

# **I've Been Sued for a Debt. What Will Happen When I Go To Court?**

## **I RECEIVED COURT PAPERS AND WENT TO COURT AND FILED AN ANSWER. I NOW HAVE TO GO BACK TO COURT ON A SPECIFIC DATE. WHAT WILL HAPPEN WHEN I GET THERE?**

Make sure you get to the courthouse on time (be sure to allow extra time to go through security). Go to the assigned room and wait for someone from the court staff to call the names of the cases. When your case is called, speak up and let the court know that you are present. If you are not in the room when your case is called, a "default" may be taken against you, which means you automatically lose.

## **AFTER ALL OF THE CASES ARE CALLED, WHAT DO I DO?**

The person calling your case might tell you to talk to someone in the hallway. Or someone might call your name or come up to you to talk about your case. That person is the lawyer who represents the company suing you (the "plaintiff"). The lawyer may try to ask you questions and pressure you to make a payment agreement on that day. You do NOT have to speak with that person. If you want to work out an agreement to pay or "settle" the case, tell the lawyer that you only want to settle with the court attorney present. The court attorney works for the judge and can help you negotiate a settlement.

## **WHAT IF I CAN'T AFFORD TO OR DON'T WANT TO MAKE A PAYMENT AGREEMENT?**

The plaintiff's attorney may try to convince you to make a payment agreement. You do NOT have to agree. Your other option is to get another date to come to court for a trial. You should not be afraid to have a trial because it is usually better to have a trial than to enter into an agreement you cannot afford or to agree to pay a debt you do not owe. Make clear to the court attorney that you want to come back for a trial and not for another conference.

You can also ask the court attorney or the judge for a "discovery order." This is a document signed by a judge who tells the plaintiff that it must share with you a copy of the evidence that its attorney intends to use against you at trial. Receiving discovery can give you an idea of how strong the plaintiff's case may be. This evidence may include: a signed credit application, the card agreement, and monthly billing statements. If the plaintiff is not the original creditor, then the evidence should also include a bill of sale indicating that the original creditor sold your account to the plaintiff.

## **I THINK I WANT TO MAKE A PAYMENT AGREEMENT TO END OR "SETTLE" THE CASE. SHOULD I DO IT?**

Because everybody's case is different, there is no right answer to this question. While settlement is appropriate for some people, for other people settlement is the wrong choice. Here are a few things to keep in mind:

- You cannot be forced to settle the case. The choice is entirely up to you. Even though the attorney from the other side may try to convince you, you need not do so.
- If your only income is benefits from the government, for example, Social Security, SSI, Veteran's benefits, unemployment benefits, or public assistance, then that money is probably exempt from collection. Therefore, settlement is probably not wise because the creditor cannot legally take that money from you even if it wins the case. This means that even if the creditor sues you and wins a judgment against you, it is not legally allowed to take your exempt income. See the list below to figure out if your money is exempt. However, you should be aware that a judgment can be enforced for 20 years. Therefore, if you plan on returning to work or are expecting to receive money or property in the future (for example, an inheritance), you may want to consider settlement.

- Only offer settlement of an amount you would be able to pay. Creditors often prefer for you to pay a “lump sum.” If you offer a “lump sum” settlement, you should demand a significant reduction in the amount of the debt in return. Otherwise, you can set up a payment plan, which should be a realistic amount you can afford each month. If the creditor will not agree to an amount you can afford, you should not settle the case! Insist on an amount you can afford, or go to trial.
- Insist on seeing the court attorney to work out the agreement. It is best to have a third person present.

### **WHAT MONEY IS EXEMPT FROM COLLECTION?**

As said above, knowing if you have exempt income may help you to negotiate with creditors because they will know that they are unable to collect this income from even if they sue you. Below is a partial list of monies that generally are exempt from collection or garnishment:

- Wages of people who also receive SSI or public assistance
- Public or private pensions
- Social Security Disability benefits (SSD)
- Unemployment benefits
- Supplemental Security Income (SSI)
- Public school teacher benefits
- Public Assistance
- Veterans benefits (including survivor’s benefits)
- Workers compensation benefits
- Social Security benefits
- Child support
- Maintenance (Alimony)
- Railroad retirement benefits
- Some insurance benefits
- Life insurance policies
- 90% of wages earned within the past 60 days

**Note:** There are exceptions to the general rule that the above benefits are exempt from garnishment: some exempt funds may be garnished for purposes of paying child support or federal debts, including student loans. If you owe these kinds of debts, you should contact an attorney to find out how these debts may affect your benefits.

### **WHAT WILL HAPPEN AT TRIAL?**

For the plaintiff to win at trial, the plaintiff’s lawyer must bring a witness or witnesses who can testify about the contract you entered into. That person must also be able to testify that you borrowed money according to that contract, and that you “defaulted” or failed to pay back the money you borrowed. The plaintiff’s attorney cannot just submit your monthly billing statements without having a witness from the bank to properly introduce the statements. If the plaintiff is a debt buyer (and not the original creditor), it should not have someone from its own company testify about the underlying contract and statements because they do not have “personal knowledge.” Because a trial is time consuming and expensive, it is somewhat rare that a consumer debt case goes to trial. If you go to multiple trial dates and the plaintiff’s attorney continues to request adjournments, be sure to ask that the next court date be marked “final.”

### **WHAT IS SUMMARY JUDGMENT?**

A motion for summary judgment is a request for the court to decide the outcome of the case based on evidence presented in the motion rather than at trial. If the plaintiff requests summary judgment, you must prepare a written “opposition” to the motion, explaining why the plaintiff should not win without a full trial. You can get help in preparing an “opposition” at the Civil Legal Advice and Resource Office (CLARO). The CLARO program is staffed by volunteer attorneys and law students who give brief advice to self-represented defendants in these cases. Their times and locations vary by borough. Visit [www.claronyc.org](http://www.claronyc.org) to learn more, or ask the court clerk when the CLARO program in your borough meets.

It is very important that you seek help shortly after receiving the summary judgment motion. There is a “return date” (when the parties go to court to argue their side of the motion) on the first page of the motion papers that you don’t want to miss. **THE RETURN DATE CAN BE BEFORE THE NEXT TRIAL DATE**, and if you miss it, you will lose by default. Note that your opposition will likely be due before the return date.