Court of King's Bench of Alberta

Citation: Grisdale v 816-838 11th Avenue SW, 2024 ABKB 500

Date: 20240820
Docket: 2301 14510
Registry: Calgary

Between:

Dan Grisdale, Matt Lowe and David Bell

Applicants

- and -

816-838 11th Avenue SW (GM Glenbow Inc)

Respondent

Reasons for Decision
of the
Honourable Justice M.H. Hollins

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[1] The Applicants are the creditors of a failed brewery business called Inner City Brewing Company Inc (ICB). After purchasing the secured debt of ICB to Bank of Montreal (BMO), the Applicants purported to exercise their rights under s.62 of the *Personal Property Security Act*, RSA 2000, c.P-7 (*PPSA*) to take the ICB equipment secured under the bank's General Security Agreement and sell it in partial satisfaction of ICB's debt.

[2] However, after the Applicants gave notice of this intention but before the equipment was removed from the ICB premises, ICB's landlord, the Respondent, distrained against the same equipment for rental arrears. The Applicants brought this application for an Order setting aside the Respondent's distraint and allowing them to proceed with the sale of the equipment for the benefit of the Applicants.

[3] As explained herein, I find that s.62 of the *PPSA* mandates the involvement of a civil enforcement agency. Having failed to comply with the statutory requirements to realize on their

security, the Applicants' attempt to take and sell the equipment in priority to the landlord is invalid. The Respondent may proceed with its distraint in accordance with the *PPSA* to seek recovery of the rental arrears.

Background

[4] The Applicants were investors in IBC, along with two other people. When IBC defaulted on its BMO loans, the Applicants purchased the BMO debt of approximately $800,000, secured by a General Security Agreement. On August 16, 2023, the Applicants served a notice to the debtors under s.62 of the *PPSA* indicating that they intended to take the secured property, primarily the IBC equipment, in partial satisfaction of the debt. They left the equipment on the premises while making arrangements to move it to British Columbia, where they thought they could sell it for more money.

[5] In the meantime, the Respondent landlord was owed approximately $700,000 in rental arrears by IBC. It issued a notice of default on September 29, 2023. When it got wind of the Applicants' intentions, the Respondent proceeded under s.104 of the *Civil Enforcement Act,* RSA 2000, c.C-15 (*CEA*) to have a bailiff seize the equipment on or about October 18, 2023.

The Parties' Positions

[6] Both sides agree that once a debtor has defaulted, a secured creditor may proceed to realize on its security interest in personal property in one of two ways set out in the *PPSA*. The first is to seize the secured property and sell it, applying the proceeds of sale to the debt and maintaining a claim against the debtor for any deficiency. This process is governed by s.60 of the *PPSA*.

[7] Alternatively, a secured creditor may elect to keep the secured property for itself in satisfaction of the debt, without offering it for sale to a third party. This process is governed by s.62 of the *PPSA*. Both sections are set out in full in an Appendix to these Reasons.

[8] In this case, the issue is whether the Applicants' use of the s.62 process was valid and if not, the ramifications of that finding.

[9] The Respondent says the Applicants' notice under s.62 *PPSA* was invalid for two reasons: (1) the Applicants purported to take the equipment in *partial* satisfaction of the IBC debt, rather than in *whole* satisfaction of the debt; and (2) the Applicants failed to employ a civil enforcement agency.

[10] The Applicants respond that their only obligation under s.62 PPSA is to give notice, which they did. Receiving no objection, they say that the property passed to them at the expiry of the period for objection and was therefore no longer the property of IBC when the landlord purported to seize the same property.

1. Section 62 *PPSA* does not allow for a Deficiency Judgment

[11] I will first address the issue of whether or not a creditor can take collateral for itself under s.62 and still preserve a deficiency claim against the debtor. These comments are *obiter* because, whether allowable or not, the Respondent has no standing to complain about a deficiency judgment against the debtors. The debtors were given notice that the Applicants intended to "credit" them with $300,000 against their debt and they registered no objection.

[12] My view is that a creditor cannot maintain a deficiency judgment where they have elected to proceed under s.62. Section 60, which addresses the process of sale of collateral to a third party, expressly deals with the prospect of either a surplus or a deficiency following that sale (s.61 *PPSA*). Section 62 does not.

[13] Further under s.62, the creditor elects to take the collateral "in satisfaction of the obligations secured", which I interpret to mean the whole of the obligations secured. Without some qualification, that is what "satisfaction" means.

[14] In any event, the Applicants' purported seizure of collateral does not fail for this reason. While I doubt that mistakenly purporting to maintain a deficiency claim would necessarily invalidate a proper notice in any event, I need not decide that issue given my findings on the second argument.

[15] The questions of whether a secured creditor who elects to proceed under s.62 *PPSA* can maintain a deficiency judgment and whether purporting to do so invalidates an otherwise proper notice under s.62 are questions that will have to await another case.

2. Section 62 *PPSA* Mandates the Use of a Civil Enforcement Agency

[16] The Applicants framed their actions as a "credit bid". This is a procedure by which a creditor attributes value to assets of the debtor, acquires those assets and credits the amount against the debt. They argue that if a credit bid is permissible, then s.62 *PPSA* allows them to notify the debtors of the credit bid and, in the absence of any objection, proceed as proposed.

[17] I do not see the propriety of a credit bid process as central to this decision. However, the fact that its use has been restricted, as far as I know, to court-supervised insolvency proceedings does speak to the potential for mischief by creditors using s.62 as a "self-help" method of realizing on their security. With court (or at least third party) oversight, there are assurances that the value of the assets has not been deflated for the benefit of the creditor acquiring those assets and to the detriment of other creditors and/or the debtor. Allowing a creditor to assign its own value, with no agency or judicial involvement, opens the door to all sorts of possible unfairness.

[18] I want to be clear that these Applicants have done nothing of the sort. Although the evidence on the value of the equipment was extremely scant (a second-hand reference to a prior appraisal done by the debtors without a copy of the appraisal itself), no one challenged the value of $225,000 attributed to the equipment. Further, the Applicants proposed a credit of $300,000 to the IBC debt, more than they might receive on sale of the equipment. In other words, they assumed some risk in setting the amount of the credit bid.

[19] However, that does not address the application of the *Act* to the realization of security generally. I make no comment on the use of credit bids in debtor-creditor scenarios generally, but a creditor relying on either s.60 or s.62 of the *PPSA* must proceed through a civil enforcement agency, based on both the aforementioned policy rationale and on the language of the *Act*, discussed below.

[20] The Respondent argued that the s.62 requires notice to be given to "the Civil Enforcement Agency", implying that there must be such a body involved in the use of s.62 *PPSA*. I do not disagree with that implication but, in my view, there is a far more compelling argument around the applicable statutory wording.

[21] Part V of the *PPSA*, which includes both s.60 and s.62 remedies, is titled "Rights and Remedies on Default" (see Appendix). The Applicants' right to realize on their security comes from s.58(1)(a) of the *PPSA* which acknowledges the Applicants' "right to take possession of the collateral or otherwise enforce the security agreement by any method permitted by law". However, that right is expressly subject to Part 2 of the *CEA.*

[22] Part 2 of the *CEA* says that "only a person who is an [civil enforcement] agency may carry out the functions" referred to in s.9(1)(a) *CEA*, including "a distress under the *Personal Property Security Act* other than by a receiver". In turn, "distress" is defined as "anything done to exercise a right of a secured party to enforce a security interest under section 56(1) or 58(1) of the *Personal Property Security Act*"; s.9(3)(b)(ii) and s.1(m) *CEA*.

[23] Because the Applicants were trying to exercise their rights under s.58(1) *PPSA*, they were required to employ a civil enforcement agency by operation of these statutes, regardless of whether they ultimately chose to proceed under s.60 or under s.62 *PPSA.*

[24] Justice Moen's decision in *954470 Alberta Ltd v GDS & Associates Systems Ltd*, 2007 ABQB 242 is directly on point. In that case, the secured creditor attempted to seize computer equipment with the assistance of the debtor but without a civil enforcement agency. Justice Moen pointed out the same language I have reviewed above and concluded that the creditor's attempt to seize the computers "was unlawful as it failed to comply with the terms of the CEA which required it to use a civil enforcement agency"; *954470 Alberta Ltd* at para.55.

[25] She further concluded, as I do here, that the creditor's attempted seizure was a nullity and that the landlord was therefore entitled to distrain the debtors' property; *954470 Alberta Ltd* at para.17.

[26] For these reasons, the application is dismissed. The parties may speak to costs if they cannot agree.

Heard on the 21st day of February, 2024.
Dated at the City of Calgary, Alberta this 20th day of August, 2024.

M.H. Hollins
J.C.K.B.A.

Appearances:

Terry Czechowskyj, KC
for the Applicants

Anthony L. Dekens and Jelena Melnychyn
for the Respondent

APPENDIX – Personal Property Security Act, RSA 2000, c.P-7, ss.55-62

Part 5
Rights and Remedies on Default

Application of Part

55(1) This Part does not apply to a transaction referred to in section 3(2).

(2) The rights and remedies referred to in this Part are cumulative.

(3) Notwithstanding subsection (1), this Part does not apply to a transaction between a pledgor and a pawnbroker.

(4) Subject to any other Act or rule of law to the contrary, where the same obligation is secured by an interest in land and a security interest to which this Act applies, the secured party may

(a) proceed under this Part as to the personal property, or

(b) proceed as to both the land and the personal property, as if the personal property were land, in which case

(i) the secured party's rights, remedies and duties in respect of the land apply to the personal property as if the personal property were land, and

(ii) this Part does not apply.

(5) Subsection (4)(b) does not limit the rights of a secured party who has a security interest in the personal property taken before or after the security interest mentioned in subsection (4).

(6) The secured party referred to in subsection (5)

(a) has standing in proceedings taken in accordance with subsection (4)(b), and

(b) may apply to the Court for the conduct of a judicially supervised sale under subsection (4)(b).

(7) For the purpose of distributing the amount received from the sale of the land and personal property where the purchase price is not allocated to the land and the personal property separately, the amount of the purchase price that is attributable to the sale of the personal property is that proportion of the total price that the market value of the personal property at the time of the sale bears to the total market value of the land and the personal property.

(8) A security interest does not merge merely because a secured party has reduced the secured party's claim to judgment.

1988 cP-4.05 s55;1990 c31 s43

Rights and remedies

56(1) Where the debtor is in default under a security agreement,

(a) except as provided by subsection (2), the secured party has against the debtor the rights and remedies provided in the security agreement, the rights, remedies and obligations provided in this Part and in sections 36, 37 and 38 and when in possession or control, the rights, remedies and obligations provided in section 17 or 17.1, and

(b) the debtor has against the secured party, the rights and remedies provided in the security agreement, the rights and remedies provided by any other Act or rule of law not inconsistent with this Act and the rights and remedies provided in this Part and in section 17 and 17.1.

(2) Except as provided in sections 17, 17.1, 60, 61 and 63, no provision of section 17 or 17.1 or sections 58 to 67, to the extent that it gives rights to the debtor or imposes obligations on the secured party, can be waived or varied by agreement or otherwise.

RSA 2000 cP-7 s56;2006 cS-4.5 s108(25)

Collection rights of secured party

57(1) Where so agreed and in any event on default under a security agreement, a secured party is entitled

(a) to notify a debtor on an intangible or chattel paper or an obligor on an instrument to make payment to the secured party whether or not the assignor was making collections on the collateral before the notification, and

(b) to apply any money taken as collateral to the satisfaction of the obligation secured by the security interest.

(2) A secured party may deduct the secured party's reasonable collection expenses from

(a) money held as collateral, or

(b) an amount collected

(i) from a debtor on an intangible or chattel paper, or

(ii) from an obligor under an instrument.

1988 cP-4.05 s57;1990 c31 s45;1991 c21 s29(8)

Right of secured party to enforce, etc., on default

58(1) Subject to Part 2 of the *Civil Enforcement Act* and sections 36, 37 and 38, on default under a security agreement,

(a) the secured party has, unless otherwise agreed, the right to take possession of the collateral or otherwise enforce the security agreement by any method permitted by law,

(b) if the collateral is a document of title, the secured party may proceed either as to the document of title or as to the goods covered by it, and any method of enforcement that is available with respect to the document of title is also available, with all the necessary modifications, with respect to the goods covered by it,

(c) where the collateral is goods of a kind that cannot be readily moved from the debtor's premises or of a kind for which adequate alternative storage facilities are not readily available, the collateral may be seized without removing it from the debtor's

premises in any manner by which a civil enforcement agency may seize without removal under subsection (2)(b) to (d), if the secured party's interest is perfected by registration, and

(d) where clause (c) applies or where the collateral has been seized by a civil enforcement agency as provided in subsection (2)(b) to (d) and the collateral is of a kind mentioned in clause (c), the secured party may dispose of the collateral on the debtor's premises, but shall not cause the person in possession of the premises any greater inconvenience and cost than is necessarily incidental to the disposal.

(2) To make a seizure of property, the civil enforcement agency may

(a) take physical possession of the property,

(b) give to the debtor or the person in possession of the collateral a notice of seizure in the prescribed form,

(c) post in some conspicuous place on the premises on which the property is located at the time of seizure a notice of seizure in the prescribed form, or

(d) in the case of property in the form of goods, affix to the goods a sticker in the prescribed form,

and seizure by the civil enforcement agency shall continue until possession of the property is surrendered to the secured party or the secured party's agent, or the seizure has been released.

(3) At any time after making a seizure, the civil enforcement agency may appoint the debtor or other person in possession of the property seized as bailee of the civil enforcement agency on the debtor or such other person executing a written undertaking in the prescribed form to hold the property as bailee for the civil enforcement agency and to deliver up possession of the property to the civil enforcement agency on demand and property held by a bailee is deemed to be held under seizure by the civil enforcement agency.

(4) When a seizure occurs, a civil enforcement agency, on the written request of the person who has reasonable grounds to believe that the person has an interest in or a right to property seized by the civil enforcement agency, shall deliver to that person a list of items of property seized that fall within the general description of property in or to which that person claims to have an interest.

(5) On making a seizure, a civil enforcement agency may surrender possession or the right of possession of the property seized to the secured party or to a person designated in writing by the secured party.

(6) A civil enforcement agency may give before or after seizure of property, a notice to the secured party named in the warrant under which the seizure was made informing the secured party that the seizure shall be released at a date specified in the notice unless before that date the secured party takes possession of the property seized.

(7) If the person to whom the notice referred to in subsection (6) is given does not take possession of the property referred to in the notice on or before the date specified, the civil enforcement agency may release the seizure.

(8) After surrender of possession as provided in subsection (5) or release of seizure as provided in subsection (7), the civil enforcement agency has no liability for loss or damage to the property or for unlawful interference with the rights of the debtor or any other person who has rights in or to the property, occurring after the surrender or release.

(9) A seizure shall not affect the interest of a person who under this Act or under any other law has priority over the rights of the secured party.

1988 cP-4.05 s58;1990 c31 s46;1994 cC-10.5 s148

Seizure of mobile homes

59(1) In this section, "mobile home" means

(a) a vacation trailer or house trailer, or

(b) a structure, whether ordinarily equipped with wheels or not, that is designed to be moved from one point to another by being towed or carried and to provide living accommodation for one or more persons.

(2) When a mobile home is seized to enforce a security agreement and the mobile home is occupied by the debtor or some other person who fails, on demand, to deliver up possession of the mobile home, the person who has authorized the seizure or a receiver may apply to the Court under section 64 for an order directing the occupant to deliver up possession of the mobile home.

(3) The order may provide that if the occupant fails to deliver up possession of the mobile home within the time specified in the order, the civil enforcement agency shall eject and remove the occupant together with all goods the occupant may have in the mobile home, and the civil enforcement agency may take any reasonable steps necessary to obtain possession of the mobile home.

(4) The civil enforcement agency may act under subsection (3) only after an affidavit has been filed with the civil enforcement agency indicating that a copy of the Court order has been served on the occupant of the mobile home and stating that the occupant has failed to deliver up possession of it as required by the order.

1988 cP-4.05 s59;1990 c31 s47;1994 cC-10.5 s148

Disposal of collateral on default

60(1) Collateral may be disposed of in accordance with this Part in its existing condition or after any repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied in the following order to

(a) the reasonable expenses of enforcing the security agreement, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expenses incurred by the secured party, and

(b) the satisfaction of the obligations secured by the security interest of the party disposing of the collateral,

and the surplus, if any, shall be dealt with in accordance with section 61.

(1.1) Notwithstanding any other provision of this Part, if the collateral is a licence, the licence may be retained, held or disposed of under this section only in accordance with

(a) the terms and conditions of the licence, and

(b) the terms and conditions that apply to the licence by law, including by contract.

(2) Collateral may be disposed of as follows:

(a) by private sale;

(b) by public sale, including public auction or closed tender;

(c) as a whole or in commercial units or parts;

(d) if the security agreement so provides, by lease or by deferred payment.

(3) The secured party may delay disposition of the collateral in whole or in part.

(4) Not less than 20 days prior to the disposition of the collateral, the secured party shall give notice of disposition to

(a) the debtor and any other person who is known by the secured party to be an owner of the collateral,

(b) a creditor or person with a security interest in the collateral, and

(i) who has, prior to the date that the notice of disposition is given to the debtor, registered a financing statement according to the name of the debtor or according to the serial number of the collateral in the case of goods prescribed as serial number goods, or

(ii) whose interest was perfected by possession at the time the secured party seized the collateral,

and

(c) any other person with an interest in the collateral who has given notice to the secured party of the person's interest in the collateral prior to the date that the notice of disposition is given to the debtor.

(5) The notice referred to in subsection (4) shall contain

(a) a description of the collateral,

(b) the amount required to satisfy the obligations secured by the security interest,

(c) the sums actually in arrears, exclusive of the operation of any acceleration clause in the security agreement, and a brief description of any default other than non-payment, and the provision of the security agreement the breach of which resulted in the default,

(d) the amount of the applicable expenses referred to in subsection (1)(a) or, where the amount of those expenses has not been determined, a reasonable estimate,

(e) a statement that, on payment of the amounts due under clauses (b) and (d), any person entitled to receive the notice may redeem the collateral,

(f) a statement that, on payment of the sums actually in arrears, exclusive of the operation of any acceleration clause in the security agreement, or the curing of any other default, as the case may be, together with payment of the amounts due under subsection (1)(a), the debtor may reinstate the security agreement,

(g) a statement that, unless the collateral is redeemed or the security agreement is reinstated, the collateral will be disposed of and the debtor may be liable for any deficiency, and

(h) the date, time and place of any sale by public auction, the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted or the date after which any private disposition of the collateral is to be made.

(6) Where the notice required under subsection (4) is served on any person other than the debtor, it need not contain the information specified in subsection (5)(c), (f) and (g), and, where the debtor is not entitled to reinstate the security agreement, the notice to the debtor need not contain the information specified in subsection (5)(c) and (f).

(7) No statement referred to in subsection (5)(g) shall make reference to any liability on the part of the debtor to pay a deficiency if under any Act or rule of law the secured party does not have the right to collect a deficiency from the debtor.

(8) Not less than 20 days prior to the disposition of the collateral, a receiver shall give notice to

(a) the debtor, and if the debtor is a corporation, a director of the corporation,

(b) any other person who is known by the secured party to be an owner of the collateral,

(c) any person referred to in subsection (4)(b), and

(d) any other person with an interest in the collateral who has given notice to the receiver of the person's interest in the collateral prior to the date that the notice of disposition is given to the debtor.

(9) The notice referred to in subsection (8) shall contain

(a) a description of the collateral, and

(b) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.

(10) The notice required under subsection (4) or (8) may be given in accordance with section 72 or, where notice is to be given to the person who has registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given as it appears on the financing statement.

(11) The secured party may purchase the collateral or any part of it only at a public sale and only for a price that bears a reasonable relationship to the market value of the collateral.

(12) When a secured party disposes of the collateral to a purchaser who acquires the purchaser's interest for value and in good faith and who takes possession of it, the purchaser acquires the collateral free from

(a) the interest of the debtor,

(b) an interest subordinate to that of the debtor, and

(c) an interest subordinate to that of the secured party

whether or not the requirements of this section have been complied with by the secured party, and all obligations secured by the subordinate interests are, as regards the purchaser, deemed performed for the purposes of sections 49(7)(a) and 50(3)(a).

(13) Subsection (12) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 77 who has not been given a written notice under this section.

(14) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or a similar instrument and who receives a transfer of collateral from the secured party or who is subrogated to the rights of the secured party has the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral.

(15) The notice in subsection (4) or (8) is not required if

(a) the collateral is perishable,

(b) the secured party believes on reasonable grounds that the collateral will decline substantially in value if not disposed of immediately after default,

(c) the cost of care and storage of the collateral is disproportionately large relative to its value,

(d) the collateral is of a type that is to be disposed of by sale in an organized market that handles large volumes of transactions between many different sellers and many different buyers,

(e) the collateral is money other than a medium of exchange authorized by the Parliament of Canada,

(f) the Court, on ex parte application, is satisfied that a notice is not required, or

(g) after default, every person entitled to receive the notice consents to the disposition of the collateral without notice.

RSA 2000 cP-7 s60;2023 c5 s9(26)

Surplus or deficiency

61(1) Where a security interest secures an indebtedness and the collateral has been dealt with under section 57 or has been disposed of in accordance with section 60 or otherwise, any surplus shall, unless otherwise provided by law or by the agreement of all interested persons, be accounted for and paid in the following order to

(a) a person who has a subordinate security interest in the collateral

(i) who has, prior to the distribution of the proceeds, registered a financing statement according to the name of the debtor or according to the serial number of the collateral in the case of goods prescribed as serial number goods, or

(ii) whose interest was perfected by possession at the time the collateral was seized,

(b) any other person who has an interest in the collateral, if that person has given a written notice of that person's interest to the secured party prior to distribution of the proceeds, and

(c) the debtor or any other person who is known by the secured party to be the owner of the collateral

but the priority of the interest in the surplus of a person referred to in clause (a), (b) or (c) is not prejudiced by payment to anyone pursuant to this section.

(2) Where there is a question as to who is entitled to receive payment under subsection (1), the secured party may pay the surplus into the Court and the surplus shall not be paid out except on an application under section 69 by a person claiming an entitlement to the surplus.

(3) Within 30 days after receipt of the written notice of a person referred to in subsection (1), the secured party shall provide to that person a written accounting of

(a) the amount collected pursuant to section 57(1) or the amount realized from the disposition of the collateral under section 60,

(b) the manner in which the collateral was disposed of,

(c) the amount of expenses deducted as provided in sections 17, 57 and 60,

(d) the distribution of the amount received from the collection or disposition, and

(e) the amount of any surplus.

(4) Unless otherwise agreed, or unless otherwise provided in this or any other Act, the debtor is liable for any deficiency.

RSA 2000 cP-7 s61;2023 c5 s9(27)

Retention of collateral

62(1) After default, the secured party may propose to take the collateral in satisfaction of the obligations secured, and shall give a notice of the proposal to

(a) the debtor or any other person who is known by the secured party to be the owner of the collateral,

(b) a creditor or person who has a security interest in the collateral whose interest is subordinate to that of the secured party, and

(i) who has, prior to the date that the notice of the proposal is given to the debtor, registered a financing statement according to the name of the debtor or according to the serial number of the collateral in the case of goods prescribed as serial number goods, or

(ii) whose interest was perfected by possession at the time the collateral was seized,

(c) any other person with an interest in the collateral who has given a written notice to the secured party of an interest in the collateral prior to the date that notice is given to the debtor, and

(d) the civil enforcement agency, unless possession or seizure has been surrendered or released by the civil enforcement agency pursuant to section 58(5) or (7).

(2) If any person who is entitled to notification under subsection (1) and whose interest in the collateral would be adversely affected by the secured party's proposal gives to the secured party a written notice of objection not later than 15 days after giving the notice under subsection (1), the secured party shall dispose of the collateral in accordance with section 60.

(3) If no notice of objection is given, the secured party is, at the expiry of the 15-day period referred to in subsection (2), deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it, and is entitled to hold or dispose of the collateral free from all rights and interest of the debtor and any person entitled to receive a notice

(a) under subsection (1)(b), and

(b) under subsection (1)(c) whose interest is subordinate to that of the secured party,

who has been given the notice and all obligations secured by the interests referred to in clauses (a) and (b) are deemed performed for the purposes of sections 49(7)(a) and 50(3)(a).

(4) The notice required under subsection (1) may be given in accordance with section 72 or, where notice is to be given to a person who has registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given as it appears on the financing statement.

(5) The secured party may require any person who has made an objection to the secured party's proposal to furnish the secured party with proof of that person's interest in the collateral and, unless the person furnishes the proof not later than 10 days after the secured party's demand, the secured party may proceed as if the secured party had received no objection from that person.

(6) On application by a secured party, the Court may determine that an objection to the proposal of a secured party is ineffective on the grounds that

(a) the person made the objection for a purpose other than the protection of the person's interest in the collateral, or

(b) the market value of the collateral is less than the total amount owing to the secured party and the costs of disposition.

(7) Where a secured party disposes of the collateral to a purchaser who acquires the purchaser's interest for value and in good faith and who takes possession of it, the purchaser acquires the collateral free from

(a) the interest of the debtor,

(b) an interest subordinate to that of the debtor, and

(c) an interest subordinate to that of the secured party

whether or not the requirements of this section have been complied with by the secured party, and all obligations secured by the subordinate interests are deemed performed for the purposes of sections 49(7)(a) and 50(3)(a).

(8) Subsection (7) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 77 who has not been given a written notice under this section.