



NEWS WITH CLOUT

Chartered Accountants for Business Recovery & Insolvency Services
August 2004

LAST MINUTE RESTRUCTURING PERPETRATOR WINDS UP IN GAOL

In August last year ITSA were successful in flexing their not insubstantial muscle and had a Mr Dunwoody of Queensland sentenced to two years in gaol for breaching Section 266 of the Bankruptcy Act.

What was his crime?

The provision he breached was "*A person who has become a Bankrupt after the commencement of this Act and, within 12 months before the presentation of the petition on which, or by virtue of the presentation of which, he or she became a bankrupt and after the commencement of this Act, has disposed of, or created a charge on, any property with intent to defraud his or her creditors is guilty of an offence and is punishable, upon conviction for a period not exceeding 3 years.*"

The facts:

- Dunwoody suffered judgement of approximately \$80,000 which was entered plus costs which turned out to be about \$77,000
- Dunwoody then sells his farm to a family trust.
- The equity in the sale price was transferred to Vanuatu where an annuity was purchased for a superfund.
- Dunwoody stays on as manager of the farm
- Dunwoody files debtors petition for Bankruptcy.
- Dunwoody's accountant then used an entity to buy the farm and on sells it to another

company as a trust with the beneficiaries being the Dunwoody families. Each sale seems to be for a similar figure.

On investigation it was obvious his intent was to transfer his assets in such a way as to put them beyond the reach of his creditors and therefore defraud his creditors.

The transactions also kept on going after the Bankruptcy in an effort to remove it further from the Trustee. Eventually the secured creditor appointed a receiver to the farm.

What are the lessons from this affair?

Clearly there is a strong move in official circles to ensure people do not avoid their financial responsibilities as can be seen from this case and pending legislative initiatives. It was ITSA who took the action of reporting the Bankrupt to the Federal Police. ITSA are also warning that they are looking at those professionals who participate in these transactions.

It is a reminder that business involves risk and whilst it is getting harder appropriate structures should be considered for businesses at the outset. Finally the question needs to be asked was it worth \$160,000 to spend 2 years behind bars? Surely there were other options.

If you have any questions in relation to our services please feel free to contact one of our local offices



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