

Post-Judgment Collection: Don't They Have To Pay It?

Article



Clients are often surprised to hear that a collections case is not over once we have been awarded a judgment. It is natural to suppose that once a court has ordered someone to pay a judgment that they are then required to do so. Unfortunately, a judgment is often only the beginning. The following discussion provides the various options available in order to collect a judgment and the various considerations involved.

To begin, it is important to note that any legal fees incurred in collecting a judgment are unrecoverable. Once a court enters a judgment, it specifically states the amount of attorneys' fees awarded. Any attorneys' fees incurred after the judgment has been entered are not a part of that judgment award. In addition, the local courts are often reluctant to award "prospective" legal fees because, as the argument goes, the defendant should not have to pay any legal fees for action that has not yet been taken and may never be taken. Rather, the courts take the position that post-judgment legal fees are simply the "cost of doing business." As a result, clients must decide on a case-by-case basis whether taking action to collect a judgment makes economic sense.

Assuming that post-judgment collection is a viable option in a particular case, there are several options available to either force the debtor to make payment or prompt payment in full. Each option requires us to file an action with the court, which in turn gives us the ability to attach the debtors' wages, bank accounts or other assets.

WAGE GARNISHMENT

Simply put, a wage garnishment is a proceeding where the court orders the debtor's employer to withhold funds from the debtor's paycheck. In the event the debtor's employer fails to withhold funds, we can ask the court to enter a judgment against the employer. Although these garnishments are often successful, it is imperative that you have reliable employment information. Employment information is often very difficult to obtain, and what we can find is often outdated. For obvious reasons, the garnishment will be ineffective if the debtor no longer works for that employer. In addition, a wage garnishment will often be unsuccessful if the debtor is self-employed or works as an independent contractor.

It is important to note that we are often limited to a certain percentage of the debtor's wages – we cannot claim his or her entire paycheck. While we may not be able to collect the entire balance of the judgment, a wage garnishment will often prompt the debtor to either make full payment or agree to an aggressive payment plan.

BANK GARNISHMENT

We can also garnish the debtor's checking and savings accounts. When this is possible, we are often able to collect the entire judgment. Similar to a wage garnishment, it is important that you have reliable information. Frequently, obtaining a recent check copy from management can provide all the information we need. We then file an action with the court, and the court orders the debtor's bank to withhold the funds. This can be very effective if you garnish a checking account, as the debtor will be unable to withdraw any money from that account. This usually prompts the debtor to contact us and enter a payment agreement.

In our experience, when funds are subjected to a bank garnishment, debtors are more likely to claim that the funds held in by the bank are exempt from garnishment. By law, a debtor can claim that funds received from disability veteran's benefits or social security are exempt from the garnishment. If the debtor can prove that the funds in the account are the result of some form of exempt income, the court will order that the garnishment be released. Unfortunately, this often results in no recovery for the Association.

RENT GARNISHMENT

If the owner is a non-resident, it is possible to garnish any rent that the debtor receives from a tenant residing in the property. Like garnishments previously discussed, it is again important to have reliable information. However, if you have reliable information, you can claim all of the rent paid during the time the garnishment is in effect.

Unfortunately, tenant garnishments present several unique difficulties. Surprisingly, it is not uncommon to find that the debtor's tenant is a family member who does not pay rent. Also, the debtor may convince the tenant to refuse service of the garnishment or to not pay the full rent amount to the Association. We often find that the tenant owes back rent to the debtor, and may be unable to pay rent when the garnishment is filed. Nonetheless, a rent garnishment will often create a great deal of embarrassment for the debtor, which in turn may prompt him or her to either pay the judgment or enter a payment agreement.

LEVY ON PERSONAL PROPERTY

A judgment also gives us the ability to attach the debtor's personal property and sell it at public auction. Typically, we try to attach the debtor's vehicle. Unlike a garnishment, a levy does not require a Court appearance. Instead, we first file an action that directs the Sheriff to tag the specified property as to be auctioned for sale. After the property is tagged, a bond is set that must be paid to proceed with the sale. The bond is usually the amount of the judgment plus any other liens against the property (e.g. the remaining loan balance on a car). We must then schedule a sale date with the Sheriff, and the auction is then conducted at that time.

Unfortunately, levies are usually not cost-effective. Due to the amount of time involved in conducting the sale, and the bond costs, the overall cost of the sale can be expensive. Furthermore, most personal property does not have enough value to result in a significant recovery for the Association. While a vehicle is probably the most significant piece of personal property the debtor owns, it is usually encumbered with liens and therefore no one is interested in purchasing it. Generally, when we pursue a levy, we hope that the debtor makes payment as a result of the Sheriff tagging their vehicle for sale.

INTERROGATORIES

A judgment also allows you to summon the debtor to court to answer questions concerning his or her ability to pay the judgment. The debtor is required to answer the questions under oath, and if he or she does not appear, the debtor can ultimately be put in jail. It is important to note that this remedy does not require the debtor to actually pay the judgment, and for that reason, we typically file a summons to answer interrogatories if we have no asset information for the debtor and all other efforts have been unsuccessful. In filing the summons, we are simply trying to obtain some useful information and hopefully persuade the debtor to address the debt.

This memorandum provides only a brief overview of the available options for collecting a judgment. As noted earlier, post-judgment collection requires careful consideration as to what action should be taken and when.

By Rory K. Nugent, Esquire; Reese, Broome