Tough debt collection tactics for tough times

In today’s economy, companies in the printing industry need to know how to effectively collect outstanding debts. By Ivan Zartz

When I started acting as an attorney for several large commercial firms 25 years ago, dealing with debtors was pretty straightforward. I used to send letters of demand to wayward debtors and I would receive a petrified response from a credit controller or a senior financial manager advising me that payment would be made the next day. How times have changed! Unfortunately nowadays letters of demand sent by credit departments and by attorneys count for nothing. So companies need to develop drastic measures to collect outstanding debts. This article looks at ways companies in the printing industry can more effectively collect outstanding debts in today’s recessionary economy.

The “friendly” attorney’s approach
The first and friendliest way of collecting debts, once they are handed over to an attorney, is for the attorney’s secretary to make a call to the debtor in the hope that this might prompt a payment. Sadly, most of these calls result in a promise to pay, but the payment is rarely forthcoming. So you usually have to escalate matters in an attempt to collect the outstanding amounts.

The next step is to issue a summons. The problem that I find with issuing summons is that there are many creative attorneys who will find some technical reason to delay their client’s payment. This will stall things for a year or two, which is the time that matters take to come to court. It takes approximately a year for a matter to be heard in the Magistrate’s and Regional Court and two to three years in the High Court. Horror of horrors! I know of instances where companies have closed down in the interim and the debt was written off.

On the flipside it also happens that the company sued is liquidated – again, the delaying tactics paid off. And this is not to mention the costs to carry on the litigation. If the debt repayment is delayed often companies lose their appetite to carry on with the legal route and sometimes choose to write the debt off. Many financial advisors and credit controllers of large companies grow weary of attorneys rendering accounts for postages, petties and correspondence on a never-ending basis while the debt remains unpaid. Indeed, the only one who benefits is the debtor who has successfully warded off another action.

Ivan the ‘Terrible’s’ way of collecting debt over R50 000:

Liquidation of the company/close corporation
For debts of more than R50 000, I suggest a liquidation of the company/close corporation and I outline the procedure to adopt here. I would add that in any case, before a matter is handed over to an attorney, companies should adhere to the following requirements.
1. The paperwork is in order, i.e. proper proof of delivery, etc;
2. All genuine queries relating to the account have been resolved – there must be no room for the debtor to manoeuvre out of paying the debt;
3. Detailed notes of conversations with the credit department of the debtor as to why payment is not being made. I will return to this point shortly.
4. There is a willingness on behalf of the management of the company that the settlement of the debt is more important than retaining the customer.

To revert to point (c), a company or close corporation may be liquidated if it can be shown that it is unable to pay its debts. I have no doubt that this is the most effective way of collecting debts over R50 000.00.

**Inability to pay debts**

A company or close corporation is deemed unable to pay its debts if, after a letter of demand has been sent to the registered office of the company or close corporation, more than 21 days has passed from the date that the letter has been sent and no payment or response has been received. The sheriff must serve this letter.

A company is also deemed unable to pay its debts if there is a written or oral admission by a representative of the finance credit department of the debtor that the company is unable to pay because it has cash-flow problems.

It is absolutely imperative to set up a company/close corporation for a liquidation if you get an admission such as: ‘we cannot pay our debts because we are awaiting a payment of a large sum of money from the SABC’ or ‘we cannot pay our debt to you because nobody is paying us’, or ‘we cannot pay our debt to you because business is bad and our directors are trying to obtain finance from a bank or a third party’. These are telltale signs of an inability to pay.

From a practical point of view, the credit controller should note these responses and confirm them in writing with the debtor customer. For example: ‘I confirm that I telephoned you on 6 October 2012, demanding payment of the sum of R100 000. During the course of the discussion you advised me that you could not pay the debt as you were also owed substantial amounts of money by your customers who were just not paying. I confirm further that there has never been a dispute relating to any of the orders placed but you merely are short of funds’.

Both the scenarios under points eight and nine are the beginnings of successful liquidation applications. Bear in mind that you cannot liquidate a company or a close corporation if there is a genuine dispute about the amount owed. So, for instance, if there is a dispute about short delivery or credit notes not having been passed, or other substantial defences, you cannot liquidate. You then have to issue a summons.

**Companies need to adopt drastic measures to collect outstanding debt**

Assuming no disputes, and assuming you are armed with the debtor’s inability to pay, then you can liquidate.

**The advantage of a liquidation**

**Cost Effective**

Liquidation can be cost-effective if you agree a fee with your attorney upfront. The attorney doesn’t need to render countless accounts and you know what the cost will be. Invariably, you can collect the costs from the debtor, or most of the costs, because the debtor is too terrified not to pay under the sword of threatened liquidation.

**Timing – the ‘First-Come, First-Served’ principle**

In today’s recessionary climate, it is a case of first-come, first-served when it comes to liquidations. So the companies who go on and on phoning debtors without doing anything proactive from a legal point of view are often the organisations that will end up completing long-winded claim forms when the company has been placed into liquidation and receive a meagre dividend of one cent in the rand years later.

I cannot be prescriptive as to when a credit controller needs to hand over a debt, but I know of many instances where, because the company is scared of spending company’s money on legal fees, debts are handed over too late and the result is the ‘one cent in the rand’ return.

**The shock-effect of a liquidation application**

As I have said before, you have to realise that you’ll probably not do business with the customer again once you have served them with a liquidation application.

I have found from experience, that in the main companies served with liquidation applications find the money to pay. It is far too costly to oppose the application and file affidavits when, in most cases, there is no defence.

In a liquidation application, the technical defences referred to when you issue a summons are minimised so that you normally get paid fairly quickly as opposed to waiting years for payment. The prospect of the business being closed down, which is the effect of a liquidation order, outweighs all other considerations.

**The re-structuring of securities**

The final advantage of a liquidation is that sureties that are out of date, i.e. where there are new directors, can be resigned, or, in the case where there are no sureties, can be obtained in the event of the company/close corporation wishing to make payment of the debt in instalments. I honestly believe that in today’s times, careful consideration should be given to the liquidation process to collect debts.

Ivan Zartz will be holding a series of breakfasts from November 2012 through to 2013. The breakfasts will be aimed at credit controllers, financial advisors and anyone else interested in learning about debt collection techniques. Please contact Ivan Zartz Attorneys on 011 483 2741.

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