

Model Law on Cross-Border Insolvency Cases

CASE TITLE: *Tucker, in the matter of Aero Inventory (UK) Limited v Aero Inventory (UK) Limited* [2009] FCA 1354 (20 November 2009)

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Editorial Remarks by Theresa Morgante

Facts:

On 12 November 2009, relief of a provisional nature was granted. The Plaintiff's were appointed by an order of the High Court of Justice of England and Wales to be joint administrators of the Defendant. Since the Defendant owns and controls property in Australia, the Plaintiff seeks the UK Proceeding be recognised as a 'foreign proceeding' in Australia (paras (a) and (b) respectively of Article 2), a declaration the Plaintiff's are 'foreign representatives' (para (d) of Article 2), and the Defendant's assets be preserved (Article 21).

Held:

This case made reference to *UNCITRAL Model Law on Cross Border Insolvency*, Article 19 which stated the relevant considerations to grant of provisional relief of a recognised foreign proceeding (which is referenced in Schedule 1 to the *Cross Border Insolvency Act 2008* (Cth)). These considerations are unless the matter is heard, determined, further orders or through the Plaintiff's written consent, there is not to be an enforcement of charge on the Defendants property. If it is subject to a lien and is in lawful possession of the lien or pledge then the holder is able to continue to possess the property and furthermore cannot sell the property to enforce the lien or pledge. The owner or Lessor is not able to take the possession or recover the property and the property cannot be subject to other proceedings.

Furthermore, Lindgren J stated if certain matters are found in the foreign proceeding, then Australia would be bound by it unless it is "*would be manifestly contrary to the public policy of [Australia]*": Article 17(1) of Article 6.

In [Tucker, in the matter of Aero Inventory \(UK\) Limited v Aero Inventory \(UK\) Limited \(No 2\) \[2009\] FCA 1481 \(10 December 2009\)](#) further sets out Lindgren J's reasoning on this matter.