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## LawTalk Blog



# Has your business perfected its security interest under the Personal Property Security Act?

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The Supreme Court of Victoria has handed down a decision in the case of Swans Services Pty Ltd (In Liquidation) ("**Swans Services**") and Central Cleaning Supplies (Aust) Pty Ltd ("**Central Cleaning Supplies**"). Central Cleaning Supplies was appealing the liquidator's decision to seize cleaning equipment that had been supplied to Swans Services by Central Cleaning Supplies. The equipment had been supplied under a retention of title clause printed on both the "Standard Terms and Conditions" and each individual tax invoice issued by Central Cleaning Supplies.

Central Cleaning Supplies argued that its Standard Terms and Conditions, which were part of the Credit Application signed by the financial controller of Swans Services in September 2009, and the retention of title clause printed at the bottom of each tax invoice were incorporated as terms of the Credit Application. Therefore the cleaning equipment supplied pursuant to the Credit Application was security interest that was transitional security within section 308 of the *Personal Property Security Act* ("**PPSA**").

A transitional security interest is defined as an interest in collateral which was in force immediately before 30 January 2012. The interest must have come about by a transitional security agreement and that interest will continue. The PPSA must apply in relation to the security interest. The Court rejected this argument. One of the bases that the Court rejected this was that effectively, each individual tax invoice issued after 30 January 2012 (the registration commencement time for the purposes of the PPSA), formed a separate contract.

The Court found that the Credit Application did not include a term in which title in goods is retained until payment for them has been made. It therefore followed that the Credit Application was not a transitional security agreement because it did not provide for the granting of a security interest. Therefore, Central Cleaning Services did not have the benefit of the transitional provisions of the PPSA that would have resulted in perfection of its security interests. The main method of perfecting a security interest is to register the interest on the Personal Property Security Register ("**PPSR**") without the need to take any further step.

The Court found that Central Cleaning Supplies did not have a perfected security interest in the cleaning equipment as the transitional provisions did not generally apply to goods supplied subject to a retention of title claim after 30 January 2012.

The Court reiterated that the main method of perfecting the security interest (being the goods supplied) is to register the interest on the [Personal Property Security Register](#) established under the PPSA.

This case highlights the necessity for businesses supplying goods with a 'Retention of Title' clause appropriately drafted after the 30 January 2012, to 'protect its security interest' by registering the security interest on the PPSR.

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