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Enforcing Money Judgments Against Co-Op Apartments

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Creditors' and Debtors' Rights

By Bernard D'Orazio | August 07, 2024 at 04:08 PM



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Co-op apartments are personal property for judgment enforcement purposes. The owner's interest is documented by a share certificate and by the shareholder register of the co-op corporation, which holds title to the building and the real property on which it sits. The shares are linked to a proprietary lease that gives the owner of the shares the right to possess and live in a designated apartment unit in perpetuity.

As with real property, the first issue in the judgment enforcement analysis is determining the value of the debtor's equity; i.e., the estimated market value above prior liens. While online sources can provide free estimates of market value, counsel should consider hiring an appraiser to perform a so-called "drive by" appraisal, done without access to the unit. Mortgage and tax liens can be identified through UCC and other public record searches.

Note that money judgments are not docketed as liens on co-op apartments—because they are deemed personal property—as they are automatically on condominiums and other real estate, an anomaly of New York law worthy of legislative review and correction. Why shouldn't a judgment creditor be able to docket his judgment as a lien against a debtor's co-op apartment, the same as against a debtor who owns real property or a condominium?

However, co-ops are treated as real estate for purposes of the homestead exemption. *See* CPLR 5206(a)(3). Despite its name, the homestead exemption does not exempt homestead properties from judgment enforcement. Rather, it carves out and preserves to the judgment debtor a set amount of the execution sale proceeds.

In New York City and environs, the amount, for decades \$10,000, is now a robust \$179,950. A debtor is entitled to the exemption only if he owns and occupies the unit as his primary residence. The exemption amount is calculated from the debtor's equity, over and above the mortgage debt and other liens on the property.

If there appears to be significant equity over the liens and the homestead exemption, the judgment creditor who elects to proceed against a homestead property must file a special proceeding under CPLR 5206(e) seeking an order directing the sale of the property.

Homestead orders should be granted if the judgment is substantial and the debtor has significant equity. It is not necessary for the creditor to show that he has tried to enforce the judgment in other ways, but counsel should remember that the Court has discretion under CPLR 5240 to regulate, deny, or limit any judgment enforcement

procedure. Non-homestead properties can be sold via execution sale without judicial intervention or approval.

If these issues are resolved satisfactorily, the judgment creditor may proceed with a property execution directing that a homestead property be sold at an execution sale. An execution sale is a cash-only auction. The proceeds are paid, after deduction of fees and expenses, to the judgment creditor, not to the holders of prior liens, who retain their liens on the property, unlike a sale at the end of a mortgage foreclosure proceeding, which eliminates prior liens.

In the New York City, real property execution sales are the sole province of the sheriff and involve extensive and expensive legal advertising costs. But since co-ops are considered personal property, they can be sold by a New York City marshal, and are faster and involve simpler advertising requirements.

The judgment creditor should be able to “credit bid” at an execution sale, although the sheriff or a marshal may require the creditor to file a motion seeking a credit bidding order, which should be routinely granted. See *Nicholas v. Ketcham*, 19 Johns. 84, 1821 N.Y. Lexis 37 (Sup. Ct. Judicature 1821) (New York’s highest court held that “[i]t would be unreasonable, and injurious to debtors as well as creditors, to insist that the creditor on the execution should advance money on his bid, when the sole object of the sale is to put money in his pocket, by paying a debt due to him”); *255 Butler Assoc. LLC v. 255 Butler, LLC*, 2023 NY Slip Op 33053[U] (Sup. Ct. Kings County 2023) (thoroughly reviewing the history and precedent on credit bidding and holding there is no reason it should not be allowed at an execution sale).

Note that if the judgment creditor wins the bidding for a homestead property by credit bidding, he will have to come up with cash to pay the homestead exemption amount to the debtor. There also is poundage (5% of the amount bid in New York City) that must be paid to the sheriff or marshal. See CPLR 8012.

The winning bidder at the sale becomes the owner of all the debtor’s right, title, and interest, subject to any prior liens or interests, figuratively “stepping into the shoes” of the judgment debtor. But because the interest is a co-op, more must be done.

Co-ops have broad power to approve or reject sales of units, which applies to co-ops sold at execution sales. See *House v. Lalor*, 119 Misc. 2d 193 (Sup. Ct. N.Y. County 1983) (Greenfield, J.) (“Even though the transfer of the shares and the lease take place pursuant to operation of law, the co-op still has the right to approve before [the winning execution sale bidder] takes occupancy. If she attempts to do so, or seeks to transfer her shares to another, either she or her transferee must obtain the approval of the co-op’s board of directors (*see Matter of Starbuck*, 251 N.Y. 439, 444). This is so because the co-op is entitled to screen and approve persons who wish to become members of their community.

In passing upon the fitness of [the judgment creditor] or her transferee to be the occupant of the apartment, the co-op must apply the same standards and criteria as applied to other prospective tenants. The co-op may not simply reject her because she purchased the shares and proprietary lease at a Sheriff’s sale.”).

There is still more. Some co-ops may not even accept an application for transfer of ownership unless the creditor obtains possession of the original share certificate and proprietary lease, or an order cancelling same and directing the co-op to issue new ones to the winning bidder. The method for doing that is via a CPLR 5225(b) and CPLR 5225(c) turnover order special proceeding naming the judgment debtor, the mortgagee (which usually has possession of these documents), and the co-op corporation as parties.

CPLR 5225 envisions delivery of personal property of the judgment debtor to the sheriff or marshal for liquidation at an execution sale, but liquidation is not necessary or relevant where an execution sale of the co-op interest has already been held. See Weinstein-Korn-Miller, *New York Civil Practice* ¶ 5225.06 (“Delivery to the sheriff is demanded in anticipation of the ultimate disposition of the property by sale under CPLR 5233”).

Thus, the order should direct delivery of the documents to the judgment creditor's counsel, which is within the court's power pursuant to CPLR 5240 (courts have broad power to regulate, modify, or extend any judgment enforcement device). A judgment creditor might also choose to file the turnover order action first, to obtain the documents before proceeding with the execution sale.

Once a turnover order is obtained, the co-op should process the transfer application in the normal course and hopefully will approve the purchaser, who can then take possession of the unit. This assumes there is no need to take steps to evict an uncooperative judgment debtor, which is a possibility. But what if the co-op board says no? In that case, the purchaser, who remains the owner of the debtor's co-op interest, will have to try to sell his interest to someone who can get board approval.

Not easy or straight-forward, but pursuing an execution sale of a co-op apartment may be worth it in high value cases given the enduring value of New York City real estate.

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