

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Parsons v. JWB Timber Ltd.*,  
2024 BCSC 1192

Date: 20240606  
Docket: CAR-S-S-15413  
Registry: Campbell River

Between:

**Frederick Parsons and 0846041 B.C. Ltd.**

Petitioners

And:

**JWB Timber Ltd. and  
De Lage Landen Financial Services Canada Ltd.**

Respondents

Before: The Honourable Justice Wolfe

## Oral Reasons for Judgment

Counsel for the Petitioners (via MS Teams):

W.J. Havelaar

Counsel for the Respondent, De Lage Landen  
Financial Services Inc. (via MS Teams):

D. DiPardo

Respondent JWB Timber Ltd.:

No appearance

Place and Date of Hearing:

Courtenay, B.C.  
June 3, 2024

Place and Date of Judgment:

Courtenay, B.C.  
June 6, 2024

**Overview**

[1] These are my oral reasons for judgment. If a transcript is ordered, I reserve the right to edit for grammar and clarity, and to address citations, but the substance and outcome of my reasons will not change.

[2] The petitioners, Mr. Parsons and 0846041 B.C. Ltd. (“084”) – a numbered company of which Mr. Parsons is the sole director, majority shareholder and directing mind – apply for an order pursuant to s. 70 of the *Personal Property Security Act*, RSBC 1996, c. 359 (the “PPSA”) directing the registrar of the Personal Property Registry (the “Registry”) to cancel a registration filed on February 6, 2023 against collateral described as a John Deere Log Loader, serial No. 1FF3756GJD376015 (the “Log Loader”).

[3] The registration in question – which has a base registration number of 341596P (the “Registration”) – was filed by one of the respondents, De Lage Landen Financial Services Canada Inc. (“DLL”), which opposes the present application.

[4] The other respondent, JWB Timber Ltd. (“JWB Timber”), did not file a response to petition or attend the hearing, although duly served. I am advised by counsel for the petitioners that additional communications were sent to JWB Timber without any response. The petition was also made on notice to Brandt Tractor Ltd. (“Brandt Tractor”), which likewise chose not to participate, although duly served.

[5] At core, this application concerns the entitlement to or ownership of, and rights or interests in, the Log Loader, including the right to offer the Log Loader as security for a financing arrangement. It is trite law that a debtor cannot offer as security collateral which they do not own or have the rights to transfer.

[6] Based on the evidence presently before the Court, and for the reasons that follow, I am satisfied the petitioners own the Log Loader, and the Registration filed by DLL should be cancelled as a result.

**Factual Background**

**The petitioners' relationship to the Log Loader**

[7] The petitioners say they are the proper owners of the Log Loader and they did not grant any interest in the Log Loader to anyone else such that it could have been pledged as collateral to a subsequent lender.

[8] By way of a sales agreement dated February 28, 2018, the petitioners purchased the Log Loader from Brandt Tractor for a total purchase price of \$617,946.00. The sales agreement indicates the Log Loader is being sold to 084, and Mr. Parsons signed the agreement as owner of 084. The sales agreement provides on page 1 that “[A]ll goods remain the property of Brandt Tractor Ltd. until fully paid for.” The terms and conditions of sale on page 2 of the sales agreement specify that Brandt Tractor has a security interest in the Log Loader until payment in full and performance of all other terms and conditions. The terms and conditions also include standard language with respect to default, including the right to accelerate the time for payment of all amounts owing. The terms and conditions expressly permit Brandt Tractor to assign any of its rights to a third party, including any right to receive payment and any security for such payment.

[9] At the same time, on February 28, 2018, the petitioners entered into a finance lease agreement with another company, Twenty Ten Developments Ltd. (“Twenty Ten”), as co-lessee, and Brandt Tractor as the lessor, to finance the purchase of the Log Loader through John Deere Canada ULC (“JD Canada”). Page 3 of the finance lease agreement expressly specifies that Brandt Tractor (defined as the “Dealer” under the agreement) “automatically assigns all Dealer’s rights and benefits in and under this Lease and all payments due or to become due under this Lease to JD Canada” (emphasis added). Page 2 of the finance lease agreement specifies that JD Canada retains “title to and ownership of the [Log Loader] and that no one but [JD Canada] has any legal interest in the [Log Loader] or its proceeds.” The finance lease agreement permitted JD Canada to assign its rights and benefits to any

person without notice. JD Canada subsequently assigned its rights to John Deere Financial Inc.

[10] The finance lease agreement included an option to purchase that the co-lessees could exercise by giving notice not less than 60 days prior to the end of the lease term (specified to be March 1, 2022), provided the co-lessees were not in default of any of the terms and conditions of the lease. If exercised, the option to purchase clause provided that JD Canada would transfer title to the Log Loader upon receipt of payment in full for the option price (\$1.00), plus all applicable taxes and all amounts outstanding under the lease.

[11] Mr. Parson's evidence is that he advanced the down payment for the Log Loader and that he and Mr. William Baumel, one of the directors, shareholders and officers of Twenty Ten, agreed that Twenty Ten would use the Log Loader and make all payments to JD Canada under the terms of the finance lease agreement. There was a subsequent arrangement between Mr. Parsons and Mr. Baumel for an additional loan that eventually resulted in the petitioners filing a separate notice of civil claim against Mr. Baumel and Twenty Ten. The details of that loan are not material to this application, but the outcome of the civil proceedings is relevant.

[12] In October 2018, 084 and Twenty Ten requested an amendment to the finance lease agreement to adjust the payment schedule. Subsequent correspondence indicates that the amending agreement was made effective on or about November 7, 2018. The amending agreement also confirms that by that point, JD Canada had assigned its rights and benefits to John Deere Financial Inc.

[13] By letter dated December 21, 2021, John Deere Financial Inc. notified 084 that the co-lessees were in default of their obligations under the finance lease agreement and the amending agreement. As the agreement had been for Twenty Ten to make all payments under the two agreements, Mr. Parsons says this is when he became aware that Twenty Ten had not made those payments. This default also negated the co-lessees' ability to exercise the option to purchase under the finance lease agreement.

[14] Consistent with its contractual rights, John Deere Financial Inc. declared all of the co-lessees' obligations "immediately due and payable" and demanded payment of \$76,671.76, which was the balance owing under the agreements as of December 21, 2021. John Deere Financial Inc. also demanded per diem interest of \$20.03 on the balance owing from December 21, 2021 to the date of payment.

[15] On January 20, 2022, Mr. Parsons paid the balance owing on the Log Loader in full, by way of a cash advance in the amount of \$77,226.80, representing the principal plus per diem interest to that date. This satisfied all remaining obligations under the finance lease agreement and the amending agreement. On March 9, 2022, John Deere Financial Inc. wrote to 084 confirming the release of its interest in the Log Loader. The letter references the account number associated with the finance lease agreement and amending agreement, as well as listing the Log Loader as equipment and identifying it by description and serial number. The language of the letter is material. Below the description of the Log Loader, the letter reads:

For purposes of your records, please accept this letter as our release of interest on the above piece(s) of equipment.

John Deere Financial Inc. no longer holds any interest in the above unit(s).

[16] DLL took the position during the hearing that the March 9, 2022 letter only represented a release of John Deere Financial Inc.'s security interest, and that the petitioners' failure to exercise the option to purchase means they did not acquire title to the Log Loader simply by virtue of having paid out the balance owing in full. I cannot accept DLL's position in this regard, nor was I provided with any authority to support their submission.

[17] As noted, the option to purchase could not have been exercised once the co-lessees defaulted on the payments under the finance lease agreement. The finance lease agreement and amending agreement do not explicitly address the transfer of title where the debtors default on their obligations (thereby negating the option to purchase), the lender chooses to respond by demanding full and immediate payment of all outstanding obligations (including interest) and where, as here, the

debtors (or at least one of them) satisfy that demand in full. However, the language of the letter from John Deere Financial Inc. is unequivocal. It provides that John Deere Financial Inc. – the only entity with a legal interest in the Log Loader – “no longer holds any interest” (emphasis added) in the Log Loader. As Brandt Tractor has no remaining rights or interests under the agreements, I find that the only entities that could have acquired rights and interests in the Log Loader as of this point were 084 and Twenty Ten.

[18] As referenced above, in September 2022, the petitioners commenced civil proceedings against Mr. William Baumel and Twenty Ten for breach of contract in relation to payments regarding the Log Loader. The notice of civil claim sought judgment against Mr. William Baumel and Twenty Ten, jointly and severally, in the amount of \$186,691.72, which included the amount Mr. Parsons paid to John Deere Financial Inc. to remedy the default under the finance lease agreement and amending agreement. Twenty Ten failed to file a response to civil claim and on May 16, 2023, the petitioners obtained default judgment against Twenty Ten for the full amount sought, plus contractual interest and costs.

[19] Mr. William Baumel responded to the civil claim, and in August 2023, the petitioners filed an application for summary trial seeking judgment against him in the same amount. In the application for summary trial, the petitioners also sought a declaration that the Log Loader is the property of 084 and orders permitting the petitioners to seize the Log Loader, have exclusive conduct of its sale, and for distribution of the net sales in a manner that would satisfy the monetary judgment sought and any costs to obtain and sell the Log Loader, with any balance to be paid into court.

[20] The summary trial proceeded before Justice A. Ross on September 25, 2023. Mr. William Baumel did not attend. The Court granted the requested order the Mr. William Baumel pay the petitioners \$186,691.72 plus contractual interest and costs. The Court adjourned the other relief sought, including the declaration of ownership. During the hearing before me, counsel for the petitioners advised that the

other relief was adjourned generally on the petitioners' request because, in the intervening period, they had discovered DLL's registration of its security interest in the Log Loader.

**DLL's registration of its asserted security interest**

[21] In February 2023, well after John Deere Financial Inc. had released all of its interests in the Log Loader in March 2022, and before the petitioners obtained judgment against Twenty Ten and Mr. William Baumel, DLL says they acquired a security interest in the Log Loader by virtue of a conditional sale agreement and an assignment agreement which did not in any way involve the petitioners.

[22] Both the petitioners and DLL provided evidence to the Court of a conditional sale agreement, dated February 1, 2023, between Brandt Tractor as "seller" and JWB Timber and Westly Joseph Baumel as co-buyers. Under the conditional sale agreement, Brandt Tractor purported to sell the Log Loader to the co-buyers for \$367,500.00, of which the co-buyers agreed to finance \$199,642.56. Mr. Westly Baumel is listed in the conditional sale agreement as a director of JWB Timber. There is no evidence before the Court with respect to the nature of his relationship to Mr. William Baumel.

[23] The conditional sale agreement expressly permitted Brandt Tractor as the seller to assign its rights and interests without notice. At the same time as it entered into the conditional sale agreement, Brandt Tractor assigned all of its rights, title and interest in and to the conditional sale agreement, the Log Loader and any and all guarantees and additional security to DLL, in exchange for a lump sum payment of \$165,000.00. The co-buyers agreed to make monthly payments to DLL commencing March 1, 2023. The evidence before the Court indicates that, as of the end of January 2024, the co-buyers had made 11 instalment payments to DLL.

[24] Under the assignment agreement, Brandt Tractor provided an express warranty that title to the Log Loader vested in DLL "free of all taxes, liens, charges and encumbrances". DLL relies on this warranty.

[25] On the basis of the conditional sale agreement and assignment agreement, DLL filed a financing statement registered against the Log Loader in the Registry, naming JWB Timber and Mr. Westly Baumel as debtors. As noted, the Registration has base registration number 341596P.

**Analysis**

[26] This application is brought under s. 70 of the *PPSA*, which allows an interested person to apply to court on a summary basis for an order determining questions of priority or entitlement to collateral. The Court may also direct an action to be brought or an issue to be tried. Neither counsel relied on any authorities in making their submissions. They advised the Court they were unable to find any applicable authorities under s. 70 of the *PPSA* or that would assist the Court with the issues before it.

[27] Section 2(a) of the *PPSA* provides that it applies to “every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral” (emphasis added). Section 2(b) expressly provides that the *PPSA* applies to a conditional sale if it secures the payment or performance of an obligation.

[28] Filing a registration in the Registry does not create a security interest; the Registry serves a notice function and a registration may be filed before a security interest attaches.

[29] Under s. 12 of the *PPSA*, a security interest essentially attaches when three conditions are met:

- a) value is given
- b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party, and



- c) the security interest becomes enforceable against a third party under s. 10 (which can occur when the debtor signs a security agreement that contains an adequate description of the collateral).

[30] DLL relies on the definition of “security interest” in s. 1 of the *PPSA* and the application of the *PPSA* to conditional sales agreements, as set out in s. 2 of the *PPSA*, to argue that it has a “security interest” in the Log Loader because the conditional sale agreement and assignment agreement secure payment or performance of an obligation from the co-buyers. DLL appears to accept that a debtor cannot offer as security collateral which they do not own or have the rights to transfer. This is consistent with s. 12(1)(b) of the *PPSA* which makes one of the pre-conditions to the attachment of a security interest the fact that the debtor has rights in the collateral or the power to transfer rights in the collateral. However, DLL relies on the express warranty given by Brandt Tractor in the conditional sale agreement that title to the Log Loader vested in DLL free of all taxes, liens, charges and encumbrances. In essence, DLL relies on the warranty as establishing that Brandt Tractor had title to the Log Loader that it could and did assign to DLL.

[31] The petitioners note that there is no evidence before the Court that DLL did any due diligence to ensure that either Brandt Tractor or JWB Timber had any rights or title to the Log Loader. After obtaining a copy of the conditional sale agreement, and before filing this petition, petitioners’ counsel wrote to counsel for Brandt Tractor on November 6, 2023 in an attempt to determine how Brandt Tractor purported to obtain an interest in the Log Loader. The responding letter dated November 15, 2023 from counsel for Brandt Tractor is in evidence before the Court. In that letter, counsel for Brandt Tractor states as follows:

Our understanding is that in January 2023, Westly Baumel, on behalf of JWB Timber Ltd., applied to refinance the [Log Loader], which he advised was owned by JWB Timber Ltd. The [Log Loader] was financed by De Lage [sic] Financial Services Canada Inc. in the amount of \$165,000, who we understand was granted a security interest in the [Log Loader]. The mechanism of refinancing was by way of a bill of sale from JWB Timber Ltd. to Brandt Tractor Ltd. and a concurrent Conditional Sales Agreement of the [Log Loader] back to JWB Timber Ltd., which was then assigned to De Lage Financing [sic] Services Canada Inc.

[32] Counsel for Brandt Tractor closes the letter by stating that the dispute does not involve Brandt Tractor but is instead a dispute between the Parson and Baumel parties and must be resolved without the involvement of Brandt Tractor.

[33] The bill of sale from JWB Timber Ltd. to Brandt Tractor is not in evidence before the Court. The petitioners would not have access to it. Both JWB Timber and Brandt Tractor had notice of this petition and chose not to respond or attend. The petitioners maintain that they did not grant any interest in the Log Loader to any other legal person that would have permitted the Log Loader to be pledged as collateral. As the petitioners admitted during submissions, arguably, the legal persons who might have, at one point, been in a position to claim some form of right or interest in the Log Loader would have been Mr. William Baumel and Twenty Ten. But the petitioners obtained judgment against both of them individually in an amount that appears to have been based, at least in part, on eliminating or extinguishing their interest in the Log Loader.

[34] Further, there is no evidence before the Court of a business relationship or agreement between the petitioners and JWB Timber that would support JWB Timber having had any form of interest in the Log Loader that could have been conveyed by way of a bill of sale to Brandt Tractor. The petitioners' evidence denies there was any such agreement or relationship. JWB Timber had the opportunity to participate in this proceeding to demonstrate the basis on which it says it had an interest in the Log Loader. I agree with the petitioners that it is telling that JWB Timber chose not to do so.

[35] DLL argues that there is an evidentiary gap with respect to title to the Log Loader, and that the petitioners bear the burden to prove the express warranty as to title made by Brandt Tractor was invalid. Again, I cannot accept DLL's position. It is DLL that seeks to rely on the express warranty as the basis for its opposition to this petition. A secured party is entitled to rely on a representation where that reliance is reasonable. But as the British Columbia Court of Appeal recently held in *Pyke v. Merchant Growth Asset Financing Ltd.*, 2024 BCCA 188 at paras. 34-36, a secured

party cannot assert it reasonably relied on a representation or warranty if it made no efforts to determine the facts before entering into a security agreement. The Court stated at para. 36 of that judgment that it is not “unfair to a lender to expect it to take steps, before taking security, to ascertain the nature of that security.” Here, there is no evidence that Brandt Tractor’s warranty was based on a legal interest. DLL has not provided any such evidence, or taken steps to third-party Brandt Tractor in order to support its reasonable reliance on the warranty.

[36] In contrast, the petitioners have provided the Court with a chain of evidence that establishes that, as of March 9, 2022, only they and Twenty Ten had any rights or interests in the Log Loader. The petitioners have also obtained judgment against both Twenty Ten and Mr. William Baumel individually in relation to funds owing from their collective dealings regarding the Log Loader. While an express declaration of ownership was not granted in those proceedings, due to the existence of the Registration, in my view, the practical effect of the judgment supports the petitioners’ legal position that they are the rightful owners of the Log Loader.

[37] As a result of my conclusions, I make an order under s. 70 of the *PPSA* determining the question of entitlement to the Log Loader in favour of the petitioners. It follows that the Registration filed by DLL must be cancelled and I make an order directing the registrar of the Registry to cancel it.

[38] DLL is not without recourse, as there are likely claims that may be pursued against one or more of Brandt Tractor, JWB Timber and Mr. Westly Baumel for breaches arising under the conditional sale agreement and assignment agreement.

[39] As the successful parties on this application, the petitioners are entitled to their regular costs against DLL. I make no order for costs against JWB Timber, which did not appear. DLL may, of course, choose to pursue any costs that it must pay in this proceeding in future proceedings it may bring in relation to the conditional sale agreement and assignment agreement.

[40] If the parties cannot agree on costs, they are entitled to provide further brief written submissions to me through the Court Registry after contacting the Registry in the usual manner.

[41] That is my judgment. Anything arising, counsel?

[42] CNSL HAVELAAR: No Madam Justice.

[43] CNSL DIPARDO: Nothing from me either Justice.

“K. Wolfe J.”