



DOUMAR LAW GROUP NEWSLETTER

A Periodic Publication Covering Legal Issues of General Interest

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Check and Make UCC Filings

In asset sales the seller almost always has to warrant the absence of certain prior debts and liens as to the assets sold. Always check liens (UCC's) filed against the seller's assets. But always remember to make such filings. We have a client who recently purchased assets of a business. It turned out the business owed some debts, that were allegedly secured by inventory, but no creditor had made UCC filings against the business to secure payment. Thus, the debts were in fact not secured.

Don't Ever Write Postdated Checks

We have run into people who still write checks without sufficient funds in their accounts, on the assumption that the check will be held. Don't do that. The payee can deposit the check, and trigger various civil penalties.

Even State Courts Can Dismiss Cases at an Early Stage

Our experience shows that Virginia Circuit Courts are increasingly willing to grant demurrers to dismiss claims that are weak at an early stage, rather than letting such claims grind through discovery. Although state courts traditionally were reluctant to

dismiss a case on demurrer, we recently persuaded a state court to dismiss a voluntary conveyance claim under Va. Code 55-81 when the claim did not fit the purpose of the statute, though plaintiff tried to track the statute in its pleadings. Ultimately our client would have prevailed anyway, and the court decided to cut this claim off at an early stage, which will save thousands of dollars of unnecessary costs.

Use Non-Solicitation Clauses

Non-compete clauses are difficult to enforce in Virginia, but non-solicitation clauses, preventing an ex-employee from soliciting or accepting business from a customer, are routinely enforced and accomplish a lot of the same goals. So use a non-solicitation clause, and if you have a non-competition clause in employment and consulting agreements, make sure it is separated from the non-solicitation clause, so that if a court "strikes" the non-competition provision, the non-solicitation clause will be saved.

New Associate. James Harpold, an Arlington native licensed in Virginia, has joined the firm as an associate. James graduated from law school at the University of Oregon, and benefited from a wide variety of legal experiences at a big firm and at a government agency during and prior to law school.