

Thinking litigation



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Thinking Debt Recovery with Elizabeth Stahlut, Solicitor



THINKING DEBT RECOVERY

Sometimes, you may have a complaint against someone who has provided defective goods and services, which you have not been able to resolve with the provider or someone owes you money, and they have not shown any willingness to pay you, in spite of requests from you.

Often, these issues involve relatively small amounts of money. It then does not appear worthwhile, to go to court and sue for the money, where the costs can be significant and where dealing with the complexities of court litigation can be daunting.

In civil debt claims, the amount of the debt generally determines which court or tribunal you would need to go to in order to pursue a debt claim. For matters where the claim is between \$10,000 - \$100,000, it will usually be appropriate to file your action in the Local Court in its General Division. For amounts greater than \$100,000, it would usually be appropriate to file your action in the District or Supreme Court of NSW. For these kinds of action, it is definitely recommended that you get legal advice and assistance.

Debt claims of \$10,000 and under, can usually be filed in the Small Claims Division of the Local Court. This involves filing a Statement of Claim and a supporting affidavit. These must be served upon the other party. In most cases, it is usually a good idea to send a Letter of Demand first, to the other party, to give them an opportunity to resolve the matter, without the need to go to court. This letter would be your proof that you have attempted such resolution, as the Small Claims Division strongly encourages parties to attempt prompt and efficient settlement of claims between themselves, leaving litigation as a 'last resort'. Court registry staff can provide some limited assistance in filling out the appropriate paperwork, but they cannot give legal advice.

If a party has been served with a Statement of Claim but then does nothing about it for at least 28 days, then the claiming party, the plaintiff, can apply to the court for a Default Judgement against the defendant/judgment debtor. Provided the other party does not successfully apply to have a Default Judgement set aside, the plaintiff

would automatically have judgement in their favour by default. It then becomes a matter of how the judgment is to be enforced.

One way, is for the Sheriff's Office to seize property of the judgement debtor and sell it. Another way, is for the wages or pension payments of the debtor to be garnisheed, which means that their payer has to take a certain amount of money out of the debtor's income payments, to pay off the debt. Sometimes, a debtor can apply to be allowed to pay a debt off by instalments and the court can order a party to give evidence of their financial means to determine a reasonable amount to be paid with each instalment.

Also, it is possible for a debtor's assets to be made subject to a charge or a writ. The debt then becomes payable once the debtor attempts to dispose of the asset or when the creditor sells the property. It is usually real estate that becomes the subject of a charge or writ, but it can be applied to other assets.

The Small Claims Division of the Local Court is generally less formal than the General Division, and the court may often refer parties to a Community Justice Centre for mediation, to give an opportunity to settle a claim as an alternative to 'fighting it out' in court. It is generally cheaper to negotiate a settlement, with or without the help of a mediator (Community Justice Centres do use mediators). Lawyers can also assist, in negotiations.

Seeing a lawyer about any contemplated action in court, may not only help to save you unnecessary costs, you will also get the advice, information and support that you need, in relation to costs, limitation periods and options for recovery to ensure that you are in the best position to get what you are entitled to. Elizabeth Stahlut Solicitor