

Debt Collection - Liquidated or Unliquidated Debt?

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Is your debt collection for a liquidated or an unliquidated amount? What is the difference?

In a debt collection action, the debt is often defined by the amount specified in tax invoices issued for the supply of goods or services. Debt collection for these types of debts involves a “liquidated” debt. This is because the debt which is the subject of the debt collection is ‘liquid’, in the sense of having a specific monetary value. There may be an ability to claim interest in debt collection proceedings for a liquidated debt, but again this will be a defined amount and calculated in accordance with the terms and conditions of the agreement between the parties.

Debt collection for an “unliquidated” debt is quite different. This is where there has been a claim which requires quantification, such as debt collection for loss claimed by a party, or damages suffered where the amount of loss or debt is not certain. Unliquidated debt collection will arise when the amount a person has lost cannot be simply defined and needs to be the subject of evidence and determination by the Court. Examples of debt collection for unliquidated debts might include motor vehicle accidents or defamation claims.

Debt collection in respect of building contracts are a common type of debt collection claim where the parties will often agree to convert what would otherwise be an unliquidated claim, to a liquidated claim. This can be done by means of a “liquidated damages” clause. Instead of debt collection for an unliquidated sum that needs to be established, the parties contract for a particular, liquidated amount, which is to be paid in certain circumstances – for instance late completion. This has the effect of allowing the owner to quantify, by agreement, the amount of debt collection recoverable if a builder is late in completing construction, by reference to a daily amount.

Which is better for debt collection – liquidated or unliquidated debt collection?

Debt collection for a liquidated amount is simpler. Debt collection can be commenced by way of a Statement of Claim that has a specified amount and sets out how that amount is calculated. If the claim is not defended, then a default judgment can be obtained for a definite sum. Debt

collection can then proceed to enforcement of the judgment through the various actions available under the Court rules.

However, debt collection for an unliquidated debt requires an extra step. Depending upon the amount and type of claim for debt collection, it is necessary to first establish the right to bring the debt collection claim, and further, to establish the amount which can be recovered. It is not possible to obtain default judgment for a debt collection claim in respect of an unliquidated sum. Instead the Court will have to determine both the entitlement, and the quantum of the debt collection claim. This can sometimes need to be done in separate hearings, leading to significant additional costs of bringing debt collection claims for unliquidated amounts.

Only once a judgment for a specified sum has been awarded, can the debt collection process then proceed with enforcement of the judgment in the same way as in respect of judgment for a liquidated debt collection claim.

At Matthews Folbigg we have debt collection experience and are able to help advise you on the right debt collection path from the commencement of your claim. This will help you to identify and overcome debt collection problems before they arise. Once the judgment has been entered, our debt collection team have the skills and resources to give you sound advice on a commercial and cost effective debt collection strategy.

The above summary is designed to give debt collection teams a general idea on regulatory and practical issues that may arise in respect of debt collection. Any specific advice on debt collection issues can be discussed by contacting the team at Matthews Folbigg.

If you would like more information or advice in relation to insolvency, restructuring or debt collection practice and procedure, contact Darrin Mitchell on 02 9806 7428 or darrinm@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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