

April 2009

Service on Facebook

What is Service? Service in a court case is where Court documents are given to a party. Depending on the case and who is being "served" service can take place in a variety of ways, for example they may be required to be physically handed over to a party or in some cases can be left at a party's business premises.

If a debtor cannot be found then how do you get your court documents to them? Sometimes people hire a private investigator to locate the debtor. Another way can be to serve the documents by some other means, for example on someone who is a friend of the debtor. This is called substituted service. The Court must approve the manner of the substituted service first and attempts to locate the debtor must be shown.

In a recent High Court decision the categories of permissible substituted service was widened. In that case the whereabouts of the other party was unknown and so the party who needed to serve the documents asked the Court to approve service by publication via the social network website Facebook. The Court agreed!

Exceptions to part payment of debt rule

Readers will remember that in the March 2009 newsletter mention was made of the law relating to part payment of debts in full settlement provided the debt is not disputed the creditor can accept the part payment and continue to claim the balance.

This newsletter deals with the exceptions to this rule which are:

If the debtor does something different, for example with the creditor's consent the debtor sends gold in full payment of the debt, the Court will not enquire as to the gold's value.

In New Zealand section 92 of the Judicature Act 1908 provides that if a creditor agrees in writing to accept part payment of a debt (in satisfaction of the whole debt), they cannot then claim the balance at a future date.

The rule does not apply where the debt is in dispute or the total of the debt is uncertain

Where the debtor makes an arrangement with the creditor to pay a percentage of the debt (usually due to financial difficulties) in full satisfaction of the debt.

Where a person promises to pay a lesser sum in full satisfaction on behalf of the debtor the creditor cannot then sue the debtor for the balance. To permit this would be to allow a fraud as the person had been induced to pay the lesser sum on the of the payment discharging the debtor from liability eg. where a father pays a loan off for a son, the creditor cannot then sue the son for the remainder of the debt because a binding agreement has been

Case Study

John Smith provides lawnmowing services for Jane Brown, Jim Rolton and Fran Bell who are flatmates in Christchurch.

After some months John realises that 3 months worth of accounts have not been paid and he is owed \$300.

What can John do?

John should start collectIT's debtor management process.

At the conclusion of this process if John has not been paid he should file court proceedings against the flatmates in the Christchurch District Court following collectIT's forms and information.

As there are 3 flatmates, each flatmate must be listed separately as a defendant. In this case therefore there will be 3 defendants. Each flatmate must also be served with the documents when they are released by the Court.

Success Story

Main Construction NZ Ltd
The collectIT system is brilliant!! It has saved us enormous amounts of time and money. Being in the building industry we have been searching for a low cost way to recover bad debts and slow payers. Debt collectors have cost us the earth, but with collectIT we are able to use their easy, no fuss, online system to recover our own debts following the simple step by

made with the father.

Until next time  don't write off debt...

Melanie O'Neill & Catherine Clark
Directors



0508 collectIT (265 5328)

step system. CollectIT also has brilliant customer service and phone numbers you can ring at any time you may get stuck, or just need to ask a question. We have recently just served our first court order using the construction contracts part of the website - it was easy and with the back up of calling the collectIT team, we couldn't go wrong. Thanks collectIT for making debt collection easy!

Lisa Gyde

[more success stories](#)

If you do not wish to continue receiving emails from us, please click on the link below while connected to the internet. [Remove Me](#)