



PPSR error leads to \$23million loss and confirms the court's view that form trumps function

By ,

An apparently simple administrative error in a PPSR registration has resulted in a significant financial loss for a lessor.

In *In the matter of OneSteel Manufacturing Pty Limited (administrators appointed)* [2017] NSWSC 21 the court ruled that an administrative error which saw the lessor provide the ABN of the lessee (instead of the lessee's ACN) was sufficiently material to render the PPSR registration defective. As a result, the registration was not validly perfected and the lessor's interest in the equipment, worth some \$23million, vested in the lessee.

The background

The facts of the case which were not in dispute are:

- a. In October 2014, Alleasing Pty Limited (**Alleasing**) leased equipment worth around \$23million to OneSteel Manufacturing Pty Limited (**OneSteel**).
- b. Alleasing registered the arrangement on the PPSR on 7 July 2015.
- c. The registration included OneSteel's ABN, not their ACN.
- d. On 7 April 2016, OneSteel appointed administrators.
- e. On 10 June 2016, the administrators informed Alleasing that they considered the registrations to be defective and ineffective, and that as a result, Alleasing's security interest vested in OneSteel.
- f. On 14 June 2016, Alleasing lodged new financing statements in respect of the equipment, this time using OneSteel's ACN.
- g. On 17 June 2016, Alleasing amended the original registrations to include OneSteel's ACN.
- h. On 11 August 2016, Alleasing filed proceedings seeking a declaration that its security interests were validly perfected and had not vested in OneSteel, or alternatively that second registrations were valid,

The issues

At issue was whether the registration of the security interest by reference to OneSteel's ABN, not its ACN, invalidated the registration.

Alleasing argued that:

1. there was no defect in the original registrations;
2. if there was, it was not such as to render the registrations ineffective;
3. in any event, there has been no vesting because in the circumstances of this case a vesting under the PPSA would be an acquisition of property on other than just terms, and that the PPSA does not operate to that effect; and
4. alternatively, time for registration of the second registrations should be extended.

The administrators for OneSteel contended that there has been no effective registration, and that Alleasing's security interest had vested in OneSteel.

In addition, the Registrar of the PPSR made submissions to the court regarding the manner of the operation of the PPSR. Justice Brereton states that the court was assisted by those submissions.

The two primary issues which the court considered was:

- a. was there a defect in providing OneSteel's ABN, instead of their ACN; and
- b. if so, was the defect a seriously misleading defect, rendering the original registration invalid.

Was there a defect?

Section 153 of the *Personal Property Securities Act*(2009) (**PPSA**) requires a financing statement to include “*the grantor’s details as prescribed in the regulations*”. The Regulations[1] state that where the grantor is a body corporate that has an ACN, then the ACN of the grantor must be included.

As OneSteel had an ACN, then Alleasing was required to include OneSteel’s ACN (not their ABN) in the financing statement.

However, and unfortunately for Alleasing, Alleasing had completed an ABN field, not the ACN field. Alleasing argued that the ABN contained the ACN within its fields.

However, the court rejected that proposition and said that “*an 11-digit ABN, the last 9 of which correspond with the ACN ... is not the same as a 9-digit sequence ... Thus an ABN which happens to include the 9-digit ACN is nonetheless not the ACN.*”

The court held that as the original registration did not include OneSteel’s ACN, it was defective.

Was there a “seriously misleading” defect

Having held that in the circumstances the failure to provide the ACN was a defect in the registration, the next question was whether the defect was so significant as to be “a seriously misleading defect”.

Section 164(1) of the PPSA states that a registration is ineffective because of a defect if and only if there is a seriously misleading defect in the registration.

Under the PPSA, a defect would be considered seriously misleading if a search of the PPSR of those details which are required to be included under section 153 failed to find the registration[2].

As noted above, section 153 requires a corporate entity that has an ACN to be included in the financing statement. A search of OneSteel’s ACN on the PPSR would have failed to disclose the registration because the ACN was not included in the financing statement. In addition, section 171 of the PPSA doesn’t authorise a search of details other than those required under section 153.

The search parameters which are authorised by the PPSA is by reference to the company’s ACN (not the ABN). Justice Brereton held that “*A searcher... [who searched the PPSR] would not discover the original registrations, and would be led to think, incorrectly, that there was no such registration.*”

As there was no ACN by which to search then the defect was considered to be seriously misleading.

The court declared that Alleasing’s security interests in the equipment were unperfected on the date which OneSteel went into administration (7 April 2016) and therefore the interest in that equipment vested in OneSteel.

The court also rejected the claims in relation to the second registrations and the acquisition of property.

The lessons – form over function

As alarming as this outcome was for Alleasing, it is clear that when it comes to the PPSA and registering a security interest on the PPSR, form trumps function.

This case provides a salient warning that each and every time you register a security interest on the PPSR, you must ensure you understand the regulatory requirements involved in that registration and comply strictly with each of those requirements.

Failure to follow the rules could mean significant losses and disastrous outcomes.

We wait to see if there is an appeal of the decision. However, we expect that the issue will be subject to further judicial review and debate. Watch this space.

In the meantime, to ensure that your registrations are perfected or if you have any questions about this or related matters, please contact **Gina Bozinovski, Special Counsel** or **Robert Lyons, Senior Associate**.

[1] Property Securities Regulations 2010 Sch 1 cl 1.3

[2] See section 165(b), PPSA

[3] See section 165(b), PPSA

Should you wish to discuss any matters arising out of this article, please contact the author:

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