

Its not a Bafta, but its good enough for us.



Yes it looks like the Office really is a good place to work. Described as the “expanding northern law firm with a big heart”, Cobbetts (the parent company of Incasso) has been ranked twelfth in the Sunday Times Top 100 Best Companies To Work For 2004.

The award was presented to Managing Partner, Michael Shaw (pictured), at a lavish ceremony held at the Hilton Metropole in London on 5th March, and was the result of anonymous polling.

The awards are open to thousands of eligible companies each year and the Cobbetts ranking is even more incredible as it was the first year of entry. The high ranking is a testament to Michael Shaw and Partners, and is a reflection in the guidance and enthusiasm that they have shown their staff.

After the awards, Michael explained his pride; “This is a tremendous achievement for Cobbetts and one of which I am immensely proud. It is a wonderful tribute to everyone that based on many different elements and issues of our daily working lives at Cobbetts; we have been ranked as one of the very best organisations to work for in the country. Over the years, we have spent significant time and effort in developing the Cobbetts values and internal culture and have constantly recognised the need for a sensible work life balance within a challenging environment. We have always appreciated that the strength of Cobbetts and our brand is only as good as the people we employ and I would like to think this achievement proves our approach and commitment.”

A SHERIFF’S WORK IS NEVER DONE!

On March 2nd 2004, Emma Pittuck and Robert Young visited John Marston’s Sheriffs offices to learn how such a business works.

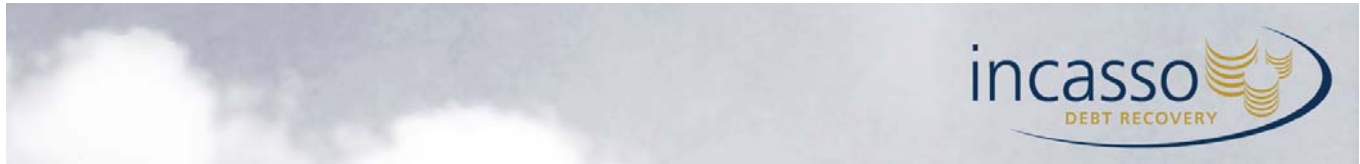
“We arrived at the offices at 12.00pm, where we met with Ian Morgan and John Marston for an introduction to the sheriff’s office and to obtain our agenda for the day.

Sheriff’s officer John James (known as JJ) then took Robert and myself on a visit to a debtor – a bus company - who owed approx £10,000. Upon entering the offices, we spoke with a receptionist who immediately contacted someone from the accounts department to discuss the outstanding bill. We thought this would simply be a straightforward case of payment being made. How wrong we were!

The accounts dept claimed to know nothing about the Judgment and warrant so contacted their solicitors who arrived after a mind-numbing



forty-five minutes! JJ advised he needed to walk round the premises to begin listing items for levy. The debtor refused to allow this to happen and as such JJ had to merely list the items he could view from the reception area. Maybe, as JJ's car had broken down we should have levied a bus to get back to the office!



After lengthy negotiations with the debtor and their solicitors, JJ decided it was time to begin removing items, as the debtor's solicitors would not agree to provide a cheque to the sheriff. We advised the company against calling the police as they had no rights to eject us from the premises and when they turned up - 3 of them to be exact! – they were happy to highlight this.

The debtor's solicitors decided to call the court, however the only thing that would prevent the sheriff from enforcing the warrant would be a court order staying the execution, or setting the Judgment aside, and we had now been in the reception area of the offices for over two hours!

We eventually received a positive response from the debtor's solicitors who advised they would issue a cheque to the sheriff, on the proviso that the monies would not be forwarded to the claimant before 21 days. All monies received by the sheriff can only be passed to a claimant after a statutory clearance period under High Court Rules.

We were very impressed with the way in which JJ dealt with the, at certain times, delicate situation. We left having learnt a lot about the obstacles the sheriff's can sometimes come up against - although we are reliably informed that this is not a regular occurrence!"

Extranet Article – Ron Lack

THE MISLEADING PHOENIX?



Section 216 of the Insolvency Act 1986 was introduced to strike down the “phoenix” phenomenon where the assets of a company (“Oldco”) would be sold to a new company with a similar name and owned by the same directors (“Newco”) at an undervalue at a time when Oldco owed substantial sums to unsecured creditors. Oldco then goes into liquidation with little prospect of unsecured creditors being paid. It is not often appreciated that a breach of this provision could lead to a director being personally liable for Newco’s debts.

The Law

Section 216 provides that a person who was a director or shadow director of Oldco in the period of 12 months prior to liquidation shall not within the period of 5 years from when Oldco went into liquidation be a director or be concerned or take part in the promotion, formation or management of a company or take part in the carrying on of a business under a prohibited name.

A prohibited name is a name by which Oldco was known in the 12 months prior to liquidation or a name, which is so similar as to suggest an association with Oldco.

Exceptions

As ever there are exceptions, for example if the Court’s permission to use the name is obtained, or notice is given to creditors when the business is sold.

Consequences

If a person acts in contravention of Section 216 can be imprisoned or fined. However and more significantly for those seeking to recover money from Newco and finding difficulties in doing so a person could be personally responsible for the debts of Newco. This potential for personal liability not only applies to the director/shadow director of Oldco but also applies to a person who is involved in the management of Newco and acts on the instruction of such a director/shadow director knowing that director/shadow director to be in breach of Section 216.

Ricketts

In the recent case of Ricketts -v- Ad Valorem Factors Limited (“Ricketts”) an unpaid creditor applied for an Order that a director of Newco personally pay the debts of Newco and it was emphasised that:

- Section 216 is not restricted to cases of Phoenixism.
- It is not necessary to prove that creditors have been misled by the similarity in the name for the Court
- To impose personal liability on recalcitrant directors.

In Ricketts there had been no transfer of assets at an undervalue. Indeed Newco was not a successor company but was part of the same group. Further although the name of Newco was similar to Oldco and therefore a prohibited name there was no evidence that creditors had been misled by the similarity.

The Court held that a director of Newco in these circumstances was personally liable for the debts of Newco when it subsequently went into insolvent liquidation.

If you are seeking to recover a debt from a company and think that there has been a breach of Section 216 and therefore that you may be able to recover the outstanding debt from a director or other person personally please contact a member of Cobbetts Insolvency Team.

Points of contact:

Manchester office - Linda McCay, tel: 0161 833 5284

Leeds office - William Ballman, tel: 0113 383 3537

For further information, please contact;
Laura Geall, Collections Manager on 0113 288 5234 lgeall@Incasso.co.uk
Ron Lack, Department Manager on 0113 288 5222 rlack@Incasso.co.uk
www.Incasso.co.uk

