

February 2010

Persons Aiding & Abetting Companies - Beware!

Creditors who have been burnt by a company going into liquidation without paying debts, all too often see the directors of that company trading again under a new company.

Of interest is a case recently decided by the New South Wales Supreme Court. The case is called [ASIC v Somerville](#).

In that case a solicitor, Timothy Somerville, was sued by ASIC (The Australian Securities and Investments Commission).

ASIC alleged that Somerville had breached a section of the Australian Corporations Act by advising his clients to carry out an improper activity and then doing all the work necessary to implement it.

The Story ...

Somerville had advised and assisted eight company directors to sell company assets to new companies. All liabilities were left in the old companies, each of which was facing insolvency. In nearly every case liquidation of the old companies occurred a short time after the assets were transferred to the new companies.

In some of the transactions the new company name was very similar to the old company and the judge pointed out that persons dealing with the new company would think they were still dealing with the old one.

In every transaction the Judge found that Somerville had provided the advice on how to restructure the companies, prepared the documentation and ensured that implementation of the transaction was carried out correctly.

The Result...

The Judge held that Somerville had "aided, abetted, counseled and by carrying out the necessary work procured the carrying out of the transaction. There was a direct causal connection between his involvement and the breach."

This case is an interesting take on the relatively new law in NZ, designed to protect creditors affected by directors asset stripping old companies, then forming and trading under a new company. This case extends that law to the company advisors in appropriate circumstances. Whether it will have application in NZ remains to be seen.

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If you have any outstanding money that you would like chased, contact CollectIT on 0508 collectIT or info@collectit.co.nz

Case Study

Neal Electrical Ltd has an outstanding debt of \$15,500.

The client disputes the amount and refuses to pay. She also refuses to consent to have it dealt with in the Disputes Tribunal which would be a faster result than the District Court (and cost less in court fees).

Neal Electrical Ltd foregoes \$500.00 to bring it within the Disputes Tribunal jurisdiction of \$15,000 as a matter of right, & then goes ahead and files the proceedings in the Disputes Tribunal.

Neal Electrical Ltd can use the collectIT system for all the court documentation, forms and letters.

[more case studies](#)

Success Story

Collision Repair Association
collectIT is such an easy system to use, that I have now passed this on to our administration officer instead of following up our debtors myself.

She has since found that we are not needing to send as many letters to slow payers because of the collectIT reminder system and as a result the Collision Repair Association has a more efficient follow up system. We have had such brilliant success using collectIT. Absolutely awesome!

Adrienne Richardson

Until next time

don't write off debt... collectIT



Catherine Clark & Melanie O'Neill
Directors



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