

IN SOME CASES, THE REAL BATTLE IS ENFORCING, RATHER THAN OBTAINING, THE JUDGMENT

By Debra Bodian Bernstein



You've won a quick and relatively inexpensive victory and obtained a money judgment against the defendant as a result of a default or an early dispositive motion. Often in this context, the chief battle is just beginning, especially if the judgment debtor is a small company or an

individual.

In a perfect world, the amount of the judgment would promptly be paid after the judgment is awarded. However, it does not always work that way and steps must be taken in order to enforce the judgment.

Under New York law, a money judgment is effective for twenty years, and is a lien on any real property owned by the judgment debtor in the county or counties in which the judgment is obtained or docketed. One of the first things that the judgment creditor should do upon obtaining a judgment is to determine whether the judgment debtor owns any real property in New York State (or elsewhere), and then take appropriate steps to docket the judgment in all relevant counties. At the least, the judgment should be docketed in the county in which the defendant resides, if that is not the county in which the judgment has been obtained.

Aside from the real property lien, New York law provides the judgment creditor with many powerful tools to enforce the judgment. Among the more useful tools are the income execution (pursuant to which approximately 10% of the debtor's gross wages may be garnished); the restraining notice/information subpoena, which may be served on banks

and other entities or individuals that may be holding money or assets belonging to the judgment debtor (the creditor can then subsequently seek to obtain the money and/or assets); and the right to depose the judgment debtor and anyone believed to owe them money or to have possession of any of their assets, or to have knowledge concerning the debtor's sources of income or assets. Asset searches can also be performed to determine whether there is any property (such as a car or boat) that a marshal can levy upon.

Because enforcement proceedings have the potential to become very time consuming and expensive, an appropriate strategy should be implemented at the beginning of the process, taking into account the amount of the judgment, an assessment of the judgment debtor's ability to pay, and the creditor's budget. A bit of patience and a well-planned and well-executed strategy for enforcing the judgment, tailored to the situation at hand, can successfully lead to collection of all or most of the judgment at a reasonable cost.

About Debra Bodian Bernstein, Counsel

Debra has special expertise in all aspects of commercial litigation. She has diverse experience handling a wide array of matters including contract disputes, insurance coverage, mortgage foreclosures, attorney malpractice, trademark and copyright infringement, libel and employment discrimination. Debra can be reached at dbernstein@tarterkrinsky.com.