



Debt Recovery - Obtaining Admission from Debtors

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OBTAINING ADMISSION FROM DEBTORS

Creditors are frequently frustrated with the time it can take to prosecute defended debt recovery proceedings in court.

Debt recovery proceedings can take somewhere usually between 6 to 24 months before obtaining a judgment against the debtor. However, in the recent case of *Mary Antoinette Aviani v Jennifer Loh* [2022] NSWSC 658 a creditor was able to obtain a judgment much earlier on in the debt recovery proceedings based on admissions the debtor conceded at an interlocutory hearing.

De facto partners were in a dispute regarding contributions towards the purchase of jointly owned property. The Plaintiff sought and obtained an injunction against the Defendant restraining property dealings. The matter next came before Kunc J where the injunction was modified. The Defendant required access to funds to conclude a property purchase.

At a further hearing shortly later, in the course of discussions before Kunc J at the hearing, admissions were extracted from the Defendant about certain amounts that she agreed she owed to the Plaintiff. It is not entirely clear why the admissions were made, but they may possibly have related to the earlier discussions about the Defendant's request to modify the original injunction where the Defendant. Kunc J recorded the admissions in notations to the effect that:

1. The Defendant acknowledged a debt of \$500,000; and
2. The Defendant undertook that she would pay \$200,000 by a certain date to reduce the acknowledged debt.

The Plaintiff then filed a Statement of Claim which pleaded the acknowledgement of debt as noted in the Court's orders as well as the undertaking. The Defendant filed a Defence admitting the facts alleged, including that the Defendant had agreed to pay the balance of \$300,000 but denying that the Plaintiff was entitled to judgment for that part of the acknowledged debt whilst the proceedings remained on foot. The Defendant paid the Plaintiff \$200,000 pursuant to the undertaking.

1. The Plaintiff filed a Notice of Motion seeking judgment for \$300,000 pursuant to the admission, relaying on rule 17.7 of the Uniform Civil Procedure Rules 2005 (NSW), which provides:
If admissions are made by a party, whether by his or her pleadings or otherwise, the court may, on the application of any other party, give any judgment or make any order to which the other party is entitled on the admissions.
2. The court may exercise its powers under this rule even if the other questions in the



proceedings have not been determined.

The Notice of Motion went before Hammerschlag CJ in Eq. The Defendant argued, among other things, that the application as “rerun” of the hearing before Kunc J, and because his Honour did not enter judgment then. The Defendants arguments were rejected and Hammerschlag CJ in Eq entered judgment for the Plaintiff.

This case highlights an advantage of obtaining admissions from debtors in the course of administrative or interlocutory hearings which debt collection lawyers should always be mindful of. Where an admission is made, creditors may wish to ask the judicial officer to make a notation on the record. An application for summary judgment based on an admission could be made to bring about a quick result in collecting money, even if it might be for only part of the overall claim.

If you would like to speak with one of our debt recovery lawyers, you can do so by telephoning 9635 7966 or by using the CONATCT US facility on this website.