

WHAT EVERY BUSINESS SHOULD KNOW ABOUT POST-JUDGMENT COLLECTIONS

In the current economic climate, an increasing number of businesses and financial institutions have had to initiate a lawsuit in order to enforce contracts or, in many cases, to collect on a bad debt, resulting from an unpaid account receivable or a defaulted loan. Often times, it is easier to obtain a judgment than to collect on it. What is a business to do? It all starts with obtaining the judgment. Thereafter, as the judgment creditor, you should serve post-judgment discovery to identify and locate potential assets. Thereafter, the judgment creditor should begin the process of seizing or collecting on these assets. A brief outline explaining the process is set forth below.

POST-JUDGMENT DISCOVERY

The purpose of the Post-Judgment Discovery is to determine the existence of any assets the judgment debtor may have to satisfy the judgment debt.

To initiate pos-judgment discovery, the judgment creditor must file an affidavit along with the discovery sought to be served. The cost of such filing varies according to date of filing in relation to the judgment date. If filed within 30 days of the judgment date, the post-judgment discovery typically is filed under the original civil action file number and the cost is around \$10.00. The Clerk's office will serve the judgment debtor by certified mail with return receipt requested. If the post-judgment discovery is filed more than 30 days after the judgment date, the discovery is assigned a new civil action file number and the cost of filing increases. In addition, the judgment creditor must pay for service upon the judgment debtor typically by the Sheriff.

If the written discovery is not answered within 30 days, the judgment creditor must file and serve an affidavit and a motion to order the judgment debtor to respond. The clerk will serve the motion and affidavit upon the judgment debtor by certified mail-return receipt requested.

If the judgment debtor fails to appear at the hearing, the court may issue an Order requiring the judgment debtor to answer the discovery within 10 days, which is served upon the judgment debtor by certified mail-return receipt requested.

If there is no response to the Court Order requiring answers to the discovery, the judgment creditor must file an Affidavit and Motion to Sanction the Judgment debtor for failing to comply with the Court's Order, plus the appropriate notice. The Sheriff must personally serve this upon the Defendant. In addition, a copy of the previous order is served upon the judgment debtor, as well.

If the Judgment debtor fails to appear at the Hearing or if the debtor does appear but without a bona fide excuse for not answering the discovery, the Court is authorized to enter an Order for Incarceration. Such an Order would cause the

judgment debtor to be arrested by the Sheriff and held in the County Jail until the discovery responses made and approved by the Magistrate.

WRIT OF FIERI FACIAS

A writ of fieri facias, more commonly referred to as writ of fi.fa., is a document that is issued by the County Clerk office for recording a lien on the judgment debtor's property. It is also the legal instrument by which the Sheriff of a County may seize the assets of a judgment debtor. A writ of fi.fa. may be issued on a default judgment case immediately. If the case was contested, then a writ of fi.fa. may not be issued until 10 days after the date of judgment. The cost for a writ of fi.fa. is generally less than \$10.00.

A writ of fi.fa. may also be used to perfect a lien upon any motor vehicles that the judgment debtor owns. However, a special process is required in order to perfect this type of judgment lien. Appropriate forms are available through the Georgia Department of Revenue, Division of Motor Vehicles on line or you can send a self-addressed envelope, a check for \$1.00 for each vehicle and a copy of the fi.fa. to:

Department of Revenue
Motor Vehicle Division
Trinity-Washington Bldg.
Atlanta, Ga., 30334.

The Magistrate Court records a writ of fi.fa. for you upon the General Execution Docket, which is maintained by the Clerk of Superior Court. If you know of any other real property or assets, the judgment debtor owns in another County, you should apply to the Clerks of each such County in order to record properly your writ of fi.fa. on each such County's General Execution Docket. When the judgment satisfied, the judgment creditor has a legal duty make sure that each recorded writ of fi.fa. is cancelled on each General Execution Docket. An additional fee is normally charged to make this cancellation, which is handled by the Clerk of Superior Court in the respective County where the writ of fi.fa. was recorded.

GARNISHMENTS

A garnishment is a separate legal action that is filed against a person or business entity that either owes funds to the judgment debtor, or is holding funds on behalf of the judgment debtor. The person or business entity is referred to as the garnishee. A garnishment can be used against a bank, credit union, employer, general contractor, etc. A judgment creditor simply needs to file a garnishment action in the County where the garnishee is located. The cost for filing a garnishment action is normally around \$50.00 to \$75.00, which does not include the cost for Sheriff's service of a 2nd or subsequent summons.

CONTINUING GARNISHMENT

A continuing garnishment is used when the judgment debtor is a wage earner. A continuing garnishment lasts for a period of 180 days and the appropriate sums will be deducted from the judgment debtor's wages on a 30-day recurring basis until the entire judgment amount is collected, or until the expiration of 180 days from the date of service, whichever occurs first. A judgment creditor files a continuing garnishment action in the County where the garnishee is located. The cost for filing a garnishment action is normally around \$50.00 to \$75.00, which does not include the cost for Sheriff's service of a 2nd or subsequent summons.