Getting Paid: Steps to Successful Debt Collection

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Introduction

As an owner/operator carrying on a business in this economy, concerns about collecting accounts/ invoices are an unfortunate reality. However, even if there are other creditors actively pursuing a debtor for payment, there are steps that a creditor can take to increase the likelihood of getting paid.

The Demand Letter

Prior to taking any enforcement steps the creditor should send the debtor a letter demanding payment. The letter should set out, among other things, the basis for the demand, the amount owing, the interest rate accruing and the date that payment must be made.

A demand letter can be a simple and cost effective tool for collecting debt and will be more effective if it contains all of the necessary information. A well drafted letter is more likely to elicit some response from the debtor and may open the door for further discussion and negotiations. However, if the debtor fails to respond, or is unable or unwilling to pay the entire amount, the creditor has options available to it to maximize its recovery.

Negotiating Terms of Payment

Often unpaid accounts are a function of hard economic times and lack of cash flow on the part of the debtor. As set out above, a proper demand letter will often elicit a response from the debtor. However, in many cases the debtor will approach the creditor seeking a discount and/or with a proposal to pay the creditor in installments over a period of time.

After assessing the risks and benefits of compromise, which should be weighed against the risks and costs of litigation, and assuming the creditor is agreeable to negotiating with the debtor, the creditor should try to negotiate terms that include some form of security and afford it some protection against incurring costs of legal proceedings in the event of default.

Depending on the debtor's circumstances, this could include negotiating a consent to judgment which enables the creditor to quickly obtain judgment (often for the full amount owing) in the event of a default in payment. Other forms of security may include a mortgage on real property owned by the debtor or a director, officer or shareholder of a debtor (if the debtor is a corporation) or a promissory note from the debtor backed up by a personal guarantee from a principal of the debtor

(if the debtor is a corporation). A creditor could also consider accepting a pledge of shares or other personal property of the debtor as collateral.

Commencing a Legal Proceeding

If the debtor fails to respond to the demand letter in a satisfactory manner, or fails to pay in accordance with the negotiated payment terms and the creditor does not have security for payment, the creditor will have to commence legal action to collect the debt.

Where the amount owing is $25,000 or less, the creditor must commence the action in Small Claims Court. For amounts greater than $25,000, the creditor still has the option of proceeding in Small Claims Court but it must reduce the amount of the claim to $25,000 to take advantage of the fast pace and lower cost of a Small Claims Court proceeding. If the claim is more than $25,000 and less than $100,000, the creditor may take advantage of the Simplified Procedure in the Ontario Superior Court of Justice which provides a somewhat more streamlined approach for litigants. For amounts in excess of $100,000, the creditor must commence a regular action in the Ontario Superior Court of Justice.

All actions are commenced by issuing a claim, which is a document filed with the Court setting out the facts that the creditor will rely upon for judgment including the relationship of the parties, the facts surrounding the indebtedness and a calculation of how much is owed. The drafting of the claim is very important. A properly drafted claim may allow the creditor to obtain judgment without incurring significant legal fees if the debtor does not defend the action.

Enforcement of a Judgment

Once a judgment or order for the payment of money has been obtained against the debtor, the creditor may have to take steps to collect the amount that the debtor owes. For more information on enforcing a judgment see my article called *Enforcement of Judgments: I Won!! … Now, How Do I Get My Money?*

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