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NEWS

Equitable lien over SMSF's artwork not prevented by SIS reg 13.14

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International Art Holdings Pty Ltd (admin apptd) v Adams

The NSW Supreme Court has ruled that reg 13.14 of the SIS Regulations does not prevent a court from imposing an equitable lien or statutory lien over artwork owned by a self-managed superannuation fund (SMSF) to secure an administrator's expenses in determining competing claims.

The plaintiffs carried on business as an art dealer whereby artwork was purchased and sold to investors who were then assisted with the placement of those artworks for rent by third parties. As a co-trustee of a SMSF, one of the defendants had purchased 8 artworks through the plaintiffs and signed a rental agreement to lease them out to earn income for the super fund. In October 2010, an administrator was appointed who then discovered various discrepancies with the artworks in the possession of the plaintiffs.

The Court ruled that the administrator was entitled to a statutory lien over the artworks in respect of which the plaintiffs had a leasehold interest, and an equitable lien in the case of other artworks. Although the plaintiffs did not have a right to ownership of the artworks, the Court held that they did have a proprietary right under the leasing arrangements. The Court also rejected the submission by the SMSF trustee that an equitable lien should not be imposed over the artworks as it would result in the assets of her fund losing its complying fund status. While reg 13.14 of the SIS Regulations prohibits a trustee from giving a charge over, or in relation to, an asset of the fund, the Court said reg 13.14 only applies to the imposition of a charge or lien by the *trustee*, and not a court-imposed equitable lien or statutory lien. (*International Art Holdings Pty Ltd (admin apptd) & Ors v Adams & Ors* [2011] NSWSC 164, NSW Supreme Court, Ward J, 7 March 2011.)

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