



Introduction

In our first article for the Monday Morning Dispatch, we introduced you to Acclaim and asked the three simple questions that we ask to our clients:

- 1 Does your business have any outstanding invoices?
- 2 Would you like to recover those invoices at no cost to you?
- 3 Can one of the Acclaim team contact you to explain how we can help?

In this week's edition of the Monday Morning Dispatch, we thought we would cover applications for summary judgment pursuant to Part 24 of the Civil Procedure Rules ("CPR"). Below is an overview and outcome of a recent matter that we acted for the claimant who instructed us to seek summary judgment.

What is a summary judgment

Summary judgment is a procedure where a court makes a judgment against a party on the whole of a claim or on a particular issue.

The main factors that will be taken into account by the court are whether:

- A claim, issue or defence has no real prospect of success; and,
- there is no other compelling reason for a trial

Where a defendant files a defence to a debt claim, and the above factors apply, summary judgment is a procedure which we can use to dispose of the case without a trial.

When an application is made for summary judgment, the burden of proof lies with the applicant. The usual principles are that if a matter proceeds to trial, burden is on the balance of probabilities (i.e. 51% would succeed), whereas with an application for summary judgment, that threshold is slightly higher as there must be 'no real prospect'.

Case Study

We recently acted for a claimant who was owed a substantial sum for unpaid invoices, for goods which they supplied to the defendant on credit terms. The defendant had breached those terms of credit and despite the claimant's efforts, payment was not forthcoming. The claimant instructed Acclaim to issue court proceedings.

We issued proceedings in the County Court Business Centre on behalf of the claimant. The defendant filed a defence which claimed that the goods that were supplied, were incorrectly supplied.

This was the first notification or indication of a dispute that the claimant had received. The defence was brief and provided no further details to allow the claimant to investigate the issues raised. A request for further information was therefore necessary and so the claimant instructed us to make such request, which was made pursuant to CPR Part 18. The defendant failed to respond to the request for further information.

The matter was allocated to the appropriate track and a trial window was arranged. The trial was due to take place some 6 months following the allocation. Consideration was therefore given as to the prospects of success for summary judgment.

It was advised to the claimant that on the basis of the defence (or lack of) and on the evidence that they had in support of their claim, that an application for summary judgment would be the right course of action and that in doing this, it would bring a conclusion to the matter sooner than waiting for the trial date. The other benefit of doing such application at this time is that the proceedings would be stayed for the purposes of hearing the application, which mean that the parties didn't need to take the steps directed by the court on the track, such as disclosure or witness evidence.

Acclaim prepared the application and a substantive witness statement in support of the application on behalf of the claimant, which provided the background giving rise to the debt and the evidence possessed by the claimant. The application was allotted to a hearing 3 months later.

As with such applications, CPR 24.5(1) states that if the respondent to an application for summary judgment wishes to rely on written evidence at the hearing, they must file the written evidence at least 7 days before the summary judgment hearing. The defendant did not file any written evidence but did proceed to turn up to the hearing.

At the hearing, we submitted that the defendant did not have a real prospect of successfully defending the claim on the basis that the defence did not dispute receiving the goods. Further, the defendant did not raise any dispute with the claimant regarding invoices or any goods in accordance with the contractual clauses of the claimant's terms of business.

Moreover, it was pointed out to the judge that when the claim was raised, the defendant made a partial payment. As a result, it was submitted that this indicates that the defendant had no issue with goods, as set out in their defence and before the defence was filed the defendant at no point raised any disputes. Further, we submitted that the defendant has not rejected or returned the goods to the claimant, therefore, they have accepted the goods by keeping them. Also, the claimant relied on Section 35(4) Sale of Goods Act 1979, which states that because the defendant did not raise any issues within a reasonable time to the claimant, they were deemed to have accepted the transaction and therefore owe the claimant the outstanding invoices.

In dealing with the two limbs to be considered by the court in such applications, it was submitted that the defendant's defence did not have sufficient merit for the claim to proceed to trial nor do they have a defence which is better than merely arguable or realistic and they have no evidence to support their position. On that basis, the claimant submitted that the defendant does not have a real prospect of successfully defending the claim and there are no other compelling reasons why the issue should be disposed of at trial.

The defendant was given the opportunity to set out their position, where they continued to claim that they disputed that the goods delivered were correct. The judge pointed out to the defendant and stated that looking at the file, the defendant filed a very brief defence and that there is no evidence from them to support their allegations, in particular evidence that they have queried the goods previously and refused or returned them.

The judge concluded the hearing and stated that she had considered all the evidence and noted, that within the defence goods were supplied and that the claimant's terms and conditions do state that if there are any disputes then notification was to be made to the claimant within 10 days. Further, she stated that the invoices raised by the claimant stated that any discrepancy is to be notified within 7 days. She further pointed out that there is no evidence that any discrepancy was raised and noted that the defendant has not returned the goods. She accepted the claimant's submission in that in Section 35(4) Sales of Goods Act 1979 if the defendant did not raise any issues within a reasonable time to the claimant, they were deemed to have accepted the transaction.

As a result, the judge struck out the defence and made a judgment in favour of the claimant for the full balance as requested and awarded costs in favour of the claimant.

How Can Acclaim help you?

Just because a defendant has filed a defence to your claim, doesn't necessarily mean the defence has merit compelling you to proceed to trial.

Acclaim have the necessary expertise and experience in litigated matters and are able to provide you with advice on your matter.

Contact

If you require assistance with debt recovery, or are interested in finding out more about our services, then you can contact a member of our team below:

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