



I GOT THE JUDGMENT.
HOW DO I GET THE MONEY?

ANSWER: RECEIVERSHIP

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You've Got the Judgment

- Congratulations! You won the trial. The judge signed the judgment.
- But the Defendant refuses to pay or hides assets.
- How do you get the money?



Answer

- Request appointment of a Receiver



Debt Collection Does Not Work

- Post-judgment discovery – ignored
- Writs of execution – never effective
- Sheriff's sale – expensive and inefficient
- Turnover orders – cumbersome and slow
- Garnishment – expensive new lawsuit against each bank



Receivers have wide authority

- Instruct debtor's bank to close accounts and send check
 - *No expensive garnishment suit*
- Blanket area banks with search for debtor accounts. Freeze and seize accounts.
- Seize non-exempt real estate, hire agent, list on MLS, sign contract, close with special warranty deed.
 - *No sheriff's sale*



Receivers have wide authority

- Seize stock accounts and sell shares
- Seize patents and exercise control, license, sale
- Seize and sell corporate or partnership interests
- Seize and sell contract rights
- Intercept account receivables



Receivers have wide authority

- Seize inheritance property
- Seize and rent out office or rental property
- Intervene in probate or divorce or PI case
- Take over business and run it
- Intercept O&G royalty payments, sign new division orders



Receivers have wide authority

- Obtain order to deliver financial records
 - Order banks, credit card companies, credit bureaus to deliver financial records
 - Depose the debtor, relatives and partners
 - Sue relatives and partners to recover wrongfully transferred assets
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- Whatever non-exempt property the debtor owns the Receiver now owns and controls



What if Debtor Threatens?

- Receiver has *derived judicial immunity*
 - *Davis v. West, 317 S.W.2d 301 (Tex. App. --- Houston [1st Dist.] 2009, no pet.)*
- Same immunity as the judge
- Debtor cannot file counterclaim
- Debtor cannot even seek court costs



Why So Much Authority?

- Ancient equity doctrine, long recognized in Texas common law, incorporated into TCPRC
- *Custodia legis* - “In the custody of the law”
 - *First Southern Properties, Inc. v. Vallone*, 533 S.W.2d 339, 343 (Tex. 1976)
- When court signs receivership order, Receiver obtains immediate legal custody of all judgment debtor’s non-exempt assets



Why So Much Authority?

- Receiver has exclusive possession and custody of debtor's non-exempt property
 - *Any later transfer is void*
 - *Even sales to GFPFV are void*
 - *No foreclosure on receivership property*
- Texas is effectively a creditor state



Sources of Authority

- Collection of Judgments Statute
 - *Texas Civil Practice and Remedies Code § 31.002(a), (b)(3)*
 - *Appointment of Receiver to collect judgment debtor's assets*



Sources of Authority

- The Receivership Statute

- *Tex. Civ. Prac. & Rem. Code § 64.001 (2017)*
- *“(5) for a corporation that is insolvent, is in imminent danger of insolvency, has been dissolved, or has forfeited its corporate rights; or*
- *“(6) in any other case in which a receiver may be appointed under the rules of equity.”*



Sources of Authority

- The Texas Fraudulent Transfer Act
 - *Tex. Bus. & Com. Code § 24.005(a)(1) (2019)*
 - *“Creditor” as “a person ... who has a claim,” even if that claim is unliquidated or disputed. Tex. Bus. & Com. Code § 24.002(4) & (6) (2019).*



Sources of Authority

- The Business Insolvency Receivership Statute
 - *Tex. Bus. Orgs. Code, §§ 11.402(a)-(b), 11.403(a)-(c) (2019)*
 - *This statute permits appointment of a receiver to preserve specific property or a corporation.*



Can Receiver Reach Assets Outside Texas?

- Unclear but probably
- Receiver appears able to reach assets in other states and countries, in every form



How Do I Get a Receiver?

- Post judgment, any time, file a motion for appointment of receiver
- Two elements:
 - *Unpaid judgment*
 - *Debtor has at least one non-exempt asset*
- Two practical requirements:
 - *Debtor has non-exempt assets or transferred them – Any bank account is non-exempt*
 - *Judge will support receivership*



Can I Get a Receiver in Federal Court?

- Yes
- Same rules
- 28 U.S.C. § 959(b) (2018)
- Federal Rules Civil Procedure 66 and 69(a)
- Fifth Circuit favors receiverships
 - *United States v. Setser*, 568 F.3d 482 (5th Cir. 2009)



Can I Get a Receiver in JP Court?

- Yes
- Even JP courts may appoint receivers
 - *Davis v. West*, 317 S.W.3d 301, 309, 2009 Tex. App. LEXIS 9921, 14-15 (Tex. App. -- Houston [1st Dist.] 2009, pet. denied)



Do I Have to Exhaust Remedies?

- No
 - See *In re Estate of Trevino*, 195 S.W.3d 223, 231 (Tex. App. --- San Antonio 2006, no pet.).
- You do not need to conduct post-judgment collect before seeking receivership
- Receivership may be first remedy



What Will Receiver Do?

- Identify and seize non-exempt assets
- Identify transfers of cash and property to insiders
- File suit against insiders to recover transfers
 - *Texas Fraudulent Transfer Act*
 - *Breach of Corporate Fiduciary Duty*
- Litigate suits to jury trial or settlement



How to Recover From LLCs?

- LLCs are hardest because protected by Texas corporate law
- LLC membership interest constitutes *non-exempt intangible personal property*, therefore subject to Receivership
 - *Tex. Bus. Orgs. Code § 101.106(a) (2019)*
 - *15 Tex. Jur. (3rd ed.) § 581 (2020).*
- Receiver will sue insiders and LLCs to recover fraudulent transfers
 - *Texas Fraudulent Transfer Act*
 - *Breach of Corporate Fiduciary Duty*



What Does a Receiver Cost?

- Receivership fees are taxable court costs
 - *See Roberts v. Abraham, et al., and Seth Kretzer, Receiver, No. 01-19-00622-CV (Tex. App. – Houston [1st Dist.] Dec. 22, 2020, no pet.)*
- The judgment debtor will pay
- Receiver are paid contingency
 - *Typically 25% of property recovered plus expenses*
 - *Receiver will seek 125% of judgment plus expenses*



How Big Does Judgment Need to Be?

- Any amount
- Receiver will be paid contingent hourly rate as taxable court cost even if larger than judgment



What about divorce and custody cases?

- Yes
- Divorce court may appoint a receiver post-final decree for one parent / spouse to recover payments due other parent / spouse
 - *Attorney's fees*
 - *Equalization payments*
 - *Division of real property or homestead*
 - *Child support*



May Receiver be appointed pre-judgment?

- Yes
- Court may appoint Receiver pre-judgment to preserve property pending trial
 - *Houses*
 - *Companies*
 - *Office buildings*
 - *Vehicles*



What Ethical Rules Apply?

- Receiver works for the judge, not you or your client
- Receiver is not your agent
- Receiver has no client and no attorney-client privilege with anyone
- Receiver will do she/he believes is fair and honest, even if you do not like it
- Receiver may reach payout agreement with debtor



What Ethical Rules Apply?

- You cannot settle the case behind Receiver's back
 - *Any agreement affecting receivership estate property is void without Receiver's signature*
- Receiver is not going to force debtor into bankruptcy if avoidable with payout
- If no assets, Receiver will close receivership



How Can I Increase Settlement?

- During mediation, ask experienced Receiver to speak by phone or video with mediator, opposing counsel and debtor
 - *Receiver will explain how she/he will take defendant's non-exempt property if appointed*
- Amend petition to allege fraudulent transfers and seek discovery
 - *Texas Fraudulent Transfer Act*
 - *Breach of corporate fiduciary duty*



How Can I Increase Settlement?

- Bankruptcy has benefits
 - *File adversary action*
 - *Non-dischargeability of 11 U.S.C. § 532*
 - Torts that harm person or property
 - Thefts and fiduciary violations
 - *Receiver will be paid as priority claim*





GET YOUR CLIENT'S MONEY!

QUESTIONS?

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