January 22, 199
FOR PUBLICATION

IN THE SUPREME COURT OF TENN

AT NASHVILLE

GUY ALEXANDER, JR., ROYCE TAYLOR, AND SKYLINE APARTMENTS PARTNERSHIP,

Plaintiffs-Appellants,

v.

THIRD NATIONAL BANK,

Defendant-Appellee.

Davidson Circui

Hon. Barbara N.

No. 01S01-9411-C

For Defendant-Appellee:

Robert C. Goodrich
Farris, Warfield &
Nashville

John C. Tishler
Nashville

For Plaintiffs-Ap

W. J. Gray Blackburn
Daykvaind Fay Gore
Blackburn & Slobe
Nashville

John D. Melton, I
Murfreesboro

OPINION

COURT OF APPEALS REVERSED;
CASE REMANDED TO TRIAL COURT. R

This case presents for review

Court of Appeals sustaining the def

judgment on the ground the suit is

statute of limitations. This Court

action alleged is breach of contrac

property and, therefore, the applic

years rather than three years.[1]

I.

For the purposes of this appea

the case, including the course of t

parties Guy Alexander, Jr. and Royc

Apartments, a general partnership,

are not disputed. The plaintiff be

Skyline Apartments located in Galla

apartments were encumbered by a dee

the approximate amount of $250,000

[1]Tenn. Code Ann. § 28-3-105(1) (Supp. 1
following actions shall be commenced with
accruing of the cause of action: (1) Ac
or real property." Tenn. Code Ann. § 28-
"The following actions shall be commenced
cause of action accrued: . . . (3) Actio
expressly provided for."

more debts due the sellers which we
property. The defendant bank agree
$650,000. The proceeds of the loan
debts that were liens against the p
apartments. A deed of trust on the
in that amount was prepared and exe
recorded.

The plaintiff had difficulty o
subordination agreement from the se
least one of the secured debts to t
the meantime, Third National Bank b
advances so that the partnership co
the apartments. The partnership ul
bank loans in the amount of $350,00
used to improve the apartments. Th
obtain a recordable subordination a
owners. When the bank stopped maki
was still encumbered by the Sovran
securing the former owners.

The bank then removed the page
of trust containing the signatures
page to a deed of trust securing a
recorded the deed of trust at the r

contends that the plaintiff consent
partnership denies that it consente

The bank foreclosed the record
apartments were sold pursuant to th
Alexander, Jr., personally, and the
proceedings.

II.

The complaint charges breach o
"implied duty of good faith and fai
and/or negligent misrepresentation,
alleges as damages: additional cos
the delay in obtaining even partial
defendant; additional interest expe
interest rates; lost rent as a resu
renovations; and loss of its equity
its inability to find substitute fi
not allege any damage to the proper

In defense, Third National Ban
of any duty or obligation due the p
pled the one year statute of limita
of limitations, waiver, estoppel, a

counter-claim against the plaintiff individually for the balance due on partnership.

III.

The plaintiff contends that th breach of contract, gove§ n2e8d- 3b-y Ten 109(a)(3), the six year statute of contends it is an action for injury Tenn. Co§ de2 8A-n3n-.105, the three year limitations.

Whether the cause of *ex contracto* an al or *ex delicto* is not determinative of the limitat Bland v, 197 Tenn. 683, 277 (1955). This C Dura v Kedge 674 S.W.2 715, 719 (Tenn. 1984): "It is well the gravamen of an action, rather t action for tort or contract, determ of limitations."

The issue before the Court is decisi Farabee-Treadwell Co. v. Unio Trust, C1o3.5 Tenn. 208, 186 S.W. 92 (

complaint alleged that the defendan
to the plaintiff to pay for the pur
to the bank of a note secured by a
a portion of the corn was delivered
defendant for part of the loan. Th
breached the contract by refusing t
plaintiff was forced to sell the co
the open market at a loss. The pla
lost profit and also for injury to
determining the damages to which th
Court discussed whether the suit wa

> There has been much discuss
> case as to whether this was an
> the contract or in tort. The
> Civil Appeals took the view th
> suit in tort, and that plainti
> accordingly entitled to recove
> it sustained growing out of th
> that court thought included ev
> damage set out in the declarat
> aforesaid.
>
> We are unable to agree with
> conclusion of the Court of Civ
> that this can be treated as a

Id at 93. The Court held that the
action for breach of contract and s

> If the plaintiff is able to
> upon a trial of the case that
> such contract as charged, and

> breached it under the circumst
> detailed in the declaration, a
> plaintiff did not have time af
> was refused to procure funds e
> order to meet its obligation,
> such circumstances we think th
> liable to the plaintiff for th
> damage claimed. That is to sa
> is liable for the loss plainti
> by reason of the necessity of
> forced sale of this corn. Suc
> naturally and proximately foll
> bank's breach of contract unde
> circumstances alleged, and was
> necessarily within the contemp
> parties under the peculiar con
> averred.

Id at 94.

A review of the facts in the c
shows that, Farabee The ceaasdew,eltlhere ha
injury to the property, but rather
plaintiff's anticipated economic ga
proceeds. The substance of the all
refused to make a loan in the amoun
contemplated by the parties. All o
committed by the defendant were inc
a $350,000 loan rather than a $650,
fabrication of the deed of trust wh
foreclosed, and alleged by the plai
was an aspect of the bank's limitin
Also, the alleged misrepresentation

refusal to loan the larger amount.
indicate the gravamen of the suit t
plaintiff complains of additional c
in the interest rate, and loss of r
counter-claim for the loan made ind
breach of contract rather than a to
property. Here, neither the value
plaintiff's interest in the propert
failure to loan the money; those va
alleged breach of contract. Conseq
to property or to an interest in pr

The bank r eVlainecse uvp.o nS c5h4u7l dSe.rW . 2
927 (Tenn. 1977), in which the Cour
statute of limitations was three ye
claim that the sale of the plaintif
full value was induced by the fraud
defendant. In that case a minority
directors of the company, alleging
misrepresentations regarding the va
resulted in the plaintiff selling h
fair value. The Court found that:

> [T]he gravamen of the prese
> fraud in the inducement of a c
> old common law action of decei
> alleges damages resulting from

> misrepresentations of material
> induced him to sell his stock
> lower figure than reasonable.

Id at 931. The Court held the clai
of deceit, for which the statute of
In that case, the value of the plai
was affected by the defendant's dec
inconsistent with the finding in th
gravamen of the complaint is breach

Nor does the decision of the S
Appeal Cumberland & Ohio Co. v, 936s
F.2d 846 (6th Cir. 1991), 1 U.S. 1034
support the defendant's position in
interpreting Tennessee law, held th
applied to a suit for damages incur
forced by the defendant bank, pursu
to sell property for less than its
the substance of the alleged wrong,
indistinguishable from deceit and t
the three year statute of limitatio
value of the plaintiff's interest i
affected by the defendant's wrongfu

Because the Court finds the si
applicable, discussion of the plain
the running of the three year statu
addressed.

The judgment of the Court of A
the case is remanded to the trial c

Costs are taxed against Third

_____
Lyle Reid, J.

Concur:

Anderson, C.J., Drowota, Birch, and
White, JJ.