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Supreme Court resolves dispute over "zombie debt" from defaulted car loans

SANTA FE – A car buyer's voluntary partial payment on a loan deficiency does not restart the time limit under New Mexico law for bringing a lawsuit to recover the uncollected balance on a repossessed vehicle, the state Supreme Court ruled today.

In a unanimous opinion, the Court rejected arguments by Autovest, L.L.C, a debt purchasing company, that a four-year statute of limitations in the Uniform Commercial Code (UCC) for a breach of contract lawsuit is renewed whenever a borrower pays any amount toward an outstanding balance.

"Reviving the limitation period would allow a debt collector to file a lawsuit regardless of how many years have passed since default, even if the lawsuit would normally be time-barred," the Court wrote in an opinion by Chief Justice David K. Thomson. "This would sanction the eternal revival of claims such that the specter of zombie debt rising from the grave would forever haunt consumers. There would be no end to the underinformed debtor's financial anguish."

The Court reached its decision after analyzing different provisions of state law that establish time limits for bringing lawsuits. The UCC governs the sale of goods such as automobiles and imposes a four-year statute of limitations for filing a breach of contract lawsuit. Another state statute sets a six-year limitation for lawsuits involving promissory notes and other written contracts. It includes a "partial payment rule" that restarts the time limit on lawsuits from the date of each partial or installment payment. However, that law clearly states its provisions do not apply when another statute, such as the UCC, establishes a different time restriction on lawsuits, the Court explained.

"Allowing for zombie debt would upend the four-year limitation, permitting forever-revival of claims if a debtor attempts to repay any minimal amount towards the deficiency," the Court wrote. "It is not the purview of this Court to stop a bad deal; individuals are responsible for their own decisions. But absent a command from the Legislature, a person should not have to submit to perpetual debt for the mistake of purchasing a car under less-than-desirable terms. The plain and fair reading of the statutes supports this principle."

The justices affirmed a state Court of Appeals decision involving two cases that Autovest filed in district court in Doña Ana County against borrowers who defaulted on auto loan contracts. A bank sold the repossessed cars at auctions but the proceeds failed to cover the balance of the

loans. The lender sold its interest in the loan deficiencies to Autovest, who later sued the consumers for the remaining amount.

The Court of Appeals determined that the lawsuits were prohibited because they were filed more than four years after the borrowers first breached their loan contracts by missing installment payments to the bank and the time limit was not restarted when the consumers later made partial payments on the loan deficiencies. Autovest then appealed to the Supreme Court.

In one of the cases, a mother and daughter – Debra and Debbie Agosto – financed about $14,000 to buy a used car in 2006. They defaulted on the loan two years later. In 2011, Autovest acquired the bank's interest in a $9,000 loan deficiency and referred the debt to a collection agency, which obtained a $1,000 partial payment that year from Debra Agosto. Autovest filed a lawsuit in 2014 for the remaining deficiency.

In the second case, Maria Estrada took out a loan for $17,900 to buy a pickup truck in 2007 and defaulted on it a year later. The bank repossessed the truck and sold it in 2009, leaving a deficiency of $9,100. Estrada made a made payment of $999 to the bank shortly after the truck was sold at auction. Autovest acquired the bank's interest in Estrada's contract in 2011 and sued for the remaining deficiency in 2013.

In its appeal before the Supreme Court, Autovest contended that its collection lawsuits were allowed under state law because they were filed within four years of the buyers' last voluntary partial payments. The justices disagreed, explaining that "the Legislature's language is unambiguous and mandatory" and the Court "was compelled to enforce its terms" concerning the UCC's time limit on breach of contract lawsuits involving the sale of goods.

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To read the decision in *Autovest, LLC v. Agosto,* No. S-1-SC-38834, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/530442/index.do