



Judicial Guidance about "Perfection by Possession" under Australia's Personal Property Securities Act

The Federal Court of Australia has provided judicial guidance about what constitutes taking possession by seizure under the *Personal Property Securities Act 2009* (Cth) ("PPSA"). *Knauf Plasterboard Pty Ltd v Plasterboard West Pty Ltd (In Liquidation) (Receivers and Managers Appointed)* [2017] FCA 866 indicates that a receiver taking possession of personal property in accordance with a valid security agreement will not perfect a security interest by way of possession.

Background

Knauf Plasterboard Pty Ltd ("Knauf") supplied plasterboard products to Plasterboard West Pty Ltd, trading as Retroflex ("Retroflex"). In June 2014, Retroflex granted Knauf a security interest over all of its personal property. Knauf did not register its security interest on the Personal Property Securities Register until 3 February 2016.

After Retroflex defaulted, Knauf appointed receivers. The receivers took steps to take control of Retroflex, including attending the premises, changing the locks and gathering information about the company. Shortly after, Retroflex's members purported to appoint a liquidator. The liquidator changed the locks and asked the receiver's employee to leave the premises.

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The Court held that the liquidator was not validly appointed and that Knauf's unperfected security interest did not vest in Retroflex.

In reaching this decision, the Court considered whether Knauf had validly perfected its security interest by possession. Section 21(2)(b) of the PPSA provides that a security interest will be perfected if, amongst other things, the secured party has possession of the collateral, provided the possession is not as the result of seizure or repossession.

The Court held that seizure is the forcible taking of possession and, therefore, the receivers had taken possession of Retroflex's property by way of seizure. The Court noted that seizure and repossession are unacceptable forms of taking possession in order to perfect a security interest because they do not give notice of security interests in collateral to third parties.

This case highlights the need for a party to properly perfect its security interest or risk having that interest vest in its counterparty if the counterparty enters administration or liquidation.

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