



Collecting on large-dollar judgments

Money disappears when a PI judgment is entered. Collecting the judgment begins with detective work to identify assets

BY DAVID COOK

Civil discovery expires at judgment, and is replaced by an Order of Examination (“OEX”), post judgment interrogatories and document requests. Facing an OEX, most debtors suffer acute amnesia that dissipates upon exiting the courthouse. An OEX is more than a blind alley. The judgment creditor can subpoena (SDT), attached to the OEX, records held by debtor’s accountants, real estate brokers, escrow holders, stock brokers, banks, and most important, lenders, leasing companies and other credit grantors. In taking out a loan or lease, the debtor reposes with the creditor the financial statements, tax returns, profit and loss statements, trust agreements, and a Uniform Residential Loan Application (“URLA”) which disclose assets and liabilities. If debtor declined to disclose the stock account at the OEX, the debtor disclosed the account in the URLA. These sources offer a baseline of assets subject to levy or further inquiry at the OEX.

Algebra is your friend

What is important in this mass of information? Obviously a financial statement provides the roadmap, but the cancelled checks or credit card statements offer a voyeur’s view into another’s personal finances. Look for payments for property taxes, insurance, contractors, HOA fees, plumbers, and mortgage payments, which suggest

ownership of real property. Watch for installment payments to banks, car financiers, or hard money lenders which suggest loans to finance a business, acquisition or car. Watch for regular payments to banks or insurance companies suggesting whole life insurance or savings. Watch for property taxes for out-of-state properties, time shares, or vacation homes. High school algebra converts interest payments on accounts into the account balances. This takes a little math, but is worth it. If the 1099-INT discloses interest of \$2,000 and the reporting bank is a national bank, the probable rate of interest is about one percent (rounding off here), the bank balance is \$200,000.

The loan amount suggests the earnings of the borrower, your debtor. The face of the deed of trust reveals a loan of \$1.2 million and might even show the due date (15- or 30-year term). At the time of the loan, the bank had well-known rates, such as 4.5 percent and the monthly payment is \$6,080. Given post-meltdown banking practices, the probable loan to value ratio is, say, 80/100 percent. This means the loan is 80 percent of the appraised value and the bank appraised the house at \$1.5 million. Add property taxes (average rate of 1.22 percent) of \$18,300. Nice homes need nice insurance, costing about \$5,000. Add the following: \$6,080.00 plus \$1,941.66 for taxes and insurance, the total “nut” for the home is \$8,021.66. If a gated community, add another \$200 to \$1,000 for HOA fees.

Maintenance is a wild card. To qualify for the loan, the borrower must have earnings of about \$20,000 to \$30,000 a month (all earners), depending upon the bank, the terms, whether the initial loan or refinance, points and rate of interest. The annual income could range between \$240,000 to \$360,000. Not chump change.

Money takes flight

The next morning, the driver retains criminal defense counsel. The spouse hires a divorce attorney, and both husband and wife hire an attorney specializing in asset protection. This attorney counsels to establish offshore, or out of state, entities (trusts or LLC) and transfer out all liquid assets. The attorney will advise converting all valuables into cash, or secreting them in an out-of-state or offshore, safe deposit box. Incoming checks, payments or cash on hand is cycled through kid’s names or newly established accounts. The most common strategy is that the spouse will shut down the California accounts and open up an account in Nevada or the next town. While paying with an out-of-state check is inconvenient, the bank issues debit cards which enable the debtor and spouse to enjoy portable wealth. Securities accounts are liquidated. Every dollar is rushing toward the exits. Embrace, not eschew, this hasty retreat, but cut them off at the pass. The SDT, tethered to the OEX, can reach bank, securities, mutual fund, employer, trust and escrow records with the clock starting at one year prior



to the incident and up to the present. Expect a tidal wave of dollars cascading out of the accounts before the body, pinned under the wheel, deflates. While one spouse faces a line up, the other spouse faces the bank teller in converting the account into cashier's checks. Expect that the spouse will convert all accounts and cash on hand into prepaid credit and debit cards which are today's portable wealth.

If the spouse hocks the house in favor of bona fide lender, the defendant (and spouse) issued another URLA which would have an up-to-date portfolio. This URLA would disclose marital status, source of income, and best of all, assets and liability.

Real estate on rollerblades

When can a 4,000 square foot home could take flight? Answer: Only when the owner faces a ten figure judgment. The day after the accident (or judgment) is the day that spouse converts community into separate property, or transfers the house to one spouse, or an irrevocable trust with a Bahamian trustee, or hocks the house to the hilt. The equity in the house will flee from the scene. If the parties own any investment property, expect a cavalcade of conveyances. With the financial disclosures or URLA from the subpoena, counsel can reconstruct the debtor's assets and commence a campaign of recovery. Upon discovery of the transfer of the property even during the main action, plaintiff can file a fraudulent conveyance action, record a *lis pendens* and engage in asset discovery at least related to the transferred property.

Security follows the debt

This asset means that the seller, the defendant, "took paper back," consisting of secured debt arising from a buyer's purchase of property. While the URLA would disclose the notes as "investments" these notes left a footprint, which is the security. A recorded deed of trust memorializes that the buyer encumbers property to secure a debt due to the defendant. As security follows the note, the deed of trust identifies the note, and asset subject to enforcement.

Lifting the veil of asset protection.

Common investment strategy dictates that buyer take title to real estate in a limited liability company. Culling through the online grantor/grantee index is useless. Search services (Westlaw, Lexis-Nexis etc.) disclose whether a person is a listed member, or manager, of an LLC. Post-incident, the spouse might assume the role of manager under a maiden name, a common form of asset protection by concealing ownership of the asset. Embrace this risk if the spouse possesses a government-issued ID in an ethnic name. This device drapes the property with a near mantle of invisibility. These LLC's also house bank and securities accounts. The favorites are Nevada LLC's that obscure ownership given the use of nominees as managers. Typically assets housed in an out of state LLC are bank and stock accounts, and real property.

The URLA commonly lists the properties, even if warehoused in an LLC. This characterization by the debtor might

support a claim that the LLC holds the property in trust for the debtor and the imposition of a resulting trust. Or, if debtor acquired the property with his (or her) funds, and reposed title in an LLC, a fraudulent conveyance action would reach the real property. Why? The titling of the real property in the LLC converted the debtor's cash (to acquire the property) into an LLC membership interest and therefore a "transfer" under the fraudulent conveyance law. Or seize membership interest and liquidate the LLC.

Justice is money, and money is justice

"I don't like violence, Tom. I'm a businessman. Blood is a big expense." You bet. While counsel barges through the front door of the courthouse, assets beat a hasty retreat out the rear door. While the defendant (or the first decedent) acted stupidly in drinking and driving, his (or her) relatives will not make that mistake. Best of luck.



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