



Recently one of our Master Club members (the Client) lost £7,000 as a result of their debtor going into voluntary liquidation. I explored the opportunity to retrieve the goods sold or any money received for the same from the debtor so as to secure the debt. But discovered that the Client did not invite the debtor to accept retention of title or an all monies clause therefore I was unable to argue that the goods only pass to the debtor once they have been paid for.

Alternatively if credit is offered in relation to services linked to the debtors goods that you have in your possession, then a Lien is recommended. A Lien is a right to hold the debtors goods and charge storage until such time that your invoices are paid. Subject to certain provisos you may sell the goods if storage charges are unpaid for 3 months or over. Last year Master Collections as a result of enforcing a lien on behalf of a Master Club member collected £10,000 from an insolvent debtor.

Although you may already have a retention of title clause in place it may be drafted too widely and void in an insolvency process, therefore useless when you need it most. The risk is that the retention of title clause constitutes a charge over the buyer's assets. A company must register all charges that it creates at Companies House within 21 calendar days of creating the charge. If the company does not do this, the charge and its operative provisions are void against an administrator, liquidator and the creditors of the company that created the charge (*section 874, Companies Act 2006*).

Usually a clause that attempts to retain title to sale proceeds from the buyer's dealings with goods will be a charge over those sale proceeds. However case law suggests that a retention of title clause combined with the doctrine of tracing may produce the result that the seller is entitled to claim the proceeds of sale as trust property *Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd*.

If there are any queries please do not hesitate to contact me.

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