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Asset transfer **not** the answer

By **Adam Fox** of specialist debt litigation law firm Drydens

Transferring assets in a deliberate attempt to avoid creditors has always been a concern but in the past few months we have witnessed a worrying rise in the numbers of individuals seeking to use this route in an attempt to avoid discharging their liabilities.

Adam Fox

The Insolvency Act 1986 does provide remedies to deal with what is effectively fraud when one party transfers their assets, usually involving property, to another party who is not liable for the debt to deliberately put the asset outside the reach of the creditor.

Where transactions of this nature have been made, and where the facts of the particular case justify it, a creditor may wish to apply to set aside the transaction. There are two options under this legislation; one which involves making the debtor bankrupt requiring the Trustee in Bankruptcy to investigate the transfer and reclaim the assets and the other where a creditor brings a claim for the transaction to be set aside but where the debtor does not have to be made bankrupt.

Selecting which route to follow is important as there are real implications on the overall success of the claim. For example if the debtor is made bankrupt and the Trustee has the fraudulent transaction set aside the creditor may only end up with a share of the proceeds. Conversely, if the debtor is not made bankrupt the creditor may have a stronger prospect of recovery against the identified asset but may not know of other assets which could be available to help meet the debtor's obligations.

Given the increase in the numbers of transactions of this nature we have experienced recently and the overall tightening economic climate we believe that we are set to see many more such cases emerging over the coming months.

If transactions of this nature are noticed by lenders, we suggest that specific attention is given as to whether a claim under the provisions of the Insolvency Act is suitable.

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