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Dormancy and Revival: Long-Term Judgment Collection in Ohio

The fortunes of those who owe you money can vary over the years. This blog post explores how Ohio judgment creditors can capture their share of a judgment debtor's improving financial situation.

Congratulations. Your litigation was successful and you won a judgment. What did you win? If you started with a promissory note, what you now have resembles that note in that each is a paper declaring that someone owes money to another, but not exactly. The judgment replaces the promissory note, with the effect that the judgment's terms now control the judgment-debtor's obligation. And further, the judgment affords you options to invoke state authority to compel your debtor to pay what is owed by garnishing bank accounts, seizing and selling personal property, garnishing a portion of the judgment debtor's wages, liening and then selling real property, and having a receiver appointed to control a judgment debtor's assets.

At common law, judgment enforcement efforts in Ohio were immediate or nothing because "writs of execution must be sued out within a year and a day after the judgment is entered, otherwise the court concludes *prima facie*, that the judgment is satisfied and extinct." [Simpson v. Hook, 2 Ohio C.D. 333, *2 \(Ohio Cir. Ct. 1891\)](#). This rule was changed by statute so that in the ordinary course, your Ohio judgment's "superpowers" last five years unless either used or revived.

Too often in the first years after litigation judgment-debtors do not have adequate assets subject to collection action to satisfy the judgment,^[1] or the judgment debtor's equity in its assets simply does not justify an investment in collection efforts.^[2] If that is true, an Ohio judgment creditor can wait, because a judgment in Ohio may be enforceable for at least fifteen years.

A privately held judgment issued in Ohio becomes "dormant" five years^[3] after the latter of (a) when the judgment was issued, or (b) the last time it was used to create a lien, generate a seizure, obtain a garnishment order, etc. O.R.C. Section 2329.07. A privately held

dormant judgment can be revived under Ohio Revised Code Section 2325.15 *et seq.* if action is taken within ten years after the judgment went dormant.[\[4\]](#)

A judgment that is dormant “shall not operate as a lien against the estate of the judgment debtor unless . . .” *Id.* One court has said that a dormant judgment is “without legal effect.” See *Adlaka v. Montellal* discussed below. Similarly, a dormant judgment does not accrue interest. O.R.C. Section 2325.18(B). This means that although Ohio’s statute of limitations for judgment enforcement is at least fifteen years, in reality the best practice is to act at least once every five years so that your judgment does not become dormant.

Often judgments are against more than one judgment debtor. Execution on a judgment against one of multiple judgment debtors does not prevent a judgment from going dormant as to the other judgment debtor(s). *Adlaka v. Montellal*, 2013 WL 1287406 (Mahoning Cty. App. Mar. 29, 2013) (“The dormant judgment statute applies to each judgment debtor individually, and an attempt to execute on the assets of one judgment debtor does not reset the dormancy clock for other judgment debtors mentioned in the same judgment entry.”)

Efforts to revive a judgment are made by filing a motion in the original case.[\[5\]](#) It is not required that the revival motion prove the remaining amount owed. *Columbus Check Cashers v. Cary*, 196 Ohio App.3d 132 (Franklin Cty. 2011) (“We read this provision [O.R.C. section 2325.17] to mean that upon revival of the dormant judgment, a judgment creditor may execute upon the judgment, and at that time, the amount remaining due and unsatisfied must be disclosed to the trial court and the judgment debtor. . . . Therefore, although a judgment creditor is not required to specify the amount of the original judgment in its conditional order of revivor, the Ohio Revised Code does mandate disclosure of the specific amount due and unsatisfied in order to file a judgment lien and/or garnish the personal earnings of a judgment debtor, subsequent to reviving the dormant judgment.”)[\[6\]](#)

The classic judgment revival procedure is for the court where the judgment was entered to promptly issue a conditional order of revivor which the judgment debtor may attempt to set aside. Ohio

Revised Code Section 2325.17 states:

If sufficient cause is not shown to the contrary, the judgment or finding mentioned in [section 2325.15 of the Revised Code](#) shall stand revived, and thereafter may be made to operate as a lien upon the lands and tenements of each judgment debtor for the amount which the court finds to be due and unsatisfied thereon to the same extent and in the same manner as judgments or findings rendered in any other action. (emphasis added)

The highlighted language places the burden on the judgment debtor to take action to set aside the revived judgment. See, [Van Nover v. Eshleman, 14 Ohio C.C. \(N.S.\) 348, 349 \(1911\)](#) where the court stated that “[a] conditional order of revivor is a revivor of the judgment subject to be defeated by the judgment debtor showing that the judgment has been paid, settled or barred by the statute of limitations, as these are practically the only defenses that can be made to the revivor of a dormant judgment.” In reality, revival of a judgment is nearly automatic.

Section 2325.17 makes clear what you expected: a revived judgment is effectively like any other judgment, specifically any new judgment. For example, revival of a judgment does not revive a lien created using that judgment before that judgment went dormant. *Columbus Check Cashers*, supra at 140 (“revivor of a dormant judgment did not automatically revive the lien affixed to the judgment debtor’s property, but that subsequent action on the part of the judgment creditor must be taken in order to execute upon the revived judgment.”)

If the amount at issue is significant and if you have reason to expect the judgment debtor’s financial situation will improve, the best practice is to use your judgment at least once every five years to prevent dormancy; failing that, you should calendar action for a judgment revival action within the ten year dormancy period.

Another complicating factor in vintage judgment collection may arise if the judgment related to an obligation originally created for a personal, family or household debt, i.e., a consumer debt obligation. The court’s judgment does not change that essential characteristic of the debt. And consequently, care must be given to any post-

judgment collection efforts, whether a young or old judgment, because of the federal Fair Debt Collection Practices Act and Ohio's consumer debt collection statutes.

Vince Mauer has an economics degree, a master's degree in Business Administration and passed the CPA exam. He has represented financial institutions in litigation matters for over 30 years. For more information on this topic, contact Vince Mauer at vmauer@fbtlaw.com.

[1] Every state has a statute protecting certain of a judgment debtor's assets from a judgment creditor's collection action. In Ohio, see O.R.C. Section 2329.66 titled Exempted Interests and Rights.

[2] For real property owned by a judgment debtor, a judgment creditor can obtain a lien on the real property (see O.R.C. Sections 2329.02 and .04) and then hope that increasing values and/or paydown of a prior lien will create equity that can be captured by the judgment creditor. Be warned, however, that filing for a judgment lien in the county recorder's office in Ohio attaches a lien only on real property in the county then owned by the judgment debtor – after acquired property is not subject to a previously filed judgment lien in Ohio.

[3] Judgments in favor of the state go dormant after ten years of inactivity as opposed to the five years of inactivity for privately held judgments. In certain situations, the period is 15 years. O.R.C. Section 2329.07(B)(2).

[4] The statute gave judgment creditors 21 years to revive a dormant judgment prior to its amendment in 2004. That amendment reduced the judgment revival opportunity to 10 years. When the judgment revival opportunity was 21 years, Ohio's general judgment collection statute of limitations was said to be 21 years based on the time set in the judgment revival statute. See, 40 O. Jur.3d Section 24 titled "Enforcement of Judgments" which states in part: "An action on a domestic judgment may be brought at any time within 21 years after the judgment was rendered. The applicable statute is the one governing limitations for actions to revive judgments." The idea that an Ohio's judgment's statute of

limitations was 21 years seems logically wrong since the judgment existed for some time until it went dormant and then 21 more years were available during which the judgment could be revived.

[5] A motion seeking to revive a judgment can be filed in municipal court if the municipal court has jurisdiction. O.R.C. Section 1901.13(A)(2).

[6] The situation is similar when an Ohio judgment is created by domesticating a foreign judgment.

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