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>> FAMILY HOME LOST BECAUSE OF BAD INVESTMENT

At all times during their court hearing Mr & Mrs Tobaji said that they had only wished to borrow $12,000.00 from the National Australia Bank to improve their home. After hearing all of the evidence the Judge did not believe them and accepted what was claimed by the bank that they had borrowed an extra $300,000.00 so that they could lend that out at a higher interest rate in an attempt to make money.

The Judge analysed all of the evidence and said that he believed that Mr & Mrs Tobaji did understand that they were borrowing the larger sum of money and that it was secured over their home.

Throughout the transaction Mr & Mrs Tobaji were helped by a family friend who was a broker, Mr Wally Estephan. It appears that Mr Estephan had prepared false documents proving employment and income. Mr Estephan arranged for the $300,000.00 to be loaned out at high interest rate secured only by a caveat. In the end this investment turned out to have no value because the company went into liquidation and all properties were heavily mortgaged.

At the beginning of the negotiations to borrow the money it seems true that Mr & Mrs Tobaji only wanted $12,000.00. It was probably Mr Estephan who convinced them to borrow the additional money to reinvest.

At the early meetings with Mr Estephan when Mr & Mrs Tobaji were explaining that they needed the 12,000.00 to improve the home at Punchbowl for a family wedding, both Mr & Mrs Tobaji said to Mr Estephan that they thought that they should talk to their old family solicitor Mr George Shad. It was Mr Estephan was emphatic that he was like their son and they shouldn't worry. He told them to sign the documents he put in front of them.

The important lesson from the case is that legal advice should always be sought. If Mr & Mrs Tobaji had in fact seen Mr Shad, he may have told them that there was to be an investment of $300,000.00 in a very high risk investment and that they should not do it. Had Mr Shad, the long trusted family solicitor, said that they should not enter into that investment they probably would not have done so and they would have saved the family home and probably still have received the $12,000.00 needed to prepare the home for the family wedding.

>> LEGAL TERMS EXPLAINED

What is a preference payment?

A preference payment is a payment that a trustee of an individual's bankrupt estate or the liquidator of a company, may recover for the benefit of creditors from a person or company who has received the preference payment.

The trustee in bankruptcy or liquidator, to recover the preference payment must show that the creditor who received the money was given preference over other creditors at a time when the individual or a company was insolvent or became insolvent as a result of the transfer or the payment.

A trustee or liquidator can look at payments for up to six months before the bankruptcy. This is only a guide because there are rules that vary the time limits.

If a notice is received requiring the repayment of monies the obligation might be avoided if it can be shown and proved that you acted genuinely and as a reasonable creditor would have acted and that there was no reason to believe that the individual or company was insolvent when the payment was received - for example payments were made on time and the account was not an aged debt.

We welcome feedback about the newsletter items and if you wish to comment please send to **info@jacksonlalic.com.au**
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>> AUSTRALIA'S CARBON POLLUTION REDUCTION SCHEME

The Australian Government is currently working on a Carbon Pollution Reduction Scheme.

1. Timetable

On 17 March 2008, Minister for Climate Change and Water, Senator Penny Wong announced the Australian Government's timetable for introduction of emissions trading.

The timetable included the following stages:

- March to June 2008: preliminary consultations on technical issues with industry and non-government groups;
- July 2008: public release of a Green Paper on emissions trading design, drawing on preliminary consultations;
- December 2008: public release of exposure draft legislation;
- March - Mid 2009: Bill considered by Parliament;
- 2009: Consultation on emissions trading regulations;
- 3rd quarter 2009: Act enters into force, regulator established;
- 2010: Emissions trading scheme will commence.

The government published a green paper on 4 July 2008 and a white paper on 15 December 2008. The draft legislation was released in early March 2009. The Government has announced that the legislation is intended to take effect in July 2010.

2. White Paper

The White Paper was released on 15 December 2008. The White Paper included the Rudd Labor government's targets for Greenhouse gas emission reductions, 5% below 2000 by 2020 on a unilateral basis or up to 15% below 2000 by 2020 if also agreed by the other major emitters. The White Paper also set an indicative national emissions trajectory for the first few years of the scheme:

- in 2010-11, 109% of 2000 levels;
- in 2011-12, 108% of 2000 levels;
- in 2012-13, 107% of 2000 levels.

For comparison, in 2006, Australia's emissions were 104% of 2000 levels (under Kyoto accounting).

Some of the features of the emissions trading scheme proposed include:

1. An output as opposed to consumption based scheme
2. A modelled carbon price range of AUD 20 to AUD 40 per tonne of carbon.
3. Less than 1,000 businesses will have to account for their emissions and buy or be allocated free permits.'
4. AUD 4.8 billion of assistance (in the form of free permits) for the most polluting electricity generators.
5. Financial assistance to compensate low and middle income families from increased costs.
6. Free permits to emissions-intensive, trade-exposed businesses - such as aluminium producers, iron and steel makers, petrol refiners and LNG producers, initially totalling 25% to 33% of permits and rising to 45% by 2020.
7. There will be total offset of the impact on fuel prices on households for 3 years.
8. Agricultural emissions are not included initially but may be included from 2015.
9. There will be a price cap on emissions, that will start at AUD 40 per tonne of carbon dioxide equivalent.
10. Firms will be able to purchase emissions allocations (CERs under the clean development mechanism and ERUs under the EU Emissions Trading Scheme) from the international market, but will not be able to sell them during the initial years.
11. Reforestation can count as carbon credit, but deforestation and forest degradation do not count as a liability.

Jackson Lalic regularly advises clients in the field of Carbon Reduction Policy