

BUSINESS LAW

Getting Paid for Your Work

By *ADAM J. BASCH, Esq.*

If you have ever had to file a lawsuit to collect a debt, you will agree; the bottom line is getting paid.

Quite simply, if you are owed money, you are not concerned with legal theories or whether or not your attorney puts forth a strong case at trial. The concern is that the customer pays for the goods and services that you provided.

There is a common misconception that if a jury renders a verdict in your favor, you automatically get paid. In the absence of insurance coverage, nothing can be further from the truth. A judgment is merely a piece of paper; it is your responsibility to turn it into cash. If you had an 'Attachment on Trustee Process' at the beginning of the lawsuit, the task is much easier.

Trustee process is a legal mechanism by which a plaintiff can attach or seize the property of the defendant while it is in the possession of a third party, which is commonly a bank. This property can be applied to satisfy a future judgment. It prevents the third party, called a trustee defendant, from transferring the property to anyone, including the

defendant. In short, you can 'freeze' a defendant's bank account.

The first step is to file a lawsuit. Anytime after the filing, the plaintiff can file a motion for Attachment on Trustee Process. If the Judge allows the motion, the court will issue a trustee summons. Basically the trustee summons is a court order that requires the trustee to hold the funds of the defendant, until the court orders otherwise.

A cynical person might think that if the defendant is informed of the filing of the motion, he or she will simply withdraw the funds before the judge can rule on it. This cynicism is well placed.

Luckily, there is a procedure to avoid this, filing a motion 'ex parte.' This is a Latin term that means 'without notice.' When a motion is filed ex parte it means that only the plaintiff is present in court, and the defendant is not notified of the hearing. Ex parte motions are rare and are only granted when notice to the defendant would prejudice or harm the plaintiff. When the motion is for an attachment on trustee process, the prejudice or harm is that the property could be moved before

the judge hears the motion.

If the motion is granted, the defendant can file a motion to dissolve the attachment on trustee process with as little as two days written notice to the plaintiff. This system ensures that the plaintiff can have a hearing that is meaningful and, at a later date, the defendant can offer evidence as to why the motion should not be granted.

In most situations, it is in both the plaintiff's and defendant's interest to settle a case at its inception, before incurring additional legal fees. If the plaintiff is successful in obtaining an attachment on trustee process, it will likely cause the defendant to engage in settlement negotiations. The logic on the part of the defendant is simple; if the plaintiff already has an asset frozen to satisfy a future judgment, why incur legal fees?

In short, if the claim is for \$20,000, and that amount has been frozen in a bank account, when the lawsuit goes all the way to trial (which can take about two years) the defendant will likely pay his attorney \$10,000 and still have to pay the plaintiff \$20,000.00, plus interest, at the statutory rate of 12%.

While it seems fundamental that one only needs to submit an invoice to receive payment, that sometimes fails to occur. Small business owners depend on a steady flow of receivables to keep their operations running. While a customer might be under the impression that failure to make timely payment is merely an inconvenience for the business owner, it can often have devastating effects.

A receivable to a business owner is like a paycheck to an average worker. Ironically, the same person who would be up in arms if he or she did not receive a paycheck on payday will be the same who fails to pay an invoice. As long as this continues, the ability to obtain an attachment on trustee process will be an integral part of day-to-day business. ❖

Adam J. Basch, Esq., is an associate with Bacon & Wilson, P.C. He is a member of the Litigation Department with expertise in the areas of construction litigation, personal injury, general litigation and creditor representation; (413) 781-0560; abasch@bacon-wilson.com.