



DEBT COLLECTION FOR OMCs

APARTMENT OWNERS NETWORK

NOVEMBER 2014

Introduction

- Outline the new District Court Procedure
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- Service of Proceedings – Problems
- Statute of Limitations – 6 year rule
- Explain enforcement options
- Legal Costs

New District Court Rules

Courts and Civil Law (Miscellaneous Provisions) Act 2013

- Monetary Jurisdiction of District Court increased from €6,349 to €15,000
- Monetary Jurisdiction of the Circuit Court increases to €75,000

New District Court Rules

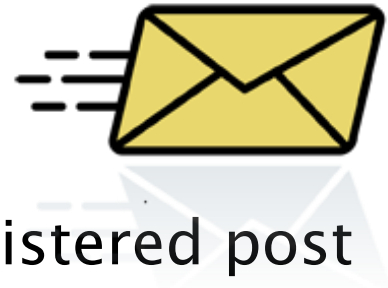
District Court (Civil Procedure) Rules 2014 (S.I. 17 of 2014)

- Proceedings are now issued by way of 'Claim Notice'
- The Statement of Claim schedules letters of demand from the OMC, legal demand letters, a statement of account and Lease details (if known)

New District Court Rules contd.

- The Respondent must enter an Appearance and **Defence** within 28 days of service of the Claim Notice and the matter is then set down for trial
- A Respondent may at any time before or at the time of delivery of Defence apply to the Claimant (The OMC) in writing for copies of all documents listed in the Statement of Claim

Service of Proceedings



- Proceedings are generally served by registered post
- By far the biggest problem in progressing debt collection claims is the inability to successfully serve proceedings
- Trace enquiries can sometimes be useful
- Personal service is possible if Directors know or trace enquiries confirm that debtor resides at address
- An application to Court is possible to allow service by ordinary recorded post – known as ‘Substituted Service’

Statute of Limitations 1957

- Time limit within which to take a claim
- For the purposes of a debt/contract – 6 year rule applies
- Any service charges outside the 6 year period prior to the *date of issuing the proceedings* is ‘statute barred’ and cannot be recovered.
- Once you have obtained judgment, in general, you have 12 years to enforce that judgment

Enforcement Options

- Sheriff
- Summons for the Attendance of a Debtor/Application for Committal
- Judgment Mortgage
- No longer a viable option: Equitable Receiver



SHERIFF



- Solicitor sends decree/execution order to Sheriff
- Sheriff sends warning letter to debtor
- Sheriff calls to debtors premises demanding payment
- Sheriff may accept post dated cheques
- Nothing to seize – decree returned to solicitors office marked 'Nulla Bona' / 'No goods'
- Proceed with alternative enforcement options

Summons for the Attendance of a Debtor

- Summons served on the debtor requiring him or her to attend court on a certain date
- Debtor is cross examined as to their means
- If Judge is satisfied with evidence a reasonable Instalment Order will be granted
- If debtor fails to show the Court can make an Instalment Order in their absence
- The order is often an nominal sum if debtors financial situation is poor

Application for Committal

- If debtor fails to pay instalment order they are in contempt of court
- If debtor remains in contempt OMC can apply to have debtor committed to prison
- Most debtors turn up at this point and plead time to pay
- A Judge can only imprison if the debtor refuses to pay, not if they are unable to do so

JUDGMENT MORTGAGE

- Apply for Judgment Mortgage after Sheriff returns Decree/Execution Order marked Nulla Bona/No Goods
- Director of OMC signs affidavit (€175 Land Registry Fee)
- Judgment applied to Land Registry Folio
- Ranks after any previous charges (eg. Mortgage)
- 12 years to enforce (mortgage suit)

EQUITABLE RECEIVER

- In the context of an OMC the equitable receiver would be appointed over rents
- No longer a viable enforcement option for OMC's
- High Court upheld appeal of Debtors in *Waterside Management Company v. Brendan Kelly and Asta Kelly*

Waterside Management Company v. Brendan Kelly and Asta Kelly

- Judgment obtained in the Circuit Court for arrears of service charges for 5 apartments
- Circuit Court Judge appointed an Equitable Receiver over the rent payable by the tenants until such time as the service charges were discharged
- Defendants appealed the decision to the High Court

Waterside Management Company v. Brendan Kelly and Asta Kelly

- President of the High Court (Kearns P.) quoted but did not expressly approve previous judgments that the appointment of Equitable Receiver may be reserved to circumstances where the debtor holds an equitable interest which is not capable of being attached by the ordinary processes of enforcement
- The Management Company held a legal interest and must therefore exhaust all other legal enforcement/execution options
- Appointment of an Equitable Receiver was not ‘just and convenient’ in this case given the small sum involved (9,684.00) compared to others with an interest in the property

COSTS

- Costs are generally applied to Debtors Account
- Court Order – possibility each side must pay own costs but generally costs ‘follow the event’ ie. unsuccessful party will pay costs
- Settlement – ‘all-in’ or ‘costs to be taxed in default of agreement’

CONCLUSION

- New rules create greater transparency – no longer ‘trial by ambush’
- The increased monetary jurisdiction of the District Court should minimise cost risks for OMCs
- Remains to be seen whether increased monetary jurisdiction will greatly increase the caseload of the District Court creating lengthy hearing delays
- Remember 6 year rule
- High Court decision in the Waterside Case is disappointing as OMCs must rely on often less effective means of enforcement

Questions....

