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Enforcement of judgment debts

By Adam Watts, Associate

For local governments, monetary judgment debts (including for payment of outstanding rates and associated costs) may remain outstanding for extended periods, in some instances over several years. This may occur for a range of reasons, including where:

- the Judgment Debtor continues to refuse to accept the judgment; and/or
- the whereabouts of the Judgment Debtor is unknown.

In other cases, the local government may simply be content to write off the debt, and bring the matter to a conclusion. In most cases, however, timely enforcement action will see a debt recovered.

We regularly act for local governments in recovering monetary debts in respect of which mechanisms for enforcement are provided under the Civil Judgments Enforcement Act 2004.

One such recent matter is *Whincup v City of Mandurah* (No 2) [2019] WASC 383, which concerned the enforcement of a Supreme Court order in respect of costs (following the local government being successful in an appeal commenced by the Judgment Debtor). The local government had a lengthy history with the Judgment Debtor dating back many years, and there had been consistent non-payment of fines and other debts owed by that Judgment Debtor to the local government.

In an effort to prevent the continuation of similar conduct, the local government sought to enforce the Supreme Court monetary judgment as to costs. In this case, a step in the process was applying for a summons to be issued to the Judgment Debtor for a means inquiry to be conducted. In summary, a means inquiry involves a formal hearing to establish the Judgment Debtor's ability ('means') to pay the monetary judgment. The summons was issued and personally served on the Judgment Debtor requiring adherence to the summons by attending the Supreme Court to undergo the means inquiry. However, on the date of the means inquiry, the Judgment Debtor failed to attend.

Due to the Judgment Debtor's failure to comply with the summons to attend, the local government was entitled to, and did, make an application to the Court for an arrest warrant to be issued. The Court ultimately allowed the Judgment Debtor one last opportunity to comply with the summons to attend the means inquiry. However, in his decision Justice Tottle stressed, (at some length), the importance of judgment debtors, and others, complying with court issued summonses. Justice Tottle said (at [21]):

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Disobedience of court orders and summonses not only undermines the rule of law; it has unfortunate adverse and immediate consequences for all concerned. It increases litigants' costs. In this case those costs must be borne, at least initially, by the City's ratepayers. Further it gives rise to proceedings to enforce the processes of the court that ought not to be required. It involves an unproductive use of the court's time and a diversion of scarce judicial resources away from more pressing work.

The means inquiry was subsequently listed for a later date and the arrest warrant was adjourned to the day after that date, pending the Judgment Debtor's compliance with the re-issued summons to attend. Fortunately, the local government shortly received a bank cheque for the full amount of the judgment debt.

In our experience, it is important from an enforcement point of view for local governments to seek recovery of judgment debts or other debts where there are legal mechanisms available to do so. The above example demonstrates that undertaking such an exercise will usually be productive. Additionally, pursuing the enforcement of debts sends not only a specific deterrent message to the judgment debtor, but also to the wider community within a local government's district.

We hope this update has been of assistance to any local government officer who may be dealing with a similar issue. The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. Should you require any further information in relation to this update or have any queries in relation to enforcement of judgment debts, please do not hesitate to contact Adam Watts of this firm on 9383 3133.

