

SO YOUR CLIENT HAS A JUDGMENT; NOW WHAT?

BY JOHN FUNK, ESQ.



Compensation for your client does not end with a judgment; it only ends when your client has successfully executed on that judgment by realizing a monetary return. Many attorneys consider a successful jury verdict, or the granting of a motion for summary judgment, to be the victory for their client. However, most clients have a sense of lasting victory only after they are actually paid what they are owed. Thus, the question becomes: so your client has a judgment; now what?

Discovering Assets

As a prerequisite to filing any complaint, attorneys should ask their clients whether or not the defendant has a way to pay them what they are owed. If the client cannot answer with a sense of confidence, it is the attorney's obligation to suggest various informal ways to ascertain whether or not the potential defendant will be able to pay a judgment should the client ultimately prevail.

These informal collection techniques can include a review of a county assessor's records, county recorder's office, a UCC-1 search and the retention of a private investigator. If your research reveals the existence of only a few assets, it may be wise to seek a prejudgment writ of attachment or garnishment, assuming you can make the requisite showing.

Once your client obtains a judgment, you can access the full array of discovery techniques available pre-judgment to learn about the debtor's assets.¹ As a judgment creditor, you can serve interrogatories, requests for production of documents and even requests for admissions, as long as they are for the purpose of collecting the judgment. The judgment creditor can also schedule a debtor's examination by following the procedures set forth in NRS 21.270.

Converting Property to Payment

Pursuant to NRS 21.080, the judgment creditor can only garnish or attach non-exempt property that the judgment debtor owns or in which the judgment debtor has an interest. Once you find the judgment debtor's asset or assets, the next hurdle is properly seizing and converting that asset to cash. The method used to properly liquidate an asset depends on the type of asset. This article will discuss some of the more common types of property against which a judgment can be executed. Remember that your client's collection efforts are subject to the judgment debtor's exemption claims.²

Real Property

Judgments may be recorded with a county recorder's office, which causes the judgment to become a lien "upon all real property of the judgment debtor not exempt from execution in that county, owned by the judgment debtor at the time, or which the judgment may afterward acquire, until the lien expires."³ However, to properly record the judgment in the county recorder's office, the attorney must pay careful

attention to certain statutory requirements. For instance, the judgment creditor must record an affidavit stating, among other things, the judgment debtor's name, address, last four digits of the driver's license number or social security number, the APN for each parcel of real property and confirmation from the judgment creditor that the judgment debtor is the legal owner of that property. The judgment creditor should also be aware that Nevada allows a judgment debtor to exempt up to \$550,000 of equity in their homestead.

Once the judgment is recorded against the property, the judgment creditor may force a foreclosure of the real property by following certain specific procedures. However, sales pursuant to a judgment lien are subject to a debtor's statutory right of redemption.⁴

Personal Property Possessed By the Judgment Debtor

The judgment debtor's personal property, in his/her/its possession, may be seized with a writ of execution. That writ of execution must be executed by the court's clerk and provided to the sheriff's office with specific instructions on what to seize and where the property is located. The sheriff's office will charge certain fees to seize and hold the property, which can be added to the judgment as a cost of collection.

Once personal property is seized, the county sheriff's office is tasked with selling that property. Certain notices must be provided and the sales must follow certain procedures, set forth in NRS Chapter 21. As the judgment creditor's counsel, you must understand and closely read each applicable requirement to ensure compliance.

Personal Property Possessed By Third Parties

The judgment debtor's personal property, in the possession of a third party, may be seized with a writ of execution and a writ of garnishment. These writs are provided to the sheriff's office with specific instructions and the necessary fees. The sheriff's office will then make attempts to seize the property and sell it, in accordance with NRS Chapter 21.

Wages/Earnings

Many individuals receive a periodic paycheck from their employers. Certain portions of these paychecks can be garnished by serving a writ of execution and a writ of garnishment upon that person's employer. The judgment debtor is entitled to exempt 75 percent of their disposable earnings, leaving the remaining 25 percent subject to garnishment.⁵ Disposable earnings are defined as the part of the earnings remaining after certain deductions are made. Earnings are defined as the compensation paid or payable for personal services rendered by a judgment debtor in the regular course of business. A wage garnishment is only effective for 120 days or until the judgment is satisfied, whichever comes first, and the judgment creditor must pay the employer certain fees.⁶

Bank Accounts

Bank accounts can be garnished with a writ of execution and writ of garnishment served upon an appropriate representative of the financial institution.⁷ However, if money has been deposited into the account electronically within the preceding 45 days from the date the writ was served, which is reasonably identifiable as exempt from execution, the sums contained in the account, up to \$2,000, must remain accessible to the judgment debtor.⁸ In all events, \$400 in the judgment debtor's personal bank account is not subject to execution and must remain accessible to the judgment debtor, unless the garnishment is for the recovery of money owed for the support of any person.

Term of Judgments

A judgment remains enforceable for only six years. However, the judgment creditor may renew a judgment that has not been satisfied by filing an affidavit with the appropriate court clerk within 90 days before the date the judgment expires.⁹ The affidavit must contain specific information set forth in NRS 17.214 in order to ensure the judgment renewal is effective. For instance, the affidavit must specify the names of the parties; if the party filing the renewal is a successor in interest, the source of their

successor interest; if the judgment is recorded, information concerning the recording; whether or not there is an outstanding writ of execution; whether or not there are any setoffs; the exact amount owed on the judgment; etc. A failure to properly renew a judgment will render it unenforceable.¹⁰

In conclusion, merely obtaining a judgment is not the end of your client's litigation journey. Whether your client utilizes your services or the services of another, you should understand the basics of Nevada's procedures for collecting on judgments, so that you may inform your client accordingly. ■

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1 NRCP 69(a) ("...in aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules....")

2 See NRS 21.090

3 NRS 17.150(2)

4 NRS 21.200

5 NRS 21.090(g); NRS 31.295

6 NRS 31.296

7 NRS 31.291

8 NRS 21.105(1)

9 NRS 17.214

10 *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754 (1994)



JOHN R. FUNK of Gunderson Law Firm in Reno has represented a wide variety of clients across Nevada, in matters concerning commercial and business litigation, real estate and commercial transactions, and business organization and governance. Prior to joining Gunderson Law Firm, Funk earned his Juris Doctorate, Magna Cum Laude from the University of Nevada Las Vegas, William S. Boyd School of Law. He can be contacted directly at (775) 829-1222, or jfunk@gundersonlaw.com.