

# ADMINISTRATORS, SALE OF GOODS, REMUNERATION LIENS AND THE PPSA

by Michael Murray | Apr 29, 2014 , on the website of the Australian Restructuring insolvency & Turnaround Association (ARITA)

The decision in *Renovation Boys* is of particular interest to those who are appointed over supply businesses that have competing claims from customers who have paid in full for their goods and from suppliers who rely upon contractual retention of title arrangements registered as PPSA security interests on the PPSR. Jason Harris of UTS reports on its significance.

The *Renovation Boys* case was brought before Justice Black on an urgent basis on 21 March 2014 by the administrators from Deloitte and a decision was given on 25 March: ***Re Renovation Boys Pty Ltd (admins apptd)*** [2014] NSWSC 340.

On 25 February 2014 the administrators had been appointed over *Renovation Boys*, a company involved in supplying bathroom products. The situation facing the administrators is one familiar to insolvency practitioners: a large volume of property that required sorting and organization, spread over several premises each of which involved accruing rent and employee entitlements at a time when the administrators had no funds to pay for the necessary work.

The company had over 1200 outstanding orders, worth more than \$1.5million. Many of these orders had been paid in full by customers, and the company's inventory system had allocated stock to fulfill the order. But in over 120 cases it had allocated the same items of stock to multiple customer purchase orders resulting in a shortfall of available stock. A further \$102,000 worth of stock was subject to security interests registered on the PPSR by suppliers, with some \$17,000 worth of this stock having already been allocated for customers who had paid in full.

The administrators organized the goods into various categories, differing according to a range of characteristics. For the purposes of this case, 3 categories were discussed:

- Category A goods were paid in full by customers and had been appropriated to individual purchase orders, and (crucially) where there were sufficient goods on hand to fulfill the orders
- Category C goods were the same as category A but there were insufficient goods to meet the purchase orders (i.e. the company's inventory system had allocated the same goods to multiple customer orders)
- Category E goods were covered by registrations on the PPSR, some of which were also category A goods.

## Directions sought

The administrators sought court directions:

1. as to who had title to the goods sitting in the various premises used by the company;
2. as to whether the administrators held a lien over the goods to indemnify them in respect of the costs incurred, and to be incurred, in maintaining possession and in organizing the stock in preparation for customer collection or sale;
3. as to whether the administrators could sell stock not collected by customers after 14 days.

The parties affected by the court orders included 1,291 customers, 4 suppliers, 3 lessors, 298 general trade creditors and 41 employees. The Court approved the administrators' proposal to send text messages to customer mobile numbers and voice messages to landline numbers. Other creditors would be telephoned and notified by email. Details would also be posted onto the administrators' website.

Justice Black held that title to category A goods had passed to customers under the NSW *Sale of Goods Act*, as the goods had been unconditionally appropriated to the customers. The same finding was made for goods in category C, but given the shortfall of stock these customers would need to take their goods *pari passu*. Where goods that fell into either category A or C were covered by security interests registered on the PPSR, his Honour held that the customers had taken the goods free from the security interests because of the operation of s 46 (dealing with taking free in the ordinary course of business) and s 47 (taking free of goods for personal, domestic or household use for less than \$5,000) of the PPSA.

## **Remuneration protected by an equitable lien**

The Court ruled that the administrators had an equitable lien over the goods given the substantial costs involved in their appointment, including rent for the premises, continued employment of workers and general organizational work to get the goods ready for customers to collect. The Court accepted the administrators' request for a direction that they would be justified in charging a 31% levy on the value of the goods to indemnify their position. This meant that customers and suppliers (as qualified in a further judgment **[2014] NSWSC 354**) could not take possession of the goods until they paid the levy. If any customers/suppliers had either not claimed their goods and paid the levy within 14 days then the administrators were justified in selling the goods and claiming their indemnity from the proceeds.

## **Comment**

The Renovation Boys case gives useful guidance on the relationship between the Sale of Goods Act (and its equivalents in other states) and the PPSA, particularly regarding the transfer of title and the operation of the taking free provisions. Importantly for insolvency practitioners, the decision provides protection for the administrators' equitable lien to cover the substantial costs and expenses and remuneration arising from the substantial work involved in organizing the stock for collection by customers.

In a tough retail environment, with increasing numbers of large retail businesses entering formal insolvency proceedings, this case provides comfort and certainty for insolvency practitioners that they will not be left carrying the costs of distributing assets.

Jason Harris, UTS, ARITA academic member.