

RSM UK Restructuring Advisory LLP

FRAUD RECOVERIES IN INSOLVENCY CASES

Mark Wilson (mark.wilson@rsmuk.com)

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING



Introduction

- Introduction to insolvency
- Powers of investigation
- My favoured recovery powers

Introduction to Insolvency

“Could it be an option for my case”

Duty to Co-operate

Directors and bankrupts obliged to provide information to and attend on the office-holder as may be reasonably required (S235 and S333 IA86)

S236 and S366 extend power to the Court to summon any person the Court thinks is capable of providing information

Designed to be information seeking provisions rather than initial claim testing

Transactions at an undervalue S339 Insolvency Act



TAX FRAUD

HMRC Investigation

Two tills

Tax lost assessed at £500k

BANKRUPTCY

Debtor makes himself bankrupt

Claims he has no assets

HMRC seek my appointment as Trustee in Bankruptcy

THE HOUSE

Debtor transferred it to his wife three years before bankruptcy

Consideration was “love and affection”

Recovered his half share - £350k

Fraudulent trading – S213 Insolvency Act 1986



Wine Investment fraud

- Business was carried out with intent to defraud investors (creditors circa £11m)
- Overpriced/resale secret profits/missing wine

Contrast with Wrongful Trading

- Story of the fraud so far.....

Fraudulent trading – S213 Insolvency Act 1986



- Secret profits from re-pack sales £900k
- Brokerage fees on re-pack sales £200k
- Missing wine £335k

Plus misfeasance

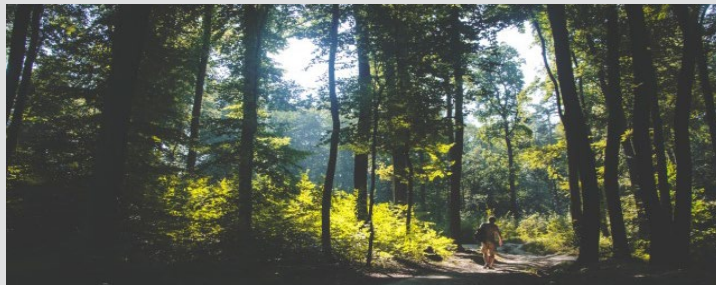
- £1m – payments to connected parties

Already recovered

- Criminal confiscation £1.2m
- But expedited bankruptcy petition
- Loan account £700k

Misfeasance – breach of duty

S212 of the
Insolvency Act
1986



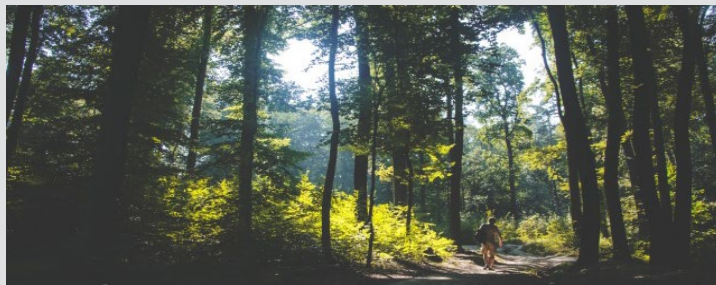
LEGAL DEFINITION

- Where a director has misapplied/retained/or become accountable for any money or property.
- Or has been guilty of any breach of any fiduciary or other duty to the company

ETHICAL INVESTMENT

- Trees in South America
- £18,000 min investment
- 10 year return £90,000
- 22 year return £700,000 (accumulator)

Ethical Investment



MISFEASANCE

- Three directors paid themselves circa £19m
- Used a tax scheme to avoid tax on the above of £15m
- Forfeited unpaid shares worth £24m

FRAUDULENT TRADING

- Ownership of trees
- Unsustainable returns promised
- Unregistered collective investment scheme
- £50m of investor claims (2000 plus individuals)

ASSETS IN COSTA RICA

- Plantations and sawmill worth circa \$20m
- Own 80%
- RSM CR working with us to realise the investment

Claims against third parties



- Lawyers/Accountants/Valuers/Insolvency Practitioners
- Professional Indemnity Policy
- Negligence v the F word
- Most claims settle but not.....
- Satellite TV Channel – what happened.....

Claims against third parties



- Ary Digital UK Limited – what happened.....
- Business had three satellite TV Channels and is loss making
- Administrator appointed by the directors
- Sells the business back to the director's newco for £40,000
- Real value £1.9m plus but to be discounted for a "fire sale"
- We sue the original Administrator after creditors appoint us liquidators and get awarded £743,750 in the High Court – paid by his insurers

In Summary

Favoured recovery powers

- Transactions at an undervalue
- Fraudulent trading
- Miffeasance
- Third party advisors

“Is insolvency an option for my case ?”

QUESTIONS AND ANSWERS?

THANK YOU