Cassels

RSLA – Getting the Structure Right

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The recent Ontario Superior Court of Justice (Toronto Small Claims Court) case of *Prefera Finance Ltd. v. Eden Park Inc*. is a helpful case in understanding how the *Repair and Storage Liens Act* R.S.O. 1990, c. R. 25 (the RSLA) works. It also highlights what financial structures can be used by third-party finance companies with the benefit of the RSLA. While the case itself is unremarkable in its result, it does highlight specific matters that can often be misunderstood.

Facts

The facts are relatively simple. A customer (the Customer) entered into a sale finance contract with Eden Park Inc. (Eden Park) with respect to a vehicle. The Customer desired to acquire snow tires and chose to finance the acquisition of these tires from a tire vendor (the Dealer). The Dealer entered into a finance agreement with the Customer which provided for the payment of the tires over time by the Customer. The Dealer, to protect its financial interest, registered a non-possessory lien under the RSLA. Eden Park registered its interest in the vehicle under the PPSA prior to the registration of the Dealer registration under the RSLA.

The Dealer assigned the finance contract, together with the lien and registration to a third-party finance company, Prefera Finance Ltd (Prefera) and Prefera registered a financing change statement showing itself as the secured party. The Customer committed an event of default under the finance agreement and Prefera seized the vehicle. Eden Park claimed that its lien in the vehicle had preference over Prefera's lien. Prefera disagreed.

Law

Section 7(3) of the RSLA provides that a holder of a non-possessory lien has priority over the interest in the article of any other person.

Section 29 of the RSLA provides that a lien claimant may assign the lien claimant's right to a lien by an instrument in writing.

Eden Park asserted that a repairer (in this case, the Dealer) had no right to assign its lien to Prefera. In making this assertion, Eden Park relied on the decision in *Lovats Acceptance Corp. v. Advantagewon* 2017

CanLII 9128 (ON Sup Ct J (Small Claims)) (*Lovats*) where the Court held that once a non-possessory lien was paid in full by the Owner then the lien was discharged and the lien claimant had no interest that attached to the vehicle.

In determining that Prefera had a prior claim, the Court distinguished *Lovats* from the case at hand based on the facts and structure. In *Lovats*, the structure of the financing was:

a) Repair undertaken by repairer;
b) Finance company and not the repairer entered into a finance contract directly with the consumer; and
c) Finance company paid the repairer for the repair and then registered under the RSLA.

This is distinguished from the Prefera case where:

a) Repair undertaken by repairer;
b) Repairer, as opposed to finance company, entered into a finance contract with the consumer; and
c) Repairer assigned the finance contract to a finance company who paid the repairer for the accounts due under the finance contract and not advancing the funds to the consumer to pay the repairer.

The fact scenarios are very different. In the Prefera case, the repairer (in this case, the Dealer) entered into the finance contract and then assigned the contract to Prefera. Prefera did not pay the Dealer on behalf of the Customer but took an assignment of a finance contract. As such, the lien was never extinguished as the Dealer was never paid for the tires but for the sale of a finance contract. It was an entirely different asset that was sold.

Key Takeaway

This case highlights the importance of getting the finance structure correct, which Prefera did and the financing company in *Lovats* did not. If the Court did not make the determination in favour of Prefera it would have made the meaning of Section 29 of the RSLA meaningless as there would be no purpose of a repairer assigning its interest in the finance contract. The RSLA specifically provides for a method for repair companies to obtain liquidity for financing. By Prefera using the correct structure the Dealer was able to offer its clients financing which they may not otherwise been able to obtain. The Dealer could enhance sales and consumers could acquire needed assets.

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