

BUSINESS BULLETIN

September 2010

OWEN HODGE



LAWYERS

www.owenhodge.com.au

Owen Hodge Lawyers provides professional service, realistic advice and commitment to providing the best outcome for clients. We send the Business Bulletin to inform our clients and friends about aspects of the law we feel it is important they are aware of.

Debt Recovery

CHEQUES THAT 'BOUNCE'

We recently handled a debt recovery matter to a successful conclusion, where the debtor had provided dishonoured or 'bouncing' cheques. These cheques had been drawn by another company and by the director himself. In this case, our client recovered nearly all the debt.

How?

Cheques are covered by the Cheques Act 1986 (Commonwealth) which imposes strict liabilities. According to the act if a holder of a cheque presents it in a reasonable time (approximately within a week of receiving it) and the cheque is dishonoured then the drawer or indorser of the cheque is liable for the amount, plus interest.

When does dishonour occur?

If a cheque is presented in a reasonable time then dishonour is defined by section 69 of the Cheque Act:

Dishonour defined

A cheque is dishonoured if the cheque is duly presented for payment and payment is refused by the drawee institution, being a refusal that is communicated by the drawee institution to the holder or the person who presented the cheque on the holder's behalf.

Liability

Section 71 and 73 of the act sets out the liability of the drawer and indorser of cheques, and can be summarised as follows:

The drawer or indorser of a cheque, by drawing the cheque, undertakes that, on due presentment for payment, the cheque will be paid according to its tenor as

drawn and that if the cheque is dishonoured when duly presented for payment the drawer will compensate the holder or an indorser who is compelled to pay the cheque.

Amount of Liability

The amount of damages a party can attempt to recover from the drawer of the cheque that is dishonoured is set out by section 76 of the act, and includes:

The sum ordered to be paid by the cheque; and Interest in accordance with the regulations.

The Common Practice and Practical Effect

It is quite a common business practice for a party to draw a cheque in payment of a debt from an account owned by someone not actually liable for the debt. For example: Bob Pty Ltd owes money to Frank. Bob himself draws a cheque from his own account to pay the debt.

It is important to keep in mind when this occurs and Bob's cheque "bounces", Bob has just become personally liable for the debt as a result of the provisions in the Cheque Act 1986 (Commonwealth), which works to protect the rights of creditors.

If we can assist with your debt recovery matters please contact Rolf Howard of Owen Hodge Lawyers to discuss on 1800 770 780.

MORTGAGE INVESTMENTS

BY RICHARD FARMER

Owen Hodge has had a long association with Eclipse Prudent Mortgage Corporation Ltd and has acted on their behalf on numerous mortgages. Mortgage investments are available from time to time through Eclipse.

The principals of Eclipse have many years experience in the making of appropriate and sound mortgage investments. Eclipse has a stringent Compliance Plan and a Compliance Committee consisting of two very experienced external members who oversee its fulfilment of the requirements in the Corporations Act 2001, its Constitution and the Compliance Plan. The Fund is subject to monitoring by ASIC.

Some features of the investments are as follows:

1. Unlike many mortgage funds where a pool of funds is invested in many different mortgages of which the investors may have little knowledge, investors are syndicated into a particular mortgage which is approved by them prior to the funds being advanced.
2. The mortgage is a first registered mortgage which is held by Eclipse on behalf of the investors who have contributed to the particular loan.
3. A valuation of the security property is obtained by Eclipse from one of its approved valuers who are conservative and experienced. The ratio of loan to valuation would normally not exceed two thirds and is often considerably lower.
4. Credit reports and other searches are obtained by Eclipse in respect of borrowers.

5. Our firm acts for Eclipse (but not for the borrower) where investments are made by our clients and we are responsible for preparation of the mortgage and other security documents and registration of the mortgage.
6. Mortgages are normally for a term of one year which may be extended and the current interest rate is about 8% pa. Interest is paid monthly into the investor's bank account and if there is any default by the borrower, the borrower is liable for payment of interest at a rate 4% higher than the effective rate. The principal is repayable on maturity of the loan.
7. All costs are paid by the borrower and no fees are payable by the investor to Eclipse or our firm.
8. The minimum investment is \$10,000.00.
9. The investments are suitable for self managed superannuation funds, ongoing deceased estates and trusts as well as individuals and companies.

Because investments are made in a particular mortgage, there can be some delay while a suitable security is found.

Investments may only be made on the terms set out in Eclipse's Product Disclosure Statement. For a copy of the Product Disclosure Statement go to www.eclipsefinancial.com.au and look under "mortgage".

If you would like further information please contact our Special Counsel Richard Farmer, 9549 0771. Richard has many years' experience in both the mortgage and property areas.

Did we meet your expectations?

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Hurstville
Level 2
12-14 Ormonde Parade
Sydney
Level 17 Australia Square
264 George St

1800 770 780
www.owenhodge.com.au