Understanding PPSA
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By Bruce Duggan

The Personal Property Security Act (PPSA) is the name of the statute that regulates the creation and registration of security interests in all personal property within their respective jurisdictions. Ontario was the first province to introduce the legislation, followed by the remaining provinces and territories. The scope of the Act is extremely broad, as it is concerned with every transaction which in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral.

The act varies in its applicability in different provinces, but the concept is the same. Under this act, personal property is classified into the following categories: goods, instruments, documents of title, chattel paper, leases, conditional sales contracts, securities, money, and intangibles. The act excludes the following from its purview: liens, interests in annuities and insurance policies, interests in land, including leases, assignments for the general benefit of creditors, interests in any compensation.

Understanding the relative rankings and priorities of all security interests in a Borrower’s property just from reading a search certificate is almost impossible because PPSA security interests are not based only on the date of registration. Moreover, the PPSA sets out its own priority rules that are not exclusively based on the date/order of registration; some security interests are not registered at all (statutory liens, landlord interests, for example); and, some security interests can be registered in other non-PPSA systems (Bank Act, for example).

Still, assistance is available within the PPSA to understand the relationship between PPSA-registered security interests.

We begin with the PPSA rule that provides one financing statement/registration is sufficient to secure more than one security interest (45(4)). Presumably, the policy behind this rule is to discourage multiple registrations by the same secured party against the same debtor in the same collateral classification.

Here is where the collateral classification(s) selected in the financing statement governs. For example, when “equipment” is selected as the collateral classification in a financing statement, this is sufficient to include all equipment owned by the Debtor. This may be misleading because we will not know from this whether only specific equipment is secured: the inference that all equipment of the debtor has been secured may or may not be correct.

Another PPSA priority rule assists with narrowing the above general rule: where the financing statement has selected a collateral classification and includes words that
appear to limit the scope of the collateral classification, the security interest is only in the limited collateral class (46(2.1)). This means that under certain circumstances, completing the General Collateral Description field can limit the security interest.

For example, when “equipment” is selected as the only collateral classification and a truck is described in the General Collateral Description, the financing statement only secures that specific truck (and the proceeds from its disposition); however, if “equipment” and some other collateral classification is selected, such as “other”, the financing statement is no longer limited to the described truck.

Eventually, the PPSA will make completing this Collateral Description mandatory but, for now, we can sometimes rely on a Collateral Description, when it is completed, to define a security interest in a Borrower’s specific property. This rule has had an odd history, having been repealed once (by accident) in 2007 and then re-enacted in its original form (on purpose) in 2010. At the moment, it is optional only to complete the General Collateral Description in a financing statement but, when it is completed, the General Collateral Description will limit the financing statement to the specific collateral described.

The commercial lawyers at Simmons da Silva LLP have the experience in working with PPSAs. Should you require any assistance, please contact Bruce Duggan T: 905-861-2825 or email: bruce@sdslawfirm.com

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