

Index of New Zealand Personal Property Securities Act Cases

The New Zealand Courts have, over the last decade or so, been building up a body of case law that explains and clarifies the Personal Property Securities Act (PPSA).

We have gathered all of these cases together in this index, with a copy of each case and a brief summary of the PPSA issue that it addresses. We will continue to monitor the Courts to make available to you a complete set of the New Zealand decisions on PPSA matters. If you would like further assistance on PPSA-related issues, please contact us.

| No. | Case | Citation | Date of judgment | Section (s) | Key point |
|------|---|------------------|------------------|--------------------------|--|
| 75 | Partners Finance and Lease Ltd v Richmond | [2019] NZHC 34 | 29/01/2019 | 142, 149, 150 | The High Court granted ASB defendant summary judgment on Partners Finance and Lease Ltd's (PFLL) claim that PFLL had a first ranking registered security interest over a bulldozer. PFLL's financing statement was seriously misleading because the collateral type listed on the financing statement for the bulldozer was "goods - other" rather than "goods - motor vehicles". As a result, ASB's search of the register failed to disclose PFLL's financing statement. |
| 74 | Murray v UDC Finance Ltd | [2018] NZHC 3386 | 18/12/2018 | 110 | The principles applicable to a mortgagee's duty when exercising a power of sale under s 176 of the Property Law Act (PLA) 2007 are relevant by analogy to the duty under s 110 of the PPSA. The duty under s 110 of the PPSA requires the secured party to select an appropriate method of marketing and sale that is likely to achieve market value, or close to market value, for that particular form of personal property. |
| 73 | Pioneer Finance Ltd v Green Cars Ltd | [2017] NZHC 2782 | 14/11/2017 | 16, 17, 36, 40, 162, 167 | For the purpose of s 40(1)(b) of the PPSA, a debtor has rights in goods leased to the debtor by virtue of its possessory interest. Accordingly, a debtor may grant a security interest in goods leased to the debtor, and that security interest is not brought to an end by the conclusion of the lease. |
| 72.2 | Fatupaito v Harris | [2018] NZCA 497 | 14/11/2018 | 25 | A mortgagee need not have purity of purpose when appointing a receiver, but a mortgagee does act in bad faith if, judged objectively, it acts for a predominant purpose which is collateral to its interests as mortgagee in preserving its security and obtaining repayment of a secured debt. |
| 72.1 | Harris v Bank of New Zealand | [2017] NZHC 2374 | 29/09/2017 | 25 | High Court decision reversed on appeal. See Court of Appeal decision [2018] NZCA 497, above. |
| 71.2 | Patrick v Bank of New Zealand | [2018] NZCA 122 | 26/04/2018 | 25 | Appeal dismissed. |
| 71.1 | Bank of New Zealand v Patrick | [2017] NZHC 1184 | 01/06/2017 | 25 | The bank did not breach its good faith duty under s 25 when it appointed receivers. The Court said a secured party is unlikely to be found to have acted in bad faith where the secured party was motivated by a desire to recover the amount due to it or otherwise protect its collateral. |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|--|----------------------------------|-------------------------|--------------------|---|
| 70 | <u>Norris v Bowater Finance Ltd</u> | [2016] NZHC 2156 | 13/09/2016 | 176, 177, 178, 179 | A request for a copy of a security agreement and other information under s 177 is not made until the person making the request provides authentication of his or her claim to be authorised, and shows that the person he or she represents holds a security interest in personal property of the debtor. |
| 69.3 | <u>Conway v Mercedes-Benz Financial Services New Zealand Ltd</u> | [2018] NZSC 16 | 23/02/2018 | 114 | Application for leave to appeal the Court of Appeal's decision dismissed. The Court stated that while it accepted the notice requirements under the PPSA may give rise to a point of commercial significance, the issue in each case will be largely governed by the terms of the security arrangements between the parties, and this case was not an appropriate one to address the point, given it was unlikely to effect the ultimate issue of the applicant's obligation to pay the respondent. |
| 69.2 | <u>Conway v Mercedes-Benz Financial Services New Zealand Ltd</u> | [2017] NZCA 463 | 17/10/2017 | 16, 17, 24, 114 | With limited exceptions, the PPSA is "title neutral" and apply equally to all forms of security. By contrast, whether a security interest is a charge or mortgage for the purposes of the PLA depends on a traditional, title-based approach. The Court of Appeal's earlier comments to the contrary (in <i>Dunphy v Sleepyhead</i>) should not be followed. |
| 69.1 | <u>Mercedes-Benz Financial Services New Zealand Ltd v Conway</u> | [2016] NZHC 1896 | 16/08/2016 | 114, 185 | Whether a security interest is a charge or mortgage for the purposes of the PLA, depends on questions of ownership. That approach was explained further by the Court of Appeal, which affirmed the High Court's decision. |
| 68 | <u>Glover No 2 Ltd v Bank of New Zealand</u> | [2016] NZCA 182 | 06/05/2016 | 17 | A General Security Agreement (GSA) can create security over land, but the PPSA will not apply. |
| 67 | <u>General on behalf of the Comptroller of Customs</u> | [2016] NZHC 479; [2016] NZAR 551 | 21/03/2016 | 23, 44 | Statutory charge under Customs and Excise Act 1996 out-ranks a GSA. Irrelevant that GSA attached first, or that Customers had released goods. |
| 66.2 | <u>McCollum v Thompson</u> | (2017) 23 PRNZ 467 | 23/02/2017 | Not specified | Court of Appeal overturned the loss calculation but did not reconsider the scope of "proceeds". |
| 66.1 | <u>McCollum v Thompson</u> | [2016] NZHC 28 | 28/01/2016 | 16(1), 45(1) (b) | "Proceeds" does not include progeny of livestock. |
| 65 | <u>McKay v Johnson</u> | [2015] NZHC 242 | 23/02/2015 | 36, 41 | Bank could not locate GSA document. The requirement that the security agreement be evidenced in writing was satisfied by other evidence. |
| 64 | <u>Thomas and KMA Group Ltd v Equipment Finance Ltd</u> | [2014] NZHC 2542 | 16/10/2014 | 110 | The duty to obtain the best price reasonably obtainable is directed to the time of sale. To show sale at undervalue, independent evidence on reasonableness of steps taken is required. |
| 63 | <u>UDC Finance Ltd v Brunton</u> | [2014] NZHC 2247 | 17/09/2014 | 16, 110 | The High Court interpreted s 110 to include that a secured party selling collateral owes a duty to a guarantor to obtain the best price reasonably obtainable. A guarantor is a "debtor" under s 16(1) because he or she has payment obligations under the deed of guarantee, even though they may have no interest in the collateral. The guarantor had an arguable defence that the secured party did not take reasonable care to obtain the best price reasonably obtainable. |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|--|--|-------------------------|--|--|
| 62 | <u>Working Capital Solutions Holdings Ltd v Pezaro</u> | [2014] 3 NZLR 379 | 15/05/2014 | 162, 167 | Another application to sustain a financing statement. As in <i>Universal Trucks and Equipment Ltd v Reynolds</i> the High Court in this case rejected the analogy with caveat cases, and the “seriously arguable” test. Instead, the test is whether the Court is “satisfied” that none of the grounds for discharge exist. |
| 61 | <u>BNZ v Waewaepa Station 2002 Ltd</u> | [2013] NZHC 3321 | 12/12/2013 | 16, 45, 53, 90, 109 | Claim in conversion by secured creditor after the debtor transferred collateral (sheep) to a related party. Recipient of the sheep claimed it took the sheep free of any security interest either because they were sold in the ordinary course of business (s 53), or because the sale had been authorised by the secured party (s 45). Sale was not in the ordinary course of business. The transaction was arranged so that the secured party did not receive any of the proceeds of the sale of the sheep. The proceeds were applied against a debt between the debtor and the related party, in an attempt to get around the bank security. |
| 60 | <u>Hughes v Fea & Heenan</u> | Hughes v Fea & Heenan [2013] NZHC 2863 | 30/10/2013 | 16(1)(i), 17 | Whether a lease of plant bulbs was an “in substance” security interest. Held that it was not a security interest to the extent that it did not give the lessor new rights over the collateral. However, an interest in the sale proceeds of goods that a lessee is obliged to return at the lease’s conclusion (even where the lessee is permitted to sell and replace the goods) did constitute a security interest. |
| 59 | <u>Carey & Anor v Smith & Ors</u> | (2013) 11 NZCLC 98-019 | 05/09/2013 | 17, 53, 109 | A sale and buy-back arrangement between a company and its shareholders was not a sale of inventory in the ordinary course of business. The inventory was therefore transferred subject to the bank’s GSA. Further, the sale and buy-back was for funding purposes, so was an in-substance security interest. |
| 58 | <u>Polymers International Ltd v Toon & Ors</u> | (2013) 11 NZCLC 98-017 | 30/07/2013 | 142(1)(c), 145, 149, 150, 151, 172 | Failure to register a debtor company’s incorporation number on the Personal Property Securities Register (PPSR) will result in a financing statement being seriously misleading. The problem could have been avoided if whoever filled out the financing statement had indicated that the debtor was a company, because the PPSR website would have prompted the person to add the correct company number. The addition of a superfluous space in the abbreviation “NZ” in the name did not make it seriously misleading, because the system automatically excludes all spaces and abbreviations in the words “NZ” in the searching process. |
| 57 | <u>Perpetual Trust Ltd v Bank of New Zealand</u> | [2013] NZHC 1800 | 17/07/2013 | 16, 108 | Application of s 108 PPSA. The first-ranking secured creditor took enforcement action following default by a debtor under a trust deed, and was owed reasonable court costs by the debtor. Under s 108, the Court ordered that, on receipt of a request from the secured creditor for payment, the bank which held the debtor’s accounts would be entitled to apply the funds to meet the sums due to the creditor’s debt. |
| 56 | <u>McCloy & Bridgman v Manukau Institute of Technology</u> | [2013] 3 NZLR 390 | 01/05/2013 | 16, 17, 36, 40, 45, 53, 66, 88, 89, 90, 91, 93 | A construction contract can give rise to a security interest. Where the principal has the right to use and sell materials and equipment following default by the contractor, the principal has a security interest in those materials and that equipment. The transfer of the equipment under the contract was not authorised by a GSA holder (s 45), nor was it a sale in the ordinary course of business (s 53). |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|---|---|-------------------------|---|---|
| 55 | <u>NZ Natural Juice Co v Heartland Bank Ltd</u> | [2013] NZHC 755 | 22/04/2013 | 45, 93, 102 | A conflict between the rights of an assignee of an account receivable, and those of the account debtor. S 102(1)(a) applied, such that the assignee was bound by the terms of the contract between the assignor and the account debtor, which included a contractual right of set off. The account debtor's ability to rely on that contractual right was not limited by the time limit in s 102(1)(b), which provides that an account debtor may not exercise a set off against the assignee, where the account debtor's claim arose after the account debtor knew of the assignment |
| 54 | <u>Haar v Eastland Tyres Ltd</u> | [2013] NZHC 692 | 09/04/2013 | Not specified | A creditor owes a duty to a guarantor to perfect a security interest granted by the principal debtor for the debt, so that it is available in the exercise of a guarantor's subrogation rights where the guarantor makes payment of the principal debt. Follows <i>NZ Bloodstock v Jenkins</i> (see case 8). On the facts, the guarantor was not discharged from liability because the creditor's failure to register did not cause any loss. |
| 53 | <u>Thorn v RFD Finance Ltd</u> | [2012] NZHC 1959 | 07/08/2012 | 114, 132 | The High Court rejected an argument that s 132 of the PPSA ("Entitled persons may redeem collateral") was a code that ousted the provisions in the PLA which permit redemption of mortgages. The PLA continued to apply. |
| 52 | <u>Vegar-Fitzgerald v Noyce</u> | [2012] NZHC 1311 | 29/05/2012 | 162, 165, 166, 167 | Application to sustain financing statement. Court prefers earlier approach of "is there serious or arguable case", on a summary basis. Court rejects Universal Trucks approach where Court determines fully and finally whether a security interest exists. |
| 51.1 | <u>Gibbston Downs Wines Ltd v Perpetual Trust Ltd & Ors</u> | [2014] NZCCLR 6 | 22/10/2013 | 40, 41, 66, 69, 70, 135, 153, 159 | Appeal dismissed. Not necessary to resolve the time at which priority is to be determined, but High Court's analysis "has much to commend it". |
| 51 | <u>Gibbston Downs Wines Limited v Perpetual Trust Ltd</u> | [2012] 2 NZLR 574 | 28/05/2012 | 40, 41, 66, 69, 70, 130, 135, 153, 159 | Priority between competing security interests should be determined at the time those interests come into conflict. This analysis will depend on the facts. It will often, but not necessarily, be the point when the debtor is placed in receivership. |
| 50 | <u>Air Liquide v SupaGas 2009 & Ors</u> | [2012] NZHC 2583 | 10/05/2012 | 16, 17, 25, 66A, 135 | In order to argue that a transaction is "a lease for a term of more than one year", it was necessary to bring evidence that the lessor was regularly engaged in the business of leasing goods. Lack of such evidence prevented summary judgment being entered". |
| 49 | <u>MJN McNaughton v Thode</u> | [2012] NZHC 982 | 10/05/2012 | 109, 114, 120(2) | Relationship between Sale of Goods Act (SOGA) and PPSA. Purchaser of goods granted "security interest", agreed to restrictions on use of the goods. Terms did not include any express retention of title. Title passed to the purchaser in terms of the SOGA. |
| 48 | <u>Universal Trucks v Reynolds</u> | (2012) 10 NZBLC 99-706; (2012) 11 NZCCLC 98-003 | 21/03/2012 | 16, 35, 36, 89, 90, 149, 150, 162, 165, 167 | Revision of how courts should approach applications to maintain financing statements. It is not enough to establish a seriously arguable case for maintaining registration, instead, the court must be satisfied that no grounds exist for demanding change. |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|---|--|-------------------------|--|--|
| 47 | <u>Swindle v Matakana Estate</u> | [2012]1 NZLR 806; [2012] NZCCLR 4 | 28/10/2011 | 53, 82, 83, 84, 85 | S 53 - sale by winemaking companies to related companies for financing purposes was in the ordinary course of business. |
| 46.2 | <u>Strategic Finance Ltd (in rec & in liq) v Bridgman, Sanson</u> | [2013] 3 NZLR 650 | 09/08/2013 | 16, 17, 23, 35, 40, 43, 44, 35, 47, 53, 107 | High Court decision affirmed on appeal. The Court of Appeal added that a possible liability to pay an unidentifiable sum at an uncertain future date will not amount to an account receivable, but an existing monetary obligation that is not earned by performance under a contract is. |
| 46.1 | <u>Burns v Commissioner of Inland Revenue</u> | (2011) 25 NZTC 20-070; (2011) 10 NZCLC 264,885; (2011) 9 NZBLC 103,284 | 10/08/2011 | 16, 23 | Definition of "accounts receivable" is not limited to book debts. An "account receivable" is any monetary obligation, subject to the exceptions in the definition in the PPSA, and in s 23 of the PPSA. NorthShore Taverns case expressly rejected. A receivable will only be available to preferential creditors if the monetary obligation was owed to the company at the time that the receivership or liquidation started. Appeal Pending. |
| 45 | <u>Nichibo v Lucich</u> | (2011) 9 NZBLC 103,253; [2011] NZCCLR 31 | 15/07/2011 | 16, 17, 45, 53, 57, 58, 73, 162, 163(a), 165(1), 167 | The fact that the employee of the vendor is the purchaser of the goods does not, by itself, take the transaction outside of the ordinary course of business. |
| 44 | <u>R v Kiriona; Lima v R</u> | (unreported) Gendall J, HC Palmerston North, CRI-2008-054-001871 | 12/07/2011 | 17 | Relief against forfeiture case – on facts, applicant had no security interest. |
| 43 | <u>Stockco v Walker</u> | [2011] NZAR 669; (2011) 9 NZBLC 103,243 | 24/06/2011 | 23, 93, Pt 8 | Common law lien has priority over security agreement (ss 23 and 93). Whether the grazing contract created a common law lien depended on whether the grazing contract was for the purpose of improving the goods. |
| 42.2 | <u>Marac Finance Ltd v Greer</u> | [2012] 2 NZLR 497 | 01/03/2012 | 16, 17, 23, 41, 66, 95 | The mortgage containing an assignment of rental does not need to be registered on the PPSA. The receiver appointed under a mortgage has priority over a receiver appointed under a GSA. |
| 42.1 | <u>Marac Finance Ltd v Greer</u> | (2011) 9 NZBLC 103,189 | 17/03/2011 | 17, 23, 86 | The right of a mortgagee of land to rental payments (collected by a receiver appointed by the mortgagee) falls outside the scope of the PPSA by operation of s 23. |
| 41.2 | <u>Healy Holmberg v Grant</u> | [2012] 3 NZLR 614 | 02/10/2012 | 36, 40, 66 | Court of Appeal rejected High Court's analysis and confirmed that, as between registered security interests, priority is determined by order of registration, not by order of perfection. |
| 41.1 | <u>Healy Holmberg v Grant</u> | (2011) 10 NZCLC 264,833; (2011) 9 NZBLC 103,182 | 24/02/2011 | 36, 40, 41, 66, 67 | Ruling on the validity and priority of alleged security interests. The Court held that date of perfection, not registration, governs priority. [The judgment is wrong on this point and should not be relied on. If there is any injustice in having a later executed security agreement take priority over an earlier agreement, merely because it was registered first, that is a matter for the voidable transactions regimes.] |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|---|---|-------------------------|--|---|
| 40.3 | <u>Stiassny v Commissioner of Inland Revenue</u> | [2013]1 NZLR 453 | 28/10/2012 | 17, 19, 23, 25, 45, 53, 94, 95, 195, 196, 197, 198 | The Supreme Court upheld the Court of Appeal's decision. The Supreme Court also noted that all security interests under the PPSA are statutory fixed charges, and that there are no longer any securities which are recognised as operating as floating charges. |
| 40.2 | <u>Commissioner of Inland Revenue v Stiassny</u> | [2012]11 NZCLC 98-002 | 15/03/2012 | 17, 24, 25, 43, 44, 95, Pt 8 | S 95 (recipient of debtor-initiated payment takes free) protects a creditor only from a proprietary claim. It does not operate to extinguish any other legal claim, such as damages for money paid under a mistake. However, s 95 prevents an in personam claim based on priority from being made. Decision upheld on appeal to Supreme Court. |
| 40.1 | <u>Stiassny v Commissioner of Inland Revenue</u> | (2011)10 NZCLC 264,786 | 04/11/2010 | 95 | High Court decision later upheld on appeal. See Court of Appeal decision dated 15/03/2012. |
| 39.2 | <u>Glenmorgan Farm Ltd (in rec and in liq) v New Zealand Bloodstock</u> | [2012]1 NZLR 555 | 20/12/2011 | 10, 16(1), 17, 107, 109 | High Court decision affirmed on appeal. |
| 39.1 | <u>Glenmorgan Farm v New Zealand Bloodstock</u> | (Unreported) Potter J, HC Auckland, CIV-2008-404-1759 (HC) | 27/09/2010 | 40(3), 109 | Secured creditor's failure to register its security interest did not affect the debtor's obligation to pay the secured debt. It affected only priority. Debtor remained liable to repay both secured creditors. |
| 38.2 | <u>Rabobank v McAnulty</u> | [2011]3 NZLR 192 (CA) | 23/05/2011 | 16, 17, 40 | Three key rulings on definition of "lease for a term of more than 1 year": (i) qualifiers in (b) and (c) apply to bailments as well as leases; (ii) a bailment will be a lease for more than 1 year only if the bailor is to profit from the bailment (and not merely the transaction). (This matches the Australian Act); and (iii) "regularly" in (c) will require some recurrence of leasing transactions, either before or after, actual or intended. |
| 38.1 | <u>Rabobank v McAnulty</u> | (Unreported) Associate Judge Gendall, HC Wellington, CIV-2010-485-647 | 23/08/2010 | 16, 17, 35, 36, 40, 66 | High Court decision later considered on appeal (result upheld, but on different reasons). See Court of Appeal decision 23/05/2011. |
| 37 | <u>Commerce Commission v Budget Loans</u> | (Unreported) Wilson DCJ, DC Auckland, CRI-2009-004-028349 (DC) | 26/07/2010 | 44 | Sentencing decision under the Fair Trading Act. Lender had misrepresented its rights under an all present and after acquired property clause in relation to consumer goods (there being restrictions on such security in s 44). [The details are not apparent from the sentencing notes. See the summary of facts.] |
| 36.3 | <u>StockCo v Gibson</u> | (2012)11 NZCLC 98-010 | 26/07/2012 | 16, 17, 19, 36, 40, 45, 53, 82, 87, 88, 177 | The Court of Appeal largely upheld the High Court's decision. The main difference key difference is that the Court of Appeal did not accept that "750 mixed age cows" were adequately described just because the debtor could identify them. |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|--|---|-------------------------|---|--|
| 36.2 | <u>Gibson v StockCo</u> | [2011] NZCCLR 29 (HC) | 17/12/2010 | 16, 17, 19, 25, 36, 40, 45, 53, 66, 82, 87, 88, 89, 177, 185, 187, 191 | Lengthy and thorough discussion of: (i) ordinary course of business (ii) subordination under s 88, (iii) the good faith requirement in s 25, requiring positive conduct rather than mere knowledge, and (iv) SOGA applying to determine issues of identifying stock. |
| 36.1 | <u>Gibson v StockCo</u> | (Unreported) White J, HC Auckland, CIV-2009-404-7120 (HC) | 05/07/2010 | Not specified | Interlocutory decision declining an order for sale of disputed collateral prior to trial. |
| 35.2 | <u>Toll Logistics v McKay</u> | [2011] 2 NZLR 601 (CA) | 16/05/2011 | 17, 23, 41(1)(b)(ii), 66(b), 93 | Toll accepted the High Court's decision on the PPSA point. Toll unsuccessfully appealed the decision that it did not have a common law lien. |
| 35.1 | <u>McKay v Toll Logistics</u> | [2010] 3 NZLR 700 (HC) | 22/06/2010 | 17, 23, 41, 66, 74, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 114, Pt 7, Pt 8 | The priority given to liens over security interests by s 93 PPSA is only given to common law, statutory and maritime liens. Contractual liens qualify as security interests and are subject to the priority rules governing security interests. |
| 34 | <u>Asset Finance v Ministry of Justice</u> | [2011] DCR 1 | 25/05/2010 | Not specified | Financier with charge over vehicle, registered on PPSR, took priority over Ministry of Justice, despite the Ministry having seized the vehicle for non payment of fines, prior to the financier's charge and registration. [Was the decision correct? Judge failed to consider s 103, which gives priority to execution creditors. Ministry was arguably an execution creditor in terms of that section. Policy would certainly support that analysis]. |
| 33 | <u>Triumph Motorcycles v Keogh</u> | [2010] DCR 824 (DC) | 29/03/2010 | 16, 17, 36 | A consignment will not amount to a security interest solely because it imposes certain obligations on the consignee in respect of the goods. |
| 32.3 | <u>Tubbs v Ruby 2005</u> | [2011] 3 NZLR 551 | 27/07/2011 | 25, 53 | Ordinary course of business and s 53. Waimate's sale of timber to Ruby was in the ordinary course of business, despite being between related entities, for cashflow purposes only, timber remaining physically with Waimate and all timber to be later on sold by Waimate to customers. Further, timber provided by Waimate to Ruby to "replenish" converted timber was also taken by Ruby free of the bank's security interest partly on the grounds that the receivers, as agents of Waimate, should not be able to take advantage of Waimate's wrongful conversion. |
| 32.2 | <u>Tubbs v Ruby 2005</u> | (2010) 9 NZBLC 103,051 | 05/08/2010 | 17, 41, 53 | Application of "ordinary course of business" test in s 53 PPSA. A transfer of goods to a related company was arguably outside the ordinary course of business, as it was not for cash but in satisfaction of an existing debt. |
| 32.1 | <u>Tubbs v Ruby 2005</u> | [2010] NZCCLR 31 (HC) | 26/02/2010 | 53 | High Court decision later overturned (in part) on appeal. See Court of Appeal decision 05/08/2010. |
| 31 | <u>Motorworld v Turners Auctions</u> | [2010] NZCCLR 30 (HC) | 17/02/2010 | 45, 109 | Secured party impliedly authorised dealing and in doing so prevented the security interest from continuing in the collateral and extending to the proceeds. Conversion and knowing receipt claims against auctioneer failed. |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|---|---|-------------------------|--|---|
| 30.2 | <u>Rabobank v StockCo</u> | (2011) 13 TCLR 191 | 11/03/2011 | 16, 25, 149, 150, Sch 1 | The lack of a partnership name on the registration was not misleading because in fact the farm was not run as a partnership. Whether name on the registration was seriously misleading depended on detailed analysis of the way in which the debtor organised its business affairs. |
| 30.1 | <u>Rabobank v StockCo</u> | [2010] NZCCLR 25 | 17/02/2010 | 16(a)(iii), 41, 66, 73, 74, 90, 142, 149, 150, 172 | Summary judgment declined, partly because failure to include name of partnership in financing statements was arguably seriously misleading, thus arguably invalidating registration. See substantive decision 11/03/2011. |
| 29 | <u>Daniel Smith Industries Ltd v Cranes International</u> | (Unreported) Allan J, HC Rotorua, CIV-2009-463-286 (HC) | 16/12/2009 | 16, 17, 36, 162, 165, 167, Pt 10 | Order maintaining a financing statement; seriously arguable case that security agreement existed between the parties. |
| 28 | <u>NZ Associated Refrigerated Food v Donley</u> | (2010) 10 NZCLC 264,626 (HC) | 30/10/2009 | 17, 45(1)(b), 53, 94 | Application of "ordinary course of business" test in s 53 PPSA. Also, summary judgment denied on a claim of knowing receipt; further argument required on whether an equitable interest in the proceeds of sale could stand separately to the security interests under the PPSA. |
| 27 | <u>ANZ v SNJ Dairy</u> | (Unreported) Woodhouse J, HC Hamilton, CIV-2009-419-1404 (HC) | 23/10/2009 | 109 | Bank entitled to repossess collateral subject to GSA after the debtor leased goods to another party on oral terms and without the bank's permission. |
| 26 | <u>ALF No 9 v Ellis</u> | (unreported) Ronald Young J, HC Wellington, CIV-2009-485-435 (HC) | 13/10/2009 | 52, 87, 124 | PPSA allows a debtor to sell its interest in a cause of action that is subject to a GSA. Failure to obtain GSA-holder's consent does not render the transfer void. |
| 25.2 | <u>Viacom v Scene 1</u> | (Unreported) [2009] NZCA 457 | 22/10/2009 | 16, 35 | Court of Appeal decision on application for stay of execution of judgment pending appeal. No substantive discussion of PPSA issues. |
| 25.1 | <u>Viacom v Scene 1</u> | (Unreported) Andrews J, HC Auckland, CIV 2009-404-4305 (HC) | 18/09/2009 | 16, 35, 36, 40 | Copyright is personal property and subject to the operation of the PPSA. The prior-ranking security holder did not breach copyright by selling DVDs, etc., even though copyright held by lower-ranking secured party. |
| 24 | <u>Arcus Springs v Jeffreys</u> | (Unreported) Harvey DCJ, DC Auckland, CIV-2009-004-997 (DC) | 17/09/2009 | 16, 17 | An indefinite lease will qualify as a lease for more than one year if it can potentially run for that length of time. |
| 23 | <u>Toyota Finance v Christie</u> | (Unreported) Asher J, HC Auckland, CIV-2009-404-3797 (HC) | 15/07/2009 | 17, 40, 162, 165, 167, Pt 10 | Detailed analysis of the manner in which courts should approach applications to maintain financing statements. |
| 22 | <u>Compass v NZ Guardian Trust</u> | (Unreported) Cooper J, HC Auckland, CIV-2009-404-1500 (HC) | 19/03/2009 | 25 | Failed application to prevent appointment of receivers on the basis that the right had not been exercised in accordance with reasonable standards of commercial practice, in reliance on good faith obligation in s 25 PPSA. |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|--|---|-------------------------|--|--|
| 21 | <u>Whaitiri Potato v Grace</u> | (2009) 6 NZ ConvC 194,707 (HC) | 18/11/2008 | 44, 100 | Creditor's Purchase Money Security Interest (PMSI) rights in unplanted seeds disappear once seeds are annexed to land and become crops. |
| 20 | <u>Blue Water Resort v Marac</u> | (2009) 9 NZBLC 102,409 (HC) | 20/08/2008 | 17, 23, 104, 105(b)(i), 108, 134, Pt 2, Pt 9 | Assignee of debt arguably not protected by PPSA because right to payment arose in connection with an interest in land. |
| 19 | <u>Commissioner of Inland Revenue v North Shore Taverns (in liq)</u> | (2009) 10 NZCLC 264,429 (HC) | 27/08/2008 | 16(1) | Definition of "accounts receivable" is limited to book debts or trade credit accounts. [See criticism by M Gedye in "What is an Account Receivable" (2000) 15 NZBLQ 168.] |
| 18 | <u>Gough Finance v PL Adams</u> | (unreported) McDonald DCJ, DC Whangarei, PPN1538718129 (DC) | 23/07/2008 | 177 | Secured party must be notified before a seized motor vehicle is sold to pay off unpaid fines. Security interest has priority over fines. [Note that subsequently the Act is to be amended] |
| 17 | <u>Stiassny v Dunedin City Council</u> | (unreported) 30 May 2008, Winkelmann J, HC Auckland, CIV-2007-404-3463 (HC) | 30/05/2008 | 17, 23, 40 | A trust can in substance be a security interest if it secures payment or performance of an obligation; no security interest found on the facts. |
| 16.3 | <u>NZ Associated Refrigerated Food v Simpson</u> | (unreported) Dobson J, HC Wellington, CIV-2007-485-1563; CIV-2005-485-1820 (HC) | 20/06/2008 | 17, 82 | PMSI supplier only had PMSI in unpaid stock; onus is on supplier to determine which goods supplied were not paid for. Default position is that oldest debts are paid for first. |
| 16.2 | <u>NZ Associated Refrigerated Food v Simpson</u> | (unreported) Dobson J, HC Wellington, CIV-2007-485-1563; CIV-2005-485-1820 (HC) | 06/05/2008 | Not specified | Minute recalling 28/04/2008 decision. |
| 16.1 | <u>NZ Associated Refrigerated Food v Simpson</u> | (2008) 10 NZCLC 264,418 (HC) | 28/04/2008 | 16, 17(3), 82 | High Court decision – recalled by minute dated 06/05/2008. |
| 15 | <u>Metropolitan Advances v Hollis</u> | [2008] NZCCLR 30 (HC) | 06/03/2008 | 6, 16, 17(1), 40 | Accountant's authority to deduct invoices against tax returns did not amount to a security interest. |
| 14 | <u>K-Auto v McGuire</u> | (Unreported) Associate Judge Robinson, HC Auckland, CIV-2006-404-6784 (HC) | 11/02/2008 | Not specified | Wrongful registering of financing statement could be a proper basis for a damages claim. |
| 13.2 | <u>Stiassny v North Shore City Council</u> | [2009] 1 NZLR 342 (CA) | 02/12/2008 | 17 | A trust interest can in substance be a security interest, depending on the purpose of the transaction, the role and relationship of the parties, the practical and commercial reality and the parties' intentions. |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|--|--|-------------------------|------------------------------------|--|
| 13.1 | <u>Stiassny v North Shore City Council</u> | [2008]1 NZLR 825 (HC) | 29/11/2007 | 17, 23(b), 36, 40(1)(a) | High Court decision later affirmed on appeal. See Court of Appeal decision 02/12/2008. |
| 12.2 | <u>JS Brooksbank v EXFTX</u> | (2009)10 NZCLC 264,520 (CA) | 06/04/2009 | 16, 17, 24, 40 | Cash on delivery clause, goods delivered without payment, by agent's mistake. Title did not pass, but mere fact it was retained did not create security interest. "In substance" test not satisfied. Owner was bailor and not a secured party. |
| 12.1 | <u>JS Brooksbank v EXFTX</u> | (2008)10 NZCLC 264,338 (HC) | 21/11/2007 | 16, 17, 18, 23, 24, 40, 73 | High Court decision later overturned on appeal. See Court of Appeal decision 06/04/2009. |
| 11.2 | <u>Segard Masurel v Nicol</u> | (2008)10 NZCLC 264,386 (HC); [2008] NZCCLR 25 | 12/02/2008 | 17, 24 | Cash on delivery clause, but goods delivered without payment. SOGA applied to determine that vendor retained no rights in the collateral, so held no security interest. Had title not passed, delivery without payment would have created a security interest. |
| 11.1 | <u>Segard Masurel v Nicol</u> | (unreported) Nicola Mathers DCJ, DC Auckland, CIV-2006-004-3020 (DC) | 23/05/2007 | 17, 24 | District Court decision later affirmed on appeal. See High Court decision 12/02/2008. |
| 10 | <u>Orix v Milne</u> | [2007] 3 NZLR 637 (HC) | 17/05/2007 | 53 | When taking goods free of security interest, seller is deemed to include agents selling the relevant goods on behalf of the owner. |
| 9 | <u>NZ Bloodstock v Jenkins</u> | (2007) 3 NZCCLR 811 (HC) | 19/04/2007 | 17, 35, 40, 41, 66(1)(a), 69, 73 | Guarantors of a lease-to-purchase agreement were not released from liability by the lessor's failure to register the security interest under the PPSA (due to the guarantee's terms, which ousted the equitable defences). |
| 8 | <u>Keybank National Association v The Ship "Blaze"</u> | [2007] 2 NZLR 271 (HC). | 09/02/2007 | 23, 25(1), 26, 52, 90 | PPSA has no application to a ship which falls directly or indirectly within the Ships Registration Act. |
| 7 | <u>Harvestpro Logging v Cordyline</u> | (unreported) Associate Judge Doogue, HC Auckland, CIV-2006-404-3107 (HC) | 03/10/2006 | 17, 25, 109, 117 | A security interest entitles the secured party to possession (on default, etc.) and so entitles the secured party to sue in conversion. |
| 6 | <u>Asset Traders v Favas Sportscar</u> | (2006) 9 NZCLC 264,000 (HC) | 03/08/2006 | 17, 162, 165, 167 | The Court should approach applications to maintain financing statements in the same manner as applications to sustain caveats over land. |
| 5.2 | <u>Dunphy v Sleepyhead</u> | [2007] 3 NZLR 602 (CA) | 14/06/2007 | 7, 21, 36, 40, 75, 117, Pt 3, Pt 9 | A liquidator is an agent of the company and not a "third party" in terms of s 36, meaning that a security agreement not in writing is nevertheless enforceable against a liquidator. |
| 5.1 | <u>Re King Robb Ltd</u> | (2006) 9 NZCLC 264,000 (HC) | 23/02/2006 | 16, 17, 36, 40, 41(1), 48(1)(a) | High Court decision later affirmed on appeal. See Court of Appeal decision 14/06/2007. |

| <u>No.</u> | <u>Case</u> | <u>Citation</u> | <u>Date of judgment</u> | <u>Section (s)</u> | <u>Key point</u> |
|------------|---|-----------------------------|-------------------------|---|---|
| 4.2 | <u>Simpson v NZ Associated Refrigerated Food</u> | [2007] 2 NZLR 130 (CA). | 11/12/2006 | 16, 17, 74, 149, 162, 167 | Overly-broad description of collateral will not render a financing statement “seriously misleading”, as it does not prevent the searcher from locating it. |
| 4.1 | <u>Service Foods Manawatu v NZ Associated Refrigerated Food</u> | (2006) 9 NZCLC 263,979 (HC) | 30/01/2006 | 16, 17, 24, 36, 41, 74, 142(1) (e), 149, 150, Pt 3, Pt 10 | High Court decision later affirmed on appeal. See Court of Appeal decision 11/12/2006. |
| 3 | <u>Agnew v Pardington</u> | [2006] 2 NZLR 520 | 22/12/2005 | 16(1), 45(1), 106, 115, 117 | The concept of proceeds extends not only to proceeds of sale but also to income arising from the collateral. |
| 2.2 | <u>Waller v NZ Bloodstock</u> | [2006] 3 NZLR 629 (CA) | 27/10/2005 | 3, 16, 17, 23(e)(ix), 34, 35, 36, 40, 41, 43, 45, 52, 66, 135, 193, 194, 195, 196, 197, 198, 199, 200, 201, Pt 1, Pt 3, Pt 10 | A pre-PPSA debenture created a security interest over all collateral in which debtor has rights and not just assets owned by debtor. It extended to collateral leased to the debtor. Also, perfection cannot be achieved by repossession. |
| 2.1 | <u>Waller v NZ Bloodstock</u> | [2005] 2 NZLR 549 (HC). | 02/12/2004 | 4, 16, 17, 23, 24, 36, 40, 41, 43, 45, 66, 73, Pt 5, Pt 6 | High Court decision later affirmed on appeal. See Court of Appeal decision 27/10/2005. |
| 1 | <u>Graham v Portacom</u> | [2004] 2 NZLR 528 (HC) | 17/03/2004 | 16, 17, 36, 40, 66 | Lease for a term of more than one year creates a security interest regardless of who holds title to collateral. Debenture-holder has security interest over collateral itself, not merely debtor’s possessory interest. |

Contacts



MICHAEL ARTHUR – PARTNER
T: +64 9 357 9296 **M:** +64 27 209 4999
E: michael.arthur@chapmantripp.com



MICHAEL HARPER – PARTNER
T: +64 9 358 9816 **M:** +64 21 777 681
E: michael.harper@chapmantripp.com

AUCKLAND

23 Albert Street
 PO Box 2206, Auckland 1140
 New Zealand

T: +64 9 357 9000
F: +64 9 357 9099

WELLINGTON

10 Customhouse Quay
 PO Box 993, Wellington 6140
 New Zealand

T: +64 4 499 5999
F: +64 4 472 7111

CHRISTCHURCH

60 Cashel Street
 PO Box 2510, Christchurch 8140
 New Zealand

T: +64 3 353 4130
F: +64 3 365 4587