



Port Owen Marina Authority (NPC)

Reg # 1999/010199/08

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DEBT COLLECTION POLICY

INVOICING

The applicable invoicing (According to the Berthing/Jetty agreement) should be done timeously by POMA.

COLLECTION OF OUTSTANDING DEBTORS

The standard time allowed to the clients to pay their invoiced amounts will be within 30 days from invoice (current).

Should the outstanding amount NOT be settled within the 30-day period, the client should be contacted telephonically and reminded that the amount is overdue and queried whether there is any problem regarding the payment.

1st Letter – Should the outstanding amount be overdue by 60 days, the client should be reminded in writing of the outstanding amount.

Final reminder - As soon as the amount is overdue by 90 days a final written reminder including a warning of the intention to hand over, should be delivered to the client.

Hand over - Should the client be in arrears for 120 days the account of the client should be handed over to a collection agency/attorney to proceed with the collection of ALL outstanding amounts as described below. POMA will negotiate with the applicable collection agency/attorney how the costs of collection will be charged and be recovered from the client.

Interest – Interest will be charged on overdue accounts from 60 days at 18% per annum.

PAYMENT PLAN

If the client is unable to settle his/her account on the due date, a payment arrangement plan must be negotiated and agreed on in writing as soon as possible.

The payment plan will represent the dates and amounts that must be paid by the client as agreed between POMA and the client. This payment plan must be signed by the client and is only for outstanding amounts. The current amount is still payable monthly within 30 days from invoice.

If the client default on this schedule, the whole outstanding amount will become due for payment.

THE VARIOUS WAYS OF EXECUTING A JUDGMENT IN THE DEBT COLLECTION PROCESS

Introduction

As attorneys we advise our clients that litigation is always a risk. We do so because it is almost impossible to predict the course of litigation from the outset of a matter.

It is possible to do a feasibility study of the practical execution of any legal claim against another person approach. The feasibility study involves obtaining a copy of the debtor's credit record, as well as using a private investigator or a tracing agent to obtain information to find out where the debtor is currently located.

By doing this from the outset, the client is able to make a more informed decision about proceeding, the possible risks of litigation and risk of obtaining a judgement, without practically executing the judgement. The study also gives the attorney a better indication of the potential risks and delays that may arise from the matter.

Warrants of execution against movable property

The warrant of execution against movable property is a legal process issued once judgement has been obtained against a debtor. Under the judgement, the sheriff can attach movable goods and remove them to a place of storage until the assets can be sold at a public auction (sale in execution). This can often be a very expensive way of executing judgement because of the storage costs involved from the time of attachment to the time of the execution sale. In addition, most debtors do not have sufficient movable assets to cover the capital amount outstanding, the legal costs and the costs of the attachment and sale in execution that the creditor is entitled to. Many debtors do not own anything in their personal capacities, which makes it impossible to attach movables and execute the judgement in this way.

The Section 65 proceedings and the emoluments attachment order

The Section 65 proceeding is the Magistrates Court's proceedings for conducting enquiries into the financial affairs of a debtor. This is a very useful procedure that allows the court and the creditor an insight into the debtor's financial affairs. If the debtor is employed, the court will most probably grant an emoluments attachment order authorising the debtor's employer to deduct a fixed amount from his or her salary at the end of the month until the debt is paid in full.

The garnishee order

Garnishee orders are often erroneously referred to as being the same as emoluments attachments orders. This is not correct as the garnishee order does not authorise an employer to make a deduction from an employee salary to satisfy a third-party debt. The garnishee order is granted against monies or other negotiable instruments for the settlement of a debt. In practice, this means that book debts, investments, cash in the bank, deposits held on attorneys' trust accounts, investments or any other cash amount owed to a debtor (except for retirement monies) can be attached by a creditor under the process of a garnishee order.

The warrant of execution against immovable property

In most cases when all the above avenues have been exhausted, the warrant of execution against immovable property would be the next process to consider. These applications are not simple and the latest legislative and precedent guidelines should be followed. For more information please visit our website for a full article on the subject.

Lastly, if the issuing or the execution against immovable property still does not satisfy the judgement debt, the creditor is left with only one alternative — to make application for sequestration of the debtor. Of course, any nulla bona return of service (in which the debtor is unable to satisfy his debts) is an act of insolvency as defined in the Insolvency Act, which can also be brought against the debtor. This is a very costly exercise that practically yields little when all the above-mentioned ways have been exhausted.