

# An introduction to the enforcement of civil judgments

Delivered by Ian Cain

# The need for enforcement

- ▶ The aim of a party bringing proceedings in the civil courts is usually to obtain a remedy to their particular problem or dispute.
- ▶ However, obtaining judgment does not automatically provide the remedy.
- ▶ Before enforcement:
  - ▶ The court will determine the time for resolution of the remedy
  - ▶ The court may determine how the remedy is to be delivered
- ▶ CPR 40.4

# County Court or High Court?

- ▶ County Court up to High Court
- ▶ High Court down to County Court
- ▶ Attachment of earnings orders can only be sought in the County Court
- ▶ High Court = High Court Enforcement Officers
- ▶ County Court = Bailiffs



# *Stay of execution & applications to vary*

- ▶ CPR 83.7
- ▶ CPR 40.8
- ▶ Hall and another v Elia and another [2016] EWHC 1023 (Ch)
- ▶ CPR 40.9 – Applications to vary

# Appeals and applications to set aside

- ▶ CPR 70.6 – Applications to set aside.
- ▶ Appeals do not result in an automatic stay.
  - ▶ The Court must be satisfied that the appellant has a real prospect of success before it will be willing to consider staying the order of the lower Court



# Money Judgments – Obtaining information

- ▶ Application for information on a debtors finances
- ▶ Other mechanisms:
  1. Ask the judgement debtor
  2. Instruct an enquiry agent
  3. Check the insolvency register
  4. Check the land register
  5. Check the attachment of earning index
  6. Check the register of judgments, order and fines for England and Wales
  7. Check Companies House
  8. Ask third parties
  9. Apply for an order for disclosure by a third party
  10. Check the internet, media or other research sources



# Potential concerns

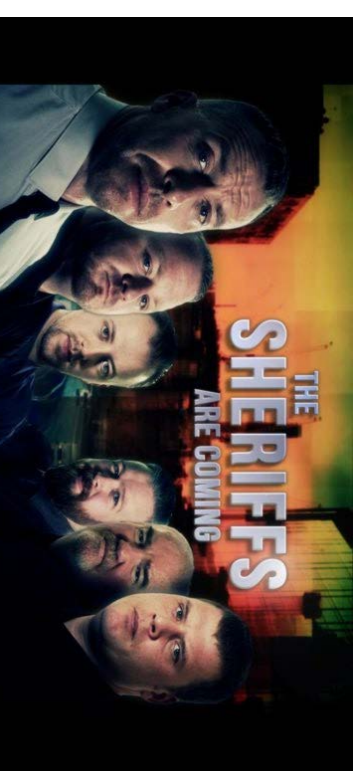
- ▶ Debtor tries to hide their assets
- ▶ Debtor tries to get rid of their assets
- ▶ Debtor tries to leave the UK to avoid paying
- ▶ Debtor becomes insolvent





# Money Judgment enforcement: Taking control of goods

- ▶ Popular method as it is quick
- ▶ Writ or warrant of control
- ▶ Control is obtained, then the items can be sold.
- ▶ 7 days notice required
- ▶ Valid for 12 months
- ▶ Cannot be exempt goods
  - ▶ Third party goods
  - ▶ Used personally by the debtor for his employment
  - ▶ Items for basic domestic needs
  - ▶ Assistance dogs and vehicles displaying a valid blue badge
  - ▶ Goods that constitute a home (houseboats, caravans etc)





# Money Judgment enforcement: Third party debt orders

- ▶ By third party debt orders, sums owed to a judgment debtor that are in the hands of a third party (such as a bank) are frozen and seized for the benefit of the judgment creditor.
- ▶ Without notice application
- ▶ Oral hearing



# Money Judgment enforcement: Charging Orders

- ▶ A charging order is a way of securing a judgment debt by imposing a charge over a judgment debtor's beneficial interest in land, securities or certain other assets.
- ▶ Most effective when there is substantial equity in a property and the judgment debtor is the sole owner.
- ▶ The process for obtaining a charging order can be slow!
- ▶ Courts will not grant them for low amounts.



# Money Judgment enforcement: Attachment of Earnings

- ▶ Attachment of earnings is a popular method of enforcement, as it is inexpensive and fairly easy to do.
- ▶ An attachment of earnings order provides that a proportion of a judgment debtor's earnings is deducted by his or her employer and paid to the judgment creditor until the judgment debt is paid.
- ▶ This method of enforcement of a judgment debt is only available against individuals and in the County Court.
- ▶ An attachment of earnings order cannot be made in respect of self-employed income, state pensions, benefits or allowances.

# Money Judgment enforcement: Insolvency

- ▶ If the amount you are owed by an individual judgment debtor is £5,000 or more, you can apply to make him or her bankrupt.
- ▶ You can also apply for a company to be wound up if it owes more than £750.
- ▶ The Courts discourage the use of insolvency procedures as a debt collection exercise.

# Judgment summonses and orders for committal

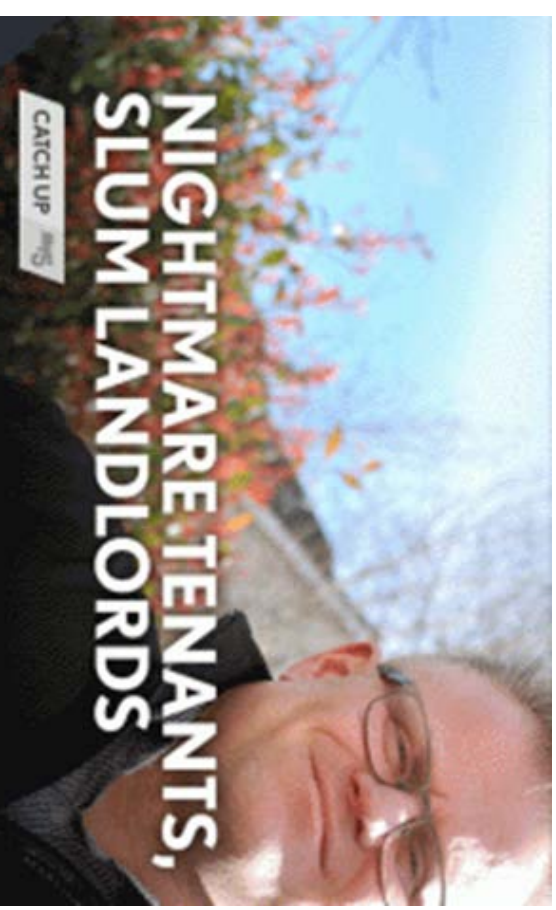
- ▶ Since the Administration of Justice Act 1970 came into force, judgment summonses have been available only for enforcing matrimonial maintenance orders and arrears of some taxes.
- ▶ The Court can make an order committing the judgment debtor to prison for contempt of Court if he or she does not comply with certain orders.

# Judgments for the delivery of goods

- ▶ Enforcement of judgments for the delivery of goods is by means of warrants of delivery.
- ▶ A warrant of specific delivery = the goods specified in the judgment with no alternative of recovering their value.
- ▶ A warrant of delivery = either the goods specified in the judgment or their value.
- ▶ The procedure to be followed is the same as enforcement of a money judgment by taking control of goods.

# Judgments for the delivery of land

- ▶ Permission from the Court is required to issue a warrant of possession unless the claim is against trespassers.
- ▶ Notice must be given.
- ▶ Entry to a property can be obtained by the police if necessary and the Claimant is advised to attend to secure the premises once possession is obtained.
- ▶ In the high Court, goods in the premises must be removed by the enforcement officer, but in the County Court this is not necessary.
- ▶ If the occupier returns to the property after possession has been obtained, such persons can be removed under a warrant or writ of restitution.





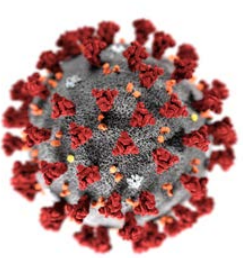
# Foreign Judgments

- ▶ The UK is party to a number of international conventions providing for the direct enforcement of foreign judgments, which have been incorporated into English law by:

- a) The Administration of Justice Act 1920
- b) The Foreign Judgments (Reciprocal Enforcement) Act 1933
- c) The Judgment Regulation (The Lugano Convention and the Hague Convention 2005)
- d) European Enforcement Orders (Council Regulation No 805/2004)

# COVID-19 and enforcement

- ▶ Coronavirus Act 2020
- ▶ CPR PD 51Z(2)
- ▶ The Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020 (SI 2020/451) (2020 Regulations)
- ▶ Can information be obtained from the debtor without an application to provide information?
- ▶ Is an enforcement agent required?
- ▶ Is an oral hearing required?



# Contact Details

- ▶ Any Questions?
- ▶ THANK YOU

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