

Be Careful Who You Call a Deadbeat

By: Randall K. Lindley

THE DILEMMA - it boils down to this: you know that your debtor (who, by the way, you inherited from the prior Credit Manager), does not pay his debts and, to be blunt, is borderline pond scum. So, who do you tell? You want to publish your debtor's name and the word DEADBEAT in 3 inch headlines on the front page of the newspaper. In contemplating this very act, you open the dictionary and turn to the word, "deadbeat." The definition is "one who fails to pay his debts." Should you share your insight (i.e., "this loser is a deadbeat") with others at the NACM or with other colleagues through social or business networking sites?

THE LEGAL QUESTION - does this make you the target of a slander or libel claim? After all, "truth" is a defense to slander and libel, isn't it? So why would it be a problem to call a debtor a "deadbeat?" Simply stated, the phrase that comes to mind is, "discretion is the better part of valor." While you have personal knowledge that the debtor did not pay a debt to you, you simply do not know the circumstances related to other debts he may, or may not, owe. So you don't know that he fails to pay all of his debts, just yours. Legally speaking, you do not want to create a defense (or claim) that the debtor can use as an excuse to not pay the underlying debt: calling him a deadbeat when you don't know that he fits the definition. To do so, may give the debtor leverage.

Indeed, debt collection can be a frustrating task and it is understandable to be aggravated with those individuals that consistently avoid their fiscal commitments. Still, debtors have certain rights that protect them from what the courts consider overzealous collection activities. It is important to understand the potential legal ramifications behind calling debtors "deadbeats," "criminals," or other such words. Aggressive creditors are occasionally sued for slander, libel,

invasion of privacy, and even intentional infliction of emotional distress. Lawsuits of this type are frequently filed when collectors publicly use derogatory words or phrases to refer to the debtor or divulge personal details of the debtor's life. Courts have held that this conduct can rise to the level of being "outrageous" and "extreme" or amount to "unlawful intimidation," even though these titles and facts are simply honest and true. The Court in *Montemayor v. Ortiz*, 208 S.W.3d 627, 656 (Tex. App.—Corpus Christi 2006), found that attempting to collect a debt "by forwarding letters reviling debtor as a deadbeat, dishonest, a criminal, and threatening lightning strikes, suits (that are never filed), garnishment of wages, disruption at his job until he is discharged, as well as physical threats" were all examples of extreme and outrageous conduct by a creditor.

There are two types of defamation claims. Slander is to make "a false and defamatory statement about another." Libel is "to publish in print (including pictures), writing or broadcast through radio, television or film, an untruth about another which will do harm to that person or his/her reputation, by tending to bring the target into ridicule, hatred, scorn or contempt of others." It is one thing to file a disparaging report with credit agencies, yet quite another to publish a disparaging article in a newspaper, on a social networking site, or some other form of public media. As a debt collector you have the right to file a report with credit agencies so long as that report is honest and accurate. However, if you file a report that is not entirely honest or accurate, then the debtor has the right to sue you or your company for libel, slander, or for violating the fair credit reporting laws. Collectors that go above and beyond normal collection means, such as misrepresenting the legal status of the claim and/or seriously invading the debtor's personal life, often find themselves subject to a new and different lawsuit that weakens their overall position.

THE LEGAL ADVICE - avoid publicizing your feelings about debtors. Rather, employ an attorney or a professional collection agency to handle the recovery of the debt. Ultimately, this approach will save you time and money from defending a libel or defamation suit. If all else fails, try a dart board plastered with your debtor's picture on it.

708576_1.DOCX