



Our Ref: SM:CE:141442

20 June 2014

The Directors
Active Debt Recovery Australia Pty Ltd
Locked Bag 10
GCMC QLD 9726

Dear Directors

Recovery of Collections Costs and Commissions

We confirm your instructions to advise in relation to the ability of your clients to recover your collection costs and/or commissions from their outstanding debtors.

The ability of a creditor to recover legal costs, collection costs and interest is subject to appropriate terms and conditions having been executed and returned by the customer. In circumstances where there is no signed Credit Application or acknowledged Terms and Conditions, then the creditor will not be able to recover such expenses.

There should be a standard clause in your clients' Terms and Conditions (signed by the customers) which specify the following:-

1. That any legal costs incurred by the creditor in the enforcement of its terms and conditions, ie the recovery of outstanding and overdue monies, are recoverable from the customer on a solicitor/client basis;
2. That any collection costs and/or commissions incurred by the creditor in relation to the enforcement of its conditions and recovery of a debt are recoverable from the customer; and
3. That interest at the stipulated rate (ie the creditor's nominated rate) will be charged on any payments made outside the usual trading terms of the creditor.

Whilst there has been some criticism of attempted recovery of collection costs or commissions, this is only in circumstances where the Court is not satisfied on the evidence produced that the commissions or collection costs have been reasonable,

or that there has been proper informed consent made by the customer about the entitlement of the creditor to these costs.

Accordingly, in order to ensure that the creditors (your clients) have terms and conditions which are capable of enforcement, they should ensure that:

1. The specific rate of interest is easily identified and able to be calculated;
2. The percentage of any commission payable as collection costs is disclosed (or at least a range); and
3. These terms are apparent on the face of the credit agreement/terms (ie not 'hidden' in extensive terms and conditions).

We have reviewed the rates which you propose to apply as commissions on certain debts to be collected on behalf of your clients and are of the view that these are reasonable. Accordingly, subject to your clients' terms and conditions being compliant and enforceable they will be in a position to recover those commissions from their debtors together with the outstanding invoices, legal costs and interest.

We are happy to provide any assistance to your clients to ensure that their Terms and Conditions are compliant in this regard so that they can enforce recovery of these additional expenses incurred.

If you have any questions, please contact the writer.

Yours faithfully

Stacy Miller
Partner
Cronin Litigation Lawyers

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