

# CALIFORNIA CREDIT EXECUTIVE

Vol. 1, No. 9, February 1995

## Getting a Judgment Against Your Debtor

by [Richard G. Baumann](#)

When it comes to the law, we all have questions. The entire legal process in collecting an outstanding account receivable is beyond the scope of this brief article. However, it may be helpful to credit professionals if we just focus on what is needed to get a judgment against the debtor.

In presenting the creditor's case, a plaintiff must show about five basic elements in order to put on what is called a *prima facie* case. The creditor must show that:

1. An order was received
2. There was a price for the order stated and agreed upon
3. The order was delivered
4. A demand for payment was made, and
5. The payment has not been made

If good and sufficient evidence cannot be established by the creditor when the case is presented, the defendant may ask the court to dismiss that case and for a judgment in their favor against the claimant.

At any time prior to the rendering of a decision, the attorneys, and the court itself, may make additional attempts to settle the case. In some instances, cases are settled during the course of a trial, at a recess period, after both sides have had an opportunity to hear the testimony and realize the impact of the strengths and weaknesses in the other's case. A settlement finalizes the legal action and releases the debtor from any more than the amount agreed upon in the settlement.

If a judgment is rendered, the losing party has the right to appeal to a higher court. However, from a practical standpoint, in terms of both expense and results, very few commercial collection cases are ever appealed. Should the trial go through to conclusion, the next step is to have the judgment entered.

In many commercial collection cases, the debtor/defendant neither obtains legal representation nor files an answer. Consequently, after the expiration of time allowed to the defendant to file a response to the creditor's complaint, the creditor may simply apply to the court for a judgment against the defendant. This is called a "Request to Enter Default/Judgment."

The creditor, in order to obtain the judgment by default, must file an affidavit with the court swearing that the amount sued for is justly due and owing and must attach some evidence of the indebtedness. This evidence might include such things as a copy of the statement of account or the invoices that make up the account. The Request to Enter Default, in essence, also represents

to the court that the debtor has not taken issue with the allegations in the complaint. Therefore, there is no dispute for the court to hear or determine and judgment should be granted to the creditor without further ado.

In most jurisdictions, if the creditor's complaint is for merchandise sold or for services rendered to the debtor, the court clerk will not require the creditor to come into court and establish the case. The clerk will rely on the sworn documents filed with the court. The clerk will check to see that the creditor gave notice to the debtor the creditor would request a default judgment.

The clerk will also review the complaint for the amount the creditor claims is due, compute the interest, figure in the costs expended in the suit, and enter a judgment by default against the debtor. In certain limited situations, the clerk may ask the creditor to appear in court, before a judge, and actually establish the basis for the indebtedness before a judgment is granted.

The judgment is the court's decree determining the amount due from the losing party to the winning party. Hopefully, the winning party is the creditor. The judgment then becomes part of the permanent court records.