



:: Recovery of Debts – Your Legal Options

The prompt collection of debts is essential for every business. All businesses should have a defined procedure in place for the recovery of monies owing on foot of invoices. This can take the form of a relatively simple procedure from the issue of an invoice, follow up with the customer after a particular period of time, subsequent follow up, an initial demand letter from a solicitor, then legal proceedings if absolutely necessary.

Reducing the Need of Legal Proceedings

Legal proceedings would obviously be a last resort in all circumstances. A professional approach towards matters of recovery, evidenced by prompt follow up with customers, shows to customers that the business takes collection seriously and can reduce the risk of default by customers. Businesses are often slow to resort to legal proceedings due to the fear of losing the customer in future. However, with a proper debt recovery system in place, a business will have a defined timetable for the recovery of debts and legal proceedings will only be initiated when it is obvious that the customer would not otherwise pay. Customers can be notified of the defined timetable for recovery on foot of invoices in the standard terms and conditions (which every business should have).

Commencing Legal Proceedings

The first stage in legal proceedings will involve sending a letter of demand from a solicitor to the debtor. The solicitor will advise the debtor that the debt must be paid with a certain period of time (generally 7 days) before legal proceedings will be issued. It will also state that if the debtor still refuses to pay the debt and legal proceedings are taken, that the costs of the legal action will be sought from the debtor. The debtor will usually also be warned of the consequences of a judgment being given and also the steps to enforce the judgment which the creditor may take. A detailed and forceful letter of demand may often lead to a prompt payment of the debt and no further action is necessary.

However, if the debtor has not paid the debt on foot of the letter of demand, legal proceedings can be issued. The relevant court will be determined by the amount of the debt.

Less than €6,350 – District Court

€6,350 – €38,092 – Circuit Court

Over €38,092 – High Court

A different procedure will apply depending on the court in which the proceedings are taken. Also, the debt may be contested which will add a level of complexity to the proceedings. However, where the debt is due and owing on foot of an invoice for work properly carried out, the debtor may not be in a position to mount a defence. If the debtor does not enter a defence to the proceedings, the creditor may seek a "judgment in default". This means that the court grants a judgment against the debtor due to the fact that the debtor has not defended the proceedings.

Interest can also be claimed by the creditor in any proceedings. This would generally be at the rate provided in the contract between the parties (such as in the creditors terms of business) or in the absence of contractual provision the Court may award interest at its discretion. Once a judgment is awarded, interest is automatically applied to the judgment debt at the statutory rate, which is currently 8%.

Costs of Proceedings

Creditors can also apply to the court for the costs of the legal proceedings necessary to collect the debt. If the debtor unsuccessfully defends the proceedings, the costs will have increased dramatically resulting in the debtor being in a far worse position than if he had paid the debt on day one. The initial letter of demand will point this out to the debtor and this threat can act as an incentive for the payment of the debt.

Judgment Against the Debtor

And what if you obtain a judgment from the court, but the debtor still refuses to pay? A creditor has a number of options once a judgment has been obtained against the debtor. The first is to publish the judgment in the relevant industry publications. These publications are read by members of the industry and bank managers and publication can have adverse consequences for the business of the debtor.

A second and more dramatic option is to seek to have the Sheriff seize and sell goods belonging to debtors in the discharge of debt.

If the debtor is an individual rather than a business, the debtor can be called to attend at the District Court to be examined as to his means. The judge can make an "Instalment Order" directing the debtor to make repayments on a monthly or weekly basis. If the debtor does not make the repayments order by the court, the





creditor can apply to the District Court and seek a "Committal Order". This is an order that the debtor is imprisoned for non-payment of the debt.

Once the judgment has been obtained, the creditor can also apply in Court to have a Judgment mortgage registered against the debtor's property. This prohibits the debtor selling or remortgaging that property until the outstanding debt is discharged. The creditor could also seek to have the debtor declared a bankrupt. This is often sought where the Sherriff has declared that the debtor has no goods which can be seized in order to satisfy the debt.

If the debtor is a limited company, the creditor can apply to court to have the company wound up. A winding up can have serious adverse consequences for the directors of the company and this will often be a serious incentive for the debtor to pay the debt.

A Last Resort

Legal proceedings should be a last resort in all circumstances.

At least then it will be abundantly clear to that the customer has no intention of paying, and you can commence legal proceedings in the knowledge that all non-legal avenues have been exhausted and you have no other option.

Legal proceedings, when issued, should be pursued in an aggressive manner.

This article provides and outline of the various options and proper legal advice should be sought in all circumstances.

Please contact us at info@macsweeneylaw.com

