

Redmond Johnson

LEGAL DEBT RECOVERY

REPUBLIC OF IRELAND

Currency

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Introduction

The Republic of Ireland legal system is based on the British System hence many sayings and procedures are similar. However it **runs at a slower pace and is more expensive** therefore you need to take careful consideration before taking legal action. Note that the creditor may only retrieve 50% of their costs.

We have set out in the following pages a broad outline of the steps taken to obtain Judgment and the options available for Enforcement of Judgments.

There are three court jurisdictions:

- District Court : deals with debts up to €6,348
- Circuit Court : up to €38,000
- High Court : accounts in excess of €38,000

Note that there is no Small Claims Court for the recovery of debts

Pre-Legal Action

A solicitors seven day letter of demand can be issued (Cost €25). If there is no response then you can issue proceedings.

Issue of Proceedings

In the District Court we issue a Civil Summons, in the Circuit Court a Civil Bill, and in the High Court a High Court Summons. The proceedings are always issued in the area where the defendant resides.

The defendant has approximately four weeks from the date of issue and service in the District Court in which to pay the account. Failing this you can then apply for Summary Judgment or Judgment in the office, when the hearing date has passed.

When proceedings are issued and served in the Circuit Court you can apply for a Summary Judgment fourteen days after the service of the Civil Bill.

In the High Court when the Summons is issued and served you can apply for Judgment ten days after service.

Substituted Service

With the exception of the High Court, where service is personal, proceedings must be served by registered post on debtors. In the case of the debtor being a Limited Company proceeding can be served by ordinary post.

If the debtor refuses proceedings, we have to make an application to court to vary our method of service. We must establish that the defendant is residing at the address given and a phone call is done for this. When our application is granted we can serve proceedings by ordinary post.

In the District Court and the High Court we choose the next available court date for our application for Substituted Service. In the Circuit Court we have to apply for a hearing date and this can take up to three months.

Defended Hearings

In the District Court, if the defendant lodges a Notice of Intention to Defend, the case will be set down for hearing. Normally this is the hearing date on the Civil Summons.

In the Circuit Court if the Defendant enters an Appearance this is an indication that he is going to defend the action. Failing the filing of a full defence within twenty-one days after receipt of the appearance, we are entitled to apply for Summary Judgment. If a defence is filed it can take approximately ninety to one hundred and sixty days for the case to be set down to hearing. In the High Court, when an Appearance is lodged the case must be set down for hearing. This takes between ninety and one hundred and sixty days.

Judgment

In all jurisdictions, where the case is undefended, Judgment is obtained from the court office following the lodgment of an Affidavit of Debt, which is sworn by you. In the District Court, an Affidavit is valid for ten days once sworn, in the Circuit Court it is valid for fourteen days, and in the High Court one month.

Once the papers are lodged in the court office, and checked by the court officials, Judgment is issued. When Judgment is granted, statutory interest is applied to the account at the rate of 8% per annum over European base rate.

There are various options open to you to enforce the Judgment. These vary depending on whether the debtor is a Limited Company or an individual. Enforcement of Judgment is very often the most critical part of the collection process.

Registration of Judgment

Registration of Judgment for publication in the Trade Gazettes (i.e. Experian Gazette and D&B Stubbs) is often an effective method of securing payment especially if the debtor is trading. We must be selective against whom we register Judgments. Only a small proportion of Judgments are ever registered

The Judgment is registered in the High Court Central Office and every week Searchers from Trade Gazettes attend to inspect the register and publish the Judgments in their weekly magazine. Some Sunday newspapers also inspect the register and publish so that there is widespread publicity of the Judgment for little cost.

You will need, however, to consider the danger of publication, will you put the debtor out of business if you publish by alerting his other creditors? Also you must advise us of any payments made while we are in the process of registering otherwise you could be sued for damages for defamation.

Sheriff

The Sheriff is another option, but it can take quite some time, and in many cases the Judgment will be returned because the Sheriff is of the opinion that the debtor has no goods he can seize. In the case of a Limited Company the Sheriff is the only realistic option after registration. We also lodge the Judgments with the Sheriff in low value accounts.

If you know that the debtor owns something valuable, for example a car, you can tell the Sheriff this and ask him to seize it; you must, however, be absolutely sure that the car belongs to the debtor and not to some other member family member or Limited Company.

The Sheriff can enter into an instalment arrangement with a debtor, which may be the best way of getting paid over a reasonable period of time.

Enforcement

In all accounts where the debtor is an individual, we recommend proceeding for an Instalment Order. Regardless of which jurisdiction Judgment was obtained in, all enforcement proceedings are dealt with by the District Court.

Proceedings are commenced after the swearing of the Declaration by us and we then obtain a Summons for Attendance of Debtor which is served on the debtor, requiring him to attend Court on a certain date to be cross-examined as to his means, so that a reasonable Instalment Order can be fixed by the Court.

If you have any information on the debtor's income or assets, then he can be cross-examined about this at the hearing. He is required to lodge a statement of his means in Court prior to the hearing; in practice this rarely happens but he can be asked about his means at the hearing. The Judge will then decide what the debtor can afford to pay, and fix an appropriate amount per month or week.

The debtor may fail to turn up for the Instalment Hearing. If that happens we make our application based on the information we have on file. We will always try and secure the biggest Order possible,

When the Instalment Order is taken up and served, the debtor is then required to pay the account as directed by the Court. If he fails to do this he is in contempt, and we can then apply to court for a Committal Order to have him committed to prison. At this application most debtors do turn up and plead for time to pay. The Judge can only imprison them if they refuse to pay, not if they are unable to.

Once an Order is made you cannot, under any circumstances accept monies from the debtor. You would be interfering with an Order of the court. You do not have to execute the Order, it may be sufficient to threaten the debtor with execution.

Generally, an Order is made for a period of between five days to a month, depending on the Judge sitting.

Garnishee and Receivers by way of Equitable Execution

These options should be considered for larger debts of several thousand pounds in view of the costs involved, approximately €750, although the bulk of the costs are usually recoverable in priority debt.

If someone owes money to your debtor; you get a Court Order to direct them to pay you instead. The difference between the two types of Orders is only that a Garnishee Order is appropriate where the debt is already due to the debtor but not yet paid by the third party, whereas a Receiver by way of Equitable execution is appropriate where the money will fall due in the future by the third party to the debtor.

These Orders can be very useful where you know that the debtor is selling his house or has a Court case, which he is likely to win, or is being paid rent. Orders have been made in the past for payment out of debtor's future salaries, but the

Courts now consider that it is not appropriate to make such Orders and it is unlikely that they will be granted in the future.

The advantage of such Orders is that they come as a surprise to the debtor and the third party. The application to court is made without notice to the debtor or the third party, although they do have a right to come into the Court afterwards if they have a valid objection. So when they hear about the application, the Court Order has already been made and they are stuck with it.

Judgment Mortgages

This is a long-term way of securing payment if other options have failed. If the debtor owns a house, even jointly with a spouse or someone else, the Judgment can be registered as a Mortgage against the house. We do not need consent to do this and it does not matter if the house is a family home or not.

A Judgment Mortgage is valid for twelve years from the date of Judgment and if in that time the debtor sells his property or re-finances his Mortgage he will have to pay it off with statutory interest and costs.

It is surprising the number of houses that do change hands within twelve years, particularly where the debtor has other financial problems. A creditor who has registered a Judgment Mortgage has the option of applying for an order for Sale of the property.

Orders for Sale

This is an expensive procedure, which takes a long time and should not be considered unless the debt is very large and there is no other way of securing payment.

It can be effective to go just as far as getting on Order for Sale, which will cost you approximately €1500. This can spur some defendants into action and they may re-finance to pay you off or may sell the house voluntarily.

If you have to sell the house the cost would be approximately another €2500 - €3500 depending on how complicated the matter gets. It takes a very long time to sell as the sale is conducted through the Courts and there are numerous meetings before the Examiner in the Courts and applications back to Court for various Orders.

It may be necessary to obtain an Order for Possession and evict the debtor and this sort of publicity may not be what you want. You would also need to be sure that there will be sufficient monies left over to pay your debt and recover your costs after payment of the debtors Mortgage and any Charges in priority to your Judgment Mortgage.

Sometimes the Mortgage will be in arrears, and where interest adds up there may be nothing left for you. Also, if the house is jointly owned it can still be sold without consent of the other joint owner but your debt is recoverable only out of the debtor's share of the proceeds of the sale.

Bankruptcy (About three times more expensive to activate than in NI or GB therefore not generally used)

This is an expensive option which takes a long time and the fact that the creditor has taken the trouble of bringing the Bankruptcy proceedings does not confer on him any priority, (i.e. any assets available after payment of preferential creditors

and secured creditors) will be divided amongst all the unsecured creditors in proportion to their debts.

Therefore the creditor who makes the debtor bankrupt will have to pay the costs, which may run into thousands of euros, unless the Bankrupt's estate is sufficient to pay all creditors plus costs, which of course will not be the case, otherwise he would have paid them off to avoid bankruptcy. It may be worthwhile initiating the process at a fairly low cost as it may frighten the debtor into settlement.

Liquidations (Winding Up - As with Bankruptcy, therefore not generally used)

This is a remedy, which may cost thousands of euros and can leave the unsecured creditor no better off. By the time Companies go into Liquidation they often have large preferential debts due to the Revenue, and any property owned is usually mortgaged to a secured creditor so that there is usually nothing left for the unsecured creditors.

The threat of liquidation may make a trading Company settle with you if its financial problems are not too great but in many cases you would be doing a Company a favour by liquidating it. This is a good reason to get personal guarantees from Company Directors before you give credit to a Company.

Remedies against Company Directors

In theory, at least since the 1990's Companies Act, there are some situations in which Company Directors can be held personally liable for Company debts and can be disqualified from acting as Directors of other Companies.

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If in the course of liquidating a Company a Liquidator certifies to the Court that it cannot pay its debts the Directors can be disqualified for five years unless they have acted honestly and responsibly. Directors can get around this only by paying up a Share Capital of €20,000 in their new company.

If in the course of liquidation it is found that a Director has acted fraudulently or recklessly then he may be disqualified and made personally liable for the debts. It is very difficult to prove fraud or reckless trading and it is only what appears to be the most blatant cases involving huge amounts of money that Liquidators have attempted any such actions so far.

The legislation is being tried out at the moment in a number of cases but it seems unlikely to be of much use to the ordinary creditor. Interestingly, the definition of reckless trading seems very straightforward and easy to prove. It is when a person knows, or ought to know, that his actions would cause loss to any creditors or the Company, or contracts a debt not honestly believing on reasonable grounds that the Company could pay it when it fell due. It seems, however, that in practice it is actually very hard to prove.

There is also a procedure for cross-examining directors of a Company on the means of the Company to pay the debt or the whereabouts of its assets. The company does not need to be put into liquidation for this to happen and it can be very useful mechanism. While it would cost approximately €1000 some Company Directors would not like to be put on the spot and asked a lot of awkward questions about what has happened to the Companies assets so it may persuade them to settle up. We have adopted a procedure of sending out letters to Directors of Companies threatening to have them cross-examined where Judgment has been obtained on debts with a value of €5000 or more. To sum up, your chances of recovering your debt are much higher if you are dealing with an individual other than a Limited Company so get a guarantee if you can.

AVERAGE COST OF LEGAL PROCEEDINGS

Example €1000 - €6000 debt – no dispute

• Outlays to obtain Judgment	€450
• Sheriff Costs	€ 75
• Subsequent Correspondence	€ 75
Total	€600
NB Recoverable Costs if Successful	50%

Legal Collection Problems : Republic of Ireland

- Can take 6 months+ to obtain court date
- Disputed cases take much longer hence “manufactured” disputes become more common
- Enforcement more difficult and slower the further the debtor is from the Greater Dublin area

Redmond Johnson General Procedure
Republic of Ireland/Northern Ireland

- Initial application letter to debtor
- Contact by telephone within 7 days if larger debt then a.s.a.p.
- Further letters depending on telephone contact outcome
- Assess financial position of company if it is a large debt
- If no positive outcome then review with client after 6 weeks.