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What Happens After You Get Judgment

So you have taken the person who owes you money to Court and got judgment in your favour. The debtor has been ordered to pay your original invoiced amount, plus interest, plus costs (if you used a lawyer during the process) and disbursements.

Now how do you get the debtor to pay what he owes you? Believe it or not, even though the Court has ordered payment, it is up to you to enforce it!

A party owing money to another party under a judgment is known as a judgment debtor - the party owed the money is known as the judgment creditor.

The main methods of enforcing a judgment against a judgment debtor are:

- Where the judgment debtor is a company owing more than \$1,000.00; by serving a Statutory Demand on the company with a view to liquidating that company should it fail to satisfy the statutory demand;
- Where the judgment debtor is a natural person owing more than \$1,000.00; by serving that person with a Bankruptcy Notice with a view to bankrupting that person should he or she fail to satisfy the bankruptcy notice;
- Where the judgment debtor has an interest in real property (ie. houses or real estate); by lodging a Charging Order against that interest to the value of the judgment;
- Obtaining an Order for Examination of judgment debtor from the Registrar of the nearest District Court and obtaining an Attachment Order against the judgment debtor's income based on the examination.

Quite often the threat of liquidation or bankruptcy proceedings will bring settlement offers from judgment debtors who obviously don't want to be liquidated or cannot afford to be bankrupted because of their particular position.

The method of enforcement you choose will be dictated by your assessment of the judgment debtor's financial situation, and will often require some significant background/financial investigation of the judgment debtor's situation.

The usual method of ascertaining a judgment debtor's ability to pay is to ask the Court for an Order for Examination. An Order for Examination

compels the judgment debtor to attend Court to be orally examined as to his or her income and expenditure, assets and liabilities, and generally as to his or her means for satisfying the judgment debt. If the judgment debtor fails to appear at the examination the Court can issue a warrant for his or her arrest to compel him or her to appear.

Following the examination, the judgment creditor normally applies to the Court for an Attachment Order against the judgment debtor's source of income. This Attachment Order compels the judgment debtor's employer to pay the judgment creditor such sums of money at such intervals as the Court may order. The judgment debtor's source of income includes social security benefits, pensions and ACC payments, as well as wages or salary. It is an offence for an employer not to comply with that Order.

For small to medium size debts, the Order for Examination/Attachment Order is the preferable option for you to take since it is a relatively cheap process in the scheme of things.

For larger debts, and if the judgment debtor has an interest in real estate, the judgment debtor can apply to the Court to have a Charging Order placed over the judgment debtor's interest in that real estate to the value of the judgment. This means that while the Charging Order is in force, the judgment debtor cannot sell or transfer his or her interest in that real estate without first satisfying the debt. The Charging Order has a lifespan of two years and can be renewed periodically. The downside of a Charging Order is that while the judgment debtor can live with having the Charging Order lodged against his or her interests in the real estate, they are not necessarily going to be compelled to pay you what is owed.

Often it is a good idea to also initiate bankruptcy proceedings at the same time as obtaining a Charging Order as this tends to focus the judgment debtor's attention on paying.

Quite often chasing debts needs to be a business decision. Obtaining judgment is a relatively straight forward process, it is enforcing that judgment which can be problematic.

If you have any questions regarding the enforcement process, give us a ring and we will help you assess the best option for you to take along with the likelihood of success.

- The next newsletter covers the topic of managing trusts after separation by Amy Haste