

CITY INSOLVENCY

DISCUSSION GROUP

Wednesday, 7 August 2019

TOPIC

Seven Year Itch: a PPSA Retrospective

PRESENTED BY

Daniel Morris, Special Counsel – HHG Legal Group



MANN JUDD
INSOLVENCY WA



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WOMEN'S ASHES WINNERS 2019



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Seven Year Itch: a PPSR Retrospective

Daniel Morris
(Special Counsel)

Identifying trustee grantor on PPSR by ABN or ACN

- ▶ *Personal Property Securities Regulations 2010* (Cth), Schedule 1, cl.1.3
 - ▷ If the trustee is a body corporate, not a managed investment scheme and has an ABN, register against the trustee's ABN.
 - ▷ If the trustee is a body corporate other than a managed investment scheme and the trust does not have an ABN, register against the body corporate's ACN.
- ▶ *In the matter of Psyche Holdings Pty Ltd* [2018] NSWSC 1254
- ▶ *In the matter of OneSteel Manufacturing Pty Ltd (administrators appointed)* [2017] NSWSC 21

Lodgment of proof of debt by secured creditor

- ▶ S 554E *Corporations Act 2001* (Cth)
 - ▷ A creditor may either surrender, realise or estimate the value of its security interest when lodging a proof of debt.
 - ▷ Where the creditor realises or estimates the value of its security interest, the creditor can only prove for the balance of the debt.
- ▶ Depends on the creditor's unequivocal conduct
- ▶ *Surfers Paradise Investments Pty Ltd (in liq) v Davoren Nominees Pty Ltd* [2004] 1 Qd R 567

Tracing security interest into proceeds of sale of collateral

- ▶ S 32 PPSA:
 - ▷ If collateral gives rise to proceeds (by being dealt with or otherwise), the security interest continues in the collateral and attaches to the proceeds, unless otherwise expressed.
- ▶ *Re O'Keefe Heneghan Pty Ltd (in liq); Aus Life Pty Ltd (in liq); Rocky Neill Construction Pty Ltd (in liq) trading as KNF Group (a firm) (No 2)* [2018] NSWSC 1958

Section 588FL *Corporations Act 2001* (Cth)

- ▶ Vesting of PPSA security interests if collateral not registered within time.
- ▶ This section applies if:
 - ▷ An order is made for the company to be wound up, or an administrator is appointed, or a deed of company arrangement is executed, and
 - ▷ A PPSA security interest granted by the company in collateral is covered.
- ▶ Whether a PPS security interest is covered depends on:
 - ▷ Whether at the critical time, or when the security interest arises (if after the critical time), the security interest is enforceable against third parties and perfected by registration and by no other means; and
 - ▷ The registration time.

Pozzebon

- ▶ ***Pozzebon (Trustee) v Australian Gaming and Entertainment Ltd, in the matter of Australian Gaming and Entertainment Ltd (in liq) [2014] FCA 1034***
- ▶ **HHG Legal Group acted for the successful respondent.**
- ▶ **‘perfected by registration and by no other means’**
- ▶ **Held: attachment and enforceability against third parties are not, as the applicant contended, means other than registration to perfect a security interest; rather, they are the first two stages in a three-staged process, towards achieving a perfected security interest.**

Hamersley Iron v Forge

- ▶ ***Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd (in liquidation)(receivers and managers appointed)***
[2017] WASC 152
- ▶ **Mutuality and set-off.**
- ▶ **Interesting question: whether Project Bank Accounts or trusts deemed by statute are capable of destroying mutuality by splitting the legal and beneficial interests.**

Thank you for listening.

Any questions?

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Next CIDG Session

Wednesday, 4 September 2019



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