Judge slams ‘brazen’ bid to phoenix translation business

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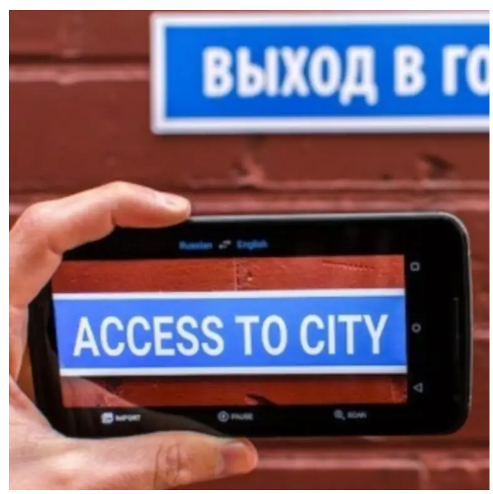
A “brazen and audacious” attempt to sell a business that offers translation services to blue-chip corporates and declare it insolvent on the same day has led to the first decision under new anti-phoenixing laws.

The Supreme Court of Victoria ruled on May 11 that Intellicoms, a company that trades under the name Ezispeak in Australia and New Zealand, had been illegally sold to a family member in 2021 - at well under market value.



Easispeak offers translation services

Associate Justice Simon Gardiner voided the sale as a “creditor-defeating disposition within the meaning of section 588FDB(1) of the Corporations Act”. The provision came into force in February 2021 and targets phoenixing – so called because one company rises out of the ashes of another.

The judge said the sole director of Intellicoms and CEO of Ezispeak, Rebecca Haynes, sold the business and assets to a third party, Technologie Fluenti (TF) on the afternoon of September 8, for $58,000.

Soon after, Ms Haynes convened “a meeting” to place Intellicoms into voluntary liquidation. It had liabilities of $3.27 million, including unsecured debts of $2.9 million. Glenn Franklin and Petr Vrsecky of PKF were appointed liquidators.
TF was only incorporated two weeks earlier, on August 25. Its sole director and shareholder was Michelle Gigliotti, a sister of Ms Haynes who was also the financial

and payroll administrator at Intellicoms.

The assets included the operating system that translated one language to another and service contracts, including with Bupa, Origin Energy, Optus, Telstra, and the New Zealand government.

Valuations

The business was valued at $11.27 million in February, and between $117,000 and $683,000 in June - a discrepancy that was not explained.

Associate Justice Gardiner said the sale agreement had “all the features of what has become known as a phoenix transaction”.

“Indeed, it is a brazen and audacious example,” he said.

“The effect of the Sale Agreement was to strip Intellicomms of what assets it had to satisfy the claims of its creditors and transfer them to an entity which was closely associated with its director, Ms Haynes.

“Shortly afterwards, Ms Haynes was instrumental in placing Intellicomms into voluntary liquidation with debts in excess of $3.2 million.

“No explanation was given as to why it was necessary to urgently sell the business rather than leave the process of the sale of what assets the company had to the liquidators ... for the benefit of its creditors.”

The judge noted that Callscan Australia, which trades as QPC - offered to buy the business on October 4 for between $500,000 and $1 million. It was owed $923,310.

‘Five minutes to midnight’

Angelo Conti, of Madgwicks Lawyers, who acted for the liquidators, said the decision could make it easier for liquidators to void such transactions and claw back assets.

“The Australian Tax Office has in recent times taken a key interest in these asset sales that occur at ‘five minutes to midnight’ and the company then being placed into liquidation.

“I would not be surprised to see both the ATO and ASIC post-election having a serious look to use the anti-phoenixing section to overturn these kinds of transactions.”

Ms Haynes said a statement that Ezispeak was considering the court’s decision.

She said the company would assess whether it was “in the interests of Tecnologie Fluenti to appeal the Court’s decision after final orders are made and to seek a stay or suspension of those orders so that business can continue as usual pending any appeal”.

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