

GE VS FORGE – PPSA

A recent landmark decision was handed down in the NSW Supreme Court in the battle between the receivers of Forge Group (KordaMentha) and the US-based, General Electric International Inc, relating to KordaMentha's claim to gas turbines totalling \$50 million.

Justice Hammerschlag ruled the absence of a PPSA registration in respect of turbines leased by GE to Forge Group, meant that title to those turbines vested with Forge Group upon their insolvency.

While there will no doubt be more than a few headlines hailing this as a 'victory for the PPSA', the legal argument was a little more nuanced.

The issue before the court concerned some technicalities of the PPSA, and the right provided by the Act for PPSA security interests to be vested in the insolvent company was never actually in dispute.

GE instead chose a two-pronged argument:

- That the goods represented fixtures (the PPSA explicitly does not apply to fixtures); and
- That GE, while having leased the turbines, was a company not *regularly* engaged in the business of leasing goods (the PPSA also does not apply to leases in such circumstances).

As to whether GE was regularly engaged in the business of leasing, this was relatively easily confirmed by a simple review of GE's leasing history. This confirmed that from 2003 to the present time GE had been no stranger to leasing its equipment, that it was a "proper component" of their business and conducted with sufficient repetitiveness to satisfy the court that their leasing arrangement with Forge fell under the auspices of the PPSA.

Therefore, not so much a victory for the PPSA as much as it is a victory for the PPSA's definitions.

PAUL MILLER
BUSINESS ANALYST

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