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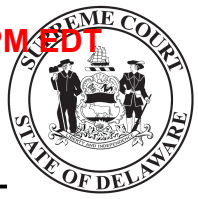

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHARON KNOTT Defendant below, Appellant, vs. LVNV FUNDING, LLC., Plaintiff below, Appellee.	No. 453, 2013

OPENING BRIEF OF DEFENDANT BELOW, APPELLANT, SHARON KNOTT

On Appeal from the Order dated July 31, 2013, granting the Motion to Allow Execution on a Judgment of the Superior Court in and for New Castle County in C.A. No. SN04J-04-116 in that court, on appeal from a Commissioner's Order in that Court dated December 24, 2012.

Respectfully submitted,
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Date: October 14, 2013

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TABLE OF CITATIONS

I. NATURE OF PROCEEDINGS

This matter involves an attempt to execute on a judgment obtained in the Court of Common Pleas in and for New Castle County on February 4, 2003,[1] and transferred to the Superior Court on April 6, 2004,[2] where no effort was made to execute on the judgment until sometime in September of 2012,[3] more than five (5) years after the judgment creditor obtained the judgment,[4] in contravention of 10 *Del. C.* §5072 which limits the ability of a creditor to execute on a judgment after five years.[5]

Specifically, in September of 2012, Plaintiff below, Appellee, LVNV Funding, LLC (hereinafter "LVNV"), made its first effort to execute on the judgment by filing its Motion to Allow Execution on a Judgment,[6] as opposed to a motion to revive or refresh the judgment.[7] On October 12, 2012, after Defendant below, Appellant, Sharon Knott (hereinafter "Ms. Knott"), filed her Answer to LVNV's Motion and LVNV filed its Reply, the Trial Court conducted a hearing,

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[1] *Motion to Allow Execution on a Judgment of Plaintiff below, Appellee* at ¶ 2.
[2] *Id.* at ¶3. *See also Appellant's Appendix* to this Opening Brief at A-000001, Docket Entry dated April 6, 2004 at 12:00:00 AM.
[3] The *Motion to Allow Execution on a Judgment* of LVNV is dated September 18, 2012, but the docket the undersigned received from the Superior Court does not indicate the date the Motion was filed.
[4] *Motion to Allow Execution on a Judgment* of LVNV at ¶ 4.
[5] 10 *Del. C.* §5072(a).
[6] The *Motion to Allow Execution on a Judgment* of LVNV is dated September 18, 2012 but the Motion does not appear on the docket received by the undersigned so the precise date of the filing is unknown. *See Appellant's Appendix* at A-000001to A-000003.
[7] *But see,* the *Order*, dated April 23, 2013 referring to LVNV's Motion as a Motion to Refresh a Judgment and the *Order*, dated July 31, 2013 at ¶8 stating that "a creditor may proceed . . . with a motion to renew the judgment."

but reserved its decision.[8] On December 24, 2012, the Trial Court issued a Commissioner's Report and Recommendation in favor of LVNV and against Ms. Knott.[9]

Appellant, Ms. Knott, filed a timely Appeal on January 7, 2013.[10] The Trial Court affirmed the Commissioner's Findings of Fact and Recommendations and ruled in favor of LVNV and against Ms. Knott on or about April 24, 2013.[11] On April 30, 2013, Ms. Knott, filed a Motion for Reargument.[12] The Trial Court denied Ms. Knott's Motion for Reargument on August 1, 2013.[13] Ms. Knott filed a timely Notice of Appeal to this Honorable Court.[14]

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[8] *Appellant's Appendix* at A-000001, Docket Entry dated October 12, 2012 at 2:39:43 PM.
[9] *Appellant's Appendix* at A-000002, Docket Entry dated December 24, 2012 at 3:11:28 PM; *Report and Recommendations* dated December 24, 2012 contained in Part V of this Opening Brief.
[10] *Appellant's Appendix* at A-000002, Docket Entry dated January 7, 2013 at 4:39:40 PM.
[11] *Id.* at Docket Entry dated April 24, 2013 at 9:31:25 AM; *Order* dated April 23, 2013 contained in Part V of this Opening Brief.
[12] *Appellant's Appendix* at A-000002, Docket Entry dated April 30, 2013 at 4:44:20 PM.
[13] *Appellant's Appendix* at A-000003, Docket Entry dated August 1, 2013 at 8:45:16 A.M.; *Order* dated July 31, 2013 contained in Part V of this Opening Brief.
[14] *Appellant's Appendix* at A-000003, Docket Entry dated August 29, 2013 at 2:31:40 PM.

II. SUMMARY OF ARGUMENT

The Trial Court erred in allowing LVNV to execute on property other than real estate owned by Ms. Knott more than five (5) years after obtaining its judgment by applying the ten (10) year duration of a judgment as a lien on real estate pronounced in 10 *Del. C.* §4711 and ignoring the five (5) year limitation on the time LVNV has to execute on a judgment pronounced in 10 *Del. C.* §5072, because §4711 only concerns a judgment as a lien on real estate.

III. STATEMENT OF FACTS

Plaintiff below, Appellee, LVNV Funding, LLC obtained a judgment against Defendant below, Appellant, Sharon Knott in the Court of Common Pleas in and for New Castle County on February 4, 2003,[15] and transferred the judgment to the Superior Court in and for New Castle County on April 6, 2004.[16]

LVNV made absolutely no attempt to execute on the judgment for more than five (5) years after obtaining the judgment, when sometime in September of 2012, LVNV filed a Motion to Allow Execution on the judgment,[17] as opposed to a Motion to Renew or Refresh a Judgment.[18] On or about October 5, 2012, Ms. Knott filed an Answer to LVNV's Motion.[19] On or about October 9, 2012, LVNV filed a Reply to that Motion.[20] On or about December 12, 2012, counsel for the parties appeared before the Trial Court for a hearing on LVNV's Motion to Allow

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[15] *Motion to Allow Execution on a Judgment of Plaintiff below, Appellee* at ¶ 2.
[16] *Id.* at ¶3. *See also, Appellant's Appendix* to this *Opening Brief* at *A-000001*, Docket Entry dated April 6, 2004 at 12:00:00 AM.
[17] LVNV's *Motion to Allow Execution on a Judgment* is dated September 18, 2012 but the Motion does not appear on the docket received by the undersigned so the precise date of the filing is unknown. *See Appellant's Appendix* at A-000001to A-000003 evidencing that LVNV's Motion does not appear as a Docket Entry.
[18] *But see,* the *Order*, dated April 23, 2013 referring to LVNV's Motion as a Motion to Refresh a Judgment and the *Order*, dated July 31, 2013 at ¶8 stating that "a creditor may proceed . . . with a motion to renew the judgment."
[19] *Answer to Motion to Allow Execution on a Judgment of Defendant below, Appellant, Sharon Knott.*
[20] *Reply to Defendant's Answer to the Motion to Allow Execution on Judgment of Plaintiff below, Appellee, LVNV.*

Execution on a Judgment of the Superior Court. The Trial Court reserved decision.[21]

On or about December 7, 2012, LVNV filed an assignment of the judgment from Sherman Acquisition Limited Partnership, Assignee of Sears, Roebuck & Co., to the use of LVNV Funding, LLC.[22] On or about December 24, 2012, the Trial Court issued a Report and Recommendation in favor of LVNV and against Ms. Knott.[23]

On or about January 7, 2013, Ms. Knott, filed an Appeal from the Trial Court's Findings of Fact and Recommendations.[24] On or about January 16, 2013, LVNV filed its response to the Appeal.[25] On or about January 24, 2013, Ms. Knott filed her reply.[26] On or about April 23, 2013, the Trial Court ruled in favor of LVNV and against Ms. Knott.[27]

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[21] *Appellant's Appendix* to this *Opening Brief* at *A-000001*, Docket Entry dated October 12, 2012 at 2:39:43 P.M. A true and Correct Copy of the Notes of Testimony from the Hearing before the Commissioner in the Trial Court on October 12, 2012 is contained in *Appellant's Appendix* at A-000004 to A-000017.

[22] *Appellant's Appendix* at A-000001, Docket Entry dated December 7, 2012 at 3:46:50 PM. The Docket Entry indicates that the document was previously filed but the date and time stamp on the document reflects a filing of December 7, 2012 at 3:48 PM. The document is dated July 6, 2012.

[23] *Id.* at A-000002, Docket Entry dated December 24, 2012 at 3:11:28 PM; *Report and Recommendations* dated December 24, 2012 contained in Part V of this Opening Brief.

[24] *Appellant's Appendix* at A-000002, Docket Entry dated January 7, 2013 at 4:39:40 PM.

[25] *Id.* at A-000002, Docket Entry dated January 16, 2013 at 4:14:06 PM.

[26] *Id.* at A-000002, Docket Entry dated January 24, 2013 at 7:30:21 AM.

[27] *Id.* at Docket Entry dated April 24, 2013 at 9:31:25 AM; *Order* dated April 23, 2013 contained in Part V of this Opening Brief.

On or about April 30, 2013, Ms. Knott, filed a Motion for Reargument and a Memorandum of Law in support of her Motion for Reargument.[28] On or about May 8, 2013, LVNV filed a response.[29] On or about July 31, 2013, the Court denied Ms. Knott's Motion for Reargument.[30] On or about August 29, 2013, Ms. Knott, filed a timely Notice of Appeal to this Honorable Court.[31]

[28] *Appellant's App*endix at A-000002, Docket Entry dated April 30, 2013 at 4:44:20 PM.
[29] *Id.* at A-000003, Docket Entry dated May 8, 2013 at 9:01:31 AM.
[30] *Id.* at A-000003, Docket Entry dated August 1, 2013 at 8:45:16 A.M.; *Order* dated July 31, 2013 contained in Part V of this Opening Brief.
[31] *Appellant's Appendix* at A-000003, Docket Entry dated August 29, 2013 at 2:31:40 PM.

IV. ARGUMENT

A. Question Presented

Did the Trial Court err in allowing LVNV to execute on property other than real estate owned by Ms. Knott more than five (5) years after obtaining its judgment by applying the ten (10) year duration of a judgment as a lien on real estate pronounced in 10 *Del. C.* §4711 and ignoring the five (5) year limitation on the time LVNV has to execute on a judgment pronounced in 10 *Del. C.* §5072, where §4711 clearly and unambiguously only concerns a judgment as a lien on real estate?

B. Scope of Review

The standard of review of the Trial Court's interpretation of a statute is *de novo*.[32]

C. Merits of Argument

In the instant matter, the Trial Court should have ruled in favor of Ms. Knott and against LVNV since the Trial Court may not look beyond a plain reading of 10 *Del. C.* §4711 and 10 *Del. C.* §5072 because the statutes are clear and unambiguous. Additionally, even if the Trial Court was correct in looking beyond the plain reading of 10 *Del. C.* §5072 and 10 *Del. C.* §4711, such an interpretation warrants a ruling in favor of Ms. Knott and against LVNV.

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[32] *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227, 231 (Del. 1999).

For the reasons that follow, the Trial Court Commissioner's Report and Recommendations, dated December 24, 2012, and the Trial Court's Order dated April 23, 2013 should be reversed.

The Trial Court erred in allowing LVNV to execute on property other than real estate owned by Ms. Knott more than five (5) years after obtaining its judgment by applying the ten (10) year duration of a judgment as a lien on real estate pronounced in 10 *Del. C.* §4711 and ignoring the five (5) year limitation on the time LVNV has to execute on a judgment pronounced in 10 *Del. C.* §5072, because §4711 only concerns a judgment as a lien on real estate.

The Trial Court erred in applying 10 *Del. C.* §4711 to the analysis in the instant matter because 10 *Del. C.* §4711 only concerns a judgment as a lien on real estate, and 10 *Del. C.* §5072 concerns all judgments. Section 4711 and Section 5072 are clear and unambiguous, and the Trial Court may not look beyond the plain language of the statutes.

The purpose of statutory construction is to determine and give effect to the legislative intent.[33] When interpreting a statute, undefined words must be given their ordinary, common meaning.[34] Where the statutory language is clear on its face, the unambiguous text will be construed accordingly, unless the result is so absurd that it cannot be reasonably attributed to the legislature.[35]

10 *Del. C.* §5072. Execution on judgments in civil actions, states:

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[33] *LeVan v. Independence Mall, Inc.*, 940 A.2d 929,932 (Del. 2007).
[34] *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 900 (Del. 1994).
[35] *CML V, LLC v. Bax*, 28 A.3d 1037, 1041 (Del. 2011).

> a) An execution may be issued upon a judgment in a civil action at any time within 5 years from the time when such judgment was entered or rendered, or from the time when such judgment became due; or to collect any installment of a judgment within 5 years from the time when such installment fell due.
>
> This section shall only apply to cases when no execution has been previously issued to collect such judgment or installment, and to cases where one or more have been issued for such purpose, and it appears by the return of the officer that such judgment or installment, as the case may be, has not been paid or satisfied. As to all other cases the law shall remain unaffected.
>
> (b) No judgment shall be deemed to be paid or satisfied, in whole or in part, by a levy on execution process, unless it appears otherwise than by the fact of such levy that such payment or satisfaction has been made.

Ms. Knott respectfully suggests that the above statutory language is clear and unambiguous, specifically that, §5072 requires execution on a judgment within five (5) years from the date of entry of the judgment. Section 5072 has not been repealed or otherwise modified by the General Assembly. Given the clear language of §5072, it was not necessary for the Trial Court to determine the intent of the legislature - the intent is clear from a plain reading of the statute. The plain language of §5072 leads to a reasonable and rational result - a judgment creditor must execute within five years from the entry of judgment. This application and common sense approach promotes the societal goal of diligent prosecution of claims and execution on judgments. A judgment creditor may still move to refresh a judgment. Therefore, the application of §5072 does not act as a windfall or a reward for a judgment debtor who has been successfully evading execution.

Here, LVNV failed to move the Trial Court to refresh or renew its judgment within ten (10) years, let alone five (5) years of obtaining the judgment. Rather, LVNV filed its untimely Motion to Allow Execution on a Judgment.

Section 5072 is more specific to the facts of the instant matter, because the Plaintiff is seeking execution on assets other than real estate. Thus, Ms. Knot most respectfully suggests that there is no need or basis for the Trial Court to look beyond the plain language of §5072 to reach the proper legal conclusion.

Similarly, 10 *Del. C.* §4711 is clear and unambiguous, and the Trial Court may not look beyond the plain language of that statute. The Trial Court erred in applying 10 *Del. C.* §4711 to its analysis in the instant matter because 10 *Del. C.* §4711 only concerns a judgment as a lien on real estate. Section 4711 states in relevant part:

> No judgment for the recovery of money entered or recorded in the Superior Court, whether rendered by that Court or transferred thereto from the Supreme Court, or from the dockets of a justice of the peace or the Court of Common Pleas, or operative by virtue of any writ of testatum fieri facias, or otherwise, howsoever recorded in the Court, shall continue a **lien upon real estate** for a longer term than 10 years next following the day of entry or recording of such judgment, or, in case the whole or any part of the money for which the judgment is recovered or rendered shall not be due and payable at or before the time of its entry or recording, the day on which such money shall have become wholly due and payable, unless, within the term of 10 years, the **lien of such judgment** is renewed and continued by a written agreement, signed by the plaintiff, or if there is more than 1, 1 or more of the plaintiffs therein, or the assignee or assignees thereof, or the person or persons to whose use such judgment shall have been marked, such person's or persons' executors or administrators, and by

> the defendant or defendants therein, such defendant's or defendants' executors or administrators, and, in order to bind lands conveyed by the defendant or defendants by **deeds** of record subsequent to such judgment, the **terre tenant** or **terre tenants** of the **real estate** bound by such **lien**, or, in case of a judgment upon a **mechanic's lien**, the **terre tenant** or **terre tenants** of such **real estate**, or by the attorneys of record of the respective parties to such judgment, or of the persons interested therein, in substantially the following form, after stating the title of the cause: "It is agreed that the **lien of this judgment** shall be extended for the term of 10 years," filed in the office of the Prothonotary and by the Prothonotary minuted and certified upon the record of the judgment, or of the testatum fieri facias, as the case may be, or by scire facias, in manner set forth in this section. **(emphasis added to the statute as a lien on real estate)**

Section 4711 can be understood plainly. It clearly concerns a judgment as a lien on real estate. The Trial Court has expanded the scope of 10 *Del. C.* §4711 beyond a judgment as a lien on real estate, contrary not only to the plain and clear language of that statute, but the plain and clear language of §5072 as well. There is absolutely nothing in 10 *Del. C.* §4711 that extends §4711 beyond a judgment as a lien on real estate, nor is there anything in 10 *Del. C.* §5072 that is incongruent with §4711 because of the judgment creditor's ability to renew or refresh a judgment. Ms. Knott most respectfully suggests that the General Assembly could have easily enacted or amended §4711 to include all judgments as opposed to real property only, or amended §5072 to extend the five (5) year limitation to ten (10) years.

It appears that the Trial Court's concern relates to what if any bearing §5072 has on §4711, and whether §5072 prohibits enforcement of a judgment as a lien on

real estate after five (5) years but before ten (10) years. However, the General Assembly has addressed that concern by permitting a judgment creditor to renew or refresh a judgment.

Even if §4711 and §5072 are considered by this Honorable Court to be ambiguous because they are unclear when read together, the principles of statutory construction warrant an interpretation as described above. Ms. Knott most respectfully suggests that the Trial Court erroneously concluded that a reading §5072 in conjunction with §4711 required the Trial Court to ignore §5072 and permit LVNV to extend its ability to execute on the judgment and seek a wage attachment against Ms. Knott after "sleeping" on the judgment for well more than five (5) years, and approaching ten (10) years.

A statute is ambiguous if it is capable of two reasonable interpretations or if a literal readings of its terms would lead to an unreasonable or absurd result not contemplated by the legislature.[36] If a statute is determined to be ambiguous, it must be read as a whole and in its role as a part of a broader statutory scheme.[37] The Court shall ascribe a purpose to the language of the statute and construe it against surplusage if reasonably possible.[38]

Assuming, *arguendo*, that §4711 and §5072 are ambiguous when read together - and again Ms. Knott most respectfully suggests that they could not and

[36] *Taylor v. Diamond State Port Corp.*, 14 A.3d 536, 538 (Del. 2011); *LeVan*, *supra*, at 933.
[37] *Taylor*, *supra*, at 538; *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999).
[38] *Id.*

should not be read together because §4711 clearly only concerns a judgment as a lien on real estate - the possible statutory interpretations are as follows: (1) §4711 only applies to real estate and §5072 limits execution to five (5) years on judgments other than those judgments constituting a lien on real estate; or (2) §4711 supersedes the language of §5072 and permits execution on all judgments beyond five (5) years.[39] The Trial Court expanded 10 *Del. C.* §4711 beyond a judgment as a lien on real estate and ignored 10 *Del. C.* §5072, even though the former concerns a judgment as a lien on real estate and the latter concerns execution on a judgment, as in the instant matter.

The Trial Court opined that "10 *Del. C.* §5072 is a concession to human frailty: once a judgment creditor is paid, he often forgets to advise the Court of the satisfaction and the judgment could sit on the books forever without some mechanism for closing it out."[40] Although the enactment of §5072 did expand the time to seek execution on judgments from one (1) year and one (1) day to five (5) years from issuance, the policy behind limitations on collection of judgments is to prevent satisfied judgments from remaining on the books. Inherent in this analysis

[39] Appellant would concede that a logical interpretation of §4711 would supersede the general language of §5072 and permit execution on a judgment as a lien against real estate within ten (10) years, and not the five (5) years set forth in §5072. However, that question is not before this Honorable Court in the instant matter. Rather, in the instant matter, LVNV appears to argue the reverse - that the specific language related to real estate contained in §4711 applies not only to real property, as clearly and unambiguously set forth in the statute, but also acts as a lien which may be enforced as a wage attachment with complete disregard for the language to the contrary in §5072.

[40] Order dated April 23, 2013 at ¶3.

is recognition that a judgment creditor must take some affirmative steps to assert its interests or lose its ability to so do. Section 5072 requires the judgment creditor to do so sooner rather than later, further addressing the Trial Court's concerns about satisfied judgments remaining on the books.

The General Assembly addressed the Trial Court's concerns about satisfied judgments remaining on the books and the "human frailty" component when it enacted Subchapter III of Chapter 47 of Title 10 of the Delaware Code. To be sure, a judgment debtor, upon satisfaction of a judgment, may demand that the judgment creditor mark the judgment satisfied, and if the judgment creditor fails to so do, the judgment debtor may plead and prove damages, attorney's fees, and costs in the event the judgment creditor fails to mark the judgment satisfied.[41] By expanding 10 *Del. C.* §4711, the Court has usurped the powers vested in the legislature.

D. Conclusion

In light of the foregoing, this Honorable Court should reverse the Order of the Trial Court below, that allowed LVNV to execute on any and all property of Ms. Knott.

[41] *See* Subchapter III of Chapter 47 of Title 10 of the Delaware Code.

V. TRIAL COURT'S JUDGMENT AND RATIONALE

A. Report and Recommendation of the Superior Court Commissioner dated December 24, 2012

B. Order of the Court dated April 23, 2013

C. Order of the Court dated July 31, 2013

Respectfully submitted,

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Date: October 14, 2013

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LNVN FUNDING, LLC, Plaintiff,	)	
v.	)	Cr.A. No. SN04J-04-116
SHARON KNOTT, Defendant	)	

Date Submitted: December 12, 2012[1]
Date Decided: December 24, 2012

REPORT AND RECOMMENDATION

Plaintiff's Motion to Refresh a Judgment
GRANTED.

On this 24TH day of December, 2012, it appears to the Court that:

1. On October 12, 2012, Plaintiff moved to refresh a judgment in the above -captioned case which originated from a credit card debt judgment first obtained on February 4, 2003 through a default judgment in the Court of Common Pleas. The judgment was transferred to Superior Court on April 6, 2004.

2. The sole issue before the Court is whether the Plaintiff's failure to

[1] The transcript of this hearing was not provided to the Court until nearly twp months after it was requested.

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execute on the judgment within five years precluded Plaintiff from ever acting upon the judgment or, alternatively, whether the statute which restricts executing on a judgment after five years should be read to permit Plaintiff to be permitted to execute now, over nine years later.

3. Plaintiff's motion is not unusual and has been generally accepted and granted by Superior Court for decades. Normally these motions go uncontested and the act of granting the motions becomes fairly routine. In this case, however, Defendant filed a response which claims that Plaintiff is prohibited from executing on the Defendant under 10 *Del. C.* § 5072 because Plaintiff made no attempt to execute within five years of the judgment.[2]

4. The relevant judgment statute reads as follows:

> An execution may be issued upon a judgment in a civil action at any time within 5 years from the time when such judgment was entered or rendered, or from the time when such judgment became due; or to collect any instalment of a judgment within 5 years from the time when such instalment fell due.
>
> This section shall apply to cases when no execution has been previously issued to collect such judgment or instalment, and to cases where one or more have been issued for such purpose, and it appears by the return of the officer that such judgment or instalment, as the case may be, has not been paid or satisfied. As to all other cases, the law shall remain unaffected.
>
> 10 *Del. C.* § 5072(a).

[2] Def. Resp. 2.

5. Plaintiff argues that the statute merely codifies the common law stance on judgments and extends the time for execution from one year and one day under the common law to five years, but that after five years, there was still a remedy under common law to issue a rule to show cause on the Defendant to show why the Defendant should not execute upon a judgment.[3] Plaintiff further opines that Superior Court civil rules no longer require the rule to show cause unless so required under the relevant statute, favoring the modern method of filing a motion to the Court.[4]

6. Defendant, on the other hand claims that the statute requires some action during the first five years of the life of the judgment; otherwise, Plaintiff's only remedy would be a lien.[5] For Plaintiff, the purpose of the statute was to promote "diligent prosecution on the judgment."[6]

7. Delaware case law is silent as to how to interpret the governing statute. This is truly a case of "first impression." In applying the import of a statute to the present case, the Court must first determine if the statute is ambiguous.[7] If the statute can be understood plainly, it should be followed as written; however, if the statute is

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[3] Transcript of Proceedings ("Tr."), October 12, 2012, 3.

[4] *Id.*, citing Sup. Ct. Civil. R. 64.1.

[5] Tr. at 5.

[6] *Id.* at 6.

[7] *Director of Revenue v. CNA Holdings, Inc.*, 818 A. 2d 953, 957 (Del. 2003).

unclear, the Court must look to the intent behind the statute to divine its meaning.[8] Because this statute is open to reasonable, differing interpretations as evidenced by the Plaintiff's and Defendant's positions, the Court shall deem such a statute ambiguous.[9]

8. "The starting point to any execution practice is traditionally [Victor] Woolley's treatise, Practice in Civil Actions and Proceedings in the Law Courts of the State of Delaware ["Woolley"]."[10] Woolley directly discusses the amendment of the common law one year and one day provision to five years under newer statutes. According to Woolley, if after one year and one day (now read "five years"), if the writ of execution were not issued, a plaintiff would be required to issue a *scire facias* or "*sci. fa.*" in order to revive the judgment.[11] The theory behind this extra step, according to Woolley, was that a judgment was obtained in order for plaintiff to recover damages and failure to act upon that right left a presumption before the court that the judgment might be satisfied, requiring an opportunity for the defendant to argue whether it was satisfied or whether there were some other reason to preclude

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[8] *Id.*

[9] *Leatherbury v. Greenspun*, 939 A. 2d 1284, 1288 (Del. 2007).

[10] *American Finance Corp. v. Webster*, 1982 WL 318026 (Del. Ct. Common Pl.) at *1.

[11] Woolley, § 955.

execution at this time.[12] Woolley further articulates that when the laws were amended by the Act of 1857, establishing a five year period and effecting language substantially similar to the provisions in the current Delaware judgment statute, the effect of the act was to "extend the right of execution."[13] The sole purpose of this new act was to extend the time by which a Defendant may execute on his judgment without the need for the *sci. fa.*[14]

9. Plaintiff contends that the *sci. fa.* has fallen into the age of the demurrer and other "ancient forms of pleading."[15] Indeed, the Superior Court Civil Rules provide that "[e]xcept where a rule to show cause is required by statute, any matter [ordinarily] brought before the Court by rule to show cause shall be initiated by motion. . ."[16]

10. Plaintiff's stand on the interpretation of this statute seems corroborated by the clear interpretation of Civil Rule 64.1 and Woolley's analysis of the judgments statute.

11. Accordingly, Plaintiff shall be permitted to execute on this judgment.

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[12] *Id.*

[13] *Id.* at § 956.

[14] *Id.* at § 957.

[15] Tr. at 5.

[16] Civ. R. 64.1

In addition, those unopposed motions stayed pending the decision in this case shall also be GRANTED.

IT IS SO RECOMMENDED,

Mark S. Vavala, Superior Court Commissioner

Original to Prothonotary

cc: Patrick Scanlon, Esq. (for the Plaintiff)
Albert Greto, Esq. (for Defendant)
Ellen Davis, Civil Deputy
LeeAnne Monti, Judgments Deputy
Margaret Derrickson

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LNVN FUNDING, LLC,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. SN04J-04-116
	)	
SHARON KNOTT,	)	
	)	
Defendant.	)	

Upon Consideration of Plaintiff's Motion to Refresh a Judgment.
GRANTED.

ORDER

On this 23rd day of April, 2013, upon consideration of the Plaintiff's Motion to Refresh a Judgment, the Commissioner's Report and Recommendation that Plaintiff's Motion to Refresh a Judgment Should be Granted and the record in this case, it appears that:

1) The Court referred this Motion to Superior Court Commissioner Mark S. Vavala pursuant to 10 *Del.C.* §512 and Superior Court Rule 132 for proposed findings of facts and conclusions of law.

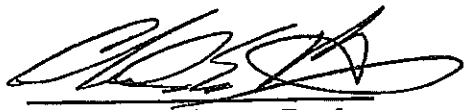
B

2) The Commissioner has filed a Report and Recommendation that the Court grant plaintiff's Motion to Refresh a Judgment. Defendant filed an appeal from the Commissioner's Findings of Fact and Recommendations.

3) The Commissioner's Report accurately notes that there is no Delaware decision interpreting 10 *Del.C.* § 5072, but we think the Commissioner's conclusions are the right ones. A statute limiting the time for execution merely serves the administrative purpose of allowing the clerk to mark the case finally closed unless advised otherwise by a judgment creditor that the debt remains. 10 Del. C §5072 is a concession to human frailty: once a judgment creditor is paid, he often forgets to advise the Court of the satisfaction and the judgment could sit on the books forever without some mechanism for closing it out. An absolute bar on refreshing the judgment does guarantee finality, but invites mischief by debtors who successfully avoid creditors for 5 years. That does not strike the Court as a policy that was intended to be sanctioned by the statute. Accordingly, the Court adopts the Commissioner's well reasoned findings and conclusions.

NOW THEREFORE, after careful review of the record in this action the Court accepts the Commissioner's proposed findings of fact, conclusions and recommendations. The plaintiff's motion to refresh this judgment is hereby **GRANTED.**

IT IS SO ORDERED.



Judge Charles E. Butler

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LVNV FUNDING, LLC,	)	
	)	
Plaintiff,	)	
	)	
V.	)	C.A. No. SN04J-04-116
	)	
SHARON KNOTT	)	
	)	
Defendant.	)	

Date Submitted: May 8, 2013
Date Decided: July 31, 2013

Upon Consideration of
Motion for Reargument from the Commissioners
Findings of Fact and Recommendations
DENIED.

This 31st day of July, 2013, upon consideration of the Defendant's Motion for Reargument pursuant to Superior Court Rules of Civil Procedure Rule 59(e) from the Commissioners findings of fact and recommendations, it appears that:

1. On April 23, 2012 the Court entered its Order adopting the Commissioner's findings and denying defendant relief. On April 30, 2013, defendant filed a motion for reargument that is literally a "cut and paste" repetition of most of the original motion.

C

2. Relief may be granted on a motion to alter or amend judgment when the plaintiff establishes one of the following: (1) an intervening change in controlling law; (2) the availability of new evidence not available previously; or (3) the need to correct clear error of law or prevent manifest injustice.[1] Defendant points to no new evidence or supervening change in the law, so we can surmise that she believes we must correct some clear error of law.

3. A motion for reargument must be denied unless the moving party can show that "the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."[2]

4. It is well settled law that "a motion for reargument should not be used merely to rehash the arguments already decided by the Court."[3] A motion for reargument is not intended to allow litigants a second bite at the apple to repeat issues that have been substantively determined.[4]

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[1] *Kostyshyn v. Commissioners of Town of Bellefonte*, 2007 WL 1241875 (Del. Super. Apr. 27, 2007).

[2] *Bd. of Managers of Del.Crim. Justice Info. Sys. v. Gannett Co.*, 2003 WL 1579170 at *1 (Del. Super. Jan. 17, 2003) (Establishing a high burden for reargument to be granted).

[3] *Wilmington Trust Co. v. Nix*, 2002 WL 356371 at *1 (Del. Super. Feb. 21, 2002); *Whitsett v. Capital Sch. Dist.*, 1999 WL 167836 at *1 (Del. Super. Jan. 28, 1999).

[4] *Id.*

5. Defendant points out that a judgment acts as a lien on real property for a period of 10 years unless the creditor files suit on the judgment or the debtor signs an acknowledgement allowing it to remain as a lien.[5] But this case has nothing to do with real property. It is a personal judgment against the defendant over a credit card debt. The judgment in this case is controlled by 10 Del. C. §5072, which provides that execution "may" issue upon any judgment at any time within 5 years of its entry. Defendant believes a personal judgment must have a lesser "life span" than the 10 year "life span" of a judgment on real property. Defendant argues the 5 year provision of 10 *Del. C.* §5072 fits this line of reasoning. This argument is essentially a hash of different provisions having quite different purposes in mind, none of which are a help to defendant. The Court found the argument to be non meritorious when first presented and continues to find it non meritorious when presented a second time.

6. Liens on real property implicate the alienability of land, one of the oldest and most historic assets of people everywhere. It is not surprising to find a statute in Delaware that decrees that a judgment lien on real property expires unless either acted upon or extended by agreement. The failure to do either could very well impede a landowner in his ability to sell his land, frequently his most

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[5] 10 *Del. C.* §4711.

important asset and an asset whose alienability has broader implications for the economy and, by extension, society generally.

7. A debtor's failure to pay his debts is not supported by the same policies on the free alienability of land and indeed, 10 Del. C. § 4711 merely extinguishes the lien on real property after 10 years; it does nothing to extinguish the underlying judgment debt. Instead, Delaware law allows for no "statute of limitations" on the collection of a judgment debt.[6] So defendant's analogy to section 4711 is not well taken. It was not well taken in defendant's initial pleading and is not well taken now.

8. The Commissioner's Report makes accurate conclusions of law that are well supported. This Court finds that a judgment debtor owes the debt if it has not been satisfied, no matter how long after the judgment. Section 5072 provides that an execution on a judgment "may be issued" at any time within 5 years of the judgment. As Wooley makes quite clear, the 5 year provision was an expansion on a previous provision that provided for executions to be issued at any time within a year and a day after the judgment was entered.[7] At common law, after a year and

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[6] *Gamles Corp. v. Gibson*, 939 A.2d 1269, 1272 (Del. 2007) (citing *Guayaquil & Quito Ry. Co. v. Suydam Holding Corp.*, 132 A. 2d 60, 66 (Del. 1957)) ("Delaware has no statute of limitations governing judgments or actions on judgments.")

[7] 2 *Woolley on Delaware Practice* § 957 (1906).

a day, the creditor had to file a writ of *scire facias* in order to execute.[8] Since the abolition of writ practice in Superior Court, the creditor today files a motion to renew the judgment.[9] We note particularly that section 5072 makes no provision that bars a creditor from collecting on his judgment after the expiration of 5 years. Thus we agree with the conclusion in *Woolley* that a creditor may proceed by writ of *scire facias* after the expiration of 5 years, and by today's pleading with a motion to renew the judgment. The 5 year standard articulated in 10 *Del. C.* §5072 seems to us at best a presumption that a debt has been satisfied after 5 years, but this is more of historical interest than legal effect, and is easily rebutted by the creditor in notifying the Court that the debt has not been extinguished.

9. Based on the foregoing, the Court is satisfied that the law or facts have not been so misapprehended as would affect the outcome of its decision. Defendant merely seeks to reassert arguments already decided adversely by the Court and accordingly the motion for reargument is **DENIED.**

IT IS SO ORDERED.

Charles E. Butler, Judge

[8] *Id.* at §956.

[9] We understand the writ of *sci. fa.* to have been what was in effect a rule to show cause why execution should not issue. This would have created a format in which the debtor could contest whether such a writ should issue. Today's pleading practice calls upon the creditor to file a motion to renew the judgment, likewise giving the debtor the opportunity to contest whether the judgment should be renewed and thus the motion's function is the functional equivalent to the previous use of the writ of *sci. fa.*