

Kimball, Tirey & St. John LLP

Seizing Accounts Receivable in Commercial Collection Cases

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Very often, a company's accounts receivable is its most vulnerable asset from a collection law perspective. Generally speaking, when considering alternatives for collecting from an ongoing business concern, we first look to seize real property and business assets by writ of execution. However, struggling businesses typically do not enjoy equity in real property and may lease business equipment such that attempted seizure of these assets would be futile. That being the case, the forced sale of real property and business equipment may not be a viable option.

Accounts receivable can be intercepted by assignment order. The assignment order is one of the most powerful yet seldom used collection tools in California. Because assignment orders require significant investigation and expense, it is not a remedy normally pursued by law firms that do not specialize in collection law.

What is an assignment order?

An assignment order is a means to seize receivables at the source. That is, if a defendant is expected to enjoy a stream of income or payment from a third party, a judgment creditor can serve the third party with a court order to pay that stream of income of payment to the creditor instead of to the defendant. Regular payments from the defendant's customers are fair game. The assignment order is also effective to reach rents, commissions, royalties, or payments due from a patent or copyright, for instance. The assignment order, in essence, assigns the right to receive payment to the judgment creditor.

When is an assignment order typically utilized?

Assignment orders work well against business defendants that receive money from existing clients on a regular basis. As you can guess, defendant businesses are quite sensitive with respect to any disruption to their relationships with customers. Assignment orders often result in immediate settlement discussions. The negotiation leverage created by an assignment order is substantial.

What procedure is required to obtain an assignment order?

Initially, for an assignment order to be considered, the judgment creditor must discover a stream of income enjoyed by the defendant or learn of an impending payment to the judgment debtor. Once the creditor has completed the necessary investigative work to discover the stream of income, the judgment creditor must pursue the assignment order by way of "noticed motion".

A noticed motion means that the creditor must reserve a court date with the clerk of the court, prepare moving papers including a proposed court order, and serve the defendant with a copy of the moving papers.

At the hearing, the judgment creditor must prove to the court that the debtor stands to be paid by a third party and that the case is appropriate for an assignment order. The creditor's burden

of proof is the same as for any civil matter: a preponderance of the evidence. When possible, in preparation for the hearing, the judgment creditor should subpoena from the third party (or from the defendant directly) any documentation that may be necessary to meet the burden of proof. If the creditor can meet its burden, the judge may sign the proposed order in court or require that the judgment creditor prepare and submit a modified order.

How is the order enforced?

Once the order is signed by the judge, it is incumbent upon the judgment creditor to serve the order upon the third party from whom payment is sought. Once the third party is properly served with the court order, the third party is charged with the duty of paying over any monies that may become due to the debtor to the judgment creditor instead. In the event that the third party fails to comply with the assignment order, the third party can be held to be in contempt of court.

Keep assignment orders in mind next time you are facing a struggling tenant. You may even be able to convince the tenant that it is in their best interest to re-prioritize their debts by moving their lease obligations to the top of their accounts payable.

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