

## SMALL CLAIMS IN THE COUNTY COURT

### GENERALLY

- 1 Identify your defendant. If the name is “Bloggs Builders” is that a sole trader or a limited company? You cannot just sue a trading name. If it is “Joe Bloggs trading as Bloggs Builders,” then that is the name to use. If you are not sure check on the Companies House Web site. That gives full details of all limited companies and their addresses.
- 2 Remember that if you live in Doncaster and issue in the Doncaster County Court, other than in personal injury actions, as soon as a defence is filed the case will be transferred to the defendant’s local County Court. It can come as a remarkable shock to find that you have to travel to London or Exeter for any case management conferences or for the hearing.
- 3 Is the defendant worth suing? If they are living on state Benefits in a council house, the prospects of you getting your money are limited. It is sometimes better to accept reality and not waste your money on the court fees.
- 4 Time Limits are extremely important. In my experience most litigants in person take a very flexible attitude towards the time limits laid down in a summons and have this belief that somehow it will not matter if they are a day or so late in doing something. When the summons is issued check the date for service given by the court. If you do not receive the acknowledgement of service by the date specified by the court go and visit the court personally and apply to enter judgement by default. The same with the defence if it does not arrive on time. You will be surprised how often you will manage to get judgement his way.
- 5 Make life as awkward as possible. If there are aspects of the defence that are unclear write to the defendant and ask for clarification (further information) always keep a copy and always be polite but insist. If they are not willing to comply apply to court for an order. The court staff will help you to fill out the paperwork
- 6 If you are asked to grant and extension of time for filing a defence or taking some other step in the proceedings, I tend to grant one extension but after that make them apply to the court. Remember that as a litigant in person in a small claims matter costs are not normally an issue, you will not be paid for your time but neither will the other side either, so make them work for it. If you do a good job they will become so brassed off with you that they will make you an offer just to get rid of you.

### THE HEARING

- 7 Make life as easy as possible for the Judge. Prepare a typewritten submission of no more than 2 sides of A4 setting out your side of the case.

Make sure that you exhibit to it any documents that you wish to refer to. Number the pages so that it can be read like a book. The judge will spend all day every day making his own notes and will be extremely pleased when somebody comes along and does the work for him

- 8 Check out any legal points. Judges do not like to have to choose between the evidence of 2 different witnesses. (effectively calling 1 or other a liar) Many court cases have at their heart a mistaken understanding of what the law says based upon what the party has been told by his mate down the pub. Check it out! Visit the CAB or the local law Centre. Ring your local solicitors and ask if they do a free clinic. If you are desperate, pay for 1/2 hours advice!
- 9 Call the Judge “Sir “ if he is a man or “Madam” if it is a woman. Always talk to the Judge. He or she is the only person in the whole room that matters. Be polite. Do not swear and never interrupt the judge. A written submission helps because you can read it or constantly refer to it. If you are lucky the judge will simply adopt what you say and start asking the other side about it, effectively taking over your case for you. At the very least it helps when your brain dries up and you cannot remember what you wanted to say any more.
- 10 Try to avoid calling the other side a liar. He might be but judges do not like making difficult decisions like that. People are “mistaken” or they have” lapses of memory”.
- 11 Serve any documents well in advance. If your bundle looks impressive enough the Defendant might not even turn up. He might realise that he is on a hiding to nothing and decide not to bother. Most of the time you will not find out until you get to court. If you are dealing with a business of any size they will have to do a cost / benefit analysis and may come to the conclusion that the case is more trouble than it is worth. If your written argument is good enough they should realise that there is a litigation risk and try to reach a compromise
- 12 Always be prepared to settle. Court proceeding are far less predictable than horse racing. Judges are very strange people who have their own idiosyncrasies and foibles. Some do not like tradesmen who try to rip off members of the public others do not like members of the public who refuse to pay honest hard working tradesmen! Some Judges do not like people with red hair or he may have had an argument with his wife that morning before he came out to court and be in a bad mood. The point in that they are only human. Do not expect justice. Court cases are all about who has the best evidence or lawyer.
- 13 Decide what your bottom line is. Tell the other side in writing what you are prepared to settle for. A bird in the hand is always worth two in the bush.!

- 14 Evidence at Arbitration hearings is informal but common sense still applies. You cannot cross-examine a letter from your mate or a witness who does not want to come to court. The evidence, which a court is likely to believe, is taken from the witness who is prepared answer hostile questions. The best witness comes to court with you
- 15 Don't be intimidated by the fact that the other side have decided to instruct a solicitor for the hearing. Solicitors are not welcome at Small Claims hearings and don't get their costs whatever the result. They are unlikely to know a fraction of what you know about the case because cost restrictions prevent them from spending the time in preparation. In any event what normally happens is that the judge will normally then start to help the litigant in person in order to redress the balance. I never have any concerns about sending a client by himself to a Small claim shearing (provided that he is not a blithering idiot in which case try to steer clear anyway)

#### ALLOCATION QUESTIONNAIRE

- 16 When you fill this in make sure that you include with it any documents that you want the Judge to see. If you want the Judge to make any specific directions say so in an accompanying letter. Half the time the Judge will give his directions on paper without calling a hearing. That is useful if you want to avoid the hassle of a trip to court but not so good if he misses something out!

#### ENFORCEMENT

- 17 Getting the judgement is the easy bit. The fun always starts here. Do not assume that when a court orders the Defendant to pay up within 14 days he will do so. In my experience most small claims debts are impossible to enforce. The court does not enforce the order for you. Having got your judgement the court leaves it entirely up to you to enforce it. You will know law steps Available to tryout ( Charging Order, County Court Bailiff, Attachment of Earnings, Garnishee or Oral Examination) **THEY ALL COST MORE MONEY** with no guarantee of success.
- 18 Start from the proposition that if the person you are chasing is living in a council house or a rented flat and is living on state benefits the prospect of getting your money is very limited indeed
- 19 Do not just send the county Court Bailiffs in. They have good shock effect for the inexperienced debtor but overall their success rate is very poor. Bailiffs are salary paid County Court officials. Nice men but they get their wages whether or not they succeed in getting you any money. The result is their threats have very little in the way of teeth.
- 20 Do not expect the bailiffs to take somebody's furniture, car or TV and stereo. It may sound like the ultimate revenge to strip the house but the reality is that the cost of collection and storage pending sale are expensive

and the bailiff will want cash up front to cover these costs before he will touch anything. The hire of a van and related labour always runs into several hundred pounds and you will have to put your hand in your pocket first. More expense! The final irony is that prices at public auction nowadays are so poor that if you are lucky you will succeed in covering the costs of using the Bailiff in the first place. In recent years with the advent of the Human Rights Act the Bailiffs are even more reluctant to be heavy handed so beware!

- 21 A Bailiff can be persuaded to take” walking possession “ and that sometimes enables him to extract some cash on the promise that he won’t come back with a van if the debtor pays something on account but this is really all just bluff. It is the most likely way to get your money but you might find that it comes in at £5.00 or £10.00 a week if you are lucky.
- 22 A garnishee order sounds good. The reality however is that most people who get themselves involved in this kind of litigation do not have any money (that is the real reason why they haven’t paid you) if they have a bank account it will be in overdraft so there is nothing to go for anyway.
- 23 To find out what they have got you can apply to have them orally examined. This can be quite good fun and is always worth a try if for no better reason than it annoys the hell out of the person who has given you so much grief to have to come along to court and explain his finances! The chief Clerk will undertake the oral examination and in theory there is no need for you to be there. He completes a fairly standard questionnaire and you will be given a copy through the post. This should at least tell you if they are working and enable you to think about an Attachment of Earnings order. If there are specific questions you want to put make sure that they are in writing to the court. Insist that the Debtor brings with him his bank statements and pay slips. Write to him and the Court. If you don’t he will often come along and give you a total load of Bull because no one has checked up. If the Court is local I try to do the oral examination myself.
- 24 Attachment of Earnings is a good method of enforcing. Once the order is made the employer has the responsibility for doing the work and it is an offence to change jobs without notifying (Better check this) it may take some time but it is one of the best ways of getting your money.
- 25 A Charging Order is also good, (slow) but effective. If they own their own property, even if it is on mortgage, go for a charging order. That gives you the equivalent of a second mortgage on the property .If there is any equity they cannot sell without using any free equity after any prior charges have been paid off, to settle your debt. Do not be too concerned if oral examination reveals that there is not a lot of equity. In recent years house prices have risen consistently. There might be nothing now but in 5 years time who knows? Do this and you are playing the long-term game.
- 26 Finally remember that if a judgement is not settled within 7 days it is registered in the Register Of County Court Judgements. Any time the

debtor applies for credit, be it to buy a new TV at Currys or to take out a store card a search will be made in the register and if there are unsatisfied judgements credit is likely to be refused until the debts are cleared. It is sometimes worth pointing this out because nowadays credit is the lifeblood of the economy. You will be surprised how often we have someone come along years later wanting to settle an old debt because they have been refused credit.

- 27 To conclude – be sensible and take a commercial view. The debtor who knows what he is doing can lead you a real merry dance and make you spend hundreds of pounds to get a fraction of that back. Some will do it deliberately. Get used to finding that people don't turn up at court so you end up with a whole series of adjournments. The court system is not designed to help collect debts and the chap who knows what he is doing can play the system and get away with a scandalous amount.
- 28 Never try bankruptcy as a means of debt collecting. It is very expensive, never brings any money in and just lets the debtor off the hook after 3 year