

The Debt Recovery Mindset

This is perhaps the most important article I have written because it points out what needs to be in place *in your own mind* before you try to get your money back.

Most contractors do not have the right thoughts and attitudes when pursuing bad payers. The mindset is too passive and assumes that the power relationship is such that the contractor has no power and the Non Payer holds all the cards.

If that is how you're thinking you will not be too successful in getting your money. You need to clearly understand and pursue the value of your work, be determined to fight to get it back, and accept the reasonable expense in doing so.

Let me explain what I'm talking about by giving you two recent examples of how Contractors Debt Recovery handled two matters:

Example 1

An earthmoving contractor carried out work on an hourly hire basis over 39 days, and invoiced the head contractor \$46 000.00 for the work. The head contractor did not pay a cent and insisted that the earthmover chase the property owner for payment as there had been a 'stuff up' saying it was not their project anymore and they had not been paid. The earthmover talked to the owner who provided a copy of the funds transaction showing that the head contractor had been paid in full for his work 3 weeks previously!

Then for his efforts he also received a fine from the local council for \$3000 for carrying out unauthorised work!

How infuriating.

Contractors Debt Recovery prepared and adjudication application and submitted a copy to the head contractor. Within 48 hours \$44 000 was transferred to the earthmover's account. [\$2000 held on another job].

Contractors Debt Recovery also challenged the fine in court. We prepared a submission to the council setting out the case why the fine should be withdrawn. A day before the court case was due to be heard, they withdrew the fine.

The opening position was a \$46 000 debt and a \$3000 fine. The closing position was \$44 000 in the bank and no fine. Total time for both outcomes; about 10 months.

Example 2

A plumber had been called in to a block of strata units to fix water leaking into the ceiling of the ground floor unit. As usually happens the investigations revealed the root cause to be a leaking sewer pipe on level 2. There was extensive damage to the walls and fittings of both units.

The plumber carried out the work, including a full bathroom re-fit, with the full knowledge of the owners and the strata manager. On completion an invoice for \$18 000 was rendered. After much delay the strata paid \$10 000 and told plumber to 'get stuffed'.

Contractors Debt Recovery took the strata to adjudication and got a determination for the full amount owing. We then registered the judgment in court. The strata refused to pay. We then wrote to the Director General of the Department of Fair Trading arguing that the strata managers were in breach of their own Act as regards the running of the strata scheme. This didn't work but was done to put pressure on the managers. It also distracted from the fact that we had got a garnishee order from the court to take the money out of the strata's account.

But there was a hitch.

The strata held accounts are held in Trust. They are Trust accounts. These accounts cannot be garnished. But given it was a court order the bank set aside the money until expiration of the agency period. So 4 months later the plumbers received a cheque for the whole amount owing plus all costs and interest.

Total time for outcome; 6 months.

Now just think about the determination and ~~stick~~ to your guns ~~mentality~~ that was required to get these payments. Without the right mindset this would not have been possible. But it was worth it, even on a purely ~~justice-has-been-done-taught-them-a-lesson~~ level.

There are three key things you need to get clear in your own mind when chasing your payments.

Keep the FULL VALUE of your work front and centre.

Accept that you are STARTING A FIGHT and you will have to be determined to do what it takes to win

It ~~is~~ going to COST YOU SOME MONEY to get your money and there is no guarantee of success

Let ~~us~~ take a closer look at each:

KEEP VALUE FRONT AND CENTRE

All too often a contractor is ready to accept a huge cut in payments simply to get any money back. I once spoke to an electrician who was owed \$120 000. Before we even started he said ~~I~~ take \$60 000. I said to him ~~Well I~~ get \$120 000, give you \$60 000 and keep the rest. He didn't know what to say. Now I wasn't serious, but it really highlights the difference in attitude doesn't it.

You must keep the full value of your work upper most in your mind as the amount you are pursuing. If you are already willing to make compromises before you start you will not recover anywhere near as much if at all. The reason you are too willing to settle for so much less is because you are not fully appreciating the value of your work and also because you are assuming you can't get it all.

This is stinking thinking. Get rid of it now.

Spend some time giving a full appreciation of what you have done for your client. Chances are you have helped your client out of a jam and really added value to their business, or delivered an outcome for them. Take the plumber in example 2. His work meant that the damage to the structure of the building was stopped. Two people had renovated bathrooms which increased the value of their properties.

I once heard of a refrigeration mechanic who went out on a Sunday to a wedding which was outdoors and in summer. The mobile cool room had broken down. He charged \$750.00 for an hour's work. He knew about value. Because of his work, two hundred people got to have a great lunch and the married couple had a memorable day that would otherwise have ended in disaster.

Now if they had not paid him, he might have been prepared to settle for \$400.00. But why? He delivered great value.

If you start by chasing the full value of your work you now place the onus on your client to justify pushing that value down. That will be hard work. And it is your job to make it as hard as possible. If your client offers you \$30 000 for work that is worth \$85 000 always ask how they possibly got to that value. Set out what you did for them, and the cost of labour and materials. And the most important thing; the benefits your work delivered for the client.

Once you start thinking about your work in this way, you will never start by cutting value again. You start by going for every cent.

YOU'RE STARTING A FIGHT

Ok now you may think you're a reasonable and fair person that just wants to be paid for the work. Surely this is not too much to ask. The mistake you will make is assuming that your non-payer is also a reasonable person who will be swayed by your appeal to ~~fairness~~ and ~~reasonableness~~

Wrong.

Your non payer is unfair and unreasonable and you are going to have to get into a fight for your money. This means that your debtor will fight back with letters full of untruths, or lawyer's correspondence, or complete denial.

You need to accept this at the outset and prepare mentally for a clash of wills. You also need to accept that victory may be fast but it also may not be. It may take months. Promise yourself that you will do what it takes to win. Winning payment disputes takes time and effort and emotional energy. You need to prepare for this. I have often seen clients who want to bail out at the first sign of a fight. You may as well not start if that's your attitude. Most non payers have found that contractors do not fight hard or for long. So they withhold money and assume that by putting up a bit of a fight you will eventually go away.

The good thing about this is that when these scumbags come across a contractor who just keeps coming they just don't know what to do... it's all a bit new and scary. And that is about the time you get paid.

So accept that you're starting a fight, put the hard hat on, and charge out of those trenches.

IT'S GOING TO COST YOU SOME MONEY

You can spend 8 months chasing your money by sending your debtor faxes and emails. This is pretty cheap to do, but does not get you any results most of the time.

So you need to accept that you will need to spend a *reasonable amount* to have the fight to get your money. I have emphasised that it must be a reasonable amount. I do not advocate that you throw so much money at the issue that you threaten the survival of your business or impose great hardship on yourself.

I don't suggest that. I do believe that there comes a time when you must cut your losses. But what I am saying is that you need to accept that there will be some expense. You should give some thought to what you are prepared to invest.

It is common for many contractors to refuse to invest anything in recovering payments. But that is not a realistic view. Of course companies like Contractors Debt Recovery charge fees to recover payments, so this might seem self serving. But it is a basic fact that most of the time a contractor won't recover money without investing some cash to do it. As long as it is reasonable, then it is a vital ingredient.

A final word on costs.

Most of the time you will not recover the full value of what you are owed. There will be a shortfall of the value of work and the amount you are paid. As I write this there is a civil contractor who is owed \$112 000. We got him a deal with the debtor to pay \$109 500. That's not bad going. But the fact is the civil contractor spent money to engage us to get that money, and also has accepted a bit of a deduction [\$2 500] to get the deal settled.

The way to think of that is as a fine to yourself for failing to do a better job on the issue. Let's say that the total cost of chasing a payment and the deductions pushed by your debtor totals \$4500. You should think of that as a \$4500 fine on your business for not having the systems and decisions in place to have dealt with that problem earlier.

When I look back at a payment battle I see contractors whose contracts are poorly written, or who did not quote properly, or did not chase their money sooner or hard enough. That shortfall is the fine that they cop for not doing the right things sooner.

The point of this is to put a dollar value on these mistakes to motivate you to fix them for next time.

If you can accept that the failure to have a written agreement cost you \$4500 then you'll do something about it. But if you put all the blame on the debtor then you will never change. It's probably true that the debtor was a bloody minded bastard. But the fact is *you let it happen* to some extent.

Put a price on your mistakes and learn from them. It is often said that "You get what you think about most". So only think about getting every dollar owed to you, and get your mindset right before the fight.

Good hunting.