

jackson smith

SOLICITORS

How appointing a voluntary administrator can prove to be a disastrous option >>

Directors of companies often appoint a Voluntary Administrator to protect the assets of the company, and obtain a breathing space to see if the company can survive.

A recent experience of a small transport company proved that this approach can sometimes be disastrous.

The director approached an insolvency practitioner to be the Voluntary Administrator of the company. In accordance with normal practice the insolvency practitioner asked for an unlimited indemnity to be signed for his fees.

The indemnity not only covered his fees, but any trading losses that the Administrator incurred when he was running the business. At the beginning of the administration the company had realisable assets of over \$100,000, and there were no securities over the family home of the director and his wife. The director gave the indemnity and it was secured over his only personal asset, his family home.

The Administrator then conducted the business, and over a one month period incurred trading losses of approximately \$55,000. The eventual figure paid to the Administrator because of the indemnity was \$118,000. The director and his wife eventually were declared bankrupt with personal debts of approximately \$150,000. The creditors of the company received nothing on the liquidation.

The Trustee of the bankruptcy estate of the director and his wife attempted to get back from the Administrator the \$118,000 that had been paid to the Administrator. The Trustee in bankruptcy was unsuccessful because the judge said that it was not unusual practice for the unlimited indemnity to be asked for.

In trying to save the company the directors lost their only personal asset, their home.

The lesson to be learnt is that care should be taken when discussing the appointment of a Voluntary Administrator to ensure that the attempt to save the company does not lead to greater personal loss.

I hope that this information is of some interest and benefit to you, and to your clients.

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