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ARTICLES & INSIGHTS

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Byron Saintsing leads a practice group focused on matters involving [construction law](#), commercial and business litigation, representation of [equipment lessors](#), charter schools, and education law, and commercial creditor bankruptcy. Byron has written and lectured on many topics pertaining to construction and equipment leasing, including editing materials on North Carolina's adoption of Article 2A of the Uniform Commercial Code.



Joe Davies is a member of the firm's construction law group and has an extensive background in lien filings and construction litigation. He represents construction companies and small business owners in lease negotiations and complex litigation matters. His clients include general contractors and subcontractors, as well as property managers, landlords, commercial tenants, equipment rental companies, and building material suppliers.

Creditors See NC Appeals Court Ruling as Possible Game-Changer

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As too many plaintiffs know, getting a judgment is often only the *beginning* of the process. It can sometimes take longer and require far more effort to collect on the judgment than it does to get a judge to enter it. Often, after exhausting the usual methods of executing on a judgment, the plaintiff (judgment creditor) learns of property to which the defendant (judgment debtor) has a claim that could be used to pay at least part of the judgment if only the defendant would take some action to get it.

In a recent case, the North Carolina Court of Appeals examined this type of situation and provided clarity on a powerful tool that judgment creditors can use when faced with a debtor that refuses to take any action. In [Haarhuis v. Cheek](#), the plaintiff obtained a \$4.5 million judgment against the defendant. Not surprisingly, the plaintiff's attempt to collect the judgment by having the sheriff serve a writ of execution was unsuccessful. However, the plaintiff did not stop there. The plaintiff knew the defendant might have legal claims of her own against her insurance company for failing to settle the lawsuit at an early stage, and against her former law firm. However, because the statute of limitations on those claims was running, the plaintiff argued the defendant was wasting valuable time and the delay could harm the plaintiff because those claims were the only apparent means of the defendant even partially satisfying the judgment. So, the plaintiff asked the court to appoint a receiver, an individual directed by the court to manage a particular aspect of a person or company's affairs. In this case, the plaintiff asked the court to appoint a receiver to determine whether the defendant actually had claims against her insurance company and the law firm and, if so, decide how to pursue them.

The insurance company and the law firm both objected, and the defendant also opposed the appointment of the receiver. The trial court considered the objections and decided not to appoint a receiver. The plaintiff appealed. In deciding the appeal, the Court of Appeals made two key decisions and clarified a few additional details regarding the appointment of a receiver in these situations.

The first major decision was that the trial court should not have considered the objections of the insurance company nor the law firm. The court determined that they had no standing to oppose the appointment of a receiver – the issue was solely between

the plaintiff and the defendant. In fact, the court specifically noted that the insurance company's and the law firm's interests were in direct conflict with the defendant's interest. Because the only result would be the receiver evaluating what action to take on claims the defendant already had, the appointment would not legally harm the insurance company and the law firm.

This ruling is significant – if your judgment-debtor has property being held by others, or has claims to such property, this case says that the debtors of your judgment-debtor have no basis to object to a court appointing a receiver to evaluate the possibility of taking action to recover that property to satisfy your judgment. So, for example, if you are aware of a bank holding deposits of your judgment-debtor, under this ruling the bank would not be heard to complain if the judgment-creditor sought an order from the court attempting to freeze the funds in the judgment-debtor's bank account.

The next critical decision was that the trial judge should have appointed a receiver in this case. This is notable because the appointment of a receiver is generally within the trial judge's discretion. When reviewing those types of decisions, the Court of Appeals will usually only reverse the trial court if there is an "abuse of discretion," which is typically a very high bar. However, the Court determined that because the appointment of a receiver turns on the equities of a given case, the decision not to do so is fully reviewable and that, in this case, the decision not to appoint a receiver was incorrect.

The court held that if a plaintiff has exhausted judgment collection efforts through execution, then, in most cases, the plaintiff is "entitled to have a receiver appointed almost as of course." The only situation where that general rule would not apply is if the court found some compelling reason that control over the potential claims should remain solely with the defendant. The court found no such reason in this case.

The court also pointed out that a receiver can be appointed to recover property that might otherwise be exempt from execution. The Court noted that the statute authorizing the appointment of a receiver states explicitly that property can be subject to a receiver "whether subject or not to be sold under execution" and that previous case law indicates that the "supplemental receivership proceeding operates to allow an otherwise helpless judgment-creditor to reach the judgment-debtor's property that cannot be successfully reached by the ordinary process of execution." Finally, the court noted that the party seeking a receiver only needs to show that the defendant has an "apparent right" to the property, not that the defendant will necessarily prevail in a claim for that property. Once that showing is made, it becomes the obligation of the receiver to determine whether that apparent right to the property is worth pursuing further.

In effect, this case provides an argument outline for judgment-creditors who have judgments that remain unsatisfied after the usual execution process, but who are also aware that the debtor has a legal claim to some other property. The debtors of your judgment-debtor have no basis for opposing the appointment of a receiver, you only need to show that your judgment-debtor has an apparent interest in the property (which does not even need to be subject to execution in the normal course), and, in most cases, you should be entitled to the appointment of a receiver "almost as of course."

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