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WFJ Celebrates 75 Years!

Wagner, Falconer & Judd, Ltd. ("WFJ"), founded in 1932, is celebrating its 75th anniversary in 2007! The firm was founded in Minneapolis by Clarence J. ("CJ") Wagner when he was 25 years of age. From its beginning in 1932 the firm has grown to 35 lawyers and more than 70 employees, with offices in Minneapolis, Milwaukee and La Crosse, WI.

For many years CJ Wagner's law partner was Donald V. Bailey, and the firm operated under the name of Wagner & Bailey. The firm concentrated its practice on commercial law and credit and collections law. The name was Wagner & Bailey until 1963 when Donald R. Johnston joined the firm, Donald Bailey left the firm, and the name changed to Wagner & Johnston. The name changed to Wagner, Johnston, Falconer & Lindstrom, Ltd. in 1967, after Alan W. Falconer, now the firm's senior partner, and Robert M Lindstrom joined the firm. The name changed to Wagner, Johnston & Falconer, Ltd. in 1974.

CJ Wagner retired in 1968 but remained "of counsel" with the firm until his death in 1988. However, the "Wagner" name remains as the lead name for the firm. When Don Johnston retired in 1991 the name changed to its current name of Wagner, Falconer & Judd, Ltd. (Robert A. Judd has been a lawyer with the firm since 1972.)

The firm's office has always been located in downtown Minneapolis, close to the Hennepin County Government Center and the Federal Courthouse. The office was in the Thorpe Building for many years, until 1970. From 1970 to 1978 the firm officed out of the Plymouth Building, and from 1978 to 1985 the firm was located in the National City Bank Building. Since 1985 the office has been located in the IDS Center, a prominent downtown Minneapolis office building. The office was on the 26th floor for 14 years, until 1999, when the office was moved to the 35th floor. In November 2005 the office was moved from the 35th floor to its current location with 13,000 sq. ft. of leased space on the 17th floor.

The office in Milwaukee was opened up in the late 1990s. The office in La Crosse, Wisconsin was opened in 2005.

Over the years the firm has remained focused on matters involving commercial law and credit/collection matters, especially credit and collection matters in the construction industry. However, over the past 15 years the areas of practice have expanded, and now include a number of practice areas, including personal injury, general corporate work, family law, criminal law, and estate planning. WFJ is pleased to have reached the 75 year mark and looks forward to continued quality service for its clients in the years to come.

Employee Theft — What Business Owners Need to Know

The amount of money lost each year to employee theft may never be known. While it is possible to count the number of cases that are actually prosecuted, both in the criminal and civil courtroom, many incidents go unreported every year. Many cases are not reported because of embarrassment, reluctance to file criminal charges, a fear of the negative publicity that might follow, or they are simply undetected. For all types of businesses, a trusted employee may steal from payroll, 401K accounts, or petty cash, or over-bill expenses or issue credits to customers who have paid their bill in full, and then keep the additional funds.

Many business owners believe

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that well-paid and/or senior employees are trustworthy and will not steal, or that it will be easy to spot employee theft before it becomes a major concern for their business. Sadly, often the most trusted employees are the ones that commit theft. If a large loss is discovered, a look back at prior records will most likely reveal smaller thefts by the employee while he or she was trying to see how easy it would be to steal.

Employee theft can happen to any business, but there are steps that a business owner can take to minimize the risks. The first step is to find people you can trust to work for you. This can be partly accomplished by running background checks on potential hires. Ask for references of potential employees and follow up with them.

Ask current employees if they are aware of any vulnerabilities in the company. Trustworthy employees will be glad to help out. Train your employees on how to spot employee theft and clearly identify the person to whom they should report any suspicious activities. Stay involved in the company finances. If numbers are not your strong suit, make it a priority to learn them. Sloppy record keeping makes it very difficult to detect irregularities.

Have periodic checks of inventory and bookkeeping. Conduct the audit yourself or have an outside auditor perform periodic but unscheduled audits. Have checks reviewed on a regular basis.

Be aware of employees that do not take vacation. They may be afraid that their theft will be detected in their absence. Encourage all accounting employees to use their vacation time. The person filling in for the vacationing employee is an additional check on bookkeeping.

Make it difficult for employees to steal. If possible, divide accounting tasks among several different people. Shifting responsibilities provides an additional check on accounting accuracies. Do not have the check writer balance the check book. If your company uses credit cards, do not allow the credit card user to open and review the statements. Have employees provide receipts for all expense reports.

Create and enforce clear policies on stealing. Inform all employees that employee theft of any size will not be tolerated. Punish all infractions regardless of the person's position in the company or how small the amount stolen.

If you feel your business is the victim of employee theft, you need to act quickly. Contact local law enforcement as soon as possible. If at all possible, do so before terminating the suspected employee. Law enforcement is trained on what type of questions should be asked in order to quickly assess the amount of loss suffered. Escort the terminated employee from the premises and do not allow the person to access the office computer or gather personal items. Remove the person's ability to access the company's network from his or her personal computer. Have the terminated employee return all keys and write down any personal passwords used at work.

Every company is susceptible to theft by employees. It is important to take steps to minimize the risks and make it as difficult as possible for dishonest employees to steal from the company.

Collection Overview: An Attorney's Perspective

In previous articles we have addressed the importance of a careful and thorough credit application process and the effective use of pre-suit collection tools. However, a thorough application process will not guarantee timely payments; and guaranties and promissory notes will not always remove the necessity for filing a lawsuit. Sometimes it will become necessary to have an attorney file a lawsuit against the debtor for the outstanding debt.

Part III: The Litigation Process - Obtaining Judgment

Litigation may become necessary when a debtor will not pay despite all the best efforts of the credit manager. The filing of a lawsuit should result in either the payment of the outstanding debt or a judgment on which post-judgment collection may be sought.

The Complaint:

A lawsuit begins with a Summons and Complaint prepared by the creditor/plaintiff's attorney. The Summons and Complaint are served on the debtor/defendant. The Summons provides notice to the defendant that they must respond to the Complaint within a set period of time. This period of time is dependant upon the laws of the jurisdiction in which the suit is brought. The Complaint is a formal pleading that sets forth the causes of action in a case. Generally, the Complaint alleges the necessary facts to support the plaintiff's causes of action. This includes allegations identifying the parties, their obligations, what they did or failed to do and the resulting damages. The Complaint includes a request asking the court for judgment against the defendant.

Occasionally, the serving of an effective

Complaint backed up with favorable facts clearly establishing liability will result in a debtor making arrangements to pay the outstanding debt to avoid judgment. Debtors faced with the strong likelihood of a judgment being entered against them and the significant cost involved in retaining an attorney to defend the suit will often choose to find a way to satisfy the outstanding debt.

The Debtor Fails to Answer:

If the debtor/defendant does not arrange to pay the debt and fails to respond within the time period required by the Summons, the creditor/plaintiff's attorney may then obtain judgment by default. When the defendant fails to answer, the attorney files directly with the court for a judgment as requested in the Complaint. The court costs and service fees expended in obtaining judgment may be included in the final judgment. In addition, when appropriate, attorney's fees may be available, although additional steps must be taken in Minnesota (and some other states) when requesting attorney's fees.

The Debtor Answers:

If the debtor/defendant does respond to the Summons and Complaint by serving an Answer, the litigation process continues. The debtor may also assert counterclaims against the creditor/plaintiff. If so, the plaintiff must then reply to the counterclaims and the case then proceeds through litigation.

Discovery. After the Answer, the next general step in the litigation process is "discovery". Discovery is the process of gathering and exchanging information about the case. Typically, parties will use interrogatories, requests for the production of documents and depositions in their fact gathering. Interrogatories are written questions, requests for the production of documents are just that, and depositions are recorded question and answer sessions with witnesses and/or parties.

Alternative Dispute Resolution. Another step in litigation involves alternative dispute resolution. There are a number of types of alternative dispute resolution. Often parties will use mediation as a form of alternative dispute resolution. In mediation, a neutral mediator typically meets with the parties individually and goes back and forth between them attempting to bring both sides together. If mediation is successful, the case is settled on terms agreeable to both parties. Upon completion of the terms of settlement, the lawsuit ends.

Motions. Many motions may be brought throughout a case. A common motion brought in cases is the motion for Summary Judgment. A party will bring this motion when they believe there is no factual issue in dispute and the law is in their favor. If there are no important facts in dispute and the defendant is clearly liable under the law, the plaintiff's motion for Summary Judgment will be successful and will result in a judgment against the defendant. If there is any issue of material fact in dispute and/or the defendant is not clearly liable under the law, the motion will be denied.

Trial. If a motion is not successfully brought to obtain judgment or dismissal, then the case eventually proceeds to trial. The trial may be in front of judge or a jury. If the case goes to trial, the plaintiff will have to prove to the judge or jury through witnesses' testimony and documentary evidence that facts exist that obligate the defendant and the defendant has failed to meet this obligation. In addition, the plaintiff will have to prove that they suffered damages and the amount of the damages. The defendant then has an opportunity to put on it's witnesses and evidence in it's defense. If the plaintiff is successful in proving it's case to the judge or jury, the plaintiff will obtain a judgment against the defendant. Most cases are settled prior to trial.

Conclusion

When a debtor will not pay despite a credit manager's best efforts, a lawsuit may be necessary. An attorney can obtain a judgment on behalf of a creditor by filing suit against the debtor. Judgment may come easily, as in the case where the defendant fails to answer the Complaint, or be hard fought through litigation. The success of the lawsuit is largely dependent upon the facts of the case. Often serving an effective Complaint backed up with favorable facts and documentation will result in the payment of the debt prior to actual judgment. Other times, it is necessary to pursue a debtor all the way through discovery, mediation, motions and trial to obtain a judgment.

Landlord Rights: When a commercial tenant stops paying rent

It happens so often it is patronizingly cliché; a tenant stops paying rent. The reasons are plentiful: economic downturn, lack of promised foot-traffic, oral agreements outside of the commercial lease agreement, and plain old hard times. The problem arises not only when the rent payments stop arriving, but also when the tenant remains in the premises, either purporting to make good on the outstanding rent and/or disputing the amount due and owing.

Ostensibly, it does not seem that complicated for a commercial landlord. By and large, the landlord has two options for the tenant: pay up or get out. The challenge for a landlord is to legally accomplish one or the other while simultaneously preserving its bottom line and (with any luck) its sanity.

A landlord's first step is to review the terms and conditions of the commercial lease agreement and any related documents to determine whether there are any affirmative actions required by the landlord prior to initiating legal action. Commercial leases often require that a landlord provide written notice of the default and allow the ten-

ant a time-frame to respond/issue payment prior to filing suit.

Once a landlord completes all required actions under the lease agreement, it may bring an eviction action (otherwise known as an "unlawful detainer") to recover possession of the leased premises. Minnesota law requires that the initial hearing be held within 7-14 days after filing the complaint. The tenant is then allowed, but is not required, to formally answer (draft a written response) the complaint. The tenant may raise defenses in the answer and/or at the initial hearing. This includes, but is not limited to: improper service, inadequate notice, inaccurate accounting/amount of rent due and waiver.

The defense of waiver is equally important to the other potential defenses a tenant may have, but is more often misunderstood by the landlord to its detriment. In Minnesota, a tenant is allowed to redeem its tenancy/right to possession by paying the full amount of the rent due and owing. The glitch arises in the form of partial payment after the eviction action has been initiated. Unless the parties have agreed in writing that acceptance of partial payment does *not* waive the landlord's right to evict the tenant for non-payment, a landlord who accepts the tenant's money will lose his right to evict on those grounds.

The case will either be settled at the initial hearing or the referee/judge will schedule a trial. While more uncommon (not to mention time consuming and expensive) a tenant has the right to request a jury trial if it so desires. In Minnesota a trial will be scheduled within seven days after the first appearance unless otherwise agreed to and ordered by the referee/judge. If a landlord wins the trial, a writ of recovery will issue and the tenant will be ordered to vacate the premises.

A landlord may also file an action solely to obtain a money judgment for unpaid rent. Contrary to an eviction action, which is filed in housing court, a collection suit is brought in district court (a corporation is required to be represented by an attorney in district court). The upside to this type of action is that it provides an additional remedy to a landlord beyond regaining possession of the premises through eviction. Likewise, if the tenant fails to answer the complaint within the 20 day deadline, it is possible to move the court for a default judgment against the tenant for the amount claimed in the complaint (and potentially costs and attorneys fees). The downside is that unlike an eviction action, which is an expedited process, the collection action can take a year or more to be tried in district court. Likewise, the tenant may raise not only the aforementioned defenses, but also claim that it was defrauded when entering into the lease, or constructively evicted by the landlord's actions.

Before entering into a commercial lease agreement with a tenant, a landlord should consult with an experienced attorney to best position itself in the event of a tenant's breach. If the tenant does not abide by the terms of the lease by failing to pay rent or otherwise, a landlord must act carefully to preserve its rights. There are specific rules and procedures that must be followed in order to maintain a cause of action.

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