LawWorks

Debt & Mortgage Advice Seminar

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Speaker
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Introduction

Part 1
Overview to debt advice,

Part 2
Defending e.g. Consumer Credit Counterclaims e.g. PPI

Part 3
Mortgage debt solutions
Start with Priority Debts

Those that can result in:-

- Committal
- Eviction
- Disconnection
Always check if your client is liable for any debt

legal liability not moral
non-priority debts can migrate into priorities
Options

1. An informal arrangement

2. An IVA (Individual voluntary arrangement)

3. Bankruptcy or Admin order
Financial Statement

Which ever of the earlier 3 options is decided you will need the following information:

- Income
- Expenditure
- Priority debts
- Non priority debts
Financial Statements

Try these two:
BBA – MAT

The Informal Self Help

- Please Note.
- An informal arrangement is not a variation of the original contract.
- Explain the circumstances and send with the financial statement with an offer to pay a sum.
- And also actually send payment!
Informal cont’d

- If the circumstances change – adjust the payments accordingly

- NOTE! token payments i.e. £1.00

- Alternatively - Pro-rata the disposable balance – or contractual monthly.
IVA

- A formal contract, it supersedes the original contract/s
- Authorised by the court
- Matter is conducted by an Insolvency Practitioner
- Intended nominee, Nominee, Supervisor.
- Cost implications
- Ability to service payments % in £
- Risk of insolvency for non-compliance
- New post bankruptcy IVA (April 2004)
Debtors Petition

- As you may be aware this is one of two ways into Bankruptcy – the other is a Creditors Petition
- Procedure -
- Effects -
- Recent changes via Enterprise Act
- Admin orders (up to 5k + CCJ)
Before moving on to Defending -
When to admit?

- Where there is no defence or client so instructs
- Alternatively where there have been regular payments made under an informal arrangement which makes the issuing of proceedings totally unreasonable – this argument only goes towards costs
- Alternatively when an instalment order would benefit defendant to avoid a forthwith order
Summary - part one

Is the debt admitted by client yes? / no?
If yes – do you have instructions to make offer? Slide 9

But have you considered the following:

Is the debt is regulated by the CCA 1974
Is it executed lawfully?
Is there even a written contract?
Is there a defence and counter claim or cross claim?
Are there any Limitation issues?
Was there an Assignment, evidence and CCA compliant?
Basic CCA 1974 defences

- s.129 Time order
- s.139 Extortionate credit (repealed)
  now s.140b Unfair relationships see sec.19 CCA 2006
- s. 127(3) Unenforceable (note CCA Act 2006 – repeal as from April 2007)
- s.18 Multiple agreement
Basic counterclaims,

consider:
- Cost consequences
- Cross-claim or counter-claim
- Grounds i.e.:
  - Joint liability – breach by supplier
  - Miss-sold an insurance product
    - Payment Protection
    - GAP
    - Mechanical breakdown
Outline steps in Court Action

Before and after issue - CPR ‘overriding objective’
Compliance with any relevant pre-action protocols.

- Time limits – 14 acknowledge +14 to file/lodge def.
- Failing which 28 days default judgment entered.
- Where defending within time limits then matter transferred to defendants home court
- Allocation Questionnaire 28 days
- CMC – Directions
- Listing Questionnaire
- Trial or Settle
Enforcement of CCJ

If defendant is complying with any court order then i.e. installment order, any creditor will be unable to enforce, if not then:

- Charging Orders - Part 73
- Attachment of Earnings –CCR 27
- Third Party Debt order - Part 72
- Freezing order
- Bankruptcy - Part 49 + 1986 Act
- Information from debtors- Part 71
Rent debt

- Identify Tenancy
- Reason for rent arrears, i.e. Housing Benefit etc
- Advise on technical or substantive grounds to defend or counterclaim - if any

Specific Lawworks course. Housing law.
Mortgages CPR Part 55

- AJA 1970/73 Power to give time to pay arrears
- Norgan v C & G - how much time? 5 12 95
- Possession v Eviction
- Post eviction
AJA 1970 Power to pay arrears

- Discretion is found in Section 36 AJA 1970.

- If the court holds that the borrower was likely to be able within ‘a reasonable period’ to pay any sums due under the mortgage or to remedy a default, the Court could exercise discretion giving the borrower more time.

- Mortgages provide for the principal to become immediately payable if installment's are in arrears. So, the court could only suspend if it appeared the borrower could repay the whole mortgage debt within a reasonable period of time. Hence:-
AJA 1973

- Section 8(1) Administration of Justice Act 1973 was introduced to succeed Section 36.
- limiting sums to be repaid to only those payments of interest which were in arrears, not the whole mortgage.

- Section 36 and 8 operated in unison as the legislators had intended.
- It was common practice to allow up to 2-3 years to clear the arrears.
- Until the decision in Cheltenham & Gloucester Building Society v Norgan.
Norgaon v C & G - how much time?

- The Court of Appeal judgment stated that
  
  "one begins with a powerful presumption of fact in favour of the period for the mortgage being the reasonable period".

Sub prime mortgages

- Clients with secured loans from this sector may have many more options than those form the high street.
- If regulated then CCA conditions apply.
- How does Securitisation play a part?
Mortgage Possession & Eviction

- There are at least two distinct elements before someone is physically removed from their home.
  - 1st The possession order
  - 2nd The eviction (an application to suspend the eviction is made by the defendant) (there are no restriction on the number of applications made)
Post eviction

- The AJA’s does not operate once an eviction has occurred.
- Oppression needs to be shown for reinstatement.
- However oppression could be occasioned by the Claimant or there agent or the Court Staff or the Bailiff
Oppression:

London Borough of Hammersmith and Fulham v Lemeh, (unreported 3 4 2000)

Lord Justice Nourse

- "Once the warrant has been obtained, its execution is a matter between the court and the tenant. It is the officer of the court who executes the warrant and the landlord has no part in that process. Moreover, there seems to be no reason why oppression should be confined to oppressive conduct on the part of the landlord or some other person. It ought to include any state of affairs which is oppressive to the tenant."

- Not only by the conduct of the landlord but others also, the existence of "a state of affairs".
Oppression = "a state of affairs"

Challenging Decisions

- Appeals
- Set asides
Appeals

- Need a point of Law
- Not a re-determination
- Time limit 21 Days – or whatever specific time the court orders
- Identify the ground/s.
- Skeleton argument
Set aside

- Procedural irregularity, bias
- Non receipt of court documents
- Depending on ground can result in the Judgement being quashed and a fresh hearing permitted.
Q & A –

Thanks you :

Bates Wells & Braithwaite