

Helping You, Help Yourself

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With what is claimed to be the end of the GFC (Global Financial Crisis) there has been an increased level of activity from various parties in relation to the recovery of outstanding accounts. Possibly the most notable of these is the Australian Taxation Office (ATO) who has become quite vocal, most recently with its planned pursuit of “Loss ridden SME’s.”

However it is not just the ATO that has ramped up its activity. Many of the collection agencies, debt recovery lawyers, insurance companies and other large Corporate’s are increasing their activity. So to the average SME it is time to both be aware and be on top of the game, even if you are experiencing some level of financial discomfort, but not outright insolvency.

A recent matter in which we were involved demonstrates the need for SME’s to be ever vigilant in this market.

A Company, let’s call it “A Little Slack Pty Ltd” or ALS for short, was operating in the Building and Construction industry and like lots of SME’s had the usual group of professional advisers around it. Life was pretty much normal with things going on in a business-like manner but there was a real air of near enough is good enough when it came to the documentation of the businesses affairs.

Alas ALS ended up in liquidation as a result of prosecution by an aggrieved party. Consequently we were appointed as Liquidator of ALS. The company found itself in this position because not only had it avoided monitoring its ASIC correspondence, but as it had not adequately updated its statutory records, information was actually being sent to alternate addresses. On the surface people would suggest that this was fine but when it has catastrophic and costly consequences reality sets in.

To add to ALS’s woes the company was actually solvent. Situations like this can very quickly erupt as the less than professional can take the opportunity to significantly increase their efforts knowing full well that there are assets available to meet their costs. Given the circumstances and this Firm’s underlying belief in preserving value, we were able to quickly assess the situation and guide the Directors through a process that enabled the winding up to be terminated and control of ALS to be returned to its Directors.

The experience was costly but no where near as costly as it could have been, and the Directors did learn some valuable lessons which are well worth sharing. They are:-

- Make sure the information on the ASIC database is always correct and up to date. Set a time each year to have it checked.
- Do not ignore threats of legal action. The earlier you deal with it the less costly it will be.
- Always review correspondence from all parties with whom you have a contractual relationship and ensure that they have the correct company name and ACN/ABN for your business. This is particularly the case with corporate groups made up of a number of companies as some creditors will put the name of company that they perceive to have the greatest asset value rather than the name of the company with whom they are actually dealing.
- Contact any creditor threatening legal action, or their advisor, and seek to resolve a solution or compromise, and if that fails;
- Seek professional advice early from a person or organisation qualified to deal with businesses or individuals in financial distress.

Getting professional advice is just that, it is seeking the counsel of a properly trained and qualified person, and then hopefully acting on that advice. There is an increasing number of so called “turnaround” or “debt negotiation” specialists who have limited experience or qualifications, sometimes nothing more than they’ve already been broke themselves. Whilst their solutions can often sound appealing, they will generally favour the debtor over the creditor, be potentially somewhat borderline legal, costly, and generally leave a very bad taste in the mouth of those affected by it. The cost should not just be measured in the physical outlay but also in the collateral damage that can impact the business and its operators.

The law provides for a wide range of very effective solutions that can help the honest business operator out of almost any situation do not fear them if you genuinely need them, but preparation, planning and positive action will most likely minimise the need.