

Outside Counsel

Bringing Old Judgments Back to Life

Whatever your favorite TV show about lawyers, whether it be *Suits*, *The Practice*, *The Good Wife*, or any of the many other shows centered around lawyers, all have a scene where the sympathetic plaintiff is awarded a large sum at trial. These shows ignore the important aftermath—the plaintiff's attempt to monetize the judgment and actually recover money. As practicing lawyers (as opposed to television lawyers) know well, enforcing judgments can be difficult, time-consuming and all too often unfruitful.

In many situations, judgments remain uncollected, grow stale and are forgotten by creditors and their counsel. Those situations provide truth to the cliché that an uncollected judgment is not worth the paper it is written on. However, the precipitous rise in the value of real estate in the metropolitan area over the last year may bring value and utility to an otherwise long forgotten judgment. To take advantage of this opportunity, a savvy lawyer must know how to bring an old judgment back to life.

A judgment is valid for 20 years at which point a presumption arises that it was paid. CPLR 211(b). However, a

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judgment lien only lasts for 10 years as a lien on real property. CPLR 5203(a). Many attorneys are unaware that the lifespan of a judgment and the lifespan of the judgment as a lien on real property are not the same. Not knowing this fact poses a risk to the judgment creditor that it will become an unsecured creditor when its judgment lien expires, and lose a potential source of recovery. The gap between the life of a judgment and that of a judgment lien also poses risk to the unaware attorney who gives advice believing the judgment lien lasts for 20 years.

Imagine a scenario where a judgment debtor owns real property but the judgment creditor cannot enforce its judgment against the real property because the debtor owns the property jointly with a spouse as tenants by the entirety. Under such a scenario, and assuming no other recoverable assets, a judgment creditor may choose to wait until the judgment debtor seeks to sell or refinance the real property. The judgment

debtor cannot accomplish either a sale or refinance without resolving the judgment, but only if the judgment creditor still has a valid judgment lien docketed against the real property. Once the judgment lien expires, the judgment debtor can sell or refinance his or her real property free and clear of the judgment. The unaware judgment creditor, thinking it had a valid judgment lien for 20 years, loses out.

This risk also exists in the foreclosure context. Where the judgment debtor owns real property encumbered by a prior mortgage that is being foreclosed, the judgment creditor often awaits the results of the foreclosure action. The judgment creditor is hoping the foreclosure sale will generate surplus monies to pay the judgment. Lapse of the judgment as a lien will bar the judgment creditor from sharing in any surplus monies generated by a foreclosure sale. *Douglass v. Chisolm*, 142 Misc. 869 (Sup. Ct. 1931), aff'd, 236 A.D. 668 (1st Dept. 1932), aff'd, 261 N.Y. 632 (1933).

Under both of these scenarios, a creditor risks that its judgment lien will expire and it will lose an opportunity to recover. An attorney for a judgment creditor that has failed to explain this possibility risks both an unhappy client and, possibly, a claim of malpractice.

Luckily for the judgment creditor (and attorney), an option exists to extend a judgment lien beyond the initial 10-year

term for another 10 years. Even in situations where a judgment creditor unknowingly or carelessly lets its judgment lien lapse, the creditor can bring an old expired judgment lien back to life and restore its status as a lien on real property. The statutory basis for both is in CPLR 5014. That statute states, in pertinent part, that:

[A]n action upon a money judgment entered in a court of the state may only be maintained between the original parties to the judgment where: (1) ten years have elapsed since the first docketing of the judgment ...

An action may be commenced under subdivision one of this section that during the year prior to the expiration of ten years since the first docketing of the judgment. The judgment in such an action shall be designated a renewal judgment and shall be so docketed by the clerk. The lien of a renewal judgment shall take effect upon the expiration of ten years from the first docketing of the original judgment.

Therefore, by obtaining a renewal judgment, a judgment creditor will have another ten-year period in which its judgment will be a lien on the debtor's real property.

Originally, the statute did not allow a creditor to seek a renewal judgment before its judgment lien had expired. However, a 1986 amendment allowed judgment creditors to do so before expiration of the judgment lien and thus avoid a "lien gap". *Premier Capital v. Best Traders*, 88 A.D.3d 677, 678 (2d Dept. 2011). A lien gap is the period of time that exists between the expiration of the judgment creditor's original judgment lien and the docketing of the renewal judgment. When a lien gap emerges, a judgment creditor loses priority to other lienors. *Gletzer v. Harris*,

51 A.D.3d 196 (1st Dept. 2008), aff'd, 12 N.Y.3d 468 (2009). Prudent practice is to seek a renewal judgment before expiration of the judgment lien as a shield against claims of other lienors. Savvy lawyers may also use a lien gap as a sword to elevate their client's liens over the expired liens of others.

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Since avoiding or minimizing a lien gap is important, the best practice is to seek a renewal judgment as soon as permissible. Due to delays in the judicial system, one should seek a renewal judgment under CPLR 3213 by bringing a motion for summary judgment in lieu of a complaint. Moving under CPLR 3213 is more expeditious than commencing the action by Summons and Complaint or Summons with Notice. Note that a creditor cannot obtain a renewal judgment by bringing a motion in the original action in which the judgment was granted. A new action must be commenced. *Id.*

Courts do not automatically grant renewal judgments. A judgment creditor must still prove its case. It must show the existence of the judgment, that the creditor still holds the judgment and that it has not been satisfied. Courts have not been sympathetic to judgment debtors and reject such equitable defenses as laches, at least where the delay has not caused the debtor any prejudice.

For example, in *Premier Capital v. Best Traders*, 88 A.D.3d 677, 678 (2d Dept. 2011), the Second Department rejected the judgment debtor's laches argument and awarded a renewal judgment even though the creditor commenced the action to renew the judgment 14 years after its initial judgment was docketed. See also *Schiff Food Products Co. v. M&M Import Export*, 84 A.D.3d 1346, 1348 (2d Dept. 2011); *C.T. Holdings, Ltd. v. Schreiber Family Charitable Foundation*, 154 A.D.3d 433 (1st Dept. 2017).

The value of real estate in the metropolitan area has been rising, and at a significant rate. Newsday recently reported that the median sales price for a home rose 14% over the last year in Nassau County and 18% in Suffolk County. From a judgment creditor's perspective, these increased values represent an opportunity to monetize a long forgotten judgment and to take advantage of "lien gaps" created when other judgment liens expire.

As attorneys, we should be aware of the risks and opportunities available to clients holding judgments. So wipe the dust and cobwebs off those old judgments, check whether they have expired as liens on real property and take prompt action to renew the judgment liens. Doing so will restore a powerful weapon to a judgment creditor's enforcement arsenal.