



This article deals with how a default judgment is obtained against a defendant. Default judgments may be entered for both liquidated and unliquidated claims. This discussion will focus on claims for a debt or liquidated claim.



COMMENCING COURT PROCEEDINGS

In the process of suing a debtor, court proceedings will start by the plaintiff filling a Statement of Claim in court. Regulation 6.3 of the Uniform Civil Procedure Rules 2005 (UCPR) lists the kind of proceedings which must be commenced by a Statement of Claim. Included in this list are claims for a debt or liquidated sum.

The Statement of Claim is then served on the defendant usually by a process server. The defendant after receiving the Statement of Claim has to respond within 28 days from the date of service by either entering an appearance or filing a defence in court and serving this defence on the plaintiff. If the defendant does nothing after being successfully served with the Statement of Claim, the plaintiff may then apply to court for judgment against the defendant in default of defence. If successful, the plaintiff will get a judgment for the debt owed or the liquidated amount which he has claimed in the Statement of Claim as well as costs and interest.

The process of obtaining default judgment at first sight appears simple and straightforward, but if not done properly may result in the judgment being deemed as irregular and allow the defendant to set aside the judgment on this ground.

HOW TO ENTER A DEFAULT JUDGMENT

The first step is to file a Notice of Motion for Default Judgment in court. It would be for a sum not exceeding the sum claimed in the Statement of Claim (UCPR Regulation 16.6). In support of the application for default judgment, an affidavit must be filed (UCPR Regulation 16.6 (2)) which:

- a. Must state the amount due to the plaintiff in respect of which the proceedings were commenced.
- b. Must give particulars of any payment made or credits issued since the Statement of Claim was filed.
- c. Must state the source of the deponent's knowledge.
- d. Must state the amount claimed by way of interest.

- e. Must state whether costs are claimed and if so how much indicating the amount of professional costs, filing fees and cost of service of the statement of Claim.
- f. Must state when and how the Statement of Claim was served on the defendant.

MANDATORY TERMS

It is noted that the UCPR Regulation 16.6 (2) is couched in mandatory terms (must state) and all the above required information must be furnished. An Affidavit of Service sworn or affirmed by the process server or person who served the Statement of Claim on the defendant is required to satisfy the court that the defendant was properly identified and served with the Statement of Claim.

KNOWLEDGE OF DEPONENT

Another important requirement is that the deponent (person swearing or affirming) the Affidavit in Support must state the source of their knowledge of the matters stated in the affidavit concerning the debt or debts. It is best that the plaintiff themselves who should have intimate knowledge of how the debt arose and the amount outstanding at the time of filing the Statement of Claim deposes the affidavit. In the case of a company plaintiff, the deponent should be a person who has knowledge of the claim.

This is also important because the Notice of Motion for default judgment need not be served on the defendant and may be dealt with in the absence of the parties by the court as provided by UCPR Regulation 16.3 (1A). The court therefore has to have sufficient information to ascertain whether the source of knowledge is likely to be reliable.

In a recent decision of the New South Wales Court of Appeal in *Arnold v Forsythe* [2012] NSWCA 18 (23 Feb 2012), the court set aside a default judgment made against the defendant on the ground of irregularity. The lawyer for the plaintiff had deposed



the supporting affidavit for default judgment. The court ruled that the lawyer acting for the plaintiff would be unlikely to have personal knowledge of the matters underlying the plaintiff's claim. Taking instructions and having conduct of the plaintiff's claim was not enough it would seem. The court also ruled that the plaintiff had also failed to plead all material facts necessary to support the cause of action for a liquidated claim. As the claim was not a liquidated claim, the default judgment was irregular.

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CONCLUSION

Entering a judgment in default is not a straightforward matter. The pleadings in the Statement of Claim must be in order with all material facts pleaded to establish a liquidated claim. Affidavit evidence to establish that the Statement of Claim has been served on the defendant must be in place and the affidavit in support of the Notice of Motion must be properly deposed as to source of knowledge. This will ensure that the default judgment will not be deemed irregular.

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