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Litigation Update

Impact of the new District Courts rules on debt recovery work in the current economic environment

The new District Courts Rules are having a real impact on debt recovery work in the current economic environment. For gone are the days when summary judgment could readily and simply be obtained at the District Court level. Instead, the new Rules can impose substantial additional burden and cost on entities such as banks seeking to use our District Courts to collect on outstanding debts. And with an increasing number of debtors truly strapped for cash given the ongoing effect of the global financial crisis, we are seeing a growing number of debtors contesting such collection actions.

By simply responding to a notice of claim filed by a bank, a debtor thwarts the ability of the bank to seek default judgment. Rather the bank then must expend considerable effort to prepare an "information capsule" under the new District Court Rules.

The manner in which the bank has maintained its written record will likely dictate the ease with which the information capsule is prepared. Because the capsule must include both relevant documents and witness statements, together with a written explanation contesting any defences raised by the debtor in its response, the starting point for preparation of the information capsule involves reviewing the bank's file. Where that file is fulsome and complete, the drafting process tends to go more smoothly. Among other things, key documents can more readily be located. Witnesses can more readily be identified. And written explanations can more quickly and cost-efficiently be drafted.

But where the bank's file is incomplete or disorganised, additional work likely will be required to prepare the information capsule. Relevant documents may need to be tracked down elsewhere. Finding witnesses and working with them to prepare statements can be more difficult. Such work can become even more challenging given the deadline of just 30 days from receipt of

the debtor's notice before the information capsule must be submitted.

While the debtor must also provide an information capsule, in our experience, this package is often much shorter and less detailed. Seldom will the debtor have needed to expend the same effort in preparation of its capsule as the bank. Moreover, under the new District Court Rules, the bank will incur some additional expense in having to respond with a written submission to the debtor's capsule.

As a procedural matter, the exchange of information capsules will result in the District Court setting down the matter for a "short trial" or a judicial settlement conference. Experience indicates that the Court will schedule a short trial if the issues appear uncomplicated and able to be resolved in a one-day hearing. Such trials are conducted in an expedited manner. For example, specific time limits apply to the presentation of each side's case.

If the Court does not consider a short trial appropriate, both sides will be ordered to attend a judicial settlement conference. Assuming that the parties do not settle at this conference, the Court will then allocate trial dates.

Under the new District Court Rules, it is only at this point that the bank can file an application for summary judgment. In

other words, summary judgment is not available until after the bank has prepared and submitted its information capsule, plus attended a judicial settlement conference. Such hurdles did not exist under the old rules. Not only do they add cost to the debt recovery process, but these hurdles also mean that it takes longer for the bank to obtain relief.

But there are ways for banks to make the best of the new District Court Rules. Information capsules can be submitted sooner than the 30 day deadline. To the extent that the bank has maintained a well-organised file it may be possible for the capsule to be quickly and efficiently prepared such that it is submitted in advance of that deadline. This may also catch the debtor off-guard and consequently render the debtor's information capsule less compelling.

Moreover, while the new District Court Rules are impacting on debt recovery work now, it is possible that fewer debtors will contest recovery proceedings as the economy recovers. History tells us that debt recovery actions are less frequently challenged in good times. And, in the absence of a challenge, the new District Court Rules permit banks to obtain default judgments just as readily as they could under the old rules.

Should you have any further questions about the impact of the new District Court Rules on debt recovery work, please feel free to contact any of our team members listed below.

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