

Debt Collection - Who Signed the Document?

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In the current age of technology, with capabilities to do just about anything, it seems redundant and "old fashioned" to be asked to execute a document by hand writing your signature on a sheet of paper! Because of this, debt collection can be a distinct (and difficult) exercise.

When opening a credit account, a supplier of goods and/or services will generally forward a Credit Application and a Deed of Guarantee to the customer. These documents are helpful in debt collection as they include information from the customer as to the customer's financial viability, and security for the repayment of amounts owing should debt collection become necessary. In days gone by, these documents were to be completed by the customer physically writing on the forms as required, then posting these back to the credit provider, or perhaps giving the documents to a sales representative for the supplier.

Fortunately, we were introduced to the facsimile machine in the 1980s, as a way of submitting documents; then came email as a way of promptly returning documents to the creditor. At all times, the documents would still require the customer to hand write information and individuals would still need to manually sign the documents.

Today, a person can sign documents with ease - electronically. Although possible, using sophisticated electronic signature software may not make debt collection easier. When fraud is present, any use of electronic signatures could compound the problem when the need for debt

collection arises.

In a recent decision of the [District Court](#) on a debt collection claim, a creditor sought to enforce a debt collection claim against two guarantors of a credit facility provided to a company that had gone into liquidation. The two guarantors who appeared to have signed the guarantee were husband and wife, although had since separated. The Credit Application and Deed of Guarantee were completed and signed off on using the Docusign facility, a facility that enables an electronic form of a person's signature to be inserted onto a document.

The debt collection action was commenced against both the husband and wife, however, only the husband went bankrupt. The debt collection action therefore centred on the wife. The wife disputed the claim stating that she had not authorised her signature to be inserted upon the documents.

The Court found that the husband had used the wife's Docusign account without her consent to include her as a signatory to the application for credit, and also to the guarantee. Judgment was awarded in favour of the wife against the creditor, extinguishing the debt collection action against her of approximately \$700,000.

As with any debt collection action, the foundation for the claim is only as good as the documents upon which it is based. All debt collection claims start with the agreement to supply the goods or services. Being able to prove who is actually a party to that agreement is obviously a critical aspect of the debt collection process, although as can be seen, it is not as simple as having a name and a signature on the agreement.

At Matthews Folbigg we have debt collection experience. We are able to send you on the right path for all debt collection actions from the commencement of your claim, which will help you to identify and overcome 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 collection of your debt in a commercial and cost effective way.

The above summary is designed to give debt collection teams a general idea on regulatory and practical issues that may arise in the sale of goods and services that may impact upon them. Any specific advice on these issues can be discussed by contacting the Debt Collection Team at Matthews Folbigg.

If you would like more information or advice in relation to insolvency, restructuring or debt recovery 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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