Transferring Proceedings to Another Court

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There are a number of reasons why it might be considered desirable to move court proceedings to a different Court. The subject matter of proceedings may make it more suitable for being heard in a specialized Court, or the location of a party to the proceedings may give rise to questions of convenience.

In the recent case of *Perugini v Perugini*, Mrs Perugini, who was the plaintiff in the proceedings, by way of summons sought to have the proceedings in the District Court of New South Wales removed to the Supreme Court of New South Wales. Once the proceedings were transferred to the Supreme Court of New South Wales, they were then to be transferred to the Federal Circuit and Family Court of Australia. The plaintiff and the defendant agreed to do anything reasonably necessary to bring about the transfer of proceedings. The Court subsequently granted the request and referenced an array of relevant principles regarding how the courts should assess an application for a transfer of proceedings.

Transfer of proceedings to the Supreme Court of New South Wales

The relevant section that outlines how to bring about a transfer of proceedings to the Supreme Court from the District Court is s 8 of the *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth) ('the *Act*').

In the case of *Amaca Pty Ltd v Mortimer*, Davies J stated that 'the test for removing proceedings from another court in this State into the Court is not a stringent one by any means… if it appears to this Court that an order should be made so that consideration can be given to whether the relevant proceedings should be transferred to another court, then this Court may make an order under s 8 removing the proceedings into this Court'.

Transfer of proceedings to the Federal Circuit and Family Court of Australia

The relevant section that outlines how to bring about a transfer of proceedings to the Federal Circuit and Family Court of Australia is s 5 of the *Act*.

According to s 5(1)(A) of the *Act*, when presiding over an application to transfer proceedings, the court should have regard to whether the matter is capable of being heard in the Federal Circuit and Family Court of Australia.

As per s 5(1)(C) of the *Act*, the court should also make an assessment as to whether it is in the interests of justice for the proceedings to be removed to the Federal Circuit and Family Court of

Australia.

Determining if it is in 'interests of justice' to transfer proceedings

In relation to this principle, in *Comino v Kremetis*, Chen J outlined that 'The determination of whether it is in the 'interests of justice'… for proceedings to be transferred depends on what is the 'more appropriate' forum for those proceedings without any particular emphasis in favour of the forum selected by the plaintiff'. In *Valceski*, the Court found that upon assessment of an application to transfer proceedings, it is mandatory to bring about a transfer of proceedings to the more appropriate forum, even if the proposed forum is only 'marginally' more appropriate.

In *Valceski*, it was found that the Court will examine various objective factors to determine whether it is in the 'interests of justice' to transfer proceedings.

In *James Hardie & Company Pty Limited v Barry*, the Court found that the court may take into consideration the following factors when determining whether it is in the 'interests of justice' to transfer proceedings:

- Balance of convenience to the parties
- Balance of convenience to the witnesses
- Governing law
- Forensic advantages and disadvantages.

If you would like more information or advice in relation to Insolvency, Restructuring or Debt Recovery law, please contact a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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