Chapter 12, infra, analyzes approaches consumers can take to set aside or discharge a collection action judgment that is in favor of the creditor. The chapter reviews the grounds to set aside both default and stipulated judgments and then considers the relief a bankruptcy filing can offer a judgment debtor. The chapter concludes with a discussion of the advisability of an affirmative action challenging creditor litigation misconduct after a judgment for the creditor.

Chapter 13, infra, details topics of general relevance concerning the creditor’s ability to enforce its judgment, with special focus on exemption laws protecting the debtor’s income and assets from seizure after a judgment for the creditor. The chapter includes such topics as the statute of limitations on collection of a judgment, whether a judgment is properly assigned to another party, interstate enforcement of judgments, waiver of exemption rights, due process protections for the debtor, and the constitutionality and validity of exemption laws.

Chapter 14, infra, examines restrictions on judgment creditors’ ability to seize debtors’ wages, benefits, other income, or bank accounts. The chapter considers federal and state limits on wage garnishment and protections against an employer’s discharge of the debtor because of a wage garnishment. It also details protections against seizure of a debtor’s Social Security, SSI, or other public benefits, as well as exemptions for pensions and other retirement benefits. The chapter also analyzes important federal and state rights that limit a judgment creditor’s ability to seize or freeze funds in the debtor’s bank account.

Chapter 15, infra, considers protections against a judgment creditor’s seizure of the debtor’s home or personal property. Homestead exemptions protect the debtor’s home. Similar exemptions may protect the debtor’s equity in a motor vehicle, household goods, health aids, tools of the trade, and other personal property.

Chapter 16, infra, considers debtor and creditor rights when the judgment creditor summons the debtor for an examination of the debtor’s income and assets. Failure to appear may result in the creditor seeking to imprison the debtor for contempt. While other forms of imprisonment for debt are largely abolished, some states allow imprisonment for failure to make court-ordered payments. Other chapters in this treatise consider imprisonment for writing bad checks (Chapter 8, infra) and for nonpayment of court-ordered fines and costs in criminal cases (Chapter 11, infra).

Chapter 17, infra, reviews actions a consumer can take after the consumer prevails in the creditor’s collection action. The chapter discusses various theories allowing the consumer to recover attorney fees from the creditor. It also examines how consumers can improve their credit reports after prevailing in the collection action. Also analyzed are consumer remedies in the surprising number of cases in which debt buyers either sell the debt to another debt buyer or continue to seek collection of the debt, even though the court has dismissed the creditor’s action with prejudice. The chapter concludes with a discussion of what types of litigation the consumer should consider to challenge the creditor’s litigation misconduct that occurred during what is now a dismissed collection action.

Source URL: https://library.nclc.org/ca/010204

Links