

News with Clout

Providing Corporate & Personal Solvency Solutions

POTENTIAL PITFALL OF FEE COLLECTION

Given the tenuous economic environment, professionals in our region are no doubt finding it a little harder to collect fees at times.

Let's face it, despite how well run your clients' businesses are, this is inevitable, where some are forced to wait for some of their customers to pay them so they can then pay their own creditors.

Mmmm this also gets a bit more complicated, particularly for accountants who act for their clients in the negotiation of repayment plans with the ATO (which from our experience is getting harder and harder to obtain approval).

What is all this saying and implying? Simple, those particular clients are most likely insolvent in that they cannot pay their debts as and when they fall due. 'So what' I hear you shout.

Unfair preference actions are the consequences. And one of the key defenses is taken out of the play as there is knowledge of the likely insolvency so there can be no argument that the monies were received in the ordinary course of business. The ATO suffers this all the time when they negotiate and there is failure within 6 months or at least 6 months of repayments before failure.

To digress for a moment, as advisors you need to remember Section 588FGA of the Corporations Act, where if the ATO has to disgorge funds, the director ends up picking up personal liabilities for those funds so disgorged. It is vital to remember that when you are advising your clients to negotiate with the ATO rather than look at the possibility of entering into a formal insolvency appointment.

Now back on topic, as professionals you have been chasing fees but given a sob story about the clients waiting for their debtors to pay them before they can pay you.

It looks to me very much like you have been

armed, or should I say burdened with the knowledge of their insolvency, then you receive the funds from them in payment of your accounts.

To make matters worse the accountants amongst you have no doubt even produced the clients' financial statements, which if you look closely at will no doubt confirm their insolvent status.

What do you do? Simple, we always advise people to take the funds when offered and worry about the consequences later. Fees in your hands are so much better than being on the creditors list. Additionally, there is always the possibility that they will survive beyond the 6 months anniversary of the payment, putting them outside the preference period.

Next, given the costs of litigation and the general size of most fees for professional work in the region, there is every chance the liquidator won't actually commence the legal action, as it would cost much more to litigate, or at worst there will be the opportunity to settle the matter for less than the full amount. Also keep the running account argument up your sleeve.

What do you do going forward after this little revelation? Professional Credit managers would advise you have a variety of choices, but be warned all the options available to you have a risk associated with them of prejudicing future ongoing relationships.

Options vary from being paid up front, to obtaining Directors personal guarantees or regular progress claims with the implied threat of if we don't get paid we can't finish the work. This is all easy to say and rather hard to do.

As ever we welcome all your enquiries and are happy to address any questions you or your clients may have.



NEWS WITH CLOUT

Offering Corporate & Personal Solvency Solutions

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Official Website

www.cloutassociates.com.au

Mid North Coast Office

Tel: (02) 6650 5888

Fax: (02) 6651 9393

Northern Rivers Office

Tel: 1300 886 006

Fax: (02) 6674 1979

Email: admin@cloutassociates.com.au

Clout & Associates Senior Representatives

Morgan Chubb

Email: mjchubb@cloutassociates.com.au

David Morgan

Email: dmorgan@cloutassociates.com.au