

AFTER YOUR FAVOURABLE DECISION – HOW DO YOU GET THE MONEY?

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Introduction

The *Building and Construction Industry Payments Act 2004* (the “Act”) has improved the flow of money through the industry according to the Registrar of the Building and Construction Industry Payments Agency.

Adjudication is one option to seek an independent decision in your favour if the person you are claiming money from:

1. Denies that you are owed anything;
2. Denies that you are owed what you claimed, but a lesser amount;
3. Does not respond to your claim at all.

This article only focuses on you applying for adjudication and obtaining a decision in your favour (the “decision”). The decision does not mean that the respondent will automatically pay you, and you do not even have an instant enforceable right to money! If the respondent does not pay you in time, generally 5 business days after the decision is given to the Respondent, you will have to take further steps to get your money.

This article briefly discusses some of those steps and the options available to you. It does not consider the options of bankrupting a respondent or winding up the respondent (if it is a company) as these are complex steps. This article is not written as legal advice. Reading this article is in no way a substitute for seeking legal advice. In any event you should talk to us before taking any steps against the respondent. Every dispute is different and it is important that your unique circumstances are taken into account to provide you with the best possible advice and ensure that you come out of the dispute with a favorable outcome. Taking the dispute on yourself can be a complex, frustrating and time consuming process.

Register the decision as a Court Judgement

Section 31 of the Act allows you to register the decision as a judgement for a debt in the relevant Court, i.e. depending on the amount of the decision. If it is up to \$50,000 you apply to the Magistrates Court. If it is over \$50,000, but less than \$250,000 then you apply to the District Court, and over \$250,000 you apply to the Supreme Court. In each case you apply to the Registrar of the Registry of the Court (the “Registrar”).

In order to register the decision, you must first obtain a certificate from the Authorised Nominating Authority (“the ANA”), to whom you made the adjudication application, which you request under s30(1) of the Act. The details in the certificate are prescribed under s30 (3) of the Act, and you can ask the ANA to state any interest that is also owing. This certificate is lodged with the relevant court with an affidavit, stating that you have not been paid, or that you have only been paid some money.

If the Registrar is satisfied with the certificate and the affidavit, then a judgement will be entered in the Court records and you will receive a duplicate copy of the original judgement that carries the Court Seal. *Baycorp*, a credit reference reporting agency, is automatically notified of the judgment, which may have an effect on the Respondent’s credit record and may place pressure on the respondent to improve the likelihood of you getting paid. Once you have been paid the record can be changed.

However, this still may not get you your money and you have a number of options which you may pursue in Court. These are found under Chapter 19 of the *Uniform Civil Procedure Rules 1999*, applicable in all Queensland Courts.

1. Enforcement hearing under Part 2 of Chapter 19

You can seek an order of the Court that the respondent provide documents and be examined to explain their financial position on oath. This can lead you to establish the existence of property, so that you can ask the Court at that time to grant you an enforcement warrant. It is preferable that you engage a solicitor or barrister to carry out the cross examination of the respondent to give you the best opportunity to get as much information as possible to discover the respondent’s assets.

2. Enforcement warrant for a money order

If you know about the existence of the respondent’s property, or after an enforcement hearing, you can seek an enforcement warrant. The Registrar will provide this to you. You are then obliged to take steps to enforce payment yourself. This can include getting a Court order that a bank or employer pay you money in regular installments. However, this may not suit your needs, so the next warrant may be preferable.

3. Enforcement warrant for seizure and sale of property

If you obtain an enforcement warrant for seizure and sale of property, then the Registrar gives the warrant to an enforcement officer (the “Bailiff”), who is ordered to seize and sell property owned by the respondent. If the property is real estate the Bailiff will not have to seize the property provided there is an advertisement for the sale of the real estate.

The Bailiff must advertise the property for sale, whether it is personal property or real estate, not less than 2 weeks and not more than 4 weeks from the date of sale. The sale is by public auction. All proceeds of sale are paid to the Registrar, who will pay the Bailiff first, and then all your debt, with the balance going to the respondent.

Conclusion

We hope that this information is of some assistance in understanding some of your options, and that you can appreciate that success in adjudication does not necessarily translate into instant payment!

Taking steps to bankrupt or wind up a respondent, or following one or more of the steps identified above is not recommended without talking to us first, as it is critical that you tailor your strategy to suit your particular circumstances.