



NEWSLETTER

Coode & Corry

Solicitors

CAN YOU BE RESPONSIBLE FOR YOUR (OR YOUR SPOUSE'S) COMPANY'S DEBTS ?

Over the last 10 years or so we have seen many examples of people walking away from a company and it's debts whilst creditors and employees go unpaid. Whilst directors are still given some protection the laws have been changed to try and make directors more accountable for the debts of their companies.

These changes mean not only that hopefully some of the failed corporate high fliers may be forced to pay for their actions but it also means that everyone else who becomes a director of a company (or who is already a director) has to be aware of the ways in which they could become personally liable for a company's debts.

Recently the NSW Court of Appeal delivered a judgment in a case which has serious implications for directors. Previously the law recognized that a spouse may be a director in name only and may have a defence to any claim that she (or he) should be responsible for the company's debts., on the basis that he/she played no part in the running of the company.

The court however said that the starting point now is that the law expects all directors to be actively involved in the management of any company that they are a director of and so expects them to know what the company is doing . The court decided that the wife ,in this case,

was to be treated the same as her husband even though it accepted that she had left everything to her husband to run and that she had no idea about what he was doing in or with the company.



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This doesn't mean that the directors are automatically personally liable for the companies debts in all cases. One of the most common situations that leads to personal liability is where the director lets the company continue to trade when the company is insolvent. Under s95(1) of the Corporations Law a company is insolvent if it cannot pay its debts as and when they fall due.

Once a company reaches the point where it is insolvent the directors have a duty to ensure that the company does not incur any more debts. If the company continues to trade the directors may be personally liable for all debts then incurred.

A director who has allowed an insolvent company to continue to trade not only incurs potential civil liability but can also be charged with criminal

offences .The criminal laws apply to directors who "knowingly, intentionally or recklessly" act in what is seen as a dishonest manner in that regard.

A director charged with insolvent trading has

several potential defences available to them such as :

- (1) they were ill or,
- (2) incapacitated or,
- (3) that they had reasonable grounds for believing (mistakenly) that the company was still solvent.

If you are a director you should always actively scrutinize what is happening in the company. If you are asked to sign any documents you should ask for the contents and the ramifications of the documents to be properly explained to you before signing anything.

Volume 1, Issue 3

August 2003

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New Rules for Auctions

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New Rules for Property Auctions

The real estate market continues to defy all the “experts” who have been saying for some time now that the bubble will burst. The current boom has been marked by both rising prices and by high success rates for auctions (and probably an increased use of auctions as the preferred method of sale).

As from the 1st of September 2003 a new set of rules for the conduct of auctions (including what has to be in the contract for sale)will come into place as part of a rewrite of the Act/ Regulations governing the activities of real estate agents. These new laws include:

- Bids may only be taken from registered bidders
 - If the seller wishes to have the right to bid at the auction they must notify everyone at the auction that they want to bid ,but they are restricted to making one bid only
 - When the auctioneer accepts a bid made by, or on behalf of the vendor, the auctioneer must “as soon as the bid is taken, clearly state that the bid is a bid by the seller or a person on behalf of the seller”
 - Once the hammer falls the auctioneer cannot accept any further bids, even if the vendor wants to accept the later bid.
- breach or breaches. If a breach occurs the agent or auctioneer may be fined or subjected to disciplinary action. I also imagine that disgruntled underbidders (or possibly vendors) may try to sue the agent for damages.
- The contract for sale has to comply with the new laws and so everyone involved in an auction , particularly the agents and the vendors must make sure that the contracts used from 1st of September comply with the new laws.
- However the problem with the overheated market is that the frenzied activity is being driven by the fact that the demand for property outweighs supply. So the market will continue to be driven by economic factors and not much is likely to change until those factors change ,or are changed.

These provisions are curious because the new laws state that if any of these laws are broken it will not invalidate any sale that occurs as a result of that

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