

SURVIVING SMALL CLAIMS COURT

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So you have a deadbeat customer or client that owes you money. You have made repeated demands for payment, you have threatened to charge interest on the overdue debt, and you have made a personal appeal to your debtor's sense of honor and fair play. Nothing has worked. He or she hasn't paid a cent. Like they say on television, it's time to . . . take them to court!

In most cases, it isn't worthwhile to bring a lawsuit in state or federal court to collect a small amount of money (less than \$5,000 in many states). Your lawyer alone will charge an upfront retainer of \$5,000 to \$10,000 to take on a new case (so-called "contingency fees", based on a percentage of the judgment you win, are usually not charged in commercial or breach-of-contract cases), and then there are the court costs, the time you lose attending depositions and hearings, and so forth. However, every state has a system of "small claims courts" that you can use to collect judgments for small amounts of money . . . if you have the nerve.

Make no mistake – when you bring a suit in small claims court, you do most of the work yourself, and pleading your own case before a real-life judge can be one of the scariest events of your life, even if you know you are 100 percent in the right. Yet sooner or later, if you run your own business, you will get into a situation where you have to bring an action in small claims court to collect an overdue debt (or, God forbid, defend yourself against someone who thinks you owe THEM money). Here is a quick "survival guide" for surviving a small claims court proceeding.

Get the Pamphlet. The bar association in just about every state publishes a short guidebook, in pamphlet form, that takes you step by step through the small claims court process in that state. This pamphlet, which is called something like "Guide to the Use of Our Small Claims Courts", is usually available free of charge or for a small fee (less than \$5.00) to cover postage. To find the address and telephone number of your state bar association, type "state bar associations" into your favorite Internet search engine or go to www.findlaw.com/06associations/state.html, a Web page that links to the home pages of virtually all state bar associations nationwide. Once you reach your state bar association, ask for their "publications department".

What if your delinquent debtor is located in another state? Let's say your business is in New York, and your debtor is in California. You bring an action in small claims court in New York, and deliver a summons and complaint to the California debtor. The court date comes around and (surprise!) the debtor fails to show, so you get a judgment in your favor (you won't get this far in many states, where the small claims court will throw your case out because it "lacks jurisdiction" over the defendant). Sad to say, the small claims courts of most states are not legally bound to honor judgments entered by small claims courts in other states, especially if they are "default judgments" (judgments rendered in favor of one party simply because the other party failed to show up in court). So, in the above example, you will have to bring an action in the

small claims courts of California, and hope that the judge out there feels so sorry for you that you are awarded your travel, lodging and other out-of-pocket expenses on top of whatever the California debtor owes you. If the amount involved is very small, it probably is better to write off the debt and chalk one up to experience.

Watch Lots of Television. I am absolutely serious about this. Here's a little secret. You know all of those courtroom television shows like "Judge Judy", "Judge Joe Brown" and "Judge Mills Lane"? They are all modeled on small claims court proceedings! If you've never watched any of these shows before (I warn you that you are likely to get hooked on them), check out the "television judge" Website at www.tvjudgeshows.com, where the strengths and weaknesses of each show are thoroughly discussed. The judges in these TV shows are (or were), after all, real-life judges, and the judge in your small claims court case is highly likely to behave the way the ones on TV do. By doing some research on your favorite show's Website, you might even be able to find an episode that featured a case similar to your own, and order a videotape of it.

And how do these judges behave? In a nutshell, here's what happens: the judge listens patiently to the arguments for both sides, asks a couple of questions if he or she doesn't understand something, and then asks some fundamental questions: who is in the right here? Who is telling the truth, and who is playing games? In most cases, the answer will be patently obvious after only a few minutes; don't be surprised if your debtor brings a check to court and pays you off in the courtroom lobby because they don't want the embarrassment of having to justify their position before a judge. The judge rules in favor of the person who is in the right (or telling the truth), and explains why they ruled the way they did.

So what does that tell you? It means that if you bring an action in small claims court against someone, you had better make darn sure there aren't any serious "holes" in your case that would lead the judge to think, even for a moment, that you are the "wise guy" in the proceeding.

Prepare, Prepare, Prepare. I cannot say this enough – almost always, the victory in small claims court goes to the party that is better prepared. If you claim that someone owes you money but (1) you never delivered a proper invoice stating when payment is due, (2) you failed to make a formal written demand for payment, and (3) the debtor has some serious objections to making payment (such as your products and services didn't work as you promised), your path to success in small claims court will be rocky indeed.

When you appear in court, be sure to bring copies of all relevant correspondence (contracts, invoices, purchase orders, warranty forms) that back up your case, in case the judge asks to look at them. Where your case is less than "air tight", ask yourself where the weaknesses are, and be prepared to explain why those weaknesses occurred. Being organized, and having ready answers to the judge's questions, sends a strong signal to the judge that you really care about the outcome of the case, and that you are the one who deserves to win.

Stay Away From Lawyers. You can sometimes be TOO prepared for a small claims court action, however. While many attorneys will be happy to spend an hour or two with you to help you prepare for your case, and anticipate the judges' questions, be careful not to overdo it. Lawyers are barred from many small claims courts, and judges always frown upon parties who appear to have been overly prepared, or "horse-shedded", by their attorneys. If you do not normally use phrases like "may it please the court", "I object, your honor" and "please let the record show" in your everyday speech, DO NOT under any circumstances use them in a small claims court.

Be On Time. You absolutely must show up on time for your court date. In case of an emergency, if you cannot possibly attend your hearing, contact the court clerk's office and try to get a postponement, or "continuance", of the court date. Be sure to call your debtor as well. In most states, each party is entitled to one continuance if both parties agree. Otherwise, your request for a continuance will have to be approved by the court, and remember, you are not there to explain why you need the continuance. If you fail to get a postponement and do not show up for your trial, the judge or magistrate may dismiss your suit and you may be prevented from suing again for that money owed you.

Keep It Simple. Now comes the stressful part. When you begin your presentation to the court, you should explain why the defendant owes you money. Answer any questions the judge or magistrate asks you as clearly and directly and possible, and **DO NOT RAMBLE**. Show him or her any bills, receipts, or letters which you have brought along as proof of your story (be sure to know in advance if you must bring originals, or whether Xerox copies will suffice). If you have a witness, your witness will be allowed to tell what he or she knows after you speak. Next, the person you are suing will explain what his or her position is. Each party has a right to question a witness. If the other party fails to show up, ask the judge for a "default judgment", as in some states the judge is not obligated to grant default judgments unless you request one.

Getting Your Money. If the case is decided in your favor, the party you sued will be ordered to pay. In most states, the judge has the power to order the defendant to pay in installments if it's clear the defendant cannot afford to pay the full amount in a lump sum. If the person who owed you money effuses to pay by the date ordered by the court, or if the payments are stopped later on, you should apply to the court clerk's office for an "execution" to be issued against the party's wages, property, or bank account. Once the "execution" is issued, you will be required to give the execution to a sheriff, bailiff or court officer who will serve the execution on the appropriate employer, banking institution or other person who will have to pay the amount directly to the court officer. The court officer will then pay you.

"When you get a judgment in small claims court, always ask to execute against the other party's wages," says Neal Moskow, an attorney in Westport, Connecticut who specializes in commercial cases (www.urymoskow.com). "It's really embarrassing for the other side, who then has to explain to his boss or spouse what's been going on."