
BERNSTEIN

LAW FIRM, P.C.

TRADITION • TECHNOLOGY • TALENT

CLIENT ADVISORY (December 2003)

Pay Attention To Debtor Identity and to Procedure When Invoking Confession of Judgment Clause

Failure to correctly identify the debtor and provide all relevant information can be costly mistakes

Including a confession of judgment clause in credit agreements is usually a good idea. Sometimes referred to as a *cognovit clause*, a confession of judgment clause provides for a judgment in the creditor's favor as soon as a complaint is filed. If properly invoked, it will allow for a less cumbersome and less costly collection process should you end up in litigation with your customer. Federal regulations prohibit the clauses in consumer transactions. Some states do not permit the use of these clauses at all.

But beware: misidentifying the debtor or improperly notifying the debtor of the proper procedures to follow in fighting the claim could become costly mistakes, as is evidenced by an appellate court ruling in a recent case. In *First National Bank, et al v. Thomas J. Holt*, 827 A.2d 1224 (2003), the Superior Court of Pennsylvania struck a judgment for \$62 million asserted under a confession of judgment clause, not because the creditor misidentified the debtor, but rather, because the notices of the procedures to be followed in challenging the judgment, served upon the debtor by the creditor in the confession of judgment action, were insufficient as a matter of Pennsylvania law.

Pennsylvania law provides that a creditor filing for a judgment by confession must provide the debtor with detailed written instructions regarding the procedures to follow to challenge the judgment. Failure to do so can cause the confessed Judgment to be stricken. Further, a creditor who misidentifies the debtor and has a confession of judgment entered against him is liable to pay all costs and attorney fees incurred by the misidentified debtor in connection with the action. In order to avoid a costly mistake in seeking recovery under a confession of judgment, creditors are advised to take the time to ensure that all debtors are properly identified and that all procedural notice requirements are met.

-continued-

For more information on how you can protect your interests, please contact Nick Krawec or Bob Bernstein at the Bernstein Law Firm, P.C. Suite 2200 Gulf Tower, Pittsburgh, PA 15219 - 412-456-8100 or toll free at 1-800-927-3197; email: nkrawec@bernsteinlaw.com or rbernstein@bernsteinlaw.com .

For more information about commercial relations, visit the “Publications” area of our website at www.bernsteinlaw.com.

NOTE: Information contained herein is a summary of complicated matters. It is not intended to convey legal advice. Before you act on any information provided in this document, you should seek professional advice regarding its applicability to your specific circumstances ©2003, All rights reserved.

Announcement

Congratulations to Attorney Nicholas Krawec, a partner in Bernstein Law Firm, P.C., who was recently elected to the Executive Council of the Creditors’ Rights Section of the Commercial Law League of America (CLLA).

The CLLA is North America’s leading organization of collections, creditors’ rights and bankruptcy professionals. It is a sponsor of the American Board of Certification, a non-profit organization dedicated to serving the public and improving the quality of the bankruptcy and creditors’ rights bars. The Creditors’ Rights Section was founded in 1992 to meet the needs of attorneys whose practice is concentrated in the representation of creditors. The purpose of the section is to address the educational, economic and legislative needs of its members.

Bernstein Law Firm, P.C. is a full service Commercial Law firm that can assist clients nationwide regarding commercial and bankruptcy issues.