

Law Currents



A Quarterly Newsletter

Winter 2005

What is a "traverse" hearing and why is it important.

By Richard A. Klass, Esq.

Recently, I had the opportunity to successfully represent a client at a traverse hearing in the Civil Court. This article will illustrate the purpose and effect of such a hearing.

A "traverse" is a hearing conducted by a judge to determine whether the defendant was properly served with the Summons in the action. The ultimate result of such a hearing will be a determination that either the defendant was properly served and, therefore, must answer the Complaint, or that the defendant was not properly served and the action is deemed dismissed. Sometimes, this is the critical part of a case, especially where the time to commence a new action against the defendant has passed by virtue of the applicable statute of limitations.

In *PRA III LLC v. Weisel*, I represented the defendant, who claimed that the first time he learned of the existence of the case was when he received a copy of the judgment from the plaintiff's counsel.

Importantly, he claimed that he was never served with the Summons and Complaint by a "process server," or someone authorized to serve such papers. [A "process server" in particular is someone who serves more than five Summonses within a year].

At the hearing, the process server was called to testify about his prior affidavit where he claimed that he served the Summons upon my client. The process server indicated on the affidavit he posted the Summons on the outer door of the defendant's house, which may be permissible according to statute. However, the defendant testified that he resided in the second floor apartment of a three-apartment house, and that the bells outside the common door are clearly marked with the occupants' names. Service by posting the Summons on the outside door was deemed insufficient in this situation.

The service was also challenged in two other ways, which proved successful:

Firstly, process servers are required to maintain a "log book," in which they note where and when they served process (or attempted to serve process unsuccessfully). Here, the process server's log book did not

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contain any entry for the date of the alleged service of process.

Secondly, the defendant resided on a block in Boro Park, Brooklyn, which the process server conceded was a heavily Sabbath-observant Jewish neighborhood. By law, service of process on a Saturday upon someone whom the process server knows or should know to be Sabbath-observant is deemed defective.

The end result of the traverse was that the service of the Summons was not sustained as valid, and the action was dismissed. Now, the plaintiff is required to commence a new action if it wants to attempt collection of the debt (perhaps with a more diligent process server!).

Debt Collection Tips:

A practical guide to collecting on a debt in New York State.

Check out Your Court Street Lawyer's web-site at:

www.courtstreetlaw.com

Docketing the Judgment:

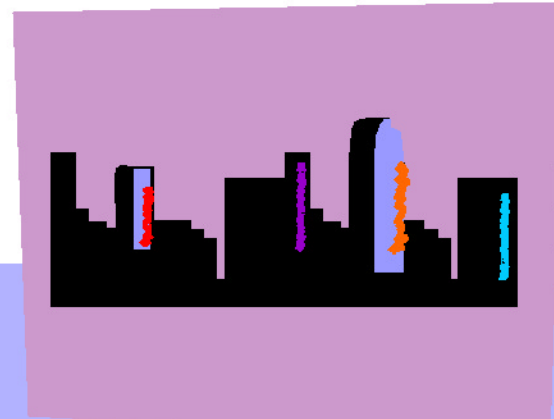
Once the creditor has obtained a Judgment from a court, the collection process has yet begun. In the context of collecting the money due on the Judgment, it may be necessary to "docket" the Judgment in the County Clerk's Office.

In each county of the State, there is a court of general jurisdiction called the "Supreme Court." In some counties, towns, cities, and villages, there are lower courts (such as Civil Court, District Court, etc.). Judgments entered in those courts are not automatic liens upon any realty that the debtor may own in the county. Rather, a "Transcript of Judgment" must be obtained from the court and filed with the County Clerk to create the lien. Once docketed, the Transcript of Judgment will serve as notice to others that there is a lien upon any realty owned by the debtor; other parties are now aware that the lien must be paid according to its priority.

Judgments entered in a Supreme Court case are automatically docketed with the County Clerk.

Unlike New Jersey or some other states, which have state-wide recognition, the Judgment must be docketed by the filing of a Transcript of Judgment in each county in which the debtor has realty in order to create the lien.

The docketing of a Judgment is also essential when attempting to issue an Income Execution to a County Sheriff in another county (where, perhaps, the employer of a debtor is located). Another purpose of docketing a Judgment may be where the Judgment was entered in federal District Court and the creditor wants to use a Sheriff instead of a United States Marshal.



YOUR REFERRALS:

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