

Legal insights: managing expectations

Many people are experiencing financial hardship, and I thought that it would be a good time to discuss expectations some might have, when starting a court case to seek payment for a debt. Many debts may be left unpaid, due to people going through financial hardship during this time.

Most of the time when people seek assistance from a lawyer, it is related to a monetary claim originating from an agreement. Common examples are, an employee seeking payment of wages in arrears from an employer, a contractor seeking payment for work completed, a company seeking payment for products sold. As Sint Maarten has people of all legal cultures, it can be difficult for some to understand the limitations in regards to obtaining payment from their counterpart, even if the person is in their legal right to obtain such payment.

Obtaining payment can be especially difficult in cases involving legal entities, as legal entities are partly created to limit financial and legal liability. The most common legal entities in our legal system are the limited liability companies, in Dutch the *Naamloze Vennootschap* (N.V.) or the *Besloten Vennootschap* (B.V.). But there are also other legal entities, for example, the foundation, the association or the foreign legal entities doing business in Sint Maarten

It can be difficult to explain to a person seeking payment from a legal entity, that the personal assets of the person behind the legal entity, or a parent company, are not owned by the legal entity, and thus do not offer redress. When seeking payment, persons sometimes lose sight of the fact that the agreement was entered with a specific legal entity, not with persons related or parent companies of the legal entity. Other countries may offer recourses in this regard, that are not available in our legal system. Article three (3) of the second book of the Civil Code, states that a legal entity is equal to a person in regard to some parts of the law. Furthermore, this article also states that members, shareholders and other persons that are involved in the organization of the legal entity are not personally liable for debts of the legal entity, as far as the law does not dictate otherwise. There are some exceptions, but only in exceptional circumstances.

Further, as lawyers we are very limited in how and what we can research in regards to the assets a particular debtor may possess. At this moment we can only do a search at Kadaster for real

estate. We depend on information provided to us from our clients, for example, information regarding the bank of the debtor, motor vehicles owned by the debtor, etc.

Above can be devastating for some, as sometimes they require the unpaid money to sustain themselves and their families. Other persons or companies might spend large sums of money to obtain a court decision, but do not succeed in obtaining payment.

For the reasons mentioned above, when considering starting a court case to obtain payment, it is very important to discuss with the lawyer if the debtor offers redress. Give your lawyer all the information you might have in regards to possible assets. This discussion with your lawyer hopefully can help manage your expectations, and always remember the Dutch proverb “Van een kale kip kun je niet plukken” (you cannot pluck a bare chicken).