COURT OF APPEAL FOR ONTARIO

CITATION: Royal Bank of Canada v. Cutler Forest Products Inc., 2024 ONCA 118
DATE: 20240216
DOCKET: COA-23-CV-0041

Miller, Harvison Young and Favreau JJ.A.

In the matter of Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

BETWEEN

Royal Bank of Canada

Applicant (Respondent)

and

Cutler Forest Products Inc.

Respondent

Craig Colraine and Freeman Choi, for the appellant Paccar Leasing Company Ltd.

Timothy C. Hogan and Robert Danter, for the respondent Fuller Landau Group Inc., in its capacity as court-appointed receiver in the within proceeding

Roger Jaipargas, for the respondent Royal Bank of Canada

Heard: July 17, 2023

On appeal from the order of Justice Michael A. Penny of the Superior Court of Justice, dated December 23, 2022, with reasons reported at 2022 ONSC 6629.

Harvison Young J.A.:

A. OVERVIEW

[1] The appellant, Paccar Leasing Company Ltd. ("Paccar"), appeals the motion judge's order holding that the perfected security interest of Royal Bank of Canada ("RBC") in the property of the debtor, Cutler Forest Products Inc. ("Cutler"), prevailed over Paccar's unperfected security interest as the lessor and owner of the three commercial trucks that it had leased to Cutler, thus permitting the Fuller Landau Group Inc. (the "Receiver") to take possession of and sell the trucks. The Receiver had sought directions from the court pursuant to the order of Dietrich J., which had appointed it as receiver for Cutler. The application for the appointment of a receiver was made pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended (the "CIA").

[2] The heart of Paccar's argument on appeal is that because it retains title over the trucks in the debtor's possession pursuant to a "true" lease, its interest ranks in priority to the interests of either RBC or the Receiver, whose interests are derived from Cutler's. Neither RBC nor the Receiver is entitled to more rights in the property than the lessee Cutler had. Accordingly, the Receiver should not have been permitted to take possession of and sell the trucks.

[3] The Receiver argues that, as the motion judge held, Paccar's position is incorrect and ignores the fundamental changes that came into effect with the

reforms to the *Personal Property Security Act*, R.S.O. 1990, c. P.10 ("*PPSA*"), in 2007. The Receiver submits that these changes to the *PPSA* displaced, in certain situations, the question of ownership and title in favour of greater emphasis on the hierarchy of priority. While Paccar clearly could have perfected its security interest under the *PPSA* as the lessor of property for more than one year, its failure to do so meant that it does not have priority over RBC's perfected security interest over the collateral, which arises under the General Security Agreement (the "GSA") between RBC and Cutler.

[4] For the reasons that follow, I would dismiss the appeal.

B. BACKGROUND

[5] The background facts are straightforward and not in dispute.

[6] RBC has a first in time registered security interest in Cutler's present and after acquired personal property and undertaking pursuant to the GSA, which it entered into in April 2007.

[7] On October 22, 2020, Paccar and Cutler entered into a Canadian Vehicle Lease and Service Agreement (the "VLSA"). Pursuant to the VLSA, Paccar leased the three trucks in issue to Cutler: the 2018 Peterbilt 337 for a term of 36 months, and the 2021 Kenworth T880 and 2021 Kenworth T270 each for a term of 84 months.

[8] The VLSA provided that Paccar retained ownership of the trucks and was responsible for maintaining them in good repair, including furnishing all labour and parts which were required to keep the trucks in good operating condition. The rental payments and other charges were for the carefree use of the trucks. Cutler was not entitled to purchase the trucks at the end of the lease.

[9] As the motion judge noted at the outset of his reasons, at para. 8, the parties agree on a number of issues:

- Paccar's lease is a security interest within the meaning of the PPSA (Paccar being a lessor of goods under a lease for a term of more than one year);
- the PPSA applies to "every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest". […]
- Paccar failed to perfect a security interest against the Debtor regarding the trucks until after the appointment of the Receiver. Regarding the Peterbilt and T880, it did not register against a named "debtor" and did not do so within the required 15 days of the Debtor's possession. Regarding the T270, Paccar failed to register against a "Motor Vehicle"; it also failed to register within 15 days of the Debtor's possession;
- as a result of defects in its registrations, Paccar does not have a valid purchase money security interest (PMSI) in the trucks and does not have a perfected security interest in the trucks; and
- Paccar retained title to the trucks. Further, for the purposes of this motion, Paccar's leases on the

> trucks did not secure payment or the performance of an obligation. They are “true” leases.

C. ISSUES

[10] Paccar makes three interrelated arguments. First, it argues that neither the common law, nor any provision of federal or provincial law, can give RBC or the Receiver greater property rights to the collateral than Cutler possessed. It argues that neither the Receiver nor RBC can be entitled to the trucks because this was a “true lease” and, while the debtor Cutler had the right to possess and use the trucks in exchange for rent, Paccar retained title.

[11] Second, Paccar takes the position that s. 20(1)(b) of the *PPSA*, which provides that a security interest “in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy”, is a “specific legislative over-ride” that does not apply to the Receiver.

[12] Third, Paccar submits that Part V of the *PPSA* precludes enforcement of security interests with respect to true leases.

[13] Paccar’s arguments on appeal essentially rest on the premise that, because the lease here was a “true” lease, the fact that title remained with the lessor effectively exempted it from the scheme of the *PPSA*.

[14] These submissions were all considered and rejected by the motion judge, and I will address his reasons in the course of considering the arguments in turn.

D. ANALYSIS

(1) The Effect of the 2007 Revisions to the *PPSA*

[15] The motion judge began his analysis by discussing the 2007 changes to the *PPSA* which, he noted, have "fundamentally changed the law around the preservation and priority of a lessor's interest". In the course of a few concise paragraphs, he summarized the pre-existing law, the object of the *PPSA*, and the purpose of the 2007 amendments as follows:

> [13] As the Court of Appeal for Saskatchewan wrote in *International Harvester Credit Corp. of Canada v. Bell's Dairy Ltd. (Trustee of)*, (1986), 30 D.L.R. (4th) 387 (Sask. C.A.), the law has long been concerned with security transactions under which title to goods rests with one person (the true owner), while their possession is enjoyed by another (the ostensible owner). The potential for mischief in such arrangements is obvious, a fact which prompted early legislation dealing with the two most frequently encountered instances: chattel mortgages and conditional sales. This early legislation, however, did not apply to a true lease of goods (as distinct from a security transaction in the form of a lease). This form of dealing – the true lease – in which title and possession are separated, was left to the common law. As a general rule, the common law did not allow the lessor's title to leased goods to be defeated through some dealing by the lessee. All this changed, however, when the PPSA (in Ontario, in 2007) brought about far-reaching statutory changes to the common law.
>
> [14] The object of the PPSA is to modernize and consolidate the law of personal property as security for debts, so as to provide an orderly, predictable system for taking and enforcing security interests. The scope of the statute includes all transactions, regardless of their form and irrespective of the intention of the parties, that either

> create or are deemed to create a security interest in personal property and fixtures. In Ontario, since 2007, the law treats true leases of goods as though the parties had intended the property to serve as security for the amounts owing by lessee. This is a singularly important departure from the law as it existed before this Act came into being.
>
> [15] The legislature has, by enacting the PPSA, set aside traditional concepts of title and ownership to a certain extent. Property rights subject to provincial legislation are what the legislature determines them to be. This is precisely what was done in the PPSA, which implemented a new conceptual approach to the definition and assertion of rights in and to personal property. Priority and realization under the PPSA revolve around the central statutory concept of a "security interest". The rights of parties to a transaction that creates a security interest are explicitly not dependent on either the form of the transaction or upon traditional questions of title. They are defined by the PPSA itself: see also *Giffen (Re)*, [1998] 1 S.C.R. 91, at para. 26. [Emphasis added.]

[16] The motion judge went on to explain that a "debtor" under the *PPSA* includes a "'lessee of goods under a lease for a term of more than one year' (s. 1(1))"; that the *PPSA* applies to a "'lease of goods under a lease for a term of more than one year even though the lease may not secure payment or performance of an obligation' (s. 2(c))"; and that the *PPSA* "'provides that a PMSI has priority over any other security interest in the collateral if the PMSI was perfected within 15 days of the debtor taking possession' (s. 33(2))".

[17] The implication of this, which is not seriously in dispute, is that the *PPSA*, as of 2007, provided Paccar with the means of preserving the priority of its interest in the trucks over the interest of RBC under the GSA. That means, however, that

Paccar's interest does not turn on common law notions of title or ownership but on compliance with the provisions of the *PPSA* governing perfection of security interests. It is common ground that, for reasons that are irrelevant to this appeal, Paccar failed to perfect its interest.

[18] In my view, there can be no doubt that the motion judge's analysis of the purpose of the *PPSA* and its revisions is correct. First, it is worth noting that Ontario and Manitoba were the last two common law provinces to include leases of more than one year in their secured interest and priority legislation: Richard H. McLaren, *Secured Transactions in Personal Property in Canada*, 3rd ed (Toronto: Thomson Reuters Canada, 2023), at § 3:19 (McLaren, *Secured Transactions*). Although this Court has not expressly ruled on the point, there is ample support for the view that the purpose of the 2007 amendments was to bring Ontario in line with the other provinces, and, as the motion judge explained, to modernize and simplify the regime of secured interests and priorities: Michael E. Burke, "Ontario Personal Property Security Act Reform: Significant Policy Changes" (2009) 48:2 Can Bus LJ 289 at 298; Ronald C. C. Cuming, Catherine Walsh & Roderick Wood, "Secured Transactions Law in Canada – Significant Achievements, Unfinished Business and Ongoing Challenges" (2011) 50 Can Bus LJ 156 at 174. Richard McLaren, in the *2022-2023 Annotated Ontario Personal Property Act*, at p. 61-62, outlined the differences in Ontario law before and after the 2007 amendments to the *PPSA*:

The scope of the PPSA has been expanded to include certain types of true leases, following the enactment of *Ministry of Government Services Consumer Protection and Service Modernization Act, 2006*, S.O. 2006, c. 34 (“Bill 152”). Previously, the Ontario PPSA differed from other provinces in that a true lease for a term of more than one year was not covered by the Act. Therefore, only leases that secured payment for an obligation fell within the ambit of the Ontario PPSA. This led to a significant amount of litigation in order to determine whether a particular lease is or is not covered by the Act. Section 2(c) now specifically includes a lease of goods for a term of more than one year, regardless of whether the lease secures payment for an obligation.

By including leases of goods for a term of more than one year under the scope of the Act, a greater degree of certainty has been achieved. The previous focus on factors such as the identity of the lessor, the value of purchase options or the intentions of parties to determine whether a transaction requires registration of a financing statement, or other acts to perfect the lessor’s interests, has been rendered obsolete. The Act is now in lock-step with other provincial PPSAs in this regard and promotes uniformity across jurisdictions.

…

In our view, it is now time to clarify the law and to move toward uniformity with *Personal Property Security Acts* in other provinces. To this end, we recommend that Ontario follow the western model, and adopt the definition of "lease for a term of more than one year," with all necessary related changes. While the OPPSA should thus apply to all leases, the default provisions set out in Part V of the OPPSA should only apply to those leases which in substance create a security interest. In other words, where there is a "true" lease, the rights and remedies of the parties after default should continue to lie outside the OPPSA.

[19] Second, and relatedly, there are a number of decisions rendered under other provincial regimes which clearly make the point that the regimes which exist in those provinces have, in prescribed circumstances, prioritized registered security interests over common law notions of title.

[20] The leading case on the subject is *Giffen (Re),* [1998] 1 S.C.R. 91, penned by Iacobucci J. on appeal from the British Columbia Court of Appeal. In that case, a lessor leased a car to a company, which in turn leased it to an employee for more than one year: at para. 3. The employee subsequently made an assignment in bankruptcy: at para. 5. According to the British Columbia *Personal Property Security Act*, S.B.C. 1989, c. 36 ("BC *PPSA*"), in force at the time, the lessor had a security interest because the lease was for more than one year, but as the lessor had not registered its financing statements as required by the BC *PPSA*, the security interest remained unperfected: at para. 32. The lessor seized the car and sold it with the appellant trustee's consent, and the trustee sought an order, pursuant to the BC *PPSA,* that it was entitled to the proceeds of sale because a security interest in collateral is not effective against a trustee in bankruptcy if the security interest is unperfected at the date of the bankruptcy: at para. 6.

[21] As in the present appeal, the lessor opposed the claim on the grounds that "the bankrupt never owned the car and that the trustee could not have a better claim to the car than the bankrupt had": *Giffen (Re)*, at para. 6. While the trial judge held that the unperfected security interest was of no effect as against the trustee,

the British Columbia Court of Appeal reversed the decision and held that the proceeds properly belonged to the lessor.

[22] In allowing the appeal and reinstating the trial judge's decision, the Supreme Court held that because the lessor's security interest in the car was unperfected at the time of bankruptcy, it could not be effective against the trustee.[1] Writing for the Court, Iacobucci J. stated at para. 44:

> Admittedly, the effect of [the section], on the present facts, is that the trustee ends up with full rights to the car when the bankrupt had only a right of use and possession.

[23] He concluded, at para. 56:

> I agree with the decisions of the courts that have held that the principle that a trustee in bankruptcy cannot obtain greater rights to the property than the bankrupt had has been modified through the policy choices of the legislatures represented in s. 20(b)(i) of the [BC] *PPSA*, and its equivalents in other provinces.

[24] Summarizing, with approval, the Court of Appeal for Saskatchewan's findings in *International Harvester Credit Corp. of Canada Ltd. v. Bell's Dairy Ltd. (Trustee of),* 30 D.L.R. (4th) 387, 50 Sask. L. R. 177, Iacobucci J. noted that the Saskatchewan *PPSA* had displaced the common law rule in favour of the true owner, at para. 52:

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[1] When *Giffen (Re)* was decided, s. 20(b)(i) of the BC *PPSA* read as follows: "A security interest… in collateral is not effective against… a trustee in bankruptcy if the security interest is unperfected at the date of the bankruptcy".

> Provincial legislatures, faced with a policy choice involving the competing interests of the true owner and those of third parties dealing with the ostensible owner, have decided that the true owner must forfeit title, when faced with a competing interest, if she failed to register her interest as required. The court also noted that true leases were not regulated by the personal property regimes until recently. Thus, "as a general rule the common law did not allow the lessor's title to leased goods to be defeated through some dealing of the lessee. However, the Personal Property Security Act has effected far-reaching changes to the law" [Citations omitted].

[25] Paccar argues that *Giffen (Re)* is distinguishable because the trustee's entitlement to the collateral in that case was based on protection from enforcement of an unsecured creditor's rights, rather than a proprietary right greater than the possessory rights held by the lessee. Accordingly, in Paccar's submission, *Giffen (Re)* does not apply to the determination of priority as between a true owner and a perfected security interest. In my view, this reading is too narrow. In *Giffen (Re)*, the Supreme Court found that the trustee could obtain greater rights than the bankrupt had, but it also found that the BC *PPSA* "set aside the traditional concepts of title and ownership to a certain extent" such that the lessor's unperfected interest was not necessarily first in priority: at paras. 26 and 32. The latter holding is applicable to the present appeal.

[26] At the time that *Giffen (Re)* was decided in 1998, Ontario had not yet reformed its *PPSA* to harmonize with legislation in other provinces. A key feature of the now-consistent policy choices made by provincial legislatures across

Canada is that a creditor with an unperfected security interest is vulnerable to the claims of other creditors, whether through a trustee in bankruptcy (as in *Giffen (Re)*) or by direct subordination to third parties with a perfected security interest. In this case, the holder of a perfected security interest (RBC, through the GSA) prevails over the unperfected security interest of the lessor owner of the collateral trucks.

[27] While the application of this principle in the context of true leases may appear counterintuitive because of our prevalent common law notions of ownership and title, the answer here is that the legislation provides the mechanism for the lessor to protect its interest by adhering to the statutory requirements for registration and perfection. Had Paccar so complied in this case, it would have had a perfected PMSI that ranked above RBC's previously registered GSA: see *PPSA,* ss. 20(3), 33(2). It did not do so.

[28] Paccar's overarching argument that neither RBC nor the Receiver can claim a greater interest in the collateral than that possessed by the debtor is based upon a faulty premise. As Iacobucci J. held in *Giffen (Re)*, "the dispute is one of priority… and not ownership in it": at para. 28. The legislature made a policy choice to displace the common law principle that the lessee cannot transfer better title than she possesses: *Giffen (Re)*, at para. 54, citing *International Harvester*. And, in recognition of the lessor's rights, the *PPSA* addressed any potential unfairness issues by providing that leases of more than one year, whether true leases or not,

are security interests and will be protected as PMSIs provided that they are perfected as required by the *PPSA* pursuant to ss. 20(3), 33(2).

(2) Section 20 of the *PPSA*

[29] The relevant parts of s. 20 of the *PPSA* provide as follows:

> (1) Except as provided in subsection (3), until perfected, a security interest,
>
> (a) in collateral is subordinate to the interest of,
>
> (i) a person who has a perfected security interest in the same collateral or who has a lien given under any other Act or by a rule of law or who has a priority under any other Act, or […]
>
> (b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;

[30] Paccar relies on s. 20(1)(b) to argue that the Receiver in this case falls outside the protection of "a person who represents the creditors of the debtor" and thus is subordinate to its unperfected security interest as the owner and lessor. Paccar also argues that s. 20 cannot confer property rights greater than those held by the lessee on either the Receiver or on any perfected security holder. On this basis, Paccar asserts that the motion judge erred in finding that RBC's interest in the collateral prevailed over Paccar's.

[31] I disagree. First, by focusing on s. 20(1)(b), Paccar ignores the clear meaning of s.20(1)(a)(i) as set out above: an unperfected interest in collateral is subordinate to a perfected interest in the same collateral. This plainly means that,

as the holder of an unperfected security interest, Paccar's security interest is subordinate to that of RBC, which holds a GSA.

[32] Second, Paccar appears to misconstrue the Receiver's role in these proceedings. It is not disputed that the Receiver in this case is not caught by s. 20(1)(b). Unlike a trustee in bankruptcy, as was the case in *Giffen (Re)*, or an assignee for the benefit of creditors, the Receiver is not "a person who represents the creditors of the debtor". The Receiver, while appointed at the instance of RBC pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, stands in the shoes of the debtor and not the creditors. While attempting to satisfy Cutler's debts, the Receiver quite properly applied to the court for directions as to the question of the trucks.

[33] In short, read in its entirety, there is no basis to support Paccar's submission on the effect of s. 20.

(3) Section 57.1 of the *PPSA* and the argument that it exempts true leases from the operation of the priority system in the *PPSA*

[34] Paccar's third ground of appeal is that the motion judge erred in rejecting its submission that s. 57.1 exempts "true leases" from the operation of the priority system in the *PPSA*. Section 57.1 provides that:

> Unless otherwise provided in this Part, this Part applies to a security interest only if it secures payment or performance of an obligation.

[35] There is no dispute that the leases in question were true leases. As before the motion judge, Paccar argues that true leases are excluded from the operation of Part V because they do not secure payment of an obligation. It does not follow from this, however, that Part V, which is entitled “Default – Rights and Remedies”, impacts RBC’s priority or the Receiver’s authority to sell the trucks and distribute the proceeds accordingly. In my view, the motion judge correctly found that Part V does not so apply. He applied the modern principle of statutory interpretation and found that Part V establishes “a scheme of ‘self-help’ rights and remedies which operate without the need for court intervention.” Accordingly, pursuant to s. 57.1, these self-help rights do not apply to a true lease. In addition, the motion judge found that interpreting s. 57.1 to give Paccar priority over a perfected security interest would entirely defeat the purpose of including leases longer than a year into the *PPSA* registration and perfection scheme.

[36] On appeal, Paccar correctly argues that true leases are excluded from Part V of the *PPSA* but misconstrues the impact of this exclusion. As McLaren notes in *Secured Transactions,* at § 3:19:

> Under the previous Act, the analysis for whether a lease could comply with the Act’s registration requirements was done by diligent secured parties at the point when the lease arose in order to protect the lessor’s interests through registration and general compliance with the Act. While it seems that the deemed inclusion of leases for more than one year does away with the analysis required under the previous Act, the revised Act merely shifts the analysis to the point when the lessor seeks to depend on

> the rights and remedies granted by Part V of the Act for the purposes of realization. Lease transactions that do not secure payment or performance are deemed to be within the scope of the Act for conflicts, perfect, and priority portions of the Act only. They are not within the types of interest regulated by statutory control over the realization process.

[37] Paccar asserts that the motion judge incorrectly found that RBC was entitled to enforce its security interests despite the explicit legislative exclusion of true leases from Part V of the *PPSA*. At the heart of the motion judge's reasons with respect to these submissions, however, were the reforms that were made to the *PPSA* which came into effect in 2007. Following this reform, a lease of more than one year creates a security interest, "whether or not the interest secures payment or performance of an obligation": *PPSA*, s. 1. For that reason, it is important to briefly re-emphasize the background to this significant legislative change.

[38] As noted above, the 2007 amendments displaced common law title and ownership in favour of the priority system under the *PPSA*. These amendments, which brought Ontario into lock-step with other Canadian provinces, were intended to address the excessive litigation over whether a lease fell under the *PPSA*: Anthony Duggan, "Quinquageneries" (2022) 46:1 Dal LJ 379 at 384-85, n. 14, citing Canadian Bar Association – Ontario, *Submission to the Minister of Consumer and Commercial Relations concerning the Personal Property Security Act* (October 1998), at p. 8. Following these amendments, the determination of whether a lease is a true or security lease is only required where there is a default

under the lease: Burke, at p. 300. As emphasized throughout *Giffen (Re)* by Iacobucci J., the traditional concepts of title and ownership are no longer determinative in the context of the present appeal, as the modern *PPSA* makes the dispute "one of priority to the [collateral] and not ownership in it": at para. 28.

[39] Paccar submits that provincial property legislation informs the rights of secured creditors under federal bankruptcy legislation and that, since true leases are excluded from Part V, a secured creditor cannot enforce its security interest under the *Bankruptcy and Insolvency Act* or the *Courts of Justice Act.*

[40] Again, the appellant's argument fails to recognize the wording and purpose of the amendments and s. 20(1)(a)(i).

[41] First, as noted above, the *PPSA* clearly lays out a procedure for lessors to protect their interests. Had Paccar perfected its security interest, it would, by virtue of ss. 33(2) and 20(3) of the *PPSA* had a PMSI in the trucks that would have ranked ahead in priority of RBC. Paccar did not do so. The *PPSA* explicitly provides for this scenario, too. Pursuant to s. 20(1)(a)(i), an unperfected security interest is subordinate to a perfected security interest in the same collateral.

[42] Second, Paccar's argument would render the amendment meaningless and undermine the goal of simplifying and modernizing the law. If the s. 57.1 exclusion allowed for determination of priority but precluded enforcement, there would be no meaningful clarification or reduction in litigation as intended by the legislature. As

the Court of Appeal for Saskatchewan found in *International Harvester*, at pp. 10-12, after the amendment of that province's personal property security legislation:

> The law has long been concerned with security transactions under which title to goods rests with one person, (the true owner), while their possession is enjoyed by-another, (the ostensible owner). The potential for mischief in such arrangements is obvious, a fact which prompted legislation dealing with the two most frequently encountered instances: chattel mortgages and conditional sales. In enacting both *The Bills of Sale Act* and *The Conditional Sales Act*, the legislature was faced with a policy choice involving the competing interests, on the one hand, of the true owner, and on the other, of persons dealing in good faith with the ostensible owner. In both cases the legislature decided that the true owner should forfeit his title, if, having failed to register his contract in the public registry provided for that purpose, a third party for value, having no knowledge of that contract, acquired an interest in the goods through the ostensible owner.
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> Neither Act applied, however, to a true lease of goods (as distinct from a security transaction in the form of a lease). This form of dealing--the true lease--in which title and possession are separated was left to the common law. And as a general rule the common law did not allow the lessor's title to leased goods to be defeated through some dealing of the lessee. However, *The Personal Property Security Act* has effected far reaching changes to the law.
>
> The object of this Act is to modernize and consolidate the law of personal property as security for debts. The scope of the statute includes all transactions, regardless of their form and irrespective of the intention of the parties, that either create or are deemed to create a security interest in personal property and fixtures. For the first time both consignments of goods and true leases of goods are treated by the law as though the parties had intended the property to serve as security for the amounts owing by

> the consignee or lessee as the case may be. This is a singularly important departure from the law as it existed before this Act came into being.

E. DISPOSITION AND COSTS

[43] For these reasons, I would dismiss the appeal.

[44] The respondent is entitled to $15,000 in costs of the appeal, inclusive of disbursements and HST.

Released: February 16, 2024 “B.W.M.”

“A. Harvison Young J.A.”
“I agree. B.W. Miller J.A.”
“I agree. L. Favreau J.A.”