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Getting Personal: Understanding Your Opponent in Asset Recovery

By Carly Sloane

When it comes to recovering unpaid debts, a judgement in your favour is rarely enough. If, for example, the debtor is based in a former soviet state - with imperfect legal systems which they know to exploit - a creditor can often find themselves playing a costly game of cat and mouse.

Creditors need to get creative, and play a more holistic, more psychographic game focused on the personal aspirations, fears and desires of the debtor, and that of the network surrounding them.

Consider, for example, the case of a Russian debtor who simply ignored a judgment against him after defaulting on a loan of hundreds of millions of dollars. His creditor had failed in attempts to seize bank accounts, factories, inventory and the other companies that comprised the bulk of the assets securing the loan. This debtor, however, also owned a stable of racehorses. Whilst the cash value of the racehorses was a trivial fraction of the amount at stake, their value to the debtor in terms of status, prestige and it being his passion was immeasurable. Having a bailiff show up at his stables to seize some of the debtor's prize horses got his attention in a way that previous court orders had failed to do so.

Not every debtor is a horse racing enthusiast. But understanding and mapping out a debtor's lifestyle and interests can present a number of opportunities for disruption that are not immediately obvious on paper. Expensive golf memberships, a passion for sailing or an interest in antique cars and fine art can convert into tangible opportunities for enforcement, and embarrassment within a niche group of enthusiasts where status can be more important to the debtor than the asset value itself.

Understanding the lifestyle and jurisdictional footprint of the debtor's close family members can be vital in asset recovery. A creditor finding it difficult to navigate the local legal system to seize a debtor's factory in, say, Moldova, may find it much easier to place a charge on the London flat the debtor bought for his son. Looking closely at the asset position of a debtor's children and spouse may also provide evidence for other legal routes that may be key to your recovery strategy. Debtors often transfer valuable assets



and business holdings to close family members in attempts to conceal them from creditors –so studying the asset footprint of debtors' wife or children may lead to hidden assets and evidence of dissipation. Developing an argument of fraudulent conveyance, receipt of the proceeds of crime and money laundering, thus entrapping loved ones into legal proceedings can provide a powerful lever for encouraging settlement discussions.

A combination of aggressive civil and criminal litigation can be an effective tool in the fight for asset recovery. If a debtor happens to be a wealthy individual with a dubious source of wealth, who happens to send their children to an English boarding school or pays university fees in the United States, then this could present an opportunity to seek disclosure as to the sources of the fees and/or provide opportunity to develop legal arguments around financial crime. Following the money can open up valuable asset leads to the debtor's financial infrastructure; providing attack points for further disclosure and freezing actions.

Exploring private criminal prosecution options against a debtor in a jurisdiction of professional or personal importance can be an effective way to limit their movements and activities. Take for example, the subject of an intellectual property dispute, who was based in Eastern Europe and wanted to expand their business portfolio in England, which was also a jurisdiction of personal importance for the Subject's family. A successful criminal complaint filed against the subject in England meant that they were unable to travel to the jurisdiction for fear of arrest, limiting their ability to conduct business. The threat of such a move may well bring a debtor to the negotiation table.

A high-profile debtor engaged in ongoing negotiations for a large business deal will be keen to protect their reputation, so developing evidence of criminal or adverse activities – liaising with relevant regulatory and law enforcement bodies and/or running a public relations campaign in parallel - can be used to magnify pressure. Understanding any pressure points related to immediate family such as instances of criminal or dubious activities, may also provide points of leverage which can be exploited. Protecting the reputation of themselves and their family members may be of tantamount importance to a debtor, especially if they are in the public eye or seeking investors in a new business venture.

After leaving creditors high and dry, the debtor is likely already on the next business venture; so, understanding their business activities may present avenues for potential disruption. Mapping out supply chains and distribution channels can provide opportunities to seize goods in transit and/or targeting account receivables owed by their customers, and understanding upcoming business ventures and close partners may provide further angles of attack.

Asset recovery isn't always about recovering the assets. Opportunities for asset recovery extend far beyond the usual paper trail, and a creative strategy, informed by a thorough understanding of your opponent and their pain points, is often key to success.



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