DISHONOURED CHEQUES – ACT
FAST OR FACE CHEQUE-MATE

by Mark Emery

Dishonoured cheques are a risk at any time for local businesses, but especially in times of economic recession. However, historic Isle of Man legislation exists to protect local business and residents against cheques “bouncing”; provided though that they act swiftly.

Under section 3 of the Bills of Exchange Act 1883 (the Act) a cheque is defined as an unconditional written instruction by an account holder to their bank instructing payment of a specified sum of money to a named beneficiary. Once a cheque is presented, the person presenting the cheque (the Payor) is confirming to the person receiving the cheque (the Recipient) that it will be honoured.

When goods or services are paid for by cheque, there are two separate contracts. The first of these is the actual contract for the supply of the goods and services; however, a second contract is also entered into by presenting a cheque, which is an unconditional promise to pay the Recipient. Therefore, should a cheque “bounce” due to non-payment, then notwithstanding the usual recourse of issuing a debt action in the Isle of Man High Court on the first contract, an additional rarely-used immediate cause of action arises under section 47(2) the Act on the second contract. This is sometimes referred to as “the cheque rule”.

One benefit of issuing a claim under the Act is that unlike in a usual debt claim where the claim can be defended on the basis of the quality of the goods or services provided, the defences to a claim for a dishonoured cheque are merely limited to fraud, duress, misrepresentation, complete incapacity, or that there has been a total failure of consideration (a total failure of anything of value being provided for the cheque). Another benefit of issuing a claim under the Act is that there is a line of well-established case law stating that judgments on cheques should not be delayed by a counterclaim by the Payor for damages for breach of
contract or negligence. Therefore, tactically this can be a very useful cause of action because it ensures that the money is paid over to the Recipient before there can be any argument about the goods or services provided.

However, the Act does prescribe a strict procedure upon receipt of a dishonoured cheque, which if not followed will cause the Recipient to lose the cause of action. Section 48 and 49 of the Act require the Recipient to give a written “notice of dishonour” to the Payor, which should be in the form of a letter. This notice should include the cheque number, the account number, the bank name, the amount, and the fact that the cheque has been dishonoured by reason of non-payment. The Act requires the notice to be given “within a reasonable time”, which means that unless there are "special circumstances", it should (at the very latest) be sent by post on the day after dishonour. Timing of the notice is therefore imperative to achieving the protection of the Act. Upon correctly service a notice of dishonour, proceedings can be issued without further notice in the Isle of Man High Court of Justice.

In conclusion, the Recipient of a dishonoured cheque must act quickly to ensure that they do not lose this additional cause of action, which is a useful tool in increasing the prospect of obtaining a good result in the Isle of Man High Court of Justice. It is therefore advisable to take urgent legal advice upon receiving a dishonoured cheque.

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