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3 **FOR PUBLICATION**
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8 **IN THE SUPERIOR COURT**
9 **OF THE**
10 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**
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13 **Western Mortgage Co., Inc.,**) **Civil Action No. 03-0051**
14 **Plaintiff,**)
15 **v.**)
16 **FTD, Ltd.,**) **ORDER DENYING SUMMARY**
17 **Defendant.**) **JUDGMENT**
18)
19)
20)

21 THIS MATTER came before this Court on February 19, 2004, on Defendant, FTD, Ltd.’s
22 (“FTD”) motion to dismiss pursuant to Commonwealth Rule of Civil Procedure 12(c). Robert
23 Goldberg, Esq. represented FTD, and Lawrence J. Teker, Esq. represented the Plaintiff, Western
24 Mortgage, Co., Inc. (“Western”). Having considered all briefs, arguments, and records on file, the
25 Court now renders its decision as follows.
26

27 **FACTS**

28 The underlying Complaint in this matter stems from a foreclosure action on two mortgages

1 on a property in Saipan, for an indebtedness of approximately One Billion, Three Hundred Fifty-Four
2 Million, One Hundred Eighty-Three Thousand, Nine Hundred Thirty-Six Yen (¥1,354,183,936). The
3 mortgages are the result of a loan agreement executed in July 1988 between EIEI and Pacific
4 Mortgage Co., Ltd. (“Pacific”), for two billion Yen (¥2,000,000,000). In order to secure EIEI’s loan,
5 FTD signed a loan guarantee in favor of Pacific.
6

7 The July 1988 mortgage covered sixteen lots, but was amended in December 1988, adding
8 two additional lots. EIEI and Pacific entered into a second mortgage on August 30, 1989. There is
9 no evidence before this Court suggesting FTD protested the revision.
10

11 On December 7, 1990, Pacific executed a partial release of the mortgage, releasing eleven of
12 the lots covered by the 1988 mortgage. Pursuant to the partial release, seven lots remained subjected
13 to the mortgage.
14

15 On December 10, 1993, EIEI, FTD, Pacific, Kabushiki Kaisha Oita Flower Country Club
16 (“OFC”), and Harunori Takahashi executed an Assumption Agreement. By the terms of the
17 Assumption Agreement, OFC assumed joint responsibility, with EIEI, for the 1988 and 1989
18 mortgages. The Assumption Agreement between the parties also recognized that the mortgages were
19 in default as of December 10, 1993.
20

21 On June 13, 2000, EIEI executed a document acknowledging the EIEI owed Pacific One
22 Billion, Three Hundred Fifty-Four Million, One Hundred Eighty-Three Thousand, Nine Hundred
23 Thirty-Six Yen (¥1,354,183,936), the same amount Plaintiff is seeking in this foreclosure action
24

25 On June 28, 2002, Pacific assigned the mortgages to Yugenn Kaisha Torico Property
26 (“Yugenn”), which immediately assigned the mortgages to Western. Shortly thereafter, on October
27 8, 2002, Western notified FTD that due to nonpayment, foreclosure on the properties was pending.
28 Western followed the notice with a Complaint, filed January 28, 2003, seeking foreclosure on the
properties. FTD contends that Western’s complaint is barred by the statute of limitations, that any

1 wavier of the statute of limitations is invalid under CNMI law, and there was no reaffirmation of the
2 mortgage, which would have reset the running of the statute of limitations. Western, in turn, argues
3 that the statute of limitations is not a valid defense under the facts of this matter, that the statute of
4 limitations was waived, and, regardless, the statute of limitations clock was restarted in 2000
5 following EIEI's reaffirmation of the mortgage.
6

7 **STANDARD FOR SUMMARY JUDGMENT**

8 Summary judgment is appropriate where “there is no genuine issue as to any material fact and
9 [the documents show] that the moving party is entitled to a judgment as a matter of law.” Com. R.
10 Civ. P. 56(c); *In re Estate of Roberto*, 2002 MP 23 ¶ 14. In deciding a summary judgment motion,
11 the initial burden is on the moving party, and the Court construes the evidence and inferences in the
12 light most favorable to the non-moving party. *Santos v. Santos*, 4 N.M.I. 206, 209 (1994) (*citing Rios*
13 *v. Marianas Pub. Land Corp.*, 3 N.M.I. 512, 518 (1993)). “A genuine dispute exists if the evidence
14 is such that a reasonable jury could return a verdict for the non-moving party.” *Eurotex (Saipan), Inc.*
15 *v. Muna*, 4 N.M.I. 280, 283-84 (1995) (internal quotations omitted). In challenging a motion for
16 summary judgment, the non-moving party may not rest simply upon mere allegations or denials of
17 the moving party's pleading, but “must set forth specific facts showing that there is a genuine issue
18 for trial.” Com. R. Civ. P. 56(e); *Eurotex (Saipan), Inc.*, 4 N.M.I. at 284-85.
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21 **DISCUSSION**

22 Turning first to the assignment. Generally, any claim for money due under a valid contract,
23 including a mortgage, may be assigned. When an assignment of a right is made, the assignee takes
24 under the assignment only the rights possessed by the assignor. The assignee is said to “step into the
25 shoes of the assignor.” Consequently, any defense involving the statute of limitations that the obligor
26 could have set up against the obligee carries through to the assignee. *Sinclair Ref. Co. v. Rosier*, 180
27 P. 807 (Kan. 1919). This same principle extends to the secondary obligee, here FTD.
28

1 [T]he secondary obligor's rights and duties with respect to the principal obligor and
2 the obligee are the same as if, on the day that the statute of limitations expired, the
3 obligee had released the principal obligor from its duties pursuant to the underlying
4 obligation without preserving the secondary obligor's recourse against the principal
5 obligor.

6 RESTATEMENT (THIRD) OF SURETYSHIP AND GUARANTY § 43 (1996). As such, the question before
7 the Court is whether Western's right of collection against the obligee, EIEI, and the secondary
8 obligee, FTD, were preserved, or were they extinguished with the running of a statute of limitations.

9 Generally, the statute of limitations begins to run when a party knows or has reason to know
10 that she was injured. *Andrews v. TRW, Inc.*, 225 F.3d 1063, 1066 (9th Cir. 2000). Also to be
11 considered in the present case is that the mortgages that are the subject of his dispute were not one,
12 continuous contract, but rather several contracts. A contract is discharged if a new agreement comes
13 into effect when some of the terms of the new contract are inconsistent with the old contract.
14 *Riverside Coal Co. v. Am. Coal Co.*, 139 A. 276, 278 (Conn. 1927). Here, there were two occasions,
15 in 1988 and again in 1990, where the mortgage was changed to include or exclude certain lots. Each
16 modification of the mortgage resulted in a new contract. Consequently, the statute of limitations was
17 reset on each occasion and began to run once default occurred under the new contract. Following the
18 changes to the mortgage, which included and then excluded certain lots, resetting the contract each
19 time, the statute of limitations were again reset on December 10, 1993, when the parties, including
20 FTD and Western, participated in the execution of an Assumption Agreement.

21
22 When a party with knowledge or sufficient notice of his rights freely does what amounts to
23 a recognition or adoption of a contract as existing, or acts in a manner inconsistent with its
24 repudiation, he is to have accepted it. *Riverside Coal Co.*, 139 A. at 278. Here, the Assumption
25 Agreement acknowledged that the mortgage was in default. FTD accepted the Assumption
26 Agreement, and in doing so, the statute of limitations was again reset. Finally, on June 13, 2000,
27 EIEI executed a document acknowledging EIEI's indebtedness to Pacific for the ¥1,354,183,936 now
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