

LEGAL EYE

by Michael Bergman

Collecting on wooden nickels

In any walk of life where money has to change hands there is always a chance it won't. The film industry is no exception. If only few production companies default on their contractual obligations to their cast, crew and suppliers, the industry remains a high-risk business. Those who are not alert to the methods and means of covering outstanding debts may find the likelihood of payment significantly reduced when problems arise. The more immediate the initiation of recovery technique, the more likelihood of subsequently being paid. No amount of nasty letters, court cases and judgments will prove effective if the debtor does not have the means to pay. Most film production companies have been specially incorporated for a single purpose — the making of a single motion picture. Consequently they are not an ongoing operation continually in business upon which a creditor may rely should the immediate project completely fail.

A production company's ability to pay is contingent on essentially two factors. First, the budget of the film which normally comprises all its expected expenses and is initially the only amount of true cash in the company's coffers; and, second, the amount of any revenue or income from the project itself, an amount of money which after prepayment of exhibition and distribution expenses may only slowly, and in a greatly diminished amount, trickle down directly into the company's hands.

All this, of course, means that a production company that has used up its budget and does not have a reasonably successful project on its hands may not have funds available to pay unpaid creditors. Most production companies probably do not own any property other than certain rights in the project itself. Once a project has been sold, there may be no property left to seize should an unpaid creditor obtain a court judgment.

The whole matter may become somewhat more complicated when we consider the problem of whom to collect from. Only a party to the contract may be liable for payment. For example, on those occasions when completion guarantors take over projects, they are not legally bound to the unpaid creditor to pay the debt (although they will probably do so in virtue of the completion guarantee with the investors!).

After negotiations, nasty letters and prayers have failed, in most instances the only hope left is to seek redress before the

courts. Even successful court litigation is fraught with pitfalls. In the best of cases, creditors have to wait long delays for trial while the solvency of the debtor may diminish to zero. This difficulty may be overcome in certain provinces, especially those in Western Canada where the possibility of attaching or seizing before judgment the debtor's bank accounts for unpaid services or supplies exists. Assuming there is anything to attach, it can readily be imagined that the effect of freezing funds will have a lightening effect. Unfortunately this attaching process does not exist everywhere and, in fact, essentially does not exist in Ontario.

Another possibility to encourage rapid settlement of judicial proceedings is the threat of simultaneously or subsequently suing the board of directors of the production company. This recourse is provided by most statutes governing the incorporation of companies in Canada, federally or provincially, in favour of employees. Those film people who can demonstrate that their legal relationship with the production company is that of employee will be able to sue for anywhere up to several months' outstanding wages.

Some further advantage may be gained by investigating the legal relationship between production company and the investors in any effort to demonstrate that the company is simply the agent of the investors who may be consequently bound to the company's debts. This possibility may in particular exist where the production company is making a film on behalf of the investors, as is generally the case in most tax-shelter projects. While wise producers and investors will arrange their mutual relationships to avoid this possibility, it is nevertheless always prudent to consider if there is any avenue of recourse against the investor.

Perhaps the rarest forms of court proceedings in the film business are bankruptcy proceedings. While bankruptcy may be voluntary, it is more likely to happen when major creditors have lost so much confidence in the production company that they petition it into bankruptcy in order to freeze its remaining assets and monies and bring it under their control. For the average film person these extreme measures will have little appeal. Most film people who are owed money by bankrupt companies have little expectation of being paid anything as the bankrupt's assets are generally insufficient to pay more than a few cents on the

dollar. In most cases, the main beneficiary of bankruptcy proceedings are those major creditors who have taken guarantees or security against assets.

A more frequent concern is knowing when to be paid and how much. This is the situation of deferred fees, residuals and royalties, payment of which is determined by an accounting process in which generally only the producer and his principals take part. The problem here is to obtain a contract which establishes some sort of reporting and accounting system whereby the recipient of deferrals, etc., can be reasonably assured that his entitlement to them will be promptly conveyed with a statement that can be examined to determine the appropriateness of the accounting methods by which the amount owing is determined. To some extent recipients of these kinds of postponed or future payments may be assisted by information contained in required regular filings with provincial Securities Commissions for film projects whose financing is subject to Securities Commission legislation. This information will be available to the general public upon request. Unfortunately these kinds of filings may be superficial and perhaps lacking in the kind of detail required.

When there is a suspicion that money is owing on postponed payments and an uncertainty as to the amount, it is still possible to launch a somewhat speculative lawsuit asking for a court order for accounting. It is speculative because if the accounting is ordered and shows nothing, then a long process — and a costly one at that — will have been a needless adventure.

As an alternative to court litigation, many film people who are members of guilds or unions will generally be able to take advantage of the various kinds of collective agreements which these bodies may obtain. Generally these collective agreements foresee the posting of some type of security for the benefit of unpaid members and an arbitration process to settle disputes in a more timely, expeditious and cheaper fashion than recourse to the courts.

Needless to say, the best form of recourse is prevention. Sizing up the situation at the start of a contract will prevent payment with coins of wood.

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CBC bumping causes ripples

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150 people? We easily could have found two-thirds on early retirement. But it was only offered to 24 people."

Carter accused the CBC of political juggling to enhance management's position. He noted that many of the management positions declared redundant had been vacant, some for more than two years. He also said that the CBC deceived federal minister of Labour William McKindig. Under the Canada Labour Code, layoffs can be administered either under the Labour Code or the union contract, whichever provides the greatest protection for workers. According to Carter "the Corporation asked for a waiver of the CLC and at the same time went to the arbitrator to deny us the facts and figures we needed to make sensible decisions." He added that "the Corporation had gone to great lengths to prove to the Minister how great our contracts were. They virtually lied to the minister." Carter said that under the CLC the union would have had a greater say in how the layoffs were managed.

The CBC, however, denies the union allegations. Richard

Chambers, acting head of corporate communications, told Cinema Canada, "Things are moving in the right direction. In most cases the atmosphere has been very good. The joint management-union manpower committees on the local, regional and national levels have gone a long way to smooth the situation."

Lowe dismissed the effectiveness of the manpower committees. "They are only following the direction of the Corporation's senior industrial relations people. They're being hamstrung by headoffice." He added that "the Corporation made no moves to establish any training scenario to allow those declared redundant to fill vacant positions if given some assistance in retraining." Carter is also bitter about CBC's refusal to take part in a department of Labour relocation counselling scheme which has an 85% success rate.

Last December the CBC announced that 1150 jobs would be lost as a result of the Tory budget cutbacks. At the time CBC vice-president Denis Harvey called it "a bloodbath."

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