

An introduction to civil asset recovery

Victims of fraud are often reluctant to bring formal proceedings against a fraudster due to misconceptions that the process may be expensive and time consuming. But for many frauds against small businesses the asset recovery process may be a lot less complex than one might think.

Introduction

Organisations that have been the victim of a fraud can be put off the idea of bringing legal proceedings due to a number of misconceived beliefs about the civil justice system, such as:

- the costs of taking action will far outweigh the benefits in making a claim;
- the process is complicated and time consuming;
- a court is unlikely to find against a fraudster unless the evidence is particularly strong.

The following description of the asset recovery process in civil cases aims to dispel these misconceptions and encourage the use of the courts as a method for exacting justice against fraudsters who might otherwise go unpunished.

Civil asset recovery process

The civil asset recovery process from start to finish is:

- building the case (evidence gathering)
- freezing
- claiming
- enforcement.

Stage 1: building the case

It is important to speak to a legal practitioner who has experience of the fraud litigation and recovery process as soon as possible. At this stage it is crucial to build up a body of evidence that can be used in any court proceedings, including (but not limited to):

- where the potential defendant is located
- whether they have substantial assets, and
- in the case of a company or other incorporated entity, the identity of its beneficial owners.

This will help to determine whether it is financially worthwhile pursuing the claim and, if it is, against whom you should be pursuing it.

There are a number of ways to obtain information about the potential defendants. For example, company searches are useful to work out the corporate structure of a registered company and determine beneficial ownership. Searches of the Land Registry may help to locate assets held in the name of a potential defendant. Such searches can be carried out at minimal cost but may be invaluable in putting you on a 'train of enquiry'.

Other fact-finding techniques are also available, but these are likely to come at a more substantial cost, so they are only likely to be cost-effective in more significant claims. For example, employing enquiry agents to carry out extensive investigations of the defendant, or obtaining a court search order to require the defendant to disclose information.

Stage 2: freezing

The next step is to obtain a freezing order to prevent the defendant from frustrating your claim by doing something that would put their assets out of reach. For example by transferring assets into the name of a third party or by taking them outside of the jurisdiction. This should be done quickly.

A freezing order is an order issued by the court to the defendant which prevents them from dealing with their assets in a certain way. Seeking such an order is only likely to be appropriate in claims involving fairly substantial sums of money.

Freezing orders are usually obtained without notifying the defendant in order to prevent them from putting assets out of reach before proceedings can begin. As a result, there are strict legal requirements on their use. For example, the applicant

will be under a duty to make full disclosure of any matters relevant to the application, even those that are harmful to their case. They may also be required to make an undertaking to pay damages to the defendant if it turns out that making an order was not appropriate.

At this stage it may also be appropriate to consider whether there are any intermediate insolvency processes available that could assist in obtaining documents and protecting assets, such as provisional liquidation or the appointment of a special manager or receiver. Appropriate professional advice should be sought.

Stage 3: claiming

Proceedings can now be issued against the fraudster. This is done by delivering a claim form to the appropriate court setting out the necessary details of your claim.

- Claims of less than £25,000 will usually be dealt with by your local county court.
- Claims of £25,000 or more may be dealt with in the High Court in London or in one of the various regional district registries.

Claims of less than £5,000 will be allocated to the 'small-claims track'. This procedure is used in low-value claims by individuals without legal representation, meaning the process is simplified and involves straightforward directions from the court concerning matters such as disclosure of documents.

Claims of more than £5,000 (but less than £25,000) will be allocated to the 'fast-track'. This procedure is designed to take straightforward cases to trial within a short but reasonable timescale. There are more pre-trial procedures involved than there are on the small-claims track, and the court will give more comprehensive directions about how the claim should proceed to trial.

Claims for more than £25,000 will be allocated to the 'multi-track', where the court will be more involved and will issue more specific directions that are tailored to the case.

Stage 4: enforcement

If successful at trial, the court will enter judgment against the wrongdoer, declaring that the fraudster owes a sum of money to the victim. Where the court has granted a freezing order, the victim may look to the assets that were frozen in order to satisfy the debt. If not, and in cases where the wrongdoer fails to make payment promptly, the victim may have the following options available to recover the debt:

- **Warrant of execution.** This allows bailiffs to seize assets belonging to the defendant and sell those assets at auction in order to satisfy the debt. Certain assets may not be seized, such as tools of the trade.
- **Attachment of earnings.** If the defendant is employed you can apply for an order that directs the employer to deduct a certain amount from the defendant's pay, and this is given to you to satisfy the debt. However, the payments are likely to be spread out over a long period, so it could be a long time before the debt is fully paid.

- **Third-party debt order.** This is usually an order given to a bank, and it stops the defendant taking money out of their account. The money you are owed is paid to you from the account.
- **Charging order.** This prevents the defendant from selling an asset (usually property such as a house or flat) without paying the debt. Care should be taken to ensure that there is sufficient equity or value in the property to be charged before incurring costs.
- **Insolvency.** There are a number of formal insolvency procedures that can be brought against the defendant and these bring with them a large number of additional powers to trace and recover assets. Advice from a licensed insolvency practitioner should be sought regarding the appropriate procedure.

Further information

Association of Business Recovery Professionals (R3)
www.R3.org.uk

Association of Chartered Certified Accountants
www.acca.org.uk

Insolvency Practitioners Association
www.insolvency-practitioners.org.uk

Institute of Chartered Accountants in England and Wales
www.icaew.com

Chartered Accountants Ireland
www.charteredaccountants.ie

Crown Prosecution Service
www.cps.gov.uk

Institute of Chartered Accountants of Scotland
www.icas.org.uk

Land Registry
www.landregistry.gov.uk

Law Society
www.lawsociety.org.uk

Law Society of Northern Ireland
www.lawsoc-ni.org

Law Society of Scotland
www.lawscot.org.uk

Recovery through criminal proceedings

For frauds involving smaller sums of money, where the costs of bringing the proceedings outlined above would be likely to far outweigh the benefits of making a recovery of the assets, the most effective avenue of recovery may be through criminal proceedings that are brought against the wrongdoer by the authorities.

When sentencing an offender, the court has a number of powers available to it to confiscate assets and provide compensation for the victims of the crime. However, it must be borne in mind that the victim may have little influence over whether such orders are made, although the court may be required to give reasons for refusing to make an order in circumstances where it could have done so.

For more information on the rights of victims in criminal proceedings visit the Crown Prosecution Service (CPS) website www.cps.gov.uk.

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