

## What to do if you lose in Small Claims Court and cannot pay

*by: Keith Murkin, Associate*

*published 31 October 2023*

Every lawsuit has two primary considerations – first, the case’s “winnability” and second, whether it is possible to collect money if the case is won. Generally, once a court case is completed, the losing party becomes the debtor and formally owes money to the winning party who becomes the creditor.

Winning a lawsuit does not guarantee that the claimant will get paid. Once a court issues its decision, the winning party is responsible for collecting payment - the court does not collect the money. A judgment is payable immediately after it has been granted by the court. It is always best to pay as soon as possible if a court orders that you owe money.

If you are unable to pay immediately, several collection measures may be used against you:

### **1) Garnishment**

Once the court issues a judgment, the winning party can apply to the court for a garnishing order to collect money from your wages or bank account.

To garnish wages or a bank account, the winning party applies to the court for an order. That order is then sent to your employer or bank. Your employer or bank must comply with the garnishing order and provide payment to the court. You may not know that your account or wages have been garnished until the money has been taken from your account.

### **2) Register Judgment on Title**

If you own a house or land, the winning party may register their judgment against your property. The judgment will remain registered on your land title and will need to be dealt with before you can sell your property. When you do sell, you will be required to pay the judgment out of the sale proceeds of your property. After a judgment has been registered for one year, the winning party may force the sale of your house or land to satisfy the judgment.

### **3) Seizure of Property**

The winning party may apply to the court for permission to seize and sell your personal property. Although there is some property that is exempt from seizure, the winning party can seek to take property that they believe has value (e.g., car, boat, tractor, livestock, etc.). Once the property is seized, the winning party will sell the items at an auction to satisfy their judgment.

#### **4) Negotiate a Payment Plan**

Finally, if you cannot immediately pay the entire judgment, you may attempt to negotiate a payment plan with the other party. They may not agree to a payment plan and may demand that you pay the full balance immediately. If you and the other party do agree to a payment plan, make sure to draft a document which explains the terms of the payment plan.

In Manitoba, all court judgements are reported to the Credit Bureau. This may negatively affect your credit score which may also impact your ability to borrow money in the future. Likewise, court judgments are subject to interest so if you do not pay, the judgment amount will continue to increase.

Finally, the winning party is entitled to be reimbursed for the cost of collecting on their judgment, including the cost of the auction sale. There are several collection tools available to the winning party, so it is often prudent to take steps to pay a judgment as soon as possible.

**DISCLAIMER:** *This article is written for informational purposes only and does not constitute legal advice. The views expressed are solely the author's and should not be attributed to any other party, including Meighen Haddad LLP. If you want to seek legal advice, please contact the author directly or call our office at (204) 727-8461.*