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Suits for Interest Under the New York Mortgage Moratorium

S. M. Linowitz

I

In 1933, the New York law of mortgages was subjected to a drastic shakeup. The Legislature, declaring that an emergency existed by reason of the financial depression, enacted the so-called mortgage moratorium statutes. The effects of the moratorium on the mortgagor-mortgagee relationship were many and varied. Foreclosure of mortgages on real property for default in payment of principal, as well as actions on bonds or other evidences of debt secured by a mortgage, for like defaults, were prohibited during the emergency. The amount of deficiency judgments in foreclosure actions was severely limited; the obtaining of such judgments was made difficult and often impossible. In any action on an indebtedness secured by a mortgage, the fair and reasonable market value of the mortgaged property, less amounts owing on prior liens and encumbrances, could be set off. The statutes were made applicable to pending actions, as well as to those commenced during the emergency. By subsequent amendments, the emergency period was extended until July 1, 1940. Bills now pending in the Legislature propose further extension of the moratorium until 1941.

The purpose of the moratorium was clear and simple: to provide a breathing spell for property owners who were unable to make payments on mortgage principal as it accrued. When prosperity returned, the moratorium would be lifted and the normal remedies of mortgagees would be restored. In the interim, the mortgagee would have to stand by and await the restoration. If he sought to foreclose, he could generally acquire legal title to the premises and no more. If, as was true in the majority of cases, the mortgagee were a bank, trust company or insurance company, the mortgagor could rest assured that in case of a suit on the bond or a foreclosure action, the statutory excess in value of the realty over the amount of the original loan would protect him...

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1Laws 1933, c. 793, in effect August 26, 1933.
2Civil Practice Act, art. 65.
3Civil Practice Act §§ 1077-a, 1077-b. See Appendix A for text.
4Civil Practice Act § 1083-a. See Appendix B.
5Civil Practice Act § 1083-b. See Appendix C.
6Civil Practice Act § 1077-e.
7Laws 1934, c. 277, extending emergency until July 1, 1935; Laws 1935, c. 2, extending period until July 1, 1936; Laws 1936, c. 87, extending period until July 1, 1937; Laws 1937, c. 83, extending period to July 1, 1938; Laws 1938, c. 501, extending period to July 1, 1939; Laws 1939, c. 607, extending period to July 1, 1940.
8Senate Print Nos. 433, 1344, 1453, 442, 1112, 2276, 1784, 1282; Assembly Print Nos. 8, 214, 421, 2435, 849, 1354, 344.
against a personal judgment. What was the mortgagee, generally reluctant to take over the property himself, to do pending the duration of the emergency? Granted that his right to sue for the principal was suspended, could he sue for and recover the interest as it accrued?

That question was partially answered by the Court of Appeals in Johnson v. Meyer. In that case, plaintiff, the mortgagee, sought to recover two installments of interest owing on a bond and mortgage, together with the amount which had been advanced by him for taxes. Defendant urged that Sections 1077-a, 1077-b and 1083-b of the Civil Practice Act barred the action for interest and taxes. The Appellate Division and the Court of Appeals both held that these sections imposed no restriction on bringing such an action, and that it could successfully be maintained. Neither the Appellate Division nor the Court of Appeals wrote an opinion. The obvious inference from the decision was, however, that the words "indebtedness secured by a mortgage" against which the defendant could set off the fair and reasonable market value of the property under Section 1083-b of the Civil Practice Act applied only to the principal and not to default in interest and taxes. There was no discussion in the briefs of counsel of the effect of a present judgment for interest and taxes on a subsequent action for the principal indebtedness. If the mortgagee now recovered a judgment for the unpaid installment of interest, would his subsequent action for the principal be met by the contention that he had split his cause of action and that the entire debt was thereby cancelled? It is important to note that in the Johnson case the due date of the principal did not appear, and it was assumed that the principal was not yet due. Could the mortgagee maintain a similar action if both principal and interest were overdue?

At common law, the success of such an action was in doubt. Illinois and Massachusetts permitted a suit for interest alone, although both the interest and principal were due. Courts in those states construed the promise to pay the interest and the promise to pay the principal as separate and distinct covenants. The weight of authority, however, was to the contrary. New

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*See N. Y. Banking Law §§ 108, 193, 239 (6), 386 (5); N. Y. Insurance Law § 16.
*See Appendix C.
*In Sparhawk v. Wills, supra note 10, Chief Justice Shaw said, at page 165, "The real promise of the mortgagor is, 'I promise to pay the debt in one year; but if I do not, I will pay the interest at that time, and so at the end of each and every year until the debt is paid.'"
*Eller v. Troy, 58 Ala. 143 (1877); Harty v. Harty, 2 La. 518 (1852); Howe v. Bradley, 19 Me. 31 (1841); McDonald v. Doudal, 28 Ont. 212 (1897); 1 C. J. 1114; 1 Am. Jur. 488.
York courts had repeatedly held that installments of money due under an installment contract must all be sued for in a single action.\textsuperscript{13} As was said in \textit{Kennedy v. City of New York}:

\begin{quote}
"The reason for the rule lies in the necessity of preventing vexatious and oppressive litigation and its purpose is accomplished by forbidding the division of a single cause of action so as to maintain several suits when a single suit will suffice."\textsuperscript{14}
\end{quote}

The only early New York case involving a suit for interest when both principal and interest on a bond secured by a mortgage were due applied the same rule and refused to allow the action.\textsuperscript{15} Interest had become a mere incident of the principal; and when both were due, "interest followed the principal as the shadow does the substance."\textsuperscript{16} A suit for interest alone, it was said, would result in the splitting of a cause of action and the forfeiture of the principal.\textsuperscript{17}

The first judicial determination of the effect of such an action under the moratorium statutes came in \textit{Kohrman v. Miller}.\textsuperscript{18} A mortgagee sued for interest alone after the stated due date of the bond and obtained a judgment. Subsequently, he sued again for the next installment of interest when due. The mortgagor pleaded the preceding judgment as a bar. In a memorandum opinion, Mr. Justice Witschief held that the plea in bar was ineffective, that the prior judgment had not split the cause of action, and that the present suit could be maintained. The question soon arose again in \textit{Union Trust Company of Rochester v. Simpson}.\textsuperscript{19} Plaintiff there sought to be apprised by means of a declaratory judgment whether a judgment for unpaid interest and taxes would prejudice its subsequent rights to recover the principal, which was already overdue. The court held that it would not, that the moratorium statutes presented no difficulty in the way of maintaining the action, and that under \textit{Johnson v. Meyer}\textsuperscript{20} and Section 254 (6) of the Real Property Law,\textsuperscript{21} the covenants to pay interest and taxes were separate agreements.

\begin{footnotes}
\footnotetext[14]{196 N. Y. 19, 22, 89 N. E. 360 (1909).}
\footnotetext[15]{Clement \textit{v. Grant}, 2 City Ct. Rep. 438 (N. Y. 1888).}
\footnotetext[16]{Woerz \textit{v. Schumacher}, 161 N. Y. 530, 56 N. E. 72 (1900); Havender \textit{v. Bradbeck}, 83 Misc. 9, 144 N. Y. Supp. 418 (Sup. Ct. 1913).}
\footnotetext[17]{Brennan \textit{v. The Security Life Insurance & Annuity Co.}, 4 Daly 296 (N. Y. 1872).}
\footnotetext[18]{N. Y. L. J., March 28, 1936, p. 1589, col. 7.}
\footnotetext[19]{160 Misc. 836, 290 N. Y. Supp. 859 (Sup. Ct. 1936).}
\footnotetext[20]{\textit{Supra} note 9a.}
\footnotetext[21]{Laws 1909, c. 52, § 254 (6). While § 254 (6) of the Real Property Law clearly makes the covenant to pay taxes an independent covenant, a covenant to pay interest would not seem to be independent under § 254 (1). The wording of § 254 (3) indicates that the covenant to pay principal and the covenant to pay interest are component parts of one general covenant.}
\end{footnotes}
The first case to bring the precise question before an appellate court was *Union Trust Company of Rochester v. Kaplan*.\(^2\) Again the action was for a declaratory judgment. Again the plaintiff sought a judgment for overdue interest and taxes when the principal was already in default. In an earlier opinion\(^2\) the court had held that a declaratory judgment was a proper remedy. Defendants had contended, and the lower court had agreed,\(^2\) that *Johnson v. Meyer* was decisive of the question. The appellate court held that the *Johnson* case had merely decided that such an action could be maintained, but did not decide whether a forfeiture might result.\(^2\)

On the appeal of the later action, defendants' position was that if the court sanctioned the action without a resulting forfeiture, it would be authorizing the splitting of a cause of action since the overdue interest and the overdue principal had already combined to form a single indivisible claim. The Appellate Division affirmed the lower court's judgment and held that there was no forfeiture. The grounds for its decision were: First, that the covenants to pay interest and taxes were separate from the agreement to pay the principal. The bond provided that the interest was to be paid "semi-annually" while the principal was to be paid "one year from date." Interest was, therefore, to be paid whether or not payments were made on the principal. Said the court, at page 284:

"... it should be considered as was contemplated by the parties, as an agreement to do several things at different times, and that it is divisible in its nature, and that an action in assumpsit will lie for each default."

Secondly, the court felt constrained to sustain its decision by an interpretation of the moratorium legislation itself. If the law had not already made it proper to separate the causes of action, said the court, it was apparent that the legislature intended to do so by the moratorium. The purpose of the legislation was to extend the maturity date of all mortgages *so long as interest was paid*. "Plaintiff should not be penalized for falling in with the real intent of the Legislature and following the broad and comprehensive meaning of the statute itself."\(^2\)

In the same month, the Appellate Division, Second Department, decided

\(^2\)159 Misc. 1, 286 N. Y. Supp. 17 (Sup. Ct. 1936).
\(^2\)Said the court at page 590, "The important question here is whether a suit for interest and taxes at this time will work a forfeiture of the principal of the mortgage, which by the terms of the instrument is now due, and which in fact became due before the enactment of the moratorium statutes. That precise question was not decided or discussed in *Johnson v. Meyer* and the record in that case does not disclose the date of maturity of the principal indebtedness."
INTEREST UNDER MORTGAGE MORATORIUM

Werbelovsky v. Rosen Bros. News Agency, Inc. In that case plaintiff sought to recover the principal on the bond, and in the same action sue for interest in default. The Special Term rejected defendant’s claim that Section 1083-b was a bar to either cause of action. The Appellate Division reversed as to principal but affirmed as to interest, holding that plaintiff could recover a judgment for interest without prejudice to her right to bring an action for the principal.

The choice, it would seem, was with the mortgagee. He now had two alternatives. He could sue for interest on the bond or he could foreclose his mortgage. If he chose to sue for interest as it accumulated, he would be entitled to recover in each action, without prejudice to his right subsequently to sue for the principal. In a sense, payment of interest now suspended the payment of principal. While the mortgagee’s right to sue for interest alone was in doubt at common law, according to the Kaplan decision, the Legislature in passing the moratorium statutes had expressly authorized it.

The importance of the decision was manifest. Permission to appeal to the Court of Appeals was granted by the Appellate Division, but the appeal was not prosecuted. Other cases soon arose involving the same or similar situations. In all of them, the same principle was applied. The only case to reach the Court of Appeals, Rochester Trust & Safe Deposit Company v. Hatch, merely involved the defendant’s right to set off the value of the mortgaged premises in an action for principal, interest and taxes. The Appellate Division had permitted the set-off against all three claims. In a memorandum opinion, the Court of Appeals reversed the Appellate Division solely on the basis of its decision in Johnson v. Meyer and held that Section 1083-b did not authorize the set-off against the claims for interest and taxes.

Thus far, there has been no determination by the Court of Appeals of the precise question involved in the Kaplan case. The decisions in Johnson v. Meyer and Rochester Trust & Safe Deposit Company v. Hatch however,
seem to indicate that if and when the matter is presented to the Court of Appeals it will adhere to the reasoning in the *Kaplan* case. Recently, the Appellate Division, First Department, in *Rossbach v. Aurora Holding Company*\(^3\) lent further support to this view in holding that the law is now settled that:

1. The causes of action for interest and principal on a bond secured by a mortgage are now separate and distinct;
2. Section 1083-b is a defense only to the recovery of principal;
3. A judgment for interest will not prejudice plaintiff's right subsequently to sue for interest in default, to foreclose the mortgage, or to recover the principal.

II

The foregoing discussion has been concerned solely with the remedies available when the mortgagor is still alive. Suppose, however, that the mortgagor (or his assuming grantee) dies while he still holds title to the mortgaged property and the land descends to his distributees or passes to his devisees. Can the mortgagee then obtain a judgment against the personal representative or the new owner of the property for (1) interest which has accrued during the lifetime of the decedent, or (2) interest which accrues after the property has passed to the devisee or distributee?

This question brings into the picture Section 250 of the Real Property Law\(^8\) which provides:

> "Where real property, subject to a mortgage executed by any ancestor or testator, or subject to any other charge, including a lien for unpaid purchase money, descends to a distributee, or passes to a devisee, such distributee or devisee must satisfy and discharge the mortgage or other charge out of his own property, without resorting to the executor or administrator of his ancestor or testator, unless there be an express direction in the will of such testator that such mortgage or other charge be otherwise paid."

This section was originally passed in 1896 and was adopted from the Revised Statutes.\(^9\) The purpose of the statute was clear: to make the distributee or devisee take the mortgaged property *cum onere*.\(^8\) The personal estate of the testator could be resorted to only after the mortgagee had exhausted his remedies against the distributee or devisee.\(^9\) The personal estate stood in

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\(^{30}\) See also N. Y. DECEDE N ESTATE LAW § 70 et seq.
\(^{27}\) Laws 1896, c. 547, § 215; originally revised from Rev. Stat., pt. 2, c. 1, tit. 5, § 4; amended by Laws 1937, c. 75.
the position of a guarantor or bondsman; the primary obligation was to be
that of the distributee or devisee.\textsuperscript{40} Of course, if the will contained an express
direction as to payment of the mortgage, that would be controlling.\textsuperscript{408}

Early cases had established that the liability of the distributee or devisee
was limited to the land itself.\textsuperscript{41} The mortgaged property, and not the property
owner, was primarily liable.\textsuperscript{42} In order to satisfy the debt, the mortgagee could
foreclose on his mortgage. The words "out of his own property" in the
statute were construed to mean "out of the property inherited by or devised to
him" and no more.\textsuperscript{43}

Such was the situation prior to the passage of the moratorium legislation.
It was not long after the determination by courts that a mortgagee could
recover a judgment for interest against a mortgagor, that similar attempts were
made to fasten judgments for accrued interest onto the executor or administra-
tor, or the distributee or devisee of the mortgagor.

The question of liability for interest which had accrued during the
mortgagor's lifetime was easily solved. Cases had held that such interest
was properly a debt of the decedent, payable by the executor or administrator
under Section 116 of the Decedent Estate Law.\textsuperscript{44} A more troublesome prob-
lem was interest which had accumulated since the mortgagor's death. In
early cases, courts had decided that such interest was, under Section 250 of
the Real Property Law, part of the mortgage debt accompanying the property,
and, therefore, the obligation of the distributee or devisee.\textsuperscript{45} Later cases
had affirmed the proposition.\textsuperscript{46} The case of \textit{Levy v. Comfort}, et al.\textsuperscript{47} raised

\textsuperscript{40}Hauselt v. Patterson, 124 N. Y. 349, 26 N. E. 937 (1891); see \textit{supra} note 39.
\textsuperscript{40}Section 250 is by its terms inapplicable to such a situation.
\textsuperscript{41}Hauselt v. Patterson, \textit{supra} note 40; Halsey v. Reed, 9 Paige 446 (N. Y. 1842);
\textsuperscript{42}\textit{Supra} notes 39, 40; see \textit{In re} Rosenbaum's Estate, 157 Misc. 316, 283 N. Y. Supp. 519
(Surr. Ct. 1935).
\textsuperscript{43}Hauselt v. Patterson, \textit{supra} note 40.
\textsuperscript{44}Section 116 of the Decedent Estate Law provides: "Actions of account, and all other
actions upon contract, may be maintained by and against executors, in all cases in which
the same might have been maintained, by or against their respective testators." \textit{See}\nMatter of Rosenstein, 152 Misc. 777, 274 N. Y. Supp. 126 (Surr. Ct. 1934); New Rochelle Trust
(2d) 707 (2d Dep't 1939).
\textsuperscript{45}Matter of Watson, 101 App. Div. 550, 92 N. Y. Supp. 195 (1st Dep't 1905); Matter
of Stiles, 64 Misc. 658, 120 N. Y. Supp. 714 (Surr. Ct. 1909); Matter of Roberts, 72
said, "Maud I. Roberts, one of the administrators, is the only heir at law of the deceased,
and said mortgaged property passed to her subject to the mortgages; \textit{hence the payment
of the interest which accrued after the death of said Cyrus L. Roberts was her obligation
and not that of the estate." (Italics supplied).
\textsuperscript{46}In Matter of Fogarty, 165 Misc. 78, 83, 300 N. Y. Supp. 231 (Surr. Ct. 1937), the
court said, "... [the devisee must]... pay, out of his own means, to the first mortgagee
the $2,000 and interest since the devisor's death." (Italics supplied). \textit{See also}\ Matter of
Hackert, 171 Misc. 139, 11 N. Y. S. (2d) 987 (Surr. Ct. 1939).
\textsuperscript{47}13 N. Y. S. (2d) 846 (Monroe County Ct. 1939), \textit{aff'd}, 257 App. Div. 1037, 13 N. Y. S.
(2d) 847 (4th Dep't 1939).
the precise point under the moratorium. Defendants were the devisees of certain real property subject to a mortgage held by the plaintiff. After the testator's death, interest accrued and was not paid. Plaintiff brought an action under Section 250 of the Real Property Law for the accumulated interest. The lower court granted defendants' motion to dismiss the complaint holding that the mortgaged property was the primary source of payment and that the decisions in Johnson v. Meyer and Union Trust Company v. Kaplan were not in point. The court, at page 847, distinguished the cases on the following ground:

"Each of those actions was brought against one who executed the bond and mortgage. The defendants in this action did not execute the bond or mortgage, nor have they ever assumed the indebtedness, so far as appears."

On appeal, the Appellate Division, Fourth Department, affirmed the lower court's holding in a one-line opinion:

"Upon no aspect of the complaint can the plaintiffs maintain this action and it was properly dismissed [citing cases]."

Since an action against the distributee or devisee would not lie because he had not "assumed the indebtedness," could a judgment be obtained against the estate? That question was answered in the recent case of Doyle v. Graves. Plaintiff, the mortgagee, there joined the executors of the mortgagor's estate and the devisee of the mortgaged property in an action for a declaratory judgment. Among other things, she asked for a determination of her right to obtain a judgment against the executors or the devisee for interest accumulated since the testator's death. A motion for summary judgment dismissing the complaint was made by all of the defendants and granted by the court. The executors were relieved from liability, said the court, by Section 250 of the Real Property Law. On the other hand, the devisees were not liable since Section 250 imposed no personal liability.

The net result of these decisions seems to be, therefore, that the death of the mortgagor deprives the mortgagee of his right to obtain a judgment for interest. The effect of the Johnson and Kaplan cases is limited to suits for interest accruing in the decedent's lifetime. As soon as the mortgagor's property passes to a distributee or devisee, however, an anomalous situation results. Section 250 of the Real Property Law shifts the liability for payment of the interest from the executor onto the new owner of the land. As a result, courts say, the executor is relieved from liability because the obligation

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172 Misc. 838, 16 N. Y. S. (2d) 554 (Sup. Ct. 1939).
has become that of the heir or devisee. On the other hand, the distributee or
devisee is relieved on the ground that the property itself is now the sole source
of payment. Somewhere in the shuffle the right to obtain a judgment for
interest is lost. The mortgagee is once more left with foreclosure as his sole
remedy. He must stand by and watch the margin of his security shrink, and
let the taxes and interest accumulate, until in desperation he is driven to take
over the property which he does not want. The mortgagor alive could not
make him foreclose; the mortgagor dead can.

In effect, the law permits the executor, devisee and distributee to say to the
mortgagee:

“Our testator said to you that if you would lend him a certain sum of money,
he would pay it back to you with interest at six per cent and pledge as security
property of much greater value. This was done. After the moratorium went
into effect, you could sue our testator for interest as it accrued without fore-
closing on your mortgage and obtain a judgment. But when you now come
to us and ask us to pay the interest as he promised to do, we say to you that
such is not the law. You must foreclose your mortgage at your own expense
and sell it as provided by law. If no one comes to the sale, you must then buy
the property in your own name for what you think it is worth, whether you
want it or not. After the sale, you may apply for a deficiency judgment. If
the court finds that the value of the property is equal to the amount of principal,
together with interest, other charges, and costs of foreclosure, then we owe
you nothing and need not pay the money which our testator promised.

“This was not the law when our testator borrowed the money, but we claim
it is the law now. You have no choice but to foreclose. We do not deny that
our testator owed you this debt; we are merely denying that any one should
pay it.”

Such a jumbled situation needs clarification and needs it badly. Something
is patently wrong when the mortgagee’s remedy to sue for interest is co-
existent with the mortgagor’s life. Judicial fiat has already given the mort-
gagee a remedy to obtain a judgment for interest accumulated during the
mortgagor’s lifetime. If suits for interest are to be sanctioned under the
moratorium, then a similar remedy should be available in cases where the
mortgagor is dead, and his distributee or devisee owns the property. It is
interesting to note that in 1938 and 1939, bills were introduced into the
Legislature seeking to add Sections 1083-aa and 1083-bb to the Civil Practice
Act providing for the prohibition of actions arising out of nonpayment of
interest and taxes. Both bills were vetoed by the Governor. The 1939
bill was reintroduced in substance but was not reported out of committee.

49 1938 Senate Introd. Bills, Nos. 615 and 619.
The problem will become more acute as the emergency continues. In the natural course of events, more mortgagors will die and more mortgagees will find that death has deprived them of their action for interest. The Legislature which enacted Section 250 of the Real Property Law could not foresee the mortgage moratorium of 1933. A mortgagee could then foreclose on his mortgage and obtain a judgment against the estate for the deficiency without difficulty. His investment was protected. Today the situation is different.

Under the dictum in *Union Trust Company v. Kaplan*, subsequently followed by other courts, the moratorium has established a separate cause of action for interest. In order to protect all parties, it would seem that the estate of the mortgagor might well be held liable for interest to the mortgagee during the emergency period. The mortgage debt itself could still be satisfied only out of the land. Such procedure would not be contrary to the express provisions of Section 250 of the Real Property Law, nor would it impose an undue burden on the estate, which before 1933 would be subject to a deficiency judgment for the full amount of the deficiency. It has already been held that a mortgagee may waive the security of his mortgage and sue the estate directly on the bond. The mortgagee should not be compelled to do so. He should be able to obtain interest from the estate as it accrues and still maintain his security. Such an arrangement would be fair to all concerned and in keeping with the general spirit of the decisions concerning suits for interest under the moratorium.

APPENDIX A

*Civil Practice Act* § 1077-a. *Foreclosure For Principal Defaults Suspended.*—During the period of the emergency as defined in section ten hundred seventy-seven-g, and notwithstanding any inconsistent provisions of the civil practice act or of any other general or special law, or of any agreement, bond or mortgage, no action or proceeding for the foreclosure of a mortgage upon real property, or any interest therein, nor any foreclosure under article seventeen of the real property law, shall be maintainable, solely for or on account of a default in the payment of principal secured by such mortgage or solely in the payment of any installment or amortization of principal secured by such mortgage, although the payment of such principal or installment or amortization of principal may be due by the terms of such agreement, bond or mortgage, provided, however, that where a default authorizing foreclosure shall have occurred under the terms of the bond or mortgage or other agreement, other than the non-payment of principal or an installment or amortization of principal, and any grace period therein specified shall have expired, then the rights and remedies of the holder of the mortgage shall not be affected by this act.

Notwithstanding the foregoing provisions of this section, any installments or amortization of principal, or principal which, by the terms of such agreement, bond or mortgage, have become due or shall become due and payable prior to July first, nineteen hundred thirty-four shall become and be due and payable six months after the expiration of such emergency period as now or hereafter defined or extended.

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INTEREST UNDER MORTGAGE MORATORIUM

Notwithstanding the foregoing provisions of this section, any installments or amortization of principal, or principal which, by the terms of such agreement, bond or mortgage, shall become due and payable between July first, nineteen hundred thirty-four and July first, nineteen hundred thirty-seven, inclusive, shall become and be due and payable one year after the expiration of such emergency period as now or hereafter defined or extended.

CIVIL PRACTICE ACT § 1077-b. ACTIONS ON BONDS FOR PRINCIPAL DEFAULTS SUSPENDED.—No action shall be maintainable or judgment shall be entered during such emergency, upon any loan, indebtedness, bond, extension agreement, collateral bond, or other evidence of indebtedness or liability, whether or not such indebtedness or liability shall have been thereafter reduced, extended or modified, if the indebtedness originated or was originally contracted for simultaneously with such mortgage and is secured solely by such mortgage, or upon any guaranty of payment of the principal or installment or amortization of principal of any mortgage within the scope of section ten hundred seventy-seven-a or upon a guaranty of any obligation secured by such mortgage, so long as no action or proceeding shall be maintainable to foreclose such mortgage. No action shall be maintainable or judgment be entered during such emergency upon any guaranty of payment of any share or part of any bond and/or mortgage or group of bonds and/or mortgages represented by a certificate, bond, debenture or other instrument, nor upon any note, bond, debenture or other instrument being part of a series issued against, or secured by the deposit of a bond and/or mortgage or a group of bonds and/or mortgages so long as interest at the rate prescribed shall be paid upon any such certificate, note, bond, debenture or other instrument. The liability of any endorser, guarantor of, or surety for any such liability shall not be discharged by reason of the failure of the holder to demand payment of any such indebtedness or liability, or by reason of any failure to give notice of non-payment, or by reason of any failure to bring any action or proceeding thereon during the emergency.

Notwithstanding the foregoing provisions of this section, any installments or amortization of principal, or principal which, by the terms of any such loan, indebtedness, bond, extension agreement, collateral bond or other such indebtedness or liability have become or shall become due and payable prior to July first, nineteen hundred thirty-four, shall become and be due and payable six months after the expiration of such emergency period as now or hereafter defined or extended.

Notwithstanding the foregoing provisions of this section, any installments or amortization of principal, or principal which, by the terms of any such loan, indebtedness, bond, extension agreement, collateral bond or other such indebtedness or liability have become or shall become due and payable between July first, nineteen hundred thirty-four and July first, nineteen hundred thirty-seven, inclusive, shall become and be due and payable one year after the expiration of such emergency period as now or hereafter defined or extended. The liability of any endorser, guarantor of, or surety for any such obligation shall not be affected or impaired by reason of the extension of time of payment of any such installments or amortization of principal, or principal or by reason of the failure of the holder to demand payment of such indebtedness or liability, or of such installment or amortization, or by reason of the failure of the holder to give notice of non-payment, or by reason of the failure of the holder to bring any action or proceeding to recover such indebtedness, or any installment or amortization, during the time payment of any such installment or amortization or principal is suspended by the provisions of this section as amended by this act.

APPENDIX B

CIVIL PRACTICE ACT § 1083-a. LIMITATION UPON DEFICIENCY JUDGMENTS DURING EMERGENCY PERIOD.—No judgment shall be granted for any residue of the debt remaining unsatisfied as prescribed by the preceding section where an action to foreclose the mortgage has been or shall be commenced during the emergency or where the mortgaged property shall be sold during the emergency, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale provided such motion is made within ninety days after the date of the consummation of the sale by the delivery of the proper deed of conveyance to the purchaser in all cases where the sale is held after the date this section as hereby amended takes effect, and in all cases where the sale was held prior to the date this section as hereby amended takes effect and said sale has not heretofore been confirmed, then within ninety days from the date this section as hereby amended takes effect or within ninety days after the date of the consummation of the sale by
delivery of the proper deed of conveyance to the purchaser regardless of whether the sale was held prior or subsequent to or on the date this section as hereby amended takes effect, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date such premises were bid in at auction or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment. Such deficiency judgment shall be for an amount equal to the sum of the amount owing by the party liable as determined by the judgment with interest, plus the amount owing on all prior liens and encumbrances with interest, plus costs and disbursements of the action including the referee's fee and disbursements, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist.

Notwithstanding the foregoing provisions and irrespective of whether a motion for a deficiency judgment shall have been made, or, if made, shall have been denied, the court shall direct that all moneys remaining in the hands of a receiver of the rents and profits appointed in the action, after the payment of the receiver's fees and the expenses of the receivership, or any moneys remaining in the hands of a mortgagee in possession or an assignee of the rents and profits of said premises, shall be paid to the plaintiff to the extent of the amount, if any, by which the judgment of foreclosure and sale exceeds the amount paid for said property upon said sale.

APPENDIX C

CIVIL PRACTICE ACT § 1083-b. JUDGMENTS IN ACTIONS ON BONDS.—In any action pending at the time this section as hereby added takes effect, or hereafter commenced during the emergency, other than an action to foreclose a mortgage, to recover a judgment for any indebtedness secured by a mortgage on real property and which originated simultaneously with such mortgage and which is secured solely by such mortgage, against any person or corporation directly or indirectly or contingently liable therefor, any party against whom a money judgment is demanded, shall be entitled to set off the fair and reasonable market value of the mortgaged property less the amounts owing on prior liens and encumbrances. In any action to foreclose the mortgage commenced after the emergency as defined by the law shall have expired, a deficiency judgment may be recovered as though this section had not been enacted but the amount of any money judgment recovered as provided in this section shall be deducted in computing such deficiency judgment.