

Short Form Order

**SUPREME COURT - STATE OF NEW YORK  
TRIAL TERM, PART 11 NASSAU COUNTY**

**PRESENT:**

***Honorable Karen V. Murphy***  
**Justice of the Supreme Court**

\_\_\_\_\_ **x**

**L&L ASSOCIATES HOLDING CORP.,**

**Index No. 10648/11**

**Plaintiff(s),**

**Motion Submitted: 7/23/12**

**Motion Sequence: 001, 002**

**-against-**

**DOUGLAS STENNETT, INEZ STENNETT,  
UNITED STATES OF AMERICA, JAMILA  
COLLINS, NEW YORK PROPERTY INSURANCE  
UNDERWRITING ASSOCIATION, COUNTY OF  
CENTRE, STATE OF PENNSYLVANIA, ANDRE  
STENNETT,**

**Defendant(s).**

\_\_\_\_\_ **x**

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....XX  
Answering Papers.....X  
Reply.....X  
Briefs: Plaintiff's/Petitioner's.....  
Defendant's/Respondent's.....

Motion by ID Equity, Inc., ("ID Equity"), the assignee of the foreclosed owners/defendants, Douglas Stennett and Inez Stennett, for an order confirming the referee's report of sale and directing the Treasurer of the County of Nassau to pay the surplus money in the amount of \$65,043.86 plus accumulated interest, if any, to ID Equity, the owner of the equity of redemption or, in the alternative, appointing a referee to inquire and report as to the distribution of the surplus funds is granted as to the alternate relief. Cross-motion by defendant Jamila Collins ("Collins") to confirm the referee's report of sale and distribute the surplus monies to Collins is denied.

This action was brought to foreclose on a tax lien upon certain premises located at 97 Lena Avenue, Freeport, New York.

On January 4, 2012, a judgment of foreclosure and sale was entered in this action appointing Scott F. Guardino, Esq., referee to sell the premises. On March 13, 2012, Mr. Guardino sold the premises to 20 MK LLC for the sum of \$176,000. This sale generated a surplus of \$65,043.86, which amount was deposited in the Treasury of Nassau County on May 26, 2012.

On May 4, 2012, a notice of claim to surplus money was filed by the assignee of the foreclosed owner, ID Equity, Inc. Defendant, United States of America, also filed a notice of claim to surplus money.

In support of the motion, ID Equity submits the affidavit of Igor Shlafman, the President of ID Equity. In his affidavit, Mr. Shlafman states, in pertinent part, that “there are no unsatisfied liens” and requests that the court issue an order confirming the referee’s report of sale and directing the Treasurer of the County of Nassau to pay the surplus money in the amount of \$65,043.86 to ID Equity.

The cross-movant Collins opposes ID Equity’s request and seeks an order to confirm the referee’s report of sale and distribute the surplus monies directly to Jamila Kemp Collins. Collins contends that she is “the holder of a lien against the foreclosed premises by virtue of an outstanding judgment against property owner, Douglas Stennett and Inez Stennett, recorded in the Office of Nassau County on December 16, 2002” (¶ 4 of Daniel Trent’s Affirmation), and her lien is “clearly superior to any claim by the owners of the equity of redemption and their assignees.” (*Id.* at ¶ 10). The amount of said judgment is \$51,610.50 plus interest.

In response thereto, ID Equity notes the following:

“At the time of our motion, there was no notice of claim filed by Jamila Kemp Collins in the Nassau County Clerk’s Office and she was therefore not served with our motion nor did Ms. Collins appear at the foreclosure action;

\* \* \*

According to the cross motion papers, the judgment of the claimant in the cross-motion was obtained in the County of Kings and recorded in said office on May 23, 1997 . . . . The judgment was then filed with the Nassau County Clerk’s Office on December 16, 2002 . . . the mere filing of the judgment in the

Nassau County Clerk's office does not revive or change the date of the original judgment which . . . was obtained on May 23, 1997. . . the judgment is more than ten years old and is not entitled to enforcement and was, in fact, more than ten years old when the judgment of foreclosure and sale was entered on January 4, 2012. There are also numerous liens by the United States Government, the County of Centre, State of Pennsylvania and others." (§§ 4 and 7 of Michael Raphan's Affirmation in Opposition)

A lien on real property is only effective for ten (10) years and a money judgment is viable for twenty (20) years (*See CPLR § 211(b), § 5203(a); Gletzer v Harris*, 12 NY3d 468 [2005]; *Deutsche Bank National Trust Co. v Gonzalez*, 26 Misc3d 1219(A) [NY Sup 2010]; *First Natl. Bank of Long Island v Brooks*, 1 Misc 3d 905(A) [NY Sup 2003]). "[T]he legislature enacted CPLR 5014 to allow a judgment creditor to commence an action to renew its judgment lien for another ten (10) years. An action for renewal may be commenced in the ninth (9<sup>th</sup>) year of the original lien or after the expiration of the ten (10) year lien." (*Gletzer v Harris, supra*). Hence, "the procedure where the creditor moves within the ninth (9<sup>th</sup>) year would prevent any lien gaps. Where a judgment creditor chooses instead to move for a renewal lien after the expiration of the ten (10) year judgment, he does so with the risk that judgments, liens, mortgages, etc. may be recorded during this gap and will be entitled to priority over the expired judgment lien." (*Deutsche Bank National Trust Co. v Gonzalez, supra*).

It has been held that a mortgagee "should not be penalized for failing to unearth an expired lien or not investigating the prospect that it might be subject to a pending renewal request" (*Gletzer v Harris, supra* at 477). Thus, "where a mortgage is docketed during a judgment lien gap, a court lacks the inherent power to render *nunc pro tunc* treatment which would prejudice the priority of liens of intervening third parties." (*Deutsche Bank National Trust Co. v Gonzalez, supra; Gletzer v Harris, supra* at 476).

Further, "while the 10 year lien does not take effect until the 'docketing' of the judgment, the 10 years actually begins to run from the 'filing of the judgment roll.'" (*See Commentary C 5203:3 on McKinney's CPLR § 5203*).

This 10 year timing difference is reconciled in CPLR § 5014. "If a judgment remains unsatisfied after ten years, the judgment creditor can maintain the lien on real property by bringing an action on the original judgment." (*In re Vinieris*, 391 B.R. 707 [Bkrtcy S.D. N.Y. 2008]).

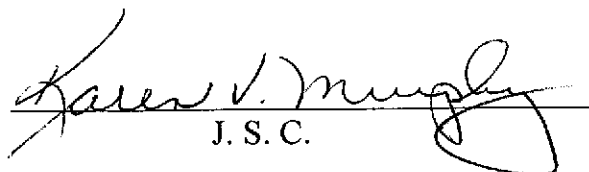
At bar, the judgment was obtained and recorded in the County of Kings on May 23, 1997 and then filed with the Nassau County Clerk's office on December 16, 2002. The judgment is more than 10 years old and claimant has offered no allegation or proof that any action was brought by her to extend her lien. Consequently, Collins has not demonstrated that her lien is superior to the claim of non-party ID Equity.

Lastly, ID Equity's Exhibit D, purportedly a copy of an assignment is blank and fails to establish that ID Equity has any interest in the surplus money.

Under the circumstances extant, ID Equity's motion is granted as to the alternative relief requested and a referee shall be appointed to inquire and report as to the distribution of the surplus funds.

Movant shall submit an order of reference for the Court's consideration, on notice to all named defendants.

Dated: August 28, 2012  
Mineola, N.Y.

  
J. S. C.

**ENTERED**

**AUG 31 2012**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**