

## Harsh Reminder for Secured Creditors Who Take Security in Individual's Vehicles

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A recent decision of the Ontario Superior Court of Justice in *Re Marleau* (2021 ONSC 3390) reminds lenders who take security in individuals' vehicles that if a vehicle is moved to Ontario the lender must re-register its security interest in Ontario quickly to maintain priority.<sup>1</sup> The impact of this case is particularly harsh as the debtor filed for bankruptcy prior to the lender re-perfecting its security interest by registration and as such, the lender was deemed unsecured and lost the vehicle. While this is not new law or a surprising result, it is a reminder that a lessor needs to remain vigilant in keeping track of their clients and the location of the collateral.

Specifically, under section 5.2 of the Ontario *Personal Property Security Act* (R.S.O., 1990, c. P.10) the secured creditor must re-register its security interest in Ontario within 60 days from when the vehicle is moved or 15 days from when the secured creditor receives notice of the relocation – **whichever date is earliest**.

Importantly, the registration must also be affected **prior to the individual debtor filing for bankruptcy** under *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3). Once a debtor files for bankruptcy the statutory stay of proceedings under section 69.3 of the BIA prevents a lender from properly perfecting the security interest by registration in priority to the trustee even if it already had a registration in another province.

### The Facts

Rifco National Auto Finance Corporation (Rifco) entered into a loan agreement with Amanda Marleau (Marleau), to finance her purchase of a vehicle. Rifco took security in the vehicle which was in Alberta and registered its security interest in Alberta. The loan agreement required Marleau to notify Rifco within 10 days of changing address or moving the vehicle out of Alberta.

Marleau moved with the vehicle to Ontario, never notified Rifco of the relocation and filed for bankruptcy shortly thereafter.

Rifco received notice of Marleau's bankruptcy filing and subsequently registered its security interest under the Ontario PPSA. The registration was made within 15 days of learning of the vehicle's relocation into Ontario but *more than* 60 days after the vehicle was moved to Ontario. The trustee disallowed Rifco's

secured claim and right to seize the vehicle stating its security interest was not properly perfected in Ontario.

## The Decision

The Court found in favour of the trustee. Rifco had failed to register its security interest in Ontario at the earliest date required by the statute (being 60 days from the date the vehicle was moved to Ontario). Rifco's lack of knowledge regarding the change in the location of the collateral was not relevant. The Court also confirmed that registering a financing statement is the type of remedy which is stayed under section 69.3(1) of the BIA. Accordingly, even if Rifco was in time to re-perfect its security under the PPSA it would have been stayed under the BIA from doing so.

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<sup>1</sup> In the case of a corporate debtor, the security interest may remain valid and enforceable if the registered head office remains unchanged.

This case and article discuss the application of the Ontario PPSA only. While the BIA is a federal statute and the Court's finding regarding the stay of proceedings will be applicable outside of Ontario, other provincial statutes may apply differently.

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