Post-Judgment Receiverships: A Creditor Tool to Collect on Judgment

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Sometimes it is necessary to take unique or atypical measures to collect a debt.

Our industry has recently seen a number of cases — involving both lenders with money judgments as a result of foreclosure litigation as well as property owners with judgments against former tenants or other parties — in which creditors request help collecting on those judgments.

An emerging option such creditors can use to assist in collection of their judgments is that of a post-judgment receiver, which is available in many — but not all — states.

There are numerous advantage to this remedy, but it is important to understand its implications and ramifications. Whereas a traditional receiver is appointed during the pendency of litigation and is charged with maintaining the asset and preserving value, a post-judgment receiver is appointed by the court with the purpose of liquidating assets until the judgment is satisfied. Moreover, a traditional receiver is typically appointed as an arm of the court for the benefit of all creditors of the receivership estate, not just the party that nominated the receiver. As such, the receiver operates as a neutral party and not under the direction or control of any of the creditors. In contrast, a post-judgment receiver is working for the direct benefit of the judgment creditor that sought the appointment. This distinction is critical and allows the receiver to focus on maximizing collection and liquidation efforts without regard to maintaining the status quo of the assets or satisfying the competing interests of other creditors.

Appointment of a post-judgment receiver provides a judgment creditor with a number of benefits not available to traditional collection efforts. First and foremost, a post-judgment receiver can get immediate access to a debtor's bank accounts by presenting the bank with the appointment order. The receiver not only can immediately seize the available cash in the accounts, but also can obtain the banking records, which may ultimately lead to discovery of other assets or accounts. This is a huge advantage, as it can take months to go through a formal garnishment process with a bank as a judgment creditor. Likewise, subpoenas for documents and records can take months before bearing any fruit, giving a debtor the time and opportunity to transfer assets and further hinder collection. The speed with which a post-judgment receiver can obtain access to accounts and cash will certainly put a debtor on notice that the creditor is serious and gives the creditor enormous leverage. If a judgment debtor actually has the assets to satisfy the judgment, seizing and freezing bank accounts are good ways to get them to the bargaining table and have some say in which assets get liquidated. Otherwise, the receiver will choose to liquidate the assets that have the most equity first and continue on until the judgment is satisfied.

As an example, our firm was recently appointed to collect on a judgment in which the debtor was hiding assets. The debtor had transferred his assets into other entities, making the sale of such assets difficult without the creditor going back to court for more litigation (and more expense) and getting a court to find that the transfers were fraudulent. Upon appointment, we were able to get bank records for this debtor. Although the accounts had already been depleted, the statements showed the debtor had safe deposit boxes at one of their locations. The receiver was empowered to take possession of the contents of those boxes under the court order and was able to seize enough cash and precious metals to allow for a sizeable recovery for the judgment creditor.

Without the appointment of a post-judgment receiver, the creditor could have spent years of additional litigation and chasing assets that had been transferred with no guaranty of anything ever being recovered. Instead, the creditor made a good recovery without having to advance additional funds, as the receiver's fee was taken out of the proceeds that were recovered and the rest was distributed to the creditor.

Another significant advantage of a post-judgment receiver is the ability to sell assets through a traditional sales and marketing process. Absent a receiver, a judgment creditor is relegated to recording the judgment and placing liens on the debtor's assets (the ones they are aware of and can locate). A creditor can seek to execute a sheriff's sale of certain of the debtor's assets, but the process is often cumbersome and time-consuming and fraught with bureaucratic and legal technicalities that are difficult to navigate successfully. Also, a sheriff's sale deprives the creditor of the ability to traditionally market the property in hopes of obtaining the highest and best value. In many states, if the purchase offers at the sheriff's auction do not reach or exceed a very high percentage of the appraised value (90% in some instances), by law the sale cannot be consummated. In contrast, a post-judgment receiver can immediately take possession of an asset once appointed and begin a thorough sales and marketing process through a traditional broker. Moreover, the receiver is not obligated to obtain any particular price to complete a sale. If there is equity in the property sufficient to pay any prior liens or encumbrances, the receiver can complete the sale and capture any remaining proceeds. This allows the post-judgment receiver to obtain the highest and best price available on the open market and captures maximum equity for the judgment creditor.

Another benefit of using a post-judgment receiver is the ability to defer costs of collection. Although costs can be added to a judgment and ultimately collected by a creditor, typical collection efforts can require advancement of funds for attorneys' fees and other costs of collection. As in the example earlier with the safe deposit box, expenses can be paid out of the receivership estate and obviate the need to advance funds. Also, many receivers will agree to be paid as a percentage of recovery, if allowed in that particular jurisdiction. Many courts encourage such arrangements with regard to fees, as the receiver is incentivized to liquidate assets with maximum efficiency, ultimately benefiting both the debtor and the creditor.

Requirements for getting a post-judgment receiver vary by state law. Texas has a specific statute allowing for the appointment of a "turnover receiver" to aid in the collection of a judgment. All that is required is for a creditor to have a valid judgment and for the debtor to have non-exempt property that "cannot readily be attached or levied on by ordinary legal process." A bank account qualifies, so appointment in Texas is almost a sure thing. In other states, however, the appointment of a receiver is considered an extraordinary remedy, and, therefore, a creditor may need to make a showing to the court that would necessitate the appointment of a receiver. Examples of such circumstances may include a debtor's attempt to hide or transfer assets, the wasting of value of particular assets, or previous bad actions by a debtor such as misappropriation of a lender's collateral.

Factors and laws vary widely from state to state, but if the appointment of a post-judgment receiver is an option, creditors will be well served by exploring such a remedy.

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