

Insolvency Newsletter

Vince & Associates

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Personal Property Securities Act Update

Alleasing Lose Mining Assets Worth \$23 million Due to PPSR Mistake

In the matter of OneSteel Manufacturing Pty Limited (administrators appointed) [2017] NSWSC 21, the NSW Supreme Court held that a registration which mistakenly identifies a grantor by its ABN instead of its ACN is a seriously misleading defect within the meaning of sections 164 and 165 of the Personal Property Securities Act 2009 that will render the registration of a security interest on the Personal Property Securities Register to be invalid.

The basic facts of this case are summarised as follows:

- On 16 October 2014, Alleasing leased mining assets to OneSteel with a value of \$23 million.
- Alleasing completed a PPS registration on 17 October 2014 against OneSteel using its ABN as the identifier.
- On 7 April 2016, OneSteel appoints Voluntary Administrators.
- On 10 June 2016, the Administrators advise Alleasing that they will be keeping their mining assets as their registration was invalid because they should have used OneSteel's ACN, not their ABN.
- On 31 January 2017, the NSW Supreme Court confirms that OneSteel has lost its mining assets to the Administrators.



This is an important factor for you and your clients to ensure that your/their PPS registrations are completed correctly or face losing your/their assets in an insolvency event, which can be a very costly mistake!

PPSR Grace Period Ended on 31 January 2017

The Personal Property Securities Act 2009 established a single national electronic database of personal property security interests, called the Personal Property and Securities Register. Security interests over personal property registered on pre-existing public registers were automatically migrated to the PPSR on 30 January 2012.

A significant number of the migrated registrations contained defects and errors.

Under transitional provisions, a five year grace period operated to ensure the effectiveness of migrated security interest registrations (despite any defects) and to allow secured parties to rectify defects with their registrations on the PPSR. This transitional period ended on 31 January 2017.

Any defects and omissions (including interests migrated without an end date) in registrations appearing on the PPSR may affect the enforceability and priority of a registered security interest.

We recommend that you and your clients review and make any required changes to your/their migrated security interests as soon as possible.

PPSR Common Mistakes

The staff at Vince & Associates review PPS registrations and supporting documentation on a regular basis and have identified the following common mistakes:

- The supplier has a properly drafted contractual agreement with PPSR terms and conditions, however fails to complete the registration on the PPSR.
- The supplier lodges the PPS registration outside the relevant timeframe and the customer is wound up within the following 6 months which may render the PPS registration void.
- There are errors with the PPS registration, such as the PPS registration is registered against a company's ABN, not its ACN.
- The supplier's security agreement is drafted but with inadequate terms and conditions such that it is unenforceable in the way intended under the PPSA.
- The PPS registration is registered by the wrong company. That is, the supplier operates within a group of related companies and "Company A" enters into the contract and supplies the asset to the customer, and "Company B" registers the PPS registration.

In addition to the above, we still encounter parties on a regular basis that have little or no knowledge of the PPSA who rely on the old Retention of Title clause on their invoice or the handshake agreement which can be very costly!

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Corporate Insolvency:

- Creditors' Voluntary Liquidation
- Members' Voluntary Liquidation
- Voluntary Administration
- Official Liquidation

Personal Insolvency:

- Bankruptcy
- Personal Insolvency Agreements

Consulting Matters:

- Investigative Accountant's Reporting
- Business Valuations
- Forensic Accounting & Litigation Support

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