

Are Municipal Civil Infraction Liens and Judgment Liens ‘Tigers With no Teeth?’

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Municipalities, or even plaintiffs, trying to recover fines, costs or judgments may find that there are limitations they will face when collecting payment. With recent holdings by the Michigan Court of Appeals in cases involving the Michigan Judgment Lien Act (MJLA) and the Revised Judicature Act (RJA), judgment liens and civil infraction liens are “tigers with no teeth.”

In two separate cases, the appellate court held that, even after a sale, the lien would not be discharged but would remain an encumbrance on the property. When citing MJLA, the lien is properly attached to the property when it is sold to a third party. In cases involving the RJA, only when the property is sold, and if there's equity in the property, will the defendant receive the judgment.

In the case of *Thomas v Dutkavich*, ___NW2d___, 2010 WL 4260094 (Mich Ct App, Oct. 28, 2010, Robert A. Thomas purchased the property from non-parties Steven and Kelly Jo Pelletier (the Pelletiers) by virtue of a warranty deed in 2007. Several years prior to that sale, the defendants, Laverne and Marilyn Dutkavich (the Dutkavichs), obtained a judgment against Mr. Pelletier and recorded a notice of judgment lien against the property in the amount of \$29,183 in July 2007.

Six months after Thomas purchased the property, the Dutkavichs caused the Schoolcraft County Sheriff to record a notice of levy against the property pursuant to MCL 600.6018. Upon examination of his title, Thomas discovered he was burdened with a lien and a notice of levy filed against his property for a debt he did not owe. In June 2009, he sued and filed a motion for summary disposition, citing the MJLA, MCL 600.2801 *et seq*, in an effort to discharge a judgment lien on his newly acquired property.

Given that the judgment lien was recorded prior to Thomas' purchase, and claiming that the Pelletiers netted a windfall by their receipt of all the net closing proceeds, the Dutkavichs refused to discharge the lien and filed a cross motion for summary disposition seeking to hold Thomas personally liable for the debt on the judgment. Judge Carmody agreed (rhetorically) that the MJLA “has no teeth” and ruled that Thomas had no duty to satisfy the judgment and ordered that the judgment lien be discharged. It left Thomas with an unencumbered condominium and the Dutkavichs with nothing. The defendants

appealed.

The Michigan Court of Appeals, in the unpublished *Thomas* decision, affirmed in part and reversed in part. In the opinion written by Chief Judge William B. Murphy, the appellate court disagreed with the trial court's conclusion that the judgment lien should be discharged and held that the judgment lien properly attached to the property. However, the court agreed that the Dutkaviches' claim seeking to hold Thomas personally liable was properly dismissed.

The court concluded that MCL 600.6018 "might" permit the Dutkaviches to levy on the property and, therefore, remanded for the trial court to consider whether this relief was or was not appropriate. However, the appellate court did not consider that the notice of levy had been voluntarily dismissed by the Schoolcraft County Sheriff or that the notice of levy was recorded after the closing with Thomas.

The appellate court also held that the obligation to pay the amount due to the judgment creditor rests only on the judgment debtor and not on a subsequent purchaser, such as Thomas. But the court looked to other language in the MJLA to conclude that, even after a sale, the lien would not be discharged but would remain an encumbrance on the property. The court noted that this "outcome may seem unfair to Thomas at first glance," but concluded that since he had constructive notice, it is not. In the court's view, Thomas, as the purchaser, had the ability to direct where his funds went as part of the closing settlement.

The appellate court also noted that the judgment lien expires five years after the date it was recorded. It may also be extinguished in specified ways, which the court set forth by quoting MCL 600.2809(6). Since none of these things had occurred, and five years had not elapsed, the court held that the lien could not be discharged.

Finally, and very importantly, the court made clear that there was no right to foreclosure on the judgment lien, confirming that the MJLA is merely "a tiger with no teeth."

Likewise, regarding a judgment for violation of a municipal civil infraction involving the use or occupancy of land, the Revised Judicature Act (RJA) MCL 600.8731 is all bark and no bite when collecting money owed.

The RJA provides that the municipality may obtain a lien if the civil fines, costs or assessments are not paid within 30 days after the date on which the payment is due. In these types of cases, a city may obtain a lien against the land pursuant to §8731 of the RJA by recording a copy of the court order requiring payment of the fees with the register of deeds for the county in which the land is located. Any such court order will not be permitted to be recorded unless a legal description of the property is incorporated in or attached to the court order.

ARE MUNICIPAL CIVIL INFRACTION LIENS AND JUDGMENT LIENS 'TIGERS WITH NO TEETH?' Cont.

Like the MJLA, there is both good and bad news for municipalities under the RJA. The good news is that the Michigan Legislature provided that the lien is effective immediately upon recording of the court order with the register of deeds and that the lien may be enforced and discharged in the manner prescribed by its charter, by the General Property Tax Act, or by an ordinance duly passed by the municipality.

However, the bad news is that under the RJA, the property is not subject to sale under the General Property Tax Act for nonpayment of the city's judgment unless the property is also subject to sale under the General Property Tax Act for delinquent property taxes.

In addition, the lien created under this section of the RJA has priority over any other liens unless one or more of the following apply:

- The other lien is a lien for taxes or special assessments;
- The other lien is created before May 1, 1994;
- Federal law provides that the other lien has priority;
- The other lien is recorded before the lien under this section is recorded.

These exceptions are frequently major problems for municipalities trying to collect the judgments. Moreover, there are no reported decisions interpreting this section of the RJA.

The plain language of the exceptions noted above, however, would lead to the conclusion that a municipality's effort to recover its fines or costs obtained against a land owner may be of little or no benefit should the property be encumbered by a mortgage leaving no equity in the property. Unless the property has equity after considering "the other lien recorded before the (city's) lien" the city's judgment may end up being uncollectable.

Even in cases where there is equity in a particular property, the city may have to wait for a sale of the property or hope the property is foreclosed to collect the delinquent taxes owed. Because of these limitations, it appears that the RJA, like the MJLA, are indeed both "tigers with no teeth."

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