Comasters
LAW FIRM AND NOTARY PUBLIC

CIVIL LITIGATION: A BRIEF GUIDE

This article discusses the process of civil litigation and the different types of courts. Litigation is generally the last measure taken as it can be costly and require a long time to reach a resolution.

A. COURTS & TRIBUNALS

There are a number of state and federal courts and tribunals operating within New South Wales ('NSW'). These include:

1. The NSW Supreme Court, the NSW Court of Appeal, the NSW District Court and the NSW Local Court..
2. Specialist courts which fall under various Acts. For instance, the Children's Court of NSW; the Federal Circuit and Family Court of Australia, the Land and Environment Court of NSW, the Coroner's Court of NSW, and the Drug Court of NSW.
3. Specialist tribunals, usually presided over by a magistrate or judge, such as the NSW Civil and Administrative Appeals Tribunal, the Mental Health Review Tribunal of NSW, the Dust Diseases Tribunal of NSW and the Administrative Appeals Tribunal.

Court and tribunal powers and jurisdictions are specified in legislation.[1] For example, the following characteristics are set out in the relevant Act for each court:

1. Local Court:
   - has jurisdiction over civil claims for up to $100,000.00 (Small Claims Division hears claims up to $20,000.00);
   - hears less serious criminal matters; and
   - conducts committal hearings for serious criminal offences (to determine if there is enough evidence for the matter to proceed to the District or Supreme Court).
2. District Court:
   - has jurisdiction over civil matters for up to $750,000.00 (claims exceeding this amount may be heard if the parties consent);
   - has criminal and special jurisdiction, where it hears serious criminal matters such as manslaughter and drug offences – the only criminal matters it cannot hear are murder, treason and piracy charges; and
   - hears appeals from the local court and other lower courts.
3. Supreme Court:
   - has unlimited jurisdiction over civil matters;
   - has jurisdiction for serious criminal offences, including murder, treason and piracy charges; and
   - hears appeals from lower courts and tribunals.

B. GOING TO COURT

The most important initial decision in the civil litigation process is to determine what the most appropriate venue to file a claim is (ie what court or tribunal a claim/action should be commenced in). The filing of originating process (the process to start proceedings) is then commenced.[2]

The type of originating process to use is determined by the rules regulating the courts and tribunals. The *Uniform Civil Procedure Rules 2005* (NSW) provide basic case management and procedural rules for NSW courts. In general, an action is commenced by way of detailed pleadings that set out all material facts in the form of a Statement of Claim. The Statement of Claim must be filed in court and a sealed copy must be served on the defendant.

[1] Also referred to as Acts and Statutes.
[2] This phrase refers to the eligibility of an individual claimant to appear before the judiciary.

Within 28 days of service of the Statement of Claim, a defendant must file a Notice of Appearance or a Defence. If 28 days have elapsed and no Defence has been filed, the plaintiff may seek default judgment against the defendant (ie to decide the case without a hearing). Once a judgment is entered, whereby the judge has ruled in favour of the plaintiff, the plaintiff is entitled to enforce the judgment.

In In the District Court, along with filing a defence, the defendant may also make a cross-claim against the plaintiff and/or against a third party. Under the rules, the plaintiff may file a reply in answer to the defence.

In defended cases, the participating parties are entitled to start interlocutory proceedings. Some examples of interlocutory proceedings include: discovery and inspection, injunctions, subpoenas, notice to admit facts, application for directions, notice for medical examinations, orders for inspection of property, interim preservation of property and other measures.

There are interlocutory summary proceedings whereby a party to a suit may apply to the court by way of affidavit evidence where the grounds of the application are sufficiently clear to enable the court to decide without a trial. The examples for this include filing for summary judgment and striking out applications.

After all pre-trial steps are completed, parties to the action are required to set the matter down for trial.

At the trial, oral evidence will be heard by a judge and affidavit evidence may also be tendered during the course of the trial. At the conclusion of the hearing, a verdict will be given.

From this point forward a dissatisfied party may appeal to the Supreme Court.

C. SETTLEMENT OUT OF COURT

Obviously, the commencement of court proceedings does not preclude settlement negotiation. Indeed, it is often the case that despite the commencement of proceedings, out of court settlements still take place. Parties may continue to negotiate throughout ongoing court proceedings by way of Calderbank offers or Consent Orders. Parties are also encouraged to attempt Alternative Dispute Resolution (ADR) before or during court proceedings.

D. CONCLUSION

The attendance and advice of lawyers is crucial in ensuring that a successful settlement takes place. In a rush to settle, participating parties often overlook the serious implications of less than satisfactory negotiations.

The commencement and conclusion of a matter in the pursuit of judicial vindication may have many pitfalls, which may be avoided by engaging professional assistance from a good lawyer.

Comasters provides professional assistance to plaintiffs as well as defendants in civil suits.

Comasters Law Firm is able to act for either the plaintiff or the defendant in any legal action.

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