

Hidden relationships can be dangerous

I'M sure we all remember the Hans Christian Andersen Tale about how the emperor who was convinced that nothing at all was the most spectacular suit he could own; and that if he couldn't see it, it was his failure rather than that the clothes did not exist. How embarrassing when he went down the road!



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Business can actually be very similar, and this was recently proven so, again. Especially for business owners who have more than one component to their own business. "Not me" did I hear you say "I've only got one company, this is not for me." Well that may possibly be so, but just as equally, possibly not! Read on.

When setting up businesses the immediate rush of blood over, the new shelf company in hand, and copies of a whole bundle of documents that have to be sent off to the Australian Taxation Office, Workers Comp, and a wide variety of other statutory authorities are complete. A job well done, well, let's hope it is; at least for that part.

Quite often there can be hidden relationships that seem to escape the clear attention of the best planners. Clearly these exist when two related companies exist and there is a business relationship between them, for example one imports and the other wholesales or one buys and the other stores, the list of alternates is almost endless. However there can be many other financial relationships where there either should be, or in some instances must be, a documented relationship.

The need can arise for various reasons and certainly the most obvious to all being in support of one's taxation returns; but where either your business or possibly a business that has a significant involvement with yours runs into trouble then the lack of proper documentation can be more than just unsettling. Recently we came across a situation where, the Family Superannuation Fund had acquired the business premises. Alas, without a formal lease, the arrangement was at best add hock, with payments varying each month, admittedly never less than the monthly repayment but often less than what could have been argued as a marketable rent. Many issues arise, the fund is not receiving its due entitlement, the survivability of the fund from a technical compliance point of view could be put at risk and the funds ability to

claim fully in an insolvency situation is put significantly at risk.

That is one of the more significant situations but others can be just as dangerous. For example, merely having a member of the family or friend who consults (i.e. works part time but doesn't want to be an employee) to the business. Without an official document (contract or agreement) between the parties you are not just likely to end up with a failure of the relationship, but more importantly it can end up in a serious and costly employment law claim.

Issues like this come up all the time. Money borrowed from the family should be no different to a bank loan. That is interest is paid and yes, if it is significant enough then it should be secured against the business. If there is no room for interest then accept the fact that it is capital and plan on paying a dividend.

Business is business and what you should be doing for an arms-length transaction is essentially no different to what should be happening for the more proximate ones. Knowing and understanding the law will enable you to use it to work for you not against you. Knowing its relationships will enable you to use it to your advantage.

Two quick examples, family members are considered related employees under the Corporations Law and have restricted benefits (entitlements to unpaid wages and salaries) in insolvency situations. Consequently if you are in a high-risk business category then rather than employ your own child, consider employing a colleague's child, whilst they employ yours. They can consider rejoining you and becoming a partner when they have the experience and business acumen to do so. Who knows they might even come in with some new ideas! Likewise if you use equipment regularly that does not belong to the business ensure its title is properly recorded under the new Personal Property (PPS) Securities Register. It protects its ownership.

You wouldn't walk down the road naked, so why do business that way! Knowledge well used is power.