

The dangers of intermeddling

12 April 2018

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A recent Federal Court decision puts administrators on notice that they must carefully consider the consequences of dealing with other people's assets.

The decision of Justice Perram in *White, in the matter of Mossgreen Pty Ltd (Administrators Appointed)* [2018] FCA 471, highlights the care that administrators must take when administering property outside the scope of their authority.

In Mossgreen, administrators were appointed to a company that conducted a business that ran an auction house and gallery.

The administrators found that the company's inventory control system was deficient, resulting in thousands of auction lots held by the company that had yet to be auctioned, yet to be delivered or yet to be collected by bidders. These goods were consignment goods that the company held as bailee for each relevant consignor.

Despite having no claim on the consigned goods and no need to deal with them for the purposes of administering the company's property, the administrators decided to take charge of the consigned goods with a view to returning them to the consignors.

To facilitate the return of the consigned goods, the administrators undertook a full stocktake of the company's inventory, which cost over \$1million. The administrators sought to recover that cost by requiring the consignors to pay a levy for the release of their property. The administrators asserted that they were entitled to the payment of the levy before the release of the goods, based on the existence of an equitable lien in their favour.

However, the Court disagreed. Justice Perram found no equitable lien existed and that the administrators were not entitled to payment of the levy.

The court found that, in undertaking the stocktake, the administrators were not attempting to achieve any outcome for the company but rather, on the administrators' own evidence, were trying to ensure equal treatment of the consignors and the disposition of their goods in an orderly fashion. His Honour found that despite the administrators' noble sentiment behind the stocktake, it did not involve the company's business, property or affairs.

The administrators had a number of other options available to them in dealing with the consignment goods, but did not avail themselves of them and rather, undertook the expensive stocktake instead. The administrators intermeddled in other people's goods when they had not been invited to do so. The administrators undertook the stocktake outside of their statutory functions and no equitable lien arose.

This decision is a timely reminder for administrators to carefully consider the circumstances when they take it upon themselves to deal in other people's assets for reasons that are not connected to the administration.

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