

Debt Recovery

By Caroline Harris

No matter the size or the nature of your business, there is one thing all businesses have in common customers that don't pay. The approach and resources a business devotes to its debt recovery can make a big difference to its cash flow. It is important to get the approach right at the outset.

Get on to it!

There are two types of debtors: those that won't pay, and those that cannot pay. An important first step for any debt recovery process is to know your debtor are they the kind who can't pay or just won't pay. Before embarking on the recovery process, it is important to ask some questions: Who can be made legally responsible for the debt? What is the debtor's credit history? Do they have any collections or judgments against them? What assets does the debtor have? Is the true debtor a company or an individual? And most importantly, can the debtor pay? Knowing the answers to these questions at the outset will help determine the best means of debt recovery in each particular case.

Know your debtor

For "hardened debtors" the smooth talking debtors who are experienced at dismissing debt collectors letter writing and telephone calls are often a waste of time and money. We have come to know many "repeat offenders" from various debt recoveries. When dealing with such practised debtors, it is important for the creditor to make their debt more important to the debtor than any other debt they may have. Sometimes legal action is the only effective means of doing this.

Some businesses use debt collection agencies to recover debts. However, there is only so far a debt collector can take the matter. Generally, a debt collector will take up where the creditor left off they will write to, telephone and may even visit the debtor and "demand" that the debtor pays. But what happens when the debt collector has exhausted these options? For many debtors, the game is up with debt collection agencies they know the limited options available to a debt collector. While the "no fee up front" policy of debt collection agencies can have some initial appeal, once the collector has exhausted their options, there is less incentive to continue to pursue the debtor by which time the debt may have become stale.

What is the best action to take?

The use of a lawyer can be a much more effective means of debt recovery. Often being contacted by the creditor's lawyer is enough to motivate a debtor to pay. The fact that the creditor has instructed a lawyer to pursue the debt

sends a clear message that the creditor is serious and that it is prepared to take action against the debtor if necessary.

There are several options open to the lawyer: Serving the debtor with a statutory demand, the summary judgment procedure and ordinary Court proceedings. All of these are excellent ways of recovering debt. Once a judgment has been obtained, there are a range of enforcement options available to the lawyer

- Place a charging order on the debtor's property to prevent a sale.
- Apply to the Court to sell the debtor's property.
- Have the debtor company wound up, or for a personal debtor, have them declared bankrupt.
- Have the Court bailiff sent around to knock on the debtor's door to collect the debt.

The appropriate action will depend on the nature of the debt and the debtor's identifiable assets. A lawyer will be able to quickly assess the best legal option to ensure the most efficient and cost effective means of recovery.

If you find debt recovery stressful and frustrating, contact the Jackson Russell litigation team which has extensive experience in this area.

The older a debt gets, the harder it is to recover. As soon as a creditor has heard the phrase "the cheque is in the mail" for the second time, this should be an instant trigger to get on to that debt recovery fast. Don't let the debt become stale. Chances are, if you are not getting paid, others are not getting paid also. The faster and firmer you advocate your own recovery, the further up the queue your debt is likely to be and the sooner it is likely to get paid.