

# How to recover undisputed debts

ALAN KIMMINSLEY



## Legal matters

**W**hen you identify a bad debtor, it is important you take immediate action to give yourself the best chance of getting the money you are owed.

It pays to act early.

The most persistent usually get paid first.

If the invoice has not been paid on time, ring the client and ask when payment will be made.

If an acceptable payment date is offered, confirm that to them verbally and follow up in writing.

Make sure you keep a note of the promise to pay and date and sign the note.

That will be vital evidence if payment is not made.

If payment is not promised and you are unsure whether there is a dispute, you may need to get legal advice.

If there is no genuine dispute and the debtor continues to refuse to pay, you can apply to a court for a summary judgment.

Summary judgment is available only where a debtor has

no reasonable defence to a claim for payment.

Where an invoice has been issued and no dispute raised under your terms of trade, it is unlikely the court will accept a later claimed dispute, but factual disputes will usually require witnesses before the court can decide the claim.

An example of a clearly indisputable debt is in a construction contract if a payment claim has been issued and not paid.

Or where a payment schedule has been provided and not paid, the unpaid amount of the payment claim or payment schedule becomes a debt due and recoverable.

Provided the payment claim was issued correctly, the client will have no defence to a claim for recovery and you can ask the court to fast-track your claim.

A summary judgment process is started by filing with the court (and serving on the other party) a statement of claim, an application for summary judgment (the facts on which you claim there is no defence), and a supporting affidavit (evidence given on oath to support your claim), plus other formal documents.

If you want to make use of the summary judgment process, it is important you file the right information at the beginning.

If the court thinks there might



There are alternatives to hitting a casino to get money owed. PHOTO: REUTERS

be a defence, or if you have missed something in your documents, the claim can be put back on to the normal track and be dealt with as if there is a defence to it.

It pays to get legal advice at the

beginning because you get only one shot at seeking summary judgment of your claim.

Once you have a judgment, it can be enforced by an attachment order on wages or income, seizure and sale of property or even an

**If the debtor is a company, you can serve a statutory demand on it when there is no dispute and the amount owing is more than \$1000.**

application for bankruptcy of an individual or winding up of a company.

Which one is best will depend on the debtor's circumstances, assets and income.

If the debtor is a company, you can serve a statutory demand on it when there is no dispute and the amount owing is more than \$1000.

If you serve a statutory demand on a company and it fails to comply with its terms, it is deemed to be insolvent and you can file proceedings in the High Court to have the company liquidated and its assets divided among creditors.

Column courtesy of Rainey Collins Lawyers, phone 0800 733484 or [raineycollins.co.nz](http://raineycollins.co.nz). If you have a legal inquiry, email [alan@raineycollins.co.nz](mailto:alan@raineycollins.co.nz). Our next free public seminar on relationship property will be on February 24, from 12:15pm to 1:15pm. See our website.