

## **SO YOU OBTAINED A JUDGEMENT - NOW WHAT?**

By: Roger Miller

February 2005

An important factor in determining whether or not to proceed with costly litigation is the collectibility of a judgment. I am referring primarily to unsecured obligations – obligations where no specific collateral has been pledged by the defendant to satisfy the obligation. With secured obligations, such as a mortgage, the plaintiff can seek to satisfy the judgment out of the specifically pledged collateral. However, even with secured obligations, the collateral may not be worth as much as the judgment, and you could still end up trying to collect the amount of the judgment not satisfied through the sale of the collateral. Therefore, one of the first questions one should ask before filing a lawsuit is: Does this person or corporation have anything from which to collect?

The goal of most plaintiffs is to obtain a money judgment. A money judgment is simply a judicial determination that one party owes another party a sum of money. It is not legal tender. You cannot use it to purchase goods or services. Therefore, you must collect on that judgment by finding assets or income of the judgment debtor.

The very first thing to be done after obtaining a judgment is record a certified copy of the judgment with the clerk of court in any county where the judgment debtor may own real property. The judgment must contain the judgment creditor's address, or an affidavit with the creditor's address must be recorded along with the certified copy of the judgment. Recording a certified copy of the judgment creates a lien on the judgment debtor's real property in the county where the judgment is recorded. Depending on how title to the property is held and whether it is the judgment debtor's homestead, you may be able to foreclose that judgment lien and sell that property to pay some or all of your judgment.

Then you need to find out what, if anything, the judgment debtor has in the way of assets or income. This is easier said than done, and is an additional expense that may not be recoverable. Unless the judgment debtor is willing to volunteer information, you must proceed with discovery in aid of execution. Discovery is the process through which one finds out information, which may mean additional depositions and written requests for information.

Bear in mind that the discovery process is founded on a judgment debtor truthfully answering questions under oath about their assets or income. I recently took a deposition in aid of execution where the judgment debtor testified that he did not work, had no bank accounts, and owned no real or personal property, other than some clothing. Aside from conducting my own asset searches and hiring a private investigator to find some property of the debtor, there was not much more I could do to collect that judgment. Needless to say, that judgment still remains unsatisfied.

Another method of collecting on a judgment is through garnishment. Essentially, garnishment allows a judgment creditor to direct third parties to pay funds directly to the judgment creditor rather than the judgment debtor. Garnishment may be obtained against a judgment debtor's wages and bank accounts; however, some exemptions exist that protect a judgment debtor's wages. For instance, if the judgment debtor is a head of household with dependents, you may not be able to garnish.

A few months ago, I sent written interrogatories to a judgment debtor on behalf of a client with the hopes of discovering some assets or income that could be used to pay my client's judgment. After repeated failures on the part of the judgment debtor to respond, I obtained an order from a judge requiring the judgment debtor to answer the interrogatories or face arrest. When the judgment debtor still did not respond, an arrest warrant was issued, after which, the judgment debtor promptly answered the interrogatories. It turned out the judgment debtor had several thousand dollars in a bank account. I promptly filed a motion with the court to garnish the funds in that bank account, which resulted in the partial payment of my client's judgment.

If you discover that the judgment debtor owns valuable tangible personal property, such as boats, cars, etc., you can have the sheriff in the county where the property is located levy on the property, and after publication in the newspaper, sell the property to the highest bidder. Before the sheriff will levy on the property, a Judgment Lien Certificate must be filed with the Florida Secretary of State. You must also provide the sheriff with instructions and a description of the property to be levied on, as well as a cost deposit that varies depending on the type of the levy. Levying on personal property can be expensive and the proceeds from a sheriff's sale may be minimal, so the property must be worth it. You must also consider pre-existing liens that may exist on the property, such as a loan the judgment debtor may have used to purchase the property.

Therefore, obtaining a judgment is only one step in the process of recovering money. The defendant must have assets or income from which to recover. A judgment creditor first has to find these assets and sources of income. Then, the judgment creditor must follow the procedures that provide for their taking. All in all, judgment collection can be a complicated and time-consuming process. So before suing, ask yourself, does this defendant have anything from which to collect, because, as the saying goes, you cannot get water from a stone.