



Priority of Personal Property Securities Register

Date : April 21, 2014

Maiden Civil Pty Ltd; Re; Albarran v Queensland Excavation Services Pty Ltd [2013] NSWSC 852

Issue

The Supreme Court of New South Wales has ruled that the nemo dat rule (that one cannot give what is not theirs) has been removed from Australian law in relation to the *Personal Property Securities Act 2009* (Cth) ("**PPSA**").

This case also provides that in circumstances where a party has not secured their interest in property as the true owner, their interests may be outweighed by the secured interest of a third party, under the act.

Facts

Maiden Civil Pty Ltd ("**Maiden Civil**") leased three excavators from Queensland Excavation Services Pty Limited ("**QES**") for the purposes of civil construction works. Fast Financial Solutions Pty Ltd ("**Fast Financial**"), through a Loan Agreement secured by a General Security Deed provided finance for the excavators to the Maiden Civil. The property secured included the excavators.

Fast Financial registered its security interest on the PPSR. Maiden Civil later defaulted on the loan to Fast Financial, who retained possession of the excavators. QES demanded return of the property as the true owners, however, had not registered the property on the PPSR.

Brereton J determined that Maiden Civil was a PPS lessee, this gave Maiden Civil the right to grant an enforceable security interest to Fast Financial over the excavators.

Brenton J stated that: "*Accordingly, QES's security interest was unperfected. In those circumstances, s 55(3) applies, so that Fast's perfected security interest in the Caterpillars has priority over QES' unperfected security interest in them...Moreover, upon Maiden going into administration and/or liquidation, Maiden became entitled to the Caterpillars — subject to the perfected security interest of Fast — because QES's (and Central's or Mr Cullenane's, if any) unperfected security interest thereupon vested in Maiden.*"

It is important to register your interests on the PPSR to avoid losing priority.

If you have any questions regarding PPSA and leases, you should contact our Property and



Finance Law specialists at Matthews Folbigg Lawyers

Call the leading Commercial Lawyers in Parramatta at Matthews Folbigg on (02) 9635 7966. Matthews Folbigg Business Lawyers can assist you with your commercial business legal needs.

Anna Zdrilic

Director, Property & Commercial Groups

Phone: 02 9806 7425

Email: annaz@matthewsfolbigg.com.au

Disclaimer: The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.