COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *KBA Canada, Inc. v. Supreme Graphics Limited,* 2014 BCCA 117

Date: 20140331
Docket: CA040176

Between:

KBA Canada, Inc.

Respondent
(Plaintiff)

And

Supreme Graphics Ltd.

Appellant
(Defendant)

And

3S Printers Inc., CIT Financial Ltd. and The Attorney General on behalf of Minister of National Revenue

Respondents
(Defendants)

Before: The Honourable Mr. Justice Low
The Honourable Madam Justice Neilson
The Honourable Mr. Justice Groberman

On appeal from: An order of the Supreme Court of British Columbia, dated July 19, 2012 (*KBA Canada, Inc. v. 3S Printers Inc.*, 2012 BCSC 1078, Vancouver Docket S110300)

Counsel for the Appellant:	R.D.W. Dalziel A. Amos-Stewart
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Counsel for the Respondent CIT Financial Ltd.:	G.G. Plottel
Place and Date of Hearing:	Vancouver, British Columbia October 1, 2013
Place and Date of Judgment:	Vancouver, British Columbia March 31, 2014

Written Reasons by:
The Honourable Mr. Justice Groberman

Concurred in by:
The Honourable Mr. Justice Low
The Honourable Madam Justice Neilson

Summary:

KBA's financing statement in respect of its security interest in a printing press was discharged by a third party, apparently inadvertently. By the time KBA became aware of the discharge and re-registered a financing statement, it had lost priority over other secured interests. It applied to a judge of the Supreme Court to reinstate the priority of its security interest. The judge found that the court had equitable jurisdiction to grant the relief sought, and gave KBA's interest priority over the interests of two other creditors. One of those creditors appealed. Held: *Appeal allowed. The statutory priorities scheme of the Personal Property Security Act applies and cannot be overridden by courts on equitable grounds.*

Reasons for Judgment of the Honourable Mr. Justice Groberman:

[1] The issue on this appeal is whether the Supreme Court may exercise equitable jurisdiction to adjust the priority regime set out in s. 35(1) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 (the "*PPSA*") where it considers the results of that regime to be unfair.

[2] The plaintiff, KBA Canada, Inc. ("KBA") had a registered security interest in an offset printing press in the possession of 3S Printers Inc. ("3S"). A third party discharged the registration without authorization, apparently through inadvertence. By the time KBA became aware of the discharge and re-registered its interest, it had lost its priority under the express scheme set out in the *PPSA*.

[3] After 3S became insolvent, KBA commenced proceedings seeking equitable relief to restore the priority of its charge. The claim was opposed by two other secured creditors, Supreme Graphics Ltd. ("Supreme Graphics") and CIT Financial Ltd. ("CIT"). All parties agreed that the matter should be dealt with by way of a summary trial. KBA was successful in the summary trial, and Supreme Graphics appeals with the support of CIT.

Factual Background

[4] In November 2004, 3S entered into a general security agreement ("GSA") with Supreme Graphics. The GSA covered all existing and after-acquired property of

3S. Supreme Graphics registered a financing statement in respect of its interest in the personal property registry.

[5] A year later, 3S entered into an arrangement to obtain an offset press from KBA's parent company. The financing arrangement was somewhat complicated. KBA's parent company sold the press to Wells Fargo Equipment Financial Corporation ("Wells Fargo"), which leased the equipment to 3S for a term of 96 months. Under the arrangement, 3S had the option of obtaining title to the press at the end of the lease period upon payment of the sum of $1. If 3S defaulted on the lease, Wells Fargo was entitled to have KBA's parent company (or a related company nominated by it) repurchase the press and take an assignment of Wells Fargo's rights as against 3S.

[6] Wells Fargo's interest in the offset press was a "purchase money security interest" ("PMSI") as that term is defined in s. 1(1) of the *PPSA*. Wells Fargo registered a financing statement in respect of its PMSI in the personal property registry in November 2005.

[7] In September 2006, 3S entered into a second GSA, this time giving CIT security over its existing and after-acquired property. A financing statement with respect to the second GSA was promptly registered in the personal property registry.

[8] In early 2010, 3S defaulted on its lease payments in respect of the offset press. On March 15, 2010, Wells Fargo exercised its right to have the press repurchased from it; KBA's parent company complied with its obligations by having KBA purchase the press. In April 2010, a financing change statement was filed to register the transfer of Wells Fargo's security interest in the press to KBA.

[9] In May 2010, Wells Fargo mistakenly filed a financing change statement discharging KBA's security interest. It is not clear, on the evidence, how this error occurred. Surprisingly, the *PPSA* appears to allow anyone to file a financing change

statement discharging a security interest.[1] The registrar's practice is to send verification statements to persons whose security interests have been discharged (a practice authorized by s. 49(2) of the *PPSA*). The verification statements are sent by ordinary mail. The evidence in this case is that neither KBA nor its agent had any record of having received a verification of the discharge.

[10] KBA first learned of the discharge on July 15, 2010. By that time, it was too late to take advantage of the limited curative provision contained in s. 35(7) of the *PPSA*:

> 35(7) If … a registration has been discharged without authorization or in error, and the secured party re-registers the security interest not later than 30 days after the … discharge, the … discharge does not affect the priority status of the security interest in relation to a competing perfected security interest that immediately before the … discharge had a subordinate priority position, except to the extent that the competing security interest secures advances made or contracted for after the … discharge and before the re-registration.

[11] Wells Fargo re-registered a financing statement in respect of the PMSI on July 16, 2010, and subsequently registered a transfer of the interest to KBA. Wells Fargo then attempted to obtain agreements from other secured creditors to waive their priority over the KBA charge. While it did obtain such agreements from at least two creditors, it was not able to convince Supreme Graphics and CIT to waive their priority.

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[1] Section 46(2) allows for the filing of discharges, but does not set out who may file them:

> 46(2) Information in a registration may be removed from the records of the registry
> …
> (b) on receipt of a financing change statement discharging … the registration.

The *Personal Property Security Regulation*, B.C. Reg. 227/2002 requires financing change statements to be filed electronically (s. 2) and provides that a statement discharging a registration must show the registration number of the charge to be discharged, the name of the debtor, and the name or registration party code of the person seeking the discharge (s. 35). There is no requirement that the person seeking the discharge be the holder of the charge, or, indeed, that that person have any connection to the charge. Further, s. 48 of the Regulation states that "A registration may be effected in the registry without proof that … the registering party has authority to submit the registration."

It is notable that the *Uniform Commercial Code*, on which is the *PPSA* is loosely modelled, does specify, in §9-509(d), that a termination statement can only be filed by the secured party of record, or, in very limited circumstances, the debtor.

[12] KBA ultimately seized the offset press and sold it for €800,000. The net proceeds are being held in trust pending final determination of priorities among the secured creditors.

Statutory Provisions Governing Priority

[13] Section 35 of the *PPSA* sets out the general (or "residual") priority rule for security interests:

> 35 (1) If this Act does not provide another method for determining priority between security interests,
>
> (a) priority between perfected security interests in the same collateral is determined by the order of the occurrence of the following:
>
> (i) the registration of a financing statement without regard to the date of attachment of the security interest ….

[14] Section 34 provides an exception to this rule, giving a PMSI what is often described as a "super-priority":

> 34(1) Subject to section 28, a purchase money security interest in
>
> (a) collateral … that is perfected not later than 15 days after the day the debtor … obtains possession of the collateral ….
>
> …
>
> has priority over any other security interest in the same collateral given by the same debtor.

[15] Subject to a rather esoteric argument put forward by Supreme Graphics which I will mention later in these reasons, this section would have given KBA's interest in the offset press priority over the interest of Supreme Graphics up until the time KBA's financing statement in respect of the PMSI was discharged by Wells Fargo. CIT's interest would have ranked subsequent in priority to both KBA's interest and that of Supreme Graphics.

[16] Upon the discharge of the financing statement in respect of the PMSI, KBA's security interest ceased to be a perfected one. It became a perfected interest again only when it was re-registered in July 2010. It no longer qualified for super-priority under s. 34 (since more than 15 days had elapsed since S3 took possession of the

offset press). By virtue of the priority scheme established by s. 35(1), KBA's security interest ranked subsequent to both the interests of Supreme Graphics and CIT.

The Judgment Below

[17] KBA applied to the Supreme Court for equitable relief to restore the priority of its charge. In doing so, it relied on s. 68 of the *PPSA*, which recognizes the continued operation of principles of equity where they are consistent with the provisions of the statute, and on s. 70, which gives the court jurisdiction to deal with priority disputes by way of summary applications.

[18] KBA also relied on the doctrine of unjust enrichment, which it contended could be applied to override the statutory priority regime. The chambers judge accepted both of KBA's arguments and restored KBA's priority. It is not clear that the judge considered the statutory arguments as independent from the unjust enrichment argument. Rather, it appears that he determined that Supreme Graphics would be unjustly enriched if its GSA were given priority over KBA's security interest, and found that ss. 68 and 70 of the statute allowed the court to remedy the unjust enrichment within the statutory scheme.

Analysis

[19] In my view, KBA's arguments should be separately analyzed. The first question is whether the *PPSA* itself allows a court to exercise equitable jurisdiction to override the balance of the statutory priorities scheme. If the statute does not allow that to occur, then the next question is whether the doctrine of unjust enrichment can nonetheless be applied to give KBA the relief that it seeks.

1. The Statutory Provisions

[20] It is well-established that the overriding goal of the *PPSA* is to provide commercial certainty and predictability to personal property financing. The statute includes clear rules for registration of financing statements in respect of security interests and for priorities among secured creditors. Courts have been very reluctant to circumvent or modify the explicit statutory provisions through the use of extra-

statutory principles of common law or equity. The general approach to the statute is well-described in the first chapter of Ronald C.C. Cuming, Catherine Walsh & Roderick Wood, *Personal Property Security Law*, 2d ed. (Toronto: Irwin Law, 2012) at 51:

> The PPSA is founded on certain legislative policies that generally inform its interpretation. The most prominent of these is the advancement of commercial certainty and predictability. This is a primary value in commercial law generally. Its principal application in the PPSA context takes the form of an appropriate reluctance to countenance judicial glosses on the statutory rules, especially those dealing with priority.

[21] This approach is in keeping with the purpose and language of the statute. As Newbury J.A. commented in *674921 B.C. Ltd. v. New Solutions Financial Corporation*, 2006 BCCA 49, the statute was designed to replace convoluted common law, equitable and statutory rules that beset personal property security law with complexity and uncertainty:

> [1] … [P]riority dispute[s] between … secured creditors over the proceeds of chattel security … have become rare since the adoption, by most Canadian provinces, of Personal Property Security Acts …. In British Columbia, as in most other Canadian provinces, the *Personal Property Security Act* … swept away various statutory, common law and equitable rules dealing with secured transactions involving personal property …. This patchwork of rules relating to constructive and actual knowledge, title, registration, crystallization, realization and priorities had developed over many years in response to changing exigencies and without any overall rationale. The new unified statutory scheme ("PPSA") applies to all interests that "in substance" create security interests on personal property.

[22] The statute includes several provisions dealing with priorities, and provides, in s. 35, a residual rule that applies where the "Act does not provide another method for determining priority between security interests." The section does not, on its face, leave room for priorities to be determined on the basis of common law or equitable principles, except to the extent that those principles are expressly incorporated into the statutory scheme.

[23] The chambers judge considered that such an incorporation is present in s. 68 of the statute:

> 68(1) The principles of the common law, equity and the law merchant, except insofar as they are inconsistent with the provisions of this Act, supplement this Act and continue to apply.

[24] In my view, s. 68 cannot be given the expansive role attributed to it by the chambers judge. If s. 68 were interpreted as "providing another method for determining priority between security interests" it would mean that equitable and common law principles would dominate the determination of priorities. The statutory purpose of replacing those complex and convoluted principles with simple rules that provide certainty and predictability would be undermined.

[25] Academic commentators have specifically referred to the limited role of equitable principles within the statutory regime:

> Equity continues to apply as well as the common law, but care has to be taken in the use of equitable principles. The PPSA deliberately sets up a rather rigid system of property entitlement and priority that is not based first and foremost on actual notice and fairness, but on parties' following certain procedural steps and the application of predictable rules. The interjection of too many equitable ideas would destroy this system and undermine its predictability and efficiency.
>
> Bruce MacDougall, *Personal Property Security Law in British Columbia* (Markham, Ontario: LexisNexis Canada, 2009) p. 11.

[26] As I read s. 68, it allows principles of common law, equity, and the law merchant to be applied only to fill interstices in the statute, or to cover areas that are beyond the scope of the legislation. It does not allow the court to apply such principles instead of the clear statutory precepts.

[27] It is difficult to conceive of a situation in which principles of common law, equity, or the law merchant will be applicable to a priorities dispute, because the *PPSA* deals with priorities comprehensively. In discussing similar Saskatchewan legislation in *Bank of Montreal v. Innovation Credit Union*, 2010 SCC 47, the Supreme Court of Canada said this of the priorities scheme:

> [22] The *PPSA* provides a detailed set of rules for resolving priority disputes between competing security interests; perfection and various temporal priority rules generally serve as the default priority rules where there is no more specific rule that governs in a particular circumstance: s. 35(1). While having a security interest gives the secured creditor an interest which is enforceable both as against the debtor and against third parties, the *PPSA* recognizes other stakeholders' interests in collateral by subordinating secured creditors' interests to third parties' interests in various circumstances. For example, unperfected secured interests are subordinated to the interests of a trustee in bankruptcy and in certain circumstances to transferees for value without notice: ss. 20(2) and (3) [ss. 20(b) and (c) of the B.C. Act]. Thus, within the domain of application of the Act, the *PPSA* provides a complete set of priority rules for ranking the interests of both creditors and third parties in particular property.

[28] As the chambers judge acknowledged, courts have not generally interpreted s. 68 of the *PPSA* (or the equivalent sections in other provinces' statutes) as affording them jurisdiction to depart from the strictures of the statute in the interests of abstract notions of fairness. Applications by parties seeking to be relieved of the effects of faulty registrations or mistaken discharges have not met with success: the judge noted, for example, *Estevan Credit Union Ltd. v. Transamerica Commercial Finance Corp.* (1989), 78 Sask. R. 285 (Q.B.); *Bankruptcy of Canadian Auto Lease Corp.*, 2006 BCSC 849 and *Canadian Imperial Bank of Commerce v. Melnitzer (Trustee of)* (1992), 23 C.B.R. (3d) 161 (Ont. Ct. J. (Gen. Div.)).

[29] While the chambers judge appears to have accepted that s. 68 does not give a court general discretion to apply equitable principles in order to avoid the strictures of the statute, he considered that s. 70 gave the court greater discretion to apply equitable principles in respect of priorities disputes than in respect of other issues addressed in the statute. Section 70 provides as follows:

> 70. On application of an interested person, a court may
>
> (a) make an order determining questions of priority or entitlement to collateral, or
>
> (b) direct an action to be brought or an issue to be tried.

[30] The judge seems to have been of the view that *obiter dicta* at para. 38 of *Rapid Transit Mix v. CommCorp Financial Services*, 1998 ABCA 63, supports the idea that s. 70 of the *PPSA* can be used to mitigate any unfairness that results from

the strict provisions of the statute, as long as no party will be unfairly prejudiced by such use. As the appellants point out, the section of the statute under consideration in that case was not the Alberta counterpart of s. 70, and the judgment of the Alberta Court of Appeal does not provide the support suggested by the chambers judge.

[31] Section 70 is purely procedural in nature. It establishes that the Supreme Court has jurisdiction to determine priorities questions summarily (*i.e.,* on "application") and gives the court discretion to require complex issues of priority or entitlement to be brought by action. Nothing in s. 70 gives the court substantive powers to vary the statutory priorities provisions.

[32] I am of the view that the chambers judge erred in finding that the provisions of the *PPSA*, and in particular, ss. 68 and 70, gave him jurisdiction to override the statutory priority rules on the basis that those rules resulted in unfairness. The overriding statutory goals of certainty and predictability in personal property financing would be undermined by giving those sections the broad interpretation applied to them by the chambers judge. In my view, nothing in those sections justifies the application of equitable principles in preference to the residual priorities rule set out in s. 35.

2. Unjust enrichment

[33] I turn, then, to the question of whether the doctrine of unjust enrichment can assist KBA.

[34] There are three elements that must be satisfied in order for a claim in unjust enrichment to succeed: there must be an enrichment of the defendant, a corresponding deprivation of the plaintiff, and an absence of juristic reason for the enrichment: *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30, citing *Pettkus v. Becker*, [1980] 2 S.C.R. 834 at 848 and *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762 at 784.

[35] In the case before us, it is apparent that the inadvertent cancellation of KBA's financing statement, through no fault of its own, resulted in it losing the priority of its

security, and in Supreme Graphics and CIT gaining corresponding priority for theirs. I accept, therefore, that the first two elements of the test for unjust enrichment are satisfied. The question is whether the statutory priorities scheme represents a "juristic reason for the enrichment".

[36] The judge placed considerable reliance on *Central Guaranty Trust Co. v. Dixdale Mortgage Investment Corp.* (1994), 24 O.R. (3d) 506 (C.A.) in holding that the statutory priorities scheme did not preclude resort to the doctrine of unjust enrichment. That case involved real property. The plaintiff trust company was the holder of a first mortgage which it discharged by mistake. The defendant mortgage company held what was originally a second mortgage. It did not realize that the first mortgage had been discharged, and continued to make payments to the trust company. It was when it sold the property under a power of sale that the mortgage company determined that the first mortgage had been discharged. It refused to pay out the trust company, and the trust company brought an action against it, arguing unjust enrichment. The trust company succeeded at trial, and the result was upheld on appeal. The Ontario Court of Appeal discussed the principle involved at pp. 516-517:

> At the level of principle the issue is whether recognizing Central Guaranty's claim undermines the purpose of the statutory provisions in question. These provisions … are intended to protect persons who, in their dealings with land, rely on the abstract. In this case, however, Dixdale did not rely on the abstract either when it decided to exercise power of sale proceedings, or when it accepted an offer to purchase the property in February 1992. Dixdale bargained with the owner for a second mortgage; it was a second mortgagee when it commenced power of sale proceedings; it did not rely on its priority of registration in entering into an agreement to sell the property; and it disposed of the property at or slightly above its appraised value. In principle, I do not think that the provisions of the Act should preclude Central Guaranty from restitutionary recovery. On the facts of this case allowing Central Guaranty to recover on the basis of unjust enrichment would not undermine the purpose of the legislation.

[37] Supreme Graphics notes that *Central Guaranty Trust* was decided twenty years ago, and says that it has been overtaken by developments in the law of restitution. In particular, it says that the Supreme Court of Canada's analysis of

"juristic reason" in *Garland* must be considered. In *Garland,* Iacobucci J., for the Court, said this about "juristic reason":

> [44] … [In] the proper approach to the juristic reason analysis …, the plaintiff must show that no juristic reason from an established category exists to deny recovery. By closing the list of categories that the plaintiff must canvass in order to show an absence of juristic reason, Smith's objection [L. Smith, "The Mystery of 'Juristic Reason'", (2000), 12 S.C.L.R. (2d) 211] to the Canadian formulation of the test that it required proof of a negative is answered. The established categories that can constitute juristic reasons include a contract (*Pettkus*, *supra*), a disposition of law (*Pettkus*, *supra*), a donative intent (*Peter* [*Peter v. Beblow*, [1993] 1 S.C.R. 980], *supra*), and other valid common law, equitable or statutory obligations (*Peter*, *supra*). If there is no juristic reason from an established category, then the plaintiff has made out a *prima facie* case under the juristic reason component of the analysis.

[38] Justice Iacobucci elaborated on "disposition of law" as a juristic reason for an enrichment:

> [49] Disposition of law is well established as a category of juristic reason. In *Rathwell* [*Rathwell v. Rathwell*, [1978] 2 S.C.R. 436], *supra*, Dickson J. gave as examples of juristic reasons "a contract or disposition of law" (p. 455). In *Reference re Goods and Services Tax*, [1992] 2 S.C.R. 445 ("*GST Reference*"), Lamer C.J. held that a valid statute is a juristic reason barring recovery in unjust enrichment. This was affirmed in *Peter*, *supra*, at p. 1018. Most recently, in *Mack v. Canada (Attorney General)*, (2002), 60 O.R. (3d) 737, the Ontario Court of Appeal held that the legislation which created the Chinese head tax provided a juristic reason which prevented recovery of the head tax in unjust enrichment. In the leading Canadian text, *The Law of Restitution* [Peter D. Maddaugh and John D. McCamus, *The Law of Restitution* (Aurora, Ontario: Canada Law Book, 1990)], *supra*, McCamus and Maddaugh discuss the phrase "disposition of law" from *Rathwell*, *supra*, stating, at p. 46:
>
> > … it is perhaps self-evident that an unjust enrichment will not be established in any case where enrichment of the defendant at the plaintiff's expense is required by law.
>
> It seems clear, then, that valid legislation can provide a juristic reason which bars recovery in restitution.

[39] *Garland* did not, itself, concern a statutory provision. In *Gladstone v. Canada (Attorney General)*, 2005 SCC 21, however, the Supreme Court dealt with the question of whether an allegedly unjust enrichment was justified by a statutory disposition. In that case, the Crown had seized herring spawn on kelp allegedly harvested in violation of the *Fisheries Act,* R.S.C. 1985, c. F-14. When charges were

eventually stayed, it paid the proceeds of sale of the herring spawn to the respondents. The respondents claimed entitlement to interest, as well, and relied on the doctrine of unjust enrichment. The Supreme Court denied recovery, on the basis that the matter was governed by statute:

> [19] In the case at bar, the seizure, sale, and return of the proceeds were all done pursuant to the *Fisheries Act*. The statute provides for the return of any fish, thing, or proceeds realized from its disposition. This is what happened. Any residual gain or loss is ancillary. Relying upon such a statutory basis fall within the "disposition of law" category of juristic reason….

[40] Where a statute addresses issues of enrichment only obliquely, there may be room for interpretation as to whether it constitutes a "juristic reason" for that enrichment: see, for example, *Bond Development Corp. v. Esquimalt (Township)*, 2006 BCCA 248. Such is not the case, however, with the *PPSA*, which is directly and centrally concerned with priorities among security interests.

[41] Indeed, in *Caterpillar Financial Services v. 360networks corporation*, 2007 BCCA 14, this Court accepted that it would be improper to impose a constructive trust to improve the creditor's security position in a manner that was contrary to the *PPSA* (and, in that case, the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36).

[42] In my view, the *PPSA*'s priorities provisions constitute clear juristic reasons for the enrichment in this case. The *PPSA* comprehensively governs priority among creditors, and the judge erred in finding that the doctrine of unjust enrichment could be used to navigate around the clear statutory provisions.

[43] I note, before leaving this area, that KBA has placed some reliance on the judgment of this Court in *Furmanek v. Community Futures Development Corp. of Howe Sound* (1998), 162 D.L.R. (4th) 501, a case in which this Court accepted that an estoppel could preclude a creditor from relying on the priority of its security interest over that of another creditor. In my view, the case does not assist KBA. There is no suggestion that anything that Supreme Graphics or CIT have done is untoward, nor that they should be prevented, as a result of their conduct, from

relying on particular facts or statutory advantages. This is, quite simply, not a case of estoppel.

3. The Alternative Argument

[44] It is unnecessary, given my analysis of the other issues, to deal in any detail with Supreme Graphics' alternative argument, to the effect that Wells Fargo's original 2005 financing statement was not entitled to "super-priority" under s. 34 of the *PPSA*. Supreme Graphics says that 3S took possession of the offset press long before acquiring rights in it. It therefore contends that the PMSI was not "perfected" (because it had not "attached" under s. 12 of the *PPSA*) within 15 days of the debtor taking possession of the collateral, as required by s. 34(1).

[45] KBA says that this alternative argument is not properly before the Court, as it was not argued before the Supreme Court.

[46] I will say only that the arguments on both sides are problematic. The evidence before the court below on the issue of delivery of the press and on the acquisition of property rights by 3S was far from conclusive. In my view, it would be unfair for this Court to make the factual findings contended for by Supreme Graphics on the limited record presented. On the other hand, KBA's contention that the issue was conceded in the court below relies, to a very great extent, on equivocal statements made by counsel in the course of oral argument.

[47] In short, while I am not convinced that Supreme Graphics is precluded, by its conduct below, from advancing the alternative argument, I am also of the view that the record is wholly inadequate to allow this Court to make essential findings of fact. Were it necessary to resolve the issue, I would remit the matter to the court below for determination of the factual questions.

Conclusion

[48] In my view, the clear priority scheme set out in the *PPSA* applies in this case, and there was no room for the court below to override that scheme in the interests of "fairness". I would allow the appeal.

"The Honourable Mr. Justice Groberman"

I Agree:

"The Honourable Mr. Justice Low"

I Agree:

"The Honourable Madam Justice Neilson"