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OF GUAM

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IN THE SUPERIOR COURT OF GUAM

DIANE ANGOCO BENAVENTE, DORIS MAE ANGOCO, ANN MARIE ANGOCO BRENT, DONNA ROSE ANGOCO, and ROBERT EARL ANGOCO, Plaintiffs, vs. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., OCWEN LOAN SERVICING, LLC, PHH MORTGAGE CORPORATION, and U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE OF LSF9 MASTER PARTICIPATION TRUST, Defendants.	**CIVIL CASE NO. CV0654-24** **DECISION AND ORDER GRANTING PRELIMINARY INJUNCTION**

Plaintiffs, the children of Joaquin Angoco, move for a preliminary injunction to enjoin Defendants Mortgage Electronic Registration Systems, Inc., Ocwen Loan Servicing, LLC, PHH Mortgage Corporation, and U.S. Bank Trust National Association as trustee of LSF9 Master Participation Trust from proceeding with the foreclosure sale of Lot 247-1REM-1, Asan. The Court determines that Plaintiffs have established serious questions regarding the likelihood of success on the merits of their claim. Therefore, the Court GRANTS their motion for a preliminary injunction.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Angoco & Lot 247-1REM1

In 2006, Angoco signed a Note with an accompanying mortgage for Lot 247-1REM1,

ORIGINAL

Asan. Decl. Daniel J. Berman, Ex. A, Exs. 1-2 (July 25, 2025). While the parties do not agree on the last time a payment was made on the loan, U.S. Bank submits that it was as far back as April 24, 2012. *Id.*, Ex. 12; Opp'n Memo. at 4 (July 25, 2025). The Note contained a maturity date of October 1, 2021. Decl. Daniel J. Berman, Ex. A, Ex. 1 at § 3(A).

Angoco died in 2008. Decl. Robert E. Angoco ¶ 4 (Dec. 3, 2024) ("First Decl. Robert Angoco"). His five children received undivided interests in Lot 247-1REM1 from his probated estate. Compl., Exs. A (Dec. 3, 2024).

B. Collection Efforts & the Court's Injunction

Payment demands were issued to Angoco's estate and/or his heirs in 2014, 2015, 2016, and 2024, from various loan servicers or their attorneys. Decl. Daniel J. Berman, Ex. A, Exs. 5-11, 13. On August 27, 2024, U.S. Bank's attorney sent Angoco's estate a Notice of Default and Election to Sell Under Mortgage by Power of Sale, Final Demand for Payment and Notice for Acceleration. *Id.,* Ex. 9. The letter noted the unpaid balance of $230,806.97 as of August 30, 2024. *Id.* The bank further recorded a Notice of Default and Election to Sell Under Mortgage by Power of Sale with the Department of Land Management, and then a Notice of Sale Under Mortgage, setting a foreclosure date of December 4, 2024. *Id.*, Exs. 10-11.

However, before the sale proceeded, Plaintiffs initiated this action and successfully obtained a Temporary Restraining Order. The Court found that "Plaintiffs will suffer irreparable harm as foreclosure will cause the loss of unique family property" and "that Plaintiffs have shown a colorable argument on the merits of their claim that enforcement of Defendants' lien on the Property is time-barred pursuant to 7 GCA § 11303." Temp. Restraining Order (Dec. 4, 2024). The TRO specified that Defendants were "temporarily enjoined and restrained, until such time that the Court rules on Plaintiffs['] application for a preliminary injunction, from proceeding with the foreclosure sale" of the property at issue. *Id.* With U.S. Bank's consent, the TRO has remained in place since its issuance on December 4, 2024, while the parties litigated the matter. Second Stip. (Feb. 3, 2025). The parties now ask the Court to rule on Plaintiffs' request for a preliminary injunction.

III. LAW AND DISCUSSION

In reviewing the parties' arguments on whether a preliminary injunction should issue, the Court considers whether Plaintiffs demonstrate a combination of probable success on the merits and the possibility of irreparable injury, or that serious questions are raised and the balance of hardships tips in Plaintiffs' favor. *Mack v. Davis*, 2013 Guam 13 ¶ 12; *Sananap v. Cyfred, Ltd.*, 2009 Guam 13 ¶ 38; *San Miguel v. Dep't of Pub. Works*, 2008 Guam 3 ¶ 19. "If the plaintiff shows no chance of success on the merits, however, the injunction should not issue." *Arcamuzi v. Continental Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987).

A. Plaintiffs have a probable success on the merits of their claims.

Evaluating the probable success of Plaintiffs' claims involves a review of applicable commercial laws, statutes of limitations, tolling of such limitation periods, and lien extinction laws. The Court reviews each in turn.

1. The Note is a negotiable instrument and governed by the UCC.

Plaintiffs argue that because an action upon a promissory note must be brought within four years under 7 GCA § 11303(a), Defendants are untimely in their attempts to recover upon the Note. U.S. Bank responds that Plaintiffs apply the wrong statute of limitations and instead must utilize the rule that a statute of limitations begins to run after a loan's maturity date, as reinforced under Guam's version of the Uniform Commercial Code, 13 GCA § 3122 ("UCC").

Which statute applies depends on whether the promissory note qualifies as a negotiable instrument, in which case the UCC governs. *Yanfag v. Cyfred, Ltd.*, 2009 Guam 16 ¶ 26 n.4;

ORIGINAL

Hemlani v. Hemlani, 2015 Guam 16 ¶¶ 14, 29 ("UCC precludes recovery under a promissory note through common law breach of contract."). A negotiable instrument is a document (1) signed by the maker; (2) that contains an unconditional promise or order to pay a sum certain and no other promise, order, obligation, or power given by the maker except authorized by this division; (3) payable on demand or at a definite time; and (4) payable to order or bearer. 13 GCA § 3104; *Yanfag*, 2009 Guam 16 ¶ 26.

There is no dispute that the maker, Angoco, signed the Note, nor that it is payable in monthly installments, all at once, or all on the maturity date, and to the lender. However, the parties differ over whether the Note meets the requirement of containing only unconditional promises. A promise or order is not unconditional if the instrument states that it is subject to or governed by any other agreement or that it is to be paid only out of a particular fund or source. 13 GCA § 3105(2); *Sananap,* 2009 Guam 13 ¶ 54 (Guam law presumes, "absent an express provision to the contrary, that a note is unconditional.").

Plaintiffs point to three provisions they consider as introducing conditional terms. One such provision states, "When I make a Prepayment, [I] will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note." Decl. Daniel J. Berman, Ex. A, Ex. 1 ¶ 4. However, in contrast to what Plaintiffs contend, the right of a payor to prepay part of the principal does not constitute an additional promise or obligation so as to make the note conditional. *See Deutsche Bank Nat'l Trust Co. v. Najar*, No. 98502, 2013 WL 1791372, *11 (Ohio App. Apr. 25, 2013) (collecting cases).

A second provision states, "Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if [I] am given a notice of that different address." Decl. Daniel J. Berman, Ex. A, Ex. 1 ¶ 7. This does not appear to be an additional promise. Section 3105(1)(a) contemplates implied conditions. The Court finds that how notices are given (i.e., by mail) is an implied condition. Moreover, this particular provision is not indicating that the notice will be given subject to or governed by another agreement or to be paid out of another source. 13 GCA § 3105.

Finally, a third provision states, "That Security Instrument describes how and under what conditions [I] may be required to make immediate payment in full of all amounts I owe under this Note." Decl. Daniel J. Berman, Ex. A, Ex. 1 ¶ 10. However, Guam's UCC states that a promise is not made conditional when it "[r]efers to a separate agreement for rights as to prepayment or acceleration." 13 GCA § 3105(1)(c). This is confirmed by the UCC, which states:

> In some cases it may be convenient not to include a statement concerning collateral, prepayment, or acceleration in the note, but rather to refer to an accompanying loan agreement, security agreement or mortgage for that statement. Subsection (b)(i) allows a reference to the appropriate writing for a statement of these rights. For example, a note would not be made conditional by the following statement: "This note is secured by a security interest in collateral described in a security agreement dated April 1, 1990 between the payee and maker of this note. Rights and obligations with respect to the collateral are [stated in] [governed by] the security agreement."

U.C.C. § 3-106 cmt. 1 (Am. L. Inst. & Unif. L. Comm'n 2023).[1] The Court construes the Note's reference to a security agreement as not making it conditional.

Because all the elements of a negotiable instrument are met, the Note is considered a negotiable instrument for which the UCC applies. *Hemlani,* 2015 Guam 16 ¶ 30 ("the UCC

[1] The Court notes that the UCC altered and renumbered this provision; however, the underlying principles still apply.

would control if the Promissory Note were a negotiable instrument."); *Yanfag*, 2009 Guam 16 n. 4.

2. The UCC determines when the limitations period accrues.

Because the UCC governs the Note, the Court applies the statute of limitations applicable under that section of Guam law. Under Guam's UCC, "[a] cause of action against a maker or an acceptor accrues [i]n the case of a time instrument on the day after maturity." 13 GCA § 3122(1)(a). The Mortgage note matured on October 1, 2021; thus, the statute of limitations began running on October 2, 2021.

While Guam's UCC specifies the instrument's maturity date as the point at which the limitations period begins to accrue, it does not define the expiration date thereafter. U.S. Bank concedes that a four-year limitation period applies after the accrual date, meaning that the deadline to bring an action (unless tolled) was October 2, 2025. Opp'n Mem. at 6 (July 25, 2025).

Before reviewing the impact of the expiration of that deadline, the Court addresses Plaintiffs' arguments that the statute of limitations begins to run for each unpaid installment. Plaintiffs cite cases that derive from jurisdictions that have specific statutory language to support those holdings, and further, do not have the same accrual language as section 3122(1)(a). For example, they cite *White v. Moriarty*, 19 Cal. Rptr. 2d 200 (Cal. App. 1993) and *Karnes v. Marrow*, 864 S.W.2d 848 (Ark. 1993) for the proposition that the limitations period begins to accrue upon each unpaid installment. Those respective jurisdictions—California and Arkansas—both adopted the 1990 revision to Article 3 of the UCC. Section 3-118 of that compendium provides language that an action to enforce a note must be commenced within six years after the due dates or dates stated in the note, or if the due date is accelerated, within six

ORIGINAL

years thereafter. UCC § 3-118(a). The Guam Legislature has never adopted this portion of the UCC.

Plaintiffs also cite *U.S. Bank Nat. Ass'n v. Mongru*, 241 N.Y.S.3d 722, 725 (App. Div. 2025), for its holding that "when a mortgage is payable in installments, separate causes of action accrue for each installment that is not paid and the statute of limitations begins to run on the date each installment becomes due." There is no indication in *Mongru*, however, that the note at issue fell under New York's UCC. The *Mongru* court's non-UCC analysis demonstrates that it did not consider the mortgage note governed by New York's UCC, consistently applying CPLR § 213 rather than UCC provisions, found in Chapter 38 of its Consolidated Laws. Its focus on real estate principles (acceleration, voluntary discontinuance, Foreclosure Abuse Prevention Act [FAPA]) without reference to commercial paper or UCC § 3-104 negotiability confirms the note fell outside UCC scope. *See also US Bank N.A. v. Nelson*, 36 N.Y.3d 998, 1007 (2020) (installment negotiable notes like mortgages implicate UCC Article 3). Even under New York law—which does not control here—negotiable instruments trigger section 3-122 maturity accrual, while non-negotiable instruments use CPLR installment rules. This section contains the same accrual language as 13 GCA § 3122 relative to a cause of action accruing on the date of maturity. In summary, the Court rejects Plaintiffs' cases and arguments contending that the statute of limitations begins to run when an installment payment is unpaid because Guam law does not have comparable statutory requirements. Instead, the controlling law under the UCC fixes accrual at October 2, 2021, rendering the four-year limitations period expired at October 2, 2025, absent tolling.

3. The time to enforce the Note has not been tolled.

U.S. Bank suggests an injunction against foreclosure amounted to an injunction against

ORIGINAL

any action on the Note. The Court recognizes that "[w]hen the commencement of an action is stayed by injunction . . ., the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action." 7 GCA § 11408. Thus, the question is whether U.S. Bank has been enjoined from commencing an action to collect on the Note.

To answer this question, the Court first reviews the language of the TRO. The TRO restrained U.S. Bank "from proceeding with the foreclosure sale of the real property." Temp. Restraining Order. Notably, however, no language in the TRO enjoins U.S. Bank from initiating an action to recover on the Note.

Courts distinguish between the two remedies of debt collection and foreclosure. For example, Texas has long held that "a suit for an injunction against nonjudicial foreclosure does not toll the statute of limitations, because it is no impediment to the lender's ability to sue on the note or seek judicial foreclosure of the property." *Deutsche Bank Nat'l Trust Co. v. Ra Surasak Ketmayura*, 2015 WL 3899050, at *9 (W.D. Tex. June 11, 2015) (citing *Davis v. Andrews*, 30 S.W. 432, 529 (Tex. 1895) and *Landers v. Nationstar Mortg., LLC*, 461 S.W.3d 923, 927 (Tex. App. 2015) (injunction against a foreclosure sale did not amount to an injunction from a judicial foreclosure)). Similarly, in *Wells Fargo Bank, Nat. Ass'n v. Welch*, 203 N.Y.S.3d 761, 764 (N.Y. App. Div. 2024), an order enjoining the sale of property in a prior foreclosure proceeding did not toll the limitations period for a new foreclosure action. The Court finds no reason to approach this issue different from these courts. The TRO plainly enjoined foreclosure, nothing else.

4. The note is extinguished with the lien.

The Court proceeds to examine the impact of U.S. Bank's ability to foreclose given that the time to bring an action on the Note has expired. On this issue, Plaintiffs argue that 18 GCA §

ORIGINAL

35603 extinguishes any lien held by U.S. Bank. Section 35603 states: "A lien is extinguished by the lapse of time within which, under the provisions of Title 7 of the Guam Code Annotated . . ., an action can be brought upon the principal obligation." In *Kaichen's Metal Mart, Inc. v. Ferro Cast Co.*, the court noted that "the underlying note is the 'principal obligation' and the lien is incident thereto." 39 Cal. Rptr. 2d 233, 235 (Ct. App. 1995).

U.S. Bank contends that *Kaichen's Metal Mart, Inc.* and other California cases also stand for the proposition that a power of sale in a deed of trust is unaffected by section 35603. Def.'s Resp. at 2 (citing *Kaichen's Metal Mart, Inc.*, 39 Cal. Rptr. 2d at 236 n.1). However, the lien at issue here is a mortgage—not a deed of trust. Mortgages and deeds of trust have similar functions, but they remain distinct types of instruments. *Aviel v. Ng*, 74 Cal. Rptr. 3d 200, 205, 207 (Ct. App. 2008). Traditionally, deeds of trust with powers of sale have been exempted from statutory authority that extinguish liens when a limitations period passes. But in *Aviel*, the court made clear that that rule has no impact on the extinction of a mortgage and its underlying debt. Noting that "historically the rule has been that time does not outlaw the trustee's power of sale under a deed of trust," the Court commented that the "running of the statute of limitations on an obligation underlying a mortgage or deed of trust bars judicial foreclosure as well as an action to enforce the obligation." *Id.* at 206 n.4.

Here, U.S. Bank's ability to foreclose on the mortgage depended on U.S. Bank's timely prosecution of the Note. Now that the time to collect on the Note has passed, U.S. Bank's lien has also been extinguished. This means that it may no longer avail of the remedy of foreclosure.

B. Plaintiffs demonstrate irreparable injury.

The Court has already found that Plaintiffs are likely to succeed on the merits given the Court's analysis that U.S. Bank's lien has been extinguished. To complete its analysis on a preliminary injunction, the Court next examines Plaintiffs' arguments regarding irreparable injury. The Court previously found that Plaintiffs met their burden of irreparable harm "as foreclosure will cause the loss of unique family property." Temp. Restraining Order at 1. This remains accurate today.

The Court also previously noted that "there is a possibility that the redemption period could expire during the pendency of this litigation resulting in Plaintiff's inability to redeem unique family property." *Id.* This is also correct although Plaintiffs now have had an additional year since the Temporary Restraining Order in which they have been able to remain on the property.

In any event, the Court continues to find that Plaintiffs will suffer an irreparable injury absent injunctive relief.

IV. CONCLUSION

The Court finds that the Plaintiffs have met their burden to show a likelihood of success or a serious question as to their ability to prevail in this matter. Thus, the Court GRANTS the motion for a preliminary injunction.

SO ORDERED this 10 March 2026.

HON. ELYZE M. IRIARTE
Judge, Superior Court of Guam

Appearing Attorneys:
Michael A. Pangelinan, Esq., Calvo Jacob & Pangelinan LLP, for Plaintiffs
Daniel J. Berman, Esq., Law Office of Daniel J. Berman & Regina J. McClendon, Esq., (pro hac vice), Troutman Pepper Locke LLP, for Defendant U.S. Bank Trust National Association

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