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Use of the Statutory Demand Procedure for Outstanding Debts

The Wrong Way

Richard Green was the Director of Clean Landscaping & Building Supplies Ltd ("CLBS") Its trading terms required payment on the 20th of the month following invoice. One of its customers, Yes We Can Builders Ltd ("YWCBS"), was invoiced on the 2nd of March 2009 in the sum of \$45,000.00. By the 20th of April 2009, the due date for payment, no payment was made.

CLBS's normal practice was to send out a copy of the outstanding invoice with a friendly sticker attached to it reminding the customer to pay. By the 20th of June 2009, CLBS sent out another reminder. By the 20th of July with no payment having been made, they phoned the owner of YWCB who promised to pay next month.

By August, Richard phoned the owner again. He apologised for the non payment and said cash flow was a bit tight at the moment, but could he provide three post dated cheques, which he did. They were post dated 30 September, 30 October and 30 November 2009. They all bounced.

By the time the third cheque bounced it was the first week of December, Richard decided to take advice from a solicitor. By the time Richard met with his solicitor, the account was nearly eight months overdue. His solicitor sent a letter of demand requiring payment within 14 days.

YWCB did not pay. It wasn't until January before Richard went back to his solicitor. His solicitor recommended the use of a Statutory Demand. Once served, this gave YWCB 15 working days to make payment. Failure to make payment within that time allowed CLBS to apply to the High Court to have YWCB placed into liquidation.

The Statutory Demand was served on the 16th of January 2010 and YWCB did not pay. Richard then instructed his solicitor to apply to the High Court to place YWCB into liquidation.

This was filed on the 12th of February 2010. The Court set a date for the hearing of 12 March. This is over one year from when YWCB

were invoiced.

The Right Way

Stephen Tucker operated a business called the Power Tool People Ltd ("PTP"). They also traded with YWCB.

On the 5th of March 2009, YWCB purchased power tools worth \$22,000.00. Payment was due on the 20th of the following month, being the 20th of April 2009. This was on the same date, YWCB were supposed to pay CLBS.

Stephen had a good system in place and sent out one reminder, giving YWCB 14 days to pay. They didn't.

On the 4th of May 2009, Stephen went to his solicitor and they issued a Statutory Demand immediately. (It costs about the same as a Letter of Demand but it starts the clock ticking.)

This was done and served on the registered office of YWCB the following day, being the 5th of May 2009. This gave YWCB until the 26th of May 2009 to pay or they are deemed to be insolvent and PTP would be able to apply to the High Court to place them into liquidation.

They received a cheque, it cleared and they closed YWCB's account. Had Richard followed the same process, he may also have been paid before YWCB's cashflow got so tight it couldn't pay anybody.

The key here is to act promptly and use the Statutory Demand procedure early because it does take time. You need to start the clock early. That way if your debtor wants to talk about time payment or negotiating some other form of settlement, they can do so, but they would have to make sure that it is completed within the time frame set out by the Statutory Demand procedure (i.e. within 15 working days) otherwise you can apply to the High Court to place them into liquidation.

This tends to be more of a motivator than a reminder letter and phone calls

- Next week—Relationship Debts by Lloyd Collins