

<b>Hamilton Equity Group, LLC v Knipl</b>
2018 NY Slip Op 32360(U)
September 19, 2018
Supreme Court, New York County
Docket Number: 159183/2017
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. KATHRYN E. FREED **PART** **IAS MOTION 2**  
*Justice*

-----X  
INDEX NO. 159183/2017  
HAMILTON EQUITY GROUP, LLC, AS ASSIGNEE OF HSBC  
BANK USA, NATIONAL ASSOCIATION, AND ITS SUBSIDIARY  
HSBC BUSINESS CREDIT (USA), INC., F/K/A MARINE MIDLAND  
BUSINESS LOANS, INC., F/K/A U.S. CONCORD, INC.,  
MOTION SEQ. NO. 001

Plaintiffs,

- v -

STANLEY KNIPL, EUGENE KNIPL, and MICHAEL ROSENTHAL,

**DECISION and ORDER**

Defendants.

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16  
were read on this motion to/for RENEWAL JUDGMENT

Upon the foregoing documents, it is ordered that the motion is **granted**.

Plaintiff Hamilton Equity Group, LLC (“Hamilton Equity”) moves, pursuant to CPLR 211(b) and 5014, for renewal of a judgment awarded to its predecessor-in-interest in 1998. It also seeks renewal of its judgment lien against defendant Stanley Knipl. After a review of the motion papers, as well as a review of the relevant statutes and case law, the motion, which is unopposed, is granted.

**FACTUAL BACKGROUND:**

On June 4, 1998, Marine Midland Business Loans, Inc. (“Marine Midland”), formerly known as U.S. Concord, Inc., was awarded judgment against Stanley Knipl (“defendant”),

Eugene Knipl, and Michael Rosenthal in the amount of \$368,293.32.<sup>1</sup> (Docs. 6 at 2, 7 at 9–10.) The judgment was filed with the New York County Clerk’s Office that same day.<sup>2</sup> (Docs. 6 at 2, 7 at 10.) On September 1, 2010, HSBC Bank USA, National Association (“HSBC Bank”), as well as its subsidiary, HSBC Business Credit (USA), Inc., formerly known as Marine Midland, assigned the judgment to Hamilton Equity. (Docs. 6 at 2–3, 7 at 14–16.)

On September 29, 2017, Hamilton Equity filed a summons and verified complaint seeking renewal of the judgment and lien against defendant.<sup>3</sup> (Doc. 7 at 2–7.) On January 4 and 29, 2018, process was properly served on defendant at his last known address. (Docs. 4, 9 at 2–3.)

On March 27, 2018, Hamilton Equity moved, pursuant to CPLR 211(b) and 5014, to renew the 1998 money judgment and lien against defendant. (Doc. 5.) Hamilton Equity argues that it is entitled to a new judgment and lien because it commenced the renewal judgment action prior to the expiration of the twenty-year statute of limitations set forth in CPLR 211(b). (Doc. 6 at 4–5.)

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<sup>1</sup> As noted in Hamilton Equity’s attorney affidavit supporting the instant motion, Hamilton Equity is not seeking to renew the judgment and lien against Eugene Knipl and Michael Rosenthal because they are “not liable.” (Doc. 6 at 1.) The attorney also submits notices of a bankruptcy case filing against Michael Rosenthal from July 2, 2003 (Doc. 18) and of a bankruptcy case filing against Eugene Knipl on June 20, 2014 (Doc. 17).

<sup>2</sup> Although NYSCEF Document 6 represents that the “original judgment in this matter was filed on May 24, 2007” (Doc. 6 at 4), this Court deems the May 2007 date to be a typographical error. A copy of the original judgment, submitted electronically as NYSCEF Document 7, establishes that the original judgment was filed with the New York County Clerk’s Office on June 4, 1998. (Doc. 7 at 9–10.)

<sup>3</sup> Although NYSCEF Document 6 states that the present action was commenced on October 16, 2017 (Doc. 6 at 3), this Court deems the October 2017 date to be a typographical error. A copy of the summons and verified complaint, submitted electronically as NYSCEF Document 7, establishes that Hamilton Equity instituted the present action on September 29, 2017. (Doc. 7 at 2–3.)

**LEGAL CONCLUSIONS:**

Under CPLR 211(b), a money judgment rendered by a New York court is valid and enforceable for twenty years. However, under CPLR 5203(a), such a judgment remains viable as a lien against the defendant's real property for only ten years. A plaintiff seeking to renew the lien for an additional ten-year period must comply with the provisions of CPLR 5014.

To obtain a renewal judgment, CPLR 5014 requires commencement of a new plenary action between the same parties. (*See Gletzer v Harris*, 51 AD3d 196, 198 [1st Dept 2008].) "A renewal judgment provides a judgment creditor with both a new 20-year judgment and a corresponding 10-year lien." (*Emerald Invs. Ltd. v Toms*, 133 AD3d 558, 558 [1st Dept 2015].) Pursuant to the final paragraph of CPLR 5014, an "action [to renew a judgment] may be commenced . . . during the year prior to the expiration of ten years since the first docketing of the judgment." If the renewal judgment is rendered within the ten-year lien period, then the subsequent ten-year lien period will take effect upon the expiration of the first period and thereby avoid a lien gap. (*See Gletzer*, 51 AD3d at 201.) But if the renewal action is delayed such that the renewal judgment is rendered after the ten-year lien period expires, the delay creates a lien gap into which other waiting creditors with priority may step. (*See id.* at 202.) A creditor may even bring the renewal action after the first ten-year period, but, in doing so, must be prepared to deal with the consequences of the resulting lien gap. (*See Guerra v Crescent St. Corp.*, 120 AD3d 754, 755 [2d Dept 2014] ("[A]n action for a renewal judgment is not time-barred even when it is commenced more than 10 years after the original judgment was docketed.").)

Hamilton Equity, as assignee of HSBC Bank, was permitted to commence this renewal judgment action against defendant since “[a]n assignee of a judgment is an ‘original party’ to the judgment for the purpose of renewing a judgment lien . . . .” (*The Cadle Co. v Biberaj*, 307 AD2d 889, 889 [1st Dept 2003].) However, this Court notes that Hamilton Equity has provided no evidence of an earlier attempt to renew the lien prior to when the first ten-year lien period elapsed on June 4, 2008. Thus, there was a lien gap. Once the first lien period expired, all HSBC Bank had against defendant was a money judgment and a right to seek a new ten-year lien period.

Hamilton Equity is entitled to a new twenty-year judgment as well as a new ten-year corresponding lien period. In construing former § 44 of the Civil Practice Act, now CPLR 211, the Court of Appeals held that “once an action is actually *commenced* within the twenty years, the statute cannot be set up as a bar, even though at the time the answer is served more than twenty years have expired.” (*Matter of Murray*, 272 NY 228, 233 [1936] (emphasis in original); see also *Levine v Bornstein*, 4 NY2d 241, 244 [1958].) The action to renew the June 4, 1998, judgment was commenced by the filing of the summons and complaint in the action to renew the judgment on September 29, 2017, and was therefore timely because the money judgment was still valid and enforceable through June 4, 2018, pursuant to CPLR 211(b). Thus, CPLR 211(b) “cannot be set up as a bar” to this renewal action. However, this Court notes that Hamilton Equity’s failure to bring the action pursuant to CPLR 5014 prior to the expiration of the first ten-year lien period in June of 2008 means that there was approximately a ten-year lien gap during which other creditors had the opportunity to assert their rights against defendant.


In accordance with the foregoing, it is hereby:

**ORDERED** that plaintiff Hamilton Equity Group, LLC's motion to renew the judgment and lien is granted; and it is further

**ORDERED** that the Clerk of the Court is to enter a renewal judgment against defendant Stanley Knipl; and it is further

**ORDERED** that this constitutes the decision and order of this Court.

9/19/2018  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE