

# News with Clout

Restructuring Insolvency and Turnarounds

## IGNORE PPSR AT YOUR PERIL

If you have been in Insolvency for as long as we have starting in the 1970s you may recall business was conducted much more cowboy style then it is today.

Back then in those politically incorrect times, one of the rules we lived by was "possession was nine tenths of the law"! What this meant was that as a liquidator you did all you could to put your foot on items such as plant and equipment, motor vehicles, boats and of course stock. As a consequence, those with a claim to the items had to start the legal battle and therefore they incurred the first costs.

There was even one of those paradoxes that, the less the assets were worth, the less likely someone with a claim to title to those assets would spend the money to get them back.

More often then not stouches settled. This was preferred to running the gauntlet of possible adverse cost orders. This was really tantamount to bullying, almost extortion.

Thankfully the last 15 years or so have seen more politically correct attitudes prevail which has seen a tendency that if the company or bankrupt did not have legal and equitable title to the items then the insolvency practitioner was less likely to play silly buggers and utilise the litigation process to extract some form of contribution to their cots.

The company in liquidation either owned the gear or it didn't.

Enter the new Personal Property Securities Act.

Suddenly the old rule is back this time cast in stone. There has been a lot written on these rules but let's restate it again in simple terms. Under the Personal Property Securities Act, if you own assets that are on some other entities premises and they fall over those assets vest in the wound up entity unless you have registered your security/ownership with the Personal Properties Security Register, and in the case of motor vehicles your identification details had better be accurate. Simple really!

For an insolvency practitioner it has gotten easier, at least in respect of this aspect of insolvency.

There has been a timely reminder of this fact passed down by the Supreme Court on 11<sup>th</sup> February 2016, which has confirmed the Receiver for the Forge Group owned certain turbines that had been the subject of a protracted legal battle by General Electric, who have discovered no doubt to their horror that you don't register, you lose if a formal insolvency ensues. They suffered a \$50 million loss, even though the items were the subject of a lease it was held if you don't have registration you have a problem if you don't have possession.

This is a timely reminder for us all. If your clients have items on other peoples' property, register it with the Personal Property Security Register or neglect it at their peril.

As ever we welcome your enquiries and appreciate your support!



# NEWS WITH CLOUT

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