

# ABN OR ACN? ONESTEEL DECISION ESTABLISHES AN EXACT MATCH SYSTEM FOR PPSA IDENTIFICATION OF GRANTORS

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Legal Briefings - By **John Angus, Paul Apathy, Mark Clifton** and **Tony Coburn**

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On 31 January 2017, Brereton J of the Supreme Court of New South Wales in *In the matter of OneSteel Manufacturing Pty Limited (administrators appointed)* [2017] NSWSC 21 declared that the interests of Alleasing Pty Limited as lessor of a certain crusher and spare parts had vested in OneSteel Manufacturing Pty Limited, effectively giving ownership of the leased assets to the insolvent estate to be realised for the benefit of creditors generally after the company mistakenly registered the financing statements against Onesteel's ABN rather than its ACN.

This decision is a reminder of the importance of strictly referring to the grantor details as prescribed under the *Personal Property Securities Act 2009* (Cth) and the *Personal Property Securities Regulations 2010* (Cth) when registering financial statements.

It also reaffirms the constitutionality of section 267 of the PPSA which provides that a security interest that is unregistered at the commencement of formal insolvency will 'vest' in the grantor. Brereton J's decision further highlights that relief under s 588FM of the *Corporations Act 2001* (Cth) will not be available where the registrations were unperfected at the time when a grantor is already under administration.

## INTRODUCTION

Brereton J's judgment in *In the matter of OneSteel Manufacturing Pty Limited (administrators appointed)* [2017] NSWSC 21 case highlights:

1. **ABN registration is not appropriate for corporate grantors with an ACN:** a registration of a security interest against the ABN of a corporate grantor where the corporate grantor has an ACN will not perfect the security interest. The case demonstrates the importance of strictly referring to the grantor details as prescribed under the *Personal Property Securities Act 2009* (Cth) (**PPSA**) and the *Personal Property Securities Regulations 2010* (Cth) (**PPSR**) when registering financial statements, notwithstanding the fact that grantor searches against a variety of identifiers of the grantor may reveal a registration made against details other than those prescribed under the PPSA and PPSR;
2. **Section 588FM relief requires prior perfection of the security interest:** relief under s 588FM of the *Corporations Act 2009* (Cth) (**Corporations Act**) from the consequences of belated registrations of perfected security interests granted by companies will only be available where the security interest has been perfected prior to the “critical time”, in this case being prior to the appointment of administrators.
3. **Section 267 of the PPSA is not unconstitutional:** section 267 of the PPSA provides that a security interest that is unregistered at the commencement of formal insolvency will ‘vest’ in the grantor. The court held that this does not effect an acquisition of property – rather, it prescribes the consequence in certain circumstances of entering into a PPS lease. Even if it did effect an acquisition, it was not one that fell within s 51(xxxi) of the Constitution.

Brereton J declared that the interests of Alleasing Pty Limited (**Alleasing**) as lessor of a certain crusher and spare parts had vested in OneSteel Manufacturing Pty Limited (**OneSteel**), effectively giving ownership of the leased asset to the insolvent estate to be realised for the benefit of creditors generally. This was on the grounds that Alleasing’s PPSR registrations were ‘seriously misleading’ in that they did not disclose the ACN of OneSteel.

## **BACKGROUND AND FACTS**

Between May and July 2015, OneSteel rented a crusher and certain spare parts for the crusher from Alleasing under a master lease agreement entered into in October 2014. It was not disputed that the leases of the equipment were PPS leases as defined under the PPSA.

As the crusher and spare parts were not consumer property, s 153 of the PPSA required that the financing statements include “the grantor’s details as prescribed in the regulations”. Clause 1.3 of Schedule 1 of the PPSR requires that where the grantor is a body corporate that has an ACN, the prescribed details are the ACN of the grantor. When Alleasing originally registered the financing statements in respect of the relevant leases in October 2014 and July 2015 (the **Original Registrations**), it registered the financing statements against OneSteel’s ABN rather than its ACN.

On 7 April 2016, OneSteel appointed administrators, who informed Alleasing that they considered the Original Registrations to be ineffective, and that as a result of PPSA s 267, Alleasing's security interest in the equipment (i.e. its interest under the PPS leases) had vested in OneSteel. In June 2016, Alleasing lodged new financing statements in respect of the equipment, this time referring to OneSteel's ACN (the **Second Registrations**). Around this time, Alleasing also amended the Original Registrations so that they referred to OneSteel's ACN.

## ISSUES

Three key issues were considered by the Supreme Court of New South Wales:

1. whether registration of Alleasing's security interests against OneSteel's ABN instead of its ACN rendered the Original Registrations ineffective;
2. whether there was power to extend the time for registration under s 588M of the Corporations Act; and
3. whether s 267 of the PPSA, which provided for the vesting of unperfected security interests in OneSteel immediately before its administration, was unconstitutional on the grounds that it effected an acquisition of property other than on just terms.

## DECISION

### **Issue 1: ABN registration not sufficient for corporate grantors with an ACN**

Brereton J held that the Original Registrations were defective as they did not include OneSteel's ACN. It was not relevant that OneSteel's ABN included its ACN, as they were two different identifiers issued by different agencies.

Moreover, Brereton J held that the Original Registrations were ineffective. Sections 164(1)(b) and 165(b) of the PPSA provide that a registration will be ineffective if a search of the PPS Register by reference to the details required to be included under s 153 of the PPSA (which refers to the details prescribed by the PPSR) was not capable of disclosing the registration. Clause 1.3 of Schedule 1 of the PPSR requires a financing statement to refer to a grantor's ACN if it has an ACN. As OneSteel's ACN had been omitted, a search of the Register by reference to the ACN would not have revealed the Original Registrations. Notably, Brereton J held that it was immaterial that the Original Registrations could be discovered by a 'combined grantor search' involving searches of the Register by reference to OneSteel's details other than those required under s 153 of the PPSA as these searches were not contemplated and authorised by the PPSA.

Brereton J also found that the defect was seriously misleading because the omission of the ACN meant that searchers using one of the authorised modes of search would not discover the registration. It was immaterial as to whether any person had actually been misled (s 164(2) of the PPSA). In this regard the court's position was consistent with that adopted by the New Zealand High Court in *Polymers International Ltd v Toon* [2013] NZHC 1897.

### **Issue 2: section 588FM relief requires prior perfection of the security interest**

Brereton J also found that relief under s 588FM of the Corporations Act was not available to cure the security interest vesting in OneSteel after it went into administration. This was because s 588FM of the Corporations Act only provided relief to a company from the consequences of belated registrations of perfected security interests granted by companies (as opposed to unperfected interests). In this case, the correct registrations needed to have been made prior to the critical time, being the time when OneSteel went into administration. As the relevant security interests were unperfected at that time, s 588FM of the Corporations Act was unavailable.

Brereton J further held that even if s 588FM was available, it would not operate to divest an unperfected security interest that had already vested under s 267 of the PPSA as it would not alter the fact that on the day on the day administrators were first appointed to OneSteel, Alleasing's security interest was unperfected.

### **Issue 3: section 267 of the PPSA is not unconstitutional**

Section 252B of the PPSA disapplies any provision of the PPSA if its operation would result in an acquisition of property other than on just terms (within the meaning of paragraph 51(xxxi) of the Constitution). Brereton J held that s 267 of the PPSA does not effect an acquisition of property – rather, it prescribes the consequence in certain circumstances of entering into a PPS lease. Alleasing's bundle of rights upon granting the lease inherently captured the risk of potential vesting.

Even if it did involve an “acquisition”, it was not an acquisition of property to be applied for any purpose in respect of which the Commonwealth had power to make laws, but instead was a genuine adjustment of the competing rights, claims and obligations between owners of interests in personal property (therefore divestment under section 267 did not fall within s 51(xxxi) of the Constitution).

## **KEY CONTACTS**

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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