

# CollinsBensonGoldhill Legal Briefing

**Debt Recovery  
Size Needn't Matter**

## Debt Recovery – Size needn't matter!

by Chi Collins

In the current economic climate, it is difficult enough maintaining your business and turning a profit without having to write off bad debts. Often, small businesses do not bother with the collection of debts as it can appear too time consuming and expensive to do so. Whether you are a landlord who is owed rent, or a business which is owed sums from suppliers or other sources, there are cost effective and relatively quick solutions to recovering debt.

Generally speaking, a debt is a sum that is owed under a contract. That contract could be a lease, it could be written or verbal, or it could simply be the terms for supply of goods or services. There are specific provisions for rent recovery under leases, such as forfeiture or seizing the tenant's goods. Here's a brief review of some significant aspects which apply to most types of debt.

- A "demand" has to be made. This is separate from the invoice as that originates your cause of action. The demand should be made by letter and give the debtor the amount required, the time limit in which to pay, details of to whom and where payment should be made and state that failure to pay will result in further action. The court will require evidence of this step.
- Once the time limit on your demand letter has expired, you can issue proceedings in the County or High Court – depending on the amounts involved and the complexity of the case. The majority of debt actions are conducted in the County Court. If the debt is less than £5000, then it will be deemed a "small claim" for which there is very limited jurisdiction for the court to award costs, even if you win. Hence creditors often do not pursue small debts, as the costs can sometimes outweigh the claim. However, it is possible to conduct your own case via the court's website and legal advice can be sought on specific parts of the claim.
- The financial position of the debtor is always a consideration but it is important to bear in mind that fixed fees for advice is available and thus the fear of having to pay undisclosed amounts is avoided.
- If the debt is over £5000, then the costs risk is the debtor's if you win. A solicitor is best placed to give you advice on your chances of success so that you do not waste time issuing a claim that is bound to fail, or when the debtor has no prospect of paying. Once a claim is issued, judgment can be entered against the debtor without a court hearing if :-
  - (i) he fails to acknowledge service of the claim form within 14 days of service;
  - (ii) he acknowledges service but fails to file a defence within 28 days of service.
- Many judgments (CCJs) are obtained in this way, as many debtors do not actually have a defence. The costs should therefore be minimised. Of course, this assumes that the claim is sound and that all paperwork has been provided. The costs are then added to the judgment debt and will carry interest.

If the claim is defended, then the case will take its course through the court procedure, which can sometimes take several months. However, there are many ways to shorten that process. For instance, if the defence is a sham or clearly has no prospect of success, then you can make an application for "summary judgment", which is in effect, a method to bring forward the entire process without having to comply with the other directions that the court has ordered.

There are various ways of enforcing CCJs depending on whether the debtor is an individual or a company. For individuals, separate proceedings can be used to obtain a charging order over any property that they own, an attachment of earnings order if they are PAYE employees, or you can instruct bailiffs to

seize goods to the value of the debt. For companies, winding up proceedings could be used, the benefit being that it would be extremely difficult for the debtor to oppose the debt as a CCJ has been obtained.

In both cases, a CCJ can affect the debtor's credit rating and make it difficult for them to obtain credit or loans. Often, once judgment is obtained, the debtor will offer some payment in order to avoid enforcement. However, please note that these are not exhaustive methods of enforcement.

CBG, has for over 20 years (amongst other things) specialised in representing restaurant and clients in the catering trade in practice areas such as commercial property, business services and dispute resolution. If you require legal advice on an issue to which this article relates and would like details of our competitive fee arrangement, please contact Mrs. Chi Collins on [cyc@cbglaw.co.uk](mailto:cyc@cbglaw.co.uk) in the first instance and let's see if we can tailor a legal service to suit you.

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