Illinois Creditors Bar Association

July 2000

From The President's Desk

Dear Members,

I want to take a moment to thank all of you for continuing your membership with the ICBA during this term. Our membership numbers are continually increasing as more attorneys throughout the state are becoming aware of the organization. Since January we have acquired 15 new members!

In addition, I am happy to report that the listserve is becoming increasingly more popular with our members. If you would like to be included in the listserve, please send your e-mail address to Leigh-Ann Thompson at Sierra847@aol.com.

For those of you who are interested in attending, the next board meeting will be held September 11 at 77 West Washington St., Suite 615 in Chicago.

In the meantime, have a great summer!

Sincerely,

Robert Becker
President 2000/2001 Term

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Welcome New Members

The Illinois Creditors Creditors Bar Association would like to extend a warm welcome to the following new members:

- Drew Erwin - Quincy, IL
- Raphael Yalden - Rockford, IL
- Jeffrey McDaniel - Rock Island, IL
- Michael Chmiel - Crystal Lake, IL
- David Fines - Taylorville, IL
- Daniel Leadley - Aurora, IL

We look forward to providing you with valuable information and welcome comments, suggestions and article submissions for the newsletter.

Articles of Interest

Tenancy by the Entirety

The Code of Civil Procedure (CCP), 735 ILCS 5/12-112, defines the estate of Tenancy By The Entirety. The statute says, in pertinent part:

> "Any real property, or any beneficial interest in a land trust, held in tenancy by the entirety shall not be liable to be sold upon judgment entered on or after October 1, 1990 against only one of the tenants, except if the property was transferred into tenancy by the entirety with the sole intent to avoid the payment of debts existing at the time of the transfer beyond the transferor's ability to pay those debts as they become due."

Joint Tenancy Versus Tenancy by the Entirety

Under joint tenancy the court could determine the value of the property, and after protecting the innocent spouse's interest and homestead, sell the property for the benefit of creditors.

Entirety protects the debtor's home from creditors. The concept of entirety implies that both spouses own the property by the whole rather than by the half, that the spouses constitute one unit. The collection of debt against one spouse is blocked by the other spouse's whole interest in the house. The estate only attaches to homestead property during a marriage.

The entirety can be nullified if the transfer of the estate into tenancy by the entireties is fraudulent. The problem is when the transfer is made. If transfer into entirety was made at a time when the "sole intent" of the spouse was to avoid the collection effort, and if the debtor was unable to pay his debts as they come due, the transfer is fraudulent, and the statute precludes the innocent spouse's entirety from blocking collection.

History of Entireties

Joint tenancy is a seven-hundred year old common law tenancy. Tenancy by the Entirety was a common law joint tenancy viewed under the ancient theory that husband and wife were one person. Illinois abandoned entirety in 1861 when the legislature promulgated enactments embodying recognition that women have legal rights apart from their husbands. In 1990, to much controversy, the legislature revived entirety in terms close to the first clause of our current enactment:

> "Any real property held in tenancy by the entirety shall not be liable to be sold upon judgment entered on or after October 1, 1990 against only one of the tenants." 735 ILCS 5/12-112 (West 1992).

The revival of entireties was enacted for the sole purpose of protecting a spouse's homestead from creditors of one spouse.

The statute was not amended to add the "sole intent" provision until 1997. In doing so the legislature indicated that:

> "This amendatory Act of 1997 (P.A. 90-514) is intended as a clarification of existing law and not as a new enactment." 735 ILCS 5/12-112 (West 1998).

The definition of the intent of the debtor spouse became the basis of a dispute between the First and Second District Appellate Courts, prior to the amendment adding the "sole intent" provision. That dispute has been resolved, however questionably, by the Illinois Supreme Court, basing itself on the new version of the statute. The dispute arose due to the evolution of the language of the statute.

Second District Allowed All Transfers Into Entireties

In 1994, the Second District issued its opinion on the earlier statute in McKernan Co. vs. Gregory, 268 Ill.App.3d 383, 643 N.E.2d 1370, appeal allowed, 161 Ill.2d 525 (1995), appeal dismissed with prejudice No. 78487 (1995). An attempt was made to employ the language of the Uniform Fraudulent Transfer Act (UFTA), 740 ILCS 160/et.seq., to define the nature of fraudulent intent required to block the entirety in CCP 12-112. This was not an illogical approach. The purpose of the UFTA was to invalidate otherwise permitted transfers made with fraudulent intent. The transfer into entirety is a permitted transfer, which if made with fraudulent intent, becomes a null transfer. So it made sense to look at the factors spelled out in UFTA to determine whether the transfer in question should have been permitted or not.

The standard of the UFTA is "actual intent". That intent is described by eleven objective factors. After many preliminary definitions, the UFTA states:

> (740 ILCS 160/5) "Sec. 5. (a) A transfer made or

obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(b) In determining actual intent under paragraph (1) of subsection (a), consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor."

Here is a list just made for a lawyer to plug into a complaint. It makes intent objective, and provides the lawyer with a road map for procuring witness testimony. But, the Second District deprived counsel of the benefits of the UFTA. The Appellate court found:

> "...intent is irrelevant in a tenancy by the entirety conveyance because it simply cannot be fraudulent to engage in conduct that is specifically and unambiguously sanctioned by statute," (268 Ill. App. 3d 388).

This left the creditor without resource, irrespective of whatever the "intent" of the debtor spouse was. Since there was no indication of intent in the statute, the court stated:

> "A plain reading of the tenancy by the entirety statutes makes it clear that no mental state is required to use the tenancy's protection." (268 Ill. App. 3d 388)

First District Recognized UFTA Application

The First District Appellate Court agreed with the creditor, and disagreed with the Second District in re Marriage of Del Guidice, 287 Ill. App.3d 215 (1997). The court found the transfer invalid under UFTA if the debtor made the transfer with actual intent to hinder, delay or defraud the creditor, 740 ILCS 160/5 (1). It is irrelevant that the CCP permitted the transfer, since the whole point of UFTA is to determine when permitted transfers are accomplished in a culpably fraudulent manner.

In this case, as in McKernan, the transfer took place after the levy was commenced. The debtor spouse filed an emergency petition to stay the levy sale. He argued it was blocked by the innocent spouse's entirety. The creditor appealed on the trial court's denial of its motion to strike debtor's emergency petition. The court pointed to other instances where a permitted transfer was prevented when the intent was fraudulent (Johnson vs. Marshall & Huschart Machinery, Co., 384 N.E.2d 141, 1978, transfer of assets into a Limited Liability Corporation after judgment but before supplemental activities).

Despite the fact that the legislature permitted married couples to protect their home by the transfer into entirety, the First District court stated in Del Guidice:

> "There is no indication from either the plain language of the statute nor the legislative history that the legislature intended to include fraudulent conduct within the scope of the afforded protections."

(287 Ill.App.3d 219)

And held that the transfer into entirety could be a fraudulent transfer under UFTA.

Latest Illinois Supreme Court Pronouncement

In Premier Property Management, Inc. vs. Jose Chaves, docket No. 86045, Agenda 33, February 17, 2000, (http://www.state.il.us./court/2000/86045.htm) Justice Bilandic, for the Illinois Supreme Court, filed the court's latest statement on tenancy by the entirety, resolving conflicts in prior decisions in the First and Second Districts. In that opinion, based on the 1997 amendment to ILCS 5/12-112, which for the first time mentioned the "sole intent" standard, the court reversed both prior decisions, Del Guidice, and McKernan.

The court determined that the legislature meant to give entirety greater protection from creditors than UFTA gave in the case of other transfers. The court ruled UFTA irrelevant to the determination of intent since the legislature had set forth the standard of intent in the statute itself. McKernan, supra, was overruled because the legislature had meant to make some legitimate transfers illegitimate. Del Guidice, supra, was overruled because the First District used the more objective UFTA standard to make its determination, instead of "sole intent". Both decisions dealt with the older statute, but the court determined that the legislature had always meant the "sole intent" standard to exist since they added the language that the sole intent standard was "intended as a clarification of existing law and not as a new enactment."

The Supreme Court ruled that the law is simply what the statute says. You must find that the "sole intent" was to avoid the payment of debts existing at the time of the transfer beyond the transferor's ability to pay those debts as they become due. The court does not clarify how to divine sole intent. The court indicates that the sole intent standard affords married debtors "greater protection" than the actual intent standard of the UFTA:

> "Under the sole intent standard, if property is transferred to tenancy by the entirety to place it beyond the reach of the creditors of one spouse and to accomplish some other legitimate purpose, the transfer is not avoidable. Such a transfer, however, would be avoidable under the actual intent standard, which only requires any actual intent to defraud a creditor." (Impossible to indicate pagination on internet document.)

Obviously, a debtor can allege he had some other intent in mind when transferring his property. Who can deny what is hidden in the recesses of that mind? A court could demand that the debtor divulge his other intent, but nothing in the statute shifts the burden to the debtor. It appears from the language that the whole burden is on plaintiff to prove "sole intent". The author was recently involved in a matter where just such an ungrounded claim of additional intent was made (it will probably not reach judicial determination). Clearly if the entire burden is placed on plaintiff and the court fails to require a reasonable explanation from the debtor, then the fraud provision in CCP 12-112 is nullified, and all transfers into entirety are legal no matter how egregious. This could be a basis for the Second District's logic in McKernan if you accept that the 1997 amendment was merely a clarification of law that the Second District was aware of.

The solution applied by Justice Bilandic appears to be that transfers effectuated in cases like Del Guidice, supra, which are obviously made in the face of imminent levy, should be invalidated under the "sole intent" standard alone, without any assistance from the objective factors in the UFTA. Given the creativity of debtor counsel in finding other intents, it is likely the matter is not resolved and will have to be revisited by the legislature. The legislature should have explicitly tied the transfer into the UFTA, or left out the exclusive sole intent provision which deprived such otherwise lawful transfers of standard UFTA treatment.

Other Approaches

Another approach would be to treat the transfer as being in violation of the pre-existing recorded judgment lien. This was the theory used in an old Illinois Supreme Court decision, Erlinger vs. Freed, 1932, 180 NE 400, 347 Ill. 588. Once a judgment lien attaches to an interest in real estate, the grantee of that interest takes the property subject to the lien, ILP Judgments, Sec. 435. In Erlinger, the judgment debtor conveyed his joint tenancy interest to his wife making her the fee owner, but the court held since the judgment lien was valid, the wife took the debtor's interest subject to the lien. This decision has never been limited or reversed, and appears to be functionally indistinguishable from the case of a judgment debtor transferring his and his spouse's joint interest into an entirety. Property received by the innocent spouse is an interest subject to

the judgment debtor's lien. The husband's transfer of his liened joint tenancy interest to his wife did not launder the interest of the taint of the lien.

Recommendations

In analyzing any such transfer into entireties, check to see if there really was such a transfer. In Travelers Indemnity Co. vs. Engel, 81 F.3d 711 (7th Cir. 1996) the spouses neglected to state on the deed they were husband and wife. They were married, but the court found they prepared the deed incorrectly and the transfer was nullified.

Since most of the cases involved transfers after judgment or levy, try to advance that fact to indicate that there could have been no other articulable purpose than fraud, especially if the property had been in joint tenancy for years. Be sure that the parties are not extending the principle to non-homestead property.

I understand that a famous title insurance company now underwrites its policies waiving over judgment claims duly recorded when the property is in tenancy by the entirety. This is a highly questionable practice given the apparent frequency of transfers in the face of judgments and levies. Also, since the entirety is only effective against creditors while the innocent spouse lives, and while there is no divorce or separation, this is a dubious underwriting decision indeed. More to the point, the property loses its entireties status on sale to third parties, those very third parties the title insurance policy is to protect from a properly implemented levy of the existing judgment lien.

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Judges Meet with Bar

“We’re starting fresh here.” With that statement by Judge Nathaniel Howsw, Judges Samuel Betar and Howse spoke to attorneys interested in the new policies and procedures which are being put into effect in room 1401 of the Daley Center in Chicago. The June 7, 2000 meeting had been set by Chicago Volunteer Legal Services as a seminar to have been given by Judge Lopez-Cepero. Howevr, Judge Lopez-Cepero’s transfer and the desire of the new regime to initiate some change caused the original seminar to become an opportunity for a discussion of the changes. members of the ICBA, therefore, were invited to attend the lunchtime courtroom session.

Judge Betar assured attorneys that no drastic changes would take effect without a discussion of the proposed changes with attorneys who practice in the courtroom. The ICBA Board will be involved. Further, Judge Betar has begun to e-mail courtroom procedural news to Scott Alexander, in Scott’s capacity as the moderator of the listserve. Scott is then posting these messages on the listserve. At the meeting, issues of Satisfaction of Judgment on settled cases and enforcement of Judgments taken against less than all the parties were discussed. The judges wanted to give those present the message that they are considering changes of policy which had been developed by Judges who had presided in the past.

As to specific procedures, Judge Betar said that he did not see the need to reopen and modify a Judgment when being settled for less than the Judgment amount in order to enter a proper Satisfaction of Judgment. On the question of enforcement of Judgments in multiple Defendant cases where less than all Defendants have been served, Judge Howse promised to examine the policy with an eye toward change. This was ultimately done.

Subsequent to the meeting HJudge Betar issued two e-mail messages regarding issues discussed at the meeting. The first, dated June 8, 2000, announced the abolishment of the following policies:

- The striking of court papers containing white-out;
- The striking of court papers showing a P.O. box as an attorney’s address;
- The rule limiting attorneys from serving only a single respondent in each Citation to Discover Assets;
- The rule barring attempts to collect on Judgments entered against less than all Defendants, even where Ill. Sup. Ct. Rule 304(a) language is contained in the Judgment Order.

The second message posted on the listserve, dated June 14, 2000, stated that attorneys would be able to secure signed Satisfactions of Judgment where the amount of the original Judgment had been compromised. The judges asked that language be added to the Satisfaction to indicate that the amount had been settled: “This case was settled for the compromised sum of $_____.” In this way, the extra step of having to move to modify the Judgment is avoided and, at the same time, the Defendant is assured that no future action can be taken

to attempt to collect the compromised portion of the Judgment.

Judges Betar and Howse encourage practitioners to make suggestions on policy changes known. A good way to voice these is to use the listserve. Scott Alexander will then forward these comments on to the Judges for consideration.

Important Decision Under the FDCPA

Members who are not aware of the recent 7th Circuit case of Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, L.L.C., No. 99-3263 (June 5, 2000) should read the opinion which is printed ,in full, in this edition of the newsletter. It requires debt collectors to set out the full amount of the debt in the verification letter without reference to other sources or charges which may be added. It also states that, once a consumer loan, always a consumer loan, for purposes of the Act. This is so even if, for instance, a residence is used to secure a loan and the Debtor subsequently moves but uses the security for rental purposes.

The opinion specifically prohibits the practice of setting the principal amount due in the verification letter and then referring the Debtor to an "800" number for a complete explanation of all charges due. It also extends the "safe harbor" language posited by the court in Bartlett v. Heibl.

The opinion leaves some nagging questions. What if the first communication is the Complaint and the attorney sues for the principal and an unspecified amount of accrued interest? What if the verification letter contains anticipated costs? What if it doesn't and the Debtor pays from the letter? Does the dicta imply anything regarding an "800" number. Judge Posner implies that oral communications from the Debt Collector are inherently untrustworthy. That is a surprising statement. read the opinion.

If you would like to contribute an article for the next newsletter, please e-mail it to Leigh-Ann Thompson at Sierra 847@aol.com or mail it to: ICBA, P.O. Box 449, Arlington Heights, IL 60006. If you have any questions call (847) 255-7920.

Cases of Note

No. 99-3263

Kevin Miller, *Plaintiff-Appellant,*

v.

McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, L.L.C., and Echevarria, McCalla, Raymer, Barrerr, and Frappier, *Defendants-Appellees.*

Appeal from the United States District Court fro the Northern District of Illinois, Eastern Division. No. 98 C 5563 - Elaine E. Bucklo, Judge.

Argued March 31, 2000 – Decided June 5, 2000

Before Posner, *Chief Judge*, and Ripple and Rovner, *Circuit Judges*.

Posner, *Chief Judge*. This is a suit under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq*., against two related law firms engaged in debt collection. The plaintiff (the debtor) claims that the defendants violated the Act by failing to state "the amount of the debt" in the dunning letter of which he complains. See § 1692g(a)(1). They reply that they did state the amount and that anyway the letter is outside the scope of the Act because they were trying to collect a business debt rather than a consumer debt, and the ACT is limited to the collection of consumer debts. § 1692a(5); *First Gibraltar Bank, FSB v. Smith*, 62 F.3d 133 (5th Cir. 1995). The district court granted summary judgment for the defendants on the latter ground, and let us start there.

The plaintiff bought a house in Atlants in 1992, and took out a mortgage. He lived in the house until 1995, when he accepted a job in Chicago; from then on he rented the house. He received the dunning letter from one of the defendant law firms on behalf of the mortgagee in 1997. By this time, renting the property to strangers, the plaintiff was making a business use of the property and so the mortgage loan was financing a business rather than a consumer debt. But, the plaintiff argues that the relevant time for determining the nature of the debt is when the debt first arises, not when collection efforts first begin. The defendants riposte that since the Act under which the plaintiff is suing, unlike Truth in Lending Act, governs debt collection, the relevant time is when the attempt at collection is made. Oddly, there are no appellate decisions on the issue, though it was assumed in *Bloom v. I.C. System, Inc.* 972

F.2d 1067, 1068-69 (9th Cir. 1992), that the relevant time is when the loan is made, not when collection is attempted.

The language of the statute favors this interpretation. "Debt" is defined as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes." § 1692a(5). The defendants don't deny that the plaintiff is a "consumer," even though he is in the "business" of renting his house (they can't deny this, because "the term consumer' means any natural person obligated or allegedly obligated to pay any debt," § 1692a(3)), and the antecedent of the first "which" in the clause "in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes" is, as a matter of grammar anyway, the transaction out of which the obligation to repay arose, not the obligation itself; and that transaction was the purchase of a house for a personal use, namely living in it. Grammar needn't trump sense; the purpose of statutory interpretation is to make sense out of statutes not written by grammarians. But we cannot say that it is senseless to base the debt collector's obligation on the character of the debt when it arose rather than when it is to be collected. The original creditor is more likely to know whether the debt was personal or commercial at its incipience that either the creditor or the debt collector is to know what current use the debtor is making of the loan (in this case, the plaintiff is using the loan, in effect, to generate income from the house that secures the loan).

Against this the defendants argue that the plaintiff's interpretation creates a loophole. Suppose the plaintiff had bought the house to use as an office, and later converted it to personal use; on the plaintiff's interpretation of the Act the debt collector would not have to give him the statutory warnings. But this makes perfect sense. The Act regulates the debt collection tactics employed against personal borrowers on the theory that they are likely to be unsophisticated about debt collection and thus prey to unscrupulous collection methods. See S. Rep. No. 382, 95th Cong., 1st Sess. 2 (1977); *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998); *McCartney v. First City Bank*, 970 F.2d 45, 47 (5th Cir. 1992). Businessmen don't need the warnings. A business man who converts a business purchase to personal use does not by virtue of that conversion lose his commercial sophistication and so acquire a need for statutory protection. And we agree with the plaintiff's concession that if a borrower for a personal use were to assign the loan that financed that use to a business, the debt would then arise out of the assignment, rather than out of the original loan, and so the Act would be inapplicable – rightly so since the recipient of the dunning letter would be a businessman, not a consumer.

So the Act is applicable and we move to the question whether the defendants violated the statutory duty to state the amount of the loan. 15 U.S.C. § 1692g(a)(1). The dunning letter said that the "unpaid principal balance" of the loan (emphasis added) was $178,844.65, but added that "this amount does not include accrued but unpaid interest, unpaid late charges, escrow advances or other charges for preservation and protection of the lender's interest in the property, as authorized by your loan agreement. The amount to reinstate or pay off your loan changes daily. You may call our office for complete reinstatement and payoff figures." An 800 number is given.

The statement does not comply with the Act (again we can find no case on the question). The unpaid principal balance is not the debt; it is only a part of the debt; the Act requires statement of the debt. The requirement is not satisfied by listing a phone number. It is notorious that trying to get through to an 800 number is often a vexing and protracted undertaking, and anyway, unless the number is recorded, to authorize debt collectors to comply orally would be an invitation to just the sort of fraudulent and coercive tactics in debt collection that the Act aimed (rightly or wrongly) to put an end to. It is no excuse that is was "impossible" for the defendants to comply when as in this case the amount of the debt changes daily. What would or might be impossible for the defendants to do would be to determine what the amount of the debt might be at some future date if for example the interest rate in the loan agreement was variable. What they certainly could do was to state the total amount due – interest and other changes as well as principal – on the date the dunning letter was sent. We think the statute required this.

In a previous case, in an effort to minimize litigation under the debt collection statute, we fashioned a "safe harbor" formula for complying with another provision of the statute. *Bartlett v. Heibl*, 128 F.3d 497, 501-02 (7th Cir. 1997); see also *Herzberger v. Standard Ins. Co.,* 205 F.3d 327, 331 (7th Cir. 2000). We think it useful

to do the same thing for the "amount of debt" provision. We hold that the following statement satisfies the debt collector's duty to state the amount of the debt in cases like this where the amount varies from day to day. "As of the date of this letter, you owe $ ___ [the exact amount due]. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write the undersigned or call 1-800-[phone number]." A debt collector who uses this form will not violate the "amount of the debt" provision, provided, of course, that the information he furnishes is accurate and he does not obscure it by adding confusing other information (or misinformation). E.g., *Marshall-Mosby v. Corporate Receivables, Inc.*, 205 F.3d 323, 326 (7th Cir. 2000); Bartlett v. Heibl, supra, 128 F.3d at 500. Of course we do not hold that a debt collector must use this form of words to avoid violating the statute; but if he does, and (to repeat an essential qualification) does not add other words that confuse the message, he will as a matter of law have discharged his duty to state clearly the amount due. No reasonable person could conclude that the statement that we have drafted does not inform the debtor of the amount due. Cf. *Walker v. National Recovery, Inc.*, 200 F.3d 500, 503 (7th Cir. 1999)

It remains to consider the independent argument of one of the two defendant law firms that it is not a "debt collector" within the meaning of the statute. See § 1692a(6). The firm that sent the dunning letter to the plaintiff is McCalla, Raymer, Padrick, Cobb, Nichols & Clark, L.L.C., and the other firm is Echevarria, McCalla, Raymer, Barrett & Frappier. The first firm, the McCalla firm we'll call it, is a partner in the Echevarria firm. (The purpose of this unusual arrangement, presumably, is to preserve the McCalla firm's limited liability, but the parties do not discuss the purpose and it is not material.) The Echevarria firm argues that it should not be liable for its partner's statutory violation, analogizing its relation to its partner as one of affiliated corporations and pointing to the rule that, save in exceptional circumstances not demonstrated here, one affiliated corporation is not liable for the debts of the other, e.g., *Papa v. Katy Industries, Inc.*, 166 F.3d 937 (7th Cir. 1999) – a principle applicable to suits under the Fair Debt Collection Practices Act. *Pettit v. Retrieval Masters Creditors Bureau, Inc.* No. 99-1797, 2000 WL 558945, at *1 (7th Cir. May 9, 2000); *White v. Goodman*, 200 F.3d 1016, 1019 (7th Cir. 2000); *Aubert v. American General Finance, Inc.*, 137 F.3d 976, 979-80 (7th Cir. 1998). The flaw is that partners, unlike corporations, do not enjoy limited liability. The liability of a partnership is imputed to the partners, and so the plaintiff was entitled to sue the partners as well as the partnership. *Bartlett v. Heibl*, supra, 128 F.3d at 499-500; Fla. Stat. § 620.8305(1) (the Echevarria firm is a Florida partnership).

The judgment in favor of the defendants is reversed and the case is remanded to the district court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Technology Update

LISTSERVE TOPICS

The ICBA would like to take this opportunity to remind members that the listserve is a valuable resource to the membership. Its use allows instant communication to the users of changes in procedure. It also allows instant communication among the users regarding any subject which any member cares to pose to the group. If you are not currently a user of the listserve, join! Subscribe at creditorsbar-subscribe@onelist.com.

Listserve users have raised these issues, among others, for consideration, recently:

- Collection of a post position debt during the pendency of a chapter 13 bankruptcy;
- Options in the enforcement of a Judgment in the Northern District of Illinois where the Judgment had been taken in a different District;
- Gathering information on the geographic areas of practice of our members in order to prepare a referral directory;
- Gathering suggestions from the membership for procedural changes in room 1401;
- Whether a Memorandum of Judgment regarding only one owner, recorded against property which is owned by the entireties, may be ignored by a title company when preparing to issue new insurance on a buy/sell or refinance.