

ALERT

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Australian PPSA decision: court confirms administrators' conduct

We have recently had the opportunity to work with administrators in creating a strategy for the sale of plant and equipment at auction having regard to the new *Personal Property Securities Act 2009* (PPSA). This strategy was subsequently ratified by the court.

On 5 July 2012, the Federal Court of Australia handed down its first PPSA-related judgment in *Carson, in the matter of Hastie Group Limited (No 3)* [2012] FCA 719. In its judgment, the court approved the strategy to sell plant and equipment at auction in circumstances complicated by, inter alia, a lack of company information and the new PPSA regime.

In doing so, Justice Yates provides the first guidance from an Australian court for administrators selling assets outside the ordinary course of business as to what conduct may be held to be reasonable in identifying potential security interests in those assets.

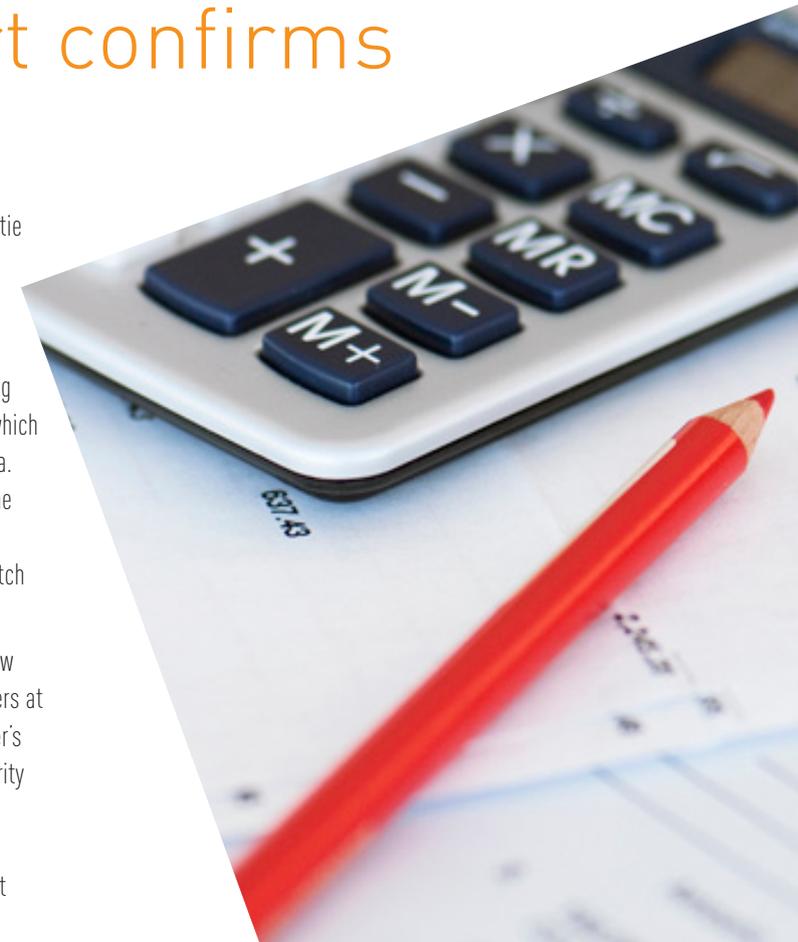
Background in brief

Numerous issues confronted the administrators of the Hastie group of entities upon their appointment. One issue involved determining

which of the plant and equipment in the possession of the Hastie group was encumbered by security interests and which could be sold at auction.

This was complicated by a variety of factors, including the inadequate books and records of the Hastie group which, among other things, failed to note which assets had moved between which of the 1,000 sites operated by the Hastie group across Australia. The matter was further complicated by the fact that most of the 987 registrations recorded against the Hastie group contained descriptions of the secured collateral which did not clearly match the plant and equipment on hand.

In particular, it was necessary to consider the impact of the new PPSA regime. Under the PPSA, a third party (here, the purchasers at auction) will only take goods free of the security interest holder's rights (here, the rights of the registrant or the rights of a security interest holder under the transitional provisions (collectively, **Secured Parties**)) in certain circumstances. There is some question as to whether these circumstances include the sale at



auction of plant and equipment. If such sale is not excluded by the PPSA, there is a risk that a Secured Party could subsequently claim rights in the assets or proceeds after their sale at auction, notwithstanding that the administrators were not on notice of those rights.

The strategy

The court relied upon the conduct adopted by the administrators in forming its views. The strategy developed included:

1. various notices of the administrators' intent to sell plant and equipment to be sent to registrants recorded on the PPS Register, to approximately 3,000 creditors and to the 12 financiers recorded in the group's books and records;
2. advertisements listed in various newspapers (both national and in the relevant states) requesting that any creditors with a right in the assets in the possession of the Hastie group contact the administrators; and
3. a period of 3 months, during which time the administrators would hold the proceeds of the auction in escrow in case a creditor's claim subsequently arose.

This strategy was intended to provide creditors with sufficient opportunity to alert the administrators to their claim without hindering the efficient and effective progress of the administration.

The lessons

For suppliers, *Hastie* confirms the importance of acting quickly to alert administrators / liquidators / receivers of any claim that you may have in assets in the company's possession. In doing so, it

is recommended that you provide sufficient detail to enable the insolvency practitioner to identify the assets the subject of your claim. Failure to put an insolvency practitioner on notice of your claim may result in those assets being sold.

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