

# ENFORCEMENT OF JUDGMENTS (WITH FORMS)



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**DANIEL E. KELLY** is an associate in the Litigation and Dispute Resolution Department of Robinson Brog Leinwand Genovese & Gluck P.C. His practice primarily focuses on immigration law and commercial litigation, including real property disputes, estates, securities, and corporate matters. Mr. Kelly also has experience with insurance litigation and construction litigation. During his career, his practice has also included general criminal defense in New York and New Jersey, internal investigations, and white collar litigation.

You are retained by a client to collect a debt. You first send a demand letter. It is ignored. You then commence a lawsuit. Whether the lawsuit is contested or ignored, you finally end up on that happy day of having entered a judgment against the debtor.

Now you can sit back and relax because for sure the judgment will be paid, correct? No, in most cases. The work now begins to collect the judgment. Whether you are successful or not depends on who is smarter: you or the debtor. Is the debtor better at hiding his assets than you are at finding and seizing them?

This article explores how to best find and seize the judgment debtor's assets.

## STEP 1

The first step is to discuss with your client what he or she knows about the debtor. Does the client know where the debtor has bank accounts? Does the client know whether the debtor owns real property? Does the client know what other property the debtor has?

### Bank accounts

If your client knows where the debtor maintains bank accounts, you should immediately send a restraining notice to that bank along with an information subpoena. That will tie up the debtor's assets and you'll be able to find out how much the debtor

has in his or her accounts. A copy of that restraining notice must also be sent to the debtor, either simultaneously or a few days after it was sent to the bank. A sample information subpoena with a restraining notice appears as Exhibit A at the end of this article. Follow up with the bank and if there are funds on deposit, send a law officer (sheriff or marshal) to seize the accounts. The fee of the officer is typically five percent of what is collected.

### Real property

If you know where the debtor lives and you know that he or she owns real property, you have a lien on the property if the judgment is entered in the county where the real property is located. If the property is in a different county, then you have to file a transcript of the judgment in the county in which the property is located (see Exhibit B). Once the transcript is filed you have a lien on that real property. You may then look into a foreclosure of such real property. You will have to work with the sheriff to effectuate a foreclosure. If the property is held by the debtor and the debtor's spouse, you cannot foreclose unless the spouse predeceases the debtor.

## STEP 2

Another important step to take is to obtain a SmartLink report as to the debtor to find out what assets

the debtor may have and/or other information that may be helpful. Also, remember most people and businesses bank near where they live or work. A restraining notice should be sent to nearby banks.

### STEP 3

The next step is to send a debtor a restraining notice with what is known as the “mini Miranda” warnings spelled out (see Exhibit C).

#### Supplementary proceedings

You should also send the debtor a subpoena to appear and bring documents for a supplemental examination as to his or her assets. A list of documents you should ask an individual debtor to bring with them is attached as Exhibit D. A list of documents you should ask for from a corporate debtor is attached as Exhibit E. One of the key documents is the debtor’s last three years of tax returns.

#### What is a supplementary proceeding?

A supplementary proceeding is an in-person examination of the debtor as to his or her assets. You should demand that documents be delivered one week before, so you can review them before the examination. At the end, do not close the examination if the debtor has to deliver additional documents. In fact, do not close unless you are satisfied that all your questions are answered.

Additionally, you may want to consider subpoenaing the debtor’s spouse or other partner and their accountant(s). Remember, there is no privilege between the debtor and the accountant, and the accountant may have valuable information as to the debtor’s assets.

### STEP 4

If you know where the debtor works, you may want to issue an income execution through the sheriff or marshal’s office to get a garnishment of the debtor’s wages. Once you have established that the debtor has bank accounts, you should issue a property execution to the marshal or sheriff’s office. They will

have those funds turned over to you toward satisfaction of judgment.

If the debtor fails to appear at a deposition as to his or her assets, your remedy is a motion for contempt. That motion may eventually result in the debtor’s imprisonment. It is rarely granted, but still is a weapon to be used to urge to the debtor to comply.

In the case of a corporation, you may issue a property execution to the sheriff or marshal directing them to arrange for seizure of all of the corporation’s equipment, including office equipment, factory equipment, etc. Also, in the case of a corporation, attempt to find out who the customers are or, if you know who the customers are, you could send the customers a restraining notice as to any accounts receivable and restrain them from paying those funds to the debtor; and you may have them seized by the marshal or sheriff by issuing a property execution. That is often a powerful weapon because seizure of the receivables could bring a company to its knees. You should also consider sending to the debtor’s landlord, whether personal or corporate, a restraining order as to the security deposit (and to the debtor’s mortgage company, if they have a mortgage). It often could be a default event under the terms of the debtor’s lease or mortgage.

### CONCLUSION

Remember—you are trying to apply pressure legally, so that the debtor will pay what is owed to your client. 🍀

## EXHIBIT A

### Information subpoena with restraining notice

[Case caption]

**WHEREAS**, in an action in the Supreme Court of the State of New York, County of New York, Index No. \_\_\_\_\_, between \_\_\_\_\_ as defendants, a judgment was entered on March 30, 2018, in favor of \_\_\_\_\_ as judgment creditor, and against the defendants, as judgment debtors, in the amount of \_\_\_\_\_, of which \_\_\_\_\_ together with post-judgment interest remains due and unpaid.

**NOW THEREFORE WE COMMAND YOU**, that you answer in writing under oath, separately and fully, each question in the questionnaire accompanying this Subpoena, each answer referring to the question to which it responds; and that you return the answers together with the original of the questions within seven (7) days after your receipt of the questions and this Subpoena.

**TAKE NOTICE** that false swearing or failure to comply with this Subpoena is punishable as a contempt of court.

### RESTRAINING NOTICE

**WHEREAS**, it appears that you owe a debt to the judgment debtor(s) or are in possession of property in which the judgment debtor(s) has an interest.

**TAKE NOTICE** that pursuant to subdivision (b) of Section 5222 of the Civil Practice Law and Rules (N.Y. C.P.L.R. § 5222(b)), which is set forth in full herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property or pay over or otherwise dispose of any such debt or property except as therein provided.

**TAKE FURTHER NOTICE** that this Restraining Notice also covers all property in which the judgment debtor(s) has an interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to the judgment debtor(s).

### Section 5222(b) of the Civil Practice Law and Rules

Section 5222(b): Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth

in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

**TAKE FURTHER NOTICE** that disobedience of this Restraining Notice is punishable as a contempt of Court.

[Date and signature block]

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**EXHIBIT B**

**Transcript of judgment**

NO. 00126      <<< FEE >>>      TRANSCRIPT OF JUDGMENT      <<< FEE >>>

JUDGMENT DEBTOR      JUDGMENT CREDITOR      ATTORNEY FOR JUDGMENT CREDITOR

SURNAME      GIVEN NAME      PROFESSION | LAST KNOWN ADDRESS      NAME AND ADDRESS      NAME AND ADDRESS

JUDGMENT DOCKETED	JUDGMENT RENDERED	COURT	COUNTY	INDEX NO.	DATE	HR & MIN.	HR & MIN.	EXECUTION	WHEN ISSUED	WHEN	HOW AND TO WHAT EXTENT	STATE OF NEW YORK	COUNTY OF NEW YORK
01 BRINKLEY CAPITAL LIMITED		SUPREME COURT	NEW YORK									STATE OF NEW YORK	COUNTY OF NEW YORK
02 MULTIFORMAS SOLUCIONES GRAFICAS INTEGRADAS													
03 WOLFF													

1 MANOR LANE      1534 53RD STREET      A) SCHON FAMILY FOUNDATION      ROBINSON BROG LEINARD GREENE GENOVESE  
 LAWRENCE NEW YORK      BROOKLYN NEW YORK      BROOKLYN NEW YORK      NEW YORK NY  
 11559      11219

1 MANOR LANE      1534 53RD STREET      B) SCHON HENRY      ROBINSON BROG LEINARD GREENE GENOVESE  
 LAWRENCE NEW YORK      BROOKLYN NEW YORK      BROOKLYN NEW YORK      NEW YORK NY  
 11559      11219

1 MANOR LANE      1534 53RD STREET      C) SCHON HENRY      ROBINSON BROG LEINARD GREENE GENOVESE  
 LAWRENCE NEW YORK      BROOKLYN NEW YORK      BROOKLYN NEW YORK      NEW YORK NY  
 11559      11219

JUDGMENT DOCKETED      JUDGMENT RENDERED      COURT: SUPREME COURT      COUNTY: NEW YORK      INDEX NO: 653664/15      DATE: 03/06/2019      HR & MIN: 01:39

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EXECUTION      WHEN ISSUED      WHEN      HOW AND TO WHAT EXTENT      STATE OF NEW YORK      COUNTY OF NEW YORK

AMOUNT OF JUDGMENT

DAMAGES      \$ 1,302,384.00      - judgment against debtors C1, C2, C3 - for creditor A)

COST      \$ 609,371.21      - judgment against debtors C1, C2, C3 - for creditor B)

TOTAL      \$ 115,000.00      - judgment against debtors C1, C2, C3 - for creditors A) and B)

I, MILTON A. TINGLING, CLERK OF THE COUNTY OF NEW YORK, HEREBY CERTIFY THAT THE ABOVE IS A CORRECT TRANSCRIPT FROM THE DOCKET OF JUDGMENTS IN MY OFFICE.

IN TESTIMONY WHEREOF, I HAVE HERE UNTO SET MY NAME AFFIXED MY OFFICIAL SEAL THIS 20<sup>th</sup> DAY March 20 19

Milton A. Tingling  
 COUNTY CLERK, NEW YORK COUNTY

EXHIBIT B (continued)

Transcript of Judgment

NO. 00126 <<< FEE >>> TRANSCRIPT OF JUDGMENT <<< FEE >>>  
REMARKS: DATE AND MANNER OF CHANGE OF STATUS OF JUDGMENT

03/06/2019 DEBTOR: BRINKLEY CAPITAL LIMITED AND MULTIFORMAS SOLUCOES GRAFICAS AND EMANUEL WOLFF JOINTLY AND SEVERALLY

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I, MILTON A. TINGLING, CLERK OF THE COUNTY OF NEW YORK, HEREBY CERTIFY THAT THE ABOVE IS A CORRECT TRANSCRIPT FROM THE DOCKET OF JUDGMENTS IN MY OFFICE.

IN TESTIMONY WHEREOF, I HAVE HERE UNTO SET MY NAME AFFIRED MY OFFICIAL SEAL THIS 20<sup>th</sup> DAY March 2019  
Milton A. Tingling  
COUNTY CLERK, NEW YORK COUNTY

EXHIBIT B (continued)

Transcript of judgment

NO. 00126 <<< FEE >>> TRANSCRIPT OF JUDGMENT <<< FEE >>>

REMARKS: DATE AND MANNER OF CHANGE OF STATUS OF JUDGMENT

- AND EMANUEL WOLFF  
JOINTLY AND SEVERALLY  
AND EMANUEL WOLFF  
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AND EMANUEL WOLFF  
JOINTLY AND SEVERALLY

I, MILTON A. TINGLING, CLERK OF THE COUNTY OF NEW YORK, HEREBY CERTIFY THAT THE ABOVE IS A CORRECT TRANSCRIPT FROM THE DOCKET OF JUDGMENTS IN MY OFFICE.

IN TESTIMONY WHEREOF, I HAVE HERE UNTO SET MY NAME AFFIXED MY OFFICIAL SEAL THIS 20<sup>th</sup> DAY March 2019  
Milton A. Tingling  
COUNTY CLERK, NEW YORK COUNTY

**EXHIBIT B (continued)**

**Transcript of judgment**

HON. MILTON A. TINGLING  
COUNTY CLERK, NEW YORK COUNTY  
60 CENTRE STREET  
NEW YORK, N.Y. 10007

-----  
NO. 00126

DATE 03/06/2019

DOCKET BRINKLEY CAPITAL LIMITED

PLEASE FILEMARK, FOLD AND  
RETURN TO ISSUING COUNTY  
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## **EXHIBIT C**

### **Restraining notice (“mini Miranda”)**

THIS COMMUNICATION IS FROM AN ATTORNEY WHO IS CONSIDERED A DEBT COLLECTOR UNDER THE FAIR DEBT COLLECTION PRACTICES ACT.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

## **EXHIBIT D**

### **Personal document request**

1. All savings bank books, records, account statements, current as well as those that may have been cancelled or closed, whether in the name of the defendant individually or in conjunction with any other person or persons.
2. All records, papers, and memoranda concerning all checking accounts in the name of the defendant individually or in conjunction with any other person or persons, including checkbooks, checkbook stubs, statements, cancelled checks and deposit slips, whether said accounts are current or may have been closed; whether current, closed, or cancelled.
3. All stock certificates, bonds, or other securities in the name of the defendant individually or in conjunction with any other person or persons, or which may be held as the account of the defendant individually or in conjunction with any other person or persons in any corporation, domestic and foreign or issued by the federal government or by any state, municipal, or other governmental agency.
4. All books, records, accounts, monthly statements, statements of transactions and all other papers and memoranda of stock brokerage accounts in the name of the defendant individually or in conjunction with any other person or persons.
5. Copies of all federal, state, and city income tax returns, together with the schedules and worksheets thereof and all other papers, documents, and memoranda referring to any adjustment made in connection therewith for the past three years.
6. Any and all contracts for the rental and/or lease of safe deposit boxes or vaults, whether in the name of the defendant individually or in conjunction with any other person, persons, or entities.
7. Any and all deeds or conveyances of real property in the name of the defendant individually or in conjunction with any other person or persons, or of which the defendant is the legal, beneficial, or equitable owner or has any interest therein.
8. Any and all records, documents, papers, and memoranda pertaining to monies received and being presently received by the defendant from all sources, including but not limited to salaries, wages, drawings, commissions, dividends, interest, bonuses, sick pay, pensions or retirement funds, or reimbursed expenses.

9. Any and all policies of insurance covering the defendant including but not limited to life, endowment, annuity, theft, floater, liability, health and accident and automobile, and all records showing payments for premiums therefor.
10. All agreements of employment, with the defendant including but not limited to any agreement with respect to commissions, bonuses, expenses, or profit sharing.
11. Copies of all balance sheets, profit and loss statements, and operating statements of any corporation in which the defendant was or is an owner or holder of more than 10 percent of the outstanding stock.
12. Copies of all federal, state, and city income tax returns, balance sheets, profit and loss statements, and operating statements of any partnership, limited liability company, professional corporation, joint venture or syndicate, of which the defendant was or is a partner or member.
13. With respect to such corporation, limited liability company, or professional corporation, partnership, joint venture, or syndicate:
  - a. All agreements to which the defendant is a party; and
  - b. All loan, personal expense, disbursement and receipt accounts with respect to the above.
14. All records of membership in and contributions to any charity or any other organizations or association including private and professional clubs or associations.
15. All records, documents, papers, statements, and memoranda pertaining to any profit-sharing plans, individual retirement accounts, and pension plans.
16. All rental or other agreements with respect to any and all automobiles operated by the defendant or any member of the defendant's family.
17. All charges made upon credit cards to the extent of the utilization thereof by the defendant or any member of the defendant's family, and all vouchers of said charges.
18. All records with respect to any of the following accounts concerning the defendant's:
  - a. Loan account;
  - b. Personal account;
  - c. Expense account;
  - d. Disbursement account; and
  - e. Receipt account.
19. Any and all records of any jewelry, antiques, or art objects bought or owned by the defendant individually or in conjunction with any other person or persons which exceed the amount of one hundred dollars (\$100).
20. Copy of all leases to real estate held by the defendant, in the name of the defendant or in conjunction with any person or entity.
21. All records of certificates of deposit of defendant, current or cancelled, in the name of defendant or in conjunction with any entity or person.
22. All records of equipment leased or financed by the defendant including lease agreements, security agreements, UCC filings, etc.

## EXHIBIT E

### Corporate document request

1. All records, accounts, and statements, current as well as those that have been cancelled or closed, with regard to corporate bank accounts in the name of the corporate defendant.
2. All records, papers, and memoranda concerning all checking accounts in the name of the corporate defendant including checkbooks, checkbook stubs, statements, cancelled checks, and deposit slips, whether said accounts are current or may have been closed.
3. All stock certificates, bonds, or other securities in the name of the corporate defendant, domestic or foreign, or issued by the federal government, any corporation, or by any state, municipal, or other governmental agency.
4. All books, records, accounts, monthly statements of transactions, and all other papers and memoranda of stock brokerage accounts in the name of the corporate defendant.
5. Copies of all federal, state, and city income tax returns, together with the schedules and worksheets thereof and all other papers, documents, and memoranda referring to any adjustment made in connection therewith for the past three years.
6. Any and all contracts for the rental and/or lease of safe deposit boxes or vaults, whether in the name of the corporate defendant or in conjunction with any other person, persons, or entities.
7. Any and all deeds or conveyances of real property in the name of the corporate defendant or in conjunction with any other person or persons, or entities of which the corporate defendant is the legal, beneficial, or equitable owner or has any interest therein.
8. Any and all records, documents, memoranda, ledger books, invoices, statements with regard to the accounts receivable of the corporate defendant, as well as all records, memoranda, invoices, ledgers with regard to the accounts payable of the corporate defendant.
9. Any and all records, documents, papers, or memoranda pertaining to any litigation in which the corporate defendant is named as either a party plaintiff or defendant.
10. Any and all records, documents, papers, or memoranda pertaining to monies received and being presently received by the corporate defendant from all sources, including but not limited to accounts receivable, dividends, interest income, etc.
11. Any and all policies of insurance covering the corporate defendant.
12. Any and all agreements of employment between the corporate defendant and its officers, directors, and managing agents, including but not limited to any agreement with respect to commissions, bonuses, expenses, or profit sharing.
13. Copies of all balance sheets and operating statements of any corporation, in which the corporate defendant was or is an owner or holder of more than ten percent (10%) of the outstanding stock.
14. Copies of all federal, state, and city income tax returns, balance sheets, profit and loss statements, and operating statements of any partnership, joint venture syndicate, limited liability company, or limited partnership of which the corporate defendant was or is a participant.
15. With respect to such joint ventures, syndicate or limited partnership:
  - a. All agreements to which the corporate defendant is a party; and
  - b. All loan, expense, disbursement, and receipt accounts with respect to the above.

16. All records of membership in, and contributions to, any charity or any other organizations or associations in which the corporate defendant participates.
17. Any and all records, documents, papers, or memoranda pertaining to any profit-sharing plan of the corporate defendant, organized for and on behalf of the employees of the corporate defendant.
18. All rental or other agreements with respect to any and all automobiles operated by employees of the corporate defendant.
19. All charges made upon credit cards to the extent of the utilization thereof by employees of the corporate defendant.
20. All records with respect to any of the following accounts concerning the corporate defendant:
  - a. Loan account;
  - b. Expense account;
  - c. Disbursement account; and
  - d. Receipt account.
21. Any and all records of any jewelry, antiques, or art objects bought or owned by the corporate defendant or in conjunction with any other person or persons, which exceed the amount of one hundred dollars (\$100).
22. Copy of all leases to real estate held by the defendant, in the name of the defendant or in conjunction with any person or entity.
23. All records of certificates of deposit of the defendant, current or cancelled, in the name of the defendant, or in conjunction with any entity or person.
24. All records of equipment leased or financed by the defendant including lease agreements, security agreements, UCC filings, etc.
25. 20\_\_, 20\_\_, 20\_\_, and 20\_\_ general ledgers of the defendant (preferably digital with all applicable computer passwords to allow access).
26. 20\_\_, 20\_\_, 20\_\_, and 20\_\_ cash receipts and disbursements journals, registers, ledgers, etc. (preferably digital with all applicable computer passwords to allow access).
27. Financial statements (audits, reviews compilations and personal financial statements) for the defendant for years 20\_\_, 20\_\_, 20\_\_, and 20\_\_.
28. Business and personal tax returns for the defendant for years 20\_\_, 20\_\_, 20\_\_, and 20\_\_.
29. All policies issued to or obtained by the defendant including riders, amendments, certificates of coverage, and extensions.
30. All financing agreements between the defendant entities and any bank or financial institutions.

[Judge's signature, case caption]

### **CERTIFICATION**

I hereby certify that this Information Subpoena complies with [applicable rule] and that I have a reasonable belief that the party receiving this Subpoena has in their possession information about the debtor that will assist the creditor in collecting the judgment.

[Signature]