

Askee: Food Service Supplier

QUESTION: Our business sells or rents equipment to a customer that has not paid for it or paid the monthly rent, then sells the business to someone new. What recourse do we have? Lien? Go Get It?

RESPONSE: I will start with the question about placing a lien on the equipment. If the product or equipment is already in the customer's hands prior to obtaining or requesting a secured position on that product, it is too late. A creditor can request a UCC on the equipment (secured position) after the sale or rental, but there is no advantage to the debtor to provide the seller (creditor) with that after they are already using or have possession of the product.

Can you go get the equipment? Yes you can! This is reclamation or repossession. However, it is important that when you show up at your customer's location, that you "keep the peace." For example, if the customer allows you to go about your business and reclaim your product and take it back, no problem. If they object, ask what you are doing, or prevent you from the taking the product, you should leave immediately. Otherwise, you may be subject to breaking and entering or trespassing.

Not all previous owners sell a business and skip town. A business is sold and new business buys it, which requires dissolution of the old business. Depending upon the terms of the sale of the business, the new owner buying the business as a going concern may have no obligation to pay you for any unpaid invoices for sale of a product or rental of products to the new purchaser. Lastly, if a business is sold in a "bulk sale", the new buyer is only purchasing the assets of the business and assuming none of the liabilities. In this situation, there has to be notice (in Wisconsin) prior to the sale.

What can you do in the future? If the sale of product or equipment is significant or a material amount, you can sell the equipment in conjunction with a UCC filing that gives you a secured position on the product. This is useful for leases, rentals, and large equipment purchases. There are services available to assist creditors in being a secured creditor.

In the case of the former business owner-skipping town, if they owe you money and you file suit against them and pursue these people by using skip tracing etc., there is a chance you could recover your unpaid receivable.