**GETTING A JUDGMENT IS ONLY THE BEGINNING OF TRYING TO GET PAID**

**By: William G. Morris, Esq.**

A lot of people think that when someone gets a judgment in a court case they get paid. That is especially true in Small Claims Court, where a majority of people represent themselves. Experienced trial lawyers know getting to judgment is often just beginning of the effort to get paid.

A judgment is only a judicial determination that money is owed. Judgment ends all question or dispute about liability or amount of damages. That opens the door to effort to actually get money but does not result in automatic payment. The United States and Florida Constitutions prohibit imprisonment for failure to pay debts. Bankruptcy further interferes with collection of judgments. That means someone with a claim needs to think long and hard about whether the claim will be collectible if judgment is obtained.

In our office, we apply 3 tests to determine if a lawsuit should be pursued. First, do the facts related by our client seem to establish a case that is winnable? Second, will the possible judgment amount warrant the lawsuit expense? Last, but not least, will a judgment be collectible?

It is that third test that the client must answer, since we cannot tell in advance if anyone has assets with which to pay a judgment. Previous columns have explained that Florida is a very debtor friendly state, with many exemptions from collection such as homestead, retirement accounts and wages of the head of a household. It is virtually impossible to confirm a defendant will have money to pay a judgment before a judgment is obtained, which can make even a strong case a gamble by the plaintiff.

A Florida judgment is a debt and can be collected for up to 20 years. By statute, all judgments bear interest. By statute, once a judgment is entered, the judgment holder is also entitled to additional judgment or judgments for reasonable attorney’s fees incurred in collecting the judgment. No statute requires payments.

First effort to collect a judgment is often discussing payment with the judgment debtor. In some cases, a plaintiff will offer to hold entry of judgment in abeyance if the debtor will pay within a certain period of time. That keeps the judgment off of the debtor’s credit history and can be an incentive to pay. The parties may work out a payment plan even after a judgment is entered. If the judgment debtor is unwilling to voluntarily pay, the judgment creditor must consider collection options. That usually starts with searching for assets that can be taken to pay the judgment.

Asset search can start with the judgment itself. Court rules allow the prevailing party in a lawsuit to request the court order a judgment debtor complete under oath Florida Rule of Civil Procedure Form 1.977. That form requires the judgment debtor answer questions about the debtor’s assets and liabilities. It is a good start because failure to complete and return the form under oath can result in the debtor being held in contempt of court and incarceration until the debtor completes and provides the fact sheet. Incarceration for failure to complete the form is not incarceration for debt, it is for failure to comply with the court order and it does not violate the Constitution. Staying out of jail can be a strong incentive to provide information.

The fact sheet is one way to gather information. Another is use of post judgment deposition, under which the judgment debtor is required to answer questions under oath and even bring documents for the judgment creditor to review. The documents can include bank statements, pay stubs, insurance policies, tax returns and almost anything related to assets and liabilities that might lead to discovery of something that could be used to pay the judgment creditor. Some judgment holders even hire private investigators and spend a lot of money searching for assets that the judgment debtor may have hidden through corporate shells or transfer to third parties. If assets are found that have been transferred for less than fair consideration, they can be taken by showing the transfer was fraudulent and effort to avoid the judgment creditor.

Searching for assets is kind of like mining for gold. Once a nugget is found, the judgment creditor may use a variety of tools to recover. If the judgment debtor has an interest in real estate, recording a certified copy of the judgment in the public records of the County where the real estate is located, including the creditor’s address, will create a lien against real estate similar to a mortgage. The judgment lien comes behind prior liens (first mortgage) but can either be foreclosed like a mortgage or through execution and levy to be sold by the sheriff.

Some judgment holders do not want to pursue the cost of selling real estate against which the judgment is a lien. The judgment holder might just wait and hope the debtor later sells the property, at which time the judgment will get paid because it affects the title. A judgment lien against real estate expires 10 years from the date it is recorded, although it is subject to renewal and extension for an additional 10 years, not to exceed the 20 years total life of the judgment.

Execution and levy can also be used to enforce a lien against personal property such as automobiles and other items of value. Cost of involving the sheriff for levy and sale will generally limit use of this tool to assets of substantial value, but it can be very effective when such assets can be located. Many of these assets are movable, which makes them difficult to find and even more difficult for the sheriff to locate, attach and sell.

The best asset for a creditor to find is money or financial accounts. When the judgment creditor finds that a bank or stockbroker has an account for the judgment debtor, a landlord or third-party holding or owing money that will ultimately be paid to the judgment debtor, a tenant who owes rent, the judgment holder can pursue garnishment. Under garnishment, the judgment holder asks the Clerk to issue a writ to the party who owes money to the judgment debtor ordering that party to pay the money to the judgment creditor. After the third party is served with the writ, the judgment creditor has to notify the debtor and the debtor has an opportunity to challenge the writ. If the judgment debtor challenges the writ, the funds are held by the third party until the court determines who gets the funds.

Wages can be garnished, but there are federal limitations and Florida prohibits garnishing wages of the head of a household. Garnishing wages can be particularly effective when the judgment debtor does not want his or her employer to know about the judgment. Simply the possibility of garnishment may result in a payment plan acceptable to both parties. Because wages are paid periodically, a continuing writ of garnishment can be obtained for non-exempt wages under which the judgment holder gets paid part of the wages due the judgment debtor each time the employer makes payment.

Collecting a judgment can be even more costly than obtaining the judgment. That makes it important to consider cost and likelihood of collection from the earliest point in dispute. The potential plaintiff should also consider Florida’s protections for debtor’s assets, which are quite broad. Once judgment is obtained, the judgment creditor should discuss collection options with counsel. Even though Florida Statutes provide for recovery of attorney’s fees as part of collecting a judgment, courts often award less than all fees and collection expenses. If the judgment ultimately proves to be uncollectible, the additional expense of pursuing collection merely pours expensive salt into a wound.

Lawsuits are expensive. Collecting judgments is expensive. Collection of a judgment is never guaranteed. Before suit, a plaintiff should not only discuss probability of success with his or her chosen attorney, but should also consider probability of collection before authorizing counsel to file suit.

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