Considerations Before Responding to a Creditor's Citation to Discover Assets

Article
Amundsen Davis Banking & Finance Alert
August 1, 2023

Before responding to a creditor's citation to discover assets ("CDA"), financial institutions should consider whether the court presiding over the judgment can lawfully direct them to act against a debtor's accounts. Even if a CDA is correctly filed and served, this does not necessarily mean that courts have proper jurisdiction. Thus, responding to these requests can lead to unsavory consequences.

How do Courts Determine Jurisdiction?

CDAs and other creditor activities directed towards third parties, such as financial institutions, are considered proceedings against the third party, not the judgment debtor. The 2014 *Daimler* decision from the U.S. Supreme Court narrowed the scope of when the courts have jurisdiction. Under this case, a company is subject to general jurisdiction only in a state that houses the company's principal place of business or formal place of incorporation. This means that, generally, a financial institution only falls under the jurisdiction of courts in which their principal place of business or formal place of incorporation is located, even if they have branches, ATMs, or other resources in multiple states throughout the nation.

Why is Answering a Court Without Jurisdiction a Problem?

Suppose a creditor properly serves a CDA to a debtor's financial institution that falls under the court's jurisdiction. In that case, the creditor is within its rights to know the amount of funds held by the debtor in that institution and get an order from the court to freeze the debtor's bank accounts, garnish wages, turnover funds, etc. However, if a court does not have proper jurisdiction, the serving creditor and responding financial institution may subject themselves to possible litigation.

First, many states have laws that fastidiously protect the privacy of financial records. For instance, under the Illinois Banking Act ("the Act"), financial institutions can only disclose financial records in response to a lawful court order. It is unlawful to knowingly and willfully provide financial records outside the scope of the Act. Therefore, financial institutions and specific officers and

PROFESSIONALS

Michael G. Cortina
Partner

RELATED SERVICES

Banking & Finance

AMUNDSEN DAVIS

employees who respond to a CDA from a court that does not have proper jurisdiction may commit a business offense by responding to an unlawful court order. Furthermore, creditors can also fall into legal trouble, as in Illinois, it is a violation to knowingly and willingly induce or attempt to induce any officer or employee of a bank to disclose financial records.

Second, sending or responding to a CDA from a court without proper jurisdiction can subject both the creditor, financial institution, and their respective attorneys to claims for invasion of privacy. When a financial institution complies with a CDA, it must complete written statements outlining the type of accounts owned by a judgment debtor and the financial holdings contained in each. Once filed with the court, these statements become a matter of public record. By their nature, financial documents are highly personal, and wrongful disclosure of this sensitive information will likely cause great offense to banking clients, who may take legal action.

What Can Be Done to Avoid Litigation?

Due to the high costs associated with transmitting and responding to CDAs from courts without proper jurisdiction, it is in both the creditor's and financial institution's best interest to ensure that the court is located in the same state as the institution's principal place of business or primary place of incorporation. If a collection summons is received by a financial institution from a state where it is neither headquartered nor incorporated, further inquiry needs to be made to ensure that answering the summons will not result in civil or criminal liability.

*** Written with assistance from law clerk, Christina Bailey.*