Federal Court of Australia

Realtek Semiconductor Corporation v Jones (Administrator) [2024] FCA 1321

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| File number: | WAD 254 of 2024 |
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| Judgment of: | **FEUTRILL J** |
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| Date of judgment: | 22 October 2024 |
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| Date of publication of reasons: | 14 November 2024 |
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| Catchwords: | **CORPORATIONS** – application for order pursuant to s 588FM of the *Corporations Act 2001* (Cth) – security interest in assets, rights and property of company – failure to register collateral due to inadvertence – prejudice to unsecured creditors  |
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| Legislation: | *Corporations Act 2001* (Cth) ss 436A, 440D, 470, 588FL, 588FL(1), 588FL(2)(a), 588FL(2)(b), 588FL(2)(b)(iv), 588FL(4), 588FM, 588FM(2), 588FM(2)(b), 588FN*Personal Property Securities Act 2009* (Cth) ss 10, 18(1)m 19, 20, 21, 267*Federal Court Rules 2011* (Cth) Sch 3*Personal Property Securities Regulations 2010 (Cth)*  |
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| Cases cited: | *Bluewaters Power 1 Pty Ltd v Griffin Coal Mining Company Pty Ltd* [2019] WASC 438*K.J. Renfrey Nominees Pty Ltd (Trustee), in the matter of OneSteel Manufacturing Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325; 120 ACSR 117*Pit N Portal Mining Services Pty Ltd v Aurora Metals Ltd (admins apptd)* [2023] FCA 762*Re Accolade Wines Australia Ltd* [2016] NSWSC 1023 *Re Appleyard Capital Pty Ltd* [2014] NSWSC 782; 101 ACSR 629*Re Transurban CCT Pty Ltd* [2014] NSWSC 1909*Squadron Resources Pty Ltd v Highlake Resources Pty Ltd* [2018] FCA 1292  |
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| Division: | General Division |
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| Registry: | Western Australia |
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| National Practice Area: | Commercial and Corporations |
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| Sub-area: | Corporations and Corporate Insolvency |
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| Number of paragraphs: | 47 |
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| Date of hearing: | 22 October 2024 |
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| Counsel for the Plaintiff: | Mr D Banda |
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| Solicitor for the Plaintiff: | Bennett + Co |
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| Counsel for the Defendant: | Ms CC Spencer |
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| Solicitor for the Defendant: | Thomson Geer |

ORDERS

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|  | WAD 254 of 2024 |
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| BETWEEN: | REALTEK SEMICONDUCTOR CORPORATIONPlaintiff |
| AND: | MARTIN JONES, MATTHEW WOODS AND CLINT JOSEPH IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF NUHEARA LIMITED (ACN 125 167 133) (ADMINISTRATORS APPOINTED)Defendant |

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| order made by: | FEUTRILL J |
| DATE OF ORDER: | 22 October 2024 |

THE COURT ORDERS THAT:

1. To the extent necessary, the plaintiff have leave pursuant to s 440D of the *Corporations Act 2001* (Cth) to commence the proceeding on 12 September 2024.
2. The company Nuheara Limited (ACN 125 167 133) (Administrators Appointed) be joined as the second defendant in the proceeding, the defendants be renamed the first defendants in the proceeding, and service of the originating process and other materials filed in the proceeding on the second defendant be dispensed with.
3. Pursuant to s 588FM of the Corporations Act, 15 March 2024 be fixed as the time for the plaintiff to register on the Personal Property Securities Register (PPSR) established under the *Personal Property Securities Act 2009* (Cth), PPSR Registration Number 202403150083941 registered against Nuheara Limited (ACN 125 167 133) (Administrators Appointed) for the purposes of s 588FL(2)(b)(iv) of the Corporations Act.
4. The plaintiff pay the first defendants’ costs of the proceeding fixed in the sum of $4000.00.

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

REASONS FOR JUDGMENT

(REVISED FROM THE TRANSCRIPT)

FEUTRILL J:

1. The plaintiff, Realtek Semiconductor Corporation, is a company incorporated in Taiwan. In September 2022 Realtek subscribed for 2.5 million convertible notes in Nuheara Limited (ACN 125 167 133) (Administrators Appointed) (the company) pursuant to a convertible note subscription agreement. Subject to shareholder approval which was obtained in November 2022, the company granted a security interest, in substance, in all of the assets, property and rights of the company to secure a payment of the sum advanced under the subscription agreement, plus accrued interest, less any amount converted to shares in the company. That security interest was not registered on the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Cth) and *Personal Property Securities Regulations 2010* (Cth) until 15 March 2024.
2. On 7 August 2024 the defendants, which I will refer to as the administrators, were appointed administrators of the company under s 436A of the *Corporations Act 2001* (Cth), and by operation of s 588FL of the Corporations Act, which I will describe in more detail shortly, the security interest vested in the company upon the appointment of the administrators.
3. Realtek filed an originating process on 12 September 2024 by which orders were sought under s 588FM of the Corporations Act to fix the latest time for registration of the security interest to 15 March 2024. If granted, the security interest will not vest in the company and Realtek will have the benefit of the security interest created under the terms of the subscription agreement as contemplated by Realtek and the company in September 2022.
4. Realtek has read and relies on the affidavits of David Grant Sanders affirmed 5 September 2024 and 14 October 2024, an affidavit of Chloe Anne Placzek sworn 6 September 2024, affidavits of Jr-Neng Chang, also known as Eric Chang, affirmed 9 September and 7 October 2024 and an affidavit of Yean-Shao Liu, also known as Leroy Liu, sworn 8 October 2024. Realtek also relies on an email chain ending on 21 December 2022 and commencing on 19 December 2022, which is Exhibit 1.
5. The administrators, who appeared at the hearing of the originating process to, in effect, assist the Court, neither consented nor opposed the orders sought in the originating process. They rely on the affidavits of Hedley James Roost sworn 8 October 2024 and 21 October 2024, and Martin Bruce Jones sworn 8 October 2024.
6. Realtek also filed and relies on written submissions dated 27 September 2024 and submissions in reply dated 16 October 2024, and the administrators rely on written submissions dated 8 October 2024. Oral submissions were also made in support of the application and on behalf of the administrators this morning.
7. A preliminary matter that was raised in the materials the parties filed in the Court concerned s 440D of Corporations Act. That provision provides that, during the administration of a company, a proceeding in the Court against a company in relation to any of its property cannot be begun or proceeded with except with the administrator's written consent or with the leave of the Court and in accordance with the terms, if any, as the Court imposes.
8. In Realtek's written submissions, it contends that leave is not necessary because the company is not a party to the proceedings, but rather the administrators are the defendants. Given that the order sought will affect the property of the company that is available for distribution to its unsecured creditors, it is reasonably arguable that the proceeding is in relation to the property of the company or, in any event, that it should be joined as a necessary party to the proceeding. Nonetheless, the administrators, in effect, consent to the proceeding being commenced, and it is also clear that applications under s 588FM can be made after an administrator has been appointed and administration has commenced. Therefore, in the circumstances, I have little difficulty in being satisfied that, to the extent necessary, leave to commence the proceeding should be granted, and it should be granted *nunc pro tunc*.
9. I will make orders, for those reasons, granting leave to the extent necessary to commence the proceedings under s 440D, and I will also exercise the Court's power to join the company as a defendant to the proceeding and dispense with the need to serve the originating process and other materials on the company given that it is, in effect, represented by the administrators.
10. I have already touched briefly on the background to the application, to the extent it is necessary to do so, in order to explain my reasons for the orders I will make. But to add some additional context, Realtek is in the business of designing and selling technology products. Its headquarters are in Taiwan, but it has personnel in China, Singapore, United States, Japan and South Korea, but does not have any employees in Australia. As I have mentioned, in September 2022 Realtek and the company entered into a convertible note subscription agreement, by which Realtek subscribed to, and the company agreed to issue 2.5 million notes for a subscription amount of AUD2.5 million.
11. The subscription agreement included terms to the effect that the company granted the security to Realtek. In the course of negotiating that agreement, Mr Chang, who is the Vice-President of Finance, was the relevant officer of Realtek responsible for negotiating and agreeing to the terms of the subscription agreement, and he was also assisted by James Shiau, an in-house counsel of Realtek, in that process. In the course of the negotiations and ultimately after the agreement was made, Realtek did not seek any legal advice from a law firm in Australia regarding the agreement. When the agreement was made, the company made a public announcement on the Australian Stock Exchange (ASX) in September 2022 about the agreement and the fact that it conferred the security interest, and after the shareholders approved the terms of the agreement, including the security agreement as required under the relevant provisions of the listing rules, the company made a further ASX announcement on 29 November 2022 confirming that shareholder approval had been obtained.
12. The security interest, as I mentioned earlier, was not registered until 15 March 2024 and, therefore, was not registered within 20 business days after the parties made the convertible note agreement or after shareholder approval of the security being granted. Subsequently, in March 2024 Realtek consulted with a legal firm who acts for it in these proceedings, and obtained advice from Mr Sanders, who recommended that the security interest be registered on the PPSR. After a short number of exchanges of correspondence between 13 March and 15 March 2024 the security interest was in fact registered, as I have already mentioned, on 15 March 2024. In accordance with the provisions of the PPS Act, a copy of the verification statement in respect of the security interest was served on the company on 18 March 2024.
13. In email correspondence between Justin Miller, then the Managing Director of the company, and Mr Liu, in December 2022, Mr Miller provided Mr Liu with responses to questions Mr Liu had asked about how the company was to ‘exercise the process of “security on collaterals”’. After the annual general meeting approval of this security, Mr Miller indicated:

Shareholders have approved so this is legally in place. If you would like to register the security then this is a process that you undertake with the government registration body. This can be accessed here: Personal Property Securities Register (ppsr.gov.au)

You will need to create an account and follow the application process for the security to be placed on the securities register. If you need any help we can provide you with a company who could assist.

1. Subsequently, in response to a further question by Mr Liu about the process to execute the note conditions under cl 10.1(a) of the subscription agreement Mr Miller said:

This is approved by Shareholders. If you want to place this on the public register then please refer to my instructions from the previous email on /how [to] access the government website. This is not necessary, but it does place it on public record [if] this provides comfort to Realtek.

1. After receiving that email, Mr Liu sent the email chain including two statements of Mr Miller, to which I have made reference, to Mr Chang on 21 December 2022. In Mr Chang's affidavit of 9 September 2024 he deposes that Realtek did not seek legal advice from the law firm in Australia regarding the draft of the subscription agreement. When he had formed the view that the terms of the agreement were acceptable, he was not aware there was a legal requirement in Australia to register the security within 20 business days of signing the subscription agreement; that Mr Shiau, to whom I have already referred, also did not know there was such a requirement and that he had not been told that Realtek was required to register the security in Australia until about 13 March 2024, when he consulted with the legal advisers in Australia.
2. In his affidavit affirmed 7 October 2024 Mr Chang's version of events is slightly different. The email chain to which I have referred was drawn to his attention, he was prompted to search his inbox and he located that email chain. He then deposes that up until having taken those actions, he did not remember that Mr Liu had sent him an email on 21 December, and that having refreshed his memory from those communications, he said:

8 Having now reviewed the email from Mr Liu to me on 21 December 2022, I recall receiving it and understanding from Mr Miller's response to Mr Liu that it was not necessary for Realtek to do anything further in relation to its Security in order for the Security to have full legal effect.

9 Had I known or been made aware that the Security could be ineffective because Realtek had not registered on the PPSR, I would have taken immediate steps to have the Security registered.

1. I accept Mr Chang's evidence and explanation of the reasons that the security interest was not registered within 20 business days of execution of the subscription agreement or obtaining shareholder approval for the security.
2. The PPS Act and PPS Regulations, with limited exceptions, apply to all security interests in personal property and make provision for registration of those security interests on the PPSR established under that Act and Regulations. The PPS Act makes provision for certain rules relating to security interests, and these rules address priorities between security interests and the circumstances in which a person takes personal property free of security interests. The rules also address the transfer and enforcement of security interests.
3. The concept of ‘perfection of a security interest’ is central to the operation of these provisions. Perfection of a security interest is also important because if any of certain insolvency events occurs with respect to the grantor and the security interest is unperfected at that time, that security interest vests in the grantor immediately before the insolvency event, and thereby the grantee loses the security interest: s 267 of the PPS Act.
4. Section 19 describes the circumstance in which the security interest is enforceable and is attached to what is referred to as the collateral. Section 20 describes the circumstance in which a security interest is enforceable against a third party in respect of particular collateral, and the term ‘collateral’ means personal property to which the security is attached, that is, the secured property. A security agreement means an agreement or act by which a security interest is created, arises or is provided for; or writing evidencing such an agreement or act: s 10. A security agreement is effective according to its terms: s 18(1). A security interest in particular collateral can be perfected if the security interest is attached to the collateral, it is enforceable against a third party and a registration of the PPS Act is effective with respect to that collateral: s 21. That is the regime that the PPS Act creates.
5. Separately, s 588FL(1) of the Corporations Act, provides as follows:

(1) This section applies if :

(a) any of the following events occurs:

…

(ii) an administrator of a company is appointed under section 436A, 436B or 436C;

… and

(b) a PPSA security interest granted by the company in collateral is covered by subsection (2).

1. Section 588FL(2) relevantly provides:

(2) This subsection covers a PPSA security interest if:

(a) at the critical time, or, if the security interest arises after the critical time, when the security interest arises:

(i) the security interest is enforceable against third parties under the law of Australia; and

(ii) the security interest is perfected by registration, and by no other means; and

(b) the registration time for the collateral is after the latest of the following times:

(i) 6 months before the critical time;

(ii) the time that is the end of 20 business days after the security agreement that gave rise to the security interest came into force, or the time that is the critical time, whichever time is earlier;

(iii) if the security agreement giving rise to the security interest came into force under the law of a foreign jurisdiction, but the security interest first became enforceable against third parties under the law of Australia after the time that is 6 months before the critical time—the time that is the end of 56 days after the security interest became so enforceable, or the time that is the critical time, whichever time is earlier;

(iv) a later time ordered by the Court under section 588FM.

1. Section 588FL(4) provides that the PPS Act security interest vests in the company at the following time, unless the security interest is unaffected by operation of s 588FN (which is not presently relevant):

(a) if the security interest first becomes enforceable against third parties at or before the critical time—immediately before the event mentioned in paragraph (1)(a);

(b) if the security interest first becomes enforceable against third parties after the critical time—at the time it first becomes so enforceable.

1. Now, the effect of all of that is that if the collateral is registered within 20 business days after the security agreement comes into force, the security interest prevails over the interests of unsecured creditors even if the company goes into a liquidation or administration within six months. However, if it is not registered within that period and the company goes into liquidation or administration within six months after it is registered, then security interest vests in the company for the benefit of creditors generally unless a later time is fixed under s 588FM.
2. As Brereton J observed in *Re Appleyard Capital Pty Ltd* [2014] NSWSC 782; 101 ACSR 629:

[13] … In other words, the effect of not registering within 20 days is to expose the secured creditor to the loss of its security if the company goes into liquidation [or administration] within 6 months of the actual date of registration, when otherwise the security would have been effective even in the event of liquidation or administration within 6 months. Essentially, the purpose and effect of an order under s 588FM is to avoid the vesting of the security interest in the company if it goes into liquidation or administration within 6 months after the actual date of registration, and thereby preserve the secured creditor’s security, to the necessary detriment of the unsecured creditors for whose benefit the security interest would otherwise vest in the company. The only utility of such an order is in the event that the company does go into liquidation or administration within 6 months.

That, of course, describes precisely the circumstances in which Realtek and the company find themselves in this case.

1. It follows that s 588FL(2)(b)(iv) contemplates that the Court may order a later time than the time prescribed in the other parts of s 588FL(2)(b) under s 588FM and, if so, that later time fixed is the latest time for registration of the collateral for the purposes of s 588FL.
2. Section 588FM provides that a company or any person interested may apply to the Court for an order fixing a later time for the purposes of s 588FL(2)(b)(iv). And, relevantly, s 588FM(2) provides:

(2) On application under this section, the Court may make the order sought if it is satisfied that:

(a) the failure to register the collateral earlier:

(i) was accidental or due to inadvertence or some other sufficient cause; or

(ii) is not of such a nature as to prejudice the position of creditors or shareholders; or

(b) on other grounds it is just and equitable to grant relief.

1. Further, the Court may make an order under s 588FM after the critical time and the vesting event: *Pit N Portal Mining Services Pty Ltd v Aurora Metals Ltd (admins apptd)* [2023] FCA 762 at [12] and the authorities there cited.
2. With that overview of the relevant facts and the applicable legal framework, I turn now to consider the question of whether a later time should be fixed in this case.
3. The issue for determination is whether a later time should be fixed on the basis the Court is satisfied of one or more of the criteria described in s 588FM(2). Realtek, evidently, seeks to satisfy the Court of all three criteria, but the first and primary basis upon which it has made its submissions is that the failure to register the collateral earlier was due to inadvertence.
4. For the reasons I gave earlier regarding my acceptance of Mr Chang's evidence, I am satisfied that the failure to register the security interest falls within the meaning of inadvertence in s 588FM(2), as has been described in numerous authorities. In *Bluewaters Power 1 Pty Ltd v Griffin Coal Mining Company Pty Ltd* [2019] WASC 438 Vaughan J observed (footnotes omitted):

40 A lack of legal understanding as to the requirements for registration may amount to 'inadvertence'. The concept is concerned with human error or oversight or being 'not properly attentive'.

41 Inadvertence will readily be found where an error of a secured creditor in not attending to registration of its security within time is innocent and does not result from any disregard of statutory obligations.

42 Where an applicant relies on its own inadvertence its proper officer should give appropriate direct evidence of that inadvertence.

1. It includes failure to advert to or understand the requirement for registration within a specified period, and innocent error in the sense of failure to register through ignorance of the legal requirement to do so, or of the consequences of not so doing: *Re Appleyard* at [10] and the authorities there cited. Thus, inadvertence will readily be found where an error of a secured creditor in not attending to registration of its security within time is innocent and does not result from any disregard of its statutory obligations: *Re Accolade Wines Australia Ltd* [2016] NSWSC 1023 at [14] (Brereton J).
2. The position adopted by the administrators of neither consenting to nor opposing the application but drawing the Court's attention to matters that may assist the Court resulted in the administrators bringing to the Court's attention the email chain to which I have made reference. As I have already said, I am satisfied that provides an adequate explanation for the failure to register. The other criteria in s 588FM are also relevant, not only in terms of enlivening the Court's discretion, but they are also matters which inform the exercise of that discretion; namely, the extent to which there is a prejudice to the position of creditors or shareholders if an order fixing a later time were made, and more broadly, whether it is just and equitable to grant relief.
3. Prejudice to unsecured creditors is not necessarily established merely by demonstrating that the return to them in an administration or liquidation of the company would be diminished if the security interest does not vest in the company. The position of the unsecured creditors may have been the same if there had been timely registration. Rather, the ‘type of prejudice that is of particular relevance is prejudice attributable to the delay in registration rather than prejudice from making the order (which is inevitable)’. Put another way, the relevant prejudice is that which flows from the failure to register earlier, not from making the order: *Re Appleyard* at [30].
4. In *Re Transurban CCT Pty Ltd* [2014] NSWSC 1909, Brereton J made the following further relevant observations:

13 In Appleyard Capital, I also discussed the significance of risk or prejudice to unsecured creditors and concluded that although the presence or absence of such prejudice was a relevant discretionary consideration, relevant prejudice was not necessarily established merely by showing that the dividend to unsecured creditors would be reduced if the security interests were not to vest in the company, as those creditors may well have been in no better position had the security interest been registered in a timely manner. The type of prejudice that is of particular relevance is prejudice attributable to delay in registration, rather than prejudice from making the order (which is inevitable). The period of delay in effecting registration is relevant, primarily because the shorter the delay the less likely that failure to register within time will have had any impact. …

1. The significance of the passage of time is mainly related to the possibility that competing interests have arisen, in particular, through others having dealt with the company on the footing that the collateral was unencumbered. The mere fact that if the extension is granted, unsecured creditors will be deprived of the benefit of the security interest vesting in the company, and thus receive a decreased dividend is no objection to making an order.
2. The administrators have made some relevant submissions in respect of these matters. I largely accept these submissions based on the affidavit material that has been filed. The creditors of the company have been notified of the application. Only one creditor, who I will refer to as Salutica, has expressed to the administrators any view regarding the application. The administrators have considered that the prejudice identified by that creditor is in the nature of inevitable prejudice to unsecured creditors of the kind I have just referred to. Mr Jones in his affidavit otherwise provides an explanation of the nature of the pool of creditors and the process by which notice was given to them. I am satisfied on the basis of the material deposed in his affidavit that reasonable and adequate notice of the originating process was provided to creditors.
3. There is one secured creditor whose registrations predate the subscription agreement, and there is no suggestion that that creditor would be negatively affected by the order sought. The administrators also make the observation, which I accept, which is that it is not a case where another party has registered a security interest between the time when Realtek ought to have registered its interest and when it was actually registered. The creditors that are unsecured appear to be employees, ordinary trading creditors, and government and statutory authorities. The administrators make the submission, which I also accept, that in the circumstances, there do not appear to be any suggestion that those creditors are of a kind that would have acted differently had the Realtek security interest been registered earlier than it was in fact registered.
4. The administrators also take the view that the company is insolvent. That is a relevant factor, but for the reasons just canvassed, that is not determinative in this case because the prejudice to the creditors is not influenced by the insolvency in any meaningful way.
5. Returning to the one creditor who has made the objection, its objections may be summarised as contending that the ignorance of the law on the part of Realtek was no excuse, and that the creditors will be prejudiced because the pool of assets, if an order is made, would be diminished. That is to say, it really attacks the statutory ground, which I have found is satisfied for making an order, and it addresses the kind of prejudice that is inevitable from an order being made, which is not, for the reasons already canvassed, a reason for refusing to make an order.
6. For completeness, I should add that s 588FM(2) confers a broad discretion informed, at least in part, by what is just and equitable and as such, the provision is to be construed liberally for the purposes for which the power is intended: *Squadron Resources Pty Ltd v Highlake Resources Pty Ltd* [2018] FCA 1292 at [35(b)] (McKerracher J).
7. Regarding the just and equitable ground in s 588FM(2)(b), Davies J said in *K.J. Renfrey Nominees Pty Ltd (Trustee), in the matter of OneSteel Manufacturing Pty Ltd v OneSteel Manufacturing Pty Ltd* [2017] FCA 325; 120 ACSR 117 at [28]:

To make an order under s 588FM(2)(b), the Court must be satisfied that it is just and equitable to grant relief. The circumstances that would justify an order extending the time for registration on the just and equitable ground to avoid the operation of s 588FL(4) will depend upon the circumstances of each particular case. Some general observations can be made though. As the purpose and effect of an order under s 588FM is to avoid the vesting of the security interest in the company and preserve the secured creditor’s security, it is relevant in determining whether it is just and equitable to fix a later time to consider the interests of the creditors: [*Re Appleyard* at [29]-[30]]. …

1. Davies J then went on to make the same observations that I have made earlier about the nature of the prejudice, before observing that Brereton J in *Re Appleyard* stated that the type of prejudice that is of particular relevance is prejudice attributable to the failure to effect registration earlier, with a delay in registration of the security interest causing prejudice to creditors who have transacted with the company to their detriment being unaware of the creation of a security interest. As I have already mentioned, in this case, there is no suggestion that prejudice of that nature is present. Taking into account Realtek's explanation for its failure to register the collateral earlier, and the absence of any evidence of relevant prejudice to the unsecured creditors, I am satisfied that the criteria for s 588FM(2) are met, and the power should be exercised to fix a later date than the date registration was in fact made for the purpose of s 588FL(2)(b)(iv).
2. The last matter I need to deal with is the question of costs. Realtek submits that there should be no orders as to costs on the application, whereas the administrators submit that Realtek should pay their costs of participating in the proceeding. I am satisfied that it is appropriate in an *inter partes* environment on an application of this nature for the administrators to adopt the position they have adopted in this case, which is to neither consent nor oppose the orders being sought, but to place before the Court material that the administrators consider to be relevant to the matters the Court is to determine without necessarily adopting a completely adversarial approach. That, in my view, is what the administrators have done in this case.
3. Although no matters they raised ultimately were of particular relevance to the proceeding, some of the matters led to a more in-depth examination of the reasons for the failure of Realtek to register the security interest within the time required, or within the 20-day period. I am reluctant to have the burden of that participation, which I consider to be appropriate, fall on the unsecured creditors in the administration of the company in circumstances where, albeit there is a good explanation, Realtek has not or did not register a security interest within the 20-day business period and, in effect, seeks the Court's indulgence to extend that time so as to avoid the consequences of that failing. Therefore, I do consider it appropriate that the Realtek pay the administrators’ costs of the proceeding.
4. I also consider it appropriate to fix those costs because, in substance, if it were to be taxed or involve further submissions and argument about the costs, the costs of undertaking that process itself would unnecessarily add to the costs incurred in these proceedings and, bearing in mind it is unlikely to be a complete recovery of all costs, it would further diminish those assets available for distribution to the unsecured creditors as the administrators were the priority in that distribution with respect to their costs. The administrators submit that an amount calculated in accordance with Sch 3 of the *Federal Court Rules 2011* (Cth), equivalent to the amount that would be applicable on a short form bill of costs for the making of a winding up order or dismissal of such an application up to and including entry and service of the order under s 470 of the Corporations Act would be appropriate, and that is in the sum of $4,862.
5. Having foreshadowed that, I would be minded to make orders for costs in favour of the administrators. Given that Realtek is a foreign company and that counsel for Realtek has not been able to obtain instructions in the short period of time given, Realtek is not in a position to consent to such an order nor to really make any submissions opposing the amount in which the administrators seek to fix those costs. Adopting what I think is a pragmatic approach in regard to the dimensions of the case and the appropriateness of fixing costs on an application such as this one, I will make an order fixing the costs in the sum of $4,000.

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| I certify that the preceding forty-seven (47) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Feutrill. |

Associate:

Dated: 14 November 2024