

**Sortis Fin., Inc. v Office of the Sheriff of the City of
N.Y. Kings County Law Enforcement Bur.**

2022 NY Slip Op 32013(U)

June 8, 2022

Supreme Court, Kings County

Docket Number: Index No. 506631/2022

Judge: Ingrid Joseph

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At an I.A.S Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 8th day of June 2022.

PRESENT: HON. INGRID JOSEPH, J.S.C
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
Sortis Financial, Inc. f/k/a Clearspring Loan Services, Inc., as Servicer for SRP 2012-4, LLC,

Index No.: 506631/2022

Petitioner,

DECISION & ORDER

-against-

Office of the Sheriff of the City of New York
Kings County Law Enforcement Bureau,
Kalman Herskovits, Oneg Jewelry Corp. and
David Dresdner, as Trustee of the "CF 11-08
Trust",

MS#1

Respondents.

-----X

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the defendants' motion.

<u>Papers</u>	<u>NYSCEF Nos.</u>
Order to Show Cause and Affidavits/Affirmations Annexed.....	2-27
Affirmation in Opposition Papers.....	
Reply to Opposition Papers.....	30-34

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Upon the foregoing papers, petitioner, Sortis Financial, Inc. f/k/a Clearspring Loan Services, Inc., as Servicer for SRP 2012-4, LLC ("Sortis Financial Inc."), move (MS#1) for an order granting a writ of mandamus directing respondent, Office of the Sheriff of the City of New York Kings County Law Enforcement Bureau ("Sheriff") to execute Sortis Financial Inc.'s

judgment against real property known as and located at 416 Bedford Avenue, Unit 1B, Brooklyn, New York 11219 (“the premises”).

Sortis Financial Inc. commenced this action to request a writ of mandamus directing the Sheriff to execute a judgment against the premises. It is undisputed that on July 13, 2007, in the matter of Home Vest Capital LLC v. Kalman Herskovits and Oneg Jewelry Corp., bearing index number 960/07, a judgment was recovered in favor of Home Vest Capital LLC (“Home Vest”) and against Kalman Herskovits (“Herskovits”) and Oneg Jewelry Corp. (“Oneg”) in the principal amount of \$114,850.79 (“the judgment”). On August 15, 2007, a Transcript of Judgment was docketed in the Kings County Clerk’s Office. Thereafter, on December 10, 2008, the deed to the premises was transferred from Herskovits to David Dresdner as trustee for CF 11-08 Trust (“Dresdner”) and on November 17, 2014, Home Vest assigned the judgment to Sortis Financial Inc.

On October 17, 2018, in the matter of Sortis Financial Inc. f/k/a Clearspring Loan Services, Inc. as Servicer for SRP 2012-4 LLC v. Kalman Herskovits and Oneg Jewelry Corp., bearing index number 58433/2018, a renewal judgment was issued by Honorable Lawrence H. Ecker and thereafter entered enabling Sortis Financial Inc. to recover from Herskovits and Oneg the judgment plus interest and costs and disbursements as taxed by the clerk for a total of \$231,861.69 (“the October 17, 2018 renewal judgment”). On March 25, 2019, a Transcript of the Renewal Judgment was docketed in the Kings County Clerk’s Office. However, at the conclusion of a traverse hearing, the October 17, 2018 renewal judgment was subsequently vacated by Hon. David F. Everett, in his Decision and Order, dated March 15, 2021 (“the March 15, 2021 decision and order”). The March 15, 2021 decision and order stated that the court found inadequate service on Herskovits, namely, the court found that Sortis Financial Inc. failed to

prove by a preponderance of the evidence that it had jurisdiction over Herskovits by obtaining proper service of process.

On September 21, 2021, in the matter of Sortis Financial, Inc. f/k/a Clearspring Loan Services, Inc. as Servicer for SRP 2012-4, LLC v. Kalman Herskovits and Oneg Jewelry Corp., bearing index number 53164/2021, in a decision and order by Hon. Terry Jane Ruderman, the court found that Sortis Financial Inc. had served Herskovits and Oneg successfully and as such its submissions established its right to a renewal judgment. Thereafter, on December 28, 2021, a renewal judgment was entered by the Clerk of the Court renewing the judgment entered on July 13, 2007 (“the December 28, 2021 renewal judgment”). On December 29, 2021, a Transcript of the 2021 Renewal Judgment was docketed in the Kings County Clerk’s Office.

It is well settled that pursuant to CPLR § 5203(a), a real property lien resulting from a judgment is viable for only 10 years, however, CPLR § 5014 permits the commencement of an action for a renewal judgment, which provides a means for a lienholder to extend the lien for an additional 10 year period (*Gletzer v. Harris*, 12 NY3d 468, 471 [2009]). Pursuant to CPLR § 5014 if the renewal judgment is awarded within the 10 year lien period, the judgment creditor is able to avoid a lien gap, however, a judgment creditor is also permitted to commence an action for a renewal judgment where 10 years “have elapsed since the judgment was originally docketed” (*Schiff Food Prods., Co., Inc. v. M&M Import Export*, 84 AD3d 1346, 1348 [2d Dept 2011]). Additionally, pursuant to CPLR § 5203(a), priority is given to a judgment creditor over subsequent transferees with regard to the debtor’s real property in a county where the judgment has been docketed with the clerk of that county (*Matter of Accounts Retrievable Sys., LLC v. Conway*, 83 AD3d 1052, 1053 [2d Dept 2011]).

Here, petitioner has established that an action for a renewal judgment was filed after 10 years had elapsed since the first docketing of the judgment, that the deed conveying Herskovits' premises to Dresdner on January 27, 2009, occurred within the pendency of the original lien and that a renewal judgment dated December 28, 2021 was entered by the Clerk of the Westchester County Supreme Court renewing the judgment of July 13, 2007. Further, petitioner has established that the instant order to show cause and its supporting papers were properly served upon the respective respondents in accordance with the court's directives. Specifically, the Sheriff was served on March 11, 2022 by personal service at 210 Joralemon Street, Brooklyn, New York 11201; Herskovits was served on March 10, 2022 by personal service at 1156 55th Street, 2nd Floor, Brooklyn, New York 11219; Oneg was served on March 10, 2022 by service on the office of the Secretary of State of New York; and Dresdner was served on March 11, 2022 by personal service at 416 Bedford Avenue, Apt. 1B, Brooklyn, New York 11249 and at 185 Wallabout Street, Apt. 1, Brooklyn, New York 11206.

Accordingly, after oral argument and review of the submitted documents, the court finds that Sortis Financial Inc. has proffered sufficient evidence establishing that it maintained its lien priority against those liens recorded during the pendency of the original lien, thus their order to show cause for an order granting a writ of mandamus directing the Office of the Sheriff of the City of New York Kings County Law Enforcement Bureau to execute Petitioner's judgment against the premises known and located at 416 Bedford Avenue, Unit 1B, Brooklyn, New York 11219, is granted without opposition.

Based upon the foregoing, it is hereby

ORDERED that Sortis Financial Inc. shall serve a copy of this order with Notice of Entry upon all parties within thirty (30) days of entry of this Order, and it is further,

ORDERED that upon Sortis Financial Inc.'s proof of service of this order upon respondents, Office of the Sheriff of the City of New York Kings County Law Enforcement Bureau, Kalman Herskovits, Oneg Jewelry Corp. and David Dresdner, as Trustee of the "CF 11-08 Trust" and upon Sortis Financial Inc. submitting an execution to the Sheriff, the Sheriff is directed to execute Sortis Financial Inc.'s judgment against the premises pursuant to CPLR § 5236.

This constitutes the Decision and Order of the Court.

ENTER



HON. INGRID JOSEPH, J.S.C.
Hon. Ingrid Joseph
Supreme Court Justice

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