

July 2004

You Sue. You Win. You've Got The Judgment. Now What?

By John Mullen

So you've gone to Court and had a trial and been successful. Or maybe the Defendant didn't even bother to put in a defence in the beginning. You won!

What do you do now?

It's Up To You To Collect

In our adversarial system the parties to the action run the Court process – including enforcement of any Judgment obtained. The Court is not going to collect the money for you, even though it has given a Judgment saying that the Defendant owes you the money. All that the Court will do is provide you with the mechanisms to assist in enforcing the Judgment. If the Defendant has gone out of business, become insolvent, or left the country in the meantime, then you are simply left with what is known as a “paper Judgment” – one that you have, but can't be enforced. Cold comfort – the satisfaction of knowing you won. Nothing else.

What Will The Court Do To Assist You?

The Court gives you the opportunity to ask the Debtor all pertinent questions concerning his or her income and assets and means of paying off the Judgment at a Judgment Debtor examination. You can also require them to bring all pertinent documents, such as bankbooks, corporate share registers, pay stubs etc., so that you can question them on all of their assets.

What If The Judgment Debtor Doesn't Show Up?

For better or worse, they don't have Debtor's prisons anymore! You can't throw someone in jail for failing to pay off a Judgment. However, if they don't show up at the Judgment Debtor

Examination, and fail repeatedly to attend, you will ultimately be able to persuade a Judge to find the Judgment Debtor in contempt of Court. At that point you can have the Judge order that the Debtor be thrown in jail. Interestingly, this will have a beneficial effect on their willingness to pay your Judgment.

If the Judgment is obtained in the Small Claims Court, then you will actually have a Small Claims Court Judge in attendance at the Judgment Debtor Examination to assist you in getting information from the Debtor. Alternatively, if the Superior Court gives you the Judgment, then you merely go to the Judgment Debtor Examination on your own and obtain the necessary information from the Debtor.

Show Me My Money!

This information will set you up to obtain the following remedies.

Writ Of Seizure And Sale

This is the basic remedy by which one enforces a Judgment in Ontario. You can register it with the Sheriff and the Office of Land Titles where the Debtor resides.

Real Estate: This Writ of Seizure and Sale, also known as an “Execution” will attach to the title of all real estate that the Debtor owns in the jurisdiction or county where it is registered. (If the Debtor has property in different counties, then more than one Writ of Seizure and Sale will have to be issued and sent to the Sheriffs in the various counties.)

Although you can take steps to have whatever real estate owned by the Debtor in that county sold within four months of the registration of the Execution, often this is not done. The more standard practice is to wait for the property to be dealt with by the Judgment Debtor, either by way of sale or remortgage. The reason for this is simple. You only get to sell the Judgment Debtor's interest in the property. If they co-own the property with another individual, such as a spouse, it will be difficult to find a buyer who would be prepared to go on title with the Judgment Debtor's spouse.

You Sue. You Win. *(continued)*

Because the Sheriff requires a deposit (usually \$1,000) to commence proceedings, most Judgment Creditors wait until the Debtor deals with the property.

Personal Property: The Writ of Seizure and Sale can also be used by a Sheriff to seize assets that the Debtor owns within the Sheriff's county. This may be beneficial, but unfortunately there are a number of exemptions that a Debtor can take advantage of, such that the Sheriff won't seize \$2,000 worth of tools, \$2,000 worth of furniture, etc. Given the small amounts second hand furniture would fetch at a Sheriff's auction, this essentially exempts most Debtors from having much by way of their personal furniture and furnishings seized (unless for example, they have an expensive art collection).

You can also get the Sheriff to seize bank accounts if you know their location (garnishment notices can also be served upon banks). You can seize certain RRSPs (although some which have a life insurance function can be exempt from seizure).

It is common that more expensive items, such as cars or boats may be leased or financed through a lending institution that will have their own security registered against the title to the property. As a result, unless you are prepared to pay out the earlier Creditor, and unless the vehicle has sufficient additional equity in it, it makes little economic sense for you to seize it.

Garnishment

If you know where the Debtor works, then garnishment proceedings can begin against them. The employer is obliged to make ongoing returns every payday up to a maximum of 20% of the Debtor's net pay.

If the Debtor is a business, and if you have inside knowledge that someone owes them money, then garnishment proceedings can be taken against the person that owes your Debtor money. They can be required to pay the money to the local Sheriff who holds the funds for 30 days. Bear in mind that the Sheriff will distribute any funds seized on a pro rata basis with you and any other Creditors who filed Writs of Seizure and Sale prior to the time of distribution.

Sometimes

You Sue, You Win, You Lose

These are just some of the steps you can take to try to enforce your Judgment once the Court says the Debtor should pay. Sometimes you sue, you win, you lose. But generally the judicial system provides for a fair outcome. If you have any questions on this topic or on any aspect of commercial litigation as it may be affecting your business, please contact me.

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John Mullen is a commercial litigator with significant court experience. His practice focuses on resolving and preventing disputes that arise in the course of ongoing business. For more information on this newsletter topic and other litigation matters please contact him at mullen@sdslawfirm.com.

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