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E-Alert: Building, Engineering, Construction and Infrastructure

By ,

What's insolvency got to do with it….

Times are tough in the Queensland construction industry.

In recent times we have seen the demise of names such as Glezeil, Carmichael Builders, SX Projects, TRAC Construction, Gary Deane Constructions and JM Kelly (Project Builders) Pty Ltd.

Insolvency affects all industries, but, given the hierarchical nature of construction contracts, when a construction company is unable to pay its bills, it can cause devastating results both up and down the contractual line:

- Principals are left with a half-finished project, inevitably costing more to complete than would have been the case had the original contractor remained on the job;
- Subcontractors are left unpaid – despite (often) having accrued significant out of pocket costs in relation to the work; and
- The directors, secretaries and other influential persons of the company which has collapsed face an exclusion period of three years.

In recent times we successfully assisted clients in all three scenarios.

Whilst you can do little to prevent a contractor from becoming insolvent, you can take steps to ensure that your exposure is limited.

The key step is to obtain legal advice early. The earlier the advice, the more options there will be to staunch the (figurative) bleeding. For example:

- If you are a principal – have you thought about propping up the contractor until the end of the project (it may be cheaper than bringing in another contractor)? Conversely, have you considered what rights you might have to suspend payments or use retentions and securities if you take the works out of the contractor's hands? Should you encourage subcontractors to utilise the Subcontractors' Charges Act?
- If you are a subcontractor – are you utilising all of the rights in your toolbox; you may have the right to suspend work, have you considered whether you might have a right to use the Subcontractors' Charges Act?, do you have a right to terminate the contract for non-payment – if so – how?

Each solution is different, but early advice is the key to minimising the pain.

Should you wish to discuss any matters arising out of this article, please contact the author:

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Broadley Rees Hogan (BRH Lawyers) is an independent boutique firm, specialising in corporate, commercial, property, construction and litigation. Based in Brisbane, we act for clients across the country and internationally – **for an unassuming firm, we know how to deal big**.

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