

## White v Spiers Earthworks Pty Ltd [2014] WASC 139



With the transition period over and the PPSA now in full force, the business community has been eagerly awaiting further case law to clarify the application of the security provisions. In April 2014, the WA Supreme Court handed down a decision confirming the importance of registration and the consequences of a security interest not being perfected in a timely manner.

In the matter, Spiers Earthworks owned earthmoving equipment but lost the items to a Receiver and Manager appointed over the hirer, BEM Equipment Pty Ltd.

Spiers hired equipment to BEM in 2010 pursuant to a hiring agreement ('the Agreement'). Administrators and Receivers were appointed to BEM in July 2013. Spiers never registered the assets hired by BEM on the PPSR.

The Judge determined that the Agreement secured payment or performance of an obligation, meaning that Spiers' interest in the hired assets was a security interest and could be considered a PPS lease. Following on from this, the Receivers argued that Spiers' interest in the assets vested in BEM if the security interest was unperfected at the time of appointment.

Spiers argued that the vesting of an unperfected security interest in BEM upon its winding up could constitute an acquisition of property other than on just terms. This was rejected by the Court.

The case has many similar elements to last year's Maiden Civil matter, but in a further blow to Spiers, the Court also ordered that Spiers return assets they had repossessed prior to the Receivers' appointment. This would not have been the case if Spiers had properly registered on the PPSA.

Spiers' failure to register allowed the Receivers to take control of \$1.4m of assets.

While there has been talk of reforms to the PPSA in the area of hiring, these are still some time off and we are yet to see the full extent of the proposals. In the meantime however, it's imperative for your clients to be up to speed on the implications of releasing goods without protection mechanisms in place.

If you or your clients need further assistance in respect of the PPSA legislation, please do not hesitate to contact our office.