



PRE-EMPTION, ADVICE AND DETERMINATION

By Schon G Condon RFD

Welcome to the new masthead for our newsletter "On the Beam". Change these days is a given however it will not mean a diminution in the quality of its content.

With the recent increases in both interest rates and the cost of fuel there has been a noticeable increase of activity within the Insolvency area of the Firm. This is being further exacerbated by an increase in recovery activity by the Australian Taxation Office and an increase in debt recovery activity in the market generally. So, the market certainly appears poised for a difficult period.

One thing that times like this bring to the forefront is the general lack of planning and preparation that should have been put into place to either prevent or minimize the impact of difficult times such as this. With our focus on turnaround and the preservation of value for all participants in the process, the need to take action early is paramount.

The combination of early action, appropriate advice and determination will provide the best position for recovery and turnaround. I have just been listening to the Honourable Charlie Lynn MLC in his dissertation on Kokoda and this, a magnificent story well worth reading and researching at another time, reinforces the fact that good guidance, a team focus and a burning desire to succeed will drive even the most adverse of situations around.

Interestingly, the actual existence of the determination is really quite common in the matters that we see, what is sad however, is that most of this determination is bloody minded and done without appropriate advice. A situation that actually expedites and fuels failure.

The other is dealing with an advisor whose only real interest is in the drawing away of the last remaining value for their own purposes. We have recently taken up a matter where various advisors, over basically a two year period, did nothing more than provide false and misleading hope whilst extracting the last vestiges of value from the business.

We do truly appreciate the opportunities we are given to provide advice and relish the satisfaction that comes from knowing we did all we could and we succeeded.

Enjoy the read.

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Official Opening of New Premises

Earlier this month around 100 friends and colleagues gathered to celebrate the opening of our new offices in Marsden Street, Parramatta. Whilst we may no longer have our vista of the Parramatta River, the view of the city's lights from our new rooftop function area created a brilliant backdrop for the event.

I would like to thank and acknowledge Alex Malley, National President of CPA Australia, who accepted the invitation to officially open our new premises; which he did with his trademark humour and very kind wishes. Alex was accompanied by NSW CPA Director Ron Switzer. It was also very pleasing to have such support and positive reaction from many long standing friends and associates. The buoyant comments throughout the evening served to further reinforce the firm's positive outlook for the coming years.

Of course the Firm is only as good as the people who work here and I would like to thank the staff, not just for their assistance in making the official opening such a success, but, as I mentioned during the evening, the calibre of the team at Condon Associates is outstanding. We have a cohesive, well rounded group of professionals - who now have a well located and spacious office in which to enjoy working!

I hope you will have the opportunity to visit us at Level 6, 87 Marsden Street, Parramatta



Alex Malley

Managing Debtors

by Robert Garofano

According to one legal professional, an effective yet under used strategy for organisations to reduce the risk of incurring unpaid debtors, is to insist Directors agree to personal guarantees over the debts their Company incurs.

Director guarantees allow a Creditor to recover unpaid debt from the Director personally, should the Director's Company be unable to meet the repayment.

Personal guarantees are a powerful incentive to make sure that when a Company is faced with difficult times; those debts holding a personal guarantee are prioritised.

According to one source, Director Guarantees are used very little because organisations are either unaware of them or concerned about losing clients due to an increase in terms of trade.

During promising economic conditions, poor credit management often gets overlooked resulting in detrimental consequences for the organisation when the economy deteriorates.

Below is a summary of tips that organisations can implement to manage credit risk:

- Insist on Directors signing personal guarantees;
- Obtain a registered charge over an asset held by the customer;
- Develop a credit risk profile for each customer and implement credit risk policies (eg. 'Bad' payers may be required to supply greater security);
- Thoroughly screen prospective customers and do not assume a standard trading agreement will suit every customer;
- Implement an effective Retention of Title ("ROT") clause in any sale of goods contract. ROT clauses provide that the seller retains ownership of the goods until full payment has been made by the debtor. The seller can therefore recover the goods should the debtor default on payment;
- Take out Trade Credit Insurance from a recognised provider.

The Administrator's Use of Casting Vote

By Padmine Saheb

For an Administrator to exercise his casting vote, he is required to take into account a number of factors including whether it is in the best interests of the Creditors. Even though the Court has a wider discretion to consider commercial morality and the public interest, a Deed of Company Arrangement ("DOCA") will not be set aside merely because the Administrator acted only in the Creditors' interests. This is reflected in the case *Deputy Commissioner of Taxation v Wellnora Pty Limited* where the Deputy Commissioner of Taxation (the DCT) sought to set aside a DOCA on the basis that the Administrator who cast the deciding vote did not take into account certain Creditor interests. This case dealt with an attempt to overturn a DOCA by DCT due to a Director's involvement in several corporate failures, the DCT argued that the Administrator should take issues of public interest and commercial morality into account in determining how to apply a casting vote.

The Chairman cast his vote in accordance with his recommendation in accordance with Section 435A(b) of the Act that the DOCA would yield a better return for Creditors than would result in the Winding Up of Wellnora. The Court found that the Administrator had carried out a thorough investigation, and that the DOCA would provide better value for the Creditors.

The power conferred by Section 600B was seen to be an ample one that could be exercised by the Court considering not only the interests of Creditors, but also the public interest and commercial morality. On consideration of all these issues, Justice Lindgren found that Winding Up would serve no useful purpose in general, and therefore the DOCA should not be set aside.

Playing with BIG money

By Esma Refik

Celebrities are going bankrupt more frequently these days. It's a shame to see these men and women work so hard to reach their goals and then not manage their lifestyles.

Mike Tyson earned over \$300 million at the peak of his boxing career. Sadly, Tyson filed for bankruptcy in 2003 stating that he reached a staggering \$27 million debt, including \$17 million in back taxes he owes in the U.S. and Britain.

Like many Bankrupts, Tyson claims his ex-wife and ex-business partners caused the boxer to go bankrupt. But, like all bankrupts, Tyson needs to take responsibility for the loss of his fortune himself.

The problem occurs when celebrities implement a "must-have" lifestyle. For example, Michael Jackson purchased ten artificial intelligence Sony AIBO dog robots at \$5,000 each, and it takes over \$200,000 a month just to maintain and run his home.

The 16th President of the United States Abraham Lincoln filed for bankruptcy twice to start over. A few other notables who have filed for Bankruptcy are:

- Kim Basinger, Oscar-winning actress (1993)
- Frank Baum, Wizard of Oz author
- George Best, Manchester United soccer
- Lorraine Bracco, Oscar-nominated actress (1999)
- Toni Braxton, rock star (1998)
- Natalie Cole, singer
- Gary Coleman, actor (1999)
- Francis Ford Coppola, Oscar-winning film writer / director / producer (1999)
- Walt Disney, Oscar-winning film producer, animation & theme park pioneer (1923)
- Henry Dunant, Red Cross founder
- Henry Ford, Automobile manufacturer
- William Fox, Co-Founder of 20th Century Fox Film Corporation (1936)
- Marvin Gaye, singer (1970s)
- Bob Guccione, publisher and founder of Penthouse magazine (2003)
- Isaac Hayes, Oscar-winning songwriter composer / musician -singer (1976)

Playing with **BIG** money

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- La Toya Jackson, rock star (1995)
- Larry King, talk-show host, best selling American author (1978)
- Meat Loaf, rock star (1983)
- Burt Reynolds, Oscar-nominated actor/director, American Author (1995)
- Debbie Reynolds, Oscar-nominated actress / singer, American Author (1997)
- Anna Nicole Smith, Model-Actress, 1993 Playboy magazine "Playmate of the Year"(1996)

These high profile celebrities all filed for bankruptcy protection. Like these celebrities, many people have found themselves leading a lavish lifestyle and gotten themselves deep into debt. The price to pay for bankruptcy causes family breakdowns and other severe consequences. No matter how high your income is, not keeping to a budget and taking care of your finances will send you bankrupt.



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