**I GOT A JUDGMENT, NOW WHAT?**

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

A lot of people think the fight is over when they get a judgment. But a judgment is not paid automatically. It is often harder to collect a judgment than it is to win one.

The United States Constitution and the Florida Constitution both prohibit imprisonment for debt. The United States Constitution ban on imprisonment for debt is judicially created by interpretation of the 14th Amendment. The 14th Amendment includes the equal protection clause which the Supreme Court has interpreted to mean indigent debtors cannot be imprisoned for failure to pay debts. Statute adopted by Congress goes on to prohibit imprisonment for debt in any state where imprisonment for debt has been abolished.

The Florida Constitution ban on imprisonment for debt carves out fraud from that prohibition. Florida courts have expanded the fraud carveout by interpretation and explanation. Protection is not provided to those who commit crimes or to those who commit a tort. A tort is a claim for damages due to breach of a non-contractual duty owed by one to another. Failure to pay child support or alimony, if unable, is also not protected.

All this means is a judgment holder cannot call the police and demand that someone against whom they hold a judgment be thrown in jail for non-payment. One bit of good news is that Section 57.115 Florida Statutes provides a judgment holder may recover the attorney’s fees and costs incurred in trying to collect a judgment. But, getting another judgment for attorney’s fees will not bring a smile to the judgment holder unless recovery is successful.

Another bit of good news for a judgment holder is in most cases the judgment holder does not have to wait to pursue collection if the debtor files an appeal. If the judgment debtor wants to stop collection during the appeal process, the judgment debtor must usually post a bond. The drawback to pursuing collection while a case is on appeal is if the judgment is reversed, the judgment holder could have to pay everything back. The judgment holder is not usually liable for damages other than repayment because the judgment creditor could have bonded off the collection process.

Florida is a debtors haven. Under Florida’s Constitution, common law and various statutes, debtors can often keep assets that a creditor thinks should be available to satisfy a judgment. Florida’s homestead protection is a great example. Florida’s Constitution exempts homestead from collection efforts of those other than those who have improved the property, liens voluntarily placed against the property and taxes. If the homestead is sold, the proceeds might be reachable unless the debtor intends to use the proceeds to purchase a replacement homestead.

Assets owned jointly by spouses as an estate by the entirety are generally exempt from the creditors of one of the spouses. If the non-debtor spouse dies, all of those assets may be reachable if the judgment debtor ends up with them.

All is not lost by Florida’s broad debtor protections. A judgment holder can still collect a judgment as long as there are non-exempt assets available. One of the simplest ways to collect a judgment is through garnishment. Garnishment seeks to have money owed by someone to the judgment debtor paid to the judgment holder instead of the judgment debtor.

In a garnishment action, the clerk issues a garnishment writ at request of the judgment holder and the writ is served on the person or entity who owes money to the judgment debtor. Bank accounts are the usual target, as the bank holds money which is due to the judgment debtor upon request. Deposits, rents, refunds, and similar finances are also reachable by garnishment.

The judgment debtor does not give notice of the garnishment writ until after it is served on the person who owes or is holding money for the judgment debtor. The writ directs the person holding money to retain it or deduct the appropriate amount to pay the judgment and not to pay it to the judgment debtor. The judgment debtor is given notice after service and has the opportunity to challenge the writ.

Garnishment writs are often used to garnish wages. A continuing garnishment writ is available for wages, which the withhold money means an employer is directed to withhold money from the wages of the employee and give to the judgment debtor. Federal law limits the amount that can be withheld. Florida law completely exempts earnings of the head of a household, but the exemption can be waived on earnings above $750.00 a week.

When the debtor owns something other than cash, the judgment creditor can seek to levy and arrange sale of the asset with the proceeds applied to the judgment debt. A writ of attachment is issued by the court, and the sheriff is directed to levy on specific property. The sheriff serves the writ and, in many cases, takes the property into the sheriff’s possession. The property can later be sold by the sheriff and the proceeds applied to the judgment. This is a rather expensive and cumbersome procedure but is very effective when the debtor owns something big and valuable like a boat or an expensive car.

Sometimes the debtor transfers assets to avoid collection. There are other ways to pursue the debtor as well, as such transfer are fraudulent and for no return value. Supplementary proceedings allow a judgment creditor to undo transfers of property made by the judgment debtor within one year when the transfer was intended to defraud the judgment debtor and can also be used to pierce the corporation.

Collecting a judgment can be complicated. Very few non-lawyers can pursue post-judgment collection successfully. Even with a good lawyer, not all judgments are collectable.

***William G. Morris is the principal of William G. Morris, P.A. William G. Morris and his firm have represented clients in Collier County for over 30 years. His practice includes litigation and divorce, business law, estate planning, associations and real estate. The information in this column is general in nature and not intended as legal advice.***