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HAPPY START OF THE FOOTBALL SEASON!

INSIDE THIS ISSUE:

Child Support Exemption for Garnishment	1
Sanctions on Improper Fair Debt Claim	1
Ted's Tips	2
Lien Avoidance Case Review: Judicial Liens	3
Using Mechanic's Liens to Secure an Interest in Real Estate	3
Law Review: Business Law	2
Employee Spotlight: Donna Edmondson	2
Trustees in Foreclosure	3
Preview of Next Issue	4
Firm Attorney Biographies	4

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Lafayette, Ayers, & Whitlock, PLC is a full-service creditor's rights firm. While many attorneys do "collections", few attorneys have the trained expertise and staff to represent creditors in all four areas of Creditor's Rights—Collections, Bankruptcy, Real Estate and Foreclosure. We do, and, we represent credit unions, banks, loan companies, homeowner associations, doctor's offices, landlords, small businesses and individuals. In *Creditor News* we will explore all four areas of Creditor's Rights.



COLLECTIONS

Child Support Exemption for Garnishment

In the case of General Electric Capital Auto Lease, Inc. v. Turner, the City of Richmond Circuit Court denied a debtor's exemption to garnishment claim.

In Turner the debtor claimed an exemption based on the amount of monthly child support the debtor owed. The Court noted that the specific exemption claimed by the debtor on the garnishment form was the exemption created by Virginia Code §55-165. The judgment creditor argued that this code section only applied to assignments of wages executed and approved by a judge under the procedure specifically set out in Virginia Code §55-161 through 167. That procedure included notice to and consent of the debtor's creditors, the appointment of a trustee, and so on. The Court found as fact that none of those things were done in this case. Therefore, the Court ruled that an exemption under Virginia Code §55-165 did not apply. The Court also considered all the other exemptions from garnishment listed in Virginia Code §8.01-512.4, and none of those exemptions applied either. Accordingly, the debtor's claim of exemption was denied.

Sanctions on Improper Fair Debt Claim

In the case of Guidry v. Clare, a United States District Court in Northern Virginia granted an award of \$16,000.00 in sanctions against a debtor who was a plaintiff in a Fair Debt Practices Collection Act (FDCPA). The Court held that the debtor's case, which also included state law claims of intentional infliction of

(Continued on page 2)

CREDITOR'S RIGHTS — IT IS MY FOCUS !

Creditors hear too much about debtors' rights - creditors need to fight back! Bankruptcy laws are primarily drawn to protect debtors. The Fair Debt Collection Practices Act also protects debtors, and limits creditors' activity. Both laws prescribe punishments for violations.

I believe that creditors deserve due process and consideration. I work hard to protect our clients' rights through collection activities, civil litigation, and bankruptcy practice. To be competitive, I offer retainer plans and several fee options. To be accessible, I promise prompt and consistent communication.

I would greatly appreciate the opportunity to meet with any prospective client to review your needs and services. Please schedule your appointment by calling me at (804) 545-6251.





TED'S TIPS

Each county and city publishes real estate assessment data that includes records of current and previous owner information. This is especially helpful when verifying addresses or checking whether a debtor still owns a property.

Sanctions on Improper Fair Debt Claim, CONTINUED FROM PAGE 1

emotional distress, malicious prosecution and false imprisonment, was filed wholly without merit.

The Court found that the dispute arose when the debtor wrote the plaintiff, a company that provided cheerleading training, a check for \$62.50 for the debtor's daughter's class. The check was returned for insufficient funds. The company's office manager (Clare) contacted the debtor to make the check good. The debtor did not respond. Over the next several months the company made several other efforts to collect on the check, including a letter from the company's attorney and from a collection agency. The company's office manager also advised the debtor that the company would seek a warrant for the debtor's arrest if the debt was not paid within seventy two hours. When the debtor did not respond, the company filed a criminal complaint for misdemeanor larceny by check. A few days later, a policeman served the warrant on the debtor at the same time he served a warrant from another creditor for felony larceny by check. The debtor was arrested and released on her own recognizance on both charges. She paid the face amount of the company's check, plus a \$30.00 bank service charge. As a result of this, the prosecutor withdrew the bad check charge.

A few months later the debtor filed her FDCPA action. After much litigation, the case was dismissed, without prejudice, because the case was not served within 120 days. The complaint was refiled. The company's attorneys sought dismissal and sanctions for filing a frivolous lawsuit. The Court dismissed the case, scheduled a hearing on sanctions, and ordered the parties to prepare briefs. After reviewing the briefs the Court concluded that the debtor's case was "meritless, indeed flatly frivolous". The meritless claims included allegations that the company's manager had failed to make a meaningful disclosure of her identity and debt collection purpose in her telephone calls to the debtor, that a debt collector was barred from filing a criminal complaint, that the company's manager had made false representations to authorities in order to disgrace the debtor, and that the collection letters failed to disclose their debt collection purpose. The Court ruled that the letters contained the required disclosures and the purpose of the phone calls were clear. The Court further ruled that the law prohibits only the threat of criminal action if there is no intent to follow through on the threat. In this case the intent to follow through was evident from the fact that a warrant was issued, and there was no evidence that the representations to authorities were false or made with an intent to disgrace the debtor. The Court found that there was also no basis for the state law claims of intentional infliction of emotional distress, malicious prosecution and false imprisonment. The Court wrote that "it cannot be forgotten or overlooked" that the case "was spawned by Guidry's failure to pay a \$62.50 debt, or rather by her attempt to pay it with a bad check".

Creditors take heart - there is still some common sense in this world!



LAW REVIEW OF THE MONTH:

BUSINESS LAW

The firm has extensive experience in the representation of small business, whether corporations, limited liability companies, partnerships or sole proprietorships. The firm has participated in the buying, selling, and financing of numerous businesses, working closely with clients, attorneys and accountants to obtain the desired result. This experience, coupled with a broad background, gives our firm the ability to provide the multi-faceted representation which is so vital to today's smart business person.



EMPLOYEE OF THE MONTH:

DONNA EDMONDSON



Donna Edmondson rejoined the firm in October 2012 (she was with us from 2006 -2009 before venturing into title insurance work). In total, Donna has been working in real estate since 1999. We are excited to have her, and, we are glad to have her experience in title insurance. Donna enjoys working at LAW because of the daily challenge of real estate and helping our clients with their real estate transactions. Outside the office she enjoys reading and fixing up her house.

BANKRUPTCY

Lien Avoidance Case Review: Judicial Liens

Bankruptcy Code §522(f) provides that debtors may avoid judgment liens if the liens impair an exemption to which the debtor would be entitled under Bankruptcy Code §522(b). Bankruptcy Code §522(b) allows debtors to exempt property pursuant to state homestead provisions.

Although opinions vary in different jurisdictions, in the Fourth Circuit, Eastern District of Virginia, to avoid judgment liens, debtors must claim the subject property as an exemption on Schedule B-4 of their bankruptcy petition, and then must also file their homestead exemption in a timely manner. The case of In Re Wall, decided by the United States Bankruptcy Court, Eastern District of Virginia, demonstrates that debtors can lose their rights by failing to properly claim the avoidance.

In the next four issues, we will review cases where judicial lien avoidance is examined.

REAL ESTATE

Using Mechanic's Liens to Secure an Interest in Real Estate

In recent editions of *Creditor News* we have been discussing the benefits of using real estate to improve creditors' positions. As I have emphasized, properly securing debts through real estate could make the difference between collecting the funds and incurring a loss. In this edition, we will begin a review of the benefits of using mechanic's liens to aid in the collection of your debt.

Virginia Code §43-3 et. seq. provides for special procedures for the collection of unpaid bills related to work performed on, or products supplied for, real estate. §43-3 A states:

"All persons performing labor or furnishing materials of the value of \$150 or more ... for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold ... shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof ... subject to the provisions of § 43-20. But when the claim is for repairs or improvements to existing structures only, no lien shall attach to the property repaired or improved unless such repairs or improvements were ordered or authorized by the owner, or his agent."

Virginia Code §43-3 B provides for special rules regarding condominiums.

Virginia Code §§43-4, 43-7 and 43-9 provide for the perfection of the lien by general contractors, subcontractors, and laborers and suppliers. We will explore this more in next month's edition.

We have experienced attorneys and staff who can examine title, file mechanic's liens, and litigate to enforce the same.

QUESTIONS AND ANSWERS:

Please feel free to let me know if there are topics that you would like to address.



If you have not already done so, and if you would like to continue receiving *Creditor News*, free of charge, please call me at 545-6251 email me at ewhitlock@lawplc.com, or complete the form adjacent and mail it to me at Lafayette, Ayers & Whitlock, PLC, CrossRidge Professional Park, 10160 Staples Mill Road, Suite 105, Glen Allen, Virginia 23060. Please let me know whether you would prefer to have a mailed copy or an emailed copy.

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**Perfection of Vehicle Liens
The Fair Debt Collection Practices Act
Lien Avoidance Case Review: Judicial Liens Larger than Available Exemptions
Perfecting Mechanic's Liens
Substitute Trustees**

AND



"MILES"

THE LEGAL BEAGLE

FORECLOSURE**Trustees in Foreclosure**

Trustee under a deed of trust are agents for both the lender and the borrowers. Accordingly, a trustee must act fairly and impartially. The lender must not let either the lender or the borrower influence the manner in which a trustee carries out the terms of the deed of trust, especially if this would be detrimental to either party. If any question arises as to the existence of the default or the amount in default, a trustee should seek the aid and direction of the court. The powers and duties of a trustee are governed by the deed of trust and Virginia Code Section 55-59.1 *et seq.* The code provides when the deed of trust does not. A trustee has no right to exercise the power of sale or to obtain possession until such time as the borrower defaults under the note or deed of trust, and, then, only for the purpose of selling the property at foreclosure or preserving the property until sale. When a default occurs, there is no change in title – the property merely becomes eligible to be sold under the powers originally conferred to the trustee by the owner. Thus, the noteholder has the right to have the property sold and the proceeds of the sale applied to the debt.



LAFAYETTE, AYERS & WHITLOCK, PLC's practice areas include (in addition to **CREDITOR REPRESENTATION** in Collection, Bankruptcy, Real Estate and Foreclosure matters) Alcoholic Beverage Control and Administrative Law; Real Estate, Commercial and Residential Settlements and Title Insurance; Wills, Trusts, Family and Estate Planning, and Probate Administration; Business, Corporate, LLC and Partnerships; Personal Injury; Civil Litigation; Traffic and Criminal cases; Military Law, Zoning and Land Use Planning; Condominium, Homeowner and Property Owners Associations; Mediation and Arbitration.

EDWARD S. WHITLOCK, III, ESQUIRE ("Eddie"), the editor of *Creditor News*, is a Richmond native with a concentrated law practice in creditor representation. His practice focuses on creditor's rights (Collection, Bankruptcy, Real Estate, and Foreclosure), but also includes the general practice of law (Business and Will & Estate Planning). Eddie holds a B.A. (1984) in Political Science, and a Juris Doctor (1987) from the University of Richmond. He is the former Chief of Admin/Military Law for the 329th Support Group (Area) in the Virginia Army National Guard. Eddie is the former President of both the Henrico County Bar Association and the Virginia Creditors' Bar Association. He is the chair of the Virginia State Bar's Fee Dispute Resolution Program, and a former member of the Virginia State Bar's Disciplinary Committee. He is a board member of the Henrico Economic Development Authority. He is the Vice President of Home Loans for KOVAR Corporation. He is also a former director of Henrico CASA, and a former adjunct professor of criminal law at J. Sargeant Reynolds Community College.

JENNIFER W. FISCHER ESQUIRE, the Associate Editor of *Creditor News*, worked concentrates her practice in creditor representation (Collection, Bankruptcy, Real Estate, and Foreclosure), but also Business and Will & Estate Planning. Jennifer holds a BS (2011) in business administration from Christopher Newport University, and a Juris Doctorate (2014) from University of Richmond, T.C. Williams School of Law. She was admitted to the Virginia State Bar in October 2014. She is a board member for the Virginia Creditors' Bar association and the Henrico County Bar Association.

MICHAEL P. LAFAYETTE, ESQUIRE concentrates his practice in real estate, business and ABC law. He represents clients in both commercial and residential real estate transactions. Michael is a frequent speaker at real estate conferences, writes curriculum for real estate continuing education courses, and is legal counsel to the Richmond Association of Realtors. Michael graduated from Bradford College in 1986 with a B.A. in Administration and Management, and a law degree from the University of Richmond in 1989.

TRAVIS P. HUGHES, ESQUIRE is Michael Lafayette's Senior Associate attorney. Travis focuses his practice on business, real estate law, and estate planning. He is a Hanover County native and has worked as an Assistant Commonwealth's Attorney for the County of Tazewell and Hanover County. Travis is the current Vice President of the Hanover Bar Association. In his free time, Travis enjoys spending time with his German shorthaired pointer, Khaleesi, and training Brazilian Jiu Jitsu.

GLENN E. AYERS, ESQUIRE concentrates his practice in all aspects of real estate law including commercial and residential settlements, litigation, zoning and land use planning; life and estate planning including domestic partnerships, wills, trusts, trust services, and probate administration; business, corporate, and LLC formation and representation; Personal Injury litigation; Condominium, Homeowners, and Property Owners Associations; and Mediation and Arbitration services. The Norfolk, Virginia native is a 1977 graduate of Virginia Tech (BS, Business Administration/Public Administration) and received his Juris Doctor from George Mason University in 1980. He is a former Supreme Court of Virginia Hearing Officer.

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