

# KREKELER LAW REPORT



OCTOBER 2019

VOL. 5 NO. 10

## CAN I NEGOTIATE?

I often get asked this question by my clients. The answer to the question, of course, is “yes.”

But the meaning of the question is not really whether we CAN negotiate...it is whether we can get some concession or compromise.

Anyone can negotiate. Negotiating is simply asking the other side for what you want and offering reasons why the other side should do so. With a few exceptions, like labor contracts, you cannot force anyone to negotiate with you. You cannot force someone to accept a compromise or settlement.

Good negotiating starts with goals. The negotiator must always keep in mind the end result sought.

Good negotiating also requires thinking about the other side’s goals. It is far easier to fashion a compromise if both sides understand what the other is seeking.

How we demonstrate to the other side that our offer should be accepted varies greatly with the facts, the timing, and the law. Over the years I have created my settlement checklist. It is a list of twenty or so factors that

I want to consider as I prepare a settlement proposal. Not all of the factors will ever be used in any one proposal or negotiation. Which factors to incorporate varies with the situation.

By utilizing the checklist, I at least make sure I have considered all of the possibilities. At least all the possibilities that I have identified and incorporated into my checklist over the years.

Do you have ideas on what should be included in preparing to negotiate? Do you have a negotiating checklist? If so, perhaps we should compare notes.



### Find Us on Social Media!



Follow the **Krekeler Strother, S.C.** page for blog and newsletter updates, tips, and firm happenings.



Follow **@jdkrek** on Twitter for firm thoughts and updates.



Positive Experience? Search for **Krekeler Strother, S.C.** and leave us a review!

Comments? Contact Wendy at (608) 310-3405 or email [wbaker@ks-lawfirm.com](mailto:wbaker@ks-lawfirm.com).

### In This Issue

- *Can I Negotiate?*
- *Wells Fargo Temporary Freeze of Account Upheld*
- *How to Buy or Refinance Your Home Without Paying Off Judgment Liens*
- *Quicken Loans Commercial*
- *Forever 21 Files Chapter 11*
- *Use Those Gift Cards!*
- *Another Bankruptcy Filed to Avoid Litigation*
- *Where's Krekeler?*
- *Unreal Legal: Here Comes the Judge*

# WELLS FARGO TEMPORARY FREEZE OF ACCOUNT UPHELD

24 years ago the U.S. Supreme Court held that an administrative freeze on an account does not violate the automatic stay imposed by a bankruptcy filing. In *Citizens Bank of Maryland v. Strumpf* (1995), the Court found that a temporary administrative freeze did not constitute taking property from the debtor. The bank was allowed to freeze the funds long enough to seek bankruptcy court relief from the stay for purposes of asserting a right of setoff.

For the past couple of years, Wells Fargo Bank has been freezing debtor's bank accounts in Chapter 7 cases. A recent case from New York upheld this practice. The Court found that Wells Fargo did not violate the automatic stay by imposing a temporary freeze, pending instructions from the bankruptcy trustee as to where the funds should be sent.

This decision from a District Court in New York is not binding in Wisconsin but may be of a persuasive authority. We generally recommend to our clients that they remove their money from any Wells Fargo account before filing bankruptcy.

## QUICKEN LOANS COMMERCIAL

Have you heard the Quicken Loans commercial urging you to take out a 30-year mortgage to pay off your credit cards? Before you act on that suggestion, let's take a deeper dive into the facts.

Jay Farner tells us in the commercial that Americans each have \$8,000 of credit card debt, so let's assume a married couple has \$16,000 in credit card debt. Quicken Loans wants us to take out a 30-year mortgage at its current rate of 4.125%. This would almost certainly save you money, as opposed to paying toward credit card debt for 30 years. But how much will you really pay?

Over the life of that Quicken loan you will pay more than \$75,000 in interest. There are also some up-front charges to get the mortgage loan.

Perhaps I should be doing a commercial urging people to file a bankruptcy instead. If all you have is \$16,000 in credit card debt, the bankruptcy will likely cost you about \$1,500 for attorney fees and about \$340 for the filing fee.

That is a lot less than a Quicken loan.

## HOW TO BUY OR REFINANCE YOUR HOME WITHOUT PAYING OFF JUDGMENT LIENS

A client called, asking if we could negotiate on his behalf for the removal of judgment liens on his home. He was refinancing and two judgments appeared on the title commitment. Naturally, the client wanted to pay as little as possible to those judgment creditors.

Once I ascertained that his total equity in the home, determined by the home's value less the mortgage balance, was less than his \$75,000 homestead exemption, I told the client he would likely not have to pay anything to have the judgment liens removed so he could complete his refinance.

Under Wisconsin law a homeowner can protect up to \$75,000 of homestead equity from the liens of judgment creditors. Even so, a docketed judgment is a lien on all real property of the judgment debtor in any county where the judgment is docketed.

The Wisconsin Supreme Court dealt with homesteads and judgment liens very early on. In 1854 the court held that a judgment creditor could not sell the homestead to get paid, but that the judgment lien could be enforced if the debtor conveyed the home or ceased to occupy it. In a case entitled *Hoyt v. Howe*, the court stated that the legislature could give debtors the power to sell their homestead free from the effect of a judgment lien.

A few years later, in response to the Hoyt decision, the Wisconsin legislature revised the homestead statute to provide that a judgment did not become a lien on the home and "that the homestead shall be exempt from the lien of every judgment."

While the homestead statute has changed over the years, to increase the amount of the homestead exemption, the legislature has never changed the language making the home exempt from the liens of judgments.

Accordingly, a judgment lien is not a lien on homestead property if the debtor's equity is less than the amount of the homestead exemption. That amount is presently \$75,000.

The first step to determine whether a judgment lien attaches to the home is to calculate if the debtor has equity in the home over and above the amount of the exemption. If the home is being sold in an arms-length transaction, the sale price should be a fair measure of its value. In a refinance, an appraisal should serve the same function.

## HOW TO BUY OR REFINANCE

Cont'd from P. 2

From that value we deduct the expenses of sale, the lien amounts of mortgages, tax liens, unpaid real estate taxes, and the homestead exemption. If the remaining sum is less than the homestead exemption, the judgment lien does not attach.

The next step is to notify the judgment lien holder and provide these calculations to that person. A release is demanded pursuant to the statute. If the judgment creditor does not provide the release, we have grounds to proceed with a lawsuit against the judgment creditor for declaratory relief. In that event, the judgment creditor will be "charged for all expenses in the court proceedings."

Unfortunately, this process can be lengthy and cumbersome. As a result, most title companies will insure over the judgment lien. This means the buyer of the home, or the lender, will receive a title insurance policy stating that the judgment lien is not a cloud on title. If that judgment lien were ever to become a problem, the insurance company would take care of it.

## FOREVER 21 FILES CHAPTER 11

Forever 21 has filed Chapter 11. The fashion for teen shoppers retailer's sales were down 20-25%.

The company has already announced closings of nearly 180 stores by the end of this year, including the store here in Madison.

Forever 21 is another in the list of retailers who have filed bankruptcy this year. Budget retailers Payless ShoeSource, Gymboree, and Charlotte Russe have led the way.

Look for Black Friday and year-end bargains.

## USE THOSE GIFT CARDS

Even though Forever 21 stores remain open and online, and even though the company has issued press releases that customers will not see any changes and that gift cards will continue to be accepted, your best bet is to redeem those cards as soon as possible.

Toys-R-Us gift cards expired in April 2018, leaving many customers unable to redeem them. Borders closed in 2011, with more than \$17 million of gift cards outstanding. Gift card customers fought in the bankruptcy case to be able to redeem the cards, but lost.

**Be safe, and use those cards now.**

## ANOTHER BANKRUPTCY FILED TO AVOID LITIGATION

Purdue Pharma, the maker of OxyContin, has filed bankruptcy. The company has been spending millions of dollars in legal fees, defending lawsuits from about 2,600 government and other entities. Attorneys involved in the case have commented that Purdue could not afford to pay the amounts sought in the lawsuits.

Bankruptcy instead provides a non-litigation forum and process to distribute funds to injured parties. The chairman of Purdue's board of directors stated that "this settlement framework avoids wasting hundreds of millions of dollars and years on protracted litigation, and instead will provide billions of dollars in critical resources to communities across the country."

Purdue is not alone in utilizing this bankruptcy strategy. Other organizations facing massive lawsuit claims have sought bankruptcy protection. They include:

- Asbestos companies some thirty years ago
- Catholic Dioceses, including Milwaukee
- USA Gymnastics in 2018 to avoid sexual abuse trials
- Pacific Gas & Electric Corp. earlier this year, as a result of lawsuits resulting from the California wildfires

It is not just large corporations and entities that utilize this strategy, either. We have filed a number of bankruptcies for small firms and even individuals who potentially faced devastating claims, whether the result of an accident, poor business deal, or even a dispute with a partner or spouse.

Sometimes the cost of litigation alone justifies a bankruptcy filing, even if the debtor believes that he or she could win the lawsuit.



# WHERE'S KREKELER?

David Krekeler gave a presentation October 17<sup>th</sup> on bankruptcy at the State Bar seminar, **Understanding Low Income Client Consumer Issues**. The presentation will be replayed by webcast on October 30<sup>th</sup> and November 5<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup> and 25<sup>th</sup>. Co-produced with the Public Interest Law Section of the State Bar of Wisconsin, this 3-hour seminar is designed to give lawyers an overview of bankruptcy law.



*The photo shows David and some of the attendees with their fidget spinners (there are always prizes to be had!).*

## **Abby Haberkorn**

### **Rejoins Krekeler Strother**

Paralegal Abby Haberkorn has returned to Krekeler Strother after working closer to home for the past two years in order to be nearer to her two young sons. A paralegal for sixteen years, Abby is again an important member of our bankruptcy team. She and her family live in Waterloo enjoying family sporting events. She's glad to be back at Krekeler Strother and enjoys the flexibility the firm offers.



### **Attorney Andrew Maruggi Joins Krekeler Strother**



After 8 years of practicing on his own, Attorney Andrew Maruggi has joined our team. Andy brings to the table years of expertise in Debt Elimination, Lawsuit Defense, and Foreclosure Defense.

When not working, Andy spends the vast majority of his time with his family and hiking with their dogs, Vincenzo and Jaymes. He also enjoys playing chess and cribbage, as well as attending concerts, especially Bon Jovi and the slightly lesser-known, but incredibly talented, "5 Card Studs," a great band from Milwaukee.



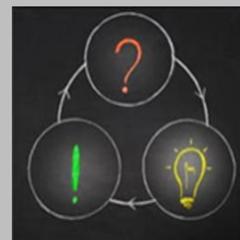
## **HERE COMES THE JUDGE !**

Two handcuffed prisoners in a Washington State courtroom were being escorted from the court. They made a run for it through a public door and down a stairwell.

Judge R.W. Buzzard threw off his robe and began to chase. As one of the prisoners was about to open an emergency exit door on the ground floor of the courthouse, the judge grabbed him and restrained him. Both prisoners now face a further charge of second-degree escape.

The courtroom and stairway security cameras caught the action. You can see it on YouTube here: [Judge R.W. Buzzard Pursues Inmates During Attempted Escape](#).

Another example of the long arm of the law.



Have a question? Idea for a future article?

If you ask for it – we will write it!

E-mail [Charlotte Babbitt](mailto:Charlotte.Babbitt@ks-lawfirm.com) at  
[cbabbitt@ks-lawfirm.com](mailto:cbabbitt@ks-lawfirm.com)

## **KREKELER STROTHER, S.C.**

ATTORNEYS AT LAW

2901 W. Beltline Highway, Suite 301  
Madison, WI 53713

**We Help Quickly.**

Phone: 608/258-8555  
Fax: 608/258-8299  
[www.ks-lawfirm.com](http://www.ks-lawfirm.com)

WE SOLVE FINANCIAL PROBLEMS.  
This is an advertisement for legal services. We have been designated by Congress as a debt relief agency and can help people file for relief under the Bankruptcy Code.

WE HELP QUICKLY.

Copyright © 2016 KREKELER LAW, All rights reserved.