



PPSR UPDATE

AUTHOR // MILES ANDERSON & JOANNE CHANG

FAILURE TO REGISTER ON THE PPSR COULD COST ONE COMPANY \$50 MILLION.

In February 2014, Australia and New Zealand Banking Group Limited (“**ANZ**”) appointed KordaMentha Pty Ltd (“**KordaMentha**”) as receivers and managers of the mining services firm, Forge Group Limited (“**Forge**”). Forge had secured debts of approximately \$500 million, including over \$300 million owed to ANZ and other insurance bond groups such as QBE and Asset Insure.

KordaMentha has now decided to issue legal proceedings in the Supreme Court of New South Wales claiming that four gas turbines leased to Forge are subject to ANZ’s security interest and may be sold by them to recover ANZ’s debt.

The turbines are estimated to be worth \$50 million. They were leased to Forge by APR Energy PLC (“**APR**”), a company listed on the London Stock Exchange, and always remained the property of APR. However, APR failed to register the leasing arrangement on the Personal Properties Security Register (“**PPSR**”).

As this case unfolds we will learn more as to why the gas turbines were not registered on the PPSR.

The consequence of not registering could mean that the gas turbines are subject to ANZ’s security interest, thus allowing KordaMentha to sell them and pay the \$50 million in sale proceeds to ANZ. If there is anything left over after ANZ’s secured debt is fully repaid, then APR may still not be entitled to this amount and may have to fight it out with Forge’s other secured and unsecured creditors.

From what we know about the case it does not bode well for APR. A case was decided in April this year where KPMG had been appointed as receivers of BEM Equipment Pty Limited (“**BEM**”). In this case, the Supreme Court of Western Australia ruled that Spiers Earthworks (“**Spiers**”), who had leased about \$1 million in plant and equipment to BEM under a hire purchase agreement, did not “perfect” their interest by registering the lease on the PPSR. Spiers lost their interest in the plant and equipment under the lease agreement and KPMG were free to sell the equipment to recover monies owing to National Australia Bank.

The Forge case is by far the largest legal proceedings that have been brought under the PPSA and is a salient warning to all equipment suppliers as to the potentially devastating implications if they don’t put in place robust procedures for PPSR registrations.

FOR MORE INFORMATION, PLEASE CONTACT:



MILES ANDERSON //
Partner
T 02 8235 1244
E m.anderson@clarkekann.com.au



JOANNE CHANG //
Lawyer
T 02 8235 1254
E j.chang@clarkekann.com.au

ClarkeKann is a commercial law firm with offices in Brisbane and Sydney. Our expertise covers commercial & corporate transactions, employment & IR, financial services, litigation, risk management and insolvency, property transactions and resources projects, across a range of industries. For a full list of our legal services, please visit our website at www.clarkekann.com.au. To update your contact details or unsubscribe to any of our publications, email us at ck@clarkekann.com.au.

This bulletin is produced as general information in summary for clients and subscribers and should not be relied upon as a substitute for detailed legal advice or as a basis for formulating business or other decisions. ClarkeKann asserts copyright over the contents of this document. This bulletin is produced by ClarkeKann. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under professional standards legislation.