

PRIORITIES UNDER THE PERSONAL PROPERTY SECURITIES ACT 2009

Dr Jim O'Donovan and Daniel Butler

Wednesday, 22 August 2012

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Priorities under PPSA 2009

Objectives

- Identify priority issues
- Avoid common mistakes
- Induce panic about time limits



Unitary concept of security interest

Interest in personal property provided for by a transaction in substance secures payment or performance

Deemed security interests

The main type for present purposes is the interest of a lessor under a PPS lease (although there are others)

Deemed security interests (cont'd)

A PPS lease is a lease or bailment of serial-numbered goods for 90 days or more, or a lease or bailment of other goods for more than one year

If a bailment, bailor must be in the business of bailing goods

Secured parties

- Lenders
- Lessors
- Bailors
- Consignors

Old law v New law

- First in time prevails
- Title affected priority

- Does not prevail
- Does not affect



Attachment

- Grantor has rights in collateral or
- Power to transfer such rights
- Secured party provides value

Perfection

Four ways:

- Possession
- Control
- Registration
- Temporary perfection under PPSA 2009

Case study No.1(a): Transitional v new security interest

- On 1 April 2011 B.E. Capital Ltd granted lease to Ferrous Pty Ltd
- On 2 March 2012 Ferrous granted chattel mortgage to Coolibah
- On 4 March 2012 Coolibah registered

Case study No.1(a) (cont'd)

- The goods are serial-numbered goods (excavator is a motor vehicle)
- The lease is a PPS lease (ie more than 90 days)



Case study No.1(a) (cont'd)

- The PPS lease is a deemed security interest

Case study No.1(a) (cont'd)

- The PPS lease is a transitional security interest
- Just before 30 January 2012:
 - (a) attachment is deemed to have occurred
 - (b) perfection is deemed to have occurred



Case study No.1(a) (cont'd)

- Transitional security interest is temporarily perfected for up to 24 months



Case study No.1(a) (cont'd)

- Transitional security interest has priority over bank's PPSA security interest



Case study No.1(b): Transitional security interest provided for by transitional security agreement

- 10 October 2010 Space World Pty Ltd entered into a master agreement with AB Sci Fi Pty Ltd
- Agreed to supply two different types of computer games on Retention of Title (**ROT**) terms over a five year period in quarterly instalments
- Does Space World need to register a security interest?

Case study No.1(b) (cont'd)

- Space World's security interest is “provided for” by a transitional security agreement
- Therefore, Space World need not register its security interest
- It enjoys temporary perfection for up to 24 months after 30 January 2012

Case study No.2: Control v registration

- 1 April 2012 Gina grants Eastpac a mortgage over CHESSE shares
- This is an intermediated security (section 15)



Case study No.2 (cont'd)

- 1 April 2012 Gina enters control agreement with Eastpac
- 1 June 2012 Gina grants General Security Agreement (**GSA**) to Goldfinger (over all present and after-acquired property)
- 1 June 2012 Goldfinger registers its GSA
- 10 June 2012 Eastpac registers share mortgage

Case study No.2 (cont'd)

- Priority determined by priority times



Case study No.2 (cont'd)

- Eastpac's priority time is 1 April 2012
- The time it first perfected by control



Case study No.2 (cont'd)

- Eastpac prevails over Goldfinger even though Goldfinger registered first



Case study No.2 (cont'd)

- Different result if control agreement terminated before 10 June 2012
- Eastpac would lose benefit of continuous perfection



PMSI definition

A Purchase Money Security Interest (**PMSI**) is a security interest that facilitates the acquisition or use of the collateral such as an ROT arrangement

Case study No.3

- Easy advances deposit (\$10,000) to Ace Rental



Case study No.3 (cont'd)

- Forward supplies new car (equipment) on ROT
- On 21 May 2012 delivered on approval



Case study No.3 (cont'd)

- 24 May 2012 Ace completes purchase



Case study No.3 (cont'd)

- On 30 May 2012 Easy registers

Case study No.3 (cont'd)

- On 13 March 2012 Ace grants Big Bank a GSA
- GSA is registered in advance on 10 March 2012



Case study No.3 (cont'd)

- Easy has a PMSI limited to \$10,000
- Easy has super priority over Big Bank
- Why?

Case study No.3 (cont'd)

- Easy registered PMSI within 15 business days after Ace obtained possession
- This period of grace applies to property other than inventory



Case study No.3 (cont.)

- Forward does not get super priority because it did not register within 15 business days of grantor obtaining possession
- Forward will not take priority over Big Bank or Easy



Case study No.3 (cont'd)

- This was not a contest between two PMSIs because Forward did not register within time
- If it had, Forward's PMSI would have taken priority over Easy's PMSI
- Sellers' PMSIs trump lenders' PMSIs



Case study No.4

- 15 February 2012
Greenbank advances
\$100,000 to Western to
acquire liquor supplies



Case study No.4 (cont'd)

- Western uses only \$50,000 for this purpose



Case study No.4 (cont'd)

- 12 February 2012 Greenbank registers

Case study No.4 (cont'd)

- 10 March 2012 Riverbank advances \$150,000 to Western
- 15 March 2012 Riverbank registers

Case study No.4 (cont'd)

- Proceeds of liquor deposited in Western's account at Riverbank
- Riverbank has a security interest in this account



Case study No.4 (cont'd)

- Greenbank's PMSI is limited to \$50,000
- Greenbank is entitled to super priority for \$50,000
- Why?



Case study No.4 (cont'd)

- Greenbank registered before Western obtained possession of the inventory
- But does Greenbank prevail?

Case study No.4 (cont'd)

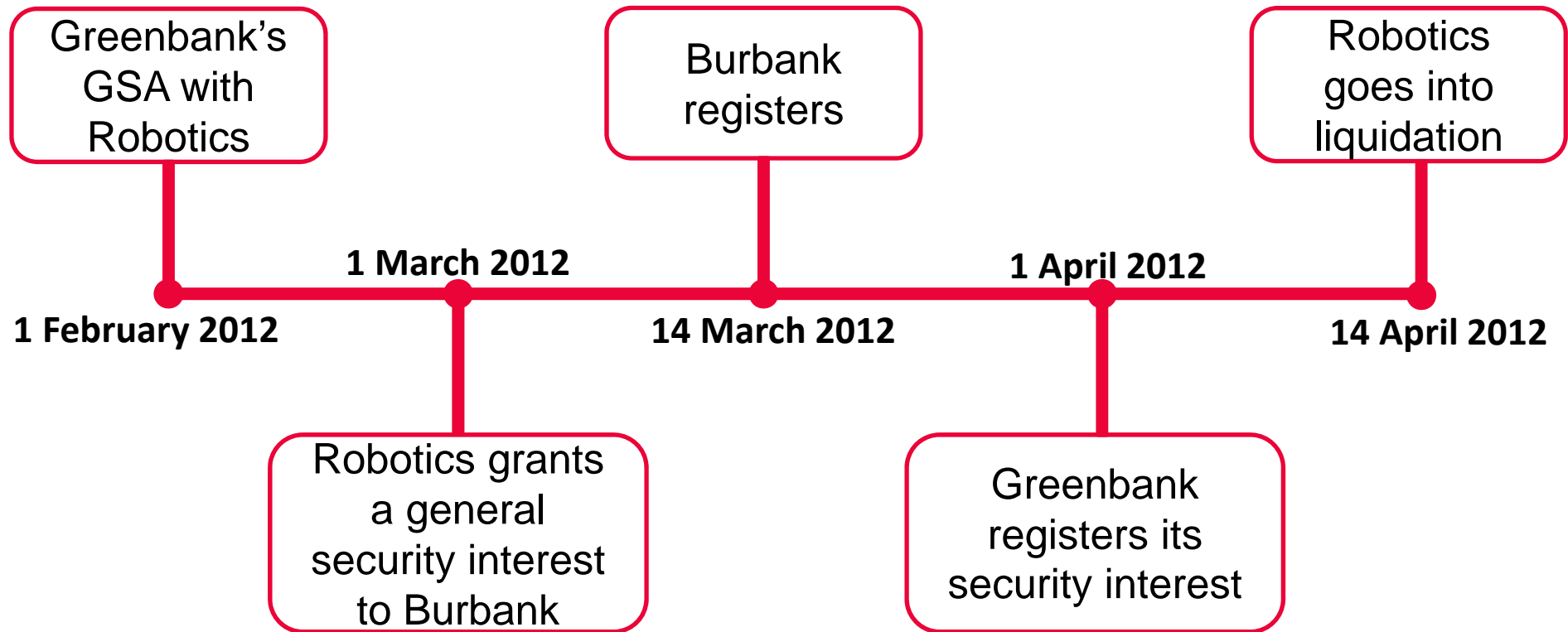
- No, Riverbank has priority as an Authorised Deposit-taking Institution (**ADI**) with a security interest in an ADI account perfected by control



Case study No.4 (cont'd)

- Greenbank has an ordinary security interest for the other \$50,000
- This security interest may prevail over later registered security interests

Case study No.5



Case study No.5 (cont'd)

- Greenbank's security interest vests in Robotics upon liquidation: not registered within 20 business days after it was made or more than six months before liquidation (section 588FL)
- Burbank's security interest does not vest in Robotics. It does not matter under section 588FL that it was registered only one month before liquidation
- Burbank prevails even though second in time



Summary

- Title does not help in priority contests
- First to register does not necessarily prevail
- Transitional Security Interests (**TSI**) have priority over PPSA security interests
- Security interests perfected by control have priority over security interests perfected by any other means, apart from TSIs

Summary (cont'd)

- PMSIs must be registered as PMSIs
- PMSIs are limited to amounts advanced or credit given to acquire the collateral
- PMSIs over goods that are inventory must be registered before grantor obtains possession

Summary (cont'd)

- PMSIs over goods other than inventory must be registered within 15 business days after grantor obtains possession

Summary (cont'd)

- Security interests granted over corporate property must be registered within 20 business days after they are granted or not more than six months before liquidation or administration of the grantor: section 588FL of *Corporations Act*.

Summary (cont'd)

- All security interests must be perfected before the grantor becomes insolvent
- Otherwise they vest in the grantor: section 267 of PPSA 2009

QUESTIONS?

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