

A NEWSLETTER OF CURRENT BUSINESS AND LEGAL MATTERS



Limited Liability Companies: Filing Annual Reports With The North Carolina Secretary of State's Office

By James R. Vann



Secretary of State
Elaine F. Marshall

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Annual Report Due Dates

Each business incorporated with the North Carolina Secretary of State's office is required to file an annual report with the Secretary of State's office each year. Depending upon the type of business entity will likely determine when the report is actually due. Thus, it is important to keep in mind when an annual report is due. If you as a business owner have several incorporated businesses which differ in the type of entity (regular corporation, an s-corporation, limited liability company, etc.), your annual reports could be due at different times.

The reason it is important to timely file the annual reports is that State law mandates that each incorporated business file an annual report in order to keep the State up to date regarding the business. For example, is the business still in operation, what the mailing address is, the contact information, the registered agent information, etc.

When are limited liability company's annual reports due?

LLC annual reports are due each year by April 15. The annual report due date is not associated to fiscal year end but is tied to the current year for which a report would be due. Upon incorporation of the limited liability company, the first annual report will be due April 15 in the year following the year of

incorporation and then each April 15 thereafter.

The North Carolina Secretary of State notifies the business community to limited liability companies which have not filed an annual report or for which an annual report was previously rejected. The importance of these notices is that all businesses which are delinquent in their filings will have time to correct the delinquency or provide satisfaction to the North Carolina Secretary of State that a delinquency does not exist. If the correction or proof is not resolved within the time period, the North Carolina Secretary of State may administratively dissolve or revoke the corporate charter for the business.

Thus, if you receive such a notice, it is important to respond to the North Carolina Secretary of State. If the limited liability company is still in business, it remains important for the officers and/or owners of the business to make sure to keep the corporate charter in good standing. Otherwise, it could create opportunities for personal liability for the officers and/or owners of the business.

If you have any questions, please feel free to contact us.



Pre-Judgment Attachment: An Occasionally Useful Collection Technique

By James A. "Jim" Beck



Given the notoriously slow litigation process, creditors are justified in their concern that a debtor will get rid of or hide assets during the period from when a lawsuit is filed until a judgment is obtained. Fortunately, in order to protect creditors, there is a solution to this problem available in certain situations. A creditor can "attach" a debtor's assets at the outset of litigation when particular conditions are met.

Attachment is a mechanism for freezing a debtor's assets prior to obtaining a judgment. This stops a debtor from getting rid of assets or fleeing the state before a creditor can obtain the legal authority to seize assets in satisfaction of the debt.

This process can only be used in situations where special protection is afforded to the creditor because of the debtor's actions or its status as a non-resident of the state. Specifically, the remedy of attachment is available in when the debtor is: a nonresident (individual), a foreign corporation, or a domestic corporation whose officers cannot be found in the State. In addition, the remedy is available when the debtor is a resident of the State who is departing the state or hiding with intent to defraud his creditors or to avoid service, and a debtor who, with intent to defraud his or its creditors, is removing, hiding, or disposing of property. The difficulty lies in establishing some of the conditions for attachment, particularly those with respect to the removal or disposal of property. In order to obtain an attachment order, a plaintiff files a lawsuit for money owed and a motion for attachment. A presiding judge will consider the motion for attachment and can enter the order without a hearing.

The plaintiff is required to post a bond to protect the debtor from wrongful attachment in an amount determined by the judge. The key is being able to provide an affidavit regarding the facts necessary to meet the conditions for attachment. The plaintiff needs someone with personal knowledge of those conditions having occurred.

A pre-judgment attachment is useful for several reasons. It puts pressure on the debtor and provides leverage in negotiating or getting the debtor to pay. The debtor's loss of possession and use of its assets can be a major problem that the debtor has no choice but to resolve. Additionally, the attachment protects the ability to collect once a judgment is obtained.

There are certainly some risks and drawbacks. First, the plaintiff must post a bond in an amount determined by a judge in order to protect the debtor from wrongful attachment. If the court later rules that the assets were wrongfully attached, the plaintiff would forfeit those funds. Further, the cost of litigation is increased, and if the assets cannot be found, then the endeavor would not have been worth the expense.

Attachment is not often available, but in the right situation is a valuable collection tool that creditors can employ. If you have questions about this process or any other collection technique, we would be pleased to assist you.



Allow Us To Introduce Our Newest Vann Attorneys Team Member, Dawn Hobbs

By Vann Attorneys, PLLC



We are very happy to announce the latest addition to Vann Attorneys, PLLC: Dawn Hobbs.

Dawn is a North Carolina native having resided in Wake/Johnson Counties her entire life. She received her Paralegal degree in 1999 from Johnston Community College and began her career in Personal Injury law that same year. She obtained her North Carolina State Bar

Certification in 2006 and has enjoyed working in several areas of law in addition to Personal Injury such as Social Security Disability and Construction Defect/Mold Litigation. She is an active member of Mount Pleasant Church in Clayton and enjoys spending time with her family and friends.

Welcome to the team Dawn!



Ratifying A Contract In The Digital Age

By Joseph A. "Joe" Davies

The electronic exchange of documents has made contract negotiation and execution much faster, and in many ways simpler. It has also created some difficulties for long-standing contract rules. A recent Court of Appeals decision started by noting the difficulty of fitting "decades-old (sometimes centuries-old) contract principles to the realities of the digital age." In *IO Moonwalkers v. Banc of America Merchant Services, LLC*, the North Carolina Court of Appeals wrestled with the question of ratification of a contract based on electronic evidence that a party had seen the contract at issue. Before getting into the specifics of the case, what does it mean to ratify a contract? Generally, if one party claims that its agent was not authorized to enter into a contract, it can still be bound to the contract if (1) the principal has full knowledge of all material facts relating to the transaction and (2) the principal signifies assent to be bound either in word or conduct. In other words, if an unauthorized employee signs an agreement on behalf of your company, the company can still be bound if it proceeds under the contract, with full knowledge of the terms.

In this case, the contract was signed electronically. Under the North Carolina version of the Uniform Electronic Transaction Act (enacted in 2000), electronic signatures are treated essentially the same as "pen and ink" signatures. That, however, is often not the end of the discussion. In *IO Moonwalkers*, for example, despite using DocuSign to exchange electronic signatures, one party maintained that any signature that appeared had not been authorized. Importantly, however, *IO Moonwalkers* did not dispute the accuracy of the DocuSign records showing the exact date and time the contract had been viewed and signed, and that the fully executed version was later viewed by someone at *IO Moonwalkers*. The company maintained,

however, that any signature that appeared on the document was not authorized.

As the court noted, before electronic transmission of such documents, it might have been enough for *IO Moonwalkers* to claim that they had not reviewed or signed the contracts to prevent summary judgment. The court wrote: "Simply put, the electronic trail created by DocuSign provides information that would not have been available before the digital age—the ability to remotely monitor when other parties to a contract actually view it." Because of this evidence, however, the court determined that there was no dispute that *IO Moonwalkers* had actually reviewed the contract at issue, and therefore the first requirement of ratification was met. Meeting the second also involved electronic records – the court relied on e-mails sent to *IO Moonwalkers* requesting certain information required under the contract. Because *IO Moonwalkers* provided the requested information (as opposed to raising the issue of a lack of a contract), and because *IO Moonwalkers* accepted the services provided, the court determined that it had signified its assent to the terms.

In this case, the parties attempted to use electronic signatures to remove any doubt regarding the validity of their contract. Although it clearly did not work out as intended, it still made proving the existence of a contract much simpler than it might have been in the past. Given the now-common use of electronic negotiation of contracts and electronic signatures, it seems likely that the struggle between old legal rules and the realities of the digital age will continue. Hopefully, however, it will also continue to make proving the existence and terms of a contract easier.



7 Tips for Negotiating in Business Today

By James R. Vann



It is such an honor to work with and help our clients in their business as they negotiate through numerous transactions and relationships. It is always interesting to help clients as they communicate with the opposing parties as the parties try to obtain a resolution to their needs. The following seven tips are based upon my experience in witnessing hundreds of transactions recently.

1. List the accomplishments you want to achieve. Many times, writing out and listing the objectives you hope to achieve will help in prioritizing the things you really want to accomplish? Even though this process seems simple, it generally helps in determining the real needs and wants in negotiating. It is also helpful to keep focus on what is important to you.

2. Ask for the things you want. Successful negotiators generally are clear and decisive as to what they want. Many are assertive and direct. This can be accomplished while still be kind and professional. I am amazed at how many times when people are clear about what they want or need to accomplish, stating it with decisiveness and directness, almost makes it seem like a forgone conclusion that it must occur. Many negotiations include the dance of people asking for the things they really need and not backing off. Making sure that your needs are accomplished while maintaining professionalism and respect for the other side's point of view is key.

3. Don't rush the negotiation. More times than not, the best negotiations have resulted in our clients not being in a hurry to get it over. This has been more evident recently more than ever. Not rushing the negotiating, conversation and expectations results in a much better outcome most of the time. Be patient. Allow time to work on your side.

4. A great time to listen and learn. Listen to the other side. Very few people are willing to come right out and say why they cannot or will not take a certain action to get to resolution to a transaction. However, if you listen close enough, often times you will gain an understanding of why they cannot or will not do so. Then, the power shifts back to you for

you to determine a work around the barrier to accomplish your goals. When negotiating with clients in mediation or in contracts for clients, when we listen close enough, we hear the real issues coming to light. Allow those barriers to become opportunities.

5. Keep your numbers close to your chest. When the negotiations turn to the numbers, often dollars, keep your bottom line close to your chest. Keep your aim high if you are asking for money and be willing to move slowly. Once the number comes down, it is almost impossible to get it to go back up. Thus, be willing to move but move slowly and optimistically. Showing a forecast of how you plan to move in your numbers can be a benefit in helping the other side getting closer to your number. Also, being willing to say "no" to an offer can be beneficial in negotiations.

6. Keep the negotiations professional, not personal. Keeping negotiations on a professional level and about the issues helps protect the negotiations from becoming personal. Focus on determining what the issue is and how to solve the issue. Avoid focusing on how unprofessional the other side might seem. Try to understand their actions and/or words and use that to your advantage. Most successful business owners can separate business from personal issues and thus do better in negotiating the terms.

7. What are the pressure points for the other side? Knowing as much about the other side as possible usually provides value in negotiations. Does the other side have a deadline to meet? Are their internal or external pressures to solve the issue? What does the other side need to resolve the issue? What happens if a resolution is not reached? What is the worse and best case scenario for the other side? These are a few questions which can help determine the need for the deal for the other side.

I hope these ideas and suggestions are helpful to you in your negotiations. If you have questions about negotiations, please feel free to contact us.