

resolution

Spring 2010

Welcome to the Spring edition of Resolution, the newsletter from the Dispute Resolution team at HBJ Gateley Wareing.

We are conscious that in the current economic climate a number of issues have begun to raise their head time and again.

If you have any questions about the articles you read here or if there is anything which you would like us to cover in future editions of Resolution, please do not hesitate to contact us:

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Who to sue other than the Vendors when a business sale goes wrong

You have bought a company and agreed a price based on extensive due diligence

You have now been in the business for a few months and something is not right. The figures are not what you expected them to be and the business may well be worth a lot less than you paid for it. What can you do?

The natural party to try to claim against would be the Vendors but what if the Vendors are not good for the money?

You may then look to the firm which dealt with your financial due diligence but again there may be reasons as to why that claim is risky or will not succeed. There may be certain terms and conditions which you agreed to or caveats in the report which might hamper a claim.

Lastly, you might consider a claim for fraud against the former directors. That type of claim is very difficult to prove however, and the directors may not be good for the money either.

In that situation, some parties may give up but there is one other claim that you might consider which may assist



you. If you have relied upon audited accounts and information provided by the auditors of the business during the sale process, then you may be able to bring a negligence claim against them.

If you are able to show that the auditors were aware of the transaction, knew what information was being provided to you and that this would be relied upon, then you may have a basis for such a claim. This type of claim can be complex but should not be written off without being explored. It may provide an alternative route to recovering losses in this situation. As the auditors are going to be insured, there will be no concerns that they would not be able to meet a Judgment.

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Five steps to effective cash collection:

1. Check your Terms and Conditions (“T’s & C’s”)

Your T’s & C’s need to be successfully incorporated into the contract. You should ensure that copies are sent before a contract is concluded. T’s & C’s on the back of an invoice is probably insufficient as the contract will have been concluded before an invoice is received or generated. You should also make sure that the T’s & C’s make it as easy as possible to bring a claim. Are any implied terms excluded under the contract? What rate of interest can you charge? Which country and what law apply if you have to sue? Are your T’s & C’s up to date? We can check them over for you.

2. Credit checking of high value clients before deciding on credit terms

This is something that is easy to overlook but is crucial. For large contracts, or those crucial to your business this should be done before a contract is entered into. Given the current economic circumstances it is also something that should be

done regularly to ensure that any issues with a client are picked up as soon as possible and action can be taken before too much has been delivered to the client on credit. This is something we can assist with and enquiry agents can be instructed to dig a little deeper into the affairs of companies that could be crucial to your business.

3. Getting your invoice to the top of the payment pile

This can be tricky. Businesses are looking to hold on to their money longer and extend payment terms as long as they can to improve cash flow. This is the ‘won’t pay customer’ rather than the ‘can’t pay customer’. You need to shout the loudest. A solicitor’s letter from a large firm of solicitors is often very effective.

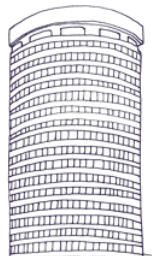
4. Use of statutory demands and insolvency

Insolvency proceedings can be very effective in forcing payment from an individual or a company. This is because the financial consequences of insolvency are so severe for the entity concerned. Technically it can only be used or threatened where a debt is undisputed and over £750. However, we have recently had very successful experiences of using the procedure where Defendants have claimed the debt was disputed but on forcing the issue before a Court quickly, it soon became apparent that the debt was not genuinely disputed. In order to be effective and get the debt paid quickly, action must be taken without delay.

5. Court action

Even if Court proceedings are required, they are not as costly and lengthy as you may think. If the Defendant ignores the matter then Default Judgment could be obtained. If the Defendant files a Defence that has no real prospect of succeeding then an Application for Summary Judgment can be made. Both Applications, if successful, can lead to a Judgment against the Defendant quickly and inexpensively.

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