



Double Whammy! When cost orders become a further debt

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In one of our recent matters, proceedings were commenced against a debtor, and the relevant guarantor, in the Local Court of NSW for recovery of a debt, being non-payment of services rendered by our client to the debtor.

Local Court proceedings

The defendants were at all times self-represented in those proceedings and took steps to file defences, out of time (and without leave) and also failed to appear in Court on several occasions. This ultimately led to:

1. the defences being struck out;
2. cost orders being made against the defendants; and
3. Judgment being entered in favour of our client in the vicinity of \$40,000.

Multiple attempts were then made by one of the defendants to set aside the default judgment and the various cost orders.

The last of these applications was held by the Local Court to be an abuse of process and the Court strongly urged the defendant to obtain legal advice before taking any further action.

Bankruptcy Notice

In the meantime, the judgment debtor was served with a Bankruptcy Notice in respect of the judgment.

Setting aside Bankruptcy Notice

The debtor then commenced proceedings in the Federal Circuit Court of Australia seeking to set aside the Bankruptcy Notice served upon him, but was unsuccessful.

The debtor failed to take steps to otherwise settle the Bankruptcy Notice and accordingly, committed an act of bankruptcy.

Bankruptcy Proceedings

Eventually, bankruptcy proceedings were commenced in the Federal Circuit Court of Australia in respect of the act of bankruptcy.



Cost Orders

Ironically, due to the various unsuccessful attempts made by the guarantor to set aside the Judgment, cost orders and Bankruptcy Notice, several cost orders were made in favour of our client that accumulatively exceeded the \$5,000 minimum debt required for bankruptcy proceedings.

Therefore, our client now held 2 debts against the guarantor, the:

1. The judgment debt which the debtor had spent so much time and effort trying to fight, and which was in excess of \$40,000; and
2. Cost orders totalling in excess of \$5,000, and which we had made sure the Courts had specified (so there was no dispute!).

At all material times, the debtor failed to make any payment at all.

If you would like more information or advice in relation to insolvency, restructuring or debt recovery law, contact Hayley Hitch at hayleyh@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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