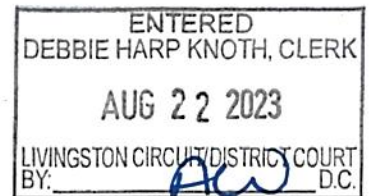


COMMONWEALTH OF KENTUCKY  
LIVINGSTON CIRCUIT COURT  
CIVIL ACTION NO. 23-CI-00042



JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

PLAINTIFF

VS.

MARY QUERTERMOUS A/K/A MARY ELLEN  
QUERTERMOUS, ET AL.,

DEFENDANTS

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**ORDER**

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This matter having come before the Court on Defendants' Motion for Judgment on the Pleadings. The defendant was not present but was represented by Hon. Tracey A. Shtofman. The plaintiff was not present but was represented by Hon. Gini Grace. Both counsel made arguments before the Court. Upon review of the pleadings, motions, arguments of counsel and being otherwise sufficiently advised;

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

**FINDINGS OF FACT**

1. The defendants signed a note and a mortgage securing a lien on real property located at 415 Court Street, Smithland, Kentucky on May 26, 2004.
2. The plaintiffs filed a foreclosure action on May 12, 2023 alleging the defendants were in default of a note and mortgage in which the plaintiffs were assigned the rights of said note and mortgage. The defendants state that the alleged default occurred over fifteen (15) years ago, specifically on June 1, 2007. The defendants state that since the default occurred over 15 years ago, the plaintiff must have brought an action to recover no later than June 1, 2022 pursuant to KRS 413.010. Defendant is requesting

the mortgage and assignment of mortgage be released and all claims dismissed as barred by the statute of limitations.

3. The plaintiff alleges the defendants' motion for judgment on the pleadings is procedurally defective at this time because the pleadings are not closed. The defendants filed an answer after their deadline of June 6, 2023 without leave of court. Specifically, the plaintiff states that the defendants filed a motion for judgment on the pleadings before properly filing an answer. Thus, the pleadings are not closed due to this procedural inequity.
4. Additionally, the plaintiff alleges the defendant fails to show the statute of limitations bars the action. The plaintiff states the defendants have failed to prove the fifteen years started the time to run in 2007. Moreover, the plaintiffs argue KRS 411.190(8) does not support the date the defendants allege the claim accrued and does not provide evidential support for the date the loan accrual began.

#### **CONCLUSIONS OF LAW**

1. CR 12.03 provides a party may move for judgment on the pleadings after the pleadings are closed. Pleadings are closed after the filing of complaints, answers, and any replies. Kentucky's "Civil Rule 12.03 provides that any party to a lawsuit may move for a judgment on the pleadings." *City of Pioneer Village v. Bullitt Cty.*, 104 S.W.3d 757, 759 (Ky. 2003).
2. In this case, the Court finds that the pleadings are not closed. The defendants filed an answer past the deadline to file a response and without leave from court. This Court determines an answer filed without leave of court does not constitute or initiate the closure of the pleadings. As a result, the Court finds the defendants' motion for

judgment on the pleadings to be premature and improper at this time and DENIES such relief.

3. While the Court has already denied the defendants' motion due to procedural inaccuracy, the Court will address the remaining argument of plaintiffs' counsel concerning statute of limitations. A judgment on the pleadings "should be granted if it appears beyond doubt that the nonmoving party cannot prove any set of facts that would entitle him/her to relief." *Id.* "[T]he circuit court is not required to make any factual determination; rather, the question is purely a matter of law." *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. App. 2002). Further, CR 12.03 may be treated as a motion for summary judgment. *Schultz v. Gen. Elec. Healthcare Fin. Servs., Inc.*, 360 S.W.3d 171, 177 (Ky. 2012). *Scott v. Forcht Bank, NA*, 521 S.W.3d 591, 594 (Ky. Ct. App. 2017).
4. The facts in this case pertain to the time period of enforcement for a note and mortgage concerning real property. In *Kraut v. City of Dayton*, 97 S.W. 1101 (Ky. 1906), under the law, as it then existed, an installment was placed on the tax bill of the owner of the property and became due and payable in July. However, the city was given no remedy to enforce the collection of this claim until November, 1899. At which time, the charter authorized its enforcement either by distraint or by suit. Section 3544, Ky. St. 1903. The Court held the statute of limitations did not begin to run until the city had a cause of action. The fact that the claim was due and payable in July did not start the statute to running at that time. The cause of action arose when the city had a right to enforce the payment of its claim, and not before. *City of Louisville v. Johnson*, 95 Ky. 254, 24 S. W. 875. The cause of action accrued,

therefore, in November, 1899. This action was instituted in September, 1904, which was within five years after the cause of action arose, and, therefore, the claim was not barred at the time.

5. In this case, the facts are similar to *Kraut*. Here, the plaintiff's cause of action has not accrued yet. The plaintiff's cause of action would start when, under the terms of the mortgage, the plaintiff provided the defendants with a notice of default prior to any acceleration. That has not been done here. In fact, the note does not even mature until June 1, 2034. There has been no fact or proof produced by the defendants that show the note has been accelerated by the plaintiff nor any evidence the Note and Mortgage have matured. As such, the Court opines the plaintiff's claim is not barred by the statute of limitations.

5. The Court orders the defendants' motion for judgment on the pleadings is DENIED.

This is a final and appealable order and no such cause for delay.

ENTERED this 22 day of August, 2023.



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HON. NATALIE WHITE  
JUDGE, LIVINGSTON CIRCUIT COURT

**CLERK'S CERTIFICATE**

I, the undersigned, hereby certify that the foregoing was served by mailing first-class, postage prepaid to the following:

Hon. Tracy A. Shtofman  
Farmer & Wright, PLLC  
4975 Alben Barkley Drive Ste. 1  
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Hon. Ashley Rothfuss  
Diaz Anselmo & Associates, PSC  
P.O. Box 19519  
Fort Lauderdale, FL 33318

On this the 22<sup>nd</sup> day of August, 2023.

  
CLERK, LIVINGSTON CIRCUIT COURT