The Claims Corner: Will You Please Let Me Pay You?

Description

Article by Michael Chang

The title of this article is not something any of us find ourselves saying very often. Most people do not ignore people who are trying to pay them or refuse payment when it is offered. Indeed, it is perplexing and confounding when someone who is owed money is offered full payment to satisfy the debt but inexplicably refuses to accept it.

This is especially true in the world of clearing title. Although it is common to run into difficulty tracking down a creditor to pay off a lien, particularly when a debt has been assigned or sold downstream (sometimes through several subsequent lenders/servicers), it is less common to encounter silence once you have located the entity that needs to be paid. This article discusses just that type of situation, and a potential resolution which may be available to you that can be found in the Virginia Code.

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The Company received a claim from a lender stating that there was a judgment lien on the subject property for a fairly nominal amountâ??the judgment was only for about $200.00, and with interest and fees the total amount due to the creditor was around $500.00â??but the judgment creditor was a homeownerâ??s association (the â??HOAâ?•) and the settlement agent was unable to get in contact with the HOA in order to pay off the judgment and obtain a lien release.

The Claims department granted coverage for the claim, and began the initial efforts to obtain a payoff and release by sending a letter to the address listed for the HOA requesting a 30-day payoff statement and alternatively offering an immediate payment of $500.00 in satisfaction of the judgment. This letter was delivered by FedEx and was also emailed to the email address listed for the HOA, but claims counsel did not receive any response thereto. Claims was otherwise unable to contact anyone from the HOA to discuss the satisfaction and release of the judgment lien, and therefore decided to retain litigation counsel to resolve the title defect.

Virginia Code Section 55.1-344 thankfully offers a remedy for people who are able and willing and who have tried to pay a creditor to release a lien but have been unable to do so.

The Code provides, in pertinent part:

If the court finds that the person entitled to such encumbrance cannot with due diligence be located, and that notice has been given such person in the manner provided by [section] 8.01-319 or 55.1-348, or that tender has been made of the sum due thereon but has been refused for any reason by the party to whom due, the court may in its discretion order the sum due to be paid into court, to be there held as provided by law, and to be paid upon demand to the person entitled thereto. The court shall order the same to be recorded as provided in subsection A, and such certificate of satisfaction or certificate of partial satisfaction shall operate as a release of the encumbrance.

Va. Code 55.1-344(B).

Litigation counsel initially attempted again to contact the HOA, several times by phone (calls were made to the number listed for the HOA as well as home numbers of officers), by email, and by messages sent to the HOAâ??s Facebook page. However, such efforts were unsuccessful. Counsel therefore sent a letter to the HOAâ??s registered agent, again offering payment in satisfaction of the debt and stating that if the HOA failed to respond within a certain time a lawsuit petitioning the circuit court to allow payment to be made to the court in the amount due (inclusive of costs and interest), and to release the judgment as provided in the statute.

Having received no response, counsel filed the lawsuit and served it on the registered agent of the HOA, but the HOA did not answer the lawsuit. Accordingly, counsel moved the court for entry of a default judgment, which was granted. The Company deposited the money with the clerk of the court as directed in the final order, and the clerk accordingly entered the release of the lien in the judgment docket.

In sum, if you ever find yourself practically begging a creditor to take your money, but they refuse to be paid, know that you are not completely without recourse and that the Code provides a mechanism specifically addressing that situation that will allow you to obtain the lien release you need to insure clear title.

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Michael grew up in Northern Virginia and received a B.A. in English at the University of Virginia. After graduation, he played music professionally for several years before moving back to the D.C. area to attend the George Mason University School of Law. Upon graduating law school, Michael served as a judicial law clerk for the Hon. Jonathan C. Thacher of the Fairfax County Circuit Court for a year before joining the commercial litigation practice group at Blankingship & Keith in Fairfax. Michael joined the In-House Litigation division of Fidelity in 2013, where he was a top litigator in the Companyâ??s DC/MD/VA office, handling hundreds of title cases throughout Virginia, Maryland and the District of Columbia until 2022 when he changed gears and joined the FNF Virginia Agency group as Virginia Underwriting Counsel.

Michael lives in Chantilly with his wife and two children. He still plays music regularly and performs occasionally at reunion shows with the popular Charlottesville band, Baaba Seth, as well as with a new

and exciting funk/jazz project with old friends in the Charlottesville music scene called Afro Asia. Michael is a strong believer in having an active, healthy lifestyle, and enjoys skateboarding and indoor rock climbing in his free time.

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