

Speech of Advocate Yechiel Yaron from Tel-Aviv Israel-

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(hotel courtyard by Marriot)

Six Claims for the Collection of Debts Filed with the Israeli Courts and the Main Claims of the debtors against the Client, the Creditor

At the end of each case, I would like your brief response. How would be you answer or reaction according to the laws of your own country? As lawyer or experience of agents who deal with debts collections

1. The evidence required to prove the collection of the debts in the courts. On whom is the burden of proof imposed?

An Italian Company sold 84 televisions to an Israeli, loaded them on the container before the buyer's representative in its factory and shipped them to Israel through the Venice Port in the respective cartons. When the shipment arrived at the Defendant's warehouse in Israel and upon opening the containers, they found rocks instead of televisions. The Israeli Company refused to pay. This is the basis for the suit in the Court. The Israeli Company claimed that they did not send it any televisions. The Plaintiff claimed that the Defendant's representative was present when the televisions were loaded. Indeed, the Israeli Company could not prove how and when the televisions disappeared and the court judgment required it to pay the entire debt.

Q.: In your opinion, and in your country on whom is the burden of proof imposed?

2. Collecting Debts in a Settlement Agreement in Courts - It is preferable to hold one bird than have 10 in the sky..

We filed a claim against an Italian furniture manufacturer for the debt regarding a furniture shipment. The Defendant claimed that most of the furniture was damaged, presented photographs and an opinion and sued for the offset of its damages from the claimed amount. The Italian Company's director notified that he would not appear in court for any mediation or to provide any testimony although he has given his main testimony affidavit..

In this case, if proceeding would reach the phase for hearing witnesses and cross – examining them, then the claim would be dismissed and the Defendant would be required to pay expenses. In order to prevent this, I suggested that the Defendant will pay 50% of the amount of the claim and 50% for compensation for its damages. The Defendant agreed. The Plaintiff also agreed.

Q. In your country, if one would not appear for any cross examination, when the Plaintiff has only one witness, should the claim be dismissed?

3. **Imposing a Lien to Secure the Collection of the Judgement Amount and the Statutes of Limitations Claim**

I represented the National Institute of Pension Insurance in Germany in a claim against a senior citizen women in Israel, with respect to an erred payment for a surplus pension between 1982 through 2012, in the amount of 120,000 Euros. We received an attachment order from the court against the woman's apartment which was valued at 180,000 Euros. According to the Israeli Law, there is a statute of limitations claims with respect to the claim since more than 7 years passed since 1982. According to the German Law, 4 years must pass since the date the plaintiff first learned of the error, and in this case more than 4 years did not pass. The defendant claimed statutes of limitations, and also questions with respect to the law is applicable here.

Both parties were at risk regarding the Court's decision. In this case, the plaintiff's German attorney-who gave testimony affidavit - also requested to release him from appearing in court and being cross examined. Since there was a lien on the apartment, and had there been a ruling in favor of the plaintiff which would have included interest and expenses then the ruling would have been in the amount of 150,000 Euros. The defendant-without knowledge that the plaintiff has no witnesses- offered an amount of 50,000 Euros as final settlement. The plaintiff and in particular its attorney, were glad because they were concerned that they would not receive anything or that the case would be dismissed, should the docket be scheduled for a cross examination of the plaintiff's witnesses affidavits.

Q.: Is it possible to receive a lien when filing a monetary claim and what is the statutes of limitations for a monetary claim?

4. **The commercial terms and the notice for the return of merchandise which are on the back of the invoice or the shipping bill.**

On behalf of a Spanish Company of ceramic products, we sued an Israeli company with respect to a monetary debt.. Only after the claim was filed – first time two years after the receipt of the merchandise – did the defendant claim that majority of the goods were damaged, that its customers returned merchandise and that is sustained significant damages. The defendant claimed that it complained over the telephone to the plaintiff, yet the fact was that it did not even send one letter in this matter. The defendant filed a counter claim for damages in an amount which exceed the amount of the claim. The court dismissed the counter claim since we proved that the commercial terms were on the back of the invoice, pursuant to which the defendant needed to send a written letter for any complaint regarding any defect or inconsistency, within 30 days of the receipt of the merchandise. The conclusion was that it is very importance - always –to ask the client for a copy of the back of the invoice or shipping bill.

Q.: In your country, is there also significance to the commercial terms and the provision for notice of damaged goods, etc.?and how long can the debtor send a message of damage or cancellation of the deal.

5. collecting of debt from Exclusively agency– a claim we are conducting before the court prior to the testimony phase.

An American Company notified an Israeli Company, who was its exclusive distributor in Israel for the duration of 10 years that it terminates its representation in Israel within the next 5 month. The debtor sued, by me as counsel, for the payment of the outstanding debt in the amount of 24,000 Dollars. The Israeli Company sued for 270,000 Dollars with respect to a breach of an exclusive contract and failure to provide notice for terminating representation within a reasonable time. The Israeli Company –the debtor – refused to sign the draft of the agreement which the plaintiff, the American creditor, sent, pursuant to which it would be possible to terminate the agency if there is a debt or with two months' prior notice

Q.: In Israel, there is a new law pursuant to which it is not necessary to have a signed exclusivity agreement, however, it is necessary to prove the exclusivity of the parties' conduct over the cooperation during the commercial business. However, what is the law when the plaintiff signed the agreement and the defendant refused to sign it? What it is the rule of law in your country, and how would you act to collect the debt?

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