**Suppliers can take back their stock from bad payers**

When things go wrong for a business and we are instructed to help with placing the business into liquidation or administration we usually have to instruct professional agents to secure, value and arrange for the assets to be sold. This of course only applies to assets the business actually owns.

When it comes to business stock more often than not part of the stock may not have been paid for. Some suppliers will have a clause in their terms of trade that title of the goods remains theirs until paid for in full. This is known as retention of title (“ROT”) and, if valid, means that they have the right to collect their goods.

Before they can collect their goods there are several tests to ensure that their ROT terms are valid.

We will check the wording of the suppliers ROT clause to make sure it is valid. They might have a basic ROT clause or an ‘all monies clause’. The basic clause will apply only to items that have not been paid for whereas an all monies clause will allow suppliers to collect all of their goods if they are owed money on different items.

So what do we check?

We will check the suppliers written terms of business. Sometimes a supplier will incorporate their ROT terms into an invoice or delivery note but these are post contractual documents and do not prove that the company was aware of and accepted the terms prior to delivery. Having said that, if a supplier has provided supplies to the business on previous occasions and their earlier invoices containing the ROT clause have been paid for in full or delivery notes this can constitute acceptance of those terms for future supplies.

If we are satisfied that the supplier has a valid ROT claim and those terms had been accepted by the business beforehand we then have to establish whether the suppliers goods can be clearly identified. For example we dealt with a chain of butchers last month. We agreed that the animal carcases from the farmer could be identified (so would be paid for) but the cut up meat on the counter could not.

It might be that the business used more than one supplier to provide identical products in which case we will have to look at the stock and see if any of the supplier’s labels or packaging are attached to the goods to ensure we are not allowing the supplier to collect someone else’s goods.

If the goods have been used there is still a chance the supplier can be allowed to collect them as long as they will not damage the fabric of the item they are attached to. For example, we once assisted a supplier who had provided tyres to a company’s fleet of vehicles that had been subject to hire purchase agreements. The supplier was legally entitled to retrieve their tyres from the vehicles as it would not have damaged the vehicles (but would have caused some obvious problems!) We negotiated with the finance company and the tyre supplier so they were paid direct for their tyres.

If the goods supplied have been incorporated into something else and their collection would physically damage that product then the suppliers ROT claim will fail.

If you would like any further advice regarding ROT we would always recommend you speak to your solicitor or feel free to call me to discuss your position.