

## Australia's first PPSA decision

---

On 27 June 2013 the first major *Personal Property Securities Act 2009* (Cth) (PPSA) judgment was handed down in Australia in the New South Wales Supreme Court. The decision in the case of *Maiden Civil (P&E) Pty Ltd; Richard Albarran and Blair Alexander Pleash as receivers and managers of Maiden Civil (P&E) Pty Ltd & Ors v Queensland Excavation Services Pty Ltd & Ors* [2013] NSWSC 852 provides guidance on the operation of the PPSA and how to resolve priority disputes.

### Facts

Queensland Excavation Services Pty Limited (QES) was involved in the leasing of large earthmoving vehicles. QES leased 3 pieces of Caterpillar construction machinery (Equipment) to Maiden Civil (P&E) Pty Ltd (Maiden). QES never registered its interest in the Equipment on the Northern Territory motor vehicle registry (a transitional PPSA register) meaning that it did not obtain the benefit of deemed perfection that is applicable to transitional security interests. QES also failed to register the security interest on the Personal Property Securities Register (PPSR) once it came into operation on 30 January 2012.

Subsequently, Maiden entered into a Loan Agreement secured by a General Security Deed whereby Maiden granted Fast Financial Solutions Pty Ltd (Fast Financial) a security interest in all present and after acquired property of Maiden. Importantly, the security was registered on the PPSR and included the Equipment.

Maiden defaulted under the Loan Agreement and receivers and managers were appointed. The receivers and managers sought to take possession of the Equipment to discharge the debt owed to Fast Financial.

The case would ultimately be determined upon the operation of the PPSA and whether the registered security interest took priority over the first in time unregistered interest.

### Decision

The court held that the *nemo dat* (you cannot give what you don't have) rule no longer applies in Australia where the PPSA operates.

The fact that QES was the owner of the Equipment did not persuade the court to give QES priority over Fast Financial. As Fast Financial had registered its security interest over the Equipment and QES did not, Fast Financial was given priority and the Equipment could be used to discharge Maiden's debt to Fast Financial.

As a result, QES lost all its entitlement to the Equipment when the receivers and managers re-possessed the Equipment.

### Relevance for businesses

The decision highlights the importance for all businesses to register every security interest on the PPSR to avoid the risk of losing priority. On giving up possession of assets owned, failure to register an interest on the PPSR may result in the true owner of goods losing priority to a registered creditor.

The operation of the PPSA and registering on the PPSR means that mere ownership of goods may not protect the true owners' rights and failing to register on the PPSR may result in a secured party taking priority.

The potential consequences of the PPSA may have a detrimental impact on your business. We advise businesses to:

1. seek legal advice on the operation and effect of the PPSA;
2. reconsider terms of trade; and
3. register security interests as a matter of urgency.

For further information please contact:

Meagan O'Connor  
Principal  
Sladen Legal  
03 9611 0106  
moconnor@sladen.com.au

Sladen Legal  
Level 5, 707 Collins Street  
Melbourne 3008  
Victoria Australia

PO Box 633  
Collins Street West  
Victoria 8007

T +61 3 9620 9399  
F +61 3 9620 9288

sladen.com.au

