The Quick Compliance Trap: Out-of-State Collections Can Create Significant Exposure for Banks

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Banks are frequently the targets of collection efforts when judgment creditors are trying to collect their judgments. While banks have policies and procedures to ensure such requests are handled promptly, accurately, and in compliance with the law, they must be cautious to ensure that they are responding only to legally valid collection efforts. With increasing frequency, out-of-state judgment creditors are serving Illinois banks with garnishments or other collection vehicles to try and collect on the out-of-state judgment. This makes perfect sense because the creditors are trying to collect on their money judgments, and most people have their money in a bank. However, banks must be cautious to ensure that they are only responding to legally valid collection efforts.

Illinois banks must remain cautious when responding to collection efforts on out-of-state judgments. When the out-of-state judgment is “domesticated” in Illinois, thereby making it an Illinois judgment, the collection attempt is proper. Failure to comply in these situations could, in some cases, result in the judgment debt being imposed on the non-complying bank. However, the out-of-state judgment creditor typically tries to collect on the judgment without first making it an Illinois judgment. Legally, this is usually improper, and banks that comply with these types of collection attempts may face severe consequences.

Personal Jurisdiction Matters

The reason this is improper is a legal concept called personal jurisdiction. This is simply the authority of the court where the judgment is being enforced over the person or entity involved in the case. In order for a garnishment, which is a court order, to be enforced by a court, that court must first have jurisdiction to enforce it against the bank that received it. If the bank engaged in conduct that caused the litigation in the first place, even though the case was filed out-of-state, that out-of-state court would likely have jurisdiction over the Illinois bank. Or, if the Illinois bank is headquartered or incorporated in the state where the judgment exists, then the court in that state likely has personal jurisdiction over the Illinois bank.

Risks of Improper Compliance

If the collection attempt on the Illinois bank is improper due to a lack of personal jurisdiction, it could be quite problematic for a bank if it complies with the collection effort. Informing the judgment creditor of the existence of a customer’s account and the amount of funds within it is providing that customer’s non-public information to a third party, and privacy in banking is extremely important. The very first sentence of the Gramm-Leach-Bliley Act (Act) states: “It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers’ non-public information.” The Act is enforceable by the OCC, FDIC, FTC, and a number of other alphabet soup regulators, and they could fine a bank up to $100,000 for each violation.

In addition, the account agreements that banks have with customers generally prohibit the bank from providing a customer’s non-public information to third parties absent a valid subpoena, court order, or the permission of the account holder. A garnishment order from another state is likely not considered a valid court order since that court probably does not have personal jurisdiction over the bank.

How Banks Should Respond to Collection Efforts

Banks should be cautious when responding to collection efforts by creditors of the bank's customers. Banks should not assume that a creditor's chosen collection method is proper merely because the creditor is attempting to use it. If a bank is unsure of whether they should respond to a collection effort, the bank's counsel should be contacted to help determine the proper course of action.