



What is a PPS Lease?

Date : May 20, 2016

Under the *Personal Property and Securities Act 2009* (Cth) ("PPSA"), if a PPS lease is not registered and a lessee goes into liquidation, the lessor will lose their interest in the property that is the subject of the lease. If a lease is not registered there is however some hope for lessors, as they may be able to prove that the lease is not a PPS lease and that they should retain the interest in their property. The recent Supreme Court of New South Wales decision of *Forge Group Pty Limited (in Liquidation (receivers and managers appointed) v General Electric International Inc* [2016] NSWSC 52, has helped to clarify the meaning of what a PPS lease actually is. This decision has provided an explanation as to what tests the courts will apply, in order to determine whether or not a particular lease will be defined as a PPS lease under the PPSA.

Forge Group v General Electric involved a contract between Forge Power and General Electric ("GE") which had not been registered on the Personal Property Securities Register ("PPSR"). Forge Power went into liquidation, raising a major issue for GE, as they had not registered their lease on the PPSR. GE tried to argue that their lease did not fall within the meaning of a PPS lease under section 13(2)(a) of the PPSA.

The PPSA defines a PPS lease in section 13, as a lease or bailment of goods, for more than one year, or in respect of an indefinite term. However, a PPS lease does not include "a lease by a lessor who is not regularly engaged in the business of leasing goods": section 13(2)(a). In *Forge* the Court held that in order to interpret this section, regard will be had to the lessor's business dealings, both in and outside of Australia: [29]. The test in this section will be applied "to the point in time at which the interest of the lessor under the instrument arises": [40]. In most cases this time will be when the lease was entered into. In order to identify whether a lease is a PPS lease the Court will then apply the test of "whether or not, at all material time, leasing the goods was a proper component" of the lessor's business: [46].

In *Forge* the Supreme Court found that GE had a long history of entering into leasing transactions, which the Court used as evidence that GE regularly engaged in leasing as a proper component of their business. After applying these tests, the Court held that the lease was a PPS lease and therefore the property vested in Forge Power immediately before the appointment of voluntary administrators.

This case illustrates the importance of registering a PPS lease on the PPSR, as the lessor in this case lost property worth a reported \$50 million. Without registration on the PPSR, your interest will not be perfected and you cannot feel secure that your interest will be protected in the event that the lessee goes into liquidation.

If you would like more information on the Personal Property Securities Act or advice as to



whether you should make a registration on the Personal Property Securities Register, contact a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

Jeffrey Brown on (02) 9806 7446 or jeffreyb@matthewsfolbigg.com.au

Stephen Mullette on (02) 9806 7459 or stephenm@matthewsfolbigg.com.au.