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SUPREME COURT OF TEXAS
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No. 22-0910

IN THE SUPREME COURT OF TEXAS

Deysi R. Santos,

Petitioner,

v.

Yellowfin Loan Servicing Corp.,
as Successor in Interest to First Franklin,

Respondent.

On Appeal from the Fourteenth Court of Appeals
in Houston, Texas
Case No. 14-21-00151-CV

PETITIONER DEYSI R. SANTOS'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

Identity of the Parties and Counsel ii

Statement of the Case 1

Statement of Jurisdiction 2

Issues Presented 3

Introduction 4

Statement of Facts 7

I. Background 7

II. Procedural history 9

Summary of Argument 11

Argument 13

I. The Court of Appeals erred in holding that Yellowfin had a right to collect unpaid debt over twelve years after the foreclosure on Santos's home. 13

A. Texas Property Code Section 51.003(a) bars Yellowfin's deficiency action. 13

1. Section 51.003(a)'s text and purpose encompass actions brought by junior creditors who did not foreclose on the property. 13

2. The precedent relied on by the Court of Appeals defies Section 51.003's text and purpose. 16

3. In any case, *Mandarino* is distinguishable. 22

B. Even if Section 16.004(a)(3) applies, Yellowfin's suit is still untimely. 23

1. The right to recover the balance on the junior loan accrued at the 2007 foreclosure, when Yellowfin's predecessor-in-interest could have sought a judicial remedy. 25

2. The 2007 foreclosure on the senior loan accelerated the junior loan. 28

C. Yellowfin's position is at odds with the Legislature's purpose in enacting statutes of limitations. 31

II. Yellowfin waived its acceleration rights, if any, by failing to act for over twelve years. 32

Prayer for Relief 37

Certificate of Compliance .....

Certificate of Service .....

INDEX OF AUTHORITIES

Page(s)

Cases

Alford, Meroney & Co. v. Rowe,
619 S.W.2d 210 (Tex. App.—Amarillo 1981, writ ref'd n.r.e.) 33

Computer Assocs. Int'l, Inc. v. Altai, Inc.,
918 S.W.2d 453 (Tex. 1996).....32

Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc.,
120 S.W.3d 878 (Tex. App.—Fort Worth 2003, pet. denied) 25

Conversion Props., L.L.C. v. Kessler,
994 S.W.2d 810 (Tex. App.—Dallas 1999, pet. denied).....19

Cowan v. Wilson,
85 S.W.2d 823 (Tex. App.—Amarillo 1935, writ dism'd).....22

Diversified Mortg. Invs. v. Lloyd D. Blaylock Gen. Contractor, Inc.,
576 S.W.2d 794 (Tex. 1978).....8, 15, 21, 26, 29

Goode v. Davis,
135 S.W.2d 285 (Tex. App.—Fort Worth 1939, writ dism'd
judgm't cor.).....22

Gulf Ins. Co. v. Burns Motors, Inc.,
22 S.W.3d 417 (Tex. 2000).....36

Haddington Fund, LP v. Kidwell,
No. 05-19-01202-CV, 2022 WL 100111 (Tex. App.—Dallas
Jan. 11, 2022, pet. denied) (mem. op.....20

Holy Cross Church of God in Christ v. Wolf,
44 S.W.3d 562 (Tex. 2001)..... 29-30, 30

Page(s)

Jackson v. Thweatt,
883 S.W.2d 171 (Tex. 1994).....36

LaLonde v. Gosnell,
593 S.W.3d 212 (Tex. 2019).....33

Mandarino v. Sherwood Lane Invs. LLC,
2016 WL 4034568 (Tex. App.—Houston [1st Dist.] July 26, 2016, no pet.) (mem op.).....16, 17, 20, 22

Marhaba Partners Ltd. P'ship v. Kindron Holdings, LLC,
457 S.W.3d 208 (Tex. App. 2015, pet. denied).....17, 18, 21, 26, 29

Mays v. Bank One, N.A.,
150 S.W.3d 897 (Tex. App.—Dallas 2004, no pet.) 16, 18, 19, 21

McGowan v. Pasol,
605 S.W.2d 728 (Tex. Civ. App.—Corpus Christi 1980, no writ).....35

McLemore v. Pac. Sw. Bank, FSB,
872 S.W.2d 286 (Tex. App.—Texarkana 1994, writ dism'd by agr.) 28

Moayedi v. Interstate 35/Chisam Rd., L.P.,
438 S.W.3d 1 (Tex. 2014).....15

Molinet v. Kimbrell,
356 S.W.3d 407 (Tex. 2011).....15

Murray v. San Jacinto Agency, Inc.,
800 S.W.2d 826 (Tex. 1990).....25, 27

O'Brien v. Wheelock,
184 U.S. 450 (1902).....34

Page(s)

PlainsCapital Bank v. Martin,
459 S.W.3d 550 (Tex. 2015).....13

Poston v. Wachovia Mortg. Corp.,
No. 14-11-00485-CV, 2012 WL 1606340 (Tex. App.—Houston [14th Dist.] May 8, 2012, pet. denied) (mem. op.).....26

Rieder v. Woods,
603 S.W.3d 86 (Tex. 2020).....22

Robinson v. Weaver,
550 S.W.2d 18 (Tex. 1977).....32

Safeway Stores, Inc. v. Certainteed Corp.,
710 S.W.2d 544 (Tex. 1986).....31

Santos v. Yellowfin Loan Servicing Corp.,
2022 WL 2678846 (Tex. App.—Houston [14th Dist.] July 12, 2022, pet. filed) (mem. op.).....1

Sw. Bell Tel. Co. v. Mktg. on Hold Inc.,
308 S.W.3d 909 (Tex. 2010).....36

Tenneco Inc. v. Enter. Prods. Co.,
925 S.W.2d 640 (Tex. 1996).....34

Trelltex, Inc. v. Intecx, LLC,
494 S.W.3d 781 (Tex. App.—Houston [14th Dist.] 2016, no pet.).....35

Trunkhill Cap., Inc. v. Jansma,
905 S.W.2d 464 (Tex. App. 1995.—Waco 1995, writ denied)... 15-16, 16, 27

Ulico Cas. Co. v. Allied Pilots Ass'n,
262 S.W.3d 773 (Tex. 2008).....33

Page(s)

Valdez v. Hollenbeck,
465 S.W.3d 217 (Tex. 2015).....12, 24

Vinewood Cap., LLC v. Sheppard Mullin Richter & Hampton, LLP,
735 F. Supp. 2d 503 (N.D. Tex. 2010).....34

Wells Fargo Bank, N.A. v. Express Limousines, Inc.,
No. 03-21-00266-CV, 2022 WL 3048235 (Tex. App.—Austin Aug. 3, 2022, no pet.) (mem. op.).....31

Wesley v. Amerigo, Inc.,
No. 10-05-00041-CV, 2006 WL 22213 (Tex. App.—Waco Jan. 4, 2006, no pet.) (mem. op.).....25, 26

Williams v. Moores,
5 S.W.3d 334 (Tex. App.—Texarkana 1999, pet. denied).....35

Statutes

Tex. Civ. Prac. & Rem. Code § 16.004(a).....24, 27

Tex. Civ. Prac. & Rem. Code § 16.004(a)(1).....24

Tex. Civ. Prac. & Rem. Code § 16.004(a)(2).....24

Tex. Civ. Prac. & Rem. Code § 16.004(a)(3).....3, 12, 23, 24, 27

Tex. Civ. Prac. & Rem. Code § 16.004(a)(4).....24

Tex. Civ. Prac. & Rem. Code § 16.004(a)(5).....24

Tex. Civ. Prac. & Rem. Code § 16.035(e).....30

Tex. Gov't Code § 22.001(a).....2

Tex. Prop. Code § 51.002.....3, 8, 20

Page(s)

Tex. Prop. Code § 51.003(a)
..... 3, 5, 10, 11, 12, 13, 14, 15, 17, 19, 20, 21, 23, 24, 25, 27

Tex. Prop. Code § 51.003(c) 17, 18, 21

Tex. Prop. Code § 51.005(c) 16, 17, 18, 19, 21

Other Authorities

Black's Law Dictionary (11th ed. 2019) 28

Black's Law Dictionary (10th ed. 2014) 15

Hearing on Tex. H.B. 169 Before House Financial Institutions Subcommittee, 1991 Leg., 72nd Sess. (Feb. 11, 1991) 16

Restatement (Third) of Property: Mortgages § 7.1 (Am. L. Inst. 1997) 19

Restatement (Third) of Property: Mortgages § 7.1 cmt. A (Am. L. Inst. 1997) 19

STATEMENT OF THE CASE

Nature of the case: Respondent Yellowfin Loan Servicing Corporation, as successor-in-interest to First Franklin bank, sued Petitioner Deysi R. Santos to recover an allegedly unpaid loan balance stemming from a junior mortgage on a property that was foreclosed on over twelve years before Yellowfin filed suit.

Proceedings in the trial court: The Honorable Donna Roth, 295th Judicial District Court of Harris County, granted summary judgment for Yellowfin. The trial court ordered Santos to pay $21,023.13 as the amount due on the loan and $5,160.00 in attorney's fees.

Proceedings in the Court of Appeals: The parties in the appellate court were Santos and Yellowfin. A three-member panel of the Fourteenth Court of Appeals, consisting of Justices Jewell, Zimmerer, and Hassan, affirmed the trial court's decision in an opinion written by Justice Jewell. *Santos v. Yellowfin Loan Servicing Corp.*, 2022 WL 2678846 (Tex. App.—Houston [14th Dist.] July 12, 2022, pet. filed) (mem. op.). The Court of Appeals denied Santos's motion for rehearing and her motion for en banc reconsideration.

STATEMENT OF JURISDICTION

This Court has jurisdiction because this appeal presents an important question of law, *see* Tex. Gov't Code § 22.001(a): whether Yellowfin's claims over unpaid balances from pre-mortgage-crisis loans used to finance homes that were foreclosed on more than a decade earlier are time-barred or equitably barred by waiver. Resolving this dispute will have wide-ranging effects in over 270 materially identical cases that Yellowfin is pursuing in Texas, as well as similar cases now pending or that might be brought in the future.

ISSUES PRESENTED

I.A. Texas Property Code Section 51.003(a) provides: "If the price at which real property is sold at a foreclosure sale under Section 51.002 is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency, any action brought to recover the deficiency must be brought within two years of the foreclosure sale[.]" Does this two-year limitations period apply to a junior creditor's claim to recover unpaid debt after foreclosure on the senior loan?

B. If Section 51.003(a) does not apply, does foreclosure accelerate the junior loan so that the junior creditor's claim accrues, triggering a four-year limitations period under Texas Civil Practice & Remedies Code Section 16.004(a)(3)?

II. If foreclosure on the senior loan does not trigger either the two-year or four-year statute of limitations on a junior creditor's claim to remaining debt, does the junior creditor (or its successors-in-interest) waive the right to accelerate the underlying loan by knowingly sitting on that right for over twelve years?

INTRODUCTION

This case involves an attempt to revive a "zombie" mortgage debt in which a creditor seeks to collect on a loan long after foreclosure on the property that had previously secured the loan. The loan was issued through a predatory mortgage product sold before the 2008 financial crisis. According to the Court of Appeals, a creditor can purchase a loan originally made to finance a long-ago foreclosed-on home and then, after sitting silently for over twelve years, sue to recover the unpaid balance. That holding is wrong and should be reversed.

In 2005, petitioner Deysi R. Santos financed her home through "senior" and "junior" loans obtained simultaneously from the same lender—First Franklin bank—in a so-called 80/20 arrangement, with the senior loan covering 80% of the amount financed and the junior loan covering the remaining 20%. The smaller, junior loan featured pre-mortgage-crisis predatory characteristics: a high interest rate (11.25%), a large balloon payment (over $17,000 of a $24,398 loan) due immediately after twenty years of timely payments, and a clause permitting acceleration if the borrower defaulted on the senior loan even if the junior loan was not in default. Santos fell behind on her payments and lost her home during the height of the mortgage crisis in November 2007. When the holder of the loans foreclosed on the senior loan, the foreclosure sale proceeds did not cover the junior loan, leaving a deficiency.

For over a decade after the foreclosure, a series of creditors allegedly bought and sold this debt, but none even attempted to contact Santos about these transactions. Then, in August 2019, respondent Yellowfin Loan Servicing Corp.—which incorporated just before it filed this suit and many others like it—purportedly purchased a group of notes that included Santos's years-old debt. Yellowfin sent letters only to Santos's former address (the home she lost and vacated twelve years earlier) and then sued Santos demanding the full remaining loan balance, allegedly over $21,000.

Yellowfin's action is barred by the applicable statute of limitations. Under Texas Property Code Section 51.003(a), any action brought to recover a post-foreclosure deficiency on a loan secured by real property must be brought within two years of the foreclosure sale. Yellowfin argues that a different statute of limitations controls and that it does not begin running until the creditor says so. That is, Yellowfin maintains that it may trigger the limitations period whenever it wants by deciding to call for the junior debt's repayment, even if it exercises that purported right more than twelve years after foreclosure and the creation of a deficiency. Yellowfin's position ignores an important point of Texas law: foreclosure automatically accelerates repayment on all outstanding loans previously secured by the property, so the junior creditor's only remedy is to sue for any unpaid debt. Put otherwise, Yellowfin's claim to recover on the junior loan accrued at foreclosure for the purposes of any limitations period. No relevant

limitations period is anywhere close to twelve years long, so Yellowfin sued too late.

Even if Yellowfin could still timely accelerate the junior loan years after foreclosure, effectively rendering any applicable statute of limitations toothless, it waived that right by failing to act for twelve years following the foreclosure sale. Yellowfin acknowledged in the Court of Appeals that if it or any of its predecessors-in-interest held the Note for twelve years, waiver could be inferred. But it maintains that the relevant period for assessing waiver resets after each assignment to a successive creditor. That gambit does not work because it's at odds with a fundamental principle of Texas assignment law: a downstream creditor assumes only the rights held by its predecessors and no more.

In sum, the Court of Appeals' decision empowers Yellowfin to collect years-old debt—in Deysi Santos's case and in over 270 other cases across Texas—while ignoring statutory and equitable limitations on the time after foreclosure when a creditor may recover any remaining deficiency. That decision will incentivize others to purchase old mortgage debt and seek enforcement long after borrowers have moved on with their lives and forgotten about the debt. That is not lawful, and this Court should say so.

STATEMENT OF FACTS

I. Background

On April 28, 2005, Deysi Santos purchased her home through two related loans issued on the same day by First Franklin bank. 1CR211-22, 8-18; RR5:14-24, 24:5-7.[1] Yellowfin's own counsel characterized the financing scheme as "one of the 80/20 loan arrangements that existed in the bad old days before the mortgage crisis." RR5:5-6. The thirty-year "senior loan" financed 80% of Santos's home ($97,592) and had to be paid back in full by May 1, 2035. 1CR211, RR5:5-8, 5:25-6:2. The twenty-year "junior loan"—offered at a higher 11.25% interest rate—covered the remaining 20% ($24,398) and had to be paid back in full by May 1, 2025. 1CR8; RR5:5-8, 5:25-6:2. Both loans were secured by the same property: Santos's home. 1CR211-22, 8-18. The senior lien took priority over the junior lien, RR5:25-6:5, so any foreclosure sale proceeds would first be applied to the senior loan.

The junior loan is the principal focus here. It required Santos to make monthly payments for twenty years and then, in a balloon payment, repay the entire remaining balance. 1CR15. After twenty years of timely payments, Santos would still owe, and would immediately have to pay, $17,263.03—over 70% of the $24,398 she originally borrowed. 1CR102-06. If Santos failed to make this lump-sum payment, the junior creditor could foreclose on her

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[1] Citations to the first supplemental clerk's record, the reporter's record, and the appendix to the petition for review include an abbreviation and a pin cite. *E.g.*, 1CR163; RR12:4-7; AP065.

home. 1CR9 ¶ 11. The loan also contained an acceleration clause tying the junior and senior loans together: it permitted the junior creditor to accelerate the loan (by immediately calling due the entire balance on the junior loan) after default on the senior loan, even if Santos's junior-loan payments were up to date. *Id.*; 1CR68. Yellowfin's counsel acknowledged that this was "not a good loan" and was "heavily, heavily, heavily weighted in favor of interest." RR12:4-6. It was "not a loan [he] would advise anybody to take." RR12:6-7.

Santos defaulted on the senior loan, and the property was sold at a foreclosure sale in November 2007. 1CR80. The Notice of Sale was posted and filed in the office of the County Clerk as required under Texas Property Code Section 51.002. 1CR224. The foreclosure wiped out ("extinguished") the junior loan's security, rendering the junior Note unsecured. RR6:7-17. After the foreclosure sale, a balance remained on the junior loan. 1CR80; RR25:7-9, 6:9-11, 7:2-4.

To recover the post-foreclosure unsecured debt, the junior creditor could have sought a money judgment. *See Diversified Mortg. Invs. v. Lloyd D. Blaylock Gen. Contractor, Inc.*, 576 S.W.2d 794, 807-08 (Tex. 1978). But Yellowfin's predecessors-in-interest did not do so. No creditor attempted to contact Santos about the junior loan for over a decade following the 2007 foreclosure. *See* RR26:18-27:3.

Yellowfin incorporated in July 2018, AP066, and purchased the junior loan the following year, 1CR86-91. In early 2020, Yellowfin sent three letters to Santos's former address—the home sold in the foreclosure sale many years earlier. 1CR225-32. First, in January 2020, Yellowfin notified Santos that it had purchased the junior debt. 1CR225. Then, after sending a notice to Santos of its intent to "accelerate" in February 2020, 1CR228, Yellowfin purportedly accelerated the Note in March 2020, 1CR231, 41. Because Santos had left her home in 2007 at the time of foreclosure, 1CR122 (¶ 57), 163, she did not receive any of these letters, RR23:13-15. Indeed, she had no notice of Yellowfin's demands until she was served with this lawsuit. *Id.*

II. Procedural history

Yellowfin filed this breach-of-contract suit in Harris County district court in June 2020, 1CR4, more than twelve years after the 2007 foreclosure, 1CR80. Santos was served about three weeks later. 1CR21-22. Around the same time, Yellowfin filed over 270 other suits against debtors throughout Texas to recover unpaid pre-mortgage-crisis junior loans that financed homes foreclosed on many years earlier. *See* AP065.[2]

[2] The appendix to the petition for review at page 65 shows search results identifying these cases. We randomly selected Dallas County and reviewed the cases Yellowfin filed there. Those thirty cases—a sampling of more than 10% of the cases Yellowfin has filed since incorporating—are materially identical to Yellowfin's suit against Santos.

In October 2020, Yellowfin filed a motion for summary judgment. 1CR23-39. In that motion, Yellowfin described this case as "the enforcement of the '20' portion of an 80/20 loan long after the 'first loan' was foreclosed." 1CR23. At the hearing on Yellowfin's motion, Yellowfin maintained that the statute of limitations would continue to run until the lender affirmatively waived or called in the loan, up until the end of the mortgage term. RR16:8-14. Yellowfin's counsel confirmed that, on its theory of the case, the statute of limitations on every mortgage could theoretically be over thirty years, and it was "really up to the lender when they decide, even though [a borrower] default[ed] 12 years ago[.]" RR15:21-25.

In her opposition to Yellowfin's motion for summary judgment, Santos contended that Yellowfin's claim to recover the unpaid balance on the junior loan—that is, Yellowfin's claim for the deficiency—was subject to the two-year limitations period for deficiency claims under Texas Property Code Section 51.003(a). 1CR111. That period expired in 2009. 1CR111, 118-19 (¶¶ 28-29). Because the Note had been in default since at least November 2007, Santos argued that any other applicable statute of limitations had also expired years ago. 1CR132-33. Alternatively, even if the statute of limitations had not been triggered, Santos argued that Yellowfin waived its right to collect the deficiency because more than twelve years had elapsed since the Note went into default prior to the 2007 foreclosure. 1CR112, 122 (¶¶ 52-55), 124 (¶¶ 66-68).

The district court rejected Santos's arguments and granted summary judgment to Yellowfin in a two-page order drafted by Yellowfin's counsel. AP002-03. It ordered Santos to pay $21,023.13 as the remaining principal amount due under the contract and $5,160.00 in attorney's fees. *Id.*

The Court of Appeals affirmed, holding that Yellowfin's suit was timely. AP012-16. It rejected Santos's argument that Yellowfin's right to collect the unpaid debt accrued at the 2007 foreclosure, instead concluding that accrual occurred when Yellowfin purportedly accelerated the loan's repayment in early 2020. AP015-19. The court summarily rejected Santos's waiver argument, stating that it was "premised on Santos's mistaken contention that Yellowfin's claim to enforce the Note accrued upon Santos's foreclosure in 2007." AP019. Thus, rather than considering Santos's waiver argument on its own terms, the court conflated that argument with Santos's statute-of-limitations defense. AP018-19.

SUMMARY OF ARGUMENT

This Court should grant review and reverse the judgment in Yellowfin's favor.

I. Yellowfin's suit is barred by any applicable statute of limitations. Texas Property Code Section 51.003(a) bars Yellowfin's claim against Santos. That Section provides that any action brought to recover a post-foreclosure deficiency on a loan secured by real property must be brought within two years of the foreclosure sale. The statute's plain words encompass

Yellowfin's suit to recover the remaining balance on Santos's junior loan after her home was foreclosed on in 2007. Section 51.003(a)'s text and purpose make no distinction between senior and junior creditors. Because Yellowfin did not sue Santos until more than twelve years after foreclosure, Section 51.003(a) bars its suit.

The Court of Appeals instead applied the four-year statute of limitations in Texas Civil Practice and Remedies Code Section 16.004(a)(3) and concluded that Yellowfin's claim did not accrue for the purposes of that provision until Yellowfin purportedly accelerated the loan in 2020. AP015-16. That conclusion was wrong for two reasons. First, Section 51.003(a)'s specific limitations period controls over Section 16.004(a)(3)'s general limitations period. *See Valdez v. Hollenbeck*, 465 S.W.3d 217, 227 (Tex. 2015). Second, even assuming (incorrectly) that Section 16.004(a)(3) applies, Yellowfin's claim accrued upon foreclosure on Santos's home, not when Yellowfin finally tried to collect the debt twelve years later. Foreclosure accelerated the junior loan and triggered the right to collect the entire remaining balance. And because foreclosure—the point of accrual—occurred more than twelve years before Yellowfin brought this action, Yellowfin's claim is untimely under Section 16.004(a)(3) as well.

II. Even if Yellowfin's claim was not time-barred by any statute of limitations, Yellowfin waived its right to accelerate the loan. For over twelve years, from November 2007 through January 2020, neither Yellowfin nor its

predecessors-in-interest contacted Santos. Courts applying Texas law have inferred waivers of contractual rights after far shorter delays in enforcement to prevent inequitable consequences.

ARGUMENT

I. The Court of Appeals erred in holding that Yellowfin had a right to collect unpaid debt over twelve years after the foreclosure on Santos's home.

A. Texas Property Code Section 51.003(a) bars Yellowfin's deficiency action.

Texas Property Code Section 51.003(a) provides a two-year statute of limitations for post-foreclosure suits to recover deficiencies after the extinguishment of mortgage debt through a foreclosure sale. *PlainsCapital Bank v. Martin*, 459 S.W.3d 550, 555 (Tex. 2015). Because Yellowfin tried to collect Santos's deficiency-based debt more than twelve years after the foreclosure sale, its suit is untimely under Section 51.003(a).

1. Section 51.003(a)'s text and purpose encompass actions brought by junior creditors who did not foreclose on the property.

The Court of Appeals erred in holding that Yellowfin's claim did not qualify as a deficiency action governed by the statute of limitations in Section 51.003(a). Because that statute applies to Yellowfin's claim, and Yellowfin tried collecting the debt more than two years after the foreclosure sale, its claim is time-barred.

Section 51.003(a) establishes the time limit for actions seeking recovery of an unpaid debt remaining after foreclosure, such as Yellowfin's claim against Santos. That Section states: "If the price at which real property is sold at a foreclosure sale … is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency, any action brought to recover the deficiency must be brought within two years of the foreclosure sale[.]" Tex. Prop. Code § 51.003(a). That describes the circumstances here to a T. The unpaid balance on Yellowfin's junior loan was part of "the indebtedness secured by the real property" before the 2007 foreclosure. Tex. Prop. Code § 51.003(a). And because "the price at which" the property was "sold at [] foreclosure" was, according to Yellowfin itself, "less than the unpaid balance of the indebtedness secured by the real property," 1CR5 (¶ 12), a deficiency resulted. Tex. Prop. Code § 51.003(a).

Section 51.003(a) does not exclude from its broad reach claims to recover amounts owed on junior loans previously secured by foreclosed-on property. Quite the contrary: Section 51.003(a) applies to "*any action* brought to recover the deficiency." Tex. Prop. Code § 51.003(a) (emphasis added). And a deficiency, under the plain meaning of the provision's text, is simply the difference between "the unpaid balance of the indebtedness secured by the real property" and "the price at which real property is sold at a foreclosure sale." *Id.* The statute's words draw no distinction between senior and junior indebtedness. Nor is the text limited to deficiencies remaining

only on the foreclosed-on loan. The most natural reading—indeed, the only natural reading—of "the indebtedness" is the total amount due on loans secured by the property prior to foreclosure. *See Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011) ("The plain meaning of the text is the best expression of legislative intent[.]").

Yellowfin cannot plausibly argue that it isn't suing to collect a deficiency because "one of the very definitions of 'deficiency' is the amount remaining on a debt after applying the proceeds realized at a foreclosure sale." *Moayedi v. Interstate 35/Chisam Rd., L.P.*, 438 S.W.3d 1, 4 (Tex. 2014) (citing Black's Law Dictionary 514 (10th ed. 2014)). And after the senior lien is satisfied post-foreclosure, the junior lienholder may pursue any excess proceeds and apply them to the junior lien. *Diversified Mortg. Invs. v. Lloyd D. Blaylock Gen. Contractor, Inc.*, 576 S.W.2d 794, 807-08 (Tex. 1978). The balance remaining on the junior loan therefore falls within the dictionary definition of "deficiency." *See Moayedi*, 438 S.W.3d at 4. Given the clarity of Section 51.003(a)'s text alone, this Court should stop here and reverse.

In any case, Section 51.003(a)'s purpose confirms this straightforward understanding of its text. Section 51.003 "is intended to protect [both] borrowers and guarantors." *Moayedi*, 438 S.W.3d at 4-5. In enacting Section 51.003(a), "the legislature intended that a creditor, once learning that the sale of the pledged collateral did not satisfy the entire debt, must sue for the deficiency within two years." *Trunkhill Cap., Inc. v. Jansma*, 905 S.W.2d 464,

468 (Tex. App.—Waco 1995, writ denied). The two-year statute of limitations responded to the concern that, absent an express time bar, "[w]hether or not the lender is going to sue for the deficiency hangs over the head of the borrower for a long period of time." *Hearing on Tex. H.B. 169 Before House Financial Institutions Subcommittee*, 1991 Leg., 72nd Sess. at 26:37-27:00 (statement of Larry Temple, representing the Texas Mortgage Bankers Association) (Feb. 11, 1991); *see Trunkhill*, 905 S.W.2d at 468 n.3. The Legislature's purpose covers junior liens in the same way as it does senior liens, as junior loans not satisfied by foreclosure similarly hang over the borrower's head.

2. The precedent relied on by the Court of Appeals defies Section 51.003's text and purpose.

The Court of Appeals relied on *Mandarino v. Sherwood Lane Invs. LLC*, No. 01-15-00192-CV, 2016 WL 4034568 (Tex. App.—Houston [1st Dist.] July 26, 2016, no pet.) (mem. op.), to conclude that Section 51.003(a) does not apply to junior creditors. To see why that conclusion is wrong, it is necessary to understand why the key precedent on which *Mandarino* relied—*Mays v. Bank One, N.A.*, 150 S.W.3d 897 (Tex. App.—Dallas 2004, no pet.)—also is wrong.

Mays involved a timely claim and concerned a different provision of the Texas Property Code, Section 51.005(c), which applies only to a foreclosure that occurs after a judgment against a guarantor. That provision allows a property's true market value to be offset against a post-foreclosure deficiency, thus preventing the foreclosing lienholder from profiting by

artificially deflating the foreclosure price. According to *Mandarino*, because *Mays* determined that Section *51.005(c)*'s offset protection does not apply to unpaid debt on junior loans after the senior lienholder's foreclosure, Section *51.003(a)*'s limitations period (which applies to foreclosures when there was no prior judgment), also does not apply to junior creditors. *See Mandarino*, 2016 WL 4034568, at *8. As we now show, *Mays* was wrong to hold that the post-foreclosure offset provision applies only to senior creditors. And, without *Mays* as a proper foundation, *Mandarino* makes no sense.

Under Section 51.005(c), the offset that protects against a lienholder's incentive to artificially deflate a foreclosure sale price is calculated as follows: the property's fair market value, minus any liens remaining on the property after foreclosure, minus the sale price. Tex. Prop. Code § 51.005(c). Again, Section 51.005(c) applies to a foreclosure occurring after a judgment against a guarantor. Not surprisingly, then, Texas law contains an identically worded provision for calculating the offset after a foreclosure when there was no prior judgment, like the foreclosure here on Santos's home. *See* Tex. Prop. Code § 51.003(c).

Both Section 51.005(c) and Section 51.003(c)—that is, the offset-calculation provisions for foreclosure sales whether or not there was a prior judgment against a guarantor—"provide[] borrowers and guarantors with a mechanism to adjust foreclosure sales prices upward." *Marhaba Partners Ltd. P'ship v. Kindron Holdings, LLC*, 457 S.W.3d 208, 213 (Tex. App.—Houston

[14th Dist.] 2015, pet. denied). As noted, that mechanism is important because post-foreclosure deficiencies would otherwise be artificially inflated when the lender sells the property to itself at a below-market price. Without statutory intervention, it's easy to see why that would happen: "[w]hen the lender is the sole bidder, it has little incentive to bid high." *Id.*

Here's how *Mays* went awry: *Mays* held that Section 51.005(c) does not apply to junior liens when only the senior lienholder has foreclosed because the senior lender's foreclosure extinguishes junior liens. 150 S.W.3d at 900-01. The court concluded that Section 51.005(c)'s language "makes it clear" that deficiencies under that Section include only liens "*not extinguished* by the foreclosure.'" *Id.* at 900. *But that is not what the statute actually says.* It says that the borrower is entitled to adjust the deficiency by the property's fair-market value, minus any lien on the property "not extinguished by the foreclosure," minus the sale price. *See* Tex. Prop. Code § 51.005(c) ("If … the fair market value is greater than the sale price of the real property … [the debtors] are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price."); *see also* Tex. Prop. Code § 51.003(c) (same).

The "not extinguished by the foreclosure" language in Section 51.005(c) (and in Section 51.003(c)'s identical provision) thus applies *only* to liens that

must be subtracted from a property's market price to accurately determine the property's true market value. That specification accords with the commonsense principle that the fair market value of a property is decreased by existing liens on the property (and not by liens that have been extinguished), which any purchaser would have to satisfy before owning the property free and clear. *See* Restatement (Third) of Property: Mortgages § 7.1 cmt. A (Am. L. Inst. 1997). For example, if a free-and-clear property can be sold for $100,000 on the free market, the same property's fair market value is $50,000 if it is subject to a $50,000 lien. That situation is most likely to arise when the junior lienholder forecloses, because foreclosure on the junior lien does not terminate the senior lienholder's interests, so senior liens remain on the property. Restatement (Third) of Property: Mortgages § 7.1 (Am. L. Inst. 1997); *see Conversion Props., L.L.C. v. Kessler*, 994 S.W.2d 810, 813 (Tex. App.—Dallas 1999, pet. denied).

Thus, contrary to *Mays*, Section 51.005(c)'s offset provision does not apply only to "deficienc[ies]" created by liens not extinguished by foreclosure—i.e., senior loans. *See Mays*, 150 S.W.3d at 900-01. *Mays* erred in citing one clause of Section 51.005(c) relevant only to the calculation of a property's value for the *general* proposition that Section 51.005(c) never applies to junior creditors' claims brought after the senior lender's foreclosure (which makes no sense). *Id.* Instead, as the Court of Appeals has elsewhere explained, a deficiency under Section 51.003(a) is "equal to: (a) the

indebtedness *immediately before foreclosure* (b) minus the foreclosure sale price." *Haddington Fund, LP v. Kidwell*, No. 05-19-01202-CV, 2022 WL 100111, at *9 (Tex. App.—Dallas Jan. 11, 2022, pet. denied) (mem. op.) (emphasis added). *Mays* erroneously conflated two different things: the debt used *to arrive at* a deficiency, which is calculated before foreclosure, and liens not extinguished by foreclosure, which, by definition, can be assessed only after foreclosure.

Mandarino is wrong for the same reason that *Mays* is wrong. Relying on *Mays* regarding Section 51.005, *Mandarino* held that Section 51.003(a)'s statute of limitations for deficiency judgments does not apply to a junior creditor's claim after the senior lienholder's foreclosure. *Mandarino*, 2016 WL 4034568, at *8. But the "not extinguished by the foreclosure" limitation appears nowhere in Section 51.003(a), which identifies what constitutes a deficiency under the statute. That subsection includes Section 51.003's statute of limitations, which is unqualified. It applies to *any* suit to recover a deficiency after a foreclosure sale: "[i]f the price at which real property is sold at a foreclosure sale under Section 51.002 is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency, any action brought to recover the deficiency must be brought within two years of the foreclosure sale and is governed by this section." Tex. Prop. Code § 51.003(a). The Texas Legislature knew how to limit covered debts to

those not extinguished by foreclosure when it wanted to, *see* Tex. Prop. Code § 51.005(c), and it did not do so in Section 51.003(a).

Established equitable principles and common sense confirm this conclusion. Consider the facts of *Mays*. There, when the senior lienholder foreclosed, the property was sold for only forty percent of its fair market value. *Mays*, 150 S.W.3d at 898. The sale price satisfied only the senior lien and left no proceeds for the junior lienholder. *Id.* at 899. Contrary to *Mays*, the statutory mechanism through which the borrower can seek an offset against the deficiency should fairly apply in those circumstances. If the property had been sold at its fair market value, the junior lienholder could have sought to apply any surplus proceeds from the sale to the junior loan. *See Diversified Mortg. Invs.*, 576 S.W.2d at 807-08. By underselling the property, the senior lienholder left the borrower owing more money on the junior loan than he justly should have. That is exactly the type of artificially inflated deficiency that both Sections 51.005(c) and 51.003(c) are designed to correct (and, presumably, to deter in the first place). *See Marhaba*, 457 S.W.3d at 213. No reason exists, however, to exclude junior loans from the definition of "deficienc[ies]" under Section 51.003(a), in either the offset provision or the statute of limitations. And, as already explained, Section 51.003(c)'s text includes "any" action to recover on a deficiency resulting from a foreclosure and is nowhere limited to deficiencies on senior loans.

3. In any case, *Mandarino* is distinguishable.

In any event, the Court of Appeals failed to appreciate what distinguishes the situation in *Mandarino* from Santos's case. *Mandarino* involved two loans made on separate days for different purposes. Here, the junior and senior loans were created on the same day, as part of the same transaction, secured by the same property.

"[A] court may determine, as a matter of law, that multiple separate contracts, documents, and agreements 'were part of a single, unified instrument.'" *Rieder v. Woods*, 603 S.W.3d 86, 94 (Tex. 2020). In doing so, it may consider whether each agreement was "a necessary part of the same transaction." *Id.* Of particular relevance here, Texas courts have interpreted two mortgages to be a single contract where one note references the other, *Cowan v. Wilson*, 85 S.W.2d 823, 824 (Tex. App.—Amarillo 1935, writ dism'd), or where the two notes were executed contemporaneously, *Goode v. Davis*, 135 S.W.2d 285, 288 (Tex. App.—Fort Worth 1939, writ dism'd judgm't cor.).

The junior and senior loans here were issued simultaneously by the same lender and were each "a necessary part of the same transaction," *Rieder*, 603 S.W.3d at 941. Santos executed the two loans to purchase her home. *See* AP006; RR5:1-5. And by the junior loan's terms, a default on the senior loan was also a default on the junior loan, 1CR9 (¶ 11), so "they must be considered as one contract," *see Cowan*, 85 S.W.2d at 824. Thus, the obligation to pay back each of the senior and junior loans formed part of the same larger obligation. If foreclosure resulted in a deficiency on the senior loan, no one

disputes that Section 51.003(a)'s statute of limitations would apply to the remaining debt. The junior loan should be subject to the same limitations period. Given its status as part of one larger, integrated obligation, Section 51.003(a) covers suits to recover the balance of the junior loan here, even if one assumes (counterfactually) that the statute does not cover a deficiency on a junior loan that was issued separately from a senior loan secured by the foreclosed-on property.

The Legislature enacted Section 51.003(a) to protect debtors, not to confer a hidden benefit on lenders who structure the loan to finance one home in two notes. Yet, if the decision below is not overturned, lenders could circumvent the statute's constraints simply by requiring a borrower to take out two mortgages. On default, the lender (or any downstream purchasers of its interests) could foreclose on one mortgage, recover the security, and then sue on the other note whenever it wishes, unencumbered by any limitations period. That result is contrary to Section 51.003(a)'s text and purpose and should be rejected.

B. Even if Section 16.004(a)(3) applies, Yellowfin's suit is still untimely.

As already shown, the type of mortgage-deficiency action identified in Section 51.003(a) perfectly describes Yellowfin's claim here, so that Section's two-year statute of limitations applies. The Court of Appeals, however, held that Texas Civil Practice & Remedies Code Section 16.004(a)(3) applied. AP015. That conclusion violated a basic tenet of statutory construction:

"When the Legislature has declared an express limitations period … the more specific time limit controls." *Valdez v. Hollenbeck*, 465 S.W.3d 217, 227 (Tex. 2015) (applying a specific limitations period over a residual one). Section 51.003(a) applies specifically (and only) to deficiency claims, while Section 16.004(a) applies generally to actions on "debt," Tex. Civ. Prac. & Rem. Code § 16.004(a)(3); "specific performance of a contract for the conveyance of real property," *id.* § (a)(1); "penalty or damages on the penal clause of a bond to convey real property," *id.* § (a)(2); "fraud," *id.* § (a)(4); or "breach of fiduciary duty," *id.* § (a)(5). Section 51.003(a), not Section 16.004(a)(3), is thus the "more specific time limit," and, therefore, it applies to Yellowfin's claim. *See Valdez*, 465 S.W.3d at 227.

But even if the more general limitations period in Section 16.004(a)(3) applies here, Yellowfin's claim is still time-barred. Section 16.004(a)(3) provides that a suit on a "debt" must be brought "not later than four years after the day the cause of action *accrues*." Tex. Civ. Prac. & Rem. Code § 16.004(a)(3) (emphasis added). The question, then, is when did Yellowfin's cause of action accrue? As we now explain, it accrued upon the 2007 foreclosure on Santos's home. Contrary to Yellowfin's assertions, foreclosure accelerated Santos's junior loan, rendering ineffectual Yellowfin's subsequent attempt to accelerate the loan in 2020. Because Yellowfin tried to collect the debt more than twelve years after its cause of action accrued, its

claim is untimely even on the (incorrect) assumption that Section 16.004(a)(3)'s four-year limitations period applies.

1. The right to recover the balance on the junior loan accrued at the 2007 foreclosure, when Yellowfin's predecessor-in-interest could have sought a judicial remedy.

The Court of Appeals erred in holding that Yellowfin's claim did not accrue until it purportedly accelerated the loan in 2020, three months before filing this suit. *See* AP015-16. Instead, that claim accrued at the 2007 foreclosure, when Yellowfin's predecessor-in-interest could have sought a money judgment for the junior loan's remaining balance.

A claim generally accrues when facts come into existence that authorize a claimant to seek a judicial remedy. *Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826, 828 (Tex. 1990). And, in the foreclosure context, the senior lienholder's foreclosure authorizes the junior creditor to seek a judicial remedy for the balance.

To explain: when more than one loan is secured by the same property, foreclosure of the senior lien extinguishes the junior lien. *Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc.*, 120 S.W.3d 878, 883 (Tex. App.—Fort Worth 2003, pet. denied). All junior lienholders are divested of title to the property and their liens are extinguished, such that the purchaser takes title to the property free of any claims by junior creditors. *Wesley v. Amerigo, Inc.*, No. 10-05-00041-CV, 2006 WL 22213, at *2 (Tex. App.—Waco Jan. 4,

2006, no pet.) (mem. op.). The junior lender, however, is not left without recourse. The unpaid portion of the loan "becomes an unsecured debt," *Poston v. Wachovia Mortg. Corp.*, No. 14-11-00485-CV, 2012 WL 1606340, at *2 (Tex. App.—Houston [14th Dist.] May 8, 2012, pet. denied) (mem. op.), for which a lender may seek a money judgment "impos[ing] personal liability upon the debtor for the unpaid amount of a debt after the foreclosure sale," *Marhaba Partners Ltd. P'ship v. Kindron Holdings, LLC*, 457 S.W.3d 208, 215 (Tex. App.—Houston [14th] 2015, pet. denied); *see also Diversified Mortg. Invs. v. Lloyd D. Blaylock Gen. Contractor, Inc.*, 576 S.W.2d 794, 808 (Tex. 1978).

But no mechanism remains for "the lender to collect the deficiency through non-judicial means." *Marhaba*, 457 S.W.3d at 215. That is, once the senior lienholder has foreclosed on the property, the junior creditor cannot foreclose on the same property. *Wesley,* 2006 WL 22213, at *2. Nor can the junior creditor continue demanding monthly payments under the former installment agreement. *See Marhaba*, 457 S.W.3d at 215. Instead, the only remedy left to the junior creditor is judicial: a suit to collect the deficiency. *Wesley*, 2006 WL 22213, at *3.

Prior to the 2007 foreclosure, Yellowfin's predecessor-in-interest retained the option to foreclose on Santos's property in the event of default. But upon foreclosure, the junior creditor's previously secured debt became an unsecured debt. Yellowfin could no longer demand installment payments from Santos through nonjudicial means. *See Marhaba*, 457 S.W.3d at 215.

Instead, from the time of foreclosure until expiration of the limitations period, Yellowfin's predecessors-in-interest had only one option by which to be made whole: seeking a money judgment for the remaining balance. Under Texas law, that is when Yellowfin's cause of action accrued. *See Murray*, 800 S.W.2d at 828. Because Yellowfin did not seek a money judgment until more than twelve years later, Yellowfin's claim is time-barred.

In determining accrual under Section 16.004(a)(3), it is instructive to consider the accrual point under Section 51.003(a)'s more specific terms. Recall that Section 51.003(a), which concerns exactly the type of claim Yellowfin brings here, requires creditors to bring deficiency actions within two years of the foreclosure sale. By setting that limitations period, the Legislature determined that a creditor's cause of action for a deficiency judgment accrues at foreclosure. *See Trunkhill Cap., Inc. v. Jansma*, 905 S.W.2d 464, 467-68 (Tex. App.—Waco 1995, writ denied). In other words, Section 51.003(a)'s limitations period employs a kind of shorthand. Rather than limiting deficiency actions to two years "after the day the cause of action accrues," the language used in Section 16.004(a), the Legislature specified the day of the foreclosure sale as the triggering event for Section 51.003(a). That's because in that context—the context here—the date of the foreclosure sale is synonymous with the date that the cause of action accrued.

2. The 2007 foreclosure on the senior loan accelerated the junior loan.

Ignoring the standard claim-accrual principles just described, Yellowfin contends—and the Court of Appeals held—that what matters is not when Yellowfin could have sought a judicial remedy, but when it purportedly accelerated the Note—in March 2020. But foreclosure had *already* accelerated the loan, and the optional acceleration clause present in the former installment contract does nothing to displace that conclusion.

To understand why foreclosure accelerated the Note, it is helpful to return to basic concepts. An "[a]cceleration clause" is "[a] loan-agreement provision that requires the debtor to pay off the balance sooner than the due date if some specified event occurs, such as failure to pay an installment or to maintain insurance." *Acceleration Clause*, Black's Law Dictionary (11th ed. 2019). In other words, acceleration simply means that the entire loan balance is due earlier than it otherwise would be. And the 2007 foreclosure accomplished just that. At that time, Yellowfin's predecessors-in-interest had the right to seek a money judgment for the entire balance remaining on the loan. Yellowfin does not, and cannot, dispute that basic point. The full balance therefore came due at foreclosure in 2007—earlier than it otherwise would have occurred under the Note. That *is* acceleration. *See McLemore v. Pac. Sw. Bank, FSB*, 872 S.W.2d 286, 291 (Tex. App.—Texarkana 1994, writ dism'd by agr.) (notice of foreclosure constitutes notice of acceleration on an installment debt).

Nor can Yellowfin argue that Santos should have continued to make installment payments after foreclosure. As already explained, foreclosure deprived it of the right to continue to receive installment payments or to recover the deficiency through nonjudicial means (that is, through foreclosure). *See Marhaba*, 457 S.W.3d at 215. Moreover, after a foreclosure sale, a junior creditor is entitled to pursue any surplus proceeds resulting from the sale. *Diversified Mortg. Invs. v. Lloyd D. Blaylock Gen. Contractor, Inc.*, 576 S.W.2d 794, 807-08 (Tex. 1978). That's because the creditor's "security interest has transferred to [any] excess proceeds from the sale, which stand in the place of the property." *Id.* at 808. And that's hardly a bad deal for the junior creditor. Following foreclosure, a junior creditor can seek a balance potentially far greater than any given installment, up to the entire balance of its loan, depending on the sale price. The very fact that a junior creditor may recover the entire outstanding balance in sale proceeds after foreclosure makes clear that acceleration has already occurred. Here, no excess proceeds from the foreclosure sale were left for immediate collection by the junior creditor. But the sale price in any particular case does not change the fundamental principle that, upon foreclosure, acceleration occurs, and a junior creditor is authorized at that time to seek the full amount it is owed.

Put the other way around, *before* foreclosure, a lender cannot seek the full balance of the loan from the homeowner without providing both notice of its intent to accelerate and notice of acceleration. *Holy Cross Church of God in*

Christ v. Wolf, 44 S.W.3d 562, 566 (Tex. 2001). But after foreclosure, everyone—lenders and borrowers—knows that if the lender plans to recover its debt, it will seek the full amount. Foreclosure accelerated the loan in 2007, but Yellowfin decided to collect years later, in 2020. By then, it was too late.

In ruling that Yellowfin could sue whenever it wanted to, the Court of Appeals relied heavily on the Note's optional acceleration clause providing that "If you are in default … we may do any of the following: (aa) accelerate the entire balance owing under this Note after any demand or notice which is required by law, which entire balance will be immediately due and payable[.]" AP015-16 n.4. Citing that clause, the Court of Appeals concluded that an action to recover the balance accrues "only when the holder actually exercises its option to accelerate" the entire note. AP015-16. But, as we've just explained, an optional acceleration clause is meaningless post-foreclosure because acceleration has already occurred.

The Court of Appeals also relied on this Court's statement in *Holy Cross* that "[i]f a note or deed of trust *secured by real property* contains an optional acceleration clause … the action [for default] accrues only when the holder actually exercises its option to accelerate." AP109-10 (quoting *Holy Cross*, 44 S.W.3d at 566 (emphasis added)). But as the statement of the rule itself shows, that case contemplated a situation entirely different from Santos's. *Holy Cross* and the statutory provision it interpreted apply only to debts secured by real property. *See* Tex. Civ. Prac. & Rem. Code § 16.035(e). *Holy*

Cross is irrelevant here, where the foreclosure extinguished the lien, eliminating the security interest and rendering the debt unsecured. In sum, Yellowfin could not "revive its rights" by "purporting to accelerate" the loan in 2020, *Wells Fargo Bank, N.A. v. Express Limousines, Inc.*, No. 03-21-00266-CV, 2022 WL 3048235, at *3 (Tex. App.—Austin Aug. 3, 2022, no pet.) (mem. op.), because foreclosure had already accelerated the loan.

C. Yellowfin's position is at odds with the Legislature's purpose in enacting statutes of limitations.

Yellowfin's position conflicts with the Legislature's purpose in establishing statutes of limitations. A statute of limitations seeks "to establish a point of repose and to terminate stale claims." *Safeway Stores, Inc. v. Certainteed Corp.*, 710 S.W.2d 544, 545 (Tex. 1986). "Society's interest in repose is to have disputes either settled or barred within a reasonable time." *Id.* Understandably, then, the Legislature does not want parties to defend post-foreclosure claims after "memories have faded and documents have been destroyed." *Id.* at 545-46.

Yellowfin maintains that it and its predecessors-in-interest could have accelerated the Note and thereby triggered the limitations period at any time they wished, from the original default and foreclosure in 2007 until May 2025, a staggering eighteen years later, when any remaining amount owed under the Note would come due in full, AP045, 049. Under Section 16.004(a)(3)'s four-year limitations period, Yellowfin would then have until May 2029 to bring its claim—twenty-two years after foreclosure. *See*

RR16:12-14 (Yellowfin's counsel noting that the statute of limitations "would not have run until 2029"). Yellowfin's position allows—indeed, guarantees—litigation of stale, long-forgotten claims. This point is underscored here, where no one contacted Santos about the debt for twelve years, no record remains of how the sale proceeds were applied to the loans, and whether the junior loan's remaining balance was over $21,000—as Yellowfin maintains—is unclear at best, AP105-08. Indeed, Yellowfin helped demonstrate the communication difficulties that arise years after relevant events by sending three letters demanding payment to Santos at the foreclosed-on property, 1CR225-31, which she had long since vacated, 1CR163.

A statute of limitations aims to ensure that "the opposing party has a fair opportunity to defend while witnesses are available and the evidence is fresh in their minds." *Robinson v. Weaver*, 550 S.W.2d 18, 20 (Tex. 1977). It seeks to avoid just the kind of "uncertainty and insecurity caused by unsettled claims" experienced by Santos here. *See Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996) (citation omitted). These concerns would not exist if, as Santos maintains, the lender's claim accrued at foreclosure.

II. Yellowfin waived its acceleration rights, if any, by failing to act for over twelve years.

Assuming that the 2007 foreclosure did not trigger the statute of limitations, Yellowfin and its predecessors-in-interest waived any acceleration rights they might have had by sitting on them for more than

twelve years. If the statute of limitations here does not establish a point of repose, a waiver defense is necessary to protect Santos and the courts from having to contend with a case reliant on memories and documents from a foreclosure sale that occurred over a decade earlier.

Instead of analyzing Santos's waiver argument independently, the Court of Appeals simply relied on its analysis of Santos's statute-of-limitations defense. AP018-19. That was mistaken because Santos's waiver argument assumes that the statute of limitations has run but that equitable principles bar Yellowfin's claim nonetheless. As we now show, even on that assumption, reversal is required.

A. Santos's waiver argument is based on the delay in enforcement starting from the date when Yellowfin's predecessor-in-interest could have first enforced its contractual right. Under "well established" Texas law, *Alford, Meroney & Co. v. Rowe*, 619 S.W.2d 210, 213 (Tex. App.—Amarillo 1981, writ ref'd n.r.e.), a party impliedly waives a contractual entitlement when it has an "existing right," "actual knowledge of its existence," and engages in "conduct inconsistent with the right," *Ulico Cas. Co. v. Allied Pilots Ass'n*, 262 S.W.3d 773, 778 (Tex. 2008). In analyzing these elements, "courts must consider the totality of the circumstances." *LaLonde v. Gosnell*, 593 S.W.3d 212, 220 (Tex. 2019). Put otherwise, "[t]he doctrine of courts of equity to withhold relief from those who have delayed the assertion of their claims for an unreasonable length of time … . depends on the circumstances of the

particular case" including a "change of situation during neglectful repose, rendering it inequitable to afford relief." *O'Brien v. Wheelock*, 184 U.S. 450, 493 (1902).

Here, the November 2007 foreclosure sale created a deficiency, and Yellowfin's predecessor-in-interest could have immediately sought a money judgment to recover it. 1CR80; RR28:21-29:2. Even if we assume (counterfactually) that the creditor's acceleration right under the Note survived the foreclosure, it was a waivable right, which can "spring from law or, as in this case, from a contract," *Tenneco Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 643 (Tex. 1996). Yellowfin's predecessors-in-interest each knew Santos had defaulted on the junior loan, RR20:12-16, triggering their alleged acceleration rights, 1CR9 (¶ 11). Yellowfin—together with all prior holders of the second loan—demonstrated an intent to waive their right to enforce the loan by making no collection efforts for over twelve years after the foreclosure sale that created the deficiency. *See* RR26:18-27:3. That is so because a party acts inconsistently with a right through "[s]ilence or inaction, for so long a period as to show an intention to yield the known right." *Tenneco*, 925 S.W.2d at 643.

The lengthy period of silence here far surpasses those in which other parties failed to assert their contractual rights and courts found waivers of those rights. *See, e.g.*, *Tenneco*, 925 S.W.2d at 643 (three years); *Vinewood Cap., LLC v. Sheppard Mullin Richter & Hampton, LLP*, 735 F. Supp. 2d 503, 518-19

(N.D. Tex. 2010) (same); *Trelltex, Inc. v. Intecx, LLC*, 494 S.W.3d 781, 791 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (nearly six years). Here, the creditors' twelve years of quietude, without any contact with Santos, constitutes "silence and inaction for such an unreasonable period of time" that it "clearly indicate[s] [Yellowfin's] intention to waive [its] right to assert this claim." *See Williams v. Moores*, 5 S.W.3d 334, 336-37 (Tex. App.—Texarkana 1999, pet. denied).

Other equitable considerations support a finding of waiver here. Santos took out both loans to finance a home that was foreclosed on over a decade ago. The junior loan's Note contained numerous predatory terms of the kind that contributed to one of the worst financial crises in this country's history, RR5:1-8, including a high interest rate and balloon-payment provision, 1CR8, 15. This Court need not take our word on that score: Yellowfin's counsel acknowledged that this loan was "not a good loan" and was "not a loan [he] would advise anybody to take." RR12:4-7. Forcing Santos to pay any remaining balance on the loan under these circumstances, even if the statute of limitations has not run, is precisely the type of "inequitable conduct" that the waiver doctrine is designed to prevent, *see McGowan v. Pasol*, 605 S.W.2d 728, 732 (Tex. Civ. App.—Corpus Christi 1980, no writ).

B. In the Court of Appeals, Yellowfin acknowledged that sitting on its rights for twelve years could constitute a waiver. But it argued that the relevant period of delay may be sliced and diced, with the validity of any

claim of waiver depending on how long any particular downstream creditor owned the debt. Thus, Yellowfin asserted, because it acquired the Note recently, it did not waive its right to collect the debt. *See* AP175-76.

That argument misunderstands basic principles of contract law. By purportedly purchasing the junior Note, Yellowfin "st[oo]d in the shoes" of the assignor—the creditor from whom it purchased the debt—and, as a matter of law, had the same acceleration rights and knowledge of those rights as its predecessors. *See Jackson v. Thweatt*, 883 S.W.2d 171, 174 (Tex. 1994) (citation omitted). For example, this Court calculated the time for a purchaser to bring suit on a note he purchased from the FDIC as beginning in 1985, when the FDIC first was legally authorized to sue, even though the purchaser did not acquire the note from the FDIC until 1988. *Id.* at 172-73.

As an assignee, Yellowfin "suffered the same injury as the assignor[]" and has only the "same ability to pursue [related] claims." *See Sw. Bell Tel. Co. v. Mktg. on Hold Inc.*, 308 S.W.3d 909, 916 (Tex. 2010) (explaining that the assignee "steps into the shoes" of assignors); *Gulf Ins. Co. v. Burns Motors, Inc.*, 22 S.W.3d 417, 419-20 (Tex. 2000) (explaining that where "Nash assigned to Burns Motors all present and future claims that Nash could assert[,] … . Burns Motors stands in Nash's shoes and may assert only those rights that Nash himself could assert"). This Court should not ignore the years that elapsed while former creditors sat on their rights before Yellowfin allegedly purchased the junior loan in 2019. Otherwise, any party could revive a

waived right by assigning it to another entity (for a price, of course), which could then exercise the right. That result would eviscerate the time-honored waiver doctrine.

PRAYER FOR RELIEF

This Court should grant this petition for review, reverse the decision below, hold Yellowfin's claim time-barred, and remand the case for any necessary proceedings in the trial court.

Respectfully submitted,

/s/Natasha R. Khan

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September 15, 2023

CERTIFICATE OF COMPLIANCE

I certify that this Petition complies with Texas Rule of Appellate Procedure 9.4 because it contains 8,079 words, excluding the parts exempted by Rule 9.4(i)(1), in 14-point Palatino Linotype font.

/s/ Natasha R. Khan
Natasha R. Khan

Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Petition was served electronically on the following counsel of record on September 15, 2023, in compliance with Texas Rule of Appellate Procedure 9.5.

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Madeline Meth		madeline.meth@georgetown.edu	9/15/2023 4:29:55 PM	SENT
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Associated Case Party: Yellowfin Loan Servicing Corp. as Successor in Interest to First Franklin

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