. The Trial Division denied the motion, holding that the cause of action accrued on March 24, 2016—the last day a payment was made on the account. Appellant Erungel filed for reconsideration and, while the motion was pending, Mr. Mongami and Appellee agreed to a Stipulated Judgment in the amount of \$42,262.97 plus an annual interest of 9%. The Trial Division denied Appellant Erungel’s Motion to Reconsider and held him jointly and severally liable for the Stipulated Judgment.

[¶ 7] Appellants both filed timely notices of appeal and the cases were consolidated by the Court.

STANDARD OF REVIEW

[¶ 8] We review the Trial Division’s conclusions of law *de novo* and its findings of fact for clear error. *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4. “We may affirm or reverse a decision of the Trial Division for any reason apparent in the record.” *Rengiil v. Ongos*, 22 ROP 48, 50 (2015).

² Appellee specifically requested a judgment declaring Appellant Erungel and Mr. Mongami jointly and severally liable for “the principal sum of \$19,026.54; interest thereon from March 18, 2010, at the rate of 16.0% per annum; late charges in the amount of \$622.64; and attorney’s fees in the amount of \$2,853.98.” Erungel Complaint ¶ 6.

DISCUSSION

[¶ 9] On appeal, Appellants make the same argument asserted at the Trial Division: The date on which they signed the Promissory Notes (July 28, 2005 for Appellant Galo and September 20, 2007 for Appellant Erungel) was the date on which the cause of action against them accrued, and because both dates are more than six years ago, any claims against them are barred by the statute of limitations. Appellants base their argument on the “Governing Law” section of the Amendment to the Promissory Note, which states: “This Note shall be governed and interpreted in accordance with the laws of the Republic of Palau. In the absence of Republic of Palau law, State of Hawaii law shall govern.” Galo Complaint Ex. A at 4; Erungel Complaint Ex. A at 4.

[¶ 10] Appellants frame this case as addressing whether payment by a joint debtor tolls the statute of limitations for the non-paying joint debtor. Both parties acknowledge that there is no Palauan statute, case law, or custom addressing this specific issue. Appellee argues that Hawaii law therefore governs the Promissory Note and, under Hawaii law, partial payment on a defaulted loan by one debtor tolls the statute of limitations as to all debtors. Appellants concede that Ms. Basilio’s January 26, 2016 payment and Mr. Mongami’s March 24, 2016 payment restarted the statute of limitations period for Ms. Basilio and Mr. Mongami. They contend, however, that the choice of law provision states that Hawaii law only applies in the absence of Palauan law and, although there is no direct Palauan law on point, 1 PNC § 303 states that United States common law “shall be the rules of decision” in the absence of Palauan law. Therefore, there is applicable law in Palau that must be used in this case: United States common law. Appellants further contend that under United States common law, partial payment on a defaulted loan by one debtor does not automatically toll the statute of limitations as to other joint debtors.

[¶ 11] Although the parties focus their arguments on whether United States common law or Hawaii law governs this case, we need not resolve this issue because the statute of limitations has not run under either law. In evaluating statute of limitations’ claims, the Court must determine two things: (1) which statute of limitations applies and (2) when the cause of action accrued. *See Isimang v. Arbedul*, 11 ROP 66, 69 (2004). The parties agree

that, pursuant to 14 PNC § 405, the statute of limitations that applies to this case is six years. Therefore, the only issue in dispute is when the cause of action accrued. The parties have presented only two possible dates on which the cause of action in this case could have accrued: (1) the date on which Appellants signed the Promissory Notes or (2) the date of the last payment made to the accounts.

[¶ 12] “A cause of action accrues as soon as the party in whose favor it arises is entitled to maintain an action.” *Isimang*, 11 ROP at 74 (internal quotation marks omitted). For actions to recover the debt owned on a Promissory Note, the cause of action accrues when the Note goes into default. Each Promissory Note here lists several ways the Note can go into default including, as relevant here, “fail[ing] to make any payment when due under this Note.” Galo Complaint Ex. A at 2; Erungel Complaint Ex. A at 2. Therefore, the cause of action accrues and Appellee is entitled to maintain an action against Appellants only *after* there has been a failure to make the agreed upon payments on time. For that reason, Appellants’ argument that the cause of action accrued against them on the day they signed the Promissory Notes must fail. Under Appellants’ argument, Appellee would have to file a lawsuit against a co-signer on a loan that is not in default. Such a rule would lead to the absurd requirement that parties must file a lawsuit before a cause of action accrues in order to avoid the statute of limitations on that claim. This cannot be the case.

[¶ 13] Having rejected Appellants’ purported dates, the Court must now determine the actual dates the cause of action accrued for these claims. As discussed, the parties have cited only two potential dates on which the Notes went into default and thus, the cause of action accrued. Because the cause of action cannot, as a matter of law, have accrued on the day the Promissory Notes were signed, the Court concludes that the dates of the last payments on the accounts are the dates upon which the cause of action accrued. *See* 17 PNC § 407 (“In an action brought to recover the balance due . . . upon a cause of action upon which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account.”); *Techitong v. Peleliu Club*, 6 T.T.R. 275, 278 (1973). Therefore, the cause of action against Appellant Galo accrued on January 26, 2016, and the cause of action against Appellant Erungel accrued on March

24, 2016. Appellee's suits against the Appellants are therefore timely. Appellant Galo is jointly and severally liable for the Stipulated Judgment against Ms. Basilio, and Appellant Erungel is jointly and severally liable for the Stipulated Judgment against Mr. Mongami.

CONCLUSION

[¶ 14] We **AFFIRM** the Trial Division's judgments.