**JUDGMENTS ARE NOT PAID AUTOMATICALLY**

**BY: WILLIAM G. MORRIS, ESQ.**

A lot of people think that once a person gets a judgment, it is automatically paid. Nothing could be further from the truth. Getting a judgment is often the easiest part of collection effort. A judgment holder must take action to collect the judgment unless the debtor pays voluntarily.

Both the U.S. and Florida Constitutions prohibit imprisonment for debt. That prohibition is a deterrence to voluntary payment of judgments, which means a judgment holder’s effort to collect is just starting when the judgment is entered.

Florida Statutes provide a judgment holder may recover attorney fees and costs of collecting a judgment. That helps make the judgment holder whole. That does not mean the judgment debtor will pay. Judgments also accrue interest until paid, but that also fails to push many to pay.

First thing a judgment holder should do is look for something the debtor owns that can be used to pay the judgment. Once a judgment is entered the judgment holder is entitled to detailed information about a judgment debtor’s assets and financials. That search often starts with asking the judge to include an order that the debtor provide sworn answers to a Fact Information Sheet. The sheet is a form under court rules. Judges grant that request as a matter of course.

The Fact Information Sheet is a multi-page questionnaire about the judgment debtor’s finances. The debtor must answer questions, attach copies of bank statements, tax returns and other to the judgment holder within 45 days. If the debtor fails to send answers and documents to the judgment holder, the judgment holder can ask the judge to hold the debtor in contempt of court for failure to comply with the court order. The debtor can be imprisoned for failure to comply with the order and may avoid imprisonment or get out of jail by providing the answers and documents. The imprisonment is not for debt but for failure to comply with the court order to provide information.

Judgment holders have other discovery tools to find assets. Those include deposition at which the debtor is asked questions under oath, interrogatories which ask for answers to written questions under oath, and requests for production of records. These can be more extensive and detailed than the Fact Information Sheet and can be tailored to particular situations. Discovery of assets is not limited to asking the judgment debtor for information. Discovery can be sought from anyone who might have information helpful to the collection effort.

Once assets are found, the judgment debtor can use other tools to have the assets used to pay the judgment. Recording a court certified copy of the judgment with the judgment holder’s address (or simultaneously recording an affidavit with the address if it is not on the judgment) can create a lien against real estate owned by the debtor. The lien is like a mortgage, and can be foreclosed or the judgment holder can arrange for the sheriff to sell the property. The judgment holder can even simply let the judgment lien sit and wait for the debtor to sell the property, at which time the title search will show the lien and hopefully get it paid.

A judgment holder will usually also ask the court for a writ of execution. The writ can be filed with the State and becomes a lien against all of the debtor’s tangible personal property. When the judgment holder finds tangible personal property of value, arrangement can be made for the sheriff to levy on the personal property and sell the property at public auction. The most common tangible personal property sold in this manner is a motor vehicle, but vehicles may not be attractive assets to take and sell because they have a finance lien against them that makes them virtually worthless. Since the judgment holder must pay a significant fee to the sheriff for levy and sale, plus advertising, vehicles are not automatically pursued for collection.

Execution and levy can be used to take and sell an owner’s stock in a corporation. That is an indirect way to get the assets of the business as well. Limited liability companies can be a bit more complicated, as statutes limit ability to take the ownership interest in an LLC if there are multiple members. That limit does not apply to a single member LLC. The difference in ability to take stock versus difficulty in taking membership in an LLC lead many to use an LLC for business rather than a corporation.

If the judgment holder can find someone who owes the debtor or is holding money for the debtor, garnishment can be used. Garnishment is a writ issued by the Clerk of Courts to the person owing or holding funds directing the funds be paid to the judgment holder. The writ is issued without notice to the debtor until after it is served on the person owing or holding funds. If successful, the funds are paid to the judgment holder instead of the debtor. Garnishment is used to obtain funds in bank accounts and even wages (although various laws limit garnishment of wages).

When a debtor sees the lawsuit coming or later when a lawsuit starts going badly, the debtor may try to shield assets from collection by transferring them to close family or others without getting payment for the transfer. Those transfers can be undone and the assets reached by pursuing action for fraudulent transfer. Action for fraudulent transfer requires another lawsuit to establish the transfer was intended to hinder collection and did not involve equivalent value given to the judgment debtor. Fraudulent transfers are relatively easy to reverse.

All of these efforts to collect a judgment can be complicated and expensive. In some cases, collection ultimately fails because the judgment debtor has nothing that can be applied to pay the judgment. It is always a good idea to make an assessment as to ultimate collectability before filing suit. That assessment can be difficult as financial information is generally entitled to privacy until a judgment is actually obtained. But, that assessment should be done to the extent possible.

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