

## Wake Up Call to Australian businesses. Register it or Lose it!

If you don't use the PPSR to register your interests in the personal assets that you rent, hire or loan to someone else you could lose your property!

GE International has recently found this out the hard way when the Supreme Court of NSW found against them after they failed to register their interest in 4 mobile gas turbines that they owned that they had leased to Forge Power for a two year term for a total rental sum of \$33m.<sup>1</sup>

Unfortunately for GE, after signing the lease, Forge Power went into administration and then liquidation. The Court found that the interest of GE held in the turbines had vested in Forge Power immediately before the appointment of the administrators under s 267 of the PPSA because there had been no registration of their interest in the turbines on the PPSR.

The Court found:

- GE regularly engaged in the business of leasing turbines. GE had sought to exempt themselves by claiming they were not regularly engaged in such business in Australia.
- The relevant date for assessing the above was when the lease was entered into (not when the equipment had been installed or some other later time).
- The turbines had not become fixtures on the land on which they had been installed- despite having been connected to concrete foundation slabs that had been installed and having air inlet filters and exhaust stacks bolted onto the main trailer on which they rested.
- The Court applied the common law test to determine if the turbines had become a fixture or not. It considered a range of factors to establish the intention of the parties to determine if the turbines had become a fixture (in which case the PPSA would not have applied and they would not have had to have been registered on the PPSR). In this case the Court took into account:
  - that the turbines had been designed to be movable
  - that the turbines had only been intended to be on the rented site for 2 year period
  - that removal of the turbines would not cause damage to the land or the turbines
  - Forge was contractually obliged to return the turbines at the end of the lease.

So if you own property that you lease or rent to others and this property is the subject of a PPS Lease be warned. You need to urgently review your current lease or rental arrangements and register your interests on the PPSR. By doing so you will be able to defeat any claim to your property by an administrator or liquidator should your lessee get into financial trouble.

You also need to review your PPS Leases and your commercial leases to ensure that they contain appropriate clauses that clearly spell out the intentions of the parties to retain ownership of your personal property in the event of your lessee's default. You don't want your assets being seized and sold and the proceeds used for the benefit of your lessee's creditors.

Contact us today and we can advise you on any PPSR issues and also arrange for your registrations on the PPSR to be done quickly and without fuss by our associates at **PPS Solutions**. Let them manage all your PPSR needs.

Philip Sheezel

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<sup>1</sup> Forge Group Power Pty Ltd (in liquidation) (Receivers & Managers appointed) v General Electric International Inc (2016) NSWSC 52, Hammerschlag J. (judgment11 February 2016)