Enforcement of Judgments- I Won!! … Now, How Do I Get My Money?

Introduction

Once a judgment or order for the payment of money has been obtained, the successful party must turn to enforcement proceedings to collect the amount that the unsuccessful party owes it.

In Ontario, there are a few pieces of legislation which may impact a creditor's ability to collect including, but not limited to, the Execution Act,[1] the Creditors Relief Act,[2] and the Rules of Civil Procedure[3] which deal with a variety of issues including debtor and creditors' rights, priorities between creditors and the procedures to enforce.

However, generally speaking, a judgment may be enforced using one or more of the following methods: a debtor examination, a writ of seizure and sale, a garnishment order, a writ of sequestration, a writ of possession and the appointment of a receiver. Some methods are much more commonly used than others due to the fact that they tend to yield better, more cost-efficient results and are less complicated.

The Demand Letter

Prior to taking any enforcement steps the creditor should send the debtor a letter demanding payment and setting out the potential consequences of non-compliance. The letter should make it very clear that the creditor is willing to enforce the judgment and collect the debt through judicial means.

In some cases, this can be a significant steps towards securing payment because it signals to the debtor that the creditor is serious about collecting the debt. However, if the debtor does not pay the entire amount owing then the creditor must utilize one of the processes below to collect.

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1 R.S.O. 1990, Chapter E.24
2 S.O. 2010, Chapter 16, Schedule 4
3 R.R.O. 1990, Reg. 194

The Debtor Examination

In order to determine which process will be most effective to enforce a judgment, a creditor must have accurate information about the debtor's assets and employment. The best way to obtain that information is by examining the judgment debtor under oath. A creditor may examine a debtor about any matter pertinent to the enforcement of the order including his or her income, property, and present, past and future means to satisfy the order.

A debtor examination is a powerful tool because it can help the creditor determine the most efficient means of collection. Also, the failure of the debtor to attend the examination or to answer proper questions satisfactorily may lead to the debtor being held in contempt of court.

Writ of Seizure and Sale

Once the creditor knows where the debtor's assets are located, he or she can obtain a writ of seizure and sale which can then be deposited with the sheriff of the county where the assets are located (and, if applicable, in a Land Titles Office). The writ has the effect of binding the lands and goods of the debtor and giving the sheriff power to seize and sell the debtor's property. Once the sheriff is given directions to enforce the writ, the sheriff may use reasonable force to enter land and premises, so long as the sheriff has reasonable grounds to believe that there is exigible property, and may seize the property of the debtor.

Exigible Property

All personal property owned by the debtor may be seized including land, shares, dividends, money, book debts, patents, equitable rights, the debtor's interest as a mortgagee or joint tenant and matrimonial property. Some property is specifically exempted by legislation such as clothing up to a value of $1,000, household furniture, utensils, equipment, food and fuel up to a value of $2,000, tools of trade, social benefits and pensions.

Garnishment Order

Wages, salary or fees owing to the debtor, bank accounts and debts owed or money accruing under a contract, such as rent or installment payments, may all be garnished. Depending on the type of debt being garnished, the creditor must serve and file documents, including an affidavit in support of the garnishment, on the garnishee (i.e. an employer, a financial institution, etc.) who is then liable to pay the sheriff any money that the garnishee may owe to the debtor up to the amount owing according to the judgment.

With respect to garnishing bank accounts, the debtor must serve the specific branch where the debtor maintains an account. With respect to garnishing wages or salary it is important to be aware that legislation limits the recovery of the creditor and exempts 80% of the net wages of the debtor from garnishment.

Garnishment of debts or wages can be an effective way to collect on a judgment and may result in greater recovery than seizure and sale of assets after having regard to the extensive list of assets exempt from seizure.

Other Methods of Enforcement

The following methods of enforcement are infrequently used but are briefly described below:

Writ of Sequestration: This writ allows the sheriff to seize and hold property of the debtor and to collect and hold income pending the debtor's compliance with the judgment. A writ of sequestration is obtained by court order and will only be ordered were the court is of the opinion that other enforcement measures are likely to be ineffective.

Writ of Possession: This writ allows the creditor to take possession of the debtor's land. The court must grant leave before the writ will issue and will only do so when it is satisfied that the persons in possession of the land have had proper notice.

Appointment of a Receiver: Where a creditor demonstrates that, practically speaking, it is very difficult, if not impossible, to obtain satisfaction of a judgment the court may appoint a receiver to assist the creditor.

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