

A Tale of Caution: What Happens When a Bank Fails to Respond to Collection Efforts?

Amundsen Davis Financial Services Alert
June 1, 2017

Whenever a creditor obtains a judgment, the first avenue to attempt collection usually leads to a bank with the service of either a citation to discover assets or a non-wage garnishment. Sometimes banks have assets belonging to judgment debtors, sometimes such assets are exempt from attachment, and sometimes they possess no assets to be turned-over; what happens, however, if a bank fails to respond to such collection efforts? Unfortunately, even if a bank has no assets belonging to the debtor, the failure of the bank to respond to collection efforts will almost certainly result in the bank paying for the judgment.

In the case of *All-Steel Employees Credit Union v. Singh*, a bank was served with a non-wage garnishment after the creditor had obtained judgment against defendant Singh. The bank employee that received the garnishment did not believe that the bank needed to respond because the judgment debtor's account at the bank was overdrawn at the time of service. Due to the lack of a response, the creditor obtained what is known as a "conditional judgment," which gave the bank notice that a judgment for the full amount of the debt would be entered against the bank if it failed to respond. The bank again did not respond to the summons for the conditional judgment, again believing that it was not required. Because of the failure to respond, a judgment for the full amount was entered against the bank. When collection proceedings were pursued against the bank, it finally sought to vacate the judgment by asserting an ignorance of the law as a defense. Although the trial court granted the motion to vacate the judgment, the appellate court overruled the trial court, and the bank found itself paying a judgment that should have never been entered but-for the employee's failure to understand the law.

Creditors' rights attorneys will always seek the least restrictive method for collecting on a judgment, and financial institutions that hold accounts are always prime targets. While it makes no practical sense to require a bank to respond to collection efforts by stating that it has no accounts of the judgment debtor, or that the accounts are exempt from garnishment, it must be remembered that it is the duty of every financial institution to answer these proceedings. A bank may know that the money in its customer's account is solely from Social Security

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(which is exempt from collection), but unless an answer is filed in the collection proceeding, the judgment creditor has no way of knowing about the account or the exempt status of the funds in the account. Answering collection summonses can be time-consuming, but failing to answer can be costly.

Financial institutions must be diligent in responding to collection attempts by creditors, and must do everything that they can to ensure that personnel are properly trained and have access to the proper advice on how to respond to such actions. The failure to properly train employees and give them access to the necessary advice could prove costly.

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