

Winning a judgement in small claims court

By JOHN D. CARROLL
The following scene illustrates a common complaint:

You performed some carpentry work for Mr. Jones. He wouldn't pay you the full amount so you sued him in small claims court. The judge decided you were entitled to receive \$200. Mr. Jones still doesn't want to pay. Now what?

Winning a judgment in small claims court is a hollow victory when you cannot collect. You have a better chance of getting your money, though, if you know and understand the procedures set up for this purpose.

The most direct way of collecting a debt is to take an asset of the debtor, sell it, and keep the money. You can do this by bringing an execution against the personal property of the debtor: that is, you put into effect the final judgment of the court by getting a bailiff to enforce the judgment. You can do this by filling out the necessary forms at the small claims court office.

A bailiff has the power to seize an asset of the debtor and turn it over to you. Despite clear advantages, there are several problems to this approach.

The first problem, which applies to all collection procedures, is that each small claims court has a distinct area of jurisdiction and its own bailiff, and the bailiff cannot act outside of the jurisdiction of the court he or she works for. This means that if Mr. Jones' assets, or in the case of other collection procedures, his place of residence or employment are outside the area of jurisdiction of the court in which you obtained judgment, then you will have to work with the court that does have territorial jurisdiction.

The second problem is that basic assets, such as household articles and tools of a trade up to a certain value, are exempt from seizure by the bailiff. The third problem is that bailiffs are paid only by the job done. They will receive a maximum of five dollars for these executions.

In fact, because bailiffs don't generally have enough work to do except in major population centres, they usually have other jobs as well. Be-

Legally Speaking

a CLEO publication

cause of this, the bailiff is unlikely to pursue your execution with the same zeal that you would. Even if he or she did, it is unlikely he or she would seize anything unless it was an asset which was obviously not exempt from seizure, for example, a stereo system.

An execution can be issued against real estate as well as personal property if the judgment is for more than \$40. If Mr. Jones owns land, or if you are going to have problems collecting through other means, you should file an execution with the Sheriff's office and the Land Titles office of the county the lands is in or likely to be in. If Mr. Jones sells the land, the buyer will require Mr. Jones to pay off your execution.

You can force Mr. Jones to sell, but not until 12 months after you file the execution. The procedure involved is very complicated so it is a good idea to seek the advice of a lawyer

before taking this action.

If you know where Mr. Jones works, you can force his employer to pay you part of his wages. This is done by means of garnishment proceedings. You would arrange to have a direction to garnish and a supporting affidavit sent to Mr. Jones' employer. To have this done, see the clerk at the small claims court office. The advantage of this method is that

you are likely to get immediate results. If the employer does not obey the garnishment order, you can get a court judgment against the employer for the full amount owed to you. The disadvantages are that you can only get at most 30 per cent of any one paycheck, so you must bring a new garnishment proceeding for each paycheck. Also, you must fill out the garnishment forms yourself.

When you have no information regarding a debtor's assets or income, you should arrange for a judgment debtor examination. (The small claims court office will help fill out the forms for this.) This means the debtor is required to explain to a

judge why he or she has not paid the judgment. The debtor will have to disclose his or her assets and sources of income. If a debtor fails to attend, he or she could be found in contempt of court and a warrant for committal could be issued by the court for his or her arrest and detention for a period of up to 40 days. Practically speaking, though, such warrants are not usually effectively enforced because bailiffs often have difficulty locating debtors, and besides, they are only paid \$6 for enforcing a committal warrant.

If you sue someone in small claims court because of a motor vehicle accident, then you have an added aid to collection.

Just write to the Registrar of Motor Vehicles of the Ministry of Transport, and send them a certified copy of your judgment. (You get a certified copy from the small claims court office.) They have the power to suspend the driving privileges of a person who is in default in payment of a judgment.

The information in this article is accurate as of May, 1982. For more information on this and other topics contact COMMUNITY LEGAL EDUCATION ONTARIO, 62 Noble St., Toronto, Ont. M6K 2C9. For legal advice, contact the Halton Hills Community Legal Aid Clinic at 5 Wesleyan St. in Georgetown, telephone 877-5236.

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If you don't like the garden, but must, you can engage a lawn care specialist who will provide such services as building a new lawn from scratch, fertilizing, mowing, and controlling weeds and insects. But, before you sign any agreements, be sure to check the reliability of the specialist with the Better Business Bureau. A signed contract listing all services and bottom-line costs is best.

Buying Lawn And Garden Equipment: Many hours of lawn and garden work can be saved by simply selecting the right tools for the job. The basics include leaf and lawn rakes, a spade for digging, a hoe for cultivating, a spreader for seed and fertilizer, a lawn mower and clippers for trimming. Buy quality tools at the outset. They stay sharp longer, are better balanced, and are easier to maintain, saving you time and money. Properly used, a good set of tools will last a lifetime.

If your lawn and garden is a large one and your budget permits, you can buy power equipment to make the job even easier. Lawn size should deter-

mine the type of lawnmower you purchase, notes Mr. Tuz. If your lawn is small, a hand-pushed reel mower with 5 to 7 blades should do a decent job. For larger lots up to one third of an acre, a power-driven rotary or reel mower is a good buy.

For lawns one third to one half of an acre, self-propelled lawnmowers make the job easier. For flat lawns, a front-wheel drive mower is best. If the lawn is hilly, a rear-wheel drive may work better; it provides more traction for climbing the hills.

For lawns more than half an acre, a riding mower is recommended. Be sure to purchase a rider with enough engine power to do the job; a 16 horsepower model will handle most mowing jobs with ease. Look for special features such as a low profile mower that will go under trees and shrubs and cut close to fences and walls. Riding mowers often have the flexibility to do other lawn and garden jobs such as plowing and cultivating.

Regardless of the type of mower, look for safety features. These include deflection shields on grass discharge chutes, "dead man" throttles that stop the mower when a special clutch device is released, an almost instant blade brake system.

Nursery Stock Promotions: When buying bedding plants and other nursery stock for your lawn and garden, always deal with a reliable, established garden center or nursery. A few fly-by-night promoters are still around trying to peddle half-dead stock and stock that is advertised to flourish in a couple of weeks and produce prize-winning blooms.

Exotic names and descriptions of plantings is a favorite trick of the nursery gyp. If you have any doubt about the reliability of a nursery, mail-order garden outlets, or other nursery retailers, check with the Better Business Bureau.

The Professional Gardener: In recent years, many communities have seen the influx of professional landscaping businesses. Most of these lawn specialists are honest, but there are a few that are questionable. Check first with the BBB. If you contract for special lawn and garden service by a professional, make sure you read the contract before signing it. Questions you will want

answered include these: What services will be performed? How much will the services cost? What is your recourse if the services are not delivered? How long is the contract term? How does the cost compare with the cost of pay-as-you-go services? Are all inapplicable items deleted?

Another questionable lawn and garden service is the travelling tree "surgeon". The "surgeon" usually makes an appearance in the neighborhood and discovers lots of sick trees. Check out

this "doctor" before letting him touch your trees. The bonafide professional does not knock on doors to solicit sick tree business.

Travelling topsoil salesmen are another spring-time pest. These fellows pull into your driveway with a load of topsoil "just like the material you need for your lawn." They will sell you a bushel or two of it. Remember that topsoil is sold by the truckload, not by the bushel except for flowerbeds. Buying topsoil by the bushel can cost you a bushel of dollars.

COUNCIL NOTES

Town battles dust 'storms'

Town councillors will be hearing shortly from their engineer regarding spraying rural dirt roads with calcium to keep dust down during dry spells. Mayor Pete Pomeroy asked that the engineer determine how much it would cost to dust the roads twice a year (rather than the single application used now) and whether it would help if the calcium was applied earlier in the year. The mayor said he has received many complaints from residents concerning the condition of dirt roads.

Diamonds will glow

J.L. Allworth Electric Ltd. of Mississauga has been awarded a contract from the town's recreation department to improve lighting on the 'B' diamond at Georgetown's Fairgrounds Park and main diamond at Acton's Prospect Park. Allworth's price of \$16,400 was accepted by the town's general committee last week, beating out five other companies. The town budgeted \$17,000 for the work this year.

POLICE BEAT

Snackbar robbed again

The Georgetown Fairgrounds concession stand was broken into once again and \$75 worth of cigarettes, chocolate bars, hot dogs and gum were taken. There was \$100 damage to the door of the stand which had been kicked in. Halton regional police are investigating the break and enter that took place some time over the weekend.

Four youths charged

Four Acton juveniles are being charged in connection with five break and enters of the Acton Curling Club in the past month, Halton regional police report. Two other Acton juveniles responsible for breaking into the St. Joseph Separate School on Acton's School Lane the weekend before last, where a small amount of cash and cartons of orange and grape juice were taken, are also being charged by police.

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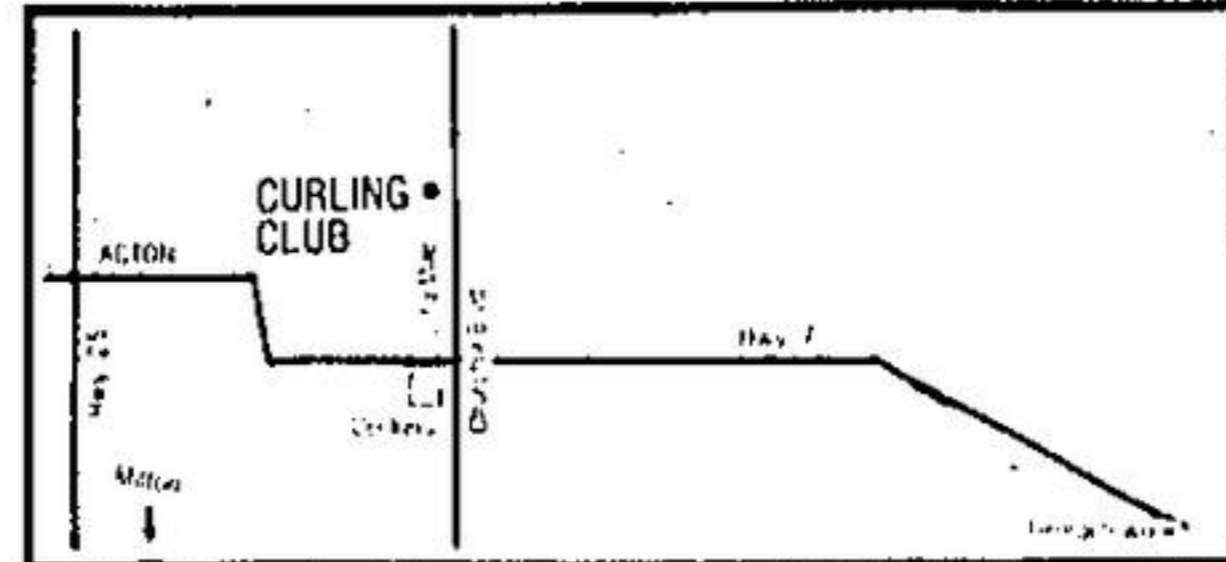
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