

Do Creditors Have Rights Anymore?

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Introduction

- Creditors who have delivered goods, provided services or loaned money have every right to collect what's duly owed to them. Whether this is a consumer-usage transaction or a business-to-business matter, the credit-grantor should expect to be paid, just as the recipient of the goods and/or services should expect to receive what they ordered, agreed to, and for which they are being charged. The result? Hopefully a positive and mutually beneficial relationship that may be a one-time deal, or an ongoing interaction.
- While this common-sense presumption has been around as long as businesses have been in existence, the past 18 months or so have produced some logical questions to ask, with some serious concerns for our industry, not necessarily with easy answers.

Intro. (cont.)

- Imagine if no business had to pay its bills
- What do you think would happen?
 - What if a business is prevented from collecting the funds it is rightfully owed preventing it from paying its own bills and employees? These employees by the way, have to pay their bills, don't they?
 - Would that business even be able to keep the lights on, pay the phone bills, or order the materials it needs to create the goods that others need and want to order?
 - Would it even be able to continue to operate? Without revenue, would these businesses be able to pay their local, state and federal taxes?

If commercial creditors have their right to recover what they are owed restricted further or taken away altogether via legislation, then we might as well eliminate the need for contracts too, because contracts will then be irrelevant. As will any terms and conditions, along with the Uniform Commercial Code, and all interstate commerce! And if less cases are filed in the civil court system, would those court employees still be needed?

Florida - a case study

- Fla. Const. Article X – (in)famous homestead exemption.
- Fla Stat. 222.11 – governs head of household exemption. Anyone providing more than 50% of the care and support of a “dependent” is functionally exempt from garnishment.
 - -“dependent” has been construed by Fl courts very broadly. From my own experience it has meant anything from minor children and stay-at-home spouses to adult children living in the home, to an elderly mother-in-law living in the guest house.
 - - intent of statute is to avoid a debtor becoming a ward of the state, but it is frequently abused by debtors and interpreted very broadly by the judiciary.

Florida (cont.)

- Chapter 222 contains other exemptions to collection:
 - Life insurance proceeds and cash surrender value
 - Nearly any kind of government support
 - Pension money
 - Certain college savings plans (529, etc.)
 - Debtors can exempt up to \$5k of personal property from levy or other attachment upon filing a schedule and fair market valuation
- More generally, courts seem very willing to give debtors every possible opportunity to cure any mistake, while coming down very hard on creditors. Conversely, plaintiff's claims are being dismissed out of hand for not being served or not progressing rapidly enough.

Benefits?

- It's not all “doom and gloom”
 - ZOOM appearances have allowed judges across states to get to know attorneys
 - Know your Judge/Audience
 - Act professionally at all times or get your client's rights taken away
 - Creditors still have rights!

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