

A NEWSLETTER OF CURRENT BUSINESS AND LEGAL MATTERS



How to Handle Commitment Issues With Slow Paying Customers

By James R. Vann



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We all have heard the story and felt the frustration when you call a customer for payment and the customer is unable and/or unwilling to make a commitment as to when payment will be made.

We are often asked by our clients how to handle a non-committed and non-paying customer. Every situation is different but often business owners need to know the current status of the accounts receivables and when payment can be expected. Thus, we suggest following your credit policy as well as following normal procedures in setting the expectation as to when payment should be made. If your company has a credit policy, it generally will provide guidance in what information is needed within 30 days, 60 days or 90 days.

Getting a customer to make a commitment as to what payment they can make, what payment they will make and when will the payment be made can take persistence. It is important to not allow the customer's lack of commitment to control the outcome of the request. Persistence often pays off. Often times when I am calling a debtor on behalf of a client and the debtor is reluctant to make a commitment, it helps to keep talking with the debtor and coming back to the question of what amount and when can they make the payment. They understand why you are asking and the need of getting the payment made. Getting the flow of funds into the account is the important portion of the transaction. If the debtor cannot make the full payment, making partial payments on a weekly

or monthly basis typically gets the debtor in the habit of making the payment. Again, persistence generally pays off.

I remember an owner of a business I had the pleasure of representing years ago who taught me a great deal about talking with others, listening, creating a relationship with the debtor and persistence. When he encountered a customer who was reluctant to make payments on a past due account, he would call often and even stop by to visit his customer. He would talk and listen to learn what was going on with the debtor's business. Quite often, he was successful by not accepting the customer's delay as a final resolution. He was consistent in asking the customer how much they could pay and when they could pay it.

Once you get the customer in an agreement to make the payments, asking the customer to sign a Promissory Note generally does not improve your legal position substantially more than where you might be already. We often suggest that the debtor sign a Confession of Judgment with a payment schedule. This process improves the creditor's position in taking payment over time. If you have questions about how Confessions of Judgments work, please let us know.

Again, do not allow your customer to delay your process of asking for payment. Be persistent and consistent!



Employee Monitoring: Combating Distractions and Containing Malice

By James R. Vann and Taylor Dougherty, Law Clerk



Efficiency is the currency of the workplace. It is often said ‘time is money,’ however, only time efficiently spent will result in a product or service worth its time. Maintaining efficiency is an increasing challenge for businesses as attention spans decrease and distractions multiply. However, as if unfocused employees were not enough, some employees are going rogue. A single rogue employee could cost their employer thousands to millions of dollars, something JP Morgan experienced a couple years ago. As a result of these two issues, employee monitoring has steadily become a necessity. The question becomes, how can employers effectively monitor their employees without unreasonably impeding upon their privacy and displaying a lack of trust?

The interference of technology on productivity levels has reached an all-time high. Computers, phones, and now watches provide a glut of distractions that can prey on even highly motivated employees. Coupled with the rise of technology comes the spread of information. Some of which is not intended to be public. Several years ago JP Morgan faced such an issue. A rogue employee at Morgan Stanley (a subsidiary of JP Morgan) stole roughly 10% of client information that eventually ended up on a file sharing site. In addition to a 3% drop in Morgan’s stocks, the SEC instigated a proceeding against Morgan Stanley for failure to uphold appropriate “safeguards” to prevent this from happening. The proceedings resulted in a one million dollar settlement. This is not an isolated incident. In 2015, the SEC filed almost 7% more proceedings than the previous year.

Both problems are compounded not only by the technologies themselves but by people who know how to use them. As millennials invade the cubicles, we see a generation born into the tech bubble and more equipped to bypass security measures than ever before. In a society based around sharing information, privacy leaks will occur. If anything, this issue will become more pronounced as time goes on.

Incidents due to either negligence or malice can also have a greater impact than ever before. As technology increases, more processes can be computerized. Today confidential emails, important documents, intellectual property, and customer and supplier contacts are commonly

stored on computers. More than ever, information could be summarily destroyed or unwantedly published. For some companies this could mean significant loss of money, for others malpractice suits. Some companies might never recover.

Website blocking, phone restrictions, and even technology policies can serve as beneficial initial step, but these methods often fail to prevent larger scale incidents where company files are involved. Extremely strict internet usage can also have negative effects on morale. While many companies completely restrict access to social media websites like Facebook and Twitter, studies show employees resent these efforts and even attempt to work around the system. Best practices include scheduling more free time into the day to allow for concentrated work time followed by strategically placed breaks.

While beneficial to promote efficiency and productivity, breaks are not sufficient to deal with the rogue employee. Some suggest the key is analytics. Instead of restricting access to websites, track internet usage to determine trends. After Morgan Stanley’s debacle with a rogue employee, JP Morgan instituted an algorithm that systematically compiles information about employees’ technology usage and compares to previous incidents. Hopefully, future incidents can be avoided. While not without controversy, this method attempts to allow employees to make their own decisions while still allowing the company to step in before another major episode.

With the great power of technology comes the great responsibility of proper management. As businesses face distracted and even malicious employees at unparalleled levels, policy changes could prevent the loss of millions. However, businesses should not stop there. To maintain efficiency and security with the every changing field of technology, businesses should constantly re-evaluate the policies and methods they use and how their employees respond.



Know What's In Your Lease: The Issue With Forms

By Joseph A. "Joe" Davies

Except for certain commercial leases involving large companies, you, as landlord, are typically the one who drafts the lease you will sign with your tenant. Because a lease is a contract, and is the most important document you and the tenant will sign, it is critical to know exactly what your lease requires. Too often, however, we received calls from landlords who do not know whether a certain provision is in their lease or, more problematically, do not know that certain clauses in their lease are illegal. In many cases, these landlords are using forms that are outdated or are not designed specifically for North Carolina leases. Other times, these leases are nothing more than a short statement of the lease term and the rent. While a complete description of what should be (or should not be) in your lease is beyond the scope of this article, the following are a few key areas that are often missing or problematic from older or out of state forms.

Partial Rent

In previous articles, we have discussed the recent changes to North Carolina law allowing a landlord to accept partial rent without waiving the right to evict for a breach of the lease, but only if the lease itself includes a provision allowing the landlord to do so. Because this is a recent change, many older forms (even those specific to North Carolina) do not include this clause. Any new lease should include this language to protect the landlord from waiving a breach of the lease which could otherwise provide a basis for eviction.

Eviction

Many landlords who handle their own evictions are often confused by the summary ejection form with regard to the reason for the

eviction. The form provides four boxes – one of which is that the defendant failed to pay rent. It seems like common sense that this would be the appropriate reason for eviction if your tenant has failed to pay rent. However, this box exists only as a fall-back, if your lease does not provide for eviction based on a breach of the lease (and failing to pay rent when due is such a breach). This is primarily a problem when landlords create their own leases and leave out a specific right to evict (or right of re-entry) based on a breach of the lease. If your lease does have this provision, then you are most likely in a much stronger position if you check the box that states "The defendant breached the condition of the lease described below for which re-entry is specified."

Late Fees

North Carolina law is clear that late fees are limited – they are capped at the higher of 5% of the rental amount or \$15. Many form leases provide for a daily late fee of a certain amount. However, if that could lead to a late fee higher than that authorized by North Carolina law, then the entire late fee provision is unenforceable. The same holds true for many other fees.

The lease is a contract – a legally enforceable document – between you and your tenant. As a landlord, you need to make sure that the terms of your lease both comply with the law and adequately protect your interests. Using an outdated form, or one that was not tailored to North Carolina law, can fail on both counts. If you would like a review of your lease to make sure that it contains everything it should, and nothing it should not, please call our office.



Allow Us to Introduce Our Newest Vann Attorneys Team Members, Emma & Elaine

By Vann Attorneys, PLLC



Emma Cernansky, North Carolina Certified Paralegal

We are very happy to announce two new additions to Vann Attorneys, PLLC: Emma Cernansky and Elaine Waters. Emma and Elaine are North Carolina Certified Paralegals and began serving our clients and our firm in July.

A Long Island, NY native, Emma has resided in NC since 2006. Emma is a proud graduate of High Point University where she graduated Magna Cum Laude with a Bachelor of Arts in Criminal Justice in May 2010. She then received her Paralegal Certificate from Guilford College in the Fall of 2010. Emma has been a NC Certified Paralegal



Elaine Waters, North Carolina Certified Paralegal

since May 2011 and looks forward to new and exciting adventures in Raleigh.

Elaine trained at Florence-Darlington Technical College in Florence, SC before moving to the great city of Raleigh in 1990. Mrs. Waters worked as a Family Law Paralegal for over 17 years before transitioning to Landlord/Tenant Law and Civil Litigation in 2007. Elaine is happily married to her husband Leland and is the proud mother of Kaitie, her 25-year-old daughter.



The Impact of Smart Contracts on the Legal Profession

By James R. Vann and Taylor Dougherty, Law Clerk



The study of technology is a fascinating endeavor. While certain excitement and satisfaction arise from much anticipated technology (not the least of which light sabers and hover boards), there is a profound awe with discovering and implementing technology hardly anyone could have ever imagined. Smart Contracts are such a technology.

Nothing more than a line of code written on the Blockchain network, a Smart Contract is essentially a transaction with automatically enforceable consequences. Blockchain, the platform for the popular alternative currency Bitcoin, implemented the idea of public transactions on a grand scale. Smart Contracts continue that concept. For those unfamiliar with the technology, Blockchain is basically a public ledger. Like 'setting something in stone' Blockchain provides the stone into which online monetary transactions can be cut. Smart Contracts are another type of transaction to cut into stone.

Another common analogy is the vending machine. Similar to purchasing a soda or snack, Smart Contracts allow for simple and immediate transactions. As soon as a coin is put in a vending machine – the product drops out. As soon as the criterion of the Smart Contract is met – the predetermined result is activated. Thus, in theory, Smart Contracts completely remove the need for enforcement of a contract. If a car payment is missed – the car can be immediately locked down remotely. If the goods are delivered – the money moves into the seller's bank account.

Smart Contracts are most attractive because of their security. They are nearly impossible to hack, not available to amend, and any possible alterations to the contract immediately notify each party involved. With software like Ethereum, Smart Contracts will be memorialized and computed by every connected computer instead of a centralized server. As more people run the Ethereum client, reliability and security increases. Smart Contracts also pull from external data (i.e. the internet)

to determine how to proceed. A typical Smart Contract might verify via news organizations, social media, or other websites to determine how an event, from a natural occurrence to a football game, played out.

As more states are accepting Smart Contracts as having full legal effect, some speculate the rise of Smart Contracts will lead to a decrease in the need for lawyers. As Smart Contracts are instantaneously executed, the need for enforcement is substantially diminished. Furthermore, instead of the court deciding whether a certain term was breached in a drawn out legal process, thousands if not millions of computers across the world would come to a consensus immediately. In fact, without programs or experts to convert the Smart Contract programming language to plain English, the courts would be unable to even consider the Smart Contract.

While Smart Contracts may decrease the need for lawyers in certain capacities, it is likely other areas of law will surge as a result. The essence of a Smart Contract is the rigid adherence to its programming. This necessitates extremely careful drafting. Additionally, unlike many contracts, Smart Contracts have to take into consideration every possible situation as they are not amendable later. Lawyers will likely take the forefront in constructing the unique and fully encompassing language of the Smart Contract programming.

Technology has a unique appeal. In a sense, it allows a glimpse into the future. As such, new technology is always fraught with anticipation, prediction, and new moral dilemmas to consider. Smart Contracts are no different. Smart Contracts will bring about changes, but correctly anticipating such changes can aid in a smooth transition and increase efficiency going forward.

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

