

Taking care of business

Background

A small company, with two employees, grew steadily over time and borrowed money from a finance company to fund their growth by way of a Commercial Credit Facility. All was going well until early 2022 when the impact of a poor investment decision started to bite, and the company failed to meet its obligations under the Commercial Credit Facility.

The lending was restructured by the lender several times before being repaid when the borrower managed to refinance with another lender.

After securing the alternative lender, the directors of the company laid a complaint with FDRS alleging that the original lender had acted incorrectly in handling their declining financial situation and, particularly, the terms on which their debt had been restructured.

The lender denied that FDRS had jurisdiction to consider the matter as the borrower was a company and the matter involved commercial lending.

Next steps

The first matter to deal with was the lender's misunderstanding of FDRS' jurisdiction. FDRS has jurisdiction to consider all forms of lending and all types of borrowers, including businesses, as long as they do not employ more than 19 full-time staff members and the matter does not involve more than \$500,000.

After carefully working through the considerable amount of evidence provided by both parties it became clear that the lender had, at all times, acted within the terms of the lending and security documents which were standard for the industry.

The lender had further protected itself by ensuring that all documents were signed by the directors in front of their lawyer.

Outcome

The customer's claim was not upheld.

Lessons learned

1. Lenders who abide by the terms of their lending and security documents and who keep good records are well placed to defend claims of this type.
2. Lenders who require borrowers to engage a professional advisor prior to signing lending and security documents protect themselves against claims that they have applied undue pressure or duress.

** Names and identifying details have been changed to protect our customers' identities*