

The Power of an Order for the Debtor to Attend Court for Questioning

In a previous article, we wrote about various enforcement options available to creditors to enforce a money judgment. In this article, we will delve into how Acclaim successfully managed to bring a debtor to court for questioning about their means and assets, ultimately leading to a resolution that satisfied both parties.

In the realm of debt recovery, challenges often arise when High Court Enforcement Officers (HCEOs) face obstacles in locating debtors and understanding their financial situation. In this matter, the claimant's attempts to recover the debt through HCEOs proved fruitless. The debtor remained elusive, the HCEO was unable to make contact with the debtor at all. This lack of communication hampered any attempt to gain insight into the debtor's financial circumstances and assets, thereby stalling the debt recovery process.

Recognising the need for a different approach, our advice to our client (the claimant) was to make an application to the court for an Order for the Debtor to Attend Court for Questioning (ODACQ). This strategic move aims to compel the debtor to attend court on a given date and disclose crucial details regarding their income, expenditure, and assets. The ODACQ procedure would provide the necessary framework for obtaining the much-needed information which can allow the claimant to make an informed decision on further steps for debt recovery.

Satisfied that this step would be needed in order to advance their efforts for collection of their money judgment, the claimant instructed Acclaim to proceed with the application for ODACQ.

Acclaim initiated the process by filing the appropriate application with the court. The court issued the order which was returned to Acclaim for service upon the debtor. On receipt of the sealed order which encompassed an appointment date and time that the debtor had to attend court, the order was served on the debtor personally, by use of a process server.

The ODACQ process, while not strictly an enforcement method, is a powerful tool in debt recovery. There are consequences where a debtor ignores the order to attend Court and fails to attend the allotted appointment. Failure to attend may be considered contempt of court. Contempt of court refers to any act or behaviour that disobeys or challenges the authority, integrity, or dignity of the court. In most cases where a debtor fails to attend, the court may issue a warrant for the debtor's arrest. The debtor may also be required to pay additional costs associated with their failure to attend, such as court fees, the claimant's legal costs.

In this case, the debtor attended the court as directed, which was a crucial step, as it allowed Acclaim to finally engage with the debtor and gather essential information.

During the appointment, the court's representative questioned the debtor regarding their means and assets, income, and expenditure. The debtor was legally obliged to provide truthful and comprehensive responses. The questions covered a broad range of information, from the debtor's personal information, such as date of birth, their housing status, employment status including place of work, employee name and salary and other financial information such as whether they have any savings accounts.

Fortunately, the debtor recognised the seriousness of the situation while at the court appointment for questioning. At this point, they voluntarily made an offer of repayment, signalling their willingness to cooperate and settle the debt.

The debtor's attendance in court and the full disclosure of their financial situation proved to be a turning point in the case.

The offer, which was made by the debtor, was found to be acceptable to the claimant. The parties reached an agreement, and the judgment was varied by the court as a result, which subsequently was satisfied by the defendant in a reasonable time frame.

The strategic decision to pursue an Order for the Debtor to Attend Court for Questioning proved to be an effective and crucial step in this case where alternative enforcement had already been attempted and exhausted.