



# Your 411Legal Newsletter

Law Offices Of Frank D.  
Granato

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Web Site: WWW.411legal.com; Office: (714) 547.3361; FAX: (714) 547.4919

## To Sue Or Not To Sue

**T**o sue or not to sue. Many times I'm asked to address that subject. Recently, a client called me about a problem he was having with a company who had sold him a machine that didn't work. The machine was sold as a used machine—as is—and without a warranty. The purchase price of the machine was \$275,000.00.

The client wanted to know if he should sue the company. This question enters the minds of many people who are upset about products they buy that don't perform as advertised. Before answering the question, I feel compelled to discuss certain issues with the client that may affect his decision to sue or not sue. If you find yourself asking the same question, the following information will be helpful.

1. **WHO WILL THE LAWSUIT BE AGAINST?** Will you be suing a corporation, partnership, or individual? If a corporation is the target defendant, I suggest getting an asset report on the company. The report costs about \$500.00 and will reveal

what assets the corporation has. Using the Internet, I can usually find out whether the company has gone public; if so, valuable information about the company will be available online. Once I have determined the company has assets, I now consider whether the corporation will file bankruptcy, in all likelihood it will file a Chapter 11 bankruptcy. In that case, it may just be a matter of time before the client receives payment. A company often uses the threat of bankruptcy to dissuade a creditor from suing. This tactic often backfires on a company when it faces an aggressive client who is not willing to walk away from money owed him.

2. If the target defendant is a partnership, I again recommend getting an asset report. In addition, I also suggest getting an asset report on the individual partners. If the partnership is a general partnership, depending on the cause of action alleged, it may be possible to maintain a suit and get a judgment against the

individual partners as well as the partnership itself. If the target defendant is an individual, an asset report is necessary to find out if the person has assets to pay a judgment. I also like to get an investigative report. It will disclose whether the person has ever filed for bankruptcy protection in the



### Get an Asset report!

past. If the individual has substantial assets, it is unlikely that he or she will consider filing for bankruptcy. A provisional remedy called Pre-Judgment Attachment may be available to use against a party that owes you money on an unsecured debt. An unsecured debt is one where there is no security to ensure payment on the debt. A court can impose a lien on any property the *(Continue Next Page)*

### This Issue:

1. To Sue Or Not To Sue
2. Bankruptcy

701 S. Parker St. Suite 600  
Orange, CA 92868

Phone: 714.547.3361  
Fax: 714.547.4919  
Email: fgranato@411legal.com

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## To Sue Or Not To Sue *(continued)*

The party owns, before the case even gets to trial. This is significant. If you win at trial, you now have property to liquidate to satisfy your judgment. This remedy is often overlooked. It is difficult to get—but possible. Often, the defendant comes to the bargaining table quickly when you attach his assets before he even goes to trial!

3. **EVIDENCE.** Now, it's necessary to evaluate how you will prove your case. A detailed chronology of events is essential. There is no better way to evaluate a case than to examine all the facts in the case. Supplement these facts with all written documents you have in your possession that concern the case. If the lawsuit is about a real estate transaction, you will have copies of the purchase contract, escrow instructions, correspondence between the parties, amendments to escrow instructions, etc.. A detailed chronology, supplemented with written documentation of the transaction will help to convince the attorney that your claim has merit and is worth pursuing.
4. **COST OF PURSUING CLAIM.** This is the most important question to have your attorney answer. First, if any attorney can tell you what the litigation

is going to cost you, he should be working in Las Vegas! I for one, cannot answer this question—at least not with any degree of accuracy. What I can do, is explain to you the variables that will affect the cost of the litigation. By doing so, I can fix a reasonable estimate of what the litigation is going to cost you.

5. **AGGRESSIVE LITIGATION.** I think, the most valuable piece of advice I can give you is, if you decide to litigate your claim, do so aggressively! Why do I say that? Because after twenty-six (26) years of litigating cases, I can tell you that ninety percent (90%) of my cases that have been aggressively fought, have resulted in a favorable settlement for my client or a victory at trial. It is not possible in my opinion to aggressively litigate a case and not be prepared. Preparation in all phases of the litigation is important, and carrying out your plan of action aggressively is paramount if you want to succeed. I will not take a case where my client tells me to simply “baby-sit” the case. It is wishful thinking on the client's part if he or she thinks the case is going to go away by itself where he

or she is the defendant. An aggressive defense goes a long way in bringing the case to an early end.

If you are considering litigation in the future, I hope this information will be of some help to you.



***Litigate your claim aggressively!***



***Should you declare bankruptcy? Call my office for a 30-minute free consultation.***

### What Is Bankruptcy?

**B**ankruptcy is a process by which a debtor can obtain court-ordered relief from all or some of his/her debts. Not everybody who faces financial problems should file for bankruptcy; however, bankruptcy may be the only option in some cases.

## Alternatives To Bankruptcy

There are numerous alternatives to filing bankruptcy. Seek financial counseling to help you determine which, if any, are appropriate for you. Bankruptcy largely depends on your personal financial situation. Some basic alternatives are:

- Refinancing
- Financial Management
- Work With Your Creditors
- Loan Modifications\*

\*Be careful not to be taken in by some companies/law firms promising to get you a loan modification. A loan modification can be typically taken care of by the individual.

Please contact the **Law Offices Of Frank D. Granato** if you would like to schedule a free consultation or make an appointment.