J-A03030-14

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

VALLEY COMMUNITY BANK, FOR THE USE OF OSPREY PORTFOLIO, LLC Appellee v. TODD J. O'MALLEY Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 850 MDA 2013

Appeal from the Judgment Entered April 3, 2013
In the Court of Common Pleas of Lackawanna County
Civil Division at No(s): 93 CV 4494

BEFORE: PANELLA,[†] OLSON and PLATT,* JJ.

MEMORANDUM BY OLSON, J.: **FILED JUNE 25, 2014**

Appellant, Todd J. O'Malley, appeals from the April 3, 2013 judgment entered in favor of Osprey Portfolio, LLC ("Osprey"), as the successor in interest to Valley Community Bank, incorporated as Commonwealth Bank ("Valley"). We affirm.

The factual and procedural history of this case is as follows. On June 22, 1993, Appellant's brother, Peter T. O'Malley ("Brother"), signed a promissory note for $83,495.00 with Valley. Complaint in Confession of Judgment, 8/31/93, Exhibit A. On or about that same date, Appellant signed a commercial guaranty with Valley which provided that he was also

[†] Judge Panella did not participate in the consideration or decision of this case. Pursuant to Superior Court Internal Operating Procedure 65.5(C)(3), this case is decided by two members of the Court.

* Retired Senior Judge assigned to the Superior Court.

liable for the full amount of the promissory note. ***Id.*** at Exhibit B. The promissory note was due in full on August 6, 1993. ***Id.*** at Exhibit A.

Brother defaulted on the promissory note and Appellant did not make payment as required by the commercial guaranty. Therefore, on August 31, 1993, Valley filed a complaint in confession of judgment in the Court of Common Pleas of Lackawanna County and judgment was entered against Appellant by confession that same day. Several steps were taken to execute on the judgment against Appellant in late 1994. These efforts did not succeed.

By 2001, Wachovia Bank, National Association ("Wachovia") was the successor in interest to Valley.[1] On November 12, 2001, Wachovia sold certain assets, including the judgment at issue in this case, to Osprey. Pursuant to that sale, on August 8, 2008 Wachovia executed an assignment of the judgment at issue in this case to Osprey *nunc pro tunc* to November 28, 2001. No action to enforce the judgment was taken in the trial court between December 9, 1994 and September 19, 2008. On September 19, 2008, Osprey filed a praecipe for writ of revival and simultaneously filed a praecipe to assign the judgment from Valley to Osprey.

---

[1] Valley merged with Commonwealth Bank, which then merged with Meridian Bank, which then merged with CoreStates Bank, N.A., which then merged with First Union National Bank, which later became known as Wachovia.

On September 15, 2010, Appellant filed a petition to strike the judgment.[2] On June 29, 2011, the trial court issued an opinion which denied the petition to strike. The trial court stayed execution pending a hearing to determine the amount of interest that had accrued on the judgment. On July 26, 2011, Appellant filed a motion for reconsideration which was denied on November 14, 2011. On June 25, 2012, Osprey filed a petition to assess damages. Although the certified record is unclear, it appears that thereafter all members of the Court of Common Pleas of Lackawanna County recused themselves from further proceedings in this matter.[3] A hearing on the issue of interest was held on March 21, 2013. On April 3, 2013, judgment was

[2] This pleading was not, in fact, a petition to strike a judgment. "When deciding if there are fatal defects on the face of the record for the purposes of a petition to strike a judgment, a court may only look at what was in the record **when the judgment was entered**." ***Oswald v. WB Pub. Square Assocs., LLC***, 80 A.3d 790, 794 (Pa. Super. 2013) (citation omitted). (emphasis added). Appellant's petition to strike only raised issues that arose **after** the judgment was originally entered in 1993, ***i.e.***, the timeliness of the revival and Osprey's standing to assert the judgment. We refer to the pleading as the petition to strike as that is how it is referred to in the certified record.

[3] All previous orders were entered by a judge of the Court of Common Pleas of Lackawanna County. However, an order of recusal is included in the certified record from a senior judge of the Court of Common Pleas of Monroe County. ***See*** Order of Recusal, 8/8/12. Thereafter, a senior judge of the Court of Common Pleas of Clinton County was assigned to this matter.

entered in favor of Osprey and against Appellant in the amount of $206,027.42. This timely appeal followed.[4]

Appellant presents five issues for our review:[5]

> 1. Whether a lapsed judgment may be revived in perpetuity?
>
> 2. Whether [the] trial court erred in not allowing a hearing on the merits of Appellant's defenses?
>
> 3. Whether [Osprey] had standing to revive the judgment?
>
> 4. Whether [Osprey]'s laches have prejudiced the Appellant?
>
> 5. Whether there was a defect on the record against the Appellant?

Appellant's Brief at 4 (capitalization removed).

We first consider Osprey's argument that this appeal should be quashed because Appellant failed to file post-trial motions pursuant to Pennsylvania Rule of Civil Procedure 227.1, which provides in relevant part that, "[p]ost-trial motions shall be filed within ten days after (1) verdict, discharge of the jury because of inability to agree, or nonsuit in the case of a jury trial; or (2) notice of nonsuit or the filing of the decision in the case of a trial without jury." Pa.R.C.P. 227.1(c). Failure to raise an issue in a post-trial motion results in that issue being deemed waived on appeal. ***See D.L.***

---

[4] The trial court did not enter an order pursuant to Pennsylvania Rule of Appellate Procedure 1925(b).

[5] We have re-numbered the issues for ease of disposition.

Forrey & Assocs., Inc. v. Fuel City Truck Stop, Inc., 71 A.3d 915, 919 (Pa. Super. 2013). However, post-trial motions may not be filed with respect to "proceedings which do not constitute a trial." Pa.R.C.P. 227.1(c) note.

Thus, whether post-trial motions were required turns on whether the proceedings to revive the judgment lien and determine the amount of interest constituted a trial. Our Supreme Court has held that waiver for failure to file a post-trial motion is only appropriate in circumstances where the requirement to file post-trial motion was clear. ***See Newman Dev. Group of Pottstown, LLC v. Genuardi's Family Markets, Inc.***, 52 A.3d 1233, 1248 (Pa. 2012). In the case *sub judice*, there was no clear requirement that Appellant file post-trial motions.

Appellant can cite no rule of court or case which stands for the proposition that post-trial motions are required after a hearing on a praecipe to revive a judgment and/or to determine the amount of interest that has accrued. We are likewise unaware of any such authority. Accordingly, we conclude that there was no clear requirement that Appellant file post-trial motions and therefore deny Osprey's request to quash this appeal.

We next consider the merits of Appellant's arguments. In his first issue on appeal, Appellant contends that pursuant to Pennsylvania Rule of Civil Procedure 3023 the judgment lien created in 1993 became dormant five

years after its entry, ***i.e.***, in 1998.[6] Appellant further argues that pursuant to 42 Pa.C.S.A. § 5526(1), failure to revive the judgment lien within five years resulted in the underlying judgment being lost forever.[7]

Appellant's first issue requires us to interpret various statutory provisions and rules of civil procedure. As the interpretation of both statues and the Pennsylvania Rules of Civil Procedure are pure questions of law, our standard of review is *de novo* and our scope of review is plenary. ***See Commonwealth v. Levy***, 83 A.3d 457, 461 (Pa. Super. 2013) (citation omitted); ***Keller v. Mey***, 67 A.3d 1, 5 (Pa. Super. 2013) (citation omitted).

In order to properly dispose of this issue it is necessary to understand the difference between a judgment and a judgment lien. Our Supreme Court has defined the term "judgment" as follows:

> A judgment is the decision or sentence of the law, given by a court of justice or other competent tribunal as the result of proceedings instituted therein for the redress of an injury. [A judgment] though pronounced or awarded by judges, is not their determination or sentence, but the determination or sentence of the law. It is the conclusion that naturally and regularly follows from the premises of law and fact, and depends not therefore on the arbitrary caprice of the judges, but on the settled and invariable principles of justice. The judgment, in short, is the

---

[6] The rule provides, in relevant part, that a judgment "lien shall continue for five years from the date the judgment was entered in the judgment index unless the judgment is sooner discharged or the lien is sooner revived." Pa.R.C.P. 3023(c).

[7] Section 5526 (1) of Title 42 provides that, "The following actions and proceedings must be commenced within five years: (1) An action for revival of a judgment lien on real property." 42. Pa.C.S.A. § 5526(1).

> remedy prescribed by law for the redress of injuries, and the suit or action is the vehicle or means of administering it, and the language employed to express the determination of [what] the law is[.]

In re Sedgeley Ave., 88 Pa. 509, 513 (1879) (internal quotation marks and citations omitted). The judicial code describes a "judgment lien" as follows:

> Any judgment or other order of a court of common pleas for the payment of money shall be a lien upon real property on the conditions, to the extent and with the priority provided by statute or prescribed by General Rule adopted pursuant to [42 Pa.C.S.A. §] 1722(b) (relating to enforcement and effect of orders and process) when it is entered of record in the office of the clerk of the court of common pleas of the county where the real property is situated, or in the office of the clerk of the branch of the court of common pleas embracing such county.

42 Pa.C.S.A. § 4303(a); ***see Grevemeyer v. S. Mut. Fire Ins. Co.***, 62 Pa. 340 (1869); ***see also*** *Black's Law Dictionary*, 758 (5th ed. 1979).

It is also necessary to understand how the judicial code, Title 42 of the Pennsylvania Consolidated Statutes, came into existence. As our Supreme Court explained:

> The [j]udicial [c]ode was created by the Judiciary Act of 1976, which, in conjunction with the Judiciary Act Repealer Act (["]JARA["]) and the Judiciary Act Repealer Act of 1980 [], represented the culmination of a ten year effort to achieve the first complete judicial codification in Pennsylvania's history.
>
> Although the [j]udicial [c]ode was enacted in 1976, it did not take effect until June 27, 1978, the effective date of JARA. The primary purpose of JARA [], was to repeal those statutes which had been supplanted by the Code. [JARA] expressly repealed parts or all of more than 1500 statutes, comprising approximately 6000 sections of Purdon's Pennsylvania Statutes, enacted between 1700 and 1977.

Chartiers Valley Sch. Dist. v. Twp. of Ross (Appeal of Chartiers Valley Sch. Dist. from Assessment of Prop. of Dev. Dimensions Int'l, Inc.), 462 A.2d 673, 675 (Pa. 1983) (internal quotation marks and footnote omitted).

JARA contained a savings clause, which provided that:

> General rules promulgated pursuant to the Constitution of Pennsylvania and the [j]udicial [c]ode in effect on the effective date of the repeal of a statute, shall prescribe and provide the practice and procedure with respect to the enforcement of any right, remedy or immunity where the practice and procedure had been governed by the repealed statute on the date of its repeal. If no such general rules are in effect with respect to the repealed statute on the effective date of its repeal, the practice and procedure provided in the repealed statute shall continue in full force and effect, as part of the common law of the Commonwealth, until such general rules are promulgated.

42 P.S. § 20003(b).

At the time the judicial code was enacted, judgment liens were mainly governed by the Judicial Lien Law of 1947. ***See*** 12 P.S. § 877 *et seq*. (repealed).[8] Under the Judgment Lien Law, "Every judgment now or hereafter entered of record and indexed in any court of record in this Commonwealth shall be a lien . . . . for a period of five years from the date on which the judgment was entered, and no longer, unless [revived.]" ***Ricci***

[8] The Judgment Lien Law was repealed by JARA. ***See*** 42 P.S. § 20002(a)(1257).

v. Cuisine Mgmt. Servs., Inc., 621 A.2d 163, 164 (Pa. Super. 1993), *quoting* 12 P.S. § 878 (repealed).

As part of the Judiciary Act of 1976, section 5526(1) of the judicial code was enacted. That section provides that, "The following actions and proceedings must be commenced within five years: (1) An action for revival of a judgment lien on real property." 42 Pa.C.S.A. § 5526(1).

As noted above, Appellant contends that pursuant to Pennsylvania Rule of Civil Procedure 3023 the judgment lien became dormant on or about August 31, 1998.[9] We conclude that the judgment lien did become dormant on or about August 31, 1998, but for a different reason. Rule 3023 was not promulgated until December 19, 2003 and did not go into effect until July 1, 2004. ***See*** 34 Pa.B. 22 (Jan. 3, 2004). Our Supreme Court's order adopting Rule 3023 provided that, "With respect to liens upon real property created or

[9] Appellant avers that the judgment lien may have become dormant in 1994 because of the one year statute of limitations contained in the Goods and Services Installment Sales Act ("GSISA"), 69 P.S. § 1101 *et seq*. (repealed effective Dec. 1, 2014, ***see*** 2013 Pa. Legis. Serv. Act 2013-98.). GSISA "applies to retail installment contracts, retail installment accounts, installment accounts, and revolving accounts[.]" ***Griffin v. Rent-A-Center, Inc.***, 843 A.2d 393, 397 (Pa. Super. 2004) (citation omitted). As the terms imply, in order to qualify as a retail installment contract, retail installment account, installment account, or revolving account there must be an installment plan as part of the sale of goods or services. ***See*** 69 P.S. § 1201(5-7). In this case, the loan entered into by Brother was not for the sale of goods or services. ***See*** Complaint in Confession of Judgment, 8/31/93, Exhibit A. Likewise, there was no installment agreement included in the loan. ***See id.*** Accordingly, we conclude that this case is not governed by GSISA.

continued prior to [its] effective date . . . [Rule 3023] shall not govern (1) the procedures by which the liens were created or continued, (2) the creation of the liens, (3) the time of creation of the liens, or (4) the priority of the liens." ***Id.*** Therefore, Rule 3023 does not govern when the judgment lien in this case became dormant. Instead, because no rules were promulgated regarding the valid duration of a judgment lien prior to the promulgation of Rule 3023, this case is governed by the Judgment Lien Law of 1947. ***See Allied Material Handling Sys. v. Agostini***, 606 A.2d 923, 925 n.3 (Pa. Super. 1992), *appeal denied*, 615 A.2d 340 (Pa. 1992). Therefore, the judgment lien in this case became dormant on or about August 31, 1998.

Noting that the judgment lien became dormant, Appellant argues that Valley (and/or its successors in interest) only had five years to revive the judgment lien pursuant to 42 Pa.C.S.A. § 5526(1). As this requires us to interpret a statute, we are guided by the Statutory Construction Act, 1 Pa.C.S.A. § 1501 *et seq*. ***See Commonwealth v. Raban***, 85 A.3d 467, 475 (Pa. 2014). "[O]ur paramount interpretative task is to give effect to the intent of our General Assembly in enacting the" statute. ***Commonwealth v. Warren***, 84 A.3d 1092, 1095 (Pa. Super. 2014) (citation omitted).

Appellant contends that failure to revive the judgment lien within the five year time period provided in section 5526(1) – ***i.e.***, on or before August 31, 2003 - results in the judgment itself being lost forever. Osprey, on the

other hand, contends that failure to revive a judgment lien within five years of its entry only results in the creditor losing any priority that it may have secured.

Appellant argues that the plain language of section 5526(1) supports his interpretation that the judgment was lost forever by failure to file a writ of revival within five years. "Generally, the best indication of the General Assembly's intent may be found in the plain language of the statute." ***Commonwealth v. Warren***, 84 A.3d 1092, 1095 (Pa. Super. 2014) (citation omitted).

We conclude that 42 Pa.C.S.A. § 5526(1) is ambiguous as there are other interpretations that are equally reasonable. For example, the language of the statute could reasonably be interpreted to mean that failure to file a writ of revival within five years causes the judgment lien holder to lose lien priority as opposed to losing the judgment forever. ***See Phoenixville Hosp. v. Workers' Comp. Appeal Bd. (Shoap)***, 81 A.3d 830, 840 n.11 (Pa. 2013) (citation omitted) ("Words of a statute are ambiguous when there are at least two reasonable interpretations of the text under review."). When a statute is ambiguous, we may consider, *inter alia*, the object to be attained; the former law, if any, including other statutes upon the same or similar subjects; the circumstances under which it was enacted; and the consequences of a particular interpretation when determining our General Assembly's intent. 1 Pa.C.S.A. § 1921(c)(2,4-6).

As to the object to be obtained, the purpose of a judgment lien is to prevent a judgment debtor from selling encumbered property without first satisfying the judgment. The lien is recorded in the judgment index to give notice to potential purchasers that a lien exists against the property. A judgment lien only lasts for five years because thereafter it would become difficult for a purchaser to ascertain whether an unsatisfied judgment lien still exists against the property. Thus, the purpose of the statute of limitations is to protect the judgment lien holder and potential purchasers. The purpose is not to protect the judgment debtor. If we were to adopt the interpretation advanced by Appellant, that is a judgment becomes unenforceable if the judgment lien is not revived with five years, we would be protecting the judgment debtor at the detriment of the judgment lien holder.

As to the former law, section 5526(1) has its roots in section 4 of the Judgment Lien Law, 42 P.S. § 880 (repealed), which provided that:

> A writ of *scire facias* issued to revive a judgment at any time either before **or after** the expiration of five years after the indexing thereof, or before **or after** five years after the indexing of the last preceding judgment of revival thereof, shall when indexed in the judgment index, be a lien upon all real property within the county which at the time of the indexing thereof is owned by the defendant against whom the original judgment is entered, whether or not such real property was owned by him at the time the judgment was indexed or previously revived. All liens against after-acquired property, or against property as to which the lien of the original judgment has been lost, shall be effective as of the date when the writ of s*cire facias* was indexed, and shall, unless sooner discharged as provided by law, continue as a lien for a period of five years from the date of the

> indexing of the judgment of revival thereon, and no longer, unless the same is revived[.]

Hertzog v. Jung, 526 A.2d 425, 428 (Pa. Super. 1987), *appeal denied*, 533 A.2d 712 (Pa. 1987) (emphasis added), *quoting* 42 P.S. § 880 (repealed). Thus, prior to enactment of the judiciary code, a writ of revival, then referred to as a writ of *scire facias*, could issue after the original five year judgment lien became dormant.

Section 5526 also has some roots in An Act of June 12, 1931. That act provided:

> That when a *scire facias* is sued out upon any judgment of record, either for the purpose of reviving the lien thereof against the real estate of the person against whom the judgment is entered **after such lien shall have been lost**, or for the purpose of extending the lien thereof to the after acquired real estate of such person, the proceedings on such *scire facias* shall be as provided by law for such writs and shall be concluded without delay, and the lien shall be effective as of the date when the *scire facias* issued. All writs of *scire facias* shall be properly indexed.

1931 P.L. 506, 506-507 (emphasis added). In the margin of the Laws of Pennsylvania, it explains that this act addresses "*scire facias* to revive or extend lien of judgment." ***Id.*** at 506. The highlighted portion of the statute makes clear that a writ of *scire facias* could be filed "after such lien shall have been lost[.]" Thus, An Act of June 12, 1931 evidences that, prior to the Judgment Lien Law, a judgment lien could be extended after the judgment lien became dormant.

Finally, as the Pennsylvania Bar Association noted upon passage of section 5526(1), section 5526(1) has roots in former 42 P.S. § 833 (repealed). That section provided that, "From and after the passage of this act no execution shall be issued on a judgment rendered before a justice of the peace or alderman, after five years from the rendering of such judgment, unless the same shall have been revived by *scire facias* or amicable confession." 42 P.S. § 833 (Purdon's 1930) (repealed). "The prohibition of [section 833 was] only against the issue of execution without revival. The judgment [was] not made void; it [could not] be stricken off." ***In re Leidich's Estate***, 8 Del. 349, 350 (Orph. Ct. Northampton 1901), *citing* ***Littster v. Littster***, 25 A. 117 (Pa. 1892). Thus, under section 833, a writ of revival, then called a *scire facias*, could be filed at any time after judgment was entered. A judgment never disappeared because of the failure to file a writ of revival. Instead, the judgment holder could not execute until the writ of revival was filed.

It is thus evident that throughout the history of judgment liens in this Commonwealth, from the antebellum period through JARA, judgment liens were only active for a period of five years. After five years, a judgment lien holder could later revive the judgment lien. In such cases, when the individual did revive the judgment lien, he or she lost priority to any intervening liens. Accordingly, the history of section 5526(1) strongly

indicates that the General Assembly did not intend for a judgment to vanish after the expiration of the five-year statute of limitations.

As to the circumstances under which the law was enacted, as noted above, section 5526(1) was enacted as part of the Judiciary Act of 1976. ***See*** 1976 P.L. 586, 709. The provisions of the act which included section 5526(1) were meant, in part, to replace those laws which were being repealed as part of JARA. Pursuant to section 4 of the Judgment Lien Law (42 P.S. § 880 (repealed), quoted above), at the time the judicial code was enacted it was permissible to revive a judgment lien after five years had elapsed. Thus, it appears as though our General Assembly did not intend to change this practice by enacting section 5526(1) and repealing the Judgment Lien Law. Instead, it meant to replace section 4 of the Judgment Lien Law with section 5526(1) of the judicial code. ***Cf.*** 1976 House Legislative Journal 5863 (June 29, 1976) (statement of Rep. Spencer) ("[T]his measure started out as a codification of laws . . and in the legislative mill some substantial amendments were put in. . . . [T]hese substantive amendments were taken out . . . in the hope [the General Assembly could] . . . get the codification, a true codification.").

As to the consequences of a particular interpretation, adopting the interpretation advocated by Appellant would be detrimental to general equitable principles. Invalidating judgments because the judgment debtor failed to pay within five years would incentivize nonpayment of judgments.

The judgment debtor would rationally delay paying the judgment for at least five years in an attempt to free his or her property from the judgment lien. This would be antithetical for a statute whose purpose is to protect judgment lien holders and purchasers. ***See supra***. On the other hand, allowing a judgment lien to be revived in perpetuity helps ensure that judgment creditors can collect on their judgments. Other lien holders are not injured by this rule because if a judgment lien holder does not revive the lien within five years, the judgment lien loses priority to intervening liens.

Thus, we construe the statute as permitting a judgment lien to be revived in perpetuity. However, a judgment lien holder loses priority against intervening liens, if any, if he or she does not revive a judgment lien within five years of the judgment lien originally being entered (or properly revived).

Our construction is supported by our Supreme Court's decision in ***Shearer v. Naftzinger***, 747 A.2d 859 (Pa. 2000), which the trial court relied upon when ruling in this case. Appellant contends that, "The trial court incorrectly interpreted the [***Shearer***] case as [holding that] a judgment [exists] in perpetuity without being revived every five years. This is simply contrary to the facts of the [***Shearer***] case and an improper interpretation of the law." Appellant's Brief at 10.

The issue before our Supreme Court in ***Shearer*** was the statute of repose for execution against personal property, which provides that, "An execution against personal property must be issued within 20 years after the

entry of the judgment upon which the execution is to be issued." 42 Pa.C.S.A. § 5529; ***see Shearer***, 747 A.2d at 860.

In ***Shearer***, judgment was entered in 1974. ***Id.*** The judgment was properly revived in 1979, 1984, and 1989. ***Id.*** However, the next revival did not occur until 1996, seven years after the previous revival. ***Id.*** Our Supreme Court concluded that the 20 year statute of repose set forth in section 5529 did not provide a defense against a praecipe for writ of revival. ***Id.*** at 861. It held that the plain meaning of section 5529 refers only to execution and not to revival. ***Id.*** Our Supreme Court stated that, "[s]even years elapsed between the 1989 writ of revival and the 1996 praecipe for writ of revival. **The judgment lien may nonetheless be revived after the five-year statute of limitations period for revival, however its priority against intervening liens, if any, is lost.**" ***Id.*** at 860 n.1, *citing* ***Mid-State Bank and Trust Co. v. Globalnet Int'l, Inc.***, 710 A.2d 1187 (Pa. Super. 1998) (emphasis added).[10]

We conclude that this statement by our Supreme Court was a critical component of its rationale and, thus, cannot be considered as dicta. When a statement is not necessary for a court's holding, it is dicta and not binding precedent. ***See Rendell v. Pa. State Ethics Com'n***, 983 A.2d 708, 714

[10] As in the case at bar, ***Globalnet*** was a case that was governed by the Judgment Lien Law. ***See Globalnet***, 710 A.2d at 1193.

(Pa. 2009) (citations omitted). In order for our Supreme Court to reach its final conclusion regarding section 5529 in ***Shearer***, it was necessary for the Court to conclude that the 1996 writ of revival was legally effective in reviving the judgment lien that was last revived in 1989. Thus, the statement that the judgment lien could be revived after the limitations period had run was necessary to our Supreme Court's holding. As such, we are bound by our Supreme Court's pronouncement.[11]

The only way to distinguish ***Shearer*** from the case *sub judice* is that the judgment lien in ***Shearer*** was revived within five years of the judgment lien becoming dormant. Some courts have interpreted section 5526(1) as requiring a writ of revival be filed within five years from the judgment lien becoming dormant. ***See Dauphin Deposit Bank & Trust Co. v. Verhovshek***, 18 Pa. D. & C.3d 108, 109 (C.C.P. Dauphin 1980). Under this

[11] Appellant cites to several cases by various courts of common pleas of this Commonwealth which have held that failure to revive a judgment lien within five years of the judgment lien becoming dormant, ***i.e.***, ten years after the judgment being entered (or previously revived) results in that judgment being lost forever. ***See United States v. Shadle***, 16 Pa. D. & C.4th 297 (C.C.P. Cumberland 1992); ***Hagmann's Relators v. Costello***, 73 Erie L.J. 193, 193 (1990); ***Dauphin Deposit Bank & Trust Co. v. Verhovshek***, 18 Pa. D. & C.3d 108, 109 (C.C.P. Dauphin 1980) ("Thus, from the date of expiration of the original judgment lien, the party seeking revival has five years within which to file a writ of revival or the lien created by the judgment is forever lost."); ***see also Slagel v. Enck***, 37 Pa. D. & C.3d 301, 304 (C.C.P. Lancaster 1985) (citation omitted). However, it is axiomatic that we are bound by decisions of our Supreme Court while decisions of the courts of common pleas have the potential to be persuasive authority.

interpretation of section 5526(1), a writ of revival filed before five years has elapsed maintains the judgment lien's priority. A writ of revival filed between five and ten years after the previous revival maintains the judgment but the lien loses priority to any intervening lien. After ten years has elapsed since the last revival, the judgment lien is lost forever. We conclude that this interpretation is incorrect.[12]

The basis of this interpretation is that a statute of limitations does not begin to run until a cause of action accrues. ***See Bell v. Willis***, 80 A.3d 476, 480 (Pa. Super. 2013). We conclude that the action accrues for a writ of revival upon entry of the judgment or a later revival. We reach this conclusion for several reasons. First, we note that the statute of limitations

---

[12] There is another possible interpretation of section 5526(1) which Appellant implicitly endorses. Under that interpretation, there is no five year "grace period" in which a judgment lien could be revived while losing priority. Instead, under that interpretation, failure to revive the judgment lien within five years resulted in the underlying judgment being lost forever. We have previously given credence to such an interpretation in ***Allied***. In ***Allied***, we stated "that [the] appellant did not effectively revive the lien within the statutory period of five years. Thus, the judgment lien expired at the end of the five years, and there is no longer a valid judgment lien that can be revived." ***Allied***, 606 A.2d at 926.

Allied does not bind us because our statement regarding when a judgment lien may be revived was dicta. Before stating that section 5526(1) required the judgment lien to be revived within five years, which we did not elaborate upon, we ruled that the lien was extinguished because the property was conveyed to an innocent purchaser for value after the judgment lien became dormant. ***Allied***, 606 A.2d at 925-926. This was sufficient to decide the case in the appellees favor and therefore our statement that section 5526(1) required the judgment lien to be revived within five years was dicta.

for a writ of revival is unique among statutes of limitations. Typically a statute of limitations deals with when a lawsuit may be filed. However, with respect to a writ of revival, not only has a lawsuit already been filed but judgment has already been entered against the defendant. Thus, the general tenants of statutes of limitation do not apply to section 5526(1). Second, there is no requirement that a judgment lien holder wait the full five years until he or she files a praecipe for a writ of revival. Instead, the praecipe for a writ of revival may be filed any time after the judgment lien (or a subsequent revival) is entered. This is unlike a breach of contract or tort action which cannot be filed until the breach actually occurs.

This is why our Supreme Court's language in ***Shearer*** was so broad. In particular, it specifically referenced the five year statute of limitation period. ***Shearer***, 747 A.2d at 860 n.1. It then stated that, although that statute of limitations period had expired, the judgment lien could still be revived. ***Id.*** The only way that this language makes sense is if the cause of action accrues for purposes of the statute of limitations as soon as the judgment lien is entered (or a previous revival occurs). Otherwise, the statute of limitations would not have run in ***Shearer*** as only seven years had passed since the previous revival (leaving three years until the statute of limitations would run under the ***Verhovshek*** interpretation).

This interpretation is supported by Justice Zappala's concurring opinion in ***Shearer***. Writing for himself, Chief Justice Cappy, and then-Justice

Castille, Justice Zappala noted that, "There is no outer time limit to executing against real property to satisfy a judgment." ***Shearer***, 747 A.2d at 861 (Zappala, J. concurring). Although not binding upon us, this statement is the only conclusion that can be drawn from the ***Shearer*** majority opinion and reflects the views of three members of that majority.

Finally, section 5529, the statute of repose at issue in ***Shearer***, supports our conclusion in the case at bar. Under section 5529 personal property cannot be executed upon after 20 years has passed since the judgment was entered. Thus, the statute of repose assumes that a judgment may be outstanding for at least 20 years; otherwise, there would be no need for such a statute. Thus, section 5529 implicitly assumes that a situation may arise like the one in the case at bar. In such instances, the judgment holder may only execute against real property, not personal property.

In addition to section 5529, there is a common law rule that assumes a judgment may go unsatisfied for at least 20 years. In 1826, our Supreme Court announced a rule whereby after 20 years a judgment is presumed paid. ***Cope v. Humphreys***, 14 Serg. & Rawle 15 (Pa. 1826). We have recently clarified that the presumption only shifts to the judgment holder if he or she has not "attempt[ed] in good faith to enforce the judgment." ***Schmalz v. Mfrs. & Traders Trust Co.***, 67 A.3d 800, 806 (Pa. Super. 2013) (emphasis removed). Section 5529 and this common law rule

combine to show that failure to revive a judgment lien within five years certainly does not cause the underlying judgment to vanish. Neither section 5529 nor the common law rule provide that they only apply if the underlying judgment has been properly revived. Instead, both rules apply whether revival has occurred or not.

For all of the above stated reasons, we hold that a judgment lien may be revived at any time as long as the underlying judgment is still valid and has not been satisfied.[13] A judgment lien holder loses priority against intervening liens, if any, if he or she does not revive a judgment lien within five years of the judgment lien originally being entered (or properly revived).

In his second issue on appeal, Appellant contends that the trial court erred by failing to hold a hearing regarding his defenses to the writ of revival. We conclude that this issue is waived. Pennsylvania Rule of

[13] We note that our conclusion is consistent with decisions of several courts of common pleas of this Commonwealth, and a federal court, which have held that a judgment lien may be revived even if more than five years has passed since the judgment lien became dormant. These courts have reached a different conclusion than those courts of common pleas cited in footnote 11, ***supra***, mainly based upon the history of the Judgment Lien Law. ***See Home Consumer Disc. Co. of Wilkes Barre v. Hashagen***, 35 Pa. D. & C.3d 668, 670 (C.C.P. Luzerne 1985); ***Mercer Cnty. State Bank v. Troy***, 27 Pa. D. & C.3d 751, 754 (C.C.P. Mercer 1983); ***Truver v. Hasker***, 20 Pa. D. & C.3d 769, 773 (C.C.P. Carbon 1981); ***In re Lucas***, 41 B.R. 785, 787 (Bankr. E.D. Pa. 1984) (citation omitted); ***see also Kopperman v. Cohen***, 13 Phila. 302, 306 (1985). These well-reasoned opinions all considered the history of section 5526(1) and came to the same conclusion as we have.

Appellate Procedure 1911(d) provides that, "If the appellant fails to take the action required by these rules and the Pennsylvania Rules of Judicial Administration for the preparation of the transcript, the appellate court may take such action as it deems appropriate[.]" Pa.R.A.P. 1911(d); ***see Commonwealth v. Reed***, 971 A.2d 1216, 1219 (Pa. 2009) ("It is an appellant's duty to ensure that the certified record is complete for purposes of review."). Among the remedies available to this Court is a finding of waiver. ***See id.***; ***Keller***, 67 A.3d at 3 n.1.

Appellant avers that, "The trial court limited the proceedings on Appellant's [m]otion to [s]trike to oral arguments following briefing" and that "when a hearing was held on Appellee's [p]etition to [a]ssess [d]amages, [the trial court] limited the argument to the amount of the judgment and the computation of interest. [The trial court] would not allow testimony or argument concurring the validity of the underlying judgment." Appellant's Brief at 11. However, there is no transcript of these proceedings in the certified record (or in the reproduced record). It is impossible for us to determine whether the trial court prohibited Appellant from presenting evidence at the hearing without a transcript of the hearing. As such, we

cannot decide this issue based upon the record before us. Accordingly, we find this issue waived.[14]

In his third issue on appeal, Appellant contends that Osprey lacked standing to revive the judgment. "[I]ssues of standing are questions of law; thus, our standard of review is *de novo* and our scope of review is plenary." ***Gordon v. Phila. Cnty. Democratic Executive Comm.***, 80 A.3d 464, 470 (Pa. Super. 2013) (internal quotation marks and citation omitted). Appellant contends that no assignment of judgment was ever filed in a case against him. Instead, he contends that the only assignment of judgment filed was in a case against Brother. However, the second docket entry in the case against Appellant is a praecipe to mark the judgment to the use of Osprey.[15]

---

[14] This finding of waiver came after extensive efforts were put forth by this Court to ensure that we had a complete record. The original record forwarded to this Court was paltry, consisting of 58 pages. We could have dismissed this appeal in its entirety because of the state of the record. ***See Keller***, 67 A.3d at 3 n.1. Instead, we expended significant judicial resources to ensure that we had all documents that were in the possession of the Clerk of Judicial Records of the Court of Common Pleas of Lackawanna County. ***See id.***; Pa.R.A.P. 1926(b)(1). To this end, we received a supplemental certified record that contained, *inter alia*, all of the documents included in the reproduced record.

[15] We are troubled by Appellant's counsel's representations in his brief. In his brief, counsel stated that this "Court may take judicial notice that no such praecipe is docketed in this case." Appellant's Brief at 14. However, in his own reproduced record, Appellant's counsel included a copy of the docket sheet which included the docket entry at issue. ***See*** R.R. at 2a. We remind counsel of Pennsylvania Rule of Professional Conduct 3.3, which requires candor with this Court, and all other tribunals of this Commonwealth.

The document also appears in the certified record in the case file for Appellant, 08cv6346. As such, Appellant's argument is frivolous.

In his fourth issue on appeal, Appellant contends that the trial court erred by not granting him relief on his equitable defense of laches.[16] "Laches arises when a defendant's position or rights are so prejudiced by length of time and inexcusable delay, plus attendant facts and circumstances, that it would be an injustice to permit presently the assertion of a claim against him." ***Madrid v. Alpine Mountain Corp.***, 24 A.3d 380, 385 (Pa. Super. 2011), *appeal denied*, 40 A.3d 1237 (Pa. 2012) (emphasis removed; citation omitted). We will not disturb the trial court's determination regarding laches absent an abuse of discretion. ***See In re Estate of Warden***, 2 A.3d 565, 580 (Pa. Super. 2010), *appeal denied*, 17 A.3d 1255 (Pa. 2011). "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused." ***Roth v. Ross***, 85 A.3d 590, 592 (Pa. Super. 2014) (citation omitted).

---

[16] Osprey contends that the defense of laches was unavailable to Appellant in this proceeding to revive the judgment lien. As we determine that the trial court did not abuse its discretion in denying Appellant relief on his laches defense we decline to address whether the defense was available to Appellant.

We discern no abuse of discretion on the part of the trial court. The only argument that Appellant raised with respect to the prejudice he suffered by the passage of time was that the judgment accrued post-judgment interest. However, this argument is without merit. Contrary to Appellant's averments, interest on a judgment is not damages that a plaintiff must mitigate. Instead, as we have explained:

> [T]he primary purpose of post-judgment interest is to compensate a successful plaintiff for the time between his entitlement to damages and the actual payment of those damages by the defendant, post-judgment interest also serves a salutary housekeeping purpose for the forum by creating an incentive for unsuccessful defendants to avoid frivolous appeals and by minimizing the necessity for court-supervised execution upon judgments.

Lockley v. CSX Transp. Inc., 66 A.3d 322, 327 (Pa. Super. 2013), *appeal denied*, 74 A.3d 127 (Pa. 2013) (ellipsis and citation omitted).

If anything, Appellant has been advantaged by the passage of time. As Judge Easterbrook stated, "Winners in litigation are not called 'judgment creditors' for nothing. They have made a large . . . loan to a debtor . . . that is doing its utmost to avoid paying." ***In re Mahurkar Double Lumen Hemodialysis Catheter Patent Litig.***, 831 F. Supp. 1354, 1394 (N.D. Ill. 1993). For over two decades Appellant has had access to funds that rightfully belonged to Valley at first, and now belong to Osprey. He made this decision of his own free will and volition. He could have stopped the accrual at interest anytime over the past 21 years by merely satisfying the judgment against him. Instead, he chose not to satisfy the judgment and

interest has continued to accrue. As Appellant has failed to show any prejudice from Valley (and then Osprey) failing to file a writ of revival at an earlier point in time, we conclude that the trial court did not abuse its discretion in declining to bar recovery because of laches.

In his final issue, Appellant claims that there is a defect on the face of the record. To this end, he makes two arguments. First, he again challenges Osprey's standing to revive the judgment – but for different reasons than discussed above. In particular, he claims that Osprey lacks standing because at the time the judgment was conveyed to Osprey, in 2001, the judgment lien was dormant. He also contends that Osprey lacks standing because the assignment is allegedly flawed. Second, he contends that various rules of civil procedure required that he be served with a ten-day notice and that he be served by the sheriff in 1993.

As to the standing arguments, attached to the praecipe to mark the judgment for Osprey's use is an assignment of judgment.[17] Appellant contends that because the first line of the assignment notes that it was "made as of November 28, 2001" that the document was notarized seven years after the document was executed. This misconstrues the document.

[17] Appellant once again argues that this document was not filed of record. However, the document carries a stamp from the Court of Common Pleas indicating it was filed September 19, 2008. It is the second document in the case file of the case against Appellant, 08cv6346. Therefore, Appellant's claim that the document was not filed of record is frivolous.

It is clear from the face of the document that the document was signed by executives of Wachovia, successor in interest to Valley, on August 8, 2008. The document specifically states that the individuals signing the document personally appeared before the notary on August 8, 2008 and the notary's stamp and seal is duly affixed to the assignment. Furthermore, Appellant's contention that there is no indication that the assignment was witnessed by an employee for Wachovia is likewise without merit. The document was signed by Joseph P. Hanley, vice president for Wachovia and witnessed by Nuria Blanco, "AVP" (ostensibly assistant or associate vice president). Thus, Appellant's argument relating to the assignment not being notarized correctly is without merit.

Appellant also contends that Osprey lacked standing because the judgment lien became dormant prior to the assignment of the judgment. However, as discussed in detail above, although the judgment lien became dormant, the judgment itself never lapsed. Wachovia, as successor in interest to Valley, had a valid interest in the judgment which it lawfully assigned to Osprey. Furthermore, our precedent has permitted assignment of a judgment even during the dormancy of the judgment lien associated with the judgment. In ***Brady v. Tarr***, the plaintiff obtained a judgment against the defendant in May 1909. 21 A.2d 131, 131 (Pa. Super. 1941). The judgment lien was revived via *scire facias* in 1916. ***Id.*** at 132. Twenty-three years passed before an assignee of the judgment filed a second writ of

scire facias seeking to revive the judgment lien. ***Id.*** We permitted such assignment despite the fact that the judgment lien had become dormant. As such, we conclude that Wachovia, as successor in interest to Valley, properly assigned its rights relating to the judgment against Appellant to Osprey in 2001.

Finally, Appellant claims various rules of civil procedure required that, in 1993, he be served by the sheriff with a ten-day notice. As this requires us to interpret various rules of court, it presents a question of law. Thus, our standard of review is *de novo* and our scope of review is plenary. ***See Oswald v. WB Pub. Square Assocs., LLC***, 80 A.3d 790, 793 (Pa. Super. 2013). The rules in effect at the time the confessed judgment were entered did not require that Appellant be served with a ten-day notice.

In 1993, Pennsylvania Rule of Civil Procedure 2952(j) provided that, "The complaint [in confession of judgment] shall neither contain a notice to defend nor be endorsed with a notice to plead, and no responsive pleading shall be required whether or not the complaint contains a notice to defend or is without a notice to plead." Pa.R.C.P. 2952(j) (West 1993).[18] Appellant alleges that if he had been served with the complaint he could have contested the factual averments therein. However, our law is clear, "The facts averred in the complaint [for confession of judgment] are to be taken

[18] This rule is currently numbered 2952(b).

as true; if the factual averments are disputed, the remedy is by a proceeding to open the judgment and not by a motion to strike." ***Manor Bldg. Corp. v. Manor Complex Assocs., Ltd.***, 645 A.2d 843, 846 (Pa. Super. 1994).

Appellant's argument that he should have been served with a copy of the complaint in confession of judgment by the sheriff is likewise without merit. In 1993, service of a complaint in confession of judgment was governed by Rule 236, which provided in relevant part that:

> The prothonotary shall immediately give written notice by ordinary mail of the entry of any order, decree[,] or judgment: (1) When a judgment by confession is entered, to the defendant at the address stated in the certificate of residence filed by the plaintiff together with a copy of all documents filed with the prothonotary in support of the confession of judgment. The plaintiff shall provide the prothonotary with the required notice and documents for mailing and a properly stamped and addressed envelope[.]

Pa.R.C.P. 236(a)(1) (West 1993).

The explanatory comment to Rule 236 shows why Appellant's arguments are without merit. The comment notes that, "[T]he bare notice of entry under [Rule 236 prior to 1977] g[ave] no real information about the background of a confessed judgment, since there has been no prior service of legal papers and no prior contact between the defendant and the judicial system." Pa.R.C.P. 236 1977 cmt. This makes clear that there was no requirement to serve the defendant with process (through the sheriff) or to issue a ten-day notice. Instead, the first notice that the defendant would

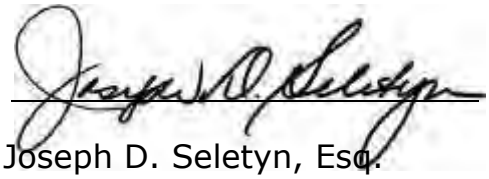
receive was that sent by the prothonotary via "ordinary mail." Accordingly, we conclude that Appellant's final issue on appeal is without merit.[19]

In sum, we hold that a judgment lien may be revived as long as the underlying judgment is unsatisfied. Failure to revive the judgment lien within five years only causes the judgment lien to lose priority to intervening liens. We conclude that Appellant's challenge to the procedures used by the trial court to decide his petition to strike is waived. We conclude that Osprey had standing to bring the writ of revival. We conclude that the trial court did not abuse its discretion in declining to bar recovery due to laches in the case *sub judice*. Finally, we conclude that there were no defects on the face of the record. Therefore, we affirm the judgment entered in favor of Osprey and against Appellant.

Judgment affirmed.

Panella, J. recuses and Platt, J. votes to concur in result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/25/2014

[19] There is likewise no requirement that default be entered prior to entry of a confessed judgment. Appellant's argument to the contrary is without merit.