

NEW YORK CITY CIVIL COURT

Credit Problems

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[START TAPE]

MR. ALEXANDER LEVINE: Hi, I'm Alexander Levine, as Fay just told you. A few things I guess you should know since the topic is Credit Problems, a few key areas a lawyer should know about, federal laws which govern heavily this area, especially if you're in a situation where you have credit problems.

For one, there would be the Fair Debt Collection Act. That's a very important Act which governs the behavior of creditors in relation to how they can collect a debt from a debtor. For instance, that's the body of law that says the time frame in which a creditor could contact you. Creditors are allowed to send letters, call you, however, it's got to be between what the law says is between 9:00 a.m. and 8:00 p.m. After that they cannot contact you. Also, for instance, if you send them a letter saying stop

contacting me, they must abide by that.

Also, another situation is they must, within five days of their first contact of you, must provide you with information pertaining to the creditor of the debt, how much is owed, how you can dispute it. Also, the first time that you tell them that you're disputing all or part of the debt, they also then at that point must stop contacting you. That doesn't mean that later on they can't pursue legal action against you, but again, if you're getting harassed or you're in a situation where you know someone who's constantly with the phone calls, the letters, those are things by which you can make it stop. Obviously, if you're represented by counsel they cannot contact you at all. Nothing. No letters, phone calls, absolutely nothing.

Be aware in that situation also. A lot of times if you're in that situation

where you're being contacted by creditors it's usually not the original creditor that you owe the debt to. It's some crazy collection agency that's coming after you. These are people who either bought this credit that - this debt, actually, from the original creditor or it was assigned to them. Basically, a lot of times when people write it off they assign it and let these credit agencies, usually from Nebraska, South Dakota, somewhere, of course, nowhere near you, are now calling you up with an accent, saying you all owe money to us. Give it to us. And their whole theory is to threaten you. This is how they get their money, is to scare you and intimidate you.

First thing I would do at that point is contact the original creditor of the debt. If you get in contact with or harassed by a credit collection agency, contact the original creditor. You'll

find out, for instance, things you want to find out, when was the last time this credit card was used? It may not be you, of course. With identity theft, this may be something that's so old you don't even know if it's you. It may not be you. But we want to find out from the original creditor. The original creditor will be nicer to you than, of course, the credit collection agency will be.

You have to remember, with the credit collection agency, all they're looking to do is scare you and get money from you. They don't want to hear any stories. They're not going to withdraw their actions. This is how they make money.

However, it's more than likely you will find out that this debt that they're looking to collect is probably beyond the statute of limitations in New York. It happens a lot, but people don't

know about the statute of limitations, which is six years in New York. You can't collect on a debt after six years of the last time that credit card was used. So when you contact the original creditor you'll probably find out this card was last used in, you know, February 1999, yet this credit collection agency is still coming after you. Well, they can harass you and try to intimidate you about it. However, it doesn't mean you have any legal obligation to pay it. So again, a lot of people get so scared because of these phone calls. I don't know why. If you don't like it, hang up. Not a big deal. So again, this Fair Debt Collection Act and the way you should handle and protect yourself, don't get scared by the phone calls. That's my first step. And yes, be aware of that statute of limitations.

Also, again, bear in mind you

don't have to pay the whole thing. You can work out agreements with them where they'll take far less than 100% on the dollar. Usually right off the bat they'll start offering you 50%. You can even get it down to about 30%, so again, as long as you get away from this intimidation and you're not afraid and you realize what's going on, that's probably your best bet in dealing with a credit problem.

Another thing is something called a - the body of law that governs who can see your credit report. So it's the Fair Credit Report Act. Basically, again, there's only limited circumstances people can see your credit report. It's a very private thing. Obviously, if you apply for credit they can see it. If you're looking to rent an apartment they can see it. But, of course, no one else can. People can't just for fun say hey, I want to see what my neighbor's credit report's

like. They can't go into that. So again, there's a body of law that governs that.

There's something called the Truth In Lending Act you should be aware of. If you ever bought a home or anything like that, it's probably the scariest document you'll see at the closing. That's the part where it says, well, you're borrowing money today, but in 30 years from now, this is how much you're going to wind up paying us back. So you wind up borrowing today, you know, \$200,000.00. By the end of the 30 years you're paying back a million. So again, Truth In Lending, why are they giving you this document? Because the law requires them. You have to know whenever you're taking out - whenever you have a contractual obligation to pay back money over time, the creditor must give you a document called the Truth In Lending Act. It's Truth In Lending Statement, actually,

which will tell you how much you're taking today and how much, at the end of the Agreement, how much you're paying back.

Another thing, of course, that's concern for people with credit problems is, what do I do if my credit is bad? Bear in mind, the worst thing you can have on your credit report is a Judgment. If you've been sued and there's a Judgment against you, that's the worst thing you could have on your credit report. That, a Judgment, will stay on your credit report for seven years. The why it's so bad is obviously; if someone sues you and has a Judgment against you, that means now, with the Judgment, they have the power to freeze your bank accounts, garnish your salary. Therefore, if you go to apply for credit from someone else, they're going to run your credit report and they're going to see the Judgment. They're going to realize, well, there's some other creditor

out there that's going to freeze your bank accounts and garnish your salary. Why am I going to lend you money when some other creditor is probably freezing your bank account and how are you going to pay me back? Judgment would be the worst.

But other things you can have, late payments, things like that. You should at least, once a year - some people are a little more diligent - twice a year - get your credit report. If you ever applied for credit and it gets denied, you have 60 days in which, based on that denial, to get a free credit report. You should take advantage of that. If, when you see your credit report, there's things that are inaccurate on there or things that you don't know that probably believe it doesn't pertain to you, now, with the computer, things are a lot easier. You can just go online. There are three credit reporting agencies that govern all

of the United States. There's TransUnion, there's Experian, and there's Equifax. Experian used to be TRW. Everybody usually refers to TRW, but it's Experian now. There's only three. That's it. You should check your credit report with all three. More than likely they won't be the same because, what happens is, all credit is reported to one or all three. Some may only report to one. So if you only pull one of your credit reports, you may not know what's going on with the others.

Now, if you go online it's so much easier. You can contact each one individually. It runs about \$8.00 you pay. Again, there's opportunities you can get it for free. There's also a lot of other agencies that will get you a consolidated report. They're not one of the three major credit reporting agencies, however, they run a service by which they will contact all three, get you a

consolidated report and give it to you.

That's not bad at all, either.

Once you see it, you can dispute anything on there that you want to. What happens is, you can fill out a form right online, email it. The credit reporting agency now has approximately 30 days to investigate your dispute, the debt that you're disputing. What they do, really, is, they just contact the original creditor, try and verify if this is true or not, if this is really you, if the amount is correct, and then within 30 days they must give you a reply. If they find out that you're correct, this stuff does not belong on there, they take it right out.

But that's why it's good to always keep track of your credit report because especially if some of you maybe have filed bankruptcy or, if not, you want to make sure the credit report is

reflecting what's going on, especially if you've filed a bankruptcy because if you've filed a bankruptcy you've wiped out all these debts. You want to make sure that that's what it's saying on your credit report.

There's also things called inquiries you also want to get off. Inquiries are every time you apply for credit or a job or anything like that, every time someone even looks at your credit report, that gets marked onto your credit report. And of course, if potential creditors see that there's a lot of inquiries, their impression is you're just running around all over the place looking for credit. That scares them a little bit. Inquiries are the easiest to get off, so again, dispute the inquiries.

You also are allowed by law to place a statement onto your credit report, your own personal statement. For

instance, you may have been in a situation where you have a bad credit report due to the fact that your temporary loss of job. Or, you know, there was a fire in your house or some emergency, whatever, that threw you off and now, you know, at that point in time of the emergency you fell back on your bills, but now you're back on your feet. You are allowed to place a statement onto your credit report so everybody can see why you have problems at that moment in time. So again, that's something also you should take advantage of.

Another key area, obviously, to warn you about is, if you're in that scary situation where you find out for the first time that someone has sued you, got a Judgment against you, and that first time when you find out obviously is when you get that letter from the bank, who tells you, hi, Mr. And Mrs. Jane Doe, your bank

account has been frozen. And you're like, why? What happened? You contact the bank, they'll say well, there was a Judgment against you. Your credit has now frozen your bank. You've never seen a lawsuit. You've never been contacted. You don't know what's going on. Best bet at that point, be aware. Just because someone gets a judgment against you, if you didn't know about it, it means they got a default Judgment against you.

You can vacate default Judgments. Thank God in our system of American jurisprudence we believe that everybody deserves their day in court. Well, you were deprived of your day in court. What usually happens here is because people are suing on old credit, people change a lot. So they're only going to try and serve you at maybe an old address, and that's what they do. They send a process server off. They probably nail it on the door or they

send it there but, of course, you'll never get it. So what happens is, because they get no answer to their summons and complaint, their lawsuit, they now are entitled to move for default and that's what they do. They just file a set of papers, Motion for Default, they get it, and now based on that Judgment it's as good as any other Judgment. They now can freeze your bank accounts, garnish your salary, and that's of course, when you find out.

What you should do is, you go to the court in the county - it's probably going to be within the county where you at least reside in. Like for instance, Queens, right here. You would go to the County Clerk's Office. Usually you'll get an index number from the bank as to this lawsuit. Pull the file. What you want to do then is file and serve an Order to Show Cause. That's what it's called. It a

motion, really. But it's an Order to Show Cause to Vacate the Default Judgment.

What happens there, however - - now you have to remember. Say for instance you've been sued for \$5,000.00. They've locked up your bank account.

If you contact the lawyer for the creditor immediately they're not going to be in a position to want to deal with you. They got a Judgment. So if you call them up and say yes, you've got me. I didn't know about this lawsuit, but I want to pay. They're going to want the whole thing. They're not going to entertain, oh, I just want to pay half at this point in time. Or put me on a payment plan. If they're going to put you on a payment plan they're going to want the whole thing. That's why it's to your advantage to do the Order to Show Cause.

Go there, move to vacate that default Judgment because one of two things

is going to happen. Now you're making the lawyer work for the first time, so he's got to come to court. Usually at that point they realize that the Judge is going to be inclined to vacate the default because you haven't had your day in court to fight this. So what they'll do at the courthouse is one of two things. Either they'll try and fight you and the Default Judgment will be vacated. But then if it gets vacated, now you have your opportunity to fight them in court. They really don't want that. They just want the money. So at that point, at the courthouse is where they'll work out a payment plan with you and now they'll take less than 100%.

So again, that's why it's to your advantage to fight back. If you don't do the Order to Show Cause, they're not going to be inclined to want to help you out or take less because they've got the

Judgment. What are they going to take less for? They'll just keep garnishing your salary, make sure you won't have a bank account. They're not inclined to take - and if they do take a payment plan, it's going to usually be for the whole amount. Because they're going to say, well, if you're willing to pay me \$100.00 a month for two years, why don't you just pay me \$100.00 a month for five years and pay off the whole thing? But if you do the Order to Show Cause you now put more power in your plate and you can force them to settle for less than 100%. So again, be aware of the Order to Show Cause.

If you can't afford an attorney, and probably most people in that situation can't, the courthouses at this point make it very easy. In fact, if you go online, everything I told you - the courts usually give you instructions. In fact, some courts are so nice they have a window that

says Order to Show Cause, so you can just go to that window and there's forms you fill out and how to serve them and things like that. So that, bear in mind, probably is where people get most fear, is the first time you find out there was a lawsuit and a judgment against you is when your bank account has been frozen.

Also another thing I want to alert you to and this may be funny or not, but there is something called credit card insurance. Believe it or not you can purchase insurance to back up payment of credit card debts. I don't know. I mean, I find it funny because if you have the money to pay premiums on credit card insurance, you could probably just pay your credit cards. I don't know how much the insurance policies are. You would just check with your insurance carrier. I just want you to be aware.

For instance, people will

purchase what's called credit card life insurance. What that is, is that any balance on your credit card statement would then be paid from this policy instead of the credit cards going after your estate. So it's a way of protecting your estate upon your death.

Another purchase, another type of policy is a situation where you can purchase a credit card policy simply for, let's say, accidents or temporary moments of employment. What happens is at that point if you're in an accident where you can't work or you're unemployed for some reason, then the policy kicks in to pay off your credit card balances during that time period that you're unemployed or sick, things of that nature.

So again, just to alert you to the fact that there are ways to maybe, you know, you bear this in mind in the future to protect yourself from credit cards. I

mean, the best way to protect yourself, obviously, down the line is don't spend more than you make, but a lot of times emergencies come in. This is something that you should be aware of, that there really is credit card insurance out there to protect you.

Bear in mind, I mean, again, I don't know how much the policy would be, but if you're - you have to know your own situation. If you realize that you're someone who likes to - who lives off the credit cards or anything it's probably worthwhile having it, or if you're planning on having an estate for your children, again that credit card life insurance is probably the best bet because you know that if you die the credit card debts, they still live on and they come after you.

Another thing just to alert you towards - we're coming towards the end in

a few minutes - bankruptcy. There is the ultimate answer, okay? The new laws have changed, but again, don't be intimidated by the new laws. Bankruptcy does wipe out credit card debts. There are still ways to qualify. Even though there's a new law there are many people who qualify. Especially if you're making under about \$40,000.00 a year, you can qualify for bankruptcy. That's a Chapter Seven in bankruptcy.

So again, that's something also you should keep in mind. Bear in mind a lot of people might steer you towards these credit counseling services where they try and consolidate your debts and payments. Personally, in my experience I have not found that that's been that helpful. Usually if you're at that point, Chapter Seven and bankruptcy is probably your best bet if you qualify. Again, the new laws have changed. They've been in

effect for about a year and a half almost at this point. The propaganda you're probably hearing on the media and what you're going to hear from the creditors is that you're never going to qualify, Chapter Seven has been eliminated, if you do a bankruptcy it will be on your credit report forever, no one will touch you. It's all lies. That aspect of that propaganda is all lies.

Number one, yes, while it's true that a bankruptcy will be on your credit for 10 years, you have to remember that if you file bankruptcy, the whole point of it is to give people a fresh financial start, and that's exactly what it does because in a Chapter Seven you will wipe out all your unsecured debt. All your unsecured debt is obviously the credit card problems, medical bills, all of that stuff that gets people in trouble. Utility bills, phone bills, anything.

Once that's all wiped out in a Chapter Seven, you don't owe a penny to anybody. So at this point once you come out of a bankruptcy, you are now the best person to lend money to. Number one, you can't do a Chapter - you can do a Chapter Seven every eight years. So the creditors know immediately you can't do this for another eight years, they got you.

Also, you don't owe anybody anything, so there's no other creditors that are threatening you to garnish your salary, seize your bank accounts. You're the best person to lend money to. People that go into bankruptcy will usually find out that they'll get credit cards, they'll get car loans, they'll get everything almost immediately. I've seen that from my own clients.

The only thing you'll have to wait for, bear in mind is, you'll probably have to wait approximately two years to

get a mortgage on a house. Banks usually disregard bankruptcies in giving out mortgages. So again, bankruptcy is actually a very helpful device. That is your ultimate nuclear bomb in dealing with credit cards.

Also, if you've been sued and there's a Judgment, bankruptcy automatically blows up the Judgment. It's gone. That means immediately upon filing the bankruptcy, all activities of creditors must completely stop. If they've frozen your bank account they must unfreeze it immediately. If they're garnishing your salary that must stop immediately. It's something called Section 362 of the Automatic Stay. It's the bankruptcy law, which forbids creditors from engaging in any collection act upon the debtor.

That's upon the filing of the bankruptcy. Whatever happens later is

irrelevant. Once the person files a bankruptcy, all action by a creditor must stop. If it doesn't, the debtor has the right to sue the creditor in Bankruptcy Court for violation of that Section 362. So bankruptcy plays a very powerful role. It's the power of the federal government now coming behind the debtor, protecting the debtor, and the whole purpose of it is to give the person a fresh financial start.

So again, do not think about, however, engaging in a Chapter Seven bankruptcy without an attorney. With the new laws now in effect you will need counseling in this. The paperwork - even if you don't add one word, the paperwork blank is approximately 30 pages long. Also, with all the odd new laws that they've attached, the new rules, it's very hard to navigate without an attorney.

For instance, now you're required

to have credit counseling service within 180 days before you can file. That's something new. You have to submit your tax returns and things like that. So again, you have options. There are things to deal with, with a credit report, of any credit problems to fix it up, bankruptcy, how to deal with credit collection agencies, and I thank you very much.

[END OF TAPE]