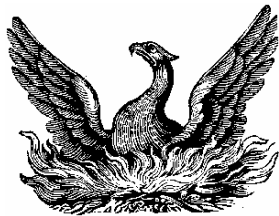


The misleading Phoenix?

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 director (“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

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 they 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

INSIDE THIS ISSUE

PAGE 1

The Misleading Phoenix

PAGE 2

New Award for Cobbetts

PAGE 3

One Times 12

PAGE 4

Merger Magic

director/shadow director to be in breach of Section 216.

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 Amanda Noble who will be able to direct your enquiry to the relevant person 0845 4041647 or email a.noble@Incasso.co.uk.

One Times 12



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 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.”

Patience Pays.

On March 2nd 2004, Emma Pittuck and Robert Young of Incasso visited John Marston’s Sheriffs



offices to learn how their business works following the successful partnership arrangement entered into between the two firms.

“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 department 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!"

Merger Magic



As of the 1st May 2004 Cobbetts saw a successful merger with Birmingham based Lee Crowder. This union will provide a fee income of around £52 million and over 700 staff, including 115 partners. The merger has created the largest law firm outside London – a deliberate part of Cobbetts' strategy.

From its offices in the key centres of the English legal market – Birmingham, Leeds and Manchester – Cobbetts intends to be the leading law firm outside the capital.

The merger has also provided the opportunity to create a new corporate identity for the firm signifying the start of a new era for a new firm in the legal services marketplace.

Launching the enlarged firm's new identity, managing partner Michael Shaw (pictured) commented: "Cobbetts is an ambitious firm that has expanded rapidly over recent years and this is the start of another new phase of development. Our merger creates a new beginning, a platform for major growth that will enable us to seize the opportunity to provide a quality of service that exceeds what national firms are able to provide in the UK's regional centres.

“In Birmingham we aim to grow by another 50 per cent over the next three years creating another 100 jobs and mirroring the successful strategy implemented in Leeds over the last two years following the merger with Reed Hind Stewart in May 2002.”

Over the last three years Cobbetts has grown by 140 per cent from a single site 50-partner firm to one employing more than 115 partners. As a result of this and projected future growth, Cobbetts is set to move to larger premises in all three locations.

Under Michael Shaw, the firm continues to run seven national practice areas, two of which are now nationally managed out of the Birmingham office. Stephen Gilmore is national head of corporate, whilst Drummond Kerr has taken on the role of national head of private client services. Meanwhile, Judith Watson will head up the firm's 32-strong employment team from the Manchester office, whilst Paul Brown will take charge of the banking practice with Mark Whittell running litigation services. The firm's 128-strong property team will be led by Andrew Flounders from Leeds office, whilst Mark Green will run the firm's commercial practice.

The merger will not affect the service offered by Incasso but will strengthen it by the addition of four members of staff in the Birmingham office namely Neil Jinks, Department Manager Birmingham/Incasso, Jason Morris, Business Development Manager Birmingham/Incasso, Helen Stead, Legal Recoveries Executive and Stephen Thorn, Trainee Legal Recoveries Executive.



Neil Jinks



Stephen Thorn



Jason Morris



Helen Stead

If you have any questions regarding this newsletter or would like to discuss anything further please contact me, Amanda Noble on 0845 404 1647 or Email a.noble@incasso.co.uk

Incasso Debt Recovery
www.incasso.co.uk

Trafalgar House
29 Park Place
Leeds LS1 2SP

Tel: 0845 404 1999 Fax: 0845 404 1998 DX 14085

Email: enquiries@incasso.co.uk