But for the Plan

Slow Justice for a Debt Collection - But Persistence Paid Off

Mr. N. came to our Oshawa office with a difficult dilemma. His son-in law, D, now separated from his daughter, had not fully repaid him for loans advanced to in the previous two years.

He instructed Bob Banik to start a lawsuit. When D did not file a defence Bob quickly obtained a “default” judgment for about $91,400 plus costs and interest, and filed a Writ of seizure and sale against D’s interest in the former matrimonial home (which was also the subject of a separate family law dispute).

Three years later, just before the matrimonial home was to be sold, D sought removal of the Writ. By this time Bob Banik had retired, and Greg Tufman, who took over the file, agreed to remove the Writ, but not before the entire judgment amount - now about $103,600, including interest - was paid, out of D’s share of the sale proceeds, into trust pending resolution of the lawsuit.

Unfortunately for our client, there was another twist to this tale!

Mr. N. did not find out until after the matrimonial home was sold that, just months after the Writ was filed, D had made a consumer proposal under the Bankruptcy and Insolvency Act and had already, without naming Mr. N. as one of his creditors, completed the consumer proposal (upon paying about 20% of what he owed to his other creditors) - a tactic D hoped would defeat Mr. N.’s judgment and allow D to recoup his share of the sale proceeds.

But for the Plan, that may have been the end of the story!

Instead, Mr. N. decided to continue his pursuit of the debtor. He instructed Greg to proceed to court, to get the consumer proposal annulled and to deny D’s attempt to set aside the original judgment. We succeeded on both counts! Mr. N. will now be able to recover his loan!

For most creditors, the cost of litigation is a steep barrier that will often end the pursuit. But for the Plan, this pursuit may also have ended prematurely.

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Submitted by:
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