

## March 2009

20th March was the deadline for subscribing to collectIT and taking advantage of collectIT's \$99 off the joining fee. We are extending this date by just a few days to the end of the financial year - 31st March.

If you've been thinking about subscribing to collectIT now is the time to act, this special is unlikely to be repeated and was aimed at bringing some good cheer to the new year.

Subscribing is easy. Go to our website [www.collectit.co.nz](http://www.collectit.co.nz). Remember you must subscribe and complete the required monthly automatic payment form to receive a collectIT subscription at this great price. The coupon number you need is 99.

## Cheques in Full settlement

Sometimes a debtor will send a cheque for payment of a lesser amount than the invoice stating that it is "in full and final settlement".

### **What is the law on this?**

If a debt is disputed then acceptance by the creditor of a lesser amount expressed to be "in full and final settlement" extinguishes the debt.

### **What is acceptance by creditor?**

Acceptance can be implied by the banking of the cheque. This is seen as strong evidence that the creditor has accepted the debtor's offer of payment.

### **What can a creditor do?**

If a creditor wants to claim the remainder of the debt then it must, at the same time or as soon as possible after banking the cheque, write to the debtor saying the payment is not accepted as full and final settlement and the balance of the debt is claimed. It is important that this is communicated straight away, in some cases communication sent less than a week later was too late.

Debtors sometimes try to force the issue by placing conditions on the payment, one example is that the debtor sends a cheque stating that it is in full settlement and if it is not accepted the cheque must be returned. In these situations banking the cheque and writing to the debtor saying it is not accepted as full and final settlement will leave it open for the balance to be claimed. There is a danger however that by banking the cheque instead of returning it as requested, the debtor could argue the creditor has converted the debtor's money improperly. Creditors need to be aware of this when they are deciding whether or not to bank cheques tendered in this manner.

It may be prudent to err on the side of caution, return the cheque and sue for the total debt.

Creditor's need to remember the above applies only where there is a dispute over the debt. If the debt is undisputed then creditors are either to insist on full payment notwithstanding on what basis payments are made or conditions are sought to be imposed by debtors. The exceptions to this rule will be outlined in

## Case Study

Happy Homes Ltd has been building a house for Mr and Mrs Smiley. The first two invoices rendered by Happy Homes Ltd have been paid on the due date by Mr. and Mrs. Smiley. When the third invoice for \$20,000 is rendered Mr and Mrs Smiley do not make payment. A payment claim under the Construction Contracts Act by Happy Homes Ltd is sent and Mr and Mrs Smiley respond with a payment schedule alleging substandard workmanship.

Happy Homes Ltd tries to sort out the problems with Mr and Mrs Smiley but to no avail.

To resolve this dispute Happy Homes Ltd uses the adjudication claim procedure in the Construction Contracts Act, an agreed adjudicator is appointed, hears from Happy Homes Ltd and Mr and Mrs Smiley, and issues a decision.

CollectIT's Construction Contracts Act section of the website explains the process to be followed and the legal terms used such as 'payment claims', 'payment schedules', and 'adjudication'. CollectIT provides all the necessary documents as templates to be used in any situation under the Construction Contracts Act.

A must have for anyone in the building industry.

## Success Story

Clarke Engineering

**collectIT's** April newsletter.

Until next time

Melanie O'Neill & Catherine Clark

Directors



don't write off debt... **collectIT**

collectIT has worked well and paid for itself in the first 2 minutes of subscribing! We had an outstanding amount for 4 months, I faxed collectIT's final letter to our debtor and was paid within the month. I feel confident knowing I have a system and I'm now looking at updating our terms of trade as collectIT has done those for us as well!"

Jo Clarke  
Owner

[more success stories](#)