YOUR FRIENDLY SMALL CLAIMS COURT, REVISITED
July 2015

We last wrote about small claims court back in 2011. However it is a subject worth revisiting – we continue to be asked questions about it. Thus, this article is both a summary and new information.

Occasionally a contractor will have a client that does not pay for the work done. If the amount owed is small to moderate, a small claims action may be the cost-effective means of recovery.

For the typical contractor, small claims court is a dreaded prospect. He or she is concerned about lost work time, snarky judges who hate contractors, and unsatisfactory results.

We disagree. Done properly, small claims court can be a great way to recover on a claim against a deadbeat client.

Jurisdiction/Money Limits. In small claims court, the monetary limits for claims are $5,000 for businesses and $10,000 for individuals and, now, sole proprietors. Anyone can file as many claims as they want for up to $2,500 each. However, they can only file 2 claims in a calendar year for more than $2,500.

But even if one has a claim for more than $5,000 (or $10,000 for a sole proprietor), if the claim is not for substantially much more consider the option of small claims. I believe the better practice in such a case would be to state the full amount – for example, $8,000 owed – but then ask for the maximum of $5,000 (or $10,000). This may incline the small claims judge to slop it over a bit and award you the $5,000 maximum in damages.

Venue. As a technical legal term, this means the proper **specific** courthouse in which to bring your claim. Every large county probably has four or five different possible courts for small claims.

As you will see in the court paperwork when starting the action – which is on your appropriate Superior Court website online – the "proper" venue can be one of several places. In a breach of contract claim it can be where the work was done - **or** where the defendant has his residence. Be careful to get this right.

Complaint. This is the document which procedurally starts the lawsuit by stating what the claimant (the "plaintiff") wants. For small claims, it is essentially a fill-in-the-line/check-the-box form online.

Filing the Complaint. I always think it is best to be filed at the proper court by hand rather than mail. Not only will the filing process go much more quickly, but you usually also have some say as to court dates.

Service. "Service" means being sure the other party properly receives the notice of the case. If they are not properly served, they don't have to show up. It is always my recommendation that you use a professional process server who knows the tricks of the trade. Check online or ask your attorney for a recommendation.

What you will get back from this process person upon successful service is a "proof of service" document, stating that the person was served. It must be filed with the court at least five days before the proceeding.

The Small Claims Trial in General. It takes place in a regular Superior Court courtroom, but the differences from a regular trial are several. First, no attorneys are allowed to represent parties. Second – and quite importantly – most of the judges are not regular superior court judges. They are older, experienced volunteer attorneys who get a thrill from wearing a judge's gown and pounding the gavel. They may be probate specialists, criminal defense attorneys, or in personal injury and may not know a lot about breach of contract and/or construction. That is why I think the "small claims brief" discussed below is an important tool for your success.

The Hearing Itself. What if the other party, the defendant, **does not show up**? Easy; you win if your paperwork is in order.

It is when the defendant **does show up** that you have some work to do. This is when a small claims brief is golden.

The Brief. A "brief" is a written statement setting out the legal position of a party. Here it should be short, about two or three pages.

Your small claims brief should have a *brief* recital of the facts (no pun intended), a *brief* statement of relevant law, and the attachments of documents to your case. Theses attachments typically are the contract, change orders, and invoices – and any collection letters. As the plaintiff you have the "burden of proof."; you have to prove to the judge that it is more likely than not that your version of the facts – that you did the work, the work was fine, but you were not paid – is correct.

Always bring three copies of the brief and its attachments to court – one for the judge, one for the defendant, and one for yourself. It can be used as your script to explain to the judge what has happened. It is also a way to get your key documents (which are attached) to the judge.

Judges rarely rule immediately from the bench when a claim is contested. When he or she sits down later to review the papers and decide the case, the brief with its facts and documents makes it much simpler to render an award for you.

Since you are the plaintiff, you get to go first. The defendant goes after you.

The Winner! Now What? You should take your judgment from the court and turn it into an Abstract of Judgment. An Abstract of Judgment is a fill-in-the-blank court form which summarizes the court judgment. When filed with the appropriate County Recorder's office it becomes a lien on the debtor's property. Should the defendant debtor refinance or sell the property, the judgment (with rare exception) must be paid.

The interest on the judgment is 10 percent per year. Judgments are generally good for 10 years and may be renewed prior to that for another 10 years.

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For Bryant's previous articles, please visit SFBA NARI's website and click on the link "In the News/Newsletter" under "For the Trade." They are also available on his website under "Articles," and on Brian's website under "Publications."

As always, these articles are summary discussions only - to simply give you a heads up on various construction topics. The information contained herein is not legal advice. Each scenario is different and if you need legal advice, you should contact an attorney immediately.