Federal Court of Australia

Getakate Pty Ltd v Beniki Finance Pty Ltd (formerly LSP Finance Pty Ltd) [2021] FCA 1118

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| File number(s): | QUD 288 of 2021 |
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| Judgment of: | **GREENWOOD J** |
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| Date of judgment: | 14 September 2021 |
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| Catchwords: | **CONTRACT** – consideration of an application for an order under the *Personal Property Securities Act 2009* (Cth) requiring the Registrar to register a financing change statement amending the registration of a security interest, under s 182(4) of that Act |
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| Legislation: | *Personal Property Securities Act 2009* (Cth), ss 178, 182, 286, 287 |
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| Division: | General Division |
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| Registry: | Queensland |
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| National Practice Area: | Commercial and Corporations |
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| Sub-area: | Commercial Contracts, Banking, Finance and Insurance |
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| Number of paragraphs: | 11 |
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| Date of hearing: | 14 September 2021 |
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| Solicitor for the Applicant: | Mahoneys |
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| Counsel for the Respondents: | No appearance |
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ORDERS

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|  | | QUD 288 of 2021 |
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| BETWEEN: | GETAKATE PTY LTD (ACN 135 694 950)  Applicant | |
| AND: | BENIKI FINANCE PTY LTD (FORMERLY LSP FINANCE PTY LTD) (ACN 605 034 599)  First Respondent  REGISTRAR OF PERSONAL PROPERTY SECURITIES  Second Respondent | |

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| order made by: | GREENWOOD J |
| DATE OF ORDER: | 14 SEPTEMBER 2021 |

THE COURT ORDERS THAT:

1. Pursuant to s 182 of the *Personal Property Securities Act 2009* (Cth), the second respondent forthwith register a financing change statement removing the registration 201708280069808 from the Personal Property Securities Register.
2. A direction pursuant to r 1.39 of the *Federal Court Rules 2011* (Cth) that the application be returnable notwithstanding that is less than five days since the application and the supporting affidavit was served on the respondents.
3. The first respondent pay the applicant’s costs of the proceeding.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

GREENWOOD J:

1. These proceedings are concerned with an application under s 182 of the *Personal Property Securities Act 2009* (Cth) (the “Act”) by an applicant who has given the first respondent an “amendment demand” under s 178 of the Act. By the application, the applicant seeks an order requiring the Registrar of Personal Property Securities (the “Registrar”) to register a “financing change statement” amending the registration: s 182(4)(a) of the Act.
2. The relevant registration of the “security interest” under the Act is Registration No. 201708280069808. The security interest holder is registered as LSP Finance Pty Ltd. The registration sets out a mailing address, a physical address and an email address for the security interest holder.
3. The applicant has a relevant interest in the collateral described in the registration in relation to the security interest, for the purposes of s 178 of the Act.
4. On 11 July 2019, the security interest holder issued an invoice to the applicant reflecting the extent of the financial interest as at 31 July 2019 as $38,019.27. That amount was paid by the applicant in full on 11 July 2019 as reflected in the bank statement for the applicant’s account in evidence in the proceedings. Having discharged the security interest, the applicant sought to administratively secure the lodging by the security interest holder of a “financing change statement” so as to amend the registration. The applicant sought to do that by emails addressed to the email address in the registration, on 18 August 2021, 19 August 2021, 24 August 2021, 25 August 2021 and 26 August 2021. There was no response to those emails.
5. On Sunday, 29 August 2021, the applicant caused an “amendment demand” to be made under the Act in respect of the registration. The giving of the amendment demand was in compliance with ss 286 and 287(c) of the Act having regard to the details set out in the registration.
6. Section 182 of the Act provides that the person who gave the amendment demand cannot make an application under s 182 before the end of five business days after the day the demand was given to the secured party.
7. In this case, the application under s 182 was filed on 8 September 2021 in conformity with s 182 of the Act.
8. I am satisfied that the proposed orders ought to be made including the order as to costs. The applicant sought to administratively resolve the issue of securing the registration of the filing of a financing change statement without the need to invoke the Court’s jurisdiction: ss 207 and 182. There was no response to the emails.
9. The applicant was thus required to seek an order of the Court. Having regard to the many attempts to resolve the matter administratively without the need to incur legal costs, the orders include an order that the first respondent pay the costs of the applicant. The material before the Court establishes that the application and supporting material was duly served on the first respondent on Friday, 10 September 2021 consisting of a covering letter, the originating application and the supporting affidavit of Mr Geoffrey Paul Hussin affirmed on 8 September 2021.
10. There has been no appearance by the first respondent.
11. A submitting notice was filed by the Registrar on 10 September 2021.

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| I certify that the preceding eleven (11) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Greenwood. |

Associate:

Dated: 14 September 2021