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Reviving dormant judgments in Illinois

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Do you recall the height of the Great Recession when banks obtained judgments against debtors daily? What did you do when judgment was entered against your borrower/guarantor? Did you proceed to supplementary proceedings? Were citations to discover assets issued either directly to the debtor or a third party? Was a memorandum of judgment recorded? Was a credit report run and asset search performed? Have you searched the bankruptcy docket? If you are a banker or an attorney representing banks, now is an excellent time to revisit your drawer or spreadsheet of judgments to see if they are worth more than the paper they are printed on.

Imagine it is May 1, 2008 and ABC Bank has just obtained a \$250,000 judgment against Gary Guarantor. ABC Bank diligently records a memorandum of judgment against Guarantor on May 2, 2008 in the local recorder of deed's office. Unfortunately, the prospect of recovery looks bleak. A citation to discover assets is issued to Guarantor, but Guarantor is never served. ABC Bank hears from a friend who hears it from another friend that Guarantor has left the country, possibly for good. At the time the memorandum of judgment was recorded, Guarantor's real property consists of two parcels: 1) an income producing three-flat valued at \$475,000 encumbered with a first mortgage in the amount of \$480,000 and ABC Bank's \$250,000 memorandum of judgment; and 2) a vacant lot located in the Fulton Meat Packing District valued at \$750,000 with a first mortgage in the amount of \$650,000 and a second lien in the amount of \$125,000. With both properties lacking any apparent equity,

ABC Bank chooses to take no action to enforce the judgment and it is filed away and forgotten.

Fast forward seven years to present day May 2015. Guarantor has resurfaced and his three-flat is now worth \$550,000 with the first mortgage having been paid down to \$470,000 followed by ABC Bank's \$250,000 memorandum of judgment. To Guarantor's surprise his vacant lot is now the subject of a bidding war between developers in the Fulton Meat Packing District. Guarantor currently is under contract to sell his lot for \$950,000, which would pay-off the first mortgage and second mortgagee in full and leave roughly \$175,000 for Guarantor. Unfortunately, ABC Bank is unaware of any of these developments, continues to take no action and relies upon their memorandum of judgment recorded in 2008. Guarantor closes on the sale of his lot on May 31, 2015 with proceeds paying off the first and second liens in full and Guarantor walking away with the remaining proceeds. ABC Bank receives nothing. What happened?

Illinois' Revival of Judgment statute sets forth the procedure to revive judgments and enforce them after the age of seven years. 735 ILCS 5/2-1602(a) states a judgment may be revived by filing a petition to revive the judgment in the seventh year after its entry or in the seventh year after its last revival or in the twentieth year after its entry or at any other time within 20 years after its entry if the judgment becomes dormant. In our above example, ABC Bank's judgment lien expired on May 2, 2015 and was never properly revived. While the entry "of a reviving order should be a clerical task; all it entails is

assurance that the judgment has not been vacated or marked satisfied since its rendition." *TDK Electronics Corp. v. Draiman*, 321 F.3d 677, 680 (7th Cir. 2003)(a creditor must remain diligent in protecting its rights by reviving judgments in a timely manner). A recent ruling by the Illinois Appellate Court, *Craig A. Burman v. Daniel Schneider III*, 2014 IL App (1st) 130772 provides a cautionary tale and an excellent opportunity to review the requirements of reviving a judgment.

In *Burman*, Burman obtained a \$91,284.25 judgment against Daniel W. Schneider and the Schneider Development Group on September 6, 1991. Thereafter, on June 9, 1998, Burman filed a timely petition to revive the judgment, however, the petition was returned not served. Over 13 years later, on December 6, 2011, Burman again attempted service of the 1998 petition and Schneider was eventually served with the petition on November 23, 2012. Schneider moved to dismiss under Illinois Supreme court Rule 103(b) for lack of diligence on the part of Burman. The trial court found that the 1998 petition to revive the judgment, the only petition filed, could not, under Illinois law (735 ILCS 5/12-108(a)) serve as a basis to revive the judgment after 2005. The court held that even if the 1998 petition to revive judgment remained viable, the 20-year statute of limitations expired on September 6, 2011, demonstrating a lack of diligence and warranting dismissal under Illinois Supreme Court Rule 103(b).

On appeal, Burman argued that he properly revived the 1991 judgment by filing a petition to revive the judgment in 1998, within seven years of its entry, in compliance with 2-1602(a) of the Illinois Code of Civil

Procedure. Burman argued that as long as a party files a single timely petition for revival, a later petition is not necessary to keep the judgment alive. The Court disagreed, finding that Burman's interpretation of the statute, that filing a single petition to revive within seven years of the entry of judgment suffices, contradicts the express language of Section 2-1602(a). Therefore, the Appellate Court affirmed the lower court's decision finding that Burman's 1998 petition could not be the basis for seeking to enforce the judgment.

The Great Recession that began in December of 2007 saw financial institutions obtaining judgments against defaulted borrowers and guarantors at a rapid pace. Financial institutions found themselves

spending time, effort and attorney's fees to obtain judgments against delinquent borrowers and guarantors. Some of the judgments were presumably not worth the paper upon which they were entered. Rather than spend additional resources to collect on those judgments, some banks chose to accumulate the judgments and wait. More than seven years have passed since the onset of the Great Recession and the economy has shown signs of improvement. Perhaps your debtor's financial condition improved and you are motivated to re-examine your collection efforts and take action? Don't let ignorance of the law or a lack of diligence cost you a recovery.

Bankers and attorneys need also be concerned with the scenario described at the

beginning of this article, the forgotten judgment lien. Pursuant to 735 ILCS 5/12-101, a judgment is not a lien on real estate for longer than seven years from the time it is entered or revived, unless the judgment is revived within seven years after its entry or last revival and a new memorandum of judgment is recorded prior to the judgment and its recorded memorandum of judgment becoming dormant. Remember, the revival of a judgment is a two-step process if you have a judgment lien. Not only do you need to file a petition to revive the judgment, but you must also record the revived judgment and make it of record. *Burman* stresses the importance of both knowing the law and acting with diligence. ■

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