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Legal Developments Affecting Business

NOVEMBER 2009



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SMALL CLAIMS COURT: A COST-EFFECTIVE ALTERNATIVE TO CIRCUIT COURT AND COLLECTIONS

By Ryan Orr

In tough economic times, more businesses experience the inability of some customers to pay their obligations. Circuit court is the typical forum for a lawsuit, and litigants may choose to bring their case in circuit court, regardless of the amount in controversy. However, it is not often cost effective to file a lawsuit in circuit court to collect these debts. Sending the debt to collections is another option, but you will likely receive only a small portion, if any, of the total debt.

With these shortfalls in mind, you may want to consider bringing your claim in small claims court. While small claims court has some drawbacks, in some situations it may be a good alternative to circuit court litigation, and it will generally provide a greater amount of recovery than collections.

Qualifications: To bring a claim in small claims court, all of your claims must total \$7,500 or less, and you must bring all claims arising out of the same transaction or occurrence in one suit. For example, your business sells a customer two separate lots of fasteners, each invoiced at \$4,000 per lot. You have not received payment for either invoice. You must bring your claim against the customer for both invoices together, and because they total \$8,000, you cannot bring the claim in small claims court.

Benefits: Small claims court is more convenient and much cheaper than circuit court litigation. If your business wishes to sue someone in circuit court, you must have an attorney represent your business. In small claims court, you can appoint a non-attorney to represent your business. Also, circuit court litigants can rack up thousands of dollars in fees through motions, discovery battles, and trial preparation, but small claims litigants may resolve their matter at a single hearing that usually lasts no more than 30 minutes. Additionally, the hearing is usually scheduled within a month or two after the claim is filed, which is much faster than getting a trial date in circuit court.

Drawbacks: The informality of small claims court can also be one of its drawbacks. In more complex cases, winning your case may depend on your ability to file motions, conduct discovery, or exclude evidence. Since you are unable to use these tools outside of circuit court, most small claims cases are limited to straightforward disputes. Also, because you are not allowed to hire an attorney to represent you in small claims court, you cannot recover any attorney fees, even if you have a contract that provides for them, and even if you consult an attorney prior to filing your claim in small claims court.

Risks: Every litigant is entitled to a jury trial in circuit court on any claim over \$750. Consequently, imagine that you have gone through all the above considerations, and you have decided that you have the perfect issue for small claims court - a \$2,000 claim on an unpaid account. Despite your careful planning, the defendant could ask the court to move the case to circuit court. Your plan to quickly and cost-effectively handle this matter would be railroad, and you would be forced to proceed in circuit court.

In the right situation, small claims court can provide a quick and cost-effective way of collecting unpaid obligations. If you need some assistance in selecting the right strategy for your collection problem, please contact a member of the Litigation Practice Group.

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Litigation Practice Group Lawyers:

Hunter Emerick	hemerick@sglaw.com
Randy Sutton	rsutton@sglaw.com
Erich Paetsch	epaetsch@sglaw.com
Shannon Martinez	smartinez@sglaw.com
David Briggs	dbriggs@sglaw.com
Andrew Naylor	anaylor@sglaw.com
Ryan Orr	rorr@sglaw.com

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