Forensic Accounting QLD - Case study

Topic: QBCC & the Excluded Individual

CATCHWORDS:

- Queensland Building and Construction Commission ("QBCC")
- The Relevant Event
- Queensland Civil & Administrative Tribunal ("QCAT")
- Global Financial Crisis ('GFC")
- Queensland Building and Construction Commission Act 1991 (the "Act")
- Excluded Individual
- Permitted Individual
- All Reasonable Steps

BACKGROUND:

Subsidiary Co was part of a large family owned Group operating in the building and construction industry. Subsidiary Co was responsible for identifying and developing profitable projects that met the Groups stringent selection criteria. Pre GFC, the company had a turnover in excess of $30 million and a workforce exceeding 30, however, the Group had downsized during the GFC until industry conditions improved.

Pre GFC, subsidiary Co had identified two potentially profitable projects. Parent Co had costed the projects and sourced sufficient funding to develop the projects from the Group's principal banker (one of the top four banks). This banker had been the Group's principal banker since the inception of the company and the Group considered that they enjoyed an excellent relationship with the bank.

Enter the GFC

Notwithstanding the excellent banking relationship, the company's bankers (like a number of banks) undertook to reduce its weighting and exposure to the building and construction industry and accordingly undertook the decision to restrict the Group's facilities and to withdraw financial support to the Group. Further, notwithstanding that there had never been an act of default by the Group, in the event that the Group failed to find alternative bankers, the bank undertook to dispose of the assets of the Group. Accordingly, Subsidiary Co disposed of one property on an undeveloped basis and the other at a significant reduction to the estimated pre GFC valuation.

Parent Co had been providing substantial financial support for the company during this period.

The Directors of Parent Co resolved not to continue to financially support Subsidiary Co, to do so could have jeopardised the entire Groups operations.

Upon the sale of the respective property, the bank applied the surplus proceeds from the sale of the property in reduction of the Group's overdraft facility without any notice of same to Parent Co, thereby further restricting the cash flows of the Group.

Subsidiary Co owed an amount of GST in respect of the disposal of one of the properties. In regards to the amount owing, I note that I have reviewed the financial affairs of many businesses over the years and in my opinion, consider that the amount of GST owed by Subsidiary Co represented a small liability in comparison to many businesses reviewed.

Further, it was likely that this liability would have been paid by the Group in due course. The GST arose from the forced sale of one of the properties. The ATO commenced recovery of the outstanding GST debt. The Group attempted to negotiate a repayment arrangement with the ATO, and as an act of good faith continued to make payments in accordance with the arrangement proposed. The ATO did not accept the payment arrangement and successfully petitioned to have the company placed into liquidation.

As a result of the liquidation, one of the Directors was served with a notice to show cause as to why they should not be classified as an Excluded Individual pursuant to section 56AC of the Act.

The Director submitted an application to be a Permitted Individual, pursuant to 56AD of the Act. This application was rejected. The Director then lodged an application with the QBCC and the matter was dealt with at a compulsory mediation.

The involvement of Forensic Accounting QLD was primarily focused on the following:

- ✓ Undertake a review of the QBSA's decision to ascertain whether there were any factors that were not taken into consideration and to ascertain whether the QBCC erred in their decision,

- ✓ Undertake the preparation of a Solvency Report to ascertain whether Subsidiary Co was solvent at all times prior to the happening of the Relevant Event.

The results of our review:

- ✓ There were a number of mitigating factors that the QBCC did not appear to have taken into account when forming an opinion and the decision to treat the director as an Excluded Individual,

- ✓ The basis for the decision by the QBCC, in our opinion showed a fundamental lack of understanding in analysing and interpreting financial statements,

- ✓ Subsidiary Co was solvent at all times prior to the happening of the Relevant Event

Result:

Forensic Accounting QLD's involvement and the preparation of our report was instrumental in assisting the parties in this matter. Our report identified a number of mitigating factors that should have been considered by the QBCC in considering whether the Director *"took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event"*.

Further, the financial analysis undertaken by the QBCC was flawed and Subsidiary Co was solvent at all times prior to the happening of the Relevant Event.

As a result of our report, the QBCC decision to record the Director as an Excluded Individual was reversed and the Director has been able to continue in the construction industry without any QBCC record against him.