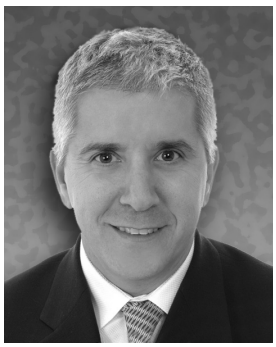

THE ENFORCER

BY DAVID FINDLING
THE FINDLING LAW FIRM

WWW.FINDLINGLAW.COM
WWW.COURTAPPOINTEDRECEIVER.COM

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Judgments Statute of Limitations

The judgment statute of limitations seems pretty straight forward; file suit against a defendant then obtain a judgment which is good for ten (10) years. However, you may ask, am I limited to 10 years? When does the clock begin to run for that 10 years? Issues related to renewal of a judgment and accrual of the statute of limitations will be reviewed in this article.

A noncontractual money obligation, i.e. a judgment, is enforceable for ten years. See MCL §600.5809(3). The renewal provision of §5809 provides that "within the applicable period of limitations prescribed by this subsection, an *action* may be brought upon the judgment or decree for a new judgment or decree." See *Id.*

The word "action" seems to imply that a lawsuit must be initiated. However, case law has established that renewal by motion is sufficient. See *Van Reken v. Darden, Neef & Heitsch*, 259 Mich. App. 454 (2004). In *Van Reken*, the plaintiff attempted to renew a judgment by motion. The court of appeals compared the language "action" in MCL §600.5809(3) to a "civil action" in MCL 600.1901 and MCR 2.101. Both provide that a civil action is commenced by filing a complaint. Because of the difference in language, the court concluded that the legislature intended "action" to have a broader meaning. See *Van Reken, supra*, 259 Mich. App at 459. The court also relied on an earlier court of appeals decision wherein the court found that courts retain personal jurisdiction over the parties in actions to extend a judgment. *Id.* The court of appeals then looked to whether filing a motion to renew a judgment constituted an "action."

The court relied on the Michigan Supreme Court's quote of Black's Law Dictionary's (7th Ed.) definition of "action" which included among other definitions, "a thing done" in *CAM Constr. v. Lake Edgewood Condo. Ass'n.*, 465 Mich. 549, 554 (2002). In *CAM*, the court found "a claim consists of facts giving rise to a right asserted in a judicial proceeding, which is an action." *Id* at 55. In *Van Reken,* the court used this definition to come to the conclusion that plaintiff's motion was "doing something" and "asserting a right in a judicial proceeding." See *Van Reken, supra*, 259 Mich. App. at 460-461. Accordingly, a motion was sufficient to renew the plaintiff's judgment.

The second issue explored by this article is determining when the judgment statute of limitations begins to run. For a normal creditor-debtor judgment, this will almost always be ten years from the date of entry of the judgment. However, MCL §600.5809(1) reveals that the statute of limitations for any given action does not begin to run until a claim accrues. Therefore, when a judgment of divorce[1] provides that an obligation is not due and payable until a certain event occurs, the statute of limitations will not begin to run until the occurrence of that event. This could be well past ten years before the claim accrues.

The following is an example. A couple divorces. The judgment of divorce provides that Husband will retain the marital home but is ordered to pay Wife a sum certain for her interest. The judgment of divorce also granted Wife a lien to secure the obligation. The obligation to Wife became due when their youngest child turned eighteen.

The youngest child turned eighteen four years ago and shockingly, Husband has not paid. However, the judgment of divorce is fifteen years old and Wife never renewed it. However, if it has been less than ten years since the Husband's obligation to pay Wife *accrued*, then the obligation and lien are still valid and enforceable.

The Michigan Supreme Court first considered this issue in Rybinski v Rybinski, 333 Mich 592, 53 NW2d 386

(1952). In Rybinski, the Court addressed when a cause of action for unpaid child support began to accrue:

> While no cases is this State have expressly applied the generally accepted theory, that the statute of limitations begins to run against each alimony installment as it become due, there are Michigan cases which indicate approval of this view. *Dewey v. Dewey*, 151 Mich. 586, 115 NW 735; *Kaiser v. Kaiser*, 213 Mich. 660, 181 NW 993; *Gutowski v. Gutowski*, 266 Mich. 1, 253 NW 192; and *Sullivan v. Sullivan*, 300 Mich. 640, 2 NW2d 799. See, also, authorities annotated in 137 ALR 890. *Id* at 596.

While Rybinski addressed a child support arrearage[2], and is distinguishable from the hypothetical presented in this article, *Gabler v Woditsch*, 143 Mich. App 709, 372 NW2d 647 (1985), made it clear the same analysis applies to the obligation owed to Wife.

In *Woditsch*, the Plaintiff husband brought an action in 1983 to enforce the parties' 1968 property settlement agreement. It provided that he would convey his interest in the marital home to the Defendant wife. In exchange, the Defendant wife was to pay Plaintiff husband $11,218.35. This obligation would be due at the time the parties' third eldest child attained the age of eighteen. The Defendant wife argued that the applicable statute of limitations was six years because the settlement agreement was a contract. The Court of Appeals disagreed holding that the 10 year limitation on actions applied and further stated:

> In *Rybinski v. Rybinski*, 333 Mich. 592, 53 N.W.2d 386 (1952), the Court noted that the ten-year period within which an action founded upon a divorce judgment must be commenced begins to run at the time the cause of action accrues. The Court held that the statute begins to run against each alimony installment as it becomes due. 333 Mich. 596, 53 N.W.2d 386.
>
> In the present case, according to the provisions of the divorce judgment, the balance of the $11,218.35 did not become due until July 27, 1975. Thus, the instant cause of action accrued as of that date. Plaintiff's complaint was therefore timely filed within the ten-year period. *Id* at 711.

Further, as long as the lien was perfected[3], because the underlying obligation is still enforceable, the lien on the marital home is still enforceable. This was explained quite clearly in *Lawrence v. Lawrence*, 150 Mich. App 29, 388 NW2d 291 (1986):

> When a circuit court provides a lien on a marital home or other property, it impliedly grants money to one of the parties. A lien is a security interest and, unless some money or property is owed by one party to the other, the lien secures payment of nothing. It is only when the amount which is owed becomes due and is not paid that the lien may be enforced. *Id* at 33 (Citations omitted) (emphasis added).

Wife's enforcement of the obligation and lien against Husband will likely still present challenges. These challenges can come in the form of animosity between the parties, Husband's refusal to pay, refinance or sell and (most importantly) his financial ability. However, the statute of limitations will not add to those challenges. Notwithstanding fifteen to twenty intervening years, Wife's obligation and lien are still enforceable as a matter of law.

Endnotes

1. A property settlement that is incorporated *and* merged into a judgment of divorce is also enforceable for ten years. See *Rybinski v Rybinski*, 333 Mich 592, 53 NW2d 386 (1952); *Gabler v Woditsch*, 143 Mich. App 709, 372 NW2d 647 (1985).

2. Author's note: Counsel should always insure that a lien granted to your client is *perfected*. A lack of perfection and concomitant loss by your client is likely to result in a malpractice claim. The applicable statute of limitations for malpractice claims will be considered in a future article.

3. Before 1997, the ten-year period of limitation began to run against each [child support] payment when that payment became due. 1996 PA 275 amended the statute effective January 1, 1997, to provide that the ten-year period to enforce a support order starts to run the day the last child support payment is due. *Rzadkowolski*, 237 Mich.App. at 411, 603 N.W.2d 646.