CONDON ASSOCIATES GROUP

REVIVE

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UNFAIR TERMS IN SMALL BUSINESS CONTRACTS

By Schon G Condon RFD

Today the skills required to successfully run a small business are broad, - sales, marketing, accounting, production, supply chain management, negotiation, and human resources skills. All, to varying degrees, are required in order to make a small business successful.

However, in addition to all that, one area that is regularly neglected by business owners is asking for specialist advice, and in particular, structural and legal advice either at the start or very early in the piece. By obtaining proper structural advice will ultimately protect both your business as well as your personal assets and will minimise the chance of future financial distress.

A continuing theme we are seeing in our practice is small business owners who come to us in highly complex financial situations all based upon having signed what may be considered 'unfair contracts'. The majority of these business owners only meet with us after their business has begun to experience some distress, if not even further delaying it until they can no longer cope.

This is often been as a result of a dispute or misunderstanding after signing a contract and then realising that its' terms are unfair and therefore unachievable. When asked why they signed the contract in the first instance answers such as "it seemed alright" or "I didn't notice anything untoward" or worse, "I didn't think (or was told) I didn't have an alternative" are given, yet if these business owners had simply visited a specialist in this area beforehand it is more than likely that all of the issues they are now facing could have been avoided in the first place. Alternately they could have entered into that agreement fully informed, with risks known, and protections put in place.

A typical example is a business owner who is overwhelmed by a large conglomerate offering them work and the business owner believing that if they do not sign the contract their own business will never achieve its potential. An example of this, which we have dealt with, was a small business in the building industry who was offered a contract to provide services to a global property group. The business owner believed that the contract would transform his business, the only problem being the terms of payment and amounts paid were at

the discretion of the global property group. Within six months the global property group began to seriously delay payments and the business owner struggled to pay his debts. This ultimately left the owner with no option but to liquidate his company as he was receiving statutory demands from his creditors and not paying staff super and the ATO. Once in liquidation the property group denied liability and ignored the liquidator. Alas the claim was not large enough to seek the support of a litigation funder and the risks of a failed litigation are too great. The legal system these days is simply not designed to assist small business.

One area that we frequently see issues with is the relationship between large shopping centre providers and their tenants. Small businesses believe that by signing up with a large shopping centre it will provide them with the exposure and foot traffic in order to guarantee that their business will be successful, whilst this is true often the terms and conditions relating to the lease contract often make it all but impossible to justify their continued tenure.

Examples of issues include "floating rents" where initial rent amounts are charged however a percentage of the amount of income above a monthly amount must be paid to the centre management as an additional fee, forced sales whereby centre management tell tenants to discount items in their store, no "exclusive area rights" whereby another group selling similar items can open up almost next door if they wish, extra charges for the appointment of key marketing and support staff of the centre; and the list goes on. Again these items are referred to in lease agreements and a thorough review would have uncovered these issues and far more thought given to their impact.

Insurance contracts too need to be appropriately reviewed as many businesses have sought our assistance in recovering on behalf of their organisation after an event has occurred and their insurance claim has failed. Many policies assume certain pre-requisites before a claim can be enacted, for example segregation of duties, security systems being in place, or appropriate review of employee activities, if these prerequisites are not in place the insurance company may not pay on any claim.

Picking up a new client (particularly a big client) is always exciting for any small business, however it is important that appropriate due diligence is completed on the client before signing any agreements. The ramifications of not conducting appropriate due diligence can be fatal for a small business, no matter how good a client may seem it is always worth checking the fine print.

Success in business is only partially luck, in the main it is hard work, good planning and astute management. It's the same regardless of the size of the business, alas often the smaller you are the less you think it relevant.

I ask, why throw it all away that easily!

DISCRETIONARY TRUSTS – CORPORATE TRUSTEE VS INDIVIDUAL TRUSTEE

By Gavin King

Discretionary trusts, commonly referred to as family trusts, are an ever increasingly popular trust structure for your business and finances. The main benefits of establishing a family trust are asset protection and the ability to utilise family trusts to build and to protect family wealth.

There are two main types of trustees for family trusts: individual trustees and corporate trustees. Choosing the type of trustee that is best suited to your business is crucial, particularly on the issue of asset protection and succession planning.

Definition of trusts and trustees

The Australian Taxation Office (ATO) defines a trust as "an obligation imposed on a person or other entity to hold property for the benefit of beneficiaries". In legal terms, a trust is a relationship or arrangement but, unlike companies, trusts are not separate legal entities. However, trusts are treated as a separate entity for taxation purposes.

Although the trust itself is a separate legal entity, the trustee is the legal entity who owns the assets, is responsible for managing the trust's tax affairs, and enters into contracts in its capacity as trustee of the trust. A trustee of a trust can be either one or more individuals, or a company.

Individual trustees

An individual trustee is a natural person who is appointed the trustee of the trust. An individual trustee is a separate legal entity and manages the trust.

Some advantages of having an individual trustee are:

- Low set-up costs e.g. don't need to incorporate a company
- Low statutory administration costs e.g. no annual ASIC fees

Some disadvantages of having an individual trustee are:

- The individual trustee may be held personally liable for any legal issues with the trust, any shortfall in the assets of the trust
- Possible issues with asset identification between the individual in their own personal capacity and the individual as trustee of the trust i.e. as the individual is a separate legal entity, the individual is able to be sued, become bankrupt, or get divorced. Inadequate record keeping such as assets only being recorded against the trustee's name without any mention of the trust may mean the assets of the trust may be incorrectly realised or distributed in settlement of a personal debt or claim.
- Possible issues with succession planning i.e. after the death of an individual trustee, the trust's assets must be transferred to another legal entity. A Deed of Appointment will need to be executed. Administrative and tax issues may arise, especially if real property is part of the trust's assets.

Corporate trustees

A corporate trustee is a company who is appointed the trustee of the trust. The company typically has minimal assets and would usually be set up for the sole purpose of acting as the trustee of a trust.

As with an individual trustee, a corporate trustee is a separate legal entity and manages the trust. Corporate trustees can have one or more directors and one or more shareholders.

Some advantages of having a corporate trustee are:

- Limited liability as the company is a separate legal entity from the shareholders. The director(s) of the trustee company would not ordinarily be personally liable for any shortfall in the assets of the trust.
- Fewer issues with asset identification between the trust's assets and personal assets i.e. the trust's assets are held in the company's name unlike for an individual trustee
- Fewer issues with succession planning i.e. as the corporate trustee is a company, the corporate trustee does not cease to act as trustee upon the death of one of the company's directors. As a corporate trustee, it is easier to add or remove directors; the new director just needs to be appointed to the trustee company and ASIC notified.

Some disadvantages of having a corporate trustee are:

- Higher set-up costs as the company must be incorporated
- Higher statutory administration costs e.g. ongoing annual ASIC fees, more rigorous record-keeping for the corporate trustee.

Ultimately, as with any pragmatic approach in business, the advantages and disadvantages of individual trustees and corporate trustees must be weighed up and personal circumstances considered. In many cases, the benefits of a corporate trustee such as limited liability, better asset identification and succession planning outweigh the higher setup costs and additional statutory administration costs.

SINGLE TOUCH PAYROLL

By Padmini Saheb

Single Touch Payroll (STP) is a new way of reporting tax and super information to the ATO. If you are using a solution that offers STP reporting, such as payroll or accounting software, you will send your employees' tax and super information to the ATO each time you run your payroll and pay your employees.

The information is sent to the ATO either directly from your software, or through a third party – such as a sending service provider. If you have a software provider, they can tell you more about the type of STP solution they offer.

There will also be a number of options available for employers who do not use payroll software, such as No-cost and low-cost Single Touch Payroll solutions.

Options will depend on the number of employees:

- Large employers with 20 or more employees should now be reporting through STP, or have applied to the ATO for a later start date.
- Small employers with 19 or less employees will need to report through STP from 1 July 2019. This is a gradual transition, and the ATO is providing flexible options.

While the start date for small employers will technically start on 1 July 2019, the Commissioner of Taxation released a statement indicating that small employers can actually start reporting through single touch payroll any time from 1 July 2019 until 30 September 2019. No penalties will be applied to mistakes, missed or late reports for the first year.

DO THE RIGHT THING

By Gerard Walz

In everyone's "walk of life" there are rules and regulations. There are laws for laws the man or woman in the street hadn't even thought there was a need for. Check out the 42 Laws of Cricket and the 24 Rules of Golf.

All the laws, by-laws, rules and regulations are written for a purpose, some to endeavour to safe-guard us personally, financially, mentally, emotionally as a community and more.

Above all of that is our conscience and the need to do the right thing. There have been tomes written (and will continue to be written for some time) about the Hayne Royal Commission into the Banking and Superannuation sectors. The final Hayne Royal Commission report produced 3 tomes – the thump-test has passed with flying colours. These words have, quite rightly, focussed on the over-charging for services. Services provided to deceased persons as well as mere living mortals. WHY WHY WHY was the charging of fees to deceased persons allowed to occur? WHY WHY WHY was the charging of fees for no service allowed to occur? What are the processes, procedures, policies, rules and regulations within the Banking and Superannuation sectors? What were/are the auditors doing (I remember a case against the auditors of a life insurance company where the directors and managers conspired to rip-off the company creating bogus clients and claims – some death claims had the cause of death as a result of a hysterectomy. An unfortunate cause of death, however, pretty rare to occur in the case of the deceased being male). Where is the morality to deliberately charge for services not supplied legitimately? Aren't financial advisers required to advise their clients of what their charges are to be? If they had been doing so, then surely they would not have gotten a deceased person to agree to being charged, much less sign them off. Gordon Gecko's mantra of "greed is good" is obviously still well and truly alive.

Why haven't the consciences of the Banking and Superannuation sectors kicked in to "do the right thing"? Greed is one excuse (hardly a reason), no-one will ever know being another, corporate profits to be distributed to, hopefully living superannuants being another.

Doing the right thing isn't confined to not throwing rubbish onto the street (bio-degradable or not) or into the waterways. It is intertwined into the Aussie psyche. That psyche sometimes gets a bit of a hiding when people don't do the right thing. A piece of sandpaper being the latest instrument used to do the damage. If the right thing had have been done in the cricket Test v South Africa, the reputations of 3 players and the team would not be in tatters. Having said that, Sandpaper-gate, the resultant changes to the team and the 2nd review of Cricket Australia have probably all conspired to cause a large degree of introspection/reflection/confession about how Australia plays the game. Doing the right thing would have been to toil away, do the best you can possibly do under the conditions at the time and in accordance with the Law.

So, you lose a game, guys (and gals) it is a bloody game – do the right thing and play it and be thrilled to bits you get paid handsomely to play… a game.

Top-of-Off

INVESTMENT STRATEGIES FOR DIFFERENT AGE GROUPS

By Sophie Bai

"An investment is the current commitment of money or other resources in the expectation of reaping future benefits" (Bodie, Kane & Marcus 2008,p.1) However, there is no "one size fits all" rule when it comes to investment strategies. Still, the following fundamental investment strategies can be applied to different age groups in order to help you secure and create wealth.

1. **Young Investors**

   The primary goals for the majority of people in their early twenties are to firstly, put their credit cards under control and then budget a plan for buying a property for the preparation for a family. In relation to credit cards, it is important to remember that you cannot extend your lifestyle by using these plastic cards, which were initially designed to serve in the best interest of the financial institution. Therefore, always pay extra attention to interest rates and the outstanding balances of your cards, not just minimum payment each month. In regard to the properties, saving a deposit by way of opening the First Home Saver Account Scheme often offered by Credit Unions and Building Societies would be good options that help you gain subsidies from the Government, if available. In addition, investing in equity funds also offers a good return.

   However, with reference to Equity Investment, it is better to give your investment some time in the market rather than attempting to pick a best timing in the market, as history demonstrates that

average returns from share markets that may experience negative returns are typically higher than cash over long terms.

2. **Middle-Age Investors**

   People in the late 30s and 40s normally start to have heavy financial burdens due to the upbringing of children and the purchase of properties. The primary objective therefore is to make their financial status increase at a stable rate. It is advised not to overly leverage their money in order to seek a higher return, such as entering future contracts or trading warrants. Instead the focus should be on reducing their mortgage by way of, for example, gaining returns from diversifications in their investment portfolios. More importantly, people in this situation should consider buying income insurance or setting money aside for emergencies, as the current uncertain economic outlook generally threatens the job security.

3. **Retirement stage**

   There is a tendency for people in their retirement stages to become extremely conservative when it comes to investment. However, the reality is that a very defensive investment strategy you adopt may mean your money could be running out in a shorter period of time because of the increasing life expectancy.

   A set of principles for investing money earmarked for retirement was advised by Mr Bodie of University of Pennsylvania in his article "an Analysis of Investment Advice to Retirement Plan Participants":

   - Diversify the total portfolio across asset classes, and the equity portion should be well-diversified across industries and companies.
   - The longer your time horizon, the more you should invest in equities.

In summary, it is advised to set a reasonable investment goal with appropriate investment strategies sticking to it. Then invest early, invest regularly and invest for the long term.

References:

1. Bodie,Z,Kane,A &Marcus, AJ, Investments, Mc Graw Hill/Irwin, New York
2. Bodie,Z, "an Analysis of Investment Advice to Retirement Plan Participants",2002,pp.1

Upcoming Events

September 2019	-	Parramatta Accountants Discussion Group
September 2019	-	EBIT "Revive…*live!*"
20 September 2019	-	Condon Advisory Charity Golf Day

CONDON IN THE COMMUNITY

We are very proud to share to you all that Schon G Condon, our Managing Principal as well as the Prior of the Order of St. John in NSW and the ACT along with the Serving Members of the Order conducted a very successful Annual Fundraising Lunch on behalf of the Children's Medical Research Centre Institute (CMRI). This year's lunch was held at the historic Castlereagh Boutique Hotel last Thursday, 25th of July. We were privileged to not only have a guest speaker from CMRI but also a number of other scientists and medical professionals.

The focal point of our luncheon was the message delivered by Andrew Kelly, the Head Director of Fundraising from CMRI his heart-warming and informative speech gave us a wonderful insight to CMRI's vision which focuses on the fundamental causes, and thus then cures, for children's genetic diseases by helping them acquire cutting edge equipment, facilities and other resources that will be useful to expedite their achievement of solutions. We are very proud to announce that this amounted to a little under $8,000. This is an amazing and outstanding result from a group of less than fifty people.

We are also proud to announce that Condon Advisory Group is one of the sponsors in this year's River City Voices. We passionately advocate and tirelessly support the businesses in Parramatta. We're very much looking forward to building our partnership – one that will help River City Voices bring exceptional programs to a wide range of audiences and support professional development of talented Western Sydney artists. Their upcoming event is an action-packed tribute to Japanese anime culture at the Sydney Cherry Blossom Festival at Auburn Botanic Gardens on Sunday 18th August from 11:00am to 3:30pm. Please visit their website, www.rivercityvoices.org.au for more information.

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