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General Information Relating to Debt Defense Cases

Welcome to the Callahan Law Firm, we are consumer protection attorneys that are passionate about helping our clients defend and exercise their legal rights. To help you understand what to expect in your case with our firm, we have prepared this information sheet to breakdown the stages of typical a consumer debt defense case. Although this is only a general roadmap and every case is individual, we hope that this guide provides some helpful context.

1. Case Filing and Service

A civil debt defense lawsuit is initiated by the filing of a Petition (also referred to as a complaint) by the Plaintiff. Due Process requires that a Court both have authority over the type of claim and the person or corporation being sued. State courts have authority over cases involving contractual agreements and then require that the Plaintiff show that the Defendant can be contacted by the Court through service of process.

Defendants have a right to receive a copy of the court summons through delivery by a sheriff or special process server. If you do not wish to be served, you can waive your right to be served through signing and filing a waiver of service with the Court. Although this does not mean that Plaintiff will stop all attempts to serve you, waiving service means that Plaintiff no longer needs to serve you.

A summons packet in a state civil court case will include the summons directing a case Defendant where and when to appear for the court date and will include a copy of the Plaintiff's Petition and any documentations or affidavits that Plaintiff includes as exhibits.

Service may be made at your residence to you or an adult co-resident, or where you may be found within the state. This is not an exhaustive list of all valid service options for Plaintiffs, but in a debt defense case service is usually at a Defendant's home. The Court summons will specify the location of service and is available through the Court's public access website.

A Defendant must either be served, or waive service, before the first court date or the Court will continue the first court date to a later date and allow the Plaintiff additional time for service. The Courts will usually allow the Plaintiff about six months to a year for service before dismissing the case without prejudice for lack of prosecution. Without prejudice means that the Plaintiff can re-file the case.

2. First Court Date

Once properly served, a Defendant is required to respond to the lawsuit, or the Court will consider all of the allegations in Plaintiff's Petition to be true and enter a default judgment for the Plaintiff against the Defendant.

Depending on which Court that the case is filed in, there are different ways that Defendants need to respond to their lawsuits. The differences can be determined by the amount in dispute in the lawsuit and the state where the lawsuit is filed. In Missouri and Kansas, most debt defense case are in a division of the Court with simplified procedure and pleading requirements. These are called the Associate Circuit Division in Missouri, and the Limited Actions Division in Kansas. For larger dollar amounts, the case is filed in the County Circuit Court in Missouri and the County District Court in Kansas. The specific requirements are all a bit different, but generally a Defendant with need to either appear in Court on the first court date or file an Answer to respond to Plaintiff's Petition, a Defendant must do both.

The objective of the first court date or the answer is to determine whether the Defendant agrees or disputes Plaintiff's claim. If the Defendant does not respond, a default judgment will be entered. If the Defendant responds and agrees to the claim then a consent judgment can be entered. If the Defendant disputes the case, then the case will be continued, or set for a trial.

The Courts are interested in parties being able to resolve their disputes without a trial, or if a trial is necessary to allow parties time for discovery of information and documents necessary for a trial. This means that most of the judges will grant continuances of the first court date to a status conferences for a few of the hearings prior to setting the case for trial.

3. The Pendency of the Case

While the case is unresolved and pending the parties are able to discuss settlement of the case or request information, statements, documents, and things from the other party through the process of discovery.

The purpose of discovery is to aid the requesting party in gaining information to prepare for trial or determining what is actually in dispute. In a typical case, the Plaintiff do not need any information or documentation to prove their case in trial, but because discovery is an important process in other civil litigation cases, the rules allow Plaintiff to require that Defendant's respond to their discovery requests. In the debt defense context, the objective of Plaintiff sending discovery requests are usually to either simply place a burden on a Defendant to respond and create pressure to settle the case faster, or if Defendant does not respond to a type of discovery called request for admission, then to ask that the non-admissions be deemed as admitted. Then use those as a basis for a motion for summary judgment.

During the pendency of the case, the Plaintiff will be seeking a way to either settle the case, or file dispositive motions, like a motion for summary judgment, with the goal of obtaining a judgment. If the case cannot be resolved through one of these means, it will be set for trial.

4. Trial

When a case is set for trial, the Plaintiff is required to prove their case to the Court. In a civil case, the Plaintiff must show that it is more likely than not that the allegations in the Petition are true. In a debt defense case this typically means proving that Defendant agreed to pay Plaintiff, and breached that agreement by failing to pay Plaintiff.

A creditor will typically have all of the documentation necessary to prove this claim on file with their attorney's office before the attorney files the lawsuit. When defending a trial, the objective is to undermine the Plaintiff successfully presenting their case. Often through procedural rules to challenge the Plaintiff's exhibits entering into evidence. This means that there is a substantial risk to push a case to trial because if the Plaintiff and their attorney do not make a mistake, then the Court will award the Plaintiff everything that they are requesting in the Petition. A standard judgement will bear interest based on a statutory rate, but it is possible that a much higher contract rate can apply to the judgment.

Success in defending a trial often results in a dismissal of the case without prejudice and not a judgment for the Defendant. This means that even after losing at trial that a Plaintiff may be able to re-file the lawsuit.

Due to the risk of paying the entire requested amounts with potential attorney's fees, interest, and costs, we do not typically recommend that our clients proceed to trial when Plaintiff is willing to negotiate a settlement unless some case specific information changes that risk analysis.

5. Disposition of the Case

A case can be disposed of, or resolved, through either a dismissal or the entry of a judgment.

Dismissals: Dismissals can be entered voluntary by Plaintiff, by the Court through an order. Defendant can move for dismissal, but that can only be entered by court order.

- a. Dismissal without prejudice: A case that is dismissed without prejudice means that Plaintiff may still have a valid claim, and can file another future lawsuit, but at this time the case is dismissed with the Court. This can happen for several reasons.
- b. Dismissal with prejudice: A case that is dismissed with prejudice means that Plaintiff no longer has a valid claim and is legally similar to a judgment in the Defendant's favor stating that no money is owed to Plaintiff. This is typically filed voluntarily by Plaintiff in exchange for a Defendant paying agreed upon settlement funds, but there are other circumstances.

Judgments: Judgments can be procedural or substantive and can also be agreed upon or disputed by the parties, but in all cases, judgments are entered by court order. All judgments bear a statutory interest rate, unless expressly disclaimed in the judgment. Contractual interest rates that are much higher than the statutory rate can also be requested in case with a signed written contract. Below are common judgments, but not an exhaustive list of all potential judgments.

- c. **Default Judgment:** A default judgment is a procedural judgment arising from a party not responding to a lawsuit. These judgments are more easily vacated by motion to the Court than substantive judgments usually requiring an appeal.
- d. **Consent Judgment:** If a Defendant agrees that they do owe the money a consent judgment can be entered by the Court. Most creditors will condition longer term payment plans in a settlement on the acceptance of a consent judgment. In that case the consent judgment is entered with an agreement written into the face of the judgment that if the Defendant makes certain payments as agreed then the Plaintiff cannot use the judgment for any of the normal collection purposes. The legal term for this is a stay of execution on a judgment. A consent judgment can also have terms stating if a lower amount than the judgment is paid as agreed, then that lower amount will satisfy the entire judgment.
- e. **Summary Judgment:** When the Court decides that there is no material fact at issue in a case, then the Court can enter summary judgment. Parties may move for Summary Judgment and this is a substantive judgment, though they can often be obtained through procedural tricks.
- f. **Trial Judgment:** This is the order of judgment entered by the court after parties' present evidence and arguments to the Court at trial. This is a substantive judgment.

6. Collection and Enforcement of Judgments

Judgments entitle a Plaintiff to collect or enforce the terms of the judgment ordered by the judge. Collection on a judgment is called execution on the judgment. Then the parties agree to terms to not collect on a judgment, it is called a "stay of execution" on a judgment. A judgment can be executed through liens and garnishments.

- a. Liens can attach to real estate owned by a judgment debtor (a Defendant), creditors do not typically foreclose, but are typically paid by title companies during a sale of property to pass good title.
- b. Garnishments can attach to funds located in bank accounts or income like wages and salaries. Some forms of income are exempt and protected from execution under a judgment. Examples are social security benefits, federal railroad retirements, and some pensions.

A judgment is subject to a statute of limitations and is valid for ten (10) years from the date of entry by the court in Missouri and five (5) years in Kansas. Both, however, are subject to renewal, though under different circumstances in each state. If the Plaintiff takes the necessary steps to renew their judgment, it is possible to collect on a judgment older than the time set out by statute.

Satisfaction of Judgment: When a judgment balance is fully paid then the Plaintiff is required to promptly file a satisfaction of judgment.

- c. This operates as a release of the lien that was created by the judgment on real property. However, it is common that title companies in Missouri and Kansas will additionally require that a judgment debtor request a formal release of judgment lien from Plaintiff to file before issuing title insurance and passing good title to a buyer.
- d. Plaintiffs can voluntarily file a satisfaction of judgment on an unpaid balance. These are not common, but can happen on when only a very low balance remains, or if an internal

investigation discovers that there is a reason that it is unfair to leave the judgment in place like it arose from fraud or bad service on the Defendant.

Our Goals in Litigation

We understand that the litigation of a civil debt defense case and all of the particular details of how to respond to a lawsuit are complicated, difficult, and time consuming. Your attorneys at Callahan Law have extensive experience litigating cases in state courts throughout Missouri and Kansas and we target our representation on each case to the goals of our clients. Our knowledge from years of cases with these judges and attorneys allows us to tailor our approach to seek the best resolution for our clients.