

14 JULY 2010

Director pursued for unpaid redundancy entitlements

Unions are taking unprecedented legal action to recover worker entitlements from the personal assets of the former sole director of a company (Forgecast Australia Pty Ltd (**Forgecast**)) that went into liquidation earlier this year.

The case

The Australian Workers' Union (**AWU**) and Australian Manufacturing Workers' Union (**AMWU**) are claiming over \$2 million in unpaid severance entitlements, plus penalties, from the former sole director.

The Unions claim that 57 workers were made redundant but have not been paid in accordance with the redundancy provisions contained in applicable Union enterprise agreements. It is alleged the employees are owed between \$6,000 and \$98,000 each.

The claim has been brought under a new and untried provision of the *Fair Work Act 2009* (**Act**), which provides that a person 'involved in' a contravention of the Act may be found to have contravened the Act personally. In this case, it is alleged Forgecast breached the Act by failing to pay the redundancy entitlements and that the former director was a

person 'involved in' this breach.

What does being 'involved in' a breach of the Act include? The Act defines the term to mean where a person has:

- aided, abetted, counselled or procured the contravention;
- induced the contravention, whether by threats or promises or otherwise;
- been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- conspired with others to effect the contravention.

Watch this space

If this litigation is successful it will have far reaching consequences, particularly in the insolvency area. Courts may be more willing to 'pierce the company veil' and allow ex-employees and Unions to personally sue former company owners.

This is a real 'watch this space' case – we will update you as the matter progresses.



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