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PPSR Update – True owner of equipment loses to liquidator

By ,

The recent Supreme Court of Victoria case of *Relux Commercial Pty Ltd (in liquidation) v Doka Formwork Pty Ltd* [2014] VSC 570 (Relux Case) provides another example of how you can lose your goods if you don't comply with the *Personal Property Securities Act 2009* (Cth) (PPSA).

The Relux Case provides a timely reminder of the risks in failing to comply with the time requirements in the PPSA, particularly where the owner is not in physical possession of their assets, for example by way of lease or hire.

The facts

Relux Commercial Pty Ltd **(Relux)** had a construction business specialising in pouring, laying and erecting large concrete slabs and panels. Relux leased formwork equipment from Doka Formwork Pty Ltd **(Doka)**.

Various Leases commenced on the following dates:

1. First Lease – 21 January 2014.
2. Second Lease – 26 February 2014.
3. Third Lease – commenced 14 March 2014.

Each lease was for an indefinite period (effectively until Relux no longer needed the formwork and returned it to Doka).

On 20 February 2014, Doka registered a Security Interest against Relux on the Personal Property Securities register (PPSR) which identified the relevant Collateral secured as commercial property held by Relux, notably 'Equipment Rental and Sales especially in Formwork.'

On 7 April 2014, Administrators were appointed to Relux.

On 16 May 2014, a meeting of creditors resolved in favour of the winding up of Relux, and Liquidators were subsequently appointed.

The Liquidators argued that they had an interest in the Formwork that was superior to that of its true owner – Doka.

The issue

The issue for the Court involved the application of section 588FL of the Corporations Act 2001, which provides that certain interests covered by the PPSA that are not registered on the PPSR within a certain time, vest in a company that is being wound up or in administration.

Applying that section more specifically, Doka's Security Interest (being its interest as owner of the Formwork) would vest in Relux (being the entity who does not own the Formwork but is merely the lessee of the Formwork under the Leases) if:

a. At the ‘Critical Time’, Doka’s Security Interest was registered on the PPSR; and
b. The registration time of the Formwork is after the later of:
    - that time that is 6 months before the Critical Time; and
    - 20 Business Days after the Security Interest was created, or the Critical Time (whichever is the earlier).

The Result

The ‘Critical Time’ within the meaning of the Corporations Act, was in this case 7 April 2014 being the date that the Administrators were appointed to Relux. As a result, the following occurred in relation to the leases and the leased equipment:

Lease	Date Created	20 Business Days later	Registration Deadline	Registration Date	Formwork vests in Relux?
First Lease	21 January 2014	19 February 2014	19 February 2014	20 February 2014	Yes
Second Lease	26 February 2014	27 March 2014	27 March 2014	20 February 2014	No
Third Lease	14 March 2014	11 April 2014	7 April 2014 (when administration commenced)	20 February 2014	No

(Note: the PPSR registration on 20 February 2014 was sufficient to cover Leases entered into after that date).

This resulted in the equipment hired under the First Lease vesting in Relux (and the liquidator), not Doka. Doka lost title in all the equipment leased to Relux under the First Lease, with all of that equipment being seized by the liquidator for its own purposes.

The Lesson

The Relux Case provides yet another timely reminder and lesson: **to be effective against a liquidator, your Security interest must be registered within time.**

Registration must occur within 20 Business Days of the transaction under which the Security Interest was created.

If registration is made after this time, the Security Interest will suffer the risk of being defeated by a liquidator or administrator if a relevant insolvency event occurs within the first 6 months of registration.

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

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