

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 15, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1399

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

BANK OF AMERICA,

PLAINTIFF-RESPONDENT,

V.

**HILLESTAD INTERNATIONAL, INC., HILLESTAD
PHARMACEUTICAL, INC., DONALD L. HILLESTAD,
AND LUCILLE T. HILLESTAD,**

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Vilas County:
JAMES B. MOHR, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Donald and Lucille Hillestad and their corporations,¹ appeal a judgment granting Bank of America recovery on a personal loan, a corporate loan and Donald Hillestad's personal guarantee on the corporate loan. Hillestad argues that the Bank's action is barred by the statute of limitations, equitable estoppel, laches and waiver. We reject these arguments and affirm the judgment.²

¶2 The Hillestads personally borrowed \$800,000 secured by commercial property in 1985. Hillestad Corporation borrowed \$430,000, secured by corporate equipment in 1986. Donald Hillestad also personally guaranteed all of the Hillestad Corporation's debts up to \$1,500,000. Both of the loan agreements allowed the Bank the option to declare the loans in default upon nonpayment, but also allowed the Bank the option to work with Hillestad regarding the repayment. The personal guarantee provided that when a declaration of default occurred, the Bank could then proceed to collect from the guarantor. All of the transactions included a waiver of the statute of limitations.

¶3 The first nonpayment on both loans occurred in 1988. The Bank exercised its option to work with Hillestad rather than immediately declaring the loans in default. For the next three years, the Bank renegotiated, granted forbearance requests and adjusted payment schedules in order to facilitate repayment of the loans.

¹ Hillestad Pharmaceutical, Inc., owns Hillestad International, Inc., the successor to Hillestad Corporation. Unless otherwise noted, we refer to the appellants as "Hillestad" for convenience.

² Our resolution of these issues obviates the need to address numerous other issues raised in Hillestad's brief.

¶4 The Bank declared the Hillestad Corporation loan in default on July 15, 1991. At that time it demanded payment from the guarantor, Donald Hillestad. The Bank never expressly declared the personal loan in default. A 1990 sale of property that secured the personal loan covered the principle balance. In June 1990, the Bank proposed a generous repayment plan concerning the remaining interest on the personal loan. Donald Hillestad signed a letter acknowledging the outstanding interest on the personal loan.

¶5 The Hillestads moved from California to Wisconsin and restarted their company as Hillestad International in 1992. The Bank continued to correspond with Donald Hillestad regarding the remaining corporate and personal debts. He continued to discuss repayment with the Bank regarding the corporate loan and made sporadic payments through the summer of 1995. Hillestad denied owing the remaining interest on the personal loan. The Bank filed this action to collect the remaining amounts on the corporate and personal loans on November 30, 1995.

¶6 The Wisconsin six-year statute of limitations applies to this case. *See* WIS. STAT. § 893.43 (1997-98).³ The action originated in California where the applicable statute of limitations totals eight years based on CAL. CIVIL CODE §§ 337 and 360.5. In California, obligations containing a waiver of the statute of limitations extend the usual four-year limitation period to eight years. Because the eight-year limitation period in California is longer than the six-year period applied in Wisconsin, we apply the shorter of the two statutes. *See* WIS. STAT. § 893.07.

³ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶7 The action was timely commenced under the Wisconsin six-year limitation period. The trial court correctly concluded that the loan documents give the Bank the right to establish the date of default by express declaration. The Bank expressly declared the corporate loan and personal guarantee in default on July 15, 1991. Its filing of this action was the first time it expressed unwillingness to continue to exercise its option to work with the Hillestads on the personal loan and operates as a declaration of default. Because this action was commenced within six years of the Bank's first declaration of default, the action was timely filed.

¶8 The doctrine of equitable estoppel and laches do not provide Hillestad with a defense. Hillestad cites *Saric v. Brlos*, 247 Wis. 400, 408, 19 N.W.2d 103 (1945) for the proposition that a court of equity will not aid a party whose application is destitute of conscience, good faith, and reasonable diligence, and will discourage stale demands. The record does not show bad faith, inequitable conduct or lack of diligence by the Bank. The extensive history of cooperation and communication between the parties establishes that Hillestad acknowledged the debts and knew that the Bank expected repayment. The parties worked together after the initial declaration of default. The Bank's activities would not have induced a reasonable person to believe that it intended to forfeit its right to recover on the loans. See *Milas v. Labor Ass'n of Wisconsin Inc.*, 214 Wis. 2d 1, 11, 571 N.W.2d 656 (1997).

¶9 Hillestad's argument that the Bank waived its right to collect under the loans is based on the assertion that a bank officer "admitted that he considered the sale of 1534 Berger Drive a nonjudicial foreclosure." Hillestad argues that under California law, a nonjudicial foreclosure sale relinquishes any further right of the lender to collect on that loan. At trial, the Bank officer testified that the sale

was not a nonjudicial foreclosure, and Hillestad attempted to impeach that testimony with a prior inconsistent statement. The trial court carefully ascertained the Bank officer's understanding of the terminology and reasonably accepted his trial testimony over the inconsistent statement he made in a deposition.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

