

# BERGMAN ON MORTGAGE FORECLOSURES

BY BRUCE J. BERGMAN



## Duration and Renewal of Money Judgments: What Lenders and Judgment Creditors Need To Know

For a foreclosing lender, naming and serving all junior interests is a goal; that is, naming necessary parties and extinguishing their interests, thus making the foreclosure title more valuable. (Foreclosure searches should not recite stale judgments—but lenders still want to appreciate the subject.) Mindful that a money judgment (unlike a judgment of foreclosure and sale) has *some* life, the judgment creditor needs to assure its viability and maintain it if necessary. A recent case conveniently explores all the principles and reminds us to review those here.<sup>1</sup>

First, the duration of a money judgment is 20 years, but that is only as to personal property.<sup>2</sup> Its effectiveness as a lien on real property is 10 years. Therefore, from the viewpoint of a foreclosing lender, if a judgment is more than 10 years old, it has expired as a lien on real property and that judgment creditor need not be named as a party defendant in a mortgage foreclosure action; the judgment creditor has nothing—at least as against the property.

From the vantage point of a judgment creditor, when a judgment has a life of 10 years, the creditor may wish to avail itself of a renewal procedure and have that judgment extended for another 10-year period. (Here is where it gets a bit more interesting.)

Statute provides for renewal of a money judgment (CPLR 5014) which allows for an action for renewal to be commenced during the year prior to the expiration of 10 years from the first docketing of the judgment. The judgment that issues from such an action is designated a renewal judgment and it is to be docketed by the court clerk, to take effect upon the expiration of 10 years from the first docking of the original judgment.

So, as long as the renewal judgment is obtained within that original 10-year lien period, then the new lien takes effect not immediately, but only upon expiration of the first 10-year lien period. This structure critically avoids a lien gap and at the same time affords the judgment creditor a full 10 years for the new lien.

The glitch in the case referred to was that the judgment creditor commenced its renewal action more than 10 years after the judgment was originally docketed. While the action was nevertheless timely, the judgment creditor was unable to avoid a lien gap. What the judgment creditor wanted was that the renewal judgment would begin at the very moment the earlier judgment ended. However, having not begun the renewal action within the 10-year period, the court was unable to relate the renewal lien back to the end of the original 10-year period.

The question then was, when does the lien of a renewal judgment where the action was begun after the conclusion of the 10 years become effective? The answer is that the renewal lien becomes effective when granted by the Supreme Court, but it is deemed granted on the date the decision and order is entered and docketed by

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the county clerk, and there is a difference between those two events. Although the 10-year realty lien is realized when the judgment is docketed, it is measured not from the time of docketing, but from the filing of the judgment roll, which is the moment the judgment is entered. In turn, a Supreme Court judgment is entered after it has been signed by the clerk and it is filed by the clerk. (Arcane stuff, to be sure.)

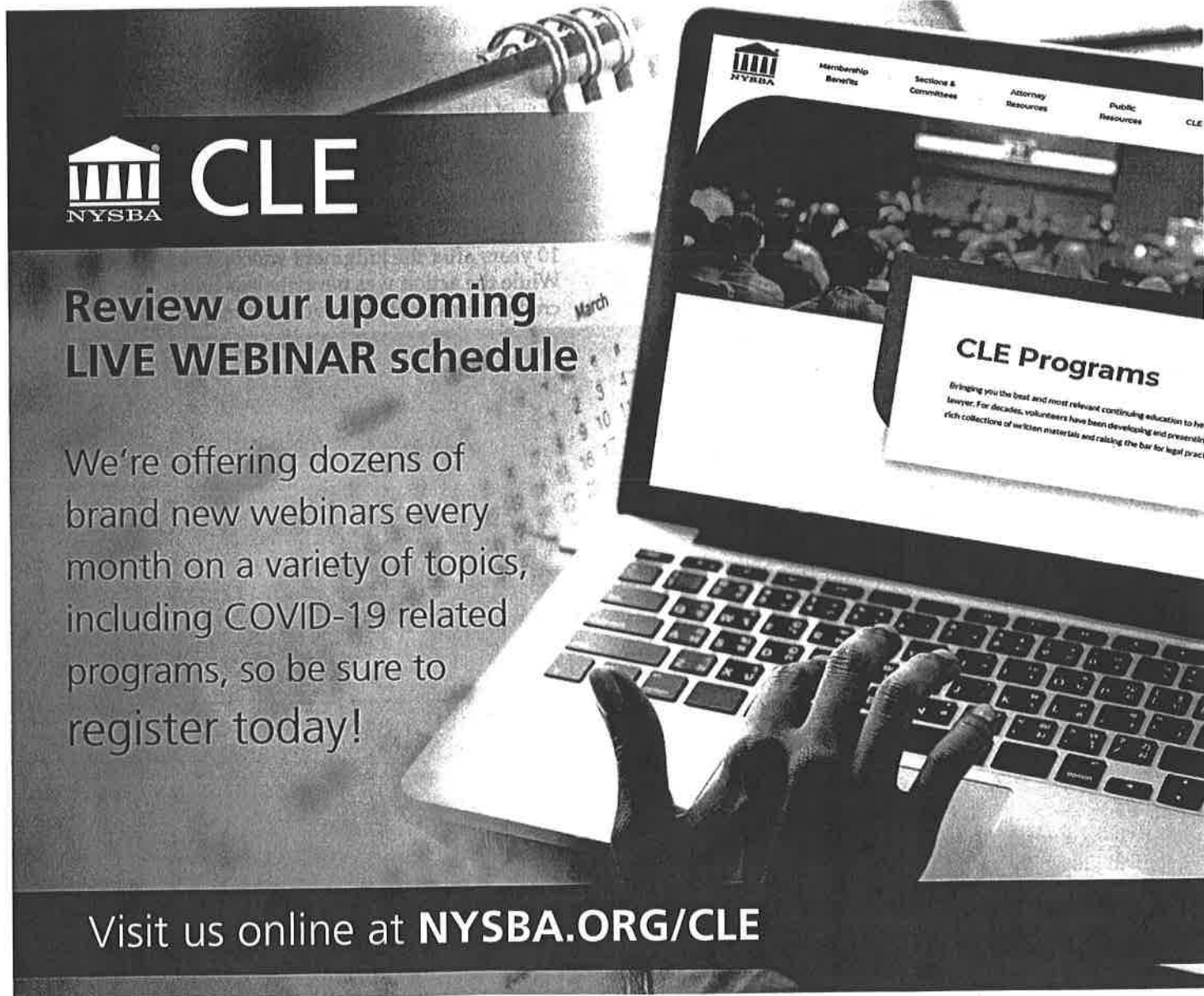
All these obscure niceties are meaningful because when a foreclosing plaintiff obtains a foreclosure search, if a money judgment has expired, the holder of that expired judgment need not be named as a party defendant. That it may have begun an action to renew the lien is not something the foreclosing plaintiff needs to search for. That the renewal judgment will later be granted, means only that the judgment comes on anew when it is docketed and entered. If this occurs after the foreclosing plaintiff has begun its foreclosure action, the judgment creditor is simply bound by the *lis pendens* filed in the


foreclosure action and the foreclosing plaintiff still does not have to worry about serving the judgment creditor.

The lesson in the end? Yes there are some complexities here, but the lender's title search should resolve them and properly advise as to when junior parties are or are not to be named in a foreclosure action. As to judgment creditors, it is an instruction that renewal of a judgment needs to be pursued before expiration of the judgment, lest there be a deleterious gap period emerging.

## Endnotes

1. *Wilmington Savings Fund Society, FSB v. John*, 67 Misc.3d 319, 132 N.Y.S.3d 862 (Sup. Ct. 2020).
2. For a more extensive review of this entire subject, see Bruce J. Bergman, 2 Bergman on New York Mortgage Foreclosures § 12.06 (LexisNexis, Matthew Bender Elite Products, 2020).



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