

“ Plain speaking legal advice ”

Gets What's Owed to You...

“ Plain speaking legal advice ”

Frankie Tierney explains how to recover money owed to you

It is debt that has got us into the current economic malaise and it is debt that is causing a growing headache for businesses – both because they have more debtors, and those debtors are less willing or able to pay.

One way to force a debtor's hand is to issue a statutory demand (SD), whether or not you have a court judgment to enforce. This ups the stakes considerably, because if the debtor does not, within 21 days of receiving the SD, either pay the debt or reach an agreement as to how it will be paid – or apply to the court to have it set aside – your next step is to issue a bankruptcy petition (if the debtor is an individual) or a winding-up petition (if a company).

Seeing it through

There are benefits to this process, but you need to tread carefully. If the debtor is genuinely struggling but wants to continue in business, an SD can encourage them to prioritise your invoice. But you must be willing to see the process through – if the debtor calls your bluff and you take no action, then your debt will inevitably go to the bottom of the pile.

Where the debt has been consistently disputed, serving an SD can prompt the debtor to pay up. But such a dispute is grounds for setting the SD aside, so should the debtor refuse to pay and can show conclusively that the whole amount has always been in dispute, be prepared to withdraw the SD. If you don't and the debtor takes the matter to court, you will end up paying their costs.

If you are the debtor in these circumstances, or perhaps the debt is not due to be paid by you, you have to act quickly and lodge your application within 21 days. The court will want proof of the dispute, so don't do it all over the phone – make sure you have written evidence.

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

It is worth contacting the party issuing the SD immediately with copies of your evidence so as to head off the need for a court hearing (again, do this in writing). It is at this point that you would be wise to instruct solicitors, rather than waiting until the twentieth day because you need to make the application to the court by the following day. In my experience, a creditor who is using the SD improperly because the debt is disputed is more likely to withdraw it if solicitors are instructed by you to challenge it straight away.

Taking action does cost – even without using solicitors, you will have to pay court fees and a deposit towards the trustee/liquidator's fees of around £450 (bankruptcy) and £650 (winding-up). An SD is also ineffective if the debt owed by an individual is less than £750, as you cannot get a bankruptcy order for less than that. The only criteria for a winding-up order is that the company cannot pay its debts.

However, if the amount is relatively small and the debtor has tried to agree a reasonable payment plan, a court may decide the bankruptcy/winding-up process is being abused and throw the application out – with an order for you to pay the debtor's costs.

Be aware also that, even if you do successfully apply for an order, this does not give your debt any greater priority. You stand in line with all the other creditors and will receive payment in the usual order of priority – and unsecured debts are very low on that list.

If you really have reached the end of the line and cannot sort out your debts sensibly, don't bury your head in the sand – go and see an insolvency practitioner for advice on what your options really are. Somebody's mate down the pub or the glossy TV adverts for debt consolidation are rarely a reliable source of advice.

If you would like to discuss any of the issues raised in this article contact Frankie Tierney at frankie.tierney@herrington-carmichael.com or call 01276 686222

Watchmoor Park
Camberley
Surrey
GU15 3YL

tel: 01276 686222

4 Station Road
Aldershot
Hampshire
GU11 1HU

tel: 01252 322451

3&4 Market Place
Wokingham
Berks
RG40 1AL

tel: 01189 774045

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.