

SMALL CLAIMS ACTIONS

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SMALL CLAIMS COURT

I. INTRODUCTION

- ▶ This seminar is going to address one of your options when a company or an individual owes you a few thousand dollars.
- ▶ Instead of letting it go or hiring an attorney, you can file an action in small claims court.
- ▶ The question then becomes:
 1. how do you go about filing an action in small claims court
 2. once you file that action how do you get the judgment
 3. once you get the judgment, how do you collect your money?
- ▶ For some of you, what we talk about today might be too basic, but bear with us because not everyone has dealt with it first hand.
- ▶ For some of you, this might be too advanced, but feel free to stop me as we go along if you do not understand something.

II. WHAT IS SMALL CLAIMS COURT?

- ▶ Court that was created in order to address and resolve relatively small matters quickly.
- ▶ Informal setting without attorneys present.
- ▶ Not actually located in a separate building.
- ▶ A “division” of the district court or city court.
- ▶ Each city, for the most part, has its own district court.
- ▶ Some cities share a single district court.
- ▶ The small claims court is located at the district courthouse.
- ▶ The small claims judge is going to be either the district court judge or a magistrate who is an attorney that is given quasi-judicial powers to hear certain matters.
- ▶ Small claims court is only for disputes over money.
- ▶ You cannot go to small claims court in an attempt to force somebody to do something or prevent somebody from doing something.
- ▶ No: Fraud, libel, slander, assault, battery, intentional torts, lien foreclosures.
- ▶ Cannot enforce construction lien.

- ▶ Basically just breach of contract/account stated (someone has account with you that they owe on.)
- ▶ The limit on the amount of money you can collect in small claims court is \$3,000.00.
- ▶ If you have a claim for \$4,000.00 and you are willing to waive \$1,000.00 of it, you can still file your action in small claims court. However, if you do this, you are in fact, giving up any rights or entitlement to those excess monies.

III. JURISDICTION/WHERE DO YOU FILE THE LAWSUIT?

- ▶ The first thing you need to know is what court are you going to sue this Defendant in.
- ▶ “Except as provided in subsections (3) and (4), in districts of the second or third class actions in the small claims division shall be filed in the district in which the cause of action arose or in the district in which the Defendant is established or resides or is employed. If there is more than 1 Defendant, actions shall be filed in the district in which any Defendant is established or resides or is employed.” (600.8415)
- ▶ Generally, you need to file a lawsuit in the city where the Defendant is located. The easiest way to get in touch with that court, if you do not know, is to simply call information and ask for the “Novi” District Court or the “Royal Oak” District Court.

IV. GETTING STARTED/FILING THE COMPLAINT

A. BASICS

- ▶ Something to keep in mind throughout this entire process is that the district court clerks are generally very helpful. That is their job and by statute, they are supposed to help people through the process. Generally speaking, if you are nice to them, they will answer all your questions and even fill out forms for you.
- ▶ A Plaintiff in a lawsuit is the party who files the lawsuit. The Defendant in a lawsuit is the person or entity who is being sued.
- ▶ No attorneys in small claims court.

- ▶ However, somebody has to represent the company in court.
- ▶ Sole proprietorship or partnership: proprietor, partner or full-time salaried employee having knowledge of the facts surrounding the complaint. (600.8407(3)/8408)
- ▶ Corporation: officer or full-time salaried employee having knowledge of the facts surrounding the complaint (600.8407(3)/8408)
- ▶ You need to file in the name of the corporation, partnership or the sole proprietorship. You cannot sue naming yourself (the representative) as the Plaintiff because the money is not owed to you but rather the company, partnership or sole proprietorship,
- ▶ No claim shall be prosecuted in a small claims division by an assignee of a claim or by third party beneficiary under a third party beneficiary contract. (600.8407(1))
- ▶ You cannot file more than five (5) claims in the small claims division in a single week. (600.8407(2))

B. PLAINTIFF

- ▶ “The full and correct name of the Plaintiff shall be given, and the Affidavit shall state whether the Plaintiff is a corporation, partnership, sole proprietorship or individual. If the Plaintiff was acting under an assumed name or business name at the time the claim arose, the assumed name or business name shall be given. (600.8402(2)).

C. DEFENDANT

- ▶ “An individual, sole proprietorship, partnership or corporation may be sued in the small claims divisions in any name used in any advertisement, sign, invoice, sales slip, register tape, business card, contract, or other communication or document, published, in the course of its business. Any judgment in such a name shall be valid if the business is accurately identified by a location or mailing address where or through which the business is carried on.” (600.8427).
- ▶ In other words, you can sue the corporation or entity in any name that they use. Make sure you have a proper address for them. More identifying information, the better.

D. COMPLAINT

- ▶ What do you actually do to file the lawsuit? Essentially fill out a form.
- ▶ Go to the district court to get the form.
- ▶ The form is called “Affidavit and Claim.” **See Appendix 1.**
- ▶ Affidavit and Claim forms are available at the office of the clerk and deputy clerk of the district court. The clerks will actually prepare the affidavit for you upon request (**600.8403**) (at least they are supposed to.) At the time they give you the Affidavit and Claim, they will also give you an instruction sheet. They may also give you brochures. **See Appendix 2.**
- ▶ The Affidavit and Claim is self-explanatory:
 1. Name of Plaintiff with address
 2. Name of Defendant with address
 3. Your capacity
 4. What the Plaintiff is
 5. What the Defendant is
 6. The date of your contract or when you did the work
 7. Amount of money you are claiming
 8. Reasons for claim
 9. Acknowledge \$3,000.00 limit
 10. Military
 11. Sign it
 12. Court
 13. Court
- ▶ In the “reasons for claim” section, make sure that you put the facts and allegations underlying the claim. Do not get too detailed, but do not leave out anything important. It should essentially be:
 1. You entered into a contract (When)
 2. You did work or provided goods (What kind)
 3. The Defendant did not pay you for the work or goods
- ▶ It is a good idea to develop a standard complaint for what you do. That way you can just plug in the names and numbers.
- ▶ Once the Affidavit and Claim form is completed, give it to the clerk.
- ▶ At the time Affidavit and Claim is submitted to the court, the clerk will also fill in the “Notice of Hearing” box which is No. 13. The hearing date will be between 15 and 45 days from the date that you filed the claim (**600.8406**).

- ▶ There will be a filing fee - \$17.00 for a \$0 - \$600.00 claim
- \$32.00 for a \$601.00 - \$3,000.00 claim.
- ▶ The clerk will take care of having the Defendant served with the complaint or in other words, getting a copy of the complaint to the Defendant. There will be a fee on this also. Usually \$8.00 for certified mail or \$16.00 plus mileage if a court officer takes care of serving them personally (600.8404).
- ▶ It is good that the clerk takes care of service for you because that is one less headache and it is money very well spent. Defendant cannot argue against service because it is essentially the court itself that is serving Defendant.

V. DEFENDANT MUST ANSWER THE AFFIDAVIT AND CLAIM

- ▶ The Defendant must file a response within 21 day of being served with the complaint, if he is personally served or 28 days if served by mail. The response will be in substantially the same form as the Affidavit and Claim. **See Appendix 3.**
- ▶ The Defendant must respond to each specific allegation. The Defendant must serve the Plaintiff with a copy of it and provide the court with a copy. Many times, the Defendant will submit it to the court and the court will provide the Plaintiff with a copy.
- ▶ If the Defendant does not respond within the 21 or 28 days, a Default Judgment will be entered against them.
- ▶ A Default Judgment has the same effect as a regular Judgment that you would obtain after trial.
- ▶ There is a period of time after the Default Judgment is entered that the Defendant essentially has to appeal. (21 days). However, generally, if they have not appeared they are not going to defend a Default Judgment either.
- ▶ The Defendant may request that the matter be removed to district court.
- ▶ If removed, Plaintiff corporation will probably have to get an attorney.
- ▶ The Defendant can file a counter complaint against you in small claims court.
- ▶ “If the Defendant files a Verified Answer stating any new matter which constitutes a counterclaim, the court may grant a continuance upon request of either party.” (600.8422)

VI. TRIAL

- ▶ Now you have filed your Affidavit and Claim and Defendant has answered in a timely manner.
- ▶ You are going to appear for the hearing date that was specified by the court in paragraph 13 of the Affidavit and Claim which is the Notice of Hearing box.
- ▶ At trial, the representative is going to appear, but it has to be a representative who is a proprietor, partner, officer or employee with direct or personal knowledge of the facts in dispute. Should be a person who knows most about it with most direct involvement. As long as it is somebody who has first hand knowledge of the facts that is a valid representative.
- ▶ Have all documents ready. (Contracts, invoices, letters, change orders, etc.).
- ▶ Have witnesses ready. They must be in court and ready to explain what they know.
- ▶ Small claims court is informal but you should strive to be the most prepared and most professional representative there. The more prepared and the more you can justify your case, obviously the better off you are going to be. Make sure that you are able to spell out exactly what happened and support it through the documents and the witnesses.
- ▶ Depending on the district court, the case may be heard before a judge or a magistrate. However, the Plaintiff and the Defendant each have the right to require that the trial be conducted before the district court judge and not the magistrate.
- ▶ If a trial is started in the small claims division, both parties have waived their right to an attorney, the right to trial by a jury, the right to recover more than the \$3,000.00 and any right to appeal (except if the action is heard before a district magistrate, the parties have a right to appeal to the small claims division of the district court).
- ▶ No jeans!

(PITFALLS)

- ▶ If the Defendant moves for removal to district court.
- ▶ If a trial date is bad, call the clerk.

- ▶ If there are any problems, always call the clerk and address it as soon as possible. Do not wait for the day before the trial to call the clerk with problems if you know about the problems before that.

VII. APPEAL

- ▶ “If the hearing is conducted by a district court magistrate, an appeal de novo as of right may be taken by either party to the small claims division of the district court. Appeals shall be taken with seven (7) days after the entry of decision of the magistrate. Further appeal from the judgment of the district court judge shall not be available to either party.” (600.8427)
- ▶ Magistrates’ decisions can be appealed to a district court judge.
- ▶ District court judges’ decisions cannot be appealed.
- ▶ However, a district court judge may re-open the case in the small claims division on petition by either party.

VIII. JUDGMENTS

- ▶ A judgment is the court’s ruling. The ruling is reduced to writing in a form entitled “Judgment.” See **Appendix 4**.
- ▶ “The judge shall order that a judgment in the small claims division shall be satisfied by payment to the clerk or the Plaintiff in lump sum or in installments in amounts and at times as the judge considers just and reasonable under the circumstances. The judge shall also provide for a stay of further proceedings to collect the judgment while the Defendant is in compliance with the order of the court.” (600.8410(2))
- ▶ “If the Defendant is not present when the judgment is entered, or is present but does not immediately pay the amount of the judgment when the judgment is entered, the judge shall order that the Defendant, within thirty (30) days after the entry of the judgment, pay the judgment in full or disclose in writing to the Plaintiff and the court his or her place of employment and the location of his or her accounts in state or federally chartered banks, savings and loan associations, and credit unions.” (600.8410(5))
- ▶ “If the Defendant fails to pay the judgment according to the terms and conditions thereof, the clerk or deputy clerk of the court, on application of the Plaintiff, shall certify such judgment on a form prescribed by the supreme court.” (600.8418)

- ▶ “The prevailing party in any action in a small claims division is entitled to costs of the action and also the costs of execution upon a judgment rendered therein. The costs shall include cost of service of the notice for the appearance of the Defendant.” (600.8421)
- ▶ The judge may allow a reasonable time to pay and may set up a payment schedule.
- ▶ Judgments in Michigan remain valid for 10 years. They can be renewed before their expiration for another 10 years.

IX. COLLECTING ON THE JUDGMENT

- ▶ Two main ways to collect on a judgment are 1) Writ of Garnishment and 2) Execution.
- ▶ A Writ of Garnishment is an order from the court which allows you to obtain money from those who owe money to your debtor (people who owe money to him, employers, banks, IRS tax refunds, etc.)
- ▶ A Writ of Execution is an order of the court that allows you to seize property owned by the Defendant.

X. GARNISHMENTS

- ▶ A garnishment is an attachment of property held by third-parties. (Money/personal property.)
- ▶ “Garnishment is a court procedure allowing you to collect your judgment directly from the Defendant’s wages, bank account or other source such as income tax refunds. You can get the forms from the clerk. Instructions are included with the form.
- ▶ There is a \$6.00 disclosure fee payable to the garnishee Defendant. A garnishee disclosure form must also be provided. There is no \$6.00 fee for Non-Periodic Garnishment.
- ▶ The three types of garnishments are 1) periodic; 2) non-periodic and 3) State tax refund garnishment. **See Appendices 5, 6 and 7.**
- ▶ You must wait 21 days after your small claims judgment was signed before you can get a garnishment issued.
- ▶ A PERIODIC Writ of Garnishment is used to garnish the Defendant’s wages, rent payments, land contract payments or other debt which is paid to the Defendant on

a periodic basis. A periodic writ is valid for up to ninety-one (91) days or until the judgment, interest and costs are paid off, whichever occurs first. After the expiration of the periodic judgment, you can file and serve another.

- ▶ Employer/Wages (Social Security Number)
- ▶ “A NON-PERIODIC Writ of Garnishment is used to garnish the Defendant’s bank account or other property. Once money has been garnished under the non-periodic writ, the writ is no longer valid. If there is a remaining balance on the judgment, you must get another writ to collect more money.”
 - ▶ Garnish every bank you can think of if you are unsure where the the Defendant does his banking. (Serve any branch).
 - ▶ Michigan Lottery.
 - ▶ Bank accounts, accounts receivable, people and projects who owe money to your Defendant (General/owner).
- ▶ STATE TAX REFUNDS are subject to garnishment. These garnishments have a separate form. (A Social Security number is required.)

GETTING GARNISHMENT IN PLACE

- ▶ You fill out the form and submit it to the clerk. The court will issue the writ and you must serve it on the garnishee along with garnishee disclosure form. **See Appendix 8.**
- ▶ The garnishee is the person or business who has control or possession of the Defendant’s money.
- ▶ The garnishee has fourteen (14) days after the Writ is served to let you know if any money is available. (**Garnishee Disclosure**)
- ▶ If money is available, it will be held for twenty-eight (28) days to allow the Defendant time to object. If no objections are filed, the money will automatically be sent to you.
- ▶ Objections must be based on legal defects in the proceedings and cannot claim that the judgment is invalid or the debt is not owed.
- ▶ If it is a periodic Writ, money will continue to be sent to you as payments become due to the Defendant until the Writ expires. (Ninety-one (91) days).
- ▶ “If a judgment had been ordered to be paid by installments, an Affidavit for a Writ of Garnishment must so state and must state that the order has been set aside or vacated.” MCR 4.305(C)

- ▶ If a garnishee fails to disclose or otherwise respond to the garnishment, you should file a Default Application and take a default against the garnishee.
- ▶ Information furnished by Plaintiff must be adequate to identify the garnishee. Address, Social Security number, employee identification number, federal tax identification number, employer number or account should be provided in the writ if known.

XI. EXECUTION

- ▶ Writ of Execution is an order directing a sheriff, bailiff or other court officer to seize property of the Defendant, to sell it at an execution sale and then pay the proceeds to Plaintiff.
- ▶ You must wait twenty-one (21) days after your small claims judgment was signed before you can get an execution against property. **See Appendix 9.**
- ▶ The court will issue the execution by signing the form and it will be executed by a sheriff or court officer.
- ▶ Any property that is seized will be sold and the money given to you. The sheriff or court officer is entitled to fees which will be deducted from the sale of the property.
- ▶ Personal property, real estate, vehicles, etc.
- ▶ Assets are subject to pre-existing valid liens/mortgages on the property.
- ▶ If you settle a case with the Defendant, it is best to contact the court officer to determine if it is a good settlement and to get the court officer's fees worked into the deal.
- ▶ Determining ownership of land - - check Register of Deeds or have title search done.
- ▶ List of Court Officers attached. **See Appendix 10.**

XII. DISCOVERY SUBPOENA

- ▶ A discovery subpoena is an order by the court that orders the Defendant appear at court and answer questions that are posed to him by the Plaintiff.
- ▶ You must wait 21 days after your small claims judgment was signed before you can file a discovery subpoena. **See Appendix 11.**

- ▶ The court will give you a date for the court appearance. The judge must sign the subpoena for it to be effective. Once the subpoena is signed, you must serve it on the Defendant.
- ▶ All costs incurred are recoverable.
- ▶ A creditor's exam is a good way to obtain information regarding the Defendant's assets. This will provide you with sources for garnishments and executions. Social Security Number, Drivers license number, assets.
- ▶ A series of questions which can be used at an individual's discovery hearing/creditors exam is attached. **See Appendix 12**
- ▶ A series of questions which can be used at an partnership/corporation's discovery hearing/creditors exam is attached. **See Appendix 13**

XIII. AVOIDING LITIGATION/GETTING OFF ON THE RIGHT FOOT

- ▶ This goes for any business or any lawsuit.
- ▶ Have documents signed no matter what.
- ▶ Always send letters to evidence and reflect what is going on if there is no written contract or change order.
- ▶ Try to stay organized. This is difficult to do but a banker's box full of papers which are just thrown in is not good. At least keep a single file with respect to each Defendant/project.
- ▶ Michigan Court Rules (regarding small claims court) **See Appendix 14**
- ▶ Michigan Statutes (regarding small claims court) **See Appendix 15**