

DEBTOR/CREDITOR

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Dangerous Dunning Letter

Two recent opinions by federal appeals courts highlight the care attorneys must take in demanding payment of debts on behalf of clients.

In May of this year, a federal appeals court in Chicago held an attorney liable under the Fair Debt Collection Practices Act for permitting paralegals to draft form demand letters "signed" with a mechanically reproduced facsimile of the attorney's signature. The attorney himself never reviewed the letters or the files. The court found this to be a false representation that the letter was a communication from an attorney.

Avila v. Rubin, 84 F.3d 222 (7th Cir. 1996).

In October, an appeals court in Richmond upheld a \$50,000 fine against an attorney who sent dunning letters suggesting that his client was considering suing the recipients.

In fact, there was no intention to commence a lawsuit, as the debts to be collected were all less than \$100. The court found this false threat to sue to be prohibited by the Act. *United States v. National Financial Services, Inc.*, 98 F.3d 131 (4th Cir. 1996).

While each of these cases deals with a collection agency which sent thousands of dunning letters, the Fair Debt Collection Practices Act and these rulings apply to anyone "who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."

Employee Withholding Unpaid

Corporate debtors are generally careful to pay federal employee withholding, because the officers may be held liable personally for any unpaid withholding. Withholding is a "trust fund" tax which is not discharged in a bankruptcy.

Recently, a bankruptcy court in Baltimore restricted a debtor's ability to pay those taxes at the last minute. The debtor, a small paving contractor, mailed its check together with its FICA employment tax return on the same day it filed a Chapter 7 petition. Before the check cleared, the Chapter 7 trustee had closed the debtor's bank accounts. The bankruptcy court rejected the argument of the IRS that the mailing of the check designated the funds as trust funds which were not part of the estate and which the trustee was required to return to the IRS. The court held that payment of the check, not the mere writing of it, was necessary to create the statutory trust in favor of the IRS.

In re Sunrise Paving, Inc., 1996 Bankr. LEXIS 1198 (Bankr. D. Md. September 3, 1996).

Member Bankruptcy Dissolves Limited Liability Company

A bankruptcy court in Alexandria, Virginia recently decided that the Chapter 11 filing of a member of a limited liability company resulted in the dissolution of the LLC and entitled the nonbankrupt member to wind up the company's affairs. The court found that the bankruptcy law did not override the state statutory provision making bankruptcy of a member a cause for dissolution.

JTB Enterprises v. D&B Venture (In re DeLuca), 194 B.R. 79 (Bankr. E.D. Va. 1996).



This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation.

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