At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 4th day of October, 2021.

P R E S E N T:

HON. DEBRA SILBER,
Justice.

- X

FIRST AMERICAN TITLE INSURANCE COMPANY,

Plaintiff,

DECISION/ORDER

- against -

Index No. 507105/20
Mot. Seq. # 1

RANDY APPELBAUM and TRISTAR OPTICS, INC.,

Defendants.

- X

The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion and Affidavits (Affirmations) Annexed	16-26
Opposing Affidavits (Affirmations)	28-36
Reply Affidavits (Affirmations)	38-41

Upon the foregoing papers in this action for a renewal judgment, plaintiff First American Title Insurance Company (First American or plaintiff) moves (in motion sequence [mot. seq.] 1) for an order: (1) granting it summary judgment, pursuant to CPLR 3212, and (2) directing the Kings County Clerk's office to issue and enter a renewal of the money judgment entered on April 21, 2000 against defendants Randy Applebaum (Applebaum) and Tristar Optics, Inc. (Tristar) (collectively, defendants) in the sum of $323,236.64, together with interest upon the original principal amount of $241,717.79 at

the rate of 9% per annum from April 21, 2000, plus the costs and disbursements of this action. For the reasons which follow, the motion is granted.

Background

First American commenced this action on April 20, 2020 by filing a verified petition (along with an ex parte application for permission to file a new essential proceeding during the Covid-19 Pandemic) in this court. Then, on August 14, 2020, First American filed a summons and a verified complaint.[1] The complaint alleges that, in a 1998 action to recover sums allegedly due (1998 Action), a judgment was rendered in the principal amount of $323,236.64 against defendants and in favor of Oscar Ehrlich, Martin Morgenstern, and Mark Sverdlin (Judgment and Judgment Creditors), and entered on April 21, 2000 (Judgment). The complaint further alleges that, by a March 23, 2018 written assignment, which was filed with the County Clerk's office on April 9, 2018, the Judgment Creditors assigned their rights, title, and interest in the Judgment to plaintiff First American. First American asserts that it is now the judgment creditor, it has not transferred the Judgment or its rights thereunder, and that the Judgment remains unsatisfied. Moreover, the complaint alleges that more than ten years have elapsed since the Judgment was docketed. First American seeks, pursuant to CPLR 5014, a renewal judgment against defendants. On September 21, 2020, plaintiff filed a "Judgment – Clerk Default" which was rejected by the Clerk with a note that "Renewal judgments require an order of the court." In the affirmation in support (Doc 9) counsel for plaintiff avers that

[1] CPLR 5014 requires an application for a renewal judgment to be brought by summons and complaint, as it refers to the bringing of an "action."

defendants' time to answer the complaint expired on September 14, 2020. In fact, the toll imposed by the Governor's Executive Orders probably extended defendants' time to answer to November 3, 2020.

On October 28, 2020, defendants answered the complaint (Doc 15), denied the material allegations therein and asserted several affirmative defenses, including laches, that the Judgment was entered in violation of a federal bankruptcy stay, and that Appelbaum's unsecured debts were discharged on October 7, 2004 by The United States Bankruptcy Court. Defendants also allege that there can be no recovery against Tristar, the corporate co-defendant, as it is no longer in business.[2] Shortly thereafter, First American filed the instant motion for summary judgment.

Arguments

First American's Summary Judgment Motion

First American, in support of its motion, submits an attorney's affirmation which argues that First American is entitled to a renewal judgment because there is no dispute that: (1) First American is the original assignee of the Judgment; (2) First American timely commenced this proceeding before the Judgment expired; and (3) the Judgment remains unsatisfied. First American's counsel asserts that defendants' affirmative defenses are meritless and that there are no triable issue of fact.

First American's counsel asserts that the 1998 Action terminated in a Judgment in favor of First American's predecessors in interest and against defendants. First

[2] The NYS Department of State, Division of Corporations' public website indicates that Tri Star Optics, Inc. was formed in 1986 and was dissolved by proclamation for non-payment of corporate taxes in 2003. In Paragraph 3 of defendants' answer, counsel states the same information.

American's counsel points out that the Judgment was entered with the County Clerk on April 21, 2000. Next, First American's counsel maintains that by a March 23, 2018 written assignment, which was filed with the County Clerk on April 9, 2018, First American's predecessors in interest assigned all their rights, title, and interest in the Judgment to First American. First American's counsel asserts that First American has not transferred its interests in the Judgment, and that no part of the Judgment has been paid.

Next, Fist American's counsel asserts that a judgment creditor is entitled to a renewal judgment where, as here, it establishes that it is the owner of the original judgment, the original judgment was docketed at least nine years before the plaintiff commenced its action, and the original judgment remains partially or completely unsatisfied. First American's counsel asserts that the record, including the verified complaint, the Judgment, and the assignment, establishes prima facie that First American is entitled to a renewal judgment against defendant, as a matter of law, because it is the assignee of the Judgment, defendants are the judgment debtors, the judgment was docketed at least nine years before First American commenced this action and no part of the Judgment has been paid or satisfied.

First American's counsel also asserts that defendants' affirmative defenses are meritless. First, counsel claims that, notwithstanding what is alleged in defendants' answer, the original Judgment was properly entered. First American asserts that it is undisputed that defendant Applebaum filed a petition for protection against creditors in the United States Bankruptcy Court on April 19, 2000. However, on April 3, 2000, 16 days before Applebaum's bankruptcy filing, the court granted the original creditors' motion for

summary judgment against Applebaum and issued the Judgment, which was entered by the County Clerk on April 21, 2000, three days after Appelbaum filed for bankruptcy. First American argues that, under controlling legal authority concerning bankruptcy, the timing of when the Judgment was entered is irrelevant. First American contends that the fact that the Judgment was entered after Applebaum filed for bankruptcy (which began the automatic stay against creditor collection attempts) did not violate any provision of federal bankruptcy law and does not render either the Judgment or the associated lien(s) ineffective. First American argues that defendants' affirmative defense which alleges that a bankruptcy stay or discharge prevents renewal of the Judgment lacks merit.

Similarly, First American argues that although the bankruptcy discharge may have cancelled defendants' unsecured debts, the judgment lien on defendants' real property within Kings County is unaffected by the bankruptcy discharge. First American asserts that, by operation of law, entry of the Judgment created a lien on defendants' real property within Kings County. First American maintains that a Bankruptcy Court discharge automatically extinguishes indebtedness, but not liens or mortgages on real property. Indeed, First American continues, the October 7, 2004 Bankruptcy Court discharge order specifically states that "a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case." Moreover, argues First American, the record in the Bankruptcy Court proceeding demonstrates that neither Appelbaum nor any other party to that proceeding ever sought to avoid the lien against Appelbaum's real property in Brooklyn which was created by entry of the Judgment. Additionally, First

American claims that it (or its predecessors in interest) was under no obligation to object to any Bankruptcy Court proceedings to preserve the Judgment lien, because the discharge does not automatically affect the lien. Lastly, claims First American, the fact that there was a subsequent bankruptcy proceeding is immaterial for the purposes of renewing the Judgment pursuant to CPLR 5014.

First American further asserts that the instant action was timely commenced. Regarding defendants' laches defense, First American notes that laches is a purely equitable defense which cannot bar recovery in an action at law commenced within the applicable limitations period. First American points out that the applicable limitations period for this matter is set forth in CPLR 211 (b), which requires that an action on a money judgment be commenced within 20 years of the entry of the judgment. First American further claims that, according to appellate authority, an action for a renewal judgment is not time-barred even if it was commenced more than 10 years after the judgment was entered. First American notes that the purpose of an action to renew a judgment is to extend the time in which it is enforceable. First American further asserts that a consequence of a renewal judgment is that it provides a judgment creditor with both a new 20-year judgment and a corresponding 10-year lien. First American argues that since this action was commenced within the 20-year limitations period, the affirmative defense of laches lacks merit.

Lastly, First American claims that the remaining affirmative defenses lack merit. First American asserts that its operations, and whether it owns property, is irrelevant; instead, plaintiff reiterates that it is the assignee of a valid Judgment and that it is thus

permitted to seek a judgment renewal. Moreover, First American argues, the issue of contribution is irrelevant here since defendants' liability has already been adjudged.

Defendants' Opposition

Defendants, in opposition to the motion, assert that denial is warranted because the motion is not supported by an affidavit of a person having personal knowledge of the relevant facts. Defendants argue that CPLR 3212 (b) specifically requires that a summary judgment motion be supported by an affidavit "by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit." Defendants claim that First American's summary judgment motion is not supported by the requisite fact affidavit.

Next, defendants claim that Appelbaum's bankruptcy discharge precludes First American from renewing the Judgment. Defendants point out that defendant Appelbaum filed a bankruptcy petition on April 19, 2000, and a copy of the original Judgment was included in the bankruptcy petition. Defendants argue that the bankruptcy proceeding led to an order discharging Applebaum's debt. Defendants argue that, therefore, the unsecured creditors listed in the bankruptcy petition are now unable to enforce any money judgments against Appelbaum. Essentially, defendants claim that the Judgment is a simple money judgment, and, thus, is unenforceable subsequent to the bankruptcy discharge order.

In response to First American's argument that the Judgment operates as a lien on defendants' Kings County real property from April 21, 2000, when the Judgment was entered, defendants assert that First American's prior dealings with defendants, and with

intermediaries, regarding defendants' real property undermine this contention. Defendants point out that First American is ostensibly the company that underwrote a title insurance policy in connection with a mortgage given by defendants that encumbers the real property located at 7320 Avenue M in Brooklyn. Defendants assert that in 2005, they obtained a refinancing loan with respect to that property in exchange for a mortgage to Wells Fargo Bank (Wells Fargo). Defendants claim that in 2007, they again refinanced their loan. Defendants emphasize that in both transactions, title insurance was obtained, and the transactions closed unremarkably, indicating that the property was not encumbered by a prior lien. Defendants insinuate that First American, who underwrote both title insurance policies, either "overlooked" the Judgment or "did not deem the judgment as effective" when it allowed the mortgage title insurance policies to be issued, which insures that the mortgage was a valid first lien on the property.

Similarly, defendants find fault with what they characterize as the abandoned prior efforts to enforce the Judgment. Defendants claim that or about February 24, 2016, First American's predecessors in interest commenced an action to renew the Judgment and unsuccessfully moved for summary judgment. Defendants claim that a second motion was made for the same relief, and that the subsequent motion was withdrawn. Moreover, defendants claim that "over twenty years have elapsed since the expiration of" the Judgment. Defendants claim that First American's predecessors in interest did not timely renew the Judgment. For these reasons, defendants argue that the Judgment is now unenforceable, based on waiver and/or delay.

Lastly, defendants claim that First American is attempting to gain lien priority in this action without including a necessary party. Defendants argue that Wells Fargo assigned its rights under the mortgage on the premises to another bank, HSBC. Defendants claim that since First American is, in essence, attempting to have a lien on the subject property judicially recognized, HSBC, another creditor with a security interest in the real property, must be joined in the instant action. Defendants claim that it would violate due process if this action were to continue without HSBC as a party and that the CPLR requires such joinder. Defendants further note that there is currently a foreclosure action pending with regard to the said mortgage and claims that First American is "attempting to assert a judgment over" the same property. Defendants argue that First American should not be permitted to use an action to renew the Judgment as a way of reordering the priority of the liens.

First American's Reply

First American, in reply, reiterates that a judgment creditor may obtain a renewal judgment any time before the original judgment expires, even if the judgment debtor's personal liability for the judgment has been discharged in bankruptcy. First American notes that the instant action was commenced before the original Judgment expired. Moreover, First American notes that the Appelbaum bankruptcy proceeding did not set aside or cancel the Judgment.

First American also asserts that the contention that HSBC is a necessary party to this action is frivolous. First American points out that it has executed an April 5, 2018 subordination agreement with HSBC, which was recorded with the City Register's office

on May 4, 2018, pursuant to which it subordinated its judgment lien against the property to HSBC's mortgage lien. First American asserts that HSBC's pending action to foreclose Appelbaum's real property has nothing to do with the validity of the Judgment and this action for renewal. First American claims that, given the agreement to subordinate any judgment liens to HSBC's mortgage, HSBC is not a necessary party to this action.

First American claims that its predecessors in interest did not commence any action with respect to the underlying Judgment. First American explains that its assignors commenced a 2016 action related to another judgment in their favor and against the same defendants, not this one.

First American asserts that the verified complaint submitted with its summary judgment motion serves as the requisite fact affidavit, pursuant to CPLR 3212 (b). Additionally, First American claims that the attorney affirmation supporting summary judgment is sufficient since it is based on documentary evidence in her possession.

Lastly, First American accuses defendants of trying to feign issues of fact by bringing up mortgages, refinancing transactions, and title insurance. First American clarifies that it is not attempting to claim a lien on one specific parcel of real property; but rather, it is seeking to renew an existing Judgment against defendants and in its favor (which would create a lien on all of defendants' property located within Kings County). First American asserts that the fact that defendants obtained loans by mortgaging real property, or that title insurance policies were underwritten and issued for these transactions, does not prove that it either deemed the underlying Judgment to be ineffective or that it

overlooked it. Such transactions, First American reasons, do not invalidate the Judgment or remove the associated lien on the judgment debtors' real property.

Discussion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should thus only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957], *rearg denied* 3 NY2d 941 [1957]). However, a summary judgment motion will be granted if, upon all the papers and proof submitted, the cause of action or defense is established sufficiently to warrant directing judgment in favor of any party as a matter of law (CPLR 3212 [b]; *Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966, 967 [1988]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), and the party opposing the motion for summary judgment fails to produce evidentiary proof in admissible form sufficient to establish the existence of material factual issues (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Zuckerman*, 49 NY2d at 562).

Proponents of a motion for summary judgment must first demonstrate entitlement

to judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez*, 68 NY2d at 324; *see also Zuckerman*, 49 NY2d at 562; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). When the movant establishes prima facie entitlement to judgment as a matter of law, the burden shifts and the party opposing the motion must tender evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which would require a trial or tender an acceptable excuse for his failure so to do (*see Greenberg v Coronet Prop. Co.,* 167 AD2d 291 [1990]; *see Zuckerman* 49 NY2d at 557). If this burden is met, the court must evaluate whether the issues of fact alleged by the opponent are genuine or unsubstantiated (*Gervasio v Di Napoli*, 134 AD2d 235, 236 [2d Dept 1987]; *Assing v United Rubber Supply Co.*, 126 AD2d 590 [2d Dept 1987]; *Columbus Trust Co. v Campolo*, 110 AD2d 616 [2d Dept 1985], *affd* 66 NY2d 701 [1985]).

Conclusory assertions, even if believable, are not enough to defeat a motion for summary judgment (*Spodek v Park Property Dev. Assocs.*, 263 AD2d 478 [2d Dept 1999]). "[A]verments merely stating conclusions, of fact or of law, are insufficient [to] defeat summary judgment" (*Banco Popular North America v Victory Taxi Management, Inc.*, 1 NY3d 381, 383 [2004], quoting *Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290 [1973]). Lastly, if there is no genuine issue of fact, the case should be summarily decided (*Andre*, 35 NY2d at 364).

Here, by demonstrating the existence of the Judgment and submitting documentary evidence that First American is the assignee of the rights thereunder, First American has

established its prima facie entitlement to a judgment, as a matter of law, in this action for a renewal judgment pursuant to CPLR 5014 (*see e.g., Cadle Co. v Biberaj*, 307 AD2d 889 [1st Dept 2003]). The court next considers defendants' affirmative defenses.

The limitations period for an action "[o]n a money judgment" is twenty years (CPLR 211 [b]). Here, the Judgment was entered on April 21, 2000 and the instant action was commenced on April 20, 2020. Thus, the instant action was timely commenced, even though more than "10 years 'have elapsed since the judgment was originally docketed'" (*Premier Capital, LLC v Best Traders, Inc.*, 88 AD3d 677, 678 [2d Dept 2011], quoting *Schiff Food Prods. Co., Inc. v M&M Import Export*, 84 AD3d 1346, 1348 [2d Dept 2011]).[3]

Defendants' arguments to the contrary lack merit. Under CPLR 5014 and the holding in *Premier Capital, LLC*, the instant action was timely commenced within 20 years of entry of the Judgment. Defendants claim that the doctrine of laches is a defense to the complaint and motion. However, contrary to their argument, "laches is an equitable defense which is unavailable in an action at law commenced within the period of limitation" (*Premier Capital, LLC*, 88 AD3d at 678, citing *Matter of County of Orange [Al Turi Landfill, Inc.]*, 75 AD3d 224, 237 [2d Dept 2010]; *Stassa v Stassa*, 73 AD3d 1157, 1158 [2d Dept 2010]; *Fade v Pugliani/Fade*, 8 AD3d 612, 615 [2d Dept 2004]; *Cognetta v Valencia Devs., Inc.*, 8 AD3d 318, 320 [2d Dept 2004]; *Roth v Black Star Publ. Co*., 302

[3] The 10-year period is relevant because under CPLR 5203 (a) a judgment becomes an automatic lien on defendant's real property within the county for that period (*see e.g., Nelson, L.P. v Jannace*, 87 AD3d 731, 732 [2d Dept 2011] ["The docketing of the money judgment, by operation of law, created a lien on the defendants' real property within the county"], citing CPLR 5018 (a); CPLR 5203; *Gihon, LLC v 501 Second St., LLC*, 29 AD3d 629 [2d Dept 2006]). After the ten-year period elapsed, other creditors may have increased priority, and although the instant action to renew the judgment is timely, "the judgment creditor . . . will not be entitled to avoid a lien gap by operation of CPLR 5014" (*Schiff Food Prods. Co., Inc.*, 84 AD3d at 1348).

AD2d 442, 443 [2d Dept 2003]). "In any event, even if the defense of laches were cognizable in this timely-commenced action for the renewal of a money judgment, 'mere delay alone, without actual prejudice, does not constitute laches' " (*C.T. Holdings, Ltd. v Schreiber Family Charitable Found., Inc.*, 154 AD3d 433 [1st Dept 2017]; *Premier Capital, LLC*, 88 AD3d at 678, quoting *Dwyer*, 171 AD2d at 727), and, here, defendants have failed to demonstrate any prejudice by First American's alleged delay in enforcing its rights as a judgment creditor.

Also meritless is defendants' assertion that First American is not entitled to summary judgment because it has not submitted a fact affidavit in support of the motion. CPLR 105 (u) specifically provides that "[a] verified pleading may be utilized as an affidavit whenever the latter is required." Here, First American properly submitted a verified complaint in lieu of an affidavit in support of its summary judgment motion (*Sanchez v National R.R. Passenger Corp.*, 21 NY3d 890, 891 [2013] ["CPLR 105 (u) allows the verified complaint and bill of particulars to be considered as affidavits"], citing *Travis v Allstate Ins. Co.*, 280 AD2d 394, 394-395 [1st Dept 2001]).

Furthermore, defendants are incorrect when they assert that the bankruptcy proceeding involving Applebaum is relevant here. First, the court notes that the Judgment was based on an order of this court that was issued before Applebaum filed for bankruptcy protection. Thus, First American's predecessors were entitled to enter the Judgment without violating the automatic bankruptcy stay (*Rexnord Holdings, Inc. v Bidermann*, 21 F3d 522, 527 [2d Cir 1994] ["we do not believe that the simple and 'ministerial' act of the entry of a judgment by the court clerk constitutes the continuation of a judicial proceeding

under section 362 (a) (1) (of the Bankruptcy Code)"], citing *Savers Fed. Sav. & Loan Assoc. v McCarthy Constr. Co. (In re Knightsbridge Dev. Co.)*, 884 F2d 145, 148 [4th Cir 1989]). Moreover, defendants appear to conflate a discharge of debt with a discharge of liens. First American is the assignee of the Judgment (and associated lien), and:

> "a discharge in bankruptcy is a discharge from personal liability only and, without more, does not have any effect on a judgment lien" (*Matter of Acquisitions Plus, LLC v Shapiro*, 7 AD3d 957, 958 [2004]; 11 USC § 524 [a] [1]). Judgment liens and other secured interests ordinarily survive bankruptcy (*see Carman v European Am. Bank & Trust Co.*, 78 NY2d 1066 [1991]; *McArdle v McGregor*, 261 AD2d 591 [1999]; *Bank of N.Y. v Magri*, 226 AD2d 412 [1996]; *see also Farrey v Sanderfoot*, 500 US 291, 297 [1991]). Moreover, a creditor need not object to the debtor's discharge in bankruptcy in order to preserve its lien, since the discharge does not affect the lien (*see Carman v European Am. Bank & Trust Co.*, 78 NY2d 1066 [1991]; *McArdle v McGregor*, 261 AD2d 591 [1999])" (*Nelson, L.P. v Jannace*, 87 AD3d 731, 732-733 [2d Dept 2011]).

Defendants have submitted no evidence that the bankruptcy discharge order affected the Judgment; in fact, First American's submissions establish that neither Appelbaum nor any other party in the bankruptcy proceeding ever moved in the Bankruptcy proceeding for an order to declare the judgment lien void, as against Appelbaum's real property. At best, the bankruptcy order discharges defendants' personal liability to the judgment creditor, but "notwithstanding the debtor-owner's discharge in bankruptcy, the property [owned by the debtor] may, nonetheless, still be burdened by liens" (*Nelson, L.P.*, 87 AD3d at 733, quoting *Carman v European Am. Bank & Trust Co.*, 78 NY2d 1066, 1067 [1991]). Given that defendants cannot show that the discharge order allows Appelbaum to avoid the

judgment lien, the lien is not affected by the discharge order (*see e.g., Bank of N.Y. v Magri*, 226 AD2d 412 [2d Dept 1996]).

Also meritless is the suggestion that HSBC is a necessary party to this action. The record reflects that HSBC commenced a mortgage foreclosure proceeding against defendants' real property in Kings County. However, and contrary to defendants' contentions, it is not apparent that the instant action for a renewal judgment would affect the priority of HSBC's mortgage or its ability to foreclose thereon. Whether HSBC successfully forecloses its mortgage is irrelevant to the issue of whether the Judgment is properly renewed.[4] Additionally, this action seeks a renewal judgment, not a declaration regarding lien priority. As previously discussed, since the 10-year lien period expired in April of 2010, there exists a so-called "lien gap" where First American's judgment lien (if renewed) may lose priority with other creditors (including, presumably, a mortgage holder). Moreover, nothing in the record indicates that First American is attempting to alter its lien priority beyond what it is entitled to as a judgment creditor under applicable law.[5] For these reasons, HSBC is not a necessary party to this action.

Furthermore, defendants' assertions concerning First American's title insurance and underwriting practices is irrelevant. Defendants seem to confuse the difference between a specific lien (i.e., a mortgage securing a loan) on a specific parcel of real property, with a state court judgment that, by operation of law, creates an automatic lien on all of the

[4] Moreover, this court will not presume that the real property subject to foreclosure is defendants' only real property in Kings County.

[5] The record reflects that First American and HSBC have executed a subordination agreement, whereby First American explicitly disclaims a higher lien priority than HSBC's mortgage.

judgment debtor's real property situated in the county. The fact that First American or its associated entities chose to underwrite or issue title insurance policies with respect to one parcel of real property is not proof that the Judgment is invalid, or that First American has somehow disavowed or waived its rights under the lien associated with the Judgment. The Judgment was properly issued by this court and entered by the County Clerk and is, therefore, valid and enforceable. First American established its entitlement to a renewal judgment by submitting copies of the original Judgment and the assignment instrument (*see e.g., Cadle Co. v Biberaj*, 307 AD2d 889).

In sum, a plaintiff is entitled to a renewal judgment where it establishes that: (1) it is either the original judgment creditor or has been assigned the rights of this are; (2) the original judgment was entered at least nine years before the plaintiff commenced the renewal action; and (3) the original judgment remains partially or completely unsatisfied (*Jones Morrison, LLP v Schloss*, 155 AD3d 704, 705 [2d Dept 2017] [affirming renewal judgment]). First American has satisfied all of the foregoing criteria for a renewal judgment, and defendants' defenses lack merit and are insufficient to raise an issue of fact.

Further, although the corporate defendant Tri Star Optics, Inc. was dissolved in 2003, there is no proof in the record indicating that that its affairs have been completely wound up such that it cannot sue or be sued, or otherwise participate in judicial proceedings (*see* Business Corporations Law § 1006). Therefore, there is no basis to deny this motion as against the corporate defendant. Except as otherwise limited by law, "[t]he dissolution of a corporation shall not affect any remedy available to or against such corporation, its

directors, officers or shareholders for any right or claim existing or any liability incurred before such dissolution" (*id.* § 1006 [b]).

Accordingly, it is hereby

ORDERED that First American's summary judgment motion (mot. seq. 1) is granted; and it is further

ORDERED that the plaintiff may submit a proposed renewal judgment to the County Clerk, who shall enter a renewal judgment in favor of First American and against defendants in the principal amount of $323,236.64, with interest of 9% per annum from April 21, 2000, together with the costs and disbursements of this action.

The foregoing constitutes the decision and order of the court.

E N T E R:

Hon Debra Silber, J.S.C.