

Stim & Warmuth, P.C.

Times are hard and that has led to an increase in the number of clients seeking to start collection actions. In this issue we focus on a number of things you can do to increase the chance that your collection litigation will be successful.

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Keep Copies Of All Incoming Checks

Winning your case in court and obtaining a judgment is only the first step in collecting your money. In the past one of our first steps was to send out restraining notices to all the area banks. In this way we were often able to find the debtor's bank account and freeze it. Unfortunately, the law was changed and now we are only permitted to send a restraining notice to a bank if we have a good faith belief that the debtor has an account with that particular bank. If you keep copies of checks we can then send restraining notices to those specific banks. In a recent case our client saved a copy of the debtor's check and provided it to us at the start of the case. After

a lengthy battle and a successful appeal, the court entered judgment on October 17, 2008. We sent the restraining notice to

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the bank on October 21, 2008. In order to free up its bank account the debtor came to our office on October 27, 2008 with a certified check for the full amount of the judgment (nearly \$40,000). In ten days we had collected the full amount of the judgment at a minimal cost to our client. This success was all due to our client's foresight in making a copy of that original check.

Beware Of Discount Lien Filing Companies

Several of our clients have recently come to us to foreclose liens that were filed by discount lien filing companies. We soon learned that the liens had been improperly filed and were not valid. This was devastating to our clients since having a lien would have given them a much better chance of recovering their money when they won their cases. In one case the discount lien company named the incorrect owner (a fatal defect). We attempted to foreclose the lien but the court immediately vacated it because of this defect. We proceeded to obtain a \$500,000 judgment against the contractor. If the lien had been valid our client would have been in a much better position to collect the judgment. In another case our client hired a discount lien service to file two liens. Both liens were done wrong. When we were hired to foreclose the liens we immediately discovered the errors and tried to

correct them. Unfortunately it was too late and the liens were worthless. A properly filed lien can save you money in the long run. Regardless of the amount of time it takes us to complete the research, Stim & Warmuth charges only \$500 to file a lien plus disbursements.

Do You Really Want An Arbitration Clause In Your Contract?

Many times our clients come to us with contracts that contain clauses requiring the parties to resolve any disputes through arbitration. We typically ignore this clause and bring an action in the court instead. If the other party does not object we can continue in state court. If they insist on an arbitration there is little we can do to stop it. We prefer to bring the action in state court for a number of reasons:

- 1) Arbitration is expensive. Often there is a panel of three arbitrators. Each of these arbitrators is paid an hourly rate (and their hourly rates are almost always higher than ours). It is not uncommon for a client to pay *tens of thousands* of dollars in fees to arbitrators. In state court it only costs a one time \$95 fee to have a judge assigned to your case.
- 2) Arbitration can take a long time. Juggling the schedules of the parties, their attorneys and the arbitrators is often difficult and leads to lengthy delays in the arbitration process. In state court the Justices are becoming more and more strict with deadlines in an effort to move cases along.
- 3) Arbitrators are not bound by rules of substantive law and arbitration awards can be vacated only on limited statutory grounds such as fraud. You can get stuck with a bad decision and there is

very little you can do about it. If you lose a case in state court, we can appeal. The appeal not only gives you the chance to reverse an incorrect decision, it also gives you the chance to settle the case while the appeal is pending. The Appellate Division has a special program to settle cases and will assign a judge to help settle your case. Consider these factors the next time you consider signing a contract which contains an arbitration clause.

Act Quickly

When you are owed money time is working against you. The earlier you take legal action the better your chance of recovery. This is simple advice but we have seen far too many cases where a client comes in after their time to act has expired. Don't let this happen to you. When you have a collection problem there are many things you can do such as filing a lien or making a payment bond claim or filing a lawsuit. The rules regarding the time limits for doing these various things are complex and are dependent on the particular facts of each case. We have been working on Lien Law cases for over 25 years and we still look up the rules each and every time a new case comes in. Don't try to figure out these time limits on your own. We are more than willing to explain what options are available to you. Feel free to call us to discuss your collection remedies - and the earlier the better.

Know Where You Are Working

When we file a lien for you we need to know where you were working. While this may seem like an easy question to answer we often find that our clients do

not know exactly where the job they were working on was located. Sometimes only a driver or a workman will know the actual location where the work took place. Try to keep records regarding the exact location of the jobs you work on. It will be a big help to us if we have to file a lien.

Our Rates Are Frozen

In an effort to help our clients in these difficult times we chose not to raise our rates in 2008. We have now decided to keep the rates frozen through 2009.

Fund Raising

Stim & Warmuth entered a team in Sloan Kettering's Rock & Run by the River. Glenn ran in the race and we were able to raise over two thousand dollars for cancer research.



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